

PUBLIC HEARINGS ON THE 2012 REVIEW OF MMP

AT WELLINGTON

ON 23 APRIL 2012

HEARD BEFORE ELECTORAL COMMISSION BOARD MEMBERS

SIR HUGH ADDRESSES THE HEARING IN TE REO

SIR HUGH: Today is the opening of the public hearings into the Electoral Commission's review of the MMP voting system. It's the first time for a decade that the public has had an opportunity of looking at and talking about the MMP voting system. It began, of course, with the Royal Commission back in 1986, the referendums on which voting system we'd choose in the early 90s, the 1996 MMP election, the first, the parliamentary review of the system about a decade ago, and now this independent review by the Electoral Commission.

It comes out of the fact that in, the referendum held in conjunction with the general election on 26 November last year, nearly 58% of the voters opted to keep the MMP system as opposed to the other four also on offer. And the consequence of that majority was that the Electoral Commission was required to undertake a public consultative process to see what changes to MMP might be necessary or desirable.

The process itself really began in May when the first publicity for the MMP Review and the consequent – the MMP referendum and the consequent review were undertaken. There was extensive publicity during the middle of last year, along with the enrolment push. There was advertising, television and print. There was a website, some nearly quarter of a million people went to the website in the period leading up to the election. There was a free phone, there were some 18,500 DVDs handed out to people, to enquirers

who wanted to know more about what was on offer. There was a significant outreach programme as well.

Those of you who watched the DVDs or visited the website would know that the Commission essentially had three public faces: Professor Nigel Roberts, and Dr Therese Arseneau, our political scientists, consultants, and advisors who are here to help us during the Review and sit on the right-hand side of the courtroom and although you may not remember her name, you'd undoubtedly remember her face, Mabel Wharekawa-Burt.

She has been a returning officer with us since 2002 and was the returning officer last year for both the Coromandel and the Waiariki electorates. She's passionate about getting Māori on the electoral roll, she's an expert advisor to us on our Māori outreach programme and on the referendum. She was the Commission spokesperson in the media and those of you who watched the DVDs would remember Mabel for her introductory remarks and her closing remarks which put the whole Review in focus in Mabel's characteristically warm way. And all of that was done when she was suffering indifferent health.

On this opening of the public hearings into MMP, the Commission wants to acknowledge not just Professor Roberts and Dr Arseneau's contribution but in particular to acknowledge Mabel Wharekawa-Burt's contribution.

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This particular campaign began early in February this year, with the consultative paper being issued, and with a call for public submissions, principally online. So far, and I'm not sure, but as of last week's number we've had over 3000 submissions, a very much bigger number than the Royal Commission itself had, but of course that was in pre-Internet days.

A number of those submissions have been brief, a number have been fuller, quite considerably fuller, and that's only one of the folders. Those who wish to

have been invited to address us publically. We are sitting both here in Wellington, in Auckland, in Christchurch, and in Hamilton. We are hearing submissions on Skype and on video link, including submissions from overseas. The Commission would like to acknowledge the Ministry of Justice's assistance in arranging the venues for these hearings, and in ensuring that the evidence recording system used in the Courts is available to us so that we don't need to take laborious notes. The transcript will be available.

It's important that I emphasise that just because we're commencing the public hearings into the MMP Review at this stage, that doesn't mean that the time for putting in reviews has closed. We have a very compressed timetable, as I'll mention in a moment, but submissions are welcome online up until the end of May, 31 May.

At the conclusion of that review process, the Commission and its advisors will consider the submissions made, and in that regard it's important to recognise that this is a wide-ranging review. Although the submissions made are of crucial importance, as are the oral submissions, they're not by any means the only enquiry we shall make into the seven major questions which we are required to consider. Those questions related to both the thresholds, the 5% and the one electorate seat threshold. They relate to whether voters should have more input into the order of candidates on a party list. They relate to whether there should continue to be dual candidacy, that is to say people can stand both for an electorate and be on a party list. A subset of that is where sitting list MPs should be able to stand in by-elections, and there are two, perhaps slightly more esoteric, I'm not sure Professor Roberts and Dr Arseneau would agree with that description, points we have to answer, which is whether the current provisions which give rise to an overhang should continue and the point at which New Zealand's growing population and population grid might imperil the proportionality which is so fundamental to the MMP system.

There will be a proposal paper put out for public comment, probably in July of this year. There will be an opportunity, as I said, for comment, and then the final report will be presented to the Minister of Justice by 31 October. So you see it's a fairly compressed schedule, and as a result we've had to commence the public hearings like this before the time for filing of submissions has concluded. Nonetheless, it's an interesting, intriguing, to some even exciting prospect that New Zealand should have the opportunity to reconsider the MMP voting system and that the Electoral Commission should have the responsibility of possibly suggesting changes to it at the end of the process that I've outlined.

So thank you all for coming. Thank you for your interest. We shall now embark on the first of these scheduled submissions, which is from the New Zealand National Party, submitting, Mr Greg Hamilton. All those who made submissions should know that each of the members of the Commission and the advisors have read all the submissions beforehand and made their own notes and annotations, so those presenting submissions should feel free to comment, perhaps on additional matters that they want to raise, or additional points having occurred to them on reading some of the submissions being received, and members of the Commission, and possibly the advisors, will have an opportunity to quiz submitters on what they have put forward, but there is no need for the submissions to be read, simply highlighted and enlarged upon as necessary.

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We have Mr Hamilton. Now, Mr Hamilton, thank you for your submission, thank everybody for their submissions. Perhaps unsurprisingly, the National Party which has done so well out of MMP in its submissions largely opts for the status quo but there are additional points that you make in your submission, one of which I think is really, and you're not the only person that made this submission, will be a matter for the Representation Commission, and that's the plus or minus 10% rule, rather than for us, but it might be opportune for us to mention that in the report to ensure it doesn't get

overlooked in the future. Would you care to comment on the submission you've made?

GREG HAMILTON: Thank you very much, Your Honour. National's submission has largely argued for the retention of the status quo. There are a number of reasons that we don't believe significant change is in the best public interest, the first being that MMP is an imperfect system but it has been retained by the referendum as you've mentioned, so there is a narrow band which, within the Review's mandate, that can change that wouldn't fundamentally change the actual system of MMP.

MMP is a finely balanced compromise between proportionality and stability. We believe that the balance has proven to work well. Fixing one imperfection does have consequences. Some are recognisable and some, we believe, could be unexpected.

The third point is that we believe the public are really only getting their head around the complex issues within MMP and for that reason we really don't think that it's wise to have change for change's sake. In other words, if it's not broken, don't fix it.

There are three key arguments that we have. The 5% threshold strikes the right balance between proportionality and stability. Second, removing the one seat threshold would not improve MMP. And the third, the 10% population tolerance, electorate population tolerance in electorates would be beneficial and does need to be looked at.

On the percentage threshold, we believe the current 5% threshold is achieving the objectives of MMP and could not be reduced without unacceptable adverse impacts on stability of government. We do not believe it presents too high a barrier to entry, provided the one seat threshold remains. Under the 5% threshold, our parliament's very diverse and very proportional. The issue is that it's not always very stable. If stability is already the system's weakest

point, let's not go down the track of further compromising stable government for very limited improvements in proportionality.

The full impact of a three to 4% threshold on voter behaviour is a big unknown and likely to have some unintended consequences. While only two parties have fallen between four and 5%, a lower threshold would have an impact on voter behaviour, we believe. We consider it likely that over time new parties would enter parliament under a 3 or 4% threshold that would not under a 5% threshold and bring a sufficient number of MPs to alter government's arrangements. We ask the panel to consider seriously about the long term impacts of stable government, of introducing those extra variables to parliament; a larger crossbench with smaller major parties means a higher likelihood of coalition of the loser scenario where public choice of governing party, of governing party is overturned by crossbench parties pursuing narrow interests; a higher likelihood of midterm government dissolution; and more complex governing arrangements which slow legislative process, skew policy towards narrow interests, and result in added costs for government.

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It's clear to us that the lower the threshold the higher the likelihood of unstable Government. We think stability is the weaker side of the compromise currently between proportionality and stability. We'd not like to see a change that points to less stability, and we believe the 5% works well.

In terms of the one seat threshold, we accept that there is a perception regarding the fairness of the status quo which we actually don't accept ourselves. We believe that once a party has earned a seat in Parliament through either of the threshold it's entitled to the proportion of seats that it's been voted. But more importantly, we're really concerned about the practicality of any alternatives.

Discounting party votes of parties which hold an electorate but don't reach the 5% means those became overhang seats. We can only identify three

possible options to confront those, that issue, none of which we believe are particularly acceptable.

The first one is, add the MPs as overhang seats. That would obviously increase the size of Parliament to 127 seats in 2005, 128 in 2008, and 126 in 2011. The impact of those extra MPs is significantly, would significantly distort proportionality and lift the bar for stable coalitions to form.

The second option would be to absorb the MPs into a 120 seat Parliament. While this addresses the issue of the size of Parliament, lost seats to the major parties means an equally significant impact on proportionality and stable coalitions.

The third option that's been suggested is include in the Sainte-Laguë calculations as to the number of electorates held. While this solution does address the mathematical issues of the two previous, a party vote should determine only one thing, in our opinion, the number of MPs a party has in Parliament. Diverting the impact of a party vote to any other purpose is disingenuous to voters and a significant electoral issue.

We also wish to point out that removing the one seat threshold is highly unlikely to fix some of the issues of parties potentially negotiating arrangements to mutual advantage. It may actually make the issue worse. If parties are unable to receive the benefit of their party vote in representation, they are likely to look to other ways to gain advantage from it. This could lead to a range of unintended consequences, for example, electorate party vote deals. That is, Party A agrees not to contest the party vote if Party B does not contest strategically selected seats. Double representation strategies. Party C is unlikely to reach a percentage threshold. It suggests to its voters that they can have double representation if they vote for Party C with their candidate vote and their preferred party with their party vote.

The third area is anti-independent strategies. Parties below the threshold with only one electorate will seldom change governing arrangements, but their

presence will make it more difficult for major parties to form a majority by reducing their allocation of list MPs or increasing their overhang. It's not hard to perceive that some major parties might put significant resources into ensuring that they push very hard to get rid of those independent seats. The point we're making there is that there are incentives that could be implemented here that could encourage unexpected behaviour.

The third point was the 10% electoral population tolerance. The 1986 Commission suggested lifting the population tolerance from 5 to 10% if MMP was adopted. This advice wasn't taken, and we believe that in hindsight it should have been. The significant reduction of the number of electorates under MMP has meant that some rural electorates now cover spaces so large as to be impractical and inhibit access to representation. Further, the 5% tolerance is also not sufficiently flexible to ensure that electorates best align to community interests. Examples here include Hamilton Airport being included in the Taranaki-King Country electorate, Palmerston North, or part of Palmerston North, being in the Rangitikei electorate, part of Paraparaumu being, forming part of the Mana electorate, and part of Otara in Botany.

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The traditional objective to a greater tolerance has been on the grounds of electoral equality. However, as electorates no longer determine a party's share of seats in parliament, we do believe that it's a significant consideration under MMP.

Finally, there seems to be a pretty strong consensus on the status quo on other areas from our read, on the issues of list ranking, overhangs, dual candidacy, and the by-elections. We take this as acceptance that status quo is working well and change would be difficult to justify. However, we'd love to have our, another submission subject to findings. We do point out, though, that obviously there would be an issue around overhang seats if the 1%, ah, the one seat threshold was removed.

SIR HUGH: Well, the modus operandi we've agreed on is that members of the Commission should have an opportunity to ask questions, starting with the Chief Electoral Officer, Mr Robert Peden who is also a member of the Commission.

MR PEDEN: Thank you, Sir Hugh. Mr Hamilton, the – I take it from your submission that but for the one seat rule, you're saying that the 5% threshold would be too high? Is that correct?

MR HAMILTON: No, no.

MR PEDEN: If the one seat rule was to be removed, you would still favour the retention of the 5% -

MR HAMILTON: Well we actually think that that is, that that is a challenge, so this is one of the cause and effect issues. If you remove the one seat threshold, obviously, I think the temptation will be to reduce the 5% threshold which we think would be a mistake, in the sense that that would be fixing perhaps a problem, um, proportionality, that we don't believe really exists but it would be to the detriment of stability.

MR PEDEN: Could you then just explain why you support the one seat rule? What is the, I suppose, the principle behind the one seat rule that you favour?

CAMERON COTTER: I think you've got, um, there is a principled argument to be had but you've really really got to look at the practicality of any alternatives and we've –

MR PEDEN: I understand the concerns you have about removing it from a prac- other, other effects, but I really want to understand what you, what principle or – that you favour on the one seat rule?

MR HAMILTON: We think that the one seat rule has been very good in design in terms of giving minor parties another opportunity, another threshold

to enter parliament and we fundamentally believe that once a party has entered parliament, the stability issue has been dealt with and we can't see any reason why that party then wouldn't get representation per the votes that it's actually got through their party vote, which is, which is addressing the proportionality issue.

MR PEDEN: So behind your support for the one seat rule is the idea of proportionality?

MR HAMILTON: Yes and the fact that it, it, the issue of stability, which the 5% threshold is aiming to address, has already been dealt with in the sense that the party has actually already achieved and has got a seat in parliament.

MR PEDEN: You see, some submissions are suggesting to us that the one seat rule is arbitrary and unfair and if, if your purpose is to support proportionality, I'm just wondering if you could comment on how you see the one seat rule doing that in a way which is fair.

MR COTTER: I think, I think the point is that it's a lot more proportional if a party's in parliament for it to be there with the number of MPs that it's been voted. What seems, would seem anomalous to me would be for a party that had, say, two to 3% of the vote and was in parliament to only have one MP. As Greg mentioned, under the parties there, it's having an impact on governing arrangements, so it's having an impact on civility. So we then have to say that reducing that threshold or removing that threshold would make parliament less proportional.

MR PEDEN: Of, of, in your submission you explained the three options that you see being available for dealing with the overhang and you made very clear that you don't like any of them. But if you had to choose one, which would be your most preferred?

MR COTTER: I think, certainly, the one that has the, the least number of adverse impacts would be the last, to include it in the Sainte-Laguë formula up

to the number of electorates held. But you do have quite a major issue, that that option diverts the purpose of a vote from the intention of the voter. That is to say that your vote determines the number of MPs in parliament, rather than the number of MPs for the party you've given a vote to, and that's an electoral issue which I would ask the Commission to consider.

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SIR HUGH: Thank you. Deputy Chairman Huria?

MS HURIA: No, thank you.

SIR HUGH: You'd be aware that quite a number of the submissions have urged a reduction in the percentage threshold as part of the lengths to abandoning the one seat threshold. If – all sorts of figures have been given to us, from no threshold, 0.8%, 2%, 3%, et cetera. If the percentage threshold were to be reduced to, let's say, half of what it is now, but the one seat threshold abandoned, wouldn't that still maintain the proportionality and, again, contribute to stability in Government?

MR HAMILTON: I think there could be an argument that it would contribute to the proportionality. However, the stability issue, I think, would be a significant problem for us, and we see that the stability issue is possibly the weakest part of those two parts of the equation at the moment. We might have more to add to that.

SIR HUGH: Why would that be the weakest part?

MR WILLIAMS: Well, I think what we see is that MMP is already very proportional, but the number of parties that you have a potential to require to form a Government under a 2 to 3% threshold could be significantly greater than at the moment, particularly when you consider the impact on voter behaviour of a lower threshold. Voters might be much more likely to cast a party vote to a small party if they think it's going to count, and you could end up quite realistically with three or four parties potentially having to all vote

together to pass any individual piece of legislation, and I don't think that would be particularly conducive to stable Government.

SIR HUGH: Some submissions have suggested that a party needs – the most commonly quoted figure is three MPs to do the Parliamentary business properly, participate in the select committees, et cetera. Do you have a view on that?

MR COTTER: Certainly the more MPs a party has the more effective it will be. I don't know that there's necessarily a single number or figure of MPs that you can say is ideal.

SIR HUGH: Right, thank you. Anything, Professor Roberts or Dr Arseneau, that you want to – any questions you want to put?

PROFESSOR ROBERTS: I was just wondering, the National Party might have actually put in a very brief supplementary submission elaborating on the point they made about the – their third point on the overhang. It's not covered in their papers. That is one area that the Electoral Commission has to look at, is the question of overhang, and they come up with three scenarios, and the third one, I think, possibly – maybe a page or a page and a half.

MR WILLIAMS: Yes, certainly.

SIR HUGH: Well, you might like to think about that. Certainly in your oral submissions you've gone beyond the detail in your written submissions, but if there's something else you wanted to address to us, we'd be very happy to receive it.

MR PEDEN: A number of submissions have commented on, in response to the idea of lists being ordered by voters as an alternative to achieving – or addressing their concerns around that, that there should be a greater regulation of party selection processes for list candidates. Do you have a comment on that?

MR HAMILTON: We certainly think the list should remain closed. I think the complexities of an open list in a country this size would be pretty enormous, but I do think there's already quite significant regulation that the process must be democratic, and I absolutely think that that should be observed and managed, but whether that – we don't believe that needs to be tightened up. I think the Commission needs to check that there is the right sort of democratic process in place with each party.

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SIR HUGH: Thank you very much, thank you Mr Hamilton and your supporters. The next submission for this morning comes from the New Zealand Labour Party, Mr Flatt and others.

CHRIS FLATT: Good morning, Your Honour. Being back in a courtroom as an ex-employment lawyer, I feel like there may be some cross-examination going on at this point so I hope there's no leading questions but with me today is Jordan Carter who is our secretary of the New Zealand Labour Party policy council, he's been involved also in the preparation of this submission. I will broadly go through the key points in the submission and then open for questions. And Mr Carter may assist me in relation to some of those.

I'd just like to say, in relation to our submission, the Labour Party did its own internal review process and sought the advice and input of our own members and supporters, in relation to their views on this Review and they were invited to submit those over the last month. We had around 20 to 30 submissions from our party members that we have fed into this submission and also we have informed them that they are, as a federal organisation, entitled to submit in their own right. So where individual branches or LECs may submit, you may have some of those submissions but this is the party's submission.

Your Honour, Labour believes that MMP is the fairest way to ensure every elector's vote carries equal weight. That is a core and fundamental concept of MMP and we support MMP as an electoral system. We are pleased at the

strong endorsement of MMP by the public at the recent referendum. But we do believe that MMP can be improved upon in various ways and our submissions in both writing and orally today, would like to elaborate, just some of the key points that we believe could be improved.

Those – an overview of those are that we believe the party threshold should be lowered to 4%, we believe that that would still provide an adequate safety level in terms of the provision but allow a reduction in the wasted vote that does occur at some elections. The second point is that we believe the electorate seat exception should be ended. We believe there's a fundamental fairness issue there, we will go into that in further detail in our submissions. The third point is in relation to retaining the ability of candidates to be dual candidates as discussed in the submission process and both stand on the list and the electorate seat process. The fourth point is considering increasing the number of electorate seats and then a subsequent reduction in the amount of list seats. We have some other minor points and if time does allow, we will go into those in relation to the by-election issues that were canvassed in submission papers.

But in relation to the first point, which is the 5% threshold, we believe in the retention of an appropriate level of party vote threshold, we are not seeking a complete reduction as some submissions have made. But we do believe there should be an appropriate level to prevent the issue of very small parties being represented, or gaining representation and that fragmented parliament that a number of submitters have discussed and was a key issue in the 1986 Royal Commission report that stated that without a threshold, parliament could become so fragmented amongst smaller parties, that difficulties are created in forming and holding a coalition. We believe that could impair government, effective government, which is undesirable. So we do support retention of an appropriate level.

The balance there is to minimise that wasted vote level that does occur at some elections, when you have a too-high threshold with that safety net, if you call it in that way, level of threshold. So we would support a 4% threshold

being introduced. We note that this was the 1986 Royal Commission recommendation. We believe it provides a balance between promoting the MMP principles of fair representation but does remove that possibility of fragmented parliament.

In relation to the second point which is the electorate seat exception, we do believe it is arbitrary and unfair that many submitters have stated in their submissions. It is unfair as it achieves proportionality for some lucky players in the election process but not for others and fundamentally, MMP should be about a fairness and equity across all voters. Some of those examples that have been pulled out by some submitters who will be here today is in 2008, ACT receiving four MPs with 3.65% of the vote, but New Zealand First receiving no MPs at 4.07%. The same could be said in the 2002 election where the Progressive Party received two MPs at 1.7%, but Christian Heritage did not receive any electorate MPs on 2.38.

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So in that sense, there is an unfairness and a creation of some lucky players, as we call it. It also gives voters in particular electorates, and this is a really important point in our submission, a disproportionate say regarding the composition of Parliament. For example, in the recent election you could argue that voters in Epsom and Ohariu had a greater impact upon Parliament and the composition of Parliament through what has been deemed a double dip, with their electorate vote helping one party to be represented in Parliament but their party vote also helping elect list MPs for another party. The tactical voting issue that we've seen played out through the media where a certain agreement is suggested about who should and shouldn't be voted for. We believe that can give voters in certain electorates greater status in terms of their vote counting or meaning more in terms of the outcome of Parliament. We believe this is inherently unfair and contrary to the underlying principles of MMP. So according, Labour does support the one electorate seat threshold being abolished. Being seen in conjunction with the proposed lowering of thresholds to 4%, we believe this maintains an appropriate

threshold of voter support being achieved throughout the country before parties are represented in Parliament.

Our third point relates to the issue of dual candidacy. We strongly support the retention of dual candidacy as it is currently allowed. We believe that forcing candidates to be either an electorate or list candidate has a range of potential problems. As discussed in our written submissions, such a distinction would require parties to recruit far more electorate candidates than currently occurs. New Zealand is a small nation. We do have a small base of potential candidates, and we would find that, as a party, would result in a far greater need to be recruiting a pool of candidates across certain areas, and that could potentially lower the quality of electorate candidates.

Also, we believe that the concept of the failed local MP assumption, which is discussed in certain media sectors and in some blog sites, that losing your electorate vote prevents or eliminates your ability to be a list MP should be challenged. Often an electorate vote will follow a nationwide swing and against the party at large, so the simple equation of saying that if you lose at the electorate level that means you are being rejected completely by that electorate and being completely rejected by Parliament in the ability to be an MP is something that we should challenge.

We also believe there is a potential that good candidates who live in safe electorates held by other parties will seek to be list-only candidates, and that would have a real negative impact upon the quality of candidates opposing incumbent MPs. The decision could be made in a safe electorate of an opposing party, "There's no point standing for this, I will only stand on the list," and so the pool of candidates that can stand against that incumbent MP in a safe electorate will be reduced as they exit to be a list-only candidate, and that is not good for democracy. It's not good for the public interest that that test and challenge of safe MPs, as currently occurs by a number of list-only candidates, could be reduced and we believe that that would not serve the public well.

Further, the scenario of rejected electorate MPs returning to Parliament via the party list occurs, on average, in roughly 5% of MPs at each election, so we actually believe the occurrence of this issue is very small and has received probably more coverage in the media than is actually occurring at each election. We do note that the 1986 Royal Commission dealt with this question and came to similar conclusions.

Labour would suggest that instead of this issue a bigger public confidence issue is a situation where a list MP leaves or resigns from the party, yet becomes an independent MP in Parliament, colloquially known as the 'waka jumping' legislation that was in existence previously. We have submitted in our written submission a recommendation that if a list MP resigns from their party, or joins another party, or is expelled from their party, then they should be obliged by the Electoral Act to cease being an MP altogether. Obviously there is a clear distinction between electorate MPs who have been voted by that electorate if they were to resign. There has been a mandate from that electorate. But we believe the situation with list MPs is very different. We believe that this matter poses a greater threat to the reputation of MMP than dual candidacy.

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One of the other issues is the order of candidates on the party list. Labour currently does have a broad democratic process to rank candidates in compliance in section 71 of the Electoral Act. We believe any change to the current system not only impacts upon the autonomy of political parties to choose candidates that reflect their ideology and objectives and policies, it also has the potential for far-reaching practical issues that could create substantial voter consequences. The example of spoiled ballots and the initial requirements around the size of ballots that we highlight in our written submissions is one example of that.

We also believe there is a real potential impact upon the levels of representation for traditionally under-represented groups such as Māori, Pacific, Asian, women, for example, the amount of women involved in

parliament at the moment is dropping at horrifying rates and so we believe that an open public list process would lead to a greater under-representation of all those groups and overseas research would suggest that where the public ranking of list processes are involved in electorate selections, then many groups such as Māori, Pacific, or women do get under-represented and that increases. So we would be strongly opposed to that process. We believe the current system is working well and should be retained.

One of the final points is the proportion of electorate to list seats. Proportionality is supported by Labour as one of the key objectives of MMP and we support that principle being retained in every form of MMP but we do believe the distribution of seats in parliament, whilst matching the discretion of party votes, we do believe there is an issue there around the size of some electorates at the moment and that impacts upon the ability of electorate MPs to undertake their work and represent that electorate. And if we have a system such as MMP that does retain an electorate boundary system, rather than moving to a completely supplementary-type proportional system, if we do retain some electorate seats, then the ability of those MPs to fairly represent those electorates should be retained and supported.

So that's why we recommend that the Commission should look into potentially moving the number of electorate seats to around the 75 to 80 mark. We are not holding firm to those figures but we're throwing those out there as a potential starting point as a way of addressing that issue without affecting the proportionality issue that is addressed by list MPs.

We do have some final points just around the by-election candidates, as we say in our written submissions. We do recommend the current ability for list MPs to stand in by-elections be retained. We can go to that in questions if need be but we do note that in the four by-elections in the last parliamentary term, three of the four Labour candidates were non-MPs. So there is, from our point of view, an issue where most of our candidates are actually not list MPs so we don't see this as being a large issue but if the Commission

does want to address this point, we do believe it is important for list MPs to be able to stand in by-elections.

So that is the end of our overview of the submissions. I'm very eager to take questions in relation to those points.

MR PEDEN: Mr Flatt, what would be the minimum threshold that would address the stability concerns?

MR FLATT: Yes, it's an interesting question. I know a number of submitters have done some statistical analysis and I've read through those about – and that's interacting with the size of what is necessary for effective party representation. I know that some have said that you need three MPs or four MPs. I, I think that the 4% gives us that effective level. We'd be interested in the Commission's recommendations in relation to if it, if it is a 2.5%, what the impact of that is in terms of size. We, at this point, believe a 4% threshold gives an adequate level of representation but also ensure that parties do have sufficient numbers of MPs in their parliamentary representation to carry out the duties.

JORDAN CARTER: Can I just, just in complement to that, on the issue of stability, the fact that we've proposed ending the electorate threshold actually increases the stability of the system because it means that there'll be fewer MPs from smaller parties, all other things being considered. So that, that should lead to an increase in stability, notwithstanding what other parties may have submitted on that questions.

MR PEDEN: But at this point, you – there isn't a level that you would stay would start setting alarm bells off in your, your minds?

MR FLATT: The party has no formal position on that but my readings of some of the submitters is anything under 2.5 is starting to get incredibly problematic.

MR PEDEN: If the one seat rule was to be removed, the chance of overhangs increases. In your submission, you've said that the current approach to overhang isn't a concern. If, for example, the level of overhang was to get to, say, seven or eight additional members of parliament, would you consider that to be a problem?

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MR FLATT: No, the party does not have a problem with overhang in terms of the composition of Parliament, and we don't see that it's an issue that should stop the other changes that we are suggesting in terms of 4% and the reduction of the one seat threshold. We just believe that those – introducing those changes are far more important to the effective operation of MMP than any detrimental effect that may be presented by an overhang.

MR PEDEN: But if the – as a, I suppose a consequence of abolishing rule there was a proposal to provide that a mechanism be put in place to maintain the size of Parliament at 120, what would your comment be on that?

MR FLATT: We haven't canvassed or done extensive research into what the appropriate model would be. I know a number of submitters have said that there would be a change to the method by which it's calculated. We would have to put in further submissions on that point and see whatever the submission – whatever the suggestion was and then comment further on that. At this point, our position is that we are focusing on the 4% threshold, the one seat, deal with any potential issues around overhang as may be required when we know what we are dealing with in terms of the recommendation about either an appropriate threshold or a reduction of the one seat rule.

MR PEDEN: Okay. I've noted your views on the rebalancing of the seats. Have you got a view on what level of tolerance the representation commission should have?

MR FLATT: Our research is that anything above the current – with the current 120, assuming 120, anything above that 80 electorate MPs is –

MR PEDEN: Sorry. What I meant was that at the moment the when representation commission redistributes boundaries –

MR FLATT: Oh, okay, yes.

MR PEDEN: – there's a plus or minus 5% tolerance. Some submitters have suggested that should be increased to 10% or some other figures. Have you got a view on that, particularly thinking about your suggestion to rebalance the ratio of electorate to the seats?

MR FLATT: Again, we haven't formally canvassed that issue, but my view is that we would look at increasing that to roughly the 10% maximum, and a number of submitters have looked at that. We would have to look in detail about that, but we don't have a fundamental objection to moving that parameter out somewhat if it does effectively give a greater representation in terms of the electorate boundaries.

MR PEDEN: And the – you've talked about section 71, and I understand your views on maintaining the status quo as far as the order of party lists is concerned. Do you see any need for greater specificity within 71 of what parties should be doing when forming lists, selecting their lists?

MR FLATT: No, I think that this process is a very fundamental part of how political parties operate. I would note that our organisational review that Labour is currently undertaking is canvassing members broadly and members of the public in relation to many issues, one of this – those being how candidates are selected. I believe this is a process best handled by processes within a political party and the ability for members and supporters of those parties to prescribe in a constitutional framework the appropriate way that candidates are selected. I think we run into serious potential problems if we have to specify that under the Electoral Act, how political parties operate. I note that some submitters have talked about – some political parties will specify clearly around a gender mix. Our party has a clear ethnicity and

gender check when it's running its list processes, and I think that those processes are best handled by a political party in its own rules and relations with its members than being put in a section, an amended section 71. I think it gives a clear direction that there must be a democratic process that must be complied with, and I think that's important that political parties follow that through in their own internal processes. The political market and media place will often bring attention to this issue in a far greater means than any statutory change can bring about. So it is in a political party's interest to have a democratic and open, transparent process because we will hear about it from blog sites if they suspect we don't.

MR PEDEN: Just one final question. Thinking about the political marketplace and how this enforces elections, the 'waka jumping' proposal. There hasn't been an instance of that for some time, has there? Don't voters exercise all the discipline that's required over that kind of behaviour?

1010

MR FLATT: I think there is still a great perception amongst a lot of the public that list MPs can leave and can start their own parties and that can have fundamental damage on the reputation of MMP, so yes there are consequences if that occurs, in terms of the political market place and the reputation of a party but I think that is still a very important issue that should be looked at for retaining the reputation of MMP. There should be a limit on the ability for list MPs who are voted by the party vote. If they leave that party then I should not be able to set up an independent party and I think that that has real impact and that hits at the reputation of MMP and regardless of how many times that does or doesn't occur, it has a real potential threat to the reputation of MMP and should have continuation of that 'waka jumping' legislation to reduce that ability from occurring.

MR PEDEN: Aren't electorate MPs just as much selected by parties as list MPs?

MR FLATT: I can't see how they are. They're selected by the electorate that they stand in –

MR PEDEN: In terms of their candidacy.

MR FLATT: If we had time, we could go into the extensive way in which, under our political party, candidates are selected by members of the electorate and party, so they reflect the party members at the electorate level and then they are voted up by the constituents and if we – as I said earlier, if we have an MMP system that retains the concept of an electorate, then I think the sovereignty of an electorate MP is something under the Westminster system that we hold onto and therefore there is a mandate that if – an electorate MP is promoted by that electorate.

MR CARTER: To put it another way, Mr Peden, there is no possible reason for a list MP to be an MP other than the fact they're elected by the party list. You can make an argument in a constituency that there might be other factors at play that lead to the result. So that's why we don't propose to apply that rule to the constituency MPs as well.

MS HURIA: Some submissions say that there should be more distinction between the roles of list and electorate MPs. Do you have any thoughts on that?

MR FLATT: We haven't canvassed issue comprehensively. I don't, we don't have a view in terms of the different roles. They both provide important roles inside parliament and both are unique. I think that list MPs have received a bad rap in terms of some of the public media about what they do but in the party's, Labour Party's experience, list MPs provide an important connection with communities of interest, be it geographic or ethnicity-based, whereas an electorate MP represents that electorate area. So if anything there may be a suggestion around appropriate resourcing and equal resourcing being given by Parliamentary Service to both, both MPs but that is outside the mandate of this Commission but I think that both serve an important role and I don't think

there's any need to change to status quo in terms of that. Maybe a bit more education around what a list MP does and how to contact them would be useful but nothing further.

MS HURIA: Thank you.

SIR HUGH: Do I take it that your rough two thirds/one third split between electorate MP numbers and list MP numbers is, is based simply on pragmatism? An MP's ability to service his or her electorate, rather than on any research or principle?

MR FLATT: In 2009, at the Labour Party annual conference, this issue was debated quite extensively and these very issues were canvassed around what would be an appropriate level of electorate numbers to list MP numbers, taking on board those issues of retaining proportionality and ensuring the size of electorates. We came to the decision on that, at that conference and a remit process was put forward to our annual conference that we would support a change to that mix, in the range of 75 to 80, which would allow some reduction in size of electorates, assuming the outcomes of the coming census and how issues have affected, such as the Christchurch earthquake, which was not part of our debate at that time. So there was some level of analysis and examination of why we have come to that 75, 80.

Obviously we're interested in the Commission's views in terms of your access to the experts and research is far more than ours, in terms of running a political party, so we'd be interested in seeing what the outcomes are of that research, but that was a starting point that we felt would start to address some of the size issues and have to look at some of the South Island electorates to see the extensive distance that they have, and where you have places such as Timaru, for example, where you have the city area in such a Rangitata electorate, with such different needs, we felt that was a good starting point to look at 75, 80, without impacting heavily on the proportionality of the list seat process.

SIR HUGH: Thank you. Anything, Professor Roberts, Dr Arseneau?

DR ARSENEAU: Can I just ask you in terms of the ordering of the list? Did you consider at all something in between what we call a semi ordered, a semi-open-ordered list, where you might have the ability to change perhaps one person in the rank order?

MR FLATT: We canvassed that area and we felt that, as we've said in our written submissions, the potential impacts on rearranging any of that list and whether people will engage in that process, whether they will understand the requirements, and whether what we're trying to achieve in terms of our representation and electing a group of MPs that reflect New Zealand and what New Zealand looks like would be potentially compromised by a change to the current process, and so we looked at those situations and we support the retention of the status quo for those reasons.

MR CARTER: I think one more factor to take into account there is that candidate selection is one of the cure-alls that political parties play in the systems, and to, you know, political parties are not the most popular organisations in the country. Not very many New Zealanders are involved with them, but to the extent that you take a core function, which is candidate selection, away from them, you further reduce the already marginal incentives for New Zealanders to get involved in their parties and to shape the kinds of people who are Members of Parliament and the policies that they pursue. So that, I think, is another gentle argument in favour of keeping the list process within the hands of the political parties.

SIR HUGH: Thank you. The third submission?

MR CARTER: Thank you for the opportunity to present.

SIR HUGH: The third presentation this morning is from the United Future party, Robin Gunston. I see we've just been handed a supplementary

submission. Perhaps you could just give us a moment to run our eyes quickly through the supplementary submission.

MR GUNSTON: Sure.

SIR HUGH: Yes, Mr Gunston?

MR GUNSTON: Thank you. Thank you for the opportunity to appear before the Commission –

MR PEDEN: You're welcome.

MR GUNSTON: – on behalf of a minor party which has been part of Government for quite some time. We've given a lot of consideration to, and been waiting a long time for –

MR PEDEN: A small party, rather than a minor one.

MR GUNSTON: A small one, yes. Thank you. Further to our main submission that we made on seven or eight particular points to the Commission, I wish this morning just to emphasise as three or four differential points which differed from the bulk of the main submissions that have come in on the review so far.

Our main interest, as you know, is that New Zealand enhances its premier democratic institution, our Parliament, and encourages as many voters as possible to have a meaningful say in the makeup of Parliament. That has been very much a driving force. We've been discouraged by drop-offs in voting, particularly amongst young people, and we hope that in this Review a way of engaging the public more in our premier democratic institution by the changes that come out of this Review will drive towards that way.

So from our points, I'd like to emphasise first of all the topic that candidates for a party list should also stand for an electorate seat, and that party list

percentage vote would decide the order of party list candidate election. We have found in our review of our publics that a very unpopular feature of the current MMP system is the election of party list candidates without the individual scrutiny by voters and we believe this leads to some disengagement by voters in the whole process. We believe the simplest way to remedy this is to allow the voters to use their party list votes to rank the order of party list candidate's elections.

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Of course, parties can manipulate this by standing their preferred candidates in electorates where past results indicate their chance of success are very high. Even now, we have seen, in our review, that some parties try to rank their list candidates in much the same order as those candidates are expected to poll in the electorates and certainly that's the case amongst the larger parties.

Our recommendation is that voters have a chance to engage in the process of list candidates rather than just the party members having the final decision upon electing candidates put forward by the parties. So that's a core thing for us and we have looked at different processes in our submission as to the way in which, whether it's a percentage of the party list vote or the actual numbers of party list votes that should be the basis for the preference, ranking of party list candidates. And we, as you'll see, we propose that the percentage of party list votes proposed, not the number of votes, because of the disparity in different types of make ups of electorates.

Of course, for a minor party, reaching the threshold is, is a very – smaller party, reaching the threshold is a key thing that we aim for at each election and we believe that any threshold setting a minimum of more than one seat is an arbitrary compromise between democratic representation and effective government. When we looked at the number of countries that have proportional representation, there's a variance from no threshold right the way through to 10% in Turkey within each province. So the decision that comes out of this review is to somewhat, an arbitrary one. But we believe that 3% is

the average of similar countries to New Zealand, with proportional representation electoral systems and this will give a party four seats in the current make up of parliament. Most countries with proportional representation, we note, also have alternative means of qualifying to win party list seats, including exemptions for indigenous minorities, registering coalitions that combine the party votes, winning 10% of one province, or winning one electorate.

We believe that in New Zealand, the provision of a party winning one or more electorates qualifying for party list seats is, in future, most likely to benefit minor parties that win Māori seats. Over the last three general elections, minor parties have only won eight general electorates but have won 13 Māori electorates.

In practice, it has actually proven much more difficult for a minor or smaller party to win a single electorate than to win 5% of the total votes. In fact, our analysis shows that only defecting members from a major political party have been able to hold onto an existing seat, thus far. And we would wish the voting system to encourage such defections in the future. It's also evident in recent elections a lot of voters voted for their second preference party when polls in the last few weeks indicated they may not reach the current high threshold.

Our recommendation is, therefore, that the winning one electorate qualification be retained and a 3% threshold will allow for genuine voter primary preferences to be met.

Then we'd like to pass on, to emphasise another major part of our submission and that's the ratio of electorate seats to party list seats be increased by using preferential votes for electorate seats. We've seen that First Past the Post elections awarded disproportionate number of seats to the biggest party, especially when well ahead of the next party. Consequently, a large pool of list seats is required to restore overall proportionality to the total seats won by each qualifying party.

We believe that preferential voting will moderate the effects of a large lead, particularly when one half of the spectrum is more divided than the other half. In addition, voters can therefore make their own choice on strategic voting for their second preferences, rather than depending on local political deals.

Significantly more electorate seats and fewer list seats will also reduce the geographic size of the average electorate which is good for effective representation of the people and efficient use of parliamentary funds.

And the last bit that we wish to emphasise is that the registering of political parties should be based on their votes at the previous general election. The current political party registration system is greatly complicated by each party's practices and definitions of the words 'current', 'financial', and 'members'.

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Rather than the Commission becoming involved in disputes about various party constitutions and their varied interpretations, our recommendation is that the Electoral Commission register any party that wins over 5000 votes at the last general election. If satisfied, it is substantially the same party. A new party should be registered on receipt of supporting list of 500 enrolled electors with no more than 100 from any one electorate. So this emphasises the four main points of difference that United Future has in its submission to the Commission.

SIR HUGH: Thank you, Mr Gunston. You're proposing the retention of the one seat rule. Can you just explain, given you – you're also proposing a lower threshold of 3%. Why – I've heard that you expect it will be of value to Māori parties protecting Māori interests, but beyond that, what would be the advantage in retaining the one seat rule?

MR GUNSTON: When we looked at this, we looked initially in our analysis of – proposing a no threshold limit, back to, you know, following the Netherlands'

system. Basically you win the seat, then you attract the rest. But we realise that for this particular time in our review, this is our first major review of the MMP process and institution. We thought this would be too much for the New Zealand public to, you know, to move to a no threshold situation. Therefore, for us, it was a compromise between the effort involved as a smaller party of winning one seat as against a lowered threshold. We know the 5% threshold, as we've shown, is extremely hard to go, so retaining the one seat and also bringing in a reduced threshold.

SIR HUGH: But I'm still struggling to see what, I suppose, the point of principle is behind – I understand the difficulty of winning one seat, but why should that justify the allocation of additional list seats?

MR GUNSTON: I think it's – one of the things that we tried to do in 120-roughly seat Parliament is, of course, get diversity, and I think for New Zealand with its increase in multiculturalism and things like that, the ability of people to form a political party based on particular interests and to be able to lobby for that and to do that, we believe that extending the diversity of our Parliament is a good situation.

SIR HUGH: Thank you. With your proposal for the list members to be selected from basically the electorate result, can you – would voters still have two votes?

MR GUNSTON: Yes.

SIR HUGH: Could you just take me through how that would work?

MR GUNSTON: I'm not too sure that we've actually sort of put ourselves in the Electoral Commission's seat to see how it would work, but basically a party would put people up, so you'd have a preferential vote within the electorate so that you could have two candidates in a particular electorate, so then you'd see from the – let's say one person got 45% of the vote and another person got 12% of the vote, in that –

SIR HUGH: Are these candidates from the same party?

MR GUNSTON: Yes, candidates from the same party, and then you'd look at the proportion of those people. So let's say we had 62 electorates and let's say a larger party like National puts someone in every one of those electorates as a second person who they want to get in on the list. You get the people that win their electorate seat by the current system, but the proportional representation would allow the person to identify a second preference, person they would like to see get into Parliament, and you'd end up with a secondary ranking, so you'd take all those people who had the highest percentage of the vote to add to the party list.

SIR HUGH: So every candidate, every list candidate needs to be contesting an electorate?

MR GUNSTON: Yes.

SIR HUGH: And whether they succeed as a list member would depend upon the proportion of the electorate vote that they got?

MR GUNSTON: Yes, that they got.

SIR HUGH: I suppose the question would be, what would be the purpose of the party vote? Because would you not –

MR GUNSTON: No, the party vote's still going to give you the total, the total number of seats you're going to have in the Parliament, so if you have – let's say you win 30 electorate seats and your entitlement is 45 –

SIR HUGH: Mhm.

MR GUNSTON: – then you take the first 15 that come off the electorate ranking in proportion to the vote that they got as a second preference.

MR PEDEN: It would be quite a complicated system, wouldn't it, both from the perspective of parties having to think through how they're going to allocate their candidates and the likelihood of successes in any particular electorate, and from the perspective of voters.

MR GUNSTON: Yes but it's, for many people, the existing system is, is a complexity at the moment but a lot of people are used to proportional representation in local body electorates which seems to work reasonably well so this is a melding of the two systems. What we particularly are trying to achieve here is that people that are elected to our parliament feel that they, you know, do represent the people rather – and that the people engage in voting for those people. We believe this is something that New Zealanders want rather than just have a list of people that they actually had no say whatsoever in voting. So we realise that anything will induce complexity and will need education to make sure people understand the system. But yeah, that's our primary drive, how do we get New Zealanders to elect a representative parliament that they feel that they have elected, rather than a party nominating a whole load of list MPs.

MS HURIA: Just a point of clarification, if I may. So the voters will have to get their head around the relative attributes of two or even more –

MR GUNSTON: or even more.

MS HURIA: - candidates?

MR GUNSTON: absolutely, yes.

SIR HUGH: And how would you compare voting support between electorates if you have one or two candidates standing in an electorate where there is a strong candidate for another party? They presumably won't do terribly well.

MR GUNSTON: No and that's a matter of choice if those parties –

SIR HUGH: So they get, they get a lower percentage whereas they might be strong candidates. In the neighbouring electorate, they might be strong candidates too but because of local popularity or the like, those candidates get a higher percentages.

MR GUNSTON: yes.

MR PEDEN: Now, is not the result of your proposal that that second electorate's list candidates, list and electorate candidates would be higher up the list ranking than the first electorate?

MR GUNSTON: No they wouldn't be –

MR PEDEN: How do you compare between electorates?

MR GUNSTON: Well that's why we went for the percentage thing rather than the actual number of votes that a person might, might attract because there's different complexity of electorates. But that will be part of the art of a political party in saying, you know, on past performance, this is where we're going to place people. I mean, to a degree, they do that at the moment to make sure that the top of their list, candidates do get into parliament.

SIR HUGH: And is this, does your view on that influence your view that the number of electorates should gradually grow to perhaps a 90/30 split in parliament?

MR GUNSTON: We, we believe that a parliament is much better represented in terms of the way an electorate MP is representing the views of their electorate, if we have a parliament that is that way. But we didn't want, we didn't have a unanimity on that but as a general trend, we would support that.

SIR HUGH: Thank you. Professor Robert, Dr Arseneau?

DR ARSENEAU: Can I ask though, is that specifically linked to introducing preferential voting? Because you only want that ratio to increase if there's preferential voting?

MR GUNSTON: No, no.

DR ARSENEAU: No? It's either way?

MR GUNSTON: It's independent of that.

SIR HUGH: Mr Peden, I think, wants to ask something else.

MR GUNSTON: Yes Rob.

MR PEDEN: Sorry, just on your proposal around the registration of parties –

MR GUNSTON: Yes.

MR PEDEN: - I'm just, just want to be sure I've understood what you're saying. Well I suppose just how, how it'll work. You're suggesting that if a party won 5000 votes –

MR GUNSTON: Yes.

MR PEDEN: It would, that would be a basis for registering that party, if it wished to be registered. But initial registered party, you can't contest the party vote.

MR GUNSTON: No, until you've got your registration.

MR PEDEN: So those are 5000 electorate votes?

MR GUNSTON: Yes, yep.

MR PEDEN: And, and if the mischief that we're trying to solve here is –

MR GUNSTON: Well, we –

MR PEDEN: - wouldn't that really be addressed by your, by your other proposal, that the registration requirement be amended from 500 eligible financial electors, eligible electors, to 500 electors?

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MR GUNSTON: Yes. I think one of the things that we have to look at is if you want a truly representative Parliament, and we've looked at several overseas jurisdictions, then what you actually want is for parties both to contest, to assemble – sorry, and contest an election, and then you don't want to add an enormous burden which happens on small parties of, you know, getting your support behind you and then year by year by year, you know, trying to maintain that support. As long as the level of support is there. If it drops away, then you would unregister.

SIR HUGH: Okay.

MR GUNSTON: All right.

SIR HUGH: Thank you, Mr Gunston.

MR GUNSTON: Thank you very much indeed.

SIR HUGH: Now, in accordance with the scheduling, at quarter past 10 we were meant to have Sandra Grey of the Campaign for MMP. I suggest that we take half an hour for morning tea and to catch up. I suggest we hear from Ms Grey and then perhaps take 10 minutes for morning tea, thank you.

SANDRA GREY: Good morning. I'm Dr Sandra Grey, and I'm the spokesperson for the Campaign for MMP, which is a citizen-based

organisation which, of course, fought to retain MMP in the referendum last year, but also has been active, actually, since 2010, and speaking with and talking with fellow voters about the system. Myself, I'm a political scientist from Victoria University, and am also at the moment the President of the Tertiary Education Union, but it's in the capacity as spokesperson for the Campaign and the debates we've had with that campaign group that I come here today.

A few things first, just to run through the basis of our submission. The Campaign for MMP had hundreds of engagements with members of the public, both in terms of market stalls we held and public meetings and one-on-one discussions when we were carrying out leafleting and pamphleting last year to debate our electoral system, and to debate what voters thought was important about our electoral system. One of the key things that came through was the concern of the public to make sure they had a very legitimate system, and a system which ensured that every vote counted and, of course, we know that no electoral system can deliver that, but we took that to mean that as much as possible there should be fairness between each voter in this country in the way that their votes counted towards the composition of Parliament. And so this is the idea that members of the public were absolutely sure they wanted to retain proportionality and to reduce the level of disproportionality delivered by the electoral system.

The other thing that came through very clearly is that New Zealanders appreciated the fact that they now had an electoral system which delivered a very diverse Parliament but also strong Government, so voters recognise that there is a balance between diversity of political parties and diversity of the Members of the House, and ensuring that we had strong and effective Government, and it's those principles that have guided our submission, and those are the principles we heard clearly from the public as we met with them during the campaign. Certainly we think it is what voters voted on when they voted overwhelmingly to keep MMP.

So based on those core principles, we believe that there are a number of changes that the public desire in the system and that the Campaign for MMP is prepared to advocate for. The first has been mentioned by a number of submitters, both in written submissions and today, and that is the removal of the one seat threshold, and I won't go into details. I'm sure you'll have questions, if there are some, about why we advocate that, but again, that speaks to the issue of the legitimacy of the system and proportionality. We do also, at the same time, believe that if we remove the one seat threshold, the coattail rule, then we do need to address the very high party threshold that is incumbent in our system, and we believe that there is the need to lower the threshold to 4% or lower. So at this stage 4% is the level at which we have had agreement from a broad range of people, though we would be interested to hear and watch as other submitters talk about possibly lowering it further.

In terms of ensuring every vote counts, we also have made submissions regarding the proportion of list to electorate MPs, and we do believe there is no immediate threat to proportionality raised by the actual proportions at the moment, the ratio of list to electorate MPs, but we think more significant modelling needs to be done to show us at what point the public's desire for proportionality is affected by a higher number of electorate MPs, so we think that is an issue that needs very strong consideration and discussion in the second round of the papers put out by the Electoral Commission, but also the debates then.

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We do know that there has been significant public discussion on the issue of dual candidacy. When we went out talking with members of the public, this wasn't something that was raised all of the time. It was raised usually in the context of the campaign opposing MMP rather than by those who actually supported MMP. And it wasn't actually the issue of dual candidacy overall that people spoke to us about, and we've said in our submission what we heard very clearly was there were some electorates where people didn't like the fact that their electorate MP was booted out by them, as they put it, but then got back in on the list. So we don't know that there is a broad need to

change the rules around dual candidacy based on what we heard from members of the public, but we may need to look at the way the idea of how electorate – or whether sitting electorate MPs should also stand on the list, how that is dealt with, or urge political parties, perhaps, to look more carefully at how they manage the two sets, the dual candidacy issue.

There are, of course, huge drawbacks in limiting dual candidacy, and some of those have been covered today. One of those just is the fact that political party, particularly small political parties, would then have to find two pools, and fairly large pools, of candidates, and we recognise from our political engagement with the system as a non-partisan group the difficulty in engaging members of the public into the political sphere, so actually having two pools of candidates may prove very difficult, particularly for small parties.

But we also recognise, and, as I say, the public was very clear to us that they liked the diversity of our Parliament. One of the things mentioned quite often was the increase in the number of women in Parliament, and we do have concerns that actually if you required there to be no dual candidacy, if that was got rid of, that would affect the number of women in Parliament because, in fact, when you look at where women get into Parliament it is through the list, or it would say women could only then stand on the list in order to get in, so I think, you know, we have some real concerns about that.

We do also have concerns that currently, as our political system works and the media attention on the political system works, that actually by standing in electorates list MPs gain profile, and it is actually good for them to go to candidate meetings, and those candidate meetings are usually not open to all MPs. They are usually only open to electorate MPs, so we think there is some benefit gained there.

I do also think that much of this actually doesn't speak to people's dislike of dual candidacy. Much of what we heard was about people's views on the legitimacy of list MPs, and I do think there is a generational shift that occurs for those that knew First Past the Post and liked the idea of having, you know,

their MP, as they called them, being voted in in their electorate, to those that recognise the importance of having those lists to vote on and those party lists as being important representational tools, so I think over time this will change. But this is not for the Commission to address, but we do think political parties need to do more work on raising the public's opinion of list MPs and the great work that they do in Parliament.

In terms of the other issues, there was no broad agreement on whether much should be done regarding overhangs and by-elections with regard to the Campaign for MMP group. The one thing that we do urge the Commission to seriously look at is, of course, any rule dealing with the overhang will, or could, potentially have a significant impact on proportionality, and given our bottom line is to maintain proportionality, we don't think any rule that would affect that with regards to the overhang is acceptable.

In terms of list rankings, again, our concerns there are not broad, but members of the public didn't really raise this with us as an issue. There are really good things about having a closed list, so when you go into the polling booth you know, if you've looked at the list, basically who will get into Parliament on that list, and certainly, say, for women who are looking at the list to say, "How many women is that party putting forward in the top 10 or the top 20? Should I vote for that party?" closed lists give them some assurance of who will get into the House.

So, as I say, really the only major changes that the Campaign for MMP would urge the Commission to consider, and we would urge politicians to listen to very carefully if the public broadly is supporting this, is the removal of the one seat threshold and the lowering of the other threshold to 4% or lower, so there would only be one threshold under MMP.

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We don't recommend the abolition of dual candidacy as a general rule, but we, as we think, there's a whole lot of unintended consequences that will come about, but we do think we need parties and some consideration of how

to deal with that one issue of sitting electorate MPs who lose that electorate and then go back in on the list.

And, as I say, really we do just want everyone to bear in mind those core values and I know your documentation put out from the Electoral Commission told voters this, that the core values confirmed when we voted to keep MMP that we would maintain proportionality, a proportional representation system and any changes recommended by the Commission and any changes adopted by Parliament must defend that core principle and the public's desire to see a diverse number of political parties in the House and a diverse representation of New Zealanders in the house.

SIR HUGH: Thank you Dr Grey. Mr Peden?

MR PEDEN: Dr Grey, I understand that you are here representing a broad church and I noted that it's 4% or lower, but you can't say how much lower on behalf of that broad church, but as a political scientist yourself, do you have a view on how low New Zealand could afford to go before it put at risk effective government?

MS GREY: From my reading of the literature and my understanding of conversations with experts in the field of electoral form, a 3% threshold is unlikely in New Zealand could cause instability of government. It depends what people think instability is. If you think it will mean that there will definitely be coalition governments and you think that somehow is unstable, I guess you wouldn't like a 3% threshold. In my opinion, coalition governments are a good thing. They're a positive thing for New Zealand and a 3% threshold would allow a diverse range of political parties in the house and as I say certainly the campaign thought at least 4% was the mark.

MR PEDEN: Thank you. If the one set rule was to be abolished, that would increase the chance of overhang. If Parliament increased by six or eight MPs, how acceptable do you think that would be and would that justify, for example, applying the provisions in the Act which currently apply to independent

members, for those members. The, what looks like reasonably small impacts upon proportionality, do you think that would be justified?

MS GREY: Well, as I say, the major thing we said was that the impact on proportionality has to be insignificant in any change to the overhang rule. I think the big balance here is certainly and while the size of Parliament is not something the Commission is charged to look at, there is a public rhetoric about the size of our parliament and I do think there needs to be a balance between the public's view on how many MPs are too many MPs and proportionality but I think, you know, that balance can be achieved through the rules, but it does need to be modelled fairly carefully about that impact.

MR PEDEN: And so just a point of clarification, you've talked about disquiet as you've travelled around the country about incumbent MPs being let back on the list. I take it that your organisation doesn't think that there should be regulation of that, that that's a public education requirement?

MS GREY: I think quite a lot of this is around public education about the work of list MPs and their legitimacy and as I say that's a generational shift, but I don't think we should just wait for the generational shift, I think we do need to aid this along somewhat. It wasn't huge disquiet. That's the thing that surprised me. As I say, it was mainly brought up by those who said, "This is a good reason to get rid of MMP." So, I think that has to be born in mind as well that actually supporters of MMP realise that the voters who vote for those party lists have as much legitimacy to be represented by MPs as an electorate, so I think they do that balancing act of the legitimacy of those politicians quite easily.

MR PEDEN: And just quickly, the section 71 of the Act, do you think that that is adequate, which provides for – it has a, I suppose, really an inspirational goal of democratic process within a party for the selection of candidates, is that sufficient?

MS GREY: I think that the public would like to see more democratic measures inside political parties. When they spoke with us that certainly came out, the response I guess we always had was join those political parties and make them more democratic, which is a bit of a throw away back to the public, that actually if we want democratic political parties we need to engage.

1050

I think the interesting thing about this issue is that many members of the public knew that the Green Party had the most open democratic process in choosing its candidates and I think it's interesting that the public know this. So they actually do evaluate the internal democracy of parties, political parties. I think the wording could probably be strengthened but I also think it's beholden on our political parties to actually be much more open in their operations and their choosing of candidates. And I think they'll benefit from it. I think we saw a general mood in our meetings that people appreciated, even if they weren't Green supporters or Green voters, they appreciated the level of democratic process inside that party.

SIR HUGH: Could you just elaborate a little, Dr Grey, on your suggestion that an open list might lead to a reduction in the representation of women, Māori, and Pasifika?

DR GREY: Certainly. And certainly again, this probably goes to overseas literature and other areas but we do see, when the public is engaged with voting, often, you know, there isn't a rational choice at times around some of the voting behaviours but also the choice is often familiarity of a person, their high profile nature, their existing positions, those types of things make people choose candidates, if they don't know the full list and pool of candidates in detail. And I don't imagine many members of the public actually do know the full pool of our candidates in detail, even for local body elections. So I think the concern there is that people would pick high profile names and that's likely to go in favour of men, it's likely to go in favour of Pākeha who already hold existing high positions or have the resources, and there is a lot of international literature that would suggest quite often women candidates do not have the

resources necessary to put themselves into the public arena in the same way as some of their male counterparts.

So I think anything we can do to protect New Zealand's reputation in terms of the representation of women and Māori, Pasifika, though I think, you know, we need to take a serious look at ourselves, we're not doing as well as we should be on those things, but anything that takes us in a backwards step should be avoided.

SIR HUGH: Well thank you Dr Grey, thank you for your help. I suggest we take 10 minutes for morning tea and start Mr MacSkasy at 11.

HEARING ADJOURNS: 10.52 AM

HEARING RESUMES: 11.02 AM

SIR HUGH: With everybody so ready, we'll recommence, Mr MacSkasy, when you're ready.

MR MACSKASY: Right, okay. Well, my name is Frank MacSkasy. I'm a blogger. I'm here just representing myself, and you've got my submission, so I don't know if you want me to go over any points or if you ...

SIR HUGH: Well, as I indicated at the outset, if you want to highlight particular points, perhaps comment on additional material that's come to mind since you filed the submissions.

MR MACSKASY: Certainly. I do have a few bits of information which I – which you should have copies of now.

SIR HUGH: Oh, right. Thank you.

MR MACSKASY: The first one, should the 5% threshold be kept or changed, I'm of the view that, like the person before me, Ms Grey, it could be dropped down to 4%. I see no reason why it could be kept as high as 5%. It seems a wee bit on the high side. Getting below 4% we're starting to get into territory maybe of countries like Israel and Italy which had problems at one stage or another where they had very, very low thresholds. Italy had no threshold at one stage. So I'm quite comfortable with dropping it to 4%.

The next one, should the electorate seat threshold be changed, I'm of the view that that one seat threshold should be eliminated. It seems to offer parties an opportunity to rot the system, which probably is the last thing that the public wants to see is these politicians manipulating systems for their own benefit. I actually can't even see any particular reason why we've got a one seat threshold. It's never really been explained to me to any great satisfaction, and I would just like to see it eliminated entirely.

There was the situation in one of the elections, 2008, where New Zealand First won 4.07% of the party votes, but because they didn't cross that 5% threshold they didn't get any seats, but at the same time, Rodney Hide won an electorate and ACT came in under New Zealand First at 3.5%, but they still got party seats in Parliament. I think a lot of the public saw that and they saw it as manifestly unfair, and they couldn't quite work out how MMP, which is supposedly a fairer system than, say, First Past the Post, could deliver up such an incongruity.

I think, from what I've been hearing and from what I've been understanding, probably one of the biggest issues is the whole dual candidacy thing. There's been the suggestion that candidates stand for one but not the other. I'm totally opposed to that, and I think of all the submissions and all of the points I've raised that would be the number one concern that I have. Trying to differentiate or arbitrarily determine who can stand for electorates and who can stand for lists almost seems to be throwing up boundaries for no good reason, and as the speaker before me said, a lot of that criticism or so-called criticism seems to come from the anti-MMP campaigners who were desperately seeking ways to discredit MMP.

If you have a look at some of the documents I've given you there, I just did a bit of research to do with electoral results. Just to give you an example, in the – for the Mana electorate in 2011, Kris Faafoi got 16,323 votes and beat Hekia Parata, who came in at 14,093. So Kris Faafoi won the electorate fair and square, but at the same time, if you have a look at the party votes, Hekia Parata actually got more party votes than what Kris Faafoi got. That result is duplicated for the West Coast-Tasman. Damien O'Connor won the seat over Chris Auchinvole, if I've got that right, but Auchinvole got 6000 more party votes than what Damien O'Connor got. So I think what we – and that's repeated again for Waimakariri in 2008, and the election night result, which did change, admittedly, for Waitakere, where Carmel Sepuloni got marginally more than what Paula Bennett did, but Paula Bennett got 1000 party votes more. So, I mean, when people say that list MPs sneak back into Parliament, I think that's an emotive term which, if you look at it, doesn't really bear any

sort of real reality to it, because every single one of these list MPs actually got more votes than their electorate counterparts who actually won the electorate. So there is that support there, and I think if we're going to make that sort of separation, we're actually almost taking away the right of the New Zealand voter to make his or her own determination as to who they want to vote for, and so they're leaving it up to some arbitrary sort of, like, "Okay, these people are going to be on the list only, these people are going to be on the electorate, and never the twain shall meet." And as the previous speaker pointed out, I think that's going to throw up some real unintended consequences in times to come. I can actually see it happening where people – almost like hearkening back to First Past the Post. Contend safe seat, electorate seats, and you may put people at the top of the list seat, and then the also-rans maybe at the bottom of the list, so that's going to throw up some real unintended consequences, much like I think the one seat threshold did, which I think was probably never ever anticipated back in 1993.

Just as a matter of interest, I think that a lot of the people who are wanting to make MMP less democratic by restricting the choices, I would actually say that a lot of them are actually maybe National Party supporters who are hearkening back to First Past the Post days. Just as a matter of interest, a couple of the sheets you'll have there are electorates that voted to change from MMP, and every single electorate which returned a vote opposing MMP also returned a National MP. Following on from that, you had another cohort of electorates that voted by only a very, very narrow margin to keep MMP, and again, they all returned National MPs, so I think there's a bit of a slant there that those that want to make MMP a little bit more restrictive also tend to be National seats.

So I would be very much in favour of keeping the dual candidacy. I can see no reason against it. It's a purely arbitrary sort of delineation which to me removes choice rather than fostering it.

1110

Now, the next one is should voters be – should there be open party lists instead of closed ones? I consider myself a bit of a political animal. I think I

probably know a little bit more about the politics and the candidates and how they're selected and that sort of thing, rather than the ordinary man or woman in the street. Even I can tell you who all the candidates were in any given party, even the party I would support. If you asked me, "Frank, can you name the top 10 candidates and tell me who's good and what their merits are?" I wouldn't be able to – I wouldn't know. I think giving people that option to rank it, there's probably no real reason against it, but I can't see the reasons for it, because that complicates a system which people are already sort of trying to get their heads around in a lot of ways and I would actually say that there is already a way to rank party lists. Under MMP you've got two votes. If you join a party, you'll get a third vote and that's to rank the lists at party conferences or however else they do it.

So, in effect, if you join a party you're actually getting three votes for yourself. I would also say that by joining a party you've got a commitment to that party and you've got a knowledge as to who you're ranking and for what possible purpose. You get a lot of people who are already financial members of the party. They've made a commitment, they've joined it, they're supporting it, they're working for it, door knocking, whatever. They've ineffectively won that right to view that list ranking.

So I would actually be of the view that there's no real gain to the public in trying to figure out, who should I vote number one, who should I vote number two? It just makes – complicates the whole thing and it also I think would increase the possibility of scoring all the votes and I think that would probably be the number one concern I've had, yeah.

SIR HUGH: Thank you. Mr Peden?

MR PEDEN: Thank you for your submission. You make in rather colourful language the point that – you've suggested the 4% is an appropriate threshold, but you've cast that in terms of what you think the public would accept. You've talked about the bogey man, of the tail wagging the dog and suggested that may actually be mythical. So, leaving aside what you see as

public, what the public would accept, what do you think would actually be an appropriate threshold?

MR MACSKASY: I'm quite comfortable with 4%, I think that's appropriate, I think that's appropriate. I think 5% was a wee bit on the high side because as MMP progressed you had the major parties fracturing into their core constituents and some of those parties were a little bit on the small side, but I think they've got – even if I did disagree with them, I think they often had valid points to make and it gives them an opportunity. Three percent, maybe, I think at the moment we should be going for 4%.

MR PEDEN: Thank you, that's clear. On overhang, you've suggested that rather than trying to compensate for overhang by balance seats, wouldn't that considerably increase the size of parliament?

MR MACSKASY: I'm not sure how much it would increase it by. I haven't really gone to great detail on that. I've never really seen a problem with the number of MPs we have. To me I would rather see what parliament does, in practical terms to help the country, rather than trying to figure out, well, what's the right number of MPs. Quality rather than quantity, I guess you would say. So, I'm not really fixated on whether we have 120 or 125 MPs –

MR PEDEN: How about 127 or 157 which might be the consequence for example providing for balanced seats.

MR MACSKASY: Right, 127, I've got no problem with. I think once we start getting up to that 157, I don't think it's beyond our width to try and resolve that problem okay and I've got no magic solution to it, I'm not going to pretend I've got a magic solution for every single thing, but I don't think it's beyond our width that collectively we can come up with solutions that work for us and I think as long as we go with the number one proviso what makes it more democratic and fairer, okay, I think that works and just to give you an example, people talking about ranking the party lists, there are ways, for example, to make that more enforceable that the selection process is more

democratic. We've already got that with the Incorporated Societies Act which stipulates that Incorporated Society must hold an annual general meeting at least once a year and at that, that you must, you can elect your officers and it's stated as to what officers are elected and I don't think it's beyond us to make similar stipulations to do a – if you're a registered party, you must have a conference where, you know, your officers and your candidates are selected in a certain given manner.

1115

You've got the situation where the Greens are so open and transparent that it's almost looking through a glass window. On the other hand, you've got ACT where a person who wasn't even a member of the ACT Party came in and took over the membership, you know, without, I don't think he was voted in by the rank and file, so you've got those two great extremes and I think that's probably something we need to look at, is how to make the whole candidate ranking more democratic and more transparent, perhaps in legislation.

SIR HUGH: Ms Huria?

MS HURIA: No thank you.

SIR HUGH: I was going to ask you the same question Mr Peden's asked you so that's fine thanks, Mr Mac- Mac –

MR MACSKASY: MacsKasy.

SIR HUGH: MacsKasy, yes.

MR MACSKASY: That's all right, no one can pronounce it.

SIR HUGH: And Dr Arseneau, do you have any questions?

DR ARSENEAU: No thank you.

SIR HUGH: Thank you very much. Dr Barr? Good morning, Dr Barr. You're a fairly well practised hand on presenting submissions on this sort of topic, Dr Barr?

HUGH BARR: Probably not but certainly to parliamentary select committees, yes.

SIR HUGH: Would you care to outline anything additional you might want to put in front of us? We've seen both your submission and the supplementary submission which came to us, I think it was last week, but there may be some additional points that have occurred to you or matters that have arisen out of other submissions you'd like to comment on?

DR BARR: No, just the two, the main submission and the supplementary submission. So you've obviously read them. Perhaps you might like to ask me questions or opinions of –

SIR HUGH: Sure. Thank you. Mr Peden?

MR PEDEN: Dr Barr, you've made the comment that there should be a limit of about seven political parties in parliament. What have you got in mind there?

DR BARR: Well, if you have too many it becomes much more difficult to form a coalition, I would think. And I think it's been possibly to form coalitions fairly readily with the number we have at present which, as you can see, is really four main parties, two of which are National, Labour, and New Zealand First and the Greens, both of which have, over the six elections, have polled around about – the Greens and New Zealand First, anyway, have polled around about the same amount. So certainly four political parties seems to work reasonably satisfactorily but that's a bit, ah, bit short perhaps so perhaps, anyhow, the issue, the issue really is fairness and that's concerned with the threshold and whether or not, if you win one electorate seat, you can

actually pull in a number of other seats, list seats, and I certainly don't think that's a fair way to go. Everybody should have to get over the threshold.

So, I mean, should New Zealand political parties splinter further, then maybe, I mean, it was a bit of a throwaway line actually –

MR PEDEN: So 4% is the threshold that you would –

DR BARR: Yes, looking at what's happened, there aren't too many parties that, well, I think if you get below that, the expectation that you really have to have significant parties there in parliament starts to be undermined. So 5% has, shouldn't be too high but it's been hard for the two minor parties to get to on occasion, Green's first, 1999 I think their first election was, they only just got over 5% and so 4% if we're going to cut out the taking of list seats into parliament on the basis of an electorate seat, which has become a bit of a racket, then that would, that would sort of compensate for the fact, if you are to take away those, which I recommend, and just have if somebody wins an electorate seat, then that's all they get unless they get over the threshold that's chosen.

MR PEDEN: My other question's around overhang.

DR BARR: Yes.

MR PEDEN: You, I suppose the question, my question would be if the one seat rule is removed, that may well have the effect of increasing the number of, or the chance of more overhang seats, for example if, if voting behaviour had remained the same, in the absence of the one seat rule, there would have an overhang of something like eight seats in the 2008 election.

DR BARR: Yes.

MR PEDEN: In that kind of event do you think that we should be doing something to limit overhang seats?

DR BARR: Well I guess my understanding of it is that an overhang can occur in two ways. One is if a party wins an electorate seat it mightn't win that many party votes and maybe overhangs, well you know half a, half a seat every time that happens, but the other one as I point out in the supplementary paper is that there aren't the same number of voters in some electorates and the Māori electorates are an example of that where there are only, what is it, only about, I think it's 50% less voters in a Māori electorate based on the figures for 2011 anyhow, than there are in general electorates and that – when there is a Māori party that leads to an overhang as it has in the last three elections I think.

So that's to do with something that I think is very unfair, that I think the electorates should be determined on the basis of voting population at the next election, which when you have a census you're able to do that, you know their date of birth usually, you know – probably ask a question about whether their on the Māori roll or the general roll and you should be able from that to determine how many voters there are in different parts of the country and therefore form your electorates, Māori electorates and general electorates on the basis of trying to get those people that are of electoral age at the next election to have as – equally distributed throughout each of the electorates, in other words the number is equal which we don't do at present, we do it on the basis of – well I'm not quite sure what actually, it's a bit hard to determine.

MR PEDEN: Well I could help you with that. Since 1956 at least it's been on the basis of the ordinary resident population and that's – the principle behind that is that members of Parliament represent not only voters, but children and people who aren't eligible to vote. So that's the basis behind the principle in the Electoral Law and obviously it's applied both under first past the post and MMP and so one of the questions for the Commission would be whether it's actually within the scope of our Inquiry because it can apply to any kind of voting system.

DR BARR: So it just seems when you do it that way what you're doing is weighting each electorate according to the non-voting population so that the votes sort of carry that with them and I would have thought that in every person elected in an electorate seat is going to worry about the whole population. I mean it's pretty unlikely, well maybe there would be a party that didn't want to do that but it would be highly unlikely I think that people would do that because MPs are going to worry about everything that happens in their electorate, they usually get asked about it and they usually respond. So it seems a bit surprising that it's not done on the voting population and it's done on the full population. My view anyhow.

MR PEDEN: I understand your view. Thank you that's all the questions I have.

SIR HUGH: Ms Huria?

MS HURIA: No thanks.

SIR HUGH: Yes I was going to ask you also about your statistics for comparing the Māori electorates with the general electorates. Your figures suggest a 45,000 as a mean for electorates in the general districts and 33,000-odd in the Māori electorates. Is it your thesis that the same rules should apply to all electorates irrespective of whether they're general or Māori?

DR BARR: Yes I think my answer to that is yes that there should be the same number of prospective voters when based on whatever census that's been carried out, that determined for the next election. So 2011 we didn't have a census so one didn't have to rush through that process presumably in the year, year and a half that there would have been between the electorates. So it just seems that then it is one, one voter has the same weighting in each electorate. As soon as you have different weightings in each – if you have different numbers of voters in each electorate in terms of winning those electorates, you're not representing when you win, you're not representing as

many people perhaps as you are in – I mean you carry at two extremes. You can do the sorts of games that Jerry Mander presumably went around doing. If you halve – if you double – if you take a – say a Labour party electorate and you split it in half and I guess we'll have voters that are still labour aligned in both halves, then you create, from one seat you've created two seats. I mentioned that in there.

1125

So, I mean that's an extreme case, but the same principles applies but if a certain group of people have less voters in their electorate then they – you run the risk of that happening to some extent, well, to quite a large extent if it's actually done consistently.

MR PEDEN: One of the, I suppose, the challenges in trying to base the allocation of electorate seats on the population of voters is that the ordinarily resident population is, I suppose, a constant, whereas with the voting population, that can change depending on the rate of enrolment. Now, the figures that you're looking at and the information that you've provided to the Commissioner are on the – based of the number of people who are actually enrolled, so I think that would be something that you need to take into account and just thinking through that the line of reasoning that you're following.

DR BARR: Okay, well the census hopefully gets most people, the Commission and Commissioner probably agree they probably weren't – some were managed to hide away, weren't counted. Enrolment, I mean there's a drop out at each level, isn't there? So, enrolment, there's a number of people who either don't know how to enrol or don't want to or whatever, but that's their choice, that's not the choice of the Electoral Commission and then there's those that are enrolled but don't bother to vote and that's another drop out that really, the organisers of the election don't – you don't have much control over, you've tried to get them to enrol and you've tried to get them to vote, but that's a personal choice of those people.

SIR HUGH: So you're actually – you're talking about those enrolled, those on the roll? When you talk about voters –

DR BARR: Yes.

SIR HUGH: You're actually talking about the numbers of persons on a roll for a particular electorate –

DR BARR: Well, no, that's the only figures I have, which is why they're in here.

MR PEDEN: Yes, and I suppose what I'm suggesting is that's actually potentially quite different from the population of eligible electors. I understand you to be suggesting it should be the basis upon our representation.

DR BARR: Yes, and I agree that I don't have – I mean, if somebody analysed the last census, probably they would've got it for 2005 or six or whenever it was, but, yeah, so this is based on figures that I have to show the arguments that apply, really, and I think I probably said in here that, you know, it's not a decision that the Government or the officials running the election can make to persuade everybody to vote. They do try to do it in Australia and in theory fine people if they don't vote. I don't know how often they do that, but you know, that's a personal decision of the electors, just as a personal decision of the electors who they vote for, should they be enrolled. So, there's a group of people and I'm not sure how large it is and you probably have some estimation of it actually. What is the level of people who don't even bother to vote?

MR PEDEN: Well, it varies from electorate to electorate.

DR BARR: Yes.

MR PEDEN: And actually the information is available on our website. So, if you go to the election results website, electionresults.govt.nz.

DR BARR: Where I got this stuff from?

MR PEDEN: Basically, yes. So, there is the eligible population and there's the enrolled population.

DR BARR: Okay.

SIR HUGH: Can I just check, Dr Barr, that there's not a typo in here. When you deal with issue 2, "Should a list MP be able to stand at a by-election?" You say, "Yes, any party should be able to put up the best person for the job but not a sitting electorate MP." That's not part of the question, is it? You're talking about whether list MPs can stand in by-elections, you say anybody can but not a sitting electorate MP. It's page 4 of your first submission.

DR BARR: Yes, and –

SIR HUGH: Under issue 2.

DR BARR: So what is your point again?

1130

SIR HUGH: Well the question is whether list MPs should be able to stand at by-elections and your comment is that electorate MPs shouldn't be able to so it's really answering a different question, I just wondered if that's exactly what you meant?

DR BARR: Well electorate MPs are already in Parliament aren't they –

SIR HUGH: Well yes.

DR BARR: Shouldn't really be allowed to try and get a second seat.

SIR HUGH: Well one can easily think of circumstances where they might wish to. For instance if the Representation Commission has changed the boundaries of their seats to such an extent that they wanted to stand in an area that they thought they were more likely to be successful in the next time.

DR BARR: Yes, well I guess my own personal view is that they shouldn't be allowed to do that at a by-election.

SIR HUGH: I see.

DR BARR: Yes.

SIR HUGH: Anyway what you've got here is what you intend?

DR BARR: Yes.

SIR HUGH: Professor Roberts, Dr Arseneau, anything?

PROFESSOR ROBERTS: I wanted to take up an allied matter. Your recommendation on page 7 of your submissions, Dr Barr,, change the law and it follows on from the previous submitter, change the law to require a list MP who leaves his party to resign from Parliament, why not also include electorates? We did have in the last submissions the example of the elected MPs that had resigned from their party and had resigned their seat accordingly. We also had in the last Parliament an example of the of the person who left their party who didn't resign their seat, their electorate seat.

DR BARR: Well I suppose my reasoning for saying electorate MPs, well you couldn't agree that that was the case, that in fact electorate MPs had to actually resign their seat and re-stand, there is a number of MPs such as Winston Peters and Hone Harawira have actually done. So I guess I wasn't looking at the real why question and the question really only was about list MPs. So an electorate MP at least can say, well I did win this election, electorate and therefore the people in that electorate gave me a majority of

whatever it was. A list MP can't do that, they've just said, well I've been in this party and because the party jointly got a certain percentage of the votes, then I'm entitled to a seat because of my position on the list. So it certainly was the list MPs, they're there because the party got the vote and that means far more – that the party played a much larger role presumably than just them winning an electorate. So that would have been the reasoning behind why I think a list MP hasn't, can't claim that they have the right to be there if they shift parties.

DR ARSENEAU: Could I just ask, Dr Barr in terms of the discussion around the electorate size based on whether it's voters voting under the general population numbers, is your concern about that lessened at all by the fact that the party vote decides the overall outcome of the election? So in other words is this less of an issue for you now than it was, say for example, under first past the post?

DR BARR: First past the post was a long time ago. We've come to terms of MMP I think a bit more now and I think that's good because it does allow more than two parties to be in Parliament. So the reality is with the Māori seats either because not as many people enrol or certainly not as many people vote, much as disappointing, there is a bias in there and I guess that's what's worrying. Certainly from an MMP point of view from minor party, they probably want to contest all the larger – the electorates with all the larger number of people because they're likely to get more percentage of the vote I guess, if they do that. I mean it's an interesting concept but I don't know whether the parties actually go out and do that or not. But yes.

So my feeling that it's to be, it's a fair election when the, each of the seats general and Māori have the same number of voters and you can determine that from the census actually in their seats and I agree that this may not fully reflect that, but because I don't know the number of people who don't enrol, so...

SIR HUGH: Thank you Dr Barr, thank you for your help and for your work, the statistics you've given us.

DR BARR: Can I just make one point, I sort of made it at the beginning?

SIR HUGH: Yes.

DR BARR: That this idea that candidates can only be on the electorate, be electorate candidates or list candidates, is really, seems to me to be another way to stop minor parties, actually, having much chance of getting people into Parliament, because both the Greens and New Zealand First actually really, as smaller parties, wanting to have their good people have a chance to get in parliament, have to, mind you some of – First has a rule and it says you can't actually be on the list unless you're an electorate candidate and that's because we want the best talent to be available, you know. So, although the National Party might have the ability to run a good list of electorate candidates and a good list of list candidates and be discrete and different, smaller parties don't have that ability and therefore I would urge you not to look at implementing a rule of that sort.

SIR HUGH: Thank you. The next submission is from Mr Farrar. Perhaps I could just say in case any members of the media are waiting until the scheduled New Zealand First submission is made at 12.15, that that submission won't be made at that stage. New Zealand First submissions will be presented, well, they're scheduled for half past three this afternoon.

Mr Farrar?

DAVID FARRAR: Thank you. If I could just perhaps first touch on an issue that just came up with Dr Barr –

SIR HUGH: Yes, of course.

MR FARRAR: On the issue of why there's less voters in the Māori seats. Reo turnout enrolment is part of it. In fact, the electoral populations when first calculated by a chief statistician are not on the adult population but the total population and because of that seats, we have a high number of children, automatically then have less adults, so even if the enrolment percentage is the same, those seats which are primarily South Auckland Māori seats, will have less adults on there. I actually am of the view that the sensible thing is that the electoral population should be on the adult population, not the total population as it is adults who vote and this would still be a census figure that would be not affected by actual enrolment, so just touching on that issue first, I actually think one way to solve that issue is to go on adult population.

On my main submission, I've touched on a lot of issues, I won't speak on them all to give time for questions but of course happy for questions on any aspect. The major philosophical point I want to make with MMP is MMP, I think, got promoted as the system where you should vote with your party vote for the best party you support and you should vote with your electorate vote for the best candidate for your local seat. I think even maybe some Electoral Commission advertising may push it and that's correct and the basis on my submission is, changes should be made that actually reinforce that and reduce the power of tactical voting and somewhat against my own interests, reduce the power of polls on the election and I think this is really important because from a voter point of view, I think it's actually important that voters should vote for the party they most support and should vote for the candidate they most support without worrying about tactical and strategic issues there, because then they end up with compromises, but also from a wider democratic point of view, we see in the last few elections especially, more and more media coverage on what I call process issues, rather than policy issues and that's driven partly by the way we've got MMP currently designed.

Many more stories are about will this seat bring someone in where they can then get list MPs or what do the polls say about will this person come in on the list or on their seat, so I actually think it would be healthy for our democracy to have changes that actually reduce the impact and going through my major

recommendations, the first is to reduce the party vote threshold, quite simply because the lower, if you lower it, there's then less speculation on what party make the threshold. I don't recommend getting rid of it altogether, I think then you get very serious side effects, but as one example, at the last election, a lot of people I know who were Labour and Green supporters voted New Zealand First to get them over the 5% threshold.

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That was a very smart thing to do tactically. If the threshold had been 4% where, I think, the polls were showing they'd clearly make it, now, it's quite possible you may have ended up with – not picking on them, it's just an example – New Zealand First having perhaps one or two less MPs, Labour and the Greens one or two more, reflecting better what the people actually wanted if they took aside the tactic. By the same argument, getting rid of the one electorate seat exemption, that seriously encourages, in certain seats, people not to vote for necessarily the best candidate, but for the one that will deliver the best tactical advantage based on people's reading of the opinion poll. Again, I don't think that the opinion poll should play as significant a part in how people vote as compared to the best party, the best candidate.

The two other related issues are dual candidacy where, in at least a couple of seats, the one MP, who was a candidate, ran full-page ads saying, "Here's our party vote. Here's my list position. I'm not going to get in on the list. If you vote for me, my candidate will get in on the list and you'll get two MPs for the price of one." You know, that's sensible from their point of view, but it then means people in that seat were, if it was successful, and in one case I think it was, are not voting for the best local MP, they're voting for the best tactical outcome. Related to – I just also note on the tactical voting with the dual candidacy that it's probably the aspect of MMP still most unpopular.

The very good submission from New Zealand Elections Survey, which actually surveyed several thousand New Zealanders, said only 27% support dual candidacy, 46%, around 25% unknown. I actually think if you really want MMP to become a very accepted system, we have to look at the dual

candidacy and how it relates to the fact that, I think you see so many list MPs trying to be shadow electorate MPs because, again, the system encourages that, and people don't see the differences between the two.

The final one is the list MPs and, for that matter, I submit, electorate MPs shouldn't be able to stand in by-elections. And we again see examples where there's great tactical voting or, in fact, decisions not to stand, and in the Mt Albert by-election, where a prominent Labour MP was said to be the favourite candidate and it was, in fact, myself, amongst others who pointed out this would bring in, if he won, the next person on the party list, and it became a big enough issue that he actually withdrew from nomination for that. Now, he could have been the best candidate for that seat. He withdrew due to the rule that there's that tactical issue. Now, that will mean less fun for people like me, so again, it's perhaps arguing against my own self-interest, but those four changes are all designed to actually make MMP more vote for the party you most support, vote for the candidate you most support.

The only other issue I want to touch on pro-actively is the list ranking. I don't support open lists because I just think they're unmanageable with a national list. The average voter won't really have the capability, I think, to sensibly rank. But I don't think we should fool ourselves that, at least in the major parties, list ranking is terribly democratic and the current requirement actually has any teeth whatsoever. First of all, it can be democratic to have people vote for regional people who vote for national people who then appoint a subset to rank the list, but that's different to any meaningful membership participation.

But more to the point, in all political parties, the party leadership, those who are already MPs, have huge influence on the list ranking if it's done by a small number of people. It may be on the surface democratic, but in reality there's two or three people who are already MPs who are deciding pretty much who will be the new MPs. I actually don't think that's particularly healthy. I don't think open lists would be the answer, but I would like to see a strengthened democracy requirement for political parties, possibly going as far, I think, the

Greens are a good practice here, requiring a membership vote. I think that's the best way to dilute the power of the leadership. If you get as many people as possible voting, I think that's a good thing. You can argue about whether that's a final ranking or a ranking that goes before a final committee. I think if there's a transparency option that goes with it, that that membership vote is public, that then puts pressure on the party hierarchy not to fiddle it too much. So I think you can do it here though. With that, I'll take questions.

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SIR HUGH: Thank you Mr Farrar. Mr Peden?

MR PEDEN: Thank you for your submission, Mr Farrar, and I found the level of analysis and the detail in it very helpful. With the, your point about the level of the threshold, I may not be reading your submission right but you seem to be suggesting that if the one seat rule was removed, the 5% threshold would result in insufficient number of parties in parliament, that it should be lowered to 4%.

MR FARRAR: Yes that's correct.

MR PEDEN: I suppose my, if you look at our electoral history, having a 4% threshold and having removed the one seat threshold would have resulted in very little difference in terms of parties actually getting into parliament. So is 4% really the right?

MR FARRAR: I see it perhaps as a starting point. I'm wary of going too much further. I think you probably could go three and a half because based on the talk about minimum number of MPs to be an effective party, at 3.6%, I think, using Graeme Edgeler's calculations, you get your fifth MP so a 3.5% threshold would probably still mean a party's always getting five MPs. Much less than that, I think you have a (inaudible 11.46.51). But also, if you do go too low, as I point to with Israel and in fact also very much with the Netherlands which is being held up as a low threshold, you get real problems and I think it's then hard to start increasing the threshold again. I'd like to go

to four. If, over time, we're finding that's a bit restrictive, I think you can have a sensible discussion whether it lowers a wee bit more. I think that's easier than changing direction. The other thing worth noting is though we talked before about tactical voting. If it's 4%, some of the parties such as the Conservatives who, I think, got 2.7 may actually have ended up getting four if people are thinking, "It's not going to be a wasted vote" because they are showing that they are more likely to make that threshold.

MR PEDEN: Thank you. Your suggestion to ban dual candidacy, I suppose I'd like your comments on two aspects of that. First would be around the level of complexity that that would create for parties –

MR FARRAR: Huge.

MR PEDEN: - and so there's that. And part, your rationale appears to be to try and reinforce the idea of there being two kinds of Members of Parliament. I'm just wondering, why, why would we want to do that? Once you're elected as a Member of Parliament, aren't you just a Member of Parliament with a wide range of responsibilities and obligations that that brings with it?

MR FARRAR: Very good questions. In reverse order, perhaps I could use the term with election list MPs, 'Equal but different'. And I do believe they are different. If they're not different, why have electorates? Why not just go to a total list-based system and let the parties allocate people to electorates and other communities of interest? I think this is why there is still some of the resentment and, against MMP is because you don't have actually that clear distinction between the role of electorates MPs and the role of list MPs. I think they are different, I think there is a difference between a directly elected MP and an indirectly elected MP. Not in the sense of the voting in the house or legitimacy but in terms of their roles.

Your first question is probably the more challenging in that there's no doubt dual candidacy would make life very difficult for political parties, in fact a

nightmare maybe, and that is why they are all against it, I noted in their submissions.

MR PEDEN: Couldn't it actually have rather arbitrary results? Wouldn't it require them to be predicting the outcomes of electorate contests in ways that may actually result in not the best outcome from a, from a party perspective?

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MR FARRAR: From their perspective, yes, but I would note that under First Past The Post they had the exact same issue that you may have strong MPs you want to keep who happen to come in, in marginal seats, you have the unpredictability that boundary changes turns very safe seats into marginal seats, so I think you will always have that.

In the end, when I wake up the interests of the parties, where certainly having integrated bliss means they're all campaigning for the party vote, et cetera, against though the interest of the public in not having to worry about tactical voting and being able to just say, "We have one vote for the best candidate, one vote for the best party," at the end my balance goes to the interest of the public.

The challenge and I've been one of those to perhaps talks about it, of party discipline with the party vote, although it's perhaps untidy that you might have some candidates not incentivised to campaign for the party vote because they're not on the list. A, the National campaigns have the vast majority of the impact on the party vote, how the prime minister, the leaders do, the media report, the national contests, the mass of – whether or not the electorate candidate door knocking on your door saying, "I'm the ex party candidate," says, "Please give us your party vote in your electorate vote," I think is quite minimal.

I think parties also have their own ways to enforce, perhaps, brand loyalty and discipline and that. Candidates, if they don't support the party vote, they might get into parliament but they're not going to do very well there if the party

hierarchy is aware that they were telling people, “Split your votes, give your party vote elsewhere, give me your electorate vote.”

MR PEDEN: As we’ve discussed throughout the morning, the removal of the one seat rule might have an impact upon the number of overhang seats. You’ve got a proposal to deal with overhang seats which – perhaps you could just talk us through, it’s not the application of section 1 or the extension of section 1918, the independent –

MR FARRAR: Which is the independent role. I think actually it is the same, but I went about it in a different way. I think the impact is the same which is that if you win an electorate seat, my suggestion was you still count them for the purpose of the lay the formula there.

An independence removes, so there’s one less quota to allocate, I think actually it is effectively the same. Just the way I thought about wasn’t as applying the independent rule and I think that is the best thing to do. If there’s a one or two seat overhang, it’s not a big issue. If you remove that one seat threshold, you would well often have large overhangs that I think, I support actually increasing the size of parliament but should be a considered decision, not an accidental decision.

MR PEDEN: Now, you’ve suggested an increase in the level of tolerance for the Representation Commission. Why 10%? Would 10% actually make any difference to the sorts of issues that the Representation Commission faces?

MR FARRAR: Well, I will differ to those who have served on it, but I have worked as an analyst on some – I think there’s two major ways that will actually make a significant difference and of course the max – the first is some of the South Island rural seats are getting very large and unwieldy. Tasman West Coast, for example, has a barrier where it can’t really go into Canterbury, so it can only start increasing. Eventually, you know, it’s going to get to Nelson. Ten percent tolerance will allow the Representation Commission to set it at the lower end, so that has a bit more natural – but also

when I look at some of the other splits, often that 5% tolerance doesn't give Representation Commission a lot of room to keep communities together as well as they would like where there is a bit of an unnatural split where towns get moved from one electorate to another, to fit within the 5% tolerance. Again, South Island especially.

So, I think the 10% just means that you're going to get more natural electorates. If it was first-past-the-post, I'd say don't do it, because the electorates work out who's in Government and electorates being more unequal is less democratic, but where they don't actually determine the outcome of the Government, I think a greater tolerance is actually very useful.

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MR PEDEN: And I suppose just for information Mr Farrar, your last point about the scenario where in an electoral petition you may have a need for the Court to be able, of course that would still continue to be an issue in the case of a judicial recount so....

MR FARRAR: Indeed.

SIR HUGH: Ms Huria?

JANE HURIA: Just a little bit more information if I may. In your submission you suggested that, your opinion is that the 4% threshold is best and you noted that it meant that parties would always have at least five MPs which would be difficult to function as a Parliamentary party with fewer MPs, I guess I'm interested to know has that been proven anywhere or is that opinion or common sense?

MR FARRAR: I don't think there's any published research on this, it is from probably lengthy time working at and observing Parliament. That parties are small, they are very difficult to actually cover the range of issues that comes up, you can't even be on more than a couple of select committees, your leader and deputy leader often are freed up, have leadership responsibilities,

so I think you know you could argue four versus five but absolutely from observing Parliament I think it's very difficult. And you know MPs have complained in the small parties how difficult it is.

MS HURIA: Thank you.

SIR HUGH: If we were in dual, if dual candidacy were to be banned, that would require, would it not, not just the change to section 47 of the Electoral Act but also we'd have to recommend the repeal or certainly the major amendment of section 12 of the New Zealand Bill of Rights Act, is that not correct? Section 12 –

MR FARRAR: You may have to remind me of section 12 of the Bill of Rights Act?

SIR HUGH: “Every New Zealand citizen who is of or over the age of 18 years is qualified for membership of the House of Representatives”.

MR FARRAR: And I don't believe it would because I think it just says what path they may take to membership. It doesn't stop them from becoming an MP, it just says you have to choose which path you wish to stand for. It would be a very interesting issue. I'd like to get Crown Law advice on.

SIR HUGH: There may be room for a different view.

MR FARRAR: I, I – sure there is. That the intent isn't to stop any person from becoming an MP, it is to say that you need to choose whether – well arguably, yes to choose whether you stand on the list or whether you stand in an electorate and this is I think the case in the Scottish Assembly possibly. One of the UK constituents I think bans them. Welsh thank you very much. And I don't they've seen it as stopping citizens from being able to stand.

SIR HUGH: You suggest okay, that this election should be more democratic. What changes would your proposal require to section 71?

MR FARRAR: This is in terms of the list – close versus open list. The democratic requirement on parties –

SIR HUGH: Yes.

MR FARRAR: What I would propose is that all parties must hold a membership ballot to rank their list and that the results of that ballot must be made public. I believe that would – and that's already the practice in I think both the Greens and the ACT party because I think that minimises the influence of the hierarchy.

SIR HUGH: Wouldn't that have the risk of making lists less balanced and perhaps less representative?

MR FARRAR: It does have a risk, yes I think it does. This is why though, perhaps, I'm not ruling out that you have list ranking where you're able to modify a final list but those changes they make must be transparent, rather than at the moment you actually often don't know the changes made are from the regional or the earlier votes that are held in a party.

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SIR HUGH: How long before a general election would you propose that the result of the membership ballot be published?

MR FARRAR: I think just before the final list is published. That allows people to be able to see transparently what – how the party list differs from the members list.

SIR HUGH: Thank you very much, Mr Farrar.

MR FARRAR: Thank you.

SIR HUGH: Mr Edgeler?

GRAEME EDGELEER: Thank you. Feel free to come in at any point with questions.

SIR HUGH: Thank you.

MR EDGELEER: I think I'll start with the submission that will be different from the ones you've heard so far, and I favour not having a threshold at all, or perhaps at a level of one 120th of a seat of Parliament. I recognise that other people do have concerns, the fracturing of Parliament, the getting extremists into the House or having parties that are too small to operate effectively. They're not particularly big concerns for me. You know, I probably wouldn't vote for a party which was only going to have one MP, but if, you know, 25,000 voters do and they're happy with it, and in one election's time they realise that person wasn't very good with only one MP, then they might, you know, it'll work itself out in time.

SIR HUGH: Isn't it a trend overseas, though, Mr Edgeler, for jurisdictions for very low thresholds to actually be raising the thresholds rather than lowering them?

MR EDGELEER: It is, certainly. South Africa seems to work fine without having a threshold with just a party list process. It's probably got more MPs, so that might be something that helps, because even if you get a very low proportion of the vote you can still get two or three MPs, or something like that. It might be that that is the sort of view that people take, and perhaps that answers Mr Farrar's concern that if we have, if we start off too low this time it's more difficult to raise it, that we have seen – Israel has raised it from 1 to 1 and a half to 2, and other countries have done the same, which is why – I mean, I do favour that and I've got sort of my rationale in there, that I just basically think that everyone's vote should be worth the same as everyone else's vote, and for me, even if there are some negative consequences for that, the positive consequences, just democratic and legitimacy and all those

sorts of things, just the quality between voters, are enough to outweigh that for me.

But I recognise that some people do have greater concerns about the problems that there are, which is why I suggest what I think would be the compromise, the two and a half percent. At two and a half percent, a party will have at least three MPs. They'll have earned three whole MPs at two and a half percent, and I think when you look at the size of parties in Parliament, and we've had parties that just about every small number of MPs in Parliament. We've had three MP parties. We've had four MP parties. They haven't been able to do everything, but they've been able to do enough. I think they have operated well. Three MP party, the Māori Party at the moment has three MPs. I think there have been three MPs in the past. They can't do everything that a large party can do. If they had five MPs, they could do more, but they haven't been ineffective in representing the people who voted for them, and if the concern is parties that are too small would be ineffective, then I think our history has shown that's not the case. Even single MP parties have operated well for the people who have voted for them.

But certainly once you get to three or four MPs which you get at two and a half to 3% of the vote, then you're at a size where it's not just a fringe extreme. There's enough people voting for you to get three or four MPs. Some people might think you're extreme, but there are going to be a fair few of them out there, 50 or 60,000 votes, in all likelihood, and the concerns that people have I think are met out of 2 and a half or perhaps 3% threshold. If you put the threshold at 5% or 4%, even, you're doing more than meet the concerns that people are legitimately expressing. I think those concerns that people have with small parties and more parties getting into Parliament are met at the 2 and a half to 3%, three or four MP level. And so that's why I'd favour, if we are to have one, and I suspect we will, I think two and a half percent is the right level because it's big enough and it's big enough that telling people that their votes shouldn't count, 50, 60,000 people's votes shouldn't count, you've just gone a little too far.

Allied with my view on everyone's vote should be worth the same is one reason I changed my mind about the party, the single seat rule. I used to think it was a good way around the, the, I don't like the word undemocratic but the undemocratic effects of the 5% threshold and that it was, well, if the party's going to be in parliament anyway, well, why not let them have the MPs that people voted for them. It's not, and I did think that it was a good argument against it and long supported it but then realised – it was Therese, actually, at a discussion we were having at some point, put the argument in a way that most people haven't to me before, where it's the, if I think everyone's vote should be equal, why do I think that the people of Epsom or the people of Ohariu, or the people of Tauranga should have a much greater influence over the result and even though there are some good aspects to the one seat rule, that is such a bad problem with the one seat rule that I think it should go, even if you keep it at 5%, I think the one seat rule should go, because of that, that effect there. Through the rest of my list, ah, if anyone has any questions about this specific aspect of my submission?

MR PEDEN: Well just on your first point, just thinking about, say for example, the 2002 election, I think it was, where it would have been 11 parties, if there had been no threshold.

MR EDGELER: Yes, it would have been 11 parties, I think, if you'd had no threshold and no change to the Sainte-Laguë system, which I think, when the Royal Commission looked at it, they said not 1, 3, 5, 7, they suggested 2, 3, 5, 7, because at the completely no threshold and still using the Sainte-Laguë, you get your first seat at sort of 0.41% of the vote which is less than, you've actually earned less than half a seat and so, yes, I would say, if you're going to go for the no threshold then either change Sainte-Laguë or actually just have a threshold at 0.83.

MR PEDEN: Well one, one submitter has helpfully provided a set of tables that shows what would happen if you'd applied the modified Sainte-Laguë formula and then I think there's at least one election where we

would have had 11 parties if that had been applied. And a large, and three or four of those parties would have been one or two seat parties. Do you think we, that New Zealand may find itself in a situation where it was more difficult for government formation, of example, or effective government in that kind of situation?

MR EDGELER: It very well might and for three years, you might have a bit of a knife edge on things. You can have that anyway. I suspect it would sort itself out. You might have a term of parliament where that was a problem and if people thought it was a problem, it probably wouldn't happen again or at least not for a very long time. People suddenly, oh, actually, voting for single MP parties is not something we want to do, then people will, that was a bit of a problem, they'll vote a different way, and that's the answer to a lot of the problems that people have with MMP, with open lists and dual lists and things like that. As long as people know, you know, my voting for this person, you know, this, if people have a real problem, for example, with dual candidacy, then I've been waving over this one too, but I think in the end, if it's something that people really care about, then one party is going to come out and say, "We're not going to have dual candidacy" and if people like that, then some people, they might get more votes.

And if – you've got that with a lot of the rules, you know, list MPs being able to stand in by-elections, that list MPs have stood in by-elections recently and if people have a concern about it, well, that might be the reason why no list MP has won a by-election, that as long as the voters have the information and given that your opponents can bring it out and the media like to talk about these things, voters will have that information if it's something they'll care about, and they can vote accordingly. And that's something, something that, voters aren't as stupid as we make out sometimes. And collectively, I think that's particularly the case.

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MR PEDEN: With the – I don't know if you've had a chance to look at the New Zealand Election Study submission that's been put in by

Professor Jack Vowles, but one of the suggestions in that is that New Zealand has a, what you might call, a moderate version of proportional representation as opposed to a more absolute version of proportional representation and that significantly reducing the threshold below 5%, 4% would constitute a, almost a seat change in the type of electoral system that we have, could you – do you have a comment on that?

MR EDGELEER: I don't know if I got – that's probably fair. I don't know that it would, I don't know that in reality we would actually have that but I think that's one of our problems with our current system and 5% and I think would also be a problem at 4% is that we can't have that seat change, that 5% is so high that even if the voters are particularly concerned about, you know the current parties we have in Parliament and the options that they have, that's really all they've got, we haven't had a new party start contesting the elections and get close to 5% and I suspect it's possibly going to be difficult for that to happen. You can – we had parties based on current MPs at the first MMP election and then parties have – the Green Party has come in having had Green MPs as part of the alliance but David Farrar talked about the Conservative Party and that's possibly the closest we've had and I think even if there was, even greater public concern about what was going on and that we needed values that a party like that or values that a party on perhaps the other perspective from the left might bring, that 5% and I would say 4% as well, will prevent that from happening and I think that's a problem that the Royal Commission looked at it and said we want to have a system where new political forces can start up and if they get a lot of votes still, you know if it's at a 2.5% threshold, 60,000 votes or somewhere round there, just slightly less perhaps, they can get into Parliament and that's a seat change we should be able to have if people get annoyed enough with the current MPs and at 5% and I think 4%.

The Royal Commission's concern about new parties being able to enter into the political race, we haven't met it and if we stay as high as 4% I don't think we will be able to and I think that's a problem and hopefully others do as well. That is the major concern I have with a high threshold – is if – in reality, because people will be concerned about having their vote wasted, even if a

new political movement should form it probably won't and if it does – and even if it has the level of – even if it has 4% support, it won't get 4% of the votes because you will have had some polls telling you they're only going to get 2%; I would be wasting my vote and that is a big concern. And if that's a seat change I think we need one.

MR PEDEN: Okay, thank you. Just Graeme, Mr Edgeler your comments about overhang and I think you have a proposal for how it might be addressed and you address it in two places – one in relation to the one seat threshold and then further on your submission. And I'm just – I wonder if you could just briefly –

MR EDGELER: Certainly.

MR PEDEN: – take me through it and is it again, is it 199?

MR EDGELER: It's the same, it's not quite. It is the same as the one David Farrar has talked about. It's not quite. A party which got, won an electorate and got 0.2% of the vote would still cause an overhang –

MR PEDEN: Right.

MR EDGELER: – I would say. You know if you were – used that way. And I wouldn't particularly mind if you said we're just going to get rid of overhang. But you'd just, you'd take – the Māori Party is a good example if they won three electorates and won enough for two seats at the last election and they wouldn't cause an overhang because, well they wouldn't cause two overhang, they'd cause one because they have enough votes that they should have got 2% and so you count them – but they would still cause one overhang.

MR PEDEN: Right.

MR EDGELER: But I mean if you wanted to –

MR PEDEN: So what would your proposal do beyond that first one, it would then prevent further overhangs, is that the –

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MR EDGELER: Yes it would prevent – you would have overhang caused in the way we currently have but not additional overhang caused by the one seat rule. So the Māori Party, if you applied it strictly and said, “If Māori Party didn’t get 5% of the vote, we just take them out of the equation altogether.” That could either cause three overhangs, effectively, or it could cause one at the moment and I would say keep it at the one, because they got enough of votes that they would have, would’ve earned a list seat, then giving someone else that list seat effectively is unfair.

MR PEDEN: I think I see Professor Roberts and Dr Arseneau nodding sagely, so they’ll be able to help you with the maths.

MR EDGERLER: Yes, certainly, we were discussing it over Twitter before –

PROFESSOR ROBERTS: It’s quite an independent one because you can’t have it over –

MR EDGERLER: Yes.

PROFESSOR ROBERTS: Yes.

MR EDGERLER: You’d run a simpler calculation, you’d keep them in there, but when you were numbering out who gets what, you just wouldn’t give them the seats and you’d make sure you’d still have enough so there were 50 list seats, at least. I think it will be clear.

The other one I suggest, a sort of overhang was, I don’t think we should have the situation where we should massively increase the size of parliament to maintain proportionality. We were talking about if it was 127 or 157 seats, but I do think the one instance where having top up MPs could be or would be

appropriate, would be if a party got over half of the votes, but did not get over half the seats and I think people and I would have a problem with that. If a party gets 50.1% of the votes, they should have a majority in parliament and if overhang is stopping them from having that, then giving them enough extra seats and that would probably be only two or three at the most, probably, but giving them enough extra seats so that they have the parliamentary majority that the party vote should've given them, you should do that, and it's probably never going to come up, but it might and I like to think about those sorts of scenarios of what if and I think that would be bad for public acceptance of MMP and the parliamentary system generally. If a party could get over half the votes and not be the Government or even be the Government but have to rely on someone else. If you get over half the votes you should be able to do it yourself.

MR PEDEN: Do you have your written submission in front of you?

MR EDGERLER: I do.

MR PEDEN: Para 49, just the last phrase beginning with, it's really the last four lines, is that what you meant to say?

MR EDGERLER: I did make a few typos. I was finishing this at about 4.00 am in the morning.

MR PEDEN: Electorate MP at the timing on those, the status changes from a list MP to electorate MP does –

MR EDGERLER: Yes, that should be if someone was a list MP.

MR PEDEN: Okay, thank you, yes.

MR EDGERLER: So, if people do have a – well, they can discuss this, if people do have a concern about list MPs running in by-elections and it's a concern that enough of them have that we don't think the market should solve

it and people will just decide whether they like that or not, because I can see if there's a problem with that, it's the market of one electorate and if the whole rest of the country has a problem with it, they're the ones being forced with a new list MP from the South Island when someone won a by-election in Auckland and if that's your concern and if there are enough people and that is a real concern, I wouldn't ban list MPs from running in by-elections, but if a list MP win a by-election, don't do that bit where you bring in a new list MP.

If a party really wants to run someone then they can choose to run them and they just won't bring in the new list MP and if they want to bring in a new list MP, the only way they could do that would be if the person resigned before the election then they'd be replaced. They'd run in the by-election if they won, they'd be in and if people have a concern, I think, that's the better way to solve it, because it does seem kind of silly that someone can win a by-election but you're really voting for if that person wins, the South Island list MP and I'm happy with saying it's up to the voters to decide but if people do have that concern, say, list MPs, you don't do the whole thing and even if you're not fixing it that way. I do think the current process while we're at the electoral act is silent about what happens, it should be made clear one way or the other that we currently expect that if a list MP won a by-election they'd resign as an MP and then be sworn in as the new MP and they can choose not to.

1220

MR PEDEN: They could, yes.

MR EDGERLER: And that –

MR PEDEN: It would be a very unlikely event, wouldn't it?

MR EDGERLER: You know, the situation where, you know, it's not terribly long until the election or something like that and the next person on the list is someone who is now in prison, which is something else I raised in here that I think it's kind of odd that someone who was on the list – if someone was an MP and got convicted of a crime, even if they didn't go to prison, they lose

their seat, but if someone is waiting on the list at number 16 on the Green list or wherever and there's a resignation and that person has suddenly ceased to be eligible to be an MP or is in a position where they've lost their seat, if they were an MP, that they can still come in and that's something that changes well and that could be one reason why someone might choose not to resign because the person who you have to ask is someone that the party has decided we really don't want any more and whether that's likely to happen or not.

But it's the – if it's a concern to a large number of people that this chicanery can happen then the way to solve it, I think, is just make it clear that that isn't what happens. Next question?

SIR HUGH: A number of mine again have been answered, but do I take it that your suggestion that we propose that any changes be endorsed by a referendum is to discourage backsliding on the part of parliamentarians?

MR EDGERLER: It is somewhat, I think there is, for current political parties and for current members of parliament in particular, there could be a concern, they are certainly interested. New – current political parties do not want new political movements forming.

Current MPs do not want the situation where they might have to cease to be an MP and even though I don't – even though I support dual candidacy in the end, I've been humming and hurring about it. I wrote a, sort of, going through my submission, I wrote a blog posting which I basically said I supported banning it and then some of the comments were such, "Yes, you're right, I was wrong," and now we've got my submission, which if someone can come up with a good argument against that, I might change my mind on something like that as well, but banning dual candidacy would be detrimental to a large number of people who are currently in parliament and changing a lot of these rules would be such that they are really self interested in the results and if these are the good things, particularly if you're recommending major change, then suggesting that this is a major change, this is a sea change or a

revolutionary step in how we set up, that that's something the MPs might not want to do, even if it's the right thing to do and even if they are going to go for it, is it right that they do.

Is it right that members of parliament should set up our voting system and change which is revolutionary and maybe, you know, I want some perhaps revolutionary changes, but if a lot of people don't, then I'll lose and that would be the right thing to happen and I'll try and tell people why they should vote a particular way, but if the people don't want revolutionary change or if the people do, it's not something really that parliament should be able to have a say on.

One of my other suggestions and I think it's within your scope, is that you should recommend that more sections of the Electoral Act, particularly the existence of MMP, but probably a few other of the details it's working, should be entrenched, that we could go to a supplementary member tomorrow if parliament passed a law with just a one seat majority and they'd have to change some things, but if you can just say, "We've got 50 list seats and the list seats will be based on the party vote only, that's not entrenched and I think something like that is important and is something that, at least, the moral weight of entrenchment should be better to prevent and there are a few other things and I have come up with an exhaustive list, but I think certainly the existence of MMP should be entrenched and probably a few of the other things as well.

SIR HUGH: There hasn't been much appetite for entrenchment in New Zealand.

MR EDGERLER: No, but some of the things we've got, you know, I think are important and perhaps I'm a revolutionary on a few things like that. It's not taking a whole lot out, but I think the existence of MMP which is something that the voters voted in, is enough of a steer to say that it should be the voters who vote it out, and I suspect it would be, but giving it the moral weight so that, you know, parties don't even try is probably a good thing.

SIR HUGH: Thank you. Professor Roberts? Dr Arseneau? Thank you very much, Mr Edgeler.

JUDY WHITCOMBE: Good afternoon. My name is Judy Whitcombe and I'm a member of the National Council of Women Parliamentary Watch Committee. My colleague is Wendy Zemanek, a member of that committee. Our written submission was prepared by the convenor of the Public Issues Standing Committee and the National Council of Women Parliamentary Watch Committee. The organisation coverage of NCW was outlined in the written submission, and the information on the MMP review was circulated around the country and responses were received from 16 branches and organisations who are affiliated with NCW. The submission represents the views of 155 respondents. I just wanted to give you a background to what we're saying and what's been done. Now, I have a written copy of what I'm saying and I've left a copy here for you, so if I continue?

SIR HUGH: It probably would be a little quicker if we read it to ourselves, but there are members of the public present who, presumably, don't have a copy of this latest paper.

MS WHITCOMBE: Well, I mean, it'll only take me considerably less time than the previous person to go through it.

SIR HUGH: Yes, carry on, then, Ms Whitcombe.

MS WHITCOMBE: Right. Now, the written submission indicated a range of views was received, and I think it was important that you note that we did focus on the six questions, and the written submission that you all have has this range of views. So the purpose of being here today is to reinforce the points made and to raise some other issues that members thought were important. So addressing the six questions, rather than reading out the name of the question, the threshold one, if I refer to them by numbers 1 through to 6,

so question 1, thresholds. There was a range of views, as the submissions stated. However, the preference was to retain the 5% threshold. We noted that the 1986 Royal Commission which recommended MMP suggested a threshold of 4%, but to keep down the number of smaller parties, our members wanted to retain the 5. It was also preferred that the threshold be the percentage of the party vote only. There was some concern about gaining one seat, which I'll cover shortly.

Question 2, a list MP be able to stand as a candidate, and again, apart from the one extreme view, there was support for a list MP to stand in a by-election, as this gives them more experience and expands the debate.

Question 3, be able to stand as candidate and beyond the party list, and again, there was support for this to continue. The reasons advanced were that it gives the opportunity for list MPs to gain experience, and several of the replies we have mention the young Greens candidate, Holly Walker, who gained 11.5% of the candidate vote and she was twelfth on the Greens list, and so some of the members noted her particular situation and mentioned her name.

Other points in relation to that question related to the electorate being able to reject an unpopular candidate who may still have a high list position and be of value to the party, so being able to do both meant that while the electorate may biff a candidate, the party may value their services so it would be advantageous to have both.

1230

A younger candidate standing in an electorate can gain wider experience and that's the Holly Walker situation. Candidates standing in unwinnable safe electorate seats can have a fall back position on the list so we were wanting to retain the standing both as a candidate and still be on the list.

Now question 4, who should decide the order of candidates on party lists and the respondents supported the party ordering the list. A suggestion of having

the list promulgated earlier was made and I looked up the 2011 dates and the deadline for party lists was 1 November with the election on 26 November that left only a 25 day horizon so the view was that there should be a longer horizon between the announcement of the lists and the election.

Another suggestion involved a requirement to have the party membership involved under the selection rather than a section of the party executive. So on looking up the Electoral Act 1993, clause 71 and that's got a requirement for registered parties to follow democratic processes and candidate selection and clause 71B says for the electoral permission to be supplied with a copy of the candidate selection rules. Now I wonder does this cover list selection as well as the electorate candidate selection.

MR PEDEN: Yes it does. So you can find those constitutions on the Commission's website.

MS WHITECOMBE: Thank you. Now the submission also made reference to gender ballots in the party lists and the current Parliament has 39 women MPs, being 42% of members. This is fewer than the previous Parliament when there were 41 women MPs. However while some overseas jurisdictions may have focused, New Zealand has not shown an inclination to move in this direction as yet.

Now question 5. What should happen when the party vote wins more seats? This is the overhang question and it was not regarded as a major issue as the number involved, so far, has been so small. The current Parliament has you know, has 121 members and the previous one had 122.

Question 6, the proportionality one. The submission outlined the diversity of responses to the question. The electorate seat numbers have gone from 65, 55 in 1966 to 70/50 plus one overhang in 2011. If the list numbers reduce too far then proportionality could be affected. However with the current number of 120 seats plus any overhang we felt that any change would be slow. And the

number of electorate seats is the responsibility of the Representation Commission.

MR PEDEN: Well it's determined by a formula in the Electoral Act and so it's the application of formula based on the fact that the South Island is required by the legislation to have 16 seats and the formula is applied to then determine the number of the North Island seats and the number, the population of each electorate within the North Island seats needs to be the same, broadly, as the South Island seats.

MS WHITECOMBE: Thanks. Now some of the other issues that were raised, I'll just cover those briefly. The one point raised was party swapping and a number of respondents were adamant that MPs should not be allowed to swap parties, change from the party, make a change from the party that got them into Parliament. And members agreed that if an MP resigned from their party they should have to resign from Parliament however this was not a unanimous viewpoint but we did convey members were concerned about party swapping.

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Another issue was the power of parties with a single seat. Now parties with a single seat in the house have more power and influence than some of the larger parties and this was thought to make disproportionate representation. However, this has become more occurrent with very close results where small support parties can negotiate concessions. It would be possible with a clearer majority that the one seat party's power would diminish.

The third point here is quota representation and the concern was raised about the low youth voting at the last election. It was felt that there is a need to make politics important and necessary to those between the ages of 20 and 35. However, this is not an issue which the review of his standing.

Now, our last issue is women in parliament and members felt strongly about the under representation of women in parliament. Some suggested a

40/40/20 principle for candidate selection, so 40 men, 40 women and 20 either. The current parliament in women are 32% down from 34% in the previous parliament. I went into the web and found some interesting figures on the overseas representation, which when I click through my piece of paper, got it, so at 32.2%, New Zealand ranks 23rd in the world on the December, 31 December, women in national parliaments world ranking. A fascinating website which goes right through and it's www.ipu.org/wmn et cetera, it's in the paper.

MR PEDEN: Yes.

MS WHITECOME: European countries are much further advance and I just singled – Sweden, 44.7, Netherlands, 40.7, Norway 39.6, Belgium 38%, however, New Zealand at 32.2 is doing better than Australia, 24.7 who are 41st on the list and the United Kingdom at 22.3, which is 53rd on the list, so the National Council of Women will continue to advocate for representation of women in parliament.

So what we've set up to do today is to go, add to the submission paper which you had and then leave you with a copy of the additional points made today and we have represented, as I'll explain, the National Council of Women throughout New Zealand.

SIR HUGH: Mr Peden?

MR PEDEN: Thank you, with the – in providing the view of the Commission on the ability of a list member to contest a by-election, you said there was one, what was described as an extreme view, that there should be – was that one branch or just one person?

MS WHITECOMBE: No, no, one person.

MR PEDEN: And in terms of the ordering of the party lists, you described that as not unanimous, but I think the – was that a – how did the select committee

in 2001 talked about near unanimity, is that a fair representation of the position of the council on that point?

MS WHITECOMBE: Yes, it would be. We've got this whole sheet of action items where the responses come through and then a summary of the totals of what people said, so we could aggregate and get some idea of – but we always like to convey a range of views, so if there's one maverick down one end who feels strongly, then we have an obligation to convey that.

1240

SIR HUGH: Mhm. With your additional points, the party swapping, do your members distinguish between list members and electorate members, or should the same rule apply to both types of Members of Parliament?

MS WHITCOMBE: Well, from what I've read of the responses, it was not clear, so they didn't distinguish.

SIR HUGH: They didn't distinguish between them? Okay.

MS WHITCOMBE: It was just the principle. If you get in on one ticket and you decide to change that, then you shouldn't be allowed to stay in Parliament, that was the principle.

SIR HUGH: Right. In non-voter representation and participation by youth, any ideas? Any thoughts?

MS WHITCOMBE: Well, again, this was something that was raised and we –

SIR HUGH: It's obviously a concern.

MS WHITCOMBE: – had an obligation to mention it.

SIR HUGH: Mhm. Throughout the world and through all time, youth can be politically active, but not necessarily electorally active.

MS WHITCOMBE: Well, I think we might have had an example of that today.

MS HURIA: I just wanted a little bit of clarification, if I may, around the women in Parliament point that you made. You talk about a principle of 40/40/20. Are you suggesting that there should be something which is enforceable to support that?

MS WHITCOMBE: Well, that was –

MS HURIA: It doesn't go so far as to say –

MS WHITCOMBE: That was raised, the 40/40/20 was raised, and again, we have an obligation to convey that, but there was no large support for that idea. I mean, the principle for more women in Parliament had general support, but any sort of regime of quota system was not specified, other than the mention of the suggestion of 40/40/20.

MS HURIA: Okay. So was that suggestion also accompanied by the acknowledgement – and this is just for my clarification – that the representation of women still remained with the voters, whether or not that was in place? Have I got that –

MS WHITCOMBE: Sorry, I couldn't go back to – I haven't gone back to check out the detail of what was behind that.

MS HURIA: Okay, thank you.

SIR HUGH: I have no further questions. Thank you, Ms Whitcombe. Thank you to the National Council for their efforts. Well, as I mentioned earlier, New Zealand First is not presenting its submissions at this point, so we'll take lunch at this stage and we're scheduled to recommence at 1.30.

HEARING ADJOURNS: 12.43 PM

HEARING RESUMES: 1.30 PM

SIR HUGH: Just to keep everybody up to date of the scheduling, in case people are waiting for particular submissions. If you've got the schedule for the afternoon, number 4, Brian Winter will not be attending and as I said this morning, the 3.30 slot, Stephen Day will not be attending. The New Zealand First submission will be presented at that point and we understand it will be presented by the leader Winston Peters.

The first submission this afternoon is from Caroline Glass. Would you care to take a seat?

As I've said this morning, we've all read your submission, thank you for that. If you care just to highlight various points, perhaps add additional points coming out above the submissions, just a regime of that sort and then we can ask you some questions.

CAROLINE GLASS: Good afternoon and thank you. I will try and sum up each section of my submission in one sentence to, as a reminder, but one of them I won't manage to do in one sentence.

So, first, section A I recommended preferential voting be introduced both for the candidate vote, so the electorate vote and the party vote.

Section B on thresholds, I did not submit a view on the percentage threshold but I submitted that the one seat rule which allows you to get representation, get list representation if you won one electorate seat, that that rule should be abolished.

Section C, overhang, I can't sum this up in one sentence. I do not believe that the issue of, that it really matters a lot whether this is dealt with by increasing the number of MPs or by a formula that fits in the extra MPs within the standard 120. A bigger issue is that the party that gets an overhang if you have an overhang, is disproportionately over represented and even there, I

think the bigger issue than that is not whether the party is over represented but the fact that voters who voted for that party on the electorate vote and for another party on the other vote, that are effectively getting more voting power than the other voters, so the votes are over represented and so I tried to devise a system to get around that.

Section D, ratio of electorates, seats to list seats. I recommended that it be set at a set ratio, ideally something like 50%. Electorate tolerance is a consequence of limiting it to 50% electorate seats that could make some electorates really big, so I suggested we increase the electorate tolerance so that electorates such as Clutha Southland don't have to get really, really big to – because of a requirement that they have to have as many people as every other electorate. Obviously I mean really, really big in geographical, physical area.

1335

Rules for ordering candidates. I think there is some potential for open lists that I wouldn't necessarily object to, but that there are also problems if you try and take that too far with it actually being undemocratic in other ways, so I recommended that we should instead have stricter rules on democratic list ordering within the political parties. And finally, double candidacy. I argued that double candidacy, that the rules that we have around double candidacy should remain as they are currently. Thank you.

MR PEDEN: Thank you for your submission. I want to make sure that I understand what you're proposing as far as preferential voting is concerned, because I suppose preferential voting might seem like an odd concept to apply to a party voter, a national voter, which you're looking for a proportion, and usually preferential voting is used to ensure that a candidate has more than 50% of support.

MS GLASS: Yes.

MR PEDEN: So how would it – I mean, would a voter still get two votes?

MS GLASS: Yes.

MR PEDEN: Okay. Could you just talk us through how it would work?

MS GLASS: Okay. It stems from the issue of the threshold, the fact that if you vote for a party that gets less than the 5% threshold your vote effectively does not get counted. So I'm proposing that – so, for example, if you voted for the Conservative Party, which got under the threshold and did not get any representation in Parliament, I think it's quite likely that a lot of people who voted for that party would also quite like the National Party, and so maybe they would cast a second preference party vote for the National Party. So when the Conservative Party was ruled out as being below the threshold, those people's votes would be transferred to the National Party and would therefore add to National's vote total, and they would get representation that way. I would think that for – most people's votes would not end up being transferred because most parties, most people will vote for parties that do get over the threshold. Therefore, I imagine that most people would not even bother to list more than one preference. It would simply be a provision for those people for whom it would be useful.

MR PEDEN: Okay, thank you. And I've noted that you're recommending that if you had a preferential vote on one side of the ballot paper, you should adopt the same approach for the other side of the ballot paper to avoid confusion to voters?

MS GLASS: I don't think that that is the strongest argument for having preferential on both sides. I believe that both sides have their own reasons why preferential is desirable, but I also think there is a slight advantage to having it on both sides over having it on one side in terms of avoiding confusion.

MR PEDEN: But you'd suggest that we would avoid having a preferential vote on one side but not on the other?

MS GLASS: Yes.

MR PEDEN: Okay. On your proposal for – well, your approximate formula for the overhang, just to note, if you wake up at 3 o'clock in the morning and you've, at a point where it's no longer an approximate formula, please send it in to us.

MS GLASS: Yes, okay. Thank you.

MR PEDEN: Congratulations on the effort that you've gone to thus far, why wouldn't we just extend the provision in the Electoral Act which applies to independent candidates to the situation?

MS GLASS: The – if you extend the provision that applies to independent candidates – okay. Think of this in relation to the Māori Party situation, where currently they have three MPs and one of them is an overhang, I think. They would – so if you applied to the current rule that we have for the independents, that would, what that would do, they would still have three MPs and there would be one fewer MP from other parties to keep it within the 120.
1340

This does not actually solve the disproportionality. The Māori Party would still have approximately 50% more MPs in proportion to its vote, in comparison to what other parties have and so because of that, you would still have the situation where, by voting, by casting an electorate vote for the Māori Party, the people who did that were contributing to the allocation of seats to parties through their electorate vote and through their party vote, thus getting sort of double representation.

MR PEDEN: Thank you. Now you've recommended a 15% tolerance for the Representation Commission.

MS GLASS: Yes.

MR PEDEN: Which is larger than – we've had a couple of people recommend an increase in the tolerance. They've recommended 10%. 15%, what's your thinking behind 15%?

MS GLASS: It's reasonably arbitrary. I just thought, really, along the lines of quite a bit more than what we have at the moment.

MR PEDEN: I see. Thank you.

SIR HUGH: Ms Glass, I'm interested in your suggesting there be some kind of primary for creation of the party list. You see the franchise for any primary being restricted to party members?

MS GLASS: Yes.

SIR HUGH: Voting on a list submitted to them by the party hierarchy?

MS GLASS: I, in principle, there's, I don't think there's a reason why it would need to be limited to them voting on a list submitted by the party hierarchy if there is a way of doing it that would allow them to not be, that it not be like that. But, um, yeah, just basically looking at the, the Green Party's deliberations on how its internal list ordering system and party list creation system works, it hasn't got around the problem to the point where it wouldn't be starting with a list promoted by the hierarchy, therefore, yeah, I don't, maybe it would, as likely as not it would end up having to be like that.

SIR HUGH: Would non-party members be eligible for inclusion in that list?

MS GLASS: You mean being candidates when they're not party members?

SIR HUGH: Yes.

MS GLASS: I would assume not but I haven't thought about that or considered whether there would be any advantage to them being allowed to.

SIR HUGH: Now you suggest strengthening the, the democratic processes that section 71 requires.

MS GLASS: Yes.

SIR HUGH: For lists to be ranked by party member voting?

MS GLASS: Yes.

SIR HUGH: And then you say, "The application of rules voted for by party members." I don't quite follow that.

MS GLASS: And that would probably, clearly if this were put into law, that would have to be made more specific in terms of what sort of rules it might be but I was envisaging that they could allow rules such as that some sort of system to guarantee that there is a certain mixture, a certain balance of North Islanders and South Islanders, a certain balance of men and women, or something like that, which could then become a mathematical algorithm that was inputted into calculating the result along with the vote.

1345

SIR HUGH: Would these be, are you advocating fixed quotas for South Island representation, women representation as –

MS GLASS: I am advocating that – I'm not advocating that the law should call for any fixed quotas. I am advocating just that the definition of democracy applied to the parties should not prohibit them from having fixed quotas in their list selection mechanism.

SIR HUGH: Right, well I think I understand that a little better now, thank you. Mr Roberts – anything you wish to comment on?

PROFESSOR ROBERTS: Yes. One of the things we always have to be aware of with any electoral system engineering is the law of unintended consequences.

MS GLASS: Yes.

PROFESSOR ROBERTS: And your idea for a preferential vote for the party vote is in effect saying well if you've got a small party, the Conservative Party or the Alliance, this is a way of reducing the wasted vote because their votes will be able to go elsewhere.

MS GLASS: Yes.

PROFESSOR ROBERTS: Of course one of the consequences could be the very opposite. But the fact that it is both of note that they have a preferential vote means that, for example, you can look at the Australian House of Representatives, only one Green has ever been elected but it has a higher average vote for the Green Party for the House of Representatives because it's a preferential vote, a voter knows that their vote is not wasted. Though if you think in fact what we could do is vastly increase the number of small parties in Parliament crossing your percentage threshold, precisely because it's preferential voting – you'll have well I can vote ACT, I can vote Conservative, I can vote Green because that's not going to be wasted because I've also got a second preference but the first preference is in hand, therefore has consequences for the stability of Government.

MS GLASS: I didn't actually think of that as being an unintended consequence. I actually thought that that might, that that was one of the desirable things, as that it could work that way and I think that that would be a reason why if you were to do this you probably wouldn't want to combine it with the low threshold – you know making the threshold much lower than 5% because yes then maybe you would get way too many of these little parties. I don't actually know. You possibly – I'm sure you know better than I do what

the actual effect of that sort of fractionalisation is, whether that is actually a big problem in terms of stability but I figured that these parties, if you've got parties with a minimum of six members which, MPs which is likely if you kept the 5% threshold, then you'd at least have parties that were capable of covering half the select committees with their MPs and were capable of considering a wider range of bills before voting on them than some of the small parties that we have at the moment are. So I didn't, I thought that it's not necessarily a bad thing.

SIR HUGH: Dr Arseneau?

DR ARSENEAU: Can I just ask quickly for clarification and it seemed that some submissions with different varieties in terms of Preferential Voting –

MS GLASS: Yes.

DR ARSENEAU: So your suggestion for the party vote preferential, there'd be no limit on how many ultimate preferences, is that what you would want?

MS GLASS: Yes.

DR ARSENEAU: Right, so not just one alternate preference. Okay.

MS GLASS: Yes. I expect that the number of alternate preferences people cast would be limited in practice but I see no reason to limit it in law.

DR ARSENEAU: Yes thank you.

SIR HUGH: So all would all parties be available to be voted on in your submission? Even though in practical terms, you say, that they might, a voter might just list two or three?

MS GLASS: Yes.

SIR HUGH: Mhm. Thank you very much. Thought provoking.

Natalie Watkin-Ward. Good afternoon, would you prefer to be known as Ms Watkin Ward or Ms Ward?

NATALIE WATKIN-WARD: Good afternoon. Watkin-Ward preferably.

SIR HUGH: Thank you. You can take it Ms Watkin-Ward that we have read your submission and that you're free to elaborate on them and comment on anything new that you may wish to offer.

MS WATKIN-WARD: Well, thank you for giving me the opportunity to be here today. I'd like to speak briefly on the three points that I covered in my submission which were the basis of eligibility for list seats, the order of candidates on the list and dual candidacy.

I oppose the current thresholds due to their inconsistency and would favour lowering the party vote threshold to 2.5% or three seats in parliament. I agree that a threshold is definitely necessary to retain stability and ensure elected parties have a firm base in parliament.

The threshold of 5% however was chosen quite – almost arbitrarily followed the 1986 commission and it's not suited to the New Zealand Parliament and basically the disparity of our thresholds really needs to be equalised in order to ensure a more representative parliament, which is what we're trying to do under MMP.

I also believe that the order of party list should be established democratically within individual parties as the Green Party currently do. MMP was initially sold as a representative system of voting, but if our MPs are being hand picked by committees, then our choice of representation, it's restricted by party hierarchy.

The extreme alternative of opening the list to the public would be beneficial only if we could be assured that every voter had perfect knowledge, but as this is not the case, I believe that a democratic process should be used by those that are informed and aware as well as knowing the candidates better than your average person, which most New Zealanders aren't likely to have that awareness and knowledge.

Finally, I support the right of a candidate to be able to stand an electorate whilst retaining their position on the party list. It would simply be ridiculous to limit a party's capacity to govern effectively, rather than allow them to assure their best MPs a seat in parliament.

Abolishing dual candidacy could easily lead to less voter choice in electorates, as MPs would prefer the safer option of being list MPs. As a list MP there's no need for the excessive media and publicity campaigns and no risk of putting in all the work and missing out on that all important seat in parliament.

Politics is hard enough without forcing parties to weigh up the risk of letting good MPs running electorates when the consequence of losing is three years without their valuable skills and input.

That's kind of what my submission was in a nutshell.

SIR HUGH: Yes, it is, thank you very much. Mr Peden?

MR PEDEN: Ms Watkin-Ward, your first point, the threshold, 60,000 votes is not a lot of votes in the scheme of things, is it? You're not concerned that a threshold at 2.5% might actually result in undue fragmentation of party representation and difficulties in formation of government?

MS WATKIN-WARD: I think that given the current inconsistency we have between letting a party have one member in parliament through the electorate threshold, you end up with someone who is just there to make noise and doesn't really add anything to parliament, whereas by reducing the party vote

threshold, 2.5%, you're then guaranteed three members in parliament which I believe is enough to be a firm base as you've got, you know, more than just that one voice, you've got someone to reign in the extremists or ensure that you are sticking with the party policy and I think that having three members is enough of a base to get a party at least started in parliament and then assuming that, you know, they don't completely screw it up, then they can build on it from there, but I do believe that's an acceptable minimum.

MR PEDEN: You don't think that by lowering the threshold to that point, the – our electoral history would suggest that the application of a 2.5% threshold may not have made a huge amount of difference to the number of parties we have in parliament, but if there was a 2.5% threshold, obviously people would be making their voting decisions based on that, do you think that might result in even more small parties? I hear what you're saying about the fact that a party with three members can operate effectively, but do we want a whole lot of parties with three members in the House?

1355

MS WATKIN-WARD: I think that if we introduced a threshold of 2.5% we might initially see an increase in the number of small parties, but over time – basically, if it didn't work, then the voters would probably figure that out fairly quickly and probably would right it, we'd right it ourselves by voting more sensibly in the next election which, given that Parliament is intended to be representative of the population, I mean, we do have a lot of different people in New Zealand and it's only fair that we get at least a try, and – but I don't think it would cause a huge amount of fragmentation. I mean, take the 2011 election. By reducing the threshold to 2.5%, we'd only end up with one more party in Parliament. We'd add in the Conservatives, and that would be all. It's not a huge difference, but it does allow more representation.

MR PEDEN: Party members ranking the list candidates, would that raise a risk of less representative lists, do you think?

MS WATKIN-WARD: I like to think that our MPs are relatively intelligent people and that they would be able to make the best decision for New Zealand, and again, as MMP is designed to be representative, I don't think the best way of doing that is to give all the choice to a few top members of a party. That seems to me to be just restricting choice, when MMP is, as I said, designed to be representative of what the voters and the population voted, and so basically I think it's a good middle ground between what we currently have in most parties, of the Committee choosing the lists, and between the extreme of letting, you know, every voter play with 471 names, which is ridiculous, because it would just become a name recognition game.

MR PEDEN: I suppose what I'm just wondering about, though, is that if you leave it open to, say, a popular vote within party members that a kind of strategic decision that a party might want to make about the list that it presents for election will be more difficult to achieve?

MS WATKIN-WARD: Well, I hope that within a party they were able to trust their MPs enough to convey to them the sort of strategy that they would like to see implemented, and then I'd hope that the party would be able to support, like, I'd hope that within a party they would be able to reach similar conclusions, given that they're standing for essentially the same things, and so if the top members of a party think that, you know, these three people would be really beneficial and so we should give them top seats, then I would really hope that the majority of the rest of that party would agree that yes, those people would represent us quite well, and if the majority of the party disagrees, then I think there's something wrong there.

MR PEDEN: Sorry, I – could you just explain to me how you would see that list ranking mechanism working?

MS WATKIN-WARD: I'm actually not too sure on how it would essentially work. I'm aware that the Green Party does currently have a democratic system in place. I'm, again, not sure on the details of how that works, and I haven't put much thought into how it would actually work.

MR PEDEN: It's just the principle that you're concerned with?

MS WATKIN-WARD: Yes.

MR PEDEN: Thank you.

SIR HUGH: Mr Peden keeps pinching our questions. He's nobbled both Ms Huria's and mine, so I have no questions. Professor Roberts? Dr Arseneau? Thank you, Ms Watkin-Ward, for your contribution. Next is Voters For Change. Jordan Williams is to present. Now, I'll just check, Mr Williams, before I invite you to start, what we've got – well, what I've got, is a one page submission.

1400

JORDAN WILLIAMS: Yes.

SIR HUGH: Did you intend to elaborate on that orally?

MR WILLIAMS: Yes, I will, and will likely be filing a more comprehensive submission before the written is close or later on in the process.

SIR HUGH: Perhaps in response to the tentative proposal paper. I see, thank you very much.

MR WILLIAMS: Firstly, thank you very much for the opportunity for participating in the review. Just before I get into the substance, I just want to clarify that any attack during the campaign on what we labelled the "sneaky MMP review" certainly isn't an attack on the credibility of the review now that we're here. We were focused on the process of this reform. We argued that the review should've occurred before the referendum because we were fearful as the left wing commentator John Pagani has pointed out, he voted for MMP, so he could have this review. We argued the review should happen first and that any significant changes should be put to the people.

So, on that note, Voters for Change strong view is that although the process has been flawed it is easily fixed by the panel recommending that any significant changes are put to New Zealand voters before they are implemented and I note in grey, in each of the principled submission on that particular point and of course New Zealand First's fundamental principle of their party that any significant constitution changes are put to the electorate.

So, there's four things I would like to cover this afternoon, the first is the comment on the party thresholds, the party lists formation to build on the previous submitter, waka jumping legislation and the electorate tolerance.

The first thing on thresholds, we've already – we've called publicly for the campaign for the one seat threshold to be removed. From the submissions we've reviewed, we see that there seems to be a general consensus that that is necessary other than, of course, some of the small parties have argued against it.

On the point of the party vote threshold we believe that 4% is appropriate but we strongly urge that the party vote threshold not go lower than 4%. There are currently eight parties represented in parliament. We argue that eight is probably about right. If you were going to lower the threshold, you would lower it on the basis that there is not enough representation or diversity in parliament. We say that if you're a voter and can't identify with a particular MP in those eight parties, perhaps you need to compromise a little bit more.

Indeed, if you were to recommend getting rid of the Epsom rule, that wouldn't reduce the number of parties, albeit it would reduce the size of some of those parties and I think further that to say that small parties wouldn't still go after electorates because there wouldn't be the 1% threshold bonus, if you will, I think is unrealistic, because for some parties, I mean for example, if we look, let's hypothetically say, that a rural party or an Auckland based party were to be established, it's certainly not unrealistic that they would chase electorate seats rather than go a 5% threshold.

It seems, going through the submissions, it seems really interesting that there seems to be a distinction from the more academic submissions, where for example, go back to Graeme Edgeler where he argues for a 2.5% party threshold or that there is no principle justification for a party vote threshold and I compare that to the people that have had previous experience, either in parties or as MPs and their recommendation is not to depart and the specific examples I will use are Jeanette Fitzsimons and Sir Geoffrey Palmer, an architect of the MMP system, both Ms Fitzsimons and Sir Geoffrey have said that the party vote threshold should stay at 5% or go no lower than 4%. So, I think given that they were such champions of MMP as a system, I think that we should take their cautions as to not fragmentise parliament even further and reduce that lower, that threshold to lower the 4% into consideration.

I'll move onto the party list formation. Voters for Change supported a – what really is a compromised position between open lists and the status quo. Obviously our concern is the huge power that party bosses have in determining who list MPs are and we argue for a, that the panel recommend a process similar to the Greens but our key recommendation is that it should be on one member/one vote basis.

1405

Now there are various ways to do that. For example it might be that merely an obligation of disclosure of a political party's members' wishes versus that having been binding on the party. That would be a way to ensure that you have real participation from the membership. You would have that very public pressure to ensure that there is a loose correlation but I use in the example, and having some professional experience in relation to the ACT Party, that only the members at the very top can really understand the caucus dynamics.

And so there's a real trade-off there because naturally party bosses have a real insight and it's valuable but you want a membership to ensure that that isn't abused and there is, I mean there is a trade-off there. I primary system can't possibly under – members in the primary system can't possibly

understand the nuances of, for example, personalities in the party. I mean there have been parties that have split apart over the course of, under MMP and my understanding from, on both the left and the right that it's never been in New Zealand over any particular fundamental difference in political philosophy. It's been real simple, it's personality and unfortunately it is going to be that party hierarchy that understand that.

So that's why I, Voters for Change, have gone for a middle position and perhaps something like a compulsory voting, one level/one vote but even if you wanted to water that down further, just disclosure might be enough.

SIR HUGH: Compulsory voting?

MR WILLIAMS: Say again?

SIR HUGH: Compulsory voting.

MR WILLIAMS: No not comp, compulsory for each party to have a transparent process –

SIR HUGH: I see.

MR WILLIAMS: – on a one member/one vote system. An alternative might be a, if you were, if the objective is to reduce the power of the party hierarchy, an alternative might be a term limit for list MPs because the perception is that list MPs serve the party bosses or serve the group that determine, ultimately determine the party lists, so it might be that if you were to put a term limit of list MPs you would, you would encourage those list MPs to stand up for what they believe in rather than being at, presumably a third of them if you're having that sort of rotation if it was a three term, rather than merely being drones to party bosses.

And that leads nicely into my third point which is around the 'waka jumping' legislation. I note that a couple of submissions have commented on this.

Vote for Change are fundamentally against any form of 'waka jumping' legislation despite John Keys' recent comments approving a 'waka jumping' law. We cite the reasons that National took a very strong position in 2001 opposing such a law to prevent list MPs changing parties or not aligning to the parties. We think that, at the moment it's debateable whether list MPs are zombies or merely instruments of a party but to legislate that once you are elected, once you are elected representative you are effectively a representative of the party rather than hold any judgement for yourself, we think that would be a fundamental change to our Parliamentary practice and that would be an example, for example something that would surely need to go to the public if it was to be recommended. But as I say, we disagree with such a position for very similar reasons to the reason that National disagreed with Labour's proposal in 2001.

My final point is on electoral, electorate tolerance. We support that, we support like the Māori Party and the National Party the increase in the electorate tolerance being increased to perhaps 10%. We use the example of the Tukituki electorate where the Waipukurau and Waipawa were split. The – clearly the Boundaries Commission couldn't come up with a sensible alternative. There is – anyone that knows Central Hawke's Bay, there is no possible principle distinction between the two communities and that tighter framework makes sense in a First Past The Post environment, but mindful that MMP is for most, by and large your proportion of Parliament will be determined on the party vote.

1410

There's actually less importance on the size or the power of the vote within the electorate being as equal as the other systems. So before I take questions in conclusion, we emphasise that it is unfortunate that the review came second. However, it's easily rectified, and we encourage the Commission to recommend that any fundamental changes to the way MMP works should be put to the people.

SIR HUGH: Well, we'll try to do the egg and not the chicken. Mr Peden?

MR PEDEN: The overhang provision, you submit that it should be removed. Have you got a view on a mechanism or an approach?

MR WILLIAMS: No, we haven't. It's really a simplicity measure. We think MMP's complex enough and that there is an advantage of holding that at 120. Certainly there are some downsides, and obviously at a cost of proportionality if you've got a party with a particular overhang, but we think that on balance that if it can be achieved, it should be.

MR PEDEN: Okay. And the prohibition that you recommend for dual candidacy, why would you recommend that?

MR WILLIAMS: The – it's the, for sitting electorate MPs. It comes back to Voters For Change's view that democracy is fundamentally about accountability, that the reason democracy works isn't because it picks the best people for the job. It is the reason why democracy is so successful around the world, is it means you can get rid of a Government or get rid of the people that are representing you. And it's that churn rather than fairness that is more important, and if you have an electorate MP, it should be – the electorate, given that an electorate MP is accountable to that electorate should be able to dismiss that Member of Parliament.

Again, to come back to the campaign, it's quite a simple distinction, that if you go back to those swing seats where historically elections have been decided, we want Members of Parliament thinking, "I better do what my electorate wants to ensure that I get back into Parliament. If I don't cross the floor on this, if I don't advocate for my electorate's view" – who, as an electorate MP you're representing – "I'll be booted out." What we see as a serious flaw of the current system is that it's kind of a perverse incentive that, "Oh, I could be dismissed by my electorate on this particular issue. I better stick to my party's position to ensure that I am rewarded with a high list position," and we think that's fundamentally unfair.

And it's a distinction that every politician makes during their career, "Am I going to be a champion of an electorate, am I going to be an electorate MP, or am I going to stand on the list only, or stand in an electorate that I'm highly unlikely to win and, obviously, be a list MP should I get into Parliament?"

MR PEDEN: Let's just test that with a hypothetical. Say you're the party leader of a smallish party and in the electoral swing that occurs at a particular election you, surprisingly, win an electorate. At the following election, the swing goes back the other way. You contest that electorate. You'd suggest that that person should not be able to –

MR WILLIAMS: So the example you cite is – Jeanette Fitzsimons was in exactly that position. Two things, one is it would be clearly a factor in determining whether that party leader would initially stand in an electorate, and secondly, I don't think that it's necessarily such a bad thing if that person is voted out, and there's precedent around the world for it. I mean, off the top of my head I can think of John Howard. When his Government was dismissed, a sitting Prime Minister didn't get back into Parliament.

MR PEDEN: That's a very different system, though, isn't it? And isn't that really one of the reasons why MMP is, was recommended by the Royal Commission, that it's there to –

1415

MR WILLIAMS: Look, I mean, my impression is we make a distinction between what ought to be the incentives of a list versus an electorate MP. Vote is for change, take a position that as an electorate MP your incentives should be quite different because you're not serving just a party brand, you associate with that but you're serving a constituency.

MR PEDEN: Well just one other question. That the three term limit that you suggest for list MPs, why didn't you apply that to electorate MPs also?

MR WILLIAMS: Because we think that they, we think that because they are directly accountable to voters, that voters can dismiss them anytime and secondly a three term limit for list MPs isn't a three term limit per se if you become – if you are a list MP because of course you could transfer into an electorate.

MS HURIA: It might seem a bit nit-picky but is that a three term limit consecutively or you could do two lots of six and take a break, go back in?

MR WILLIAMS: I, to be – well we haven't got a preference to be honest.

SIR HUGH: (inaudible 14:16:24)

MS HURIA: The other thing I – just for the point of clarification, so one of the, or the key reason why you're proposing the nine year term limit is because of the importance of term to a democracy?

MR WILLIAMS: No that's not the reason for that. We look at the system, we think that there's too much power in the party hierarchy which is why we're saying that some, that either a democratic principle or at least a disclosure of a party preference in terms of the list would reduce that power of the party hierarchy and party bosses. What we're saying is if you didn't want to do that an alternative to – if you were trying to achieve a reduction in the real or perceived power of party bosses, would be to have a term limit for list MPs.

MS HURIA: I see, thank you.

SIR HUGH: Is your suggested prohibition on dual candidacy for sitting electorate MPs also designed to reduce the power of party bosses to incline an electorate MP whether in a safe or a marginal seat to put his or her electorate concerns ahead of, say, party whipping concerns?

MR WILLIAMS: Yes it's exactly that. It is an incentives point. I mean it actually – to go back to the Royal Commission – it's actually making a much

clearer distinction between the two classes of MPs. Obviously MMP is designed to be a proportional system while keeping the elements of having a – you know your local MP, your local elected member. What we're saying is take that a step further and make those incentives quite separate.

SIR HUGH: And similarly in the selection of candidates for lists where you press for greater democracy in the selection process, is that too, is that also designed to reduce the power of the party hierarchy?

MR WILLIAMS: Yes it is absolutely. Absolutely. I mean we're championing the Green's model but obviously parties are by and large in New Zealand unincorporated associations that may not want to get too descript, you might open up a whole can of worms if you want to get descriptive as to how exactly they have to run their internal list ranking and also there needs to be some flexibility in the event of a snap election. So what, so if you come back to a one person/one vote principle but even if it was just disclosure you would have, you would achieve a balance of that. Because the other thing of course you balance and you come back is the knowledge of personalities inherent and only the party hierarchy or those people very close and internally, versus a, the legitimacy of membership-backed organisations determining the list. I mean there's clearly trade-offs there and so what we're wanting you to explore is some of those middle options.

SIR HUGH: Dr Arseneau?

DR ARSENEAU: Thank you for your submission. Can I just – as a perhaps bit of an expansion on – you said that any significant changes you would recommend going back to the people to a referendum, would any of these changes qualify – are these changes you would classify as significant –
1420

MR WILLIAMS: Yes I –

DR ARSENEAU: - or are some significant and some would not be?

MR WILLIAMS: So that's, so that's clearly a, a subjective assessment. I think a good measure might be what the average, what the average voter will understand. I mean, for example, for a change in the threshold, most New Zealanders understand the, at least the 5% threshold, that would be significant. But for example, the overhang provision, most New Zealanders wouldn't understand how that works and it's mechanical in nature rather than fundamental.

PROFESSOR ROBERTS: I want to ask a question I thought you were asking. Is, what about the potential for the Human Rights Act, with regard to clause (a), should the three term limit to be introduced? This would be discriminating against the right of New Zealanders to stand, over 18, to stand as a Member of Parliament?

MR WILLIAMS: Oh I think that term limits are quite justifiable around the world, I don't think that that's, that it's much of a problem.

PROFESSOR ROBERTS: Around the world, other than the United States. When you think of – the specifics in –

MR WILLIAMS: I hate, I'd hate to think of Russia as an example that we'd want to model on. No, I don't – the costs, I think, are lower in terms of the benefits in the incentive and, of course, they can still stand for parliament. It's the list adding you and it's that incentive of being a career politician only accountable to your party that they're trying to reduce and that's why the term that we propose is designed only to reduce the power of the parties and thus only applies to list MPs.

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

Now, because the next scheduled presenter Mr Winter is not appearing, we're a little bit ahead of ourselves, is Mr Ekambaram here? Do you care to come forward Mr Ekambaram?

Thank you for coming along, thank you for your submission. We've all read it. If you would like just to elaborate on the principle points that you put forward or comment on any additional material.

SRIDHAR EKAMBARAM: The basis of what I submitted was on the fact that New Zealand Parliament is already functioning the way proportional representation works and that decisions are based on party policies. Some of the members, they don't necessarily decide on the consequences are present.

These are the two main factors and if you look at proportionality, it's not about saying that, you know, well, how the parties should be performing, but then if you take the proportional representation it says like people work only for the party and they work for the party which has got the policies which suit them the best. It may not be 100% fit, but like some party needs – one party needs 70% of the requirements, that's fine for – that's the one they want. So, I don't see any reason why it would be difficult for New Zealand to sit with First Past The Post or MMP into proportional representation, the ground work is already there.

SIR HUGH: True, but we made the point in our website material that one of the results of the referendum last year, we felt, was that we were being asked to review and examine all aspects of MMP but the electorate had decided fairly, definitely, not to pursue the other four systems on offer, including, as you know, FPP and the others SM and the like.

For myself, I wonder whether therefore we can actually take much of your well argued submission into account.

MR EKAMBARAM: The two points I can make is that in the first place there's no option saying that, okay, if you don't want MMP, would you like to have proportional representation. There's no such option, so, if that option is available, maybe people have said, right, maybe I prefer proportional rather

than First Past The Post, maybe they didn't have the option so they preferred MMP. That could be an option.

1425

The second thing is that this, a very thin margin of division between MMP and proportional because we already have got list MPs who represent the party not an electorate. So we probably have almost, there are almost 50 persons there. So it can be considered an extension of MMP itself and making it, well I won't say perfect, better.

SIR HUGH: Questions?

PROFESSOR ROBERTS: No questions.

DR ARSENEAU: No thank you.

SIR HUGH: No I have no questions. I have no questions either thank you Mr Ekambaram, thank you for coming along, thank you for giving us your submission. The next submission is down for Mr Stone who is apparently on his way, seeing we're about 20 minutes early we'll take a break until you let us know that he's arrived. Thank you.

HEARING ADJOURNS: 2.26 PM

HEARING RESUMES: 2.32 PM

SIR HUGH: Mr Stone. We've had a defection or two, and we're running a bit ahead of ourselves. So if you're rested, relaxed and recuperated and ready to go, we've read your submissions, all of us. As I've said to others, if you care just to highlight your main points and elaborate on issues or address us on anything additional that you haven't covered in your submission, then we'll ask you some questions.

MARK STONE: Well, I think the very last sentence that I've written there, that no system is perfect is something that we should all remember, and that whatever system we have, not everybody will be happy with it.

SIR HUGH: That's a given.

MR STONE: And we should also remember as well that it's not often that countries have been given the opportunity to, having worked under a form of a political system for many, many years, to be given the opportunity to review and see whether or not that's what they really want to have, so I think we ought to be mindful of that fact, and just look on this as just another step along the road that New Zealand has going along for 200 years, give or take, as far as its Government is concerned.

I think the – just turning back to my first point on thresholds, I've thought long and hard about that, and my view there is simply that, again, no system is perfect, and the point about the 5% level was one that was not originally put forward by the original Royal Commission on the electoral system. They, in fact, from memory, plumped for the 4% level, and the Parliament at the time saw fit to increase it to 5%, and I think that was an excellent idea because, as I've also referred in my original point, political stability – instability is not part of the New Zealand political system, and I have absolutely no doubt that the lower that level, that threshold level is, the less likely we would have of political stability and the more we would have, even more multi-party

Governments than we do now and has been the case since we've had MMP in force which was in, of course 1996.

1435

I've also thought one of the other contentions that various people harp on about at times is the way that candidates are ordered on political list and it's my very firm view that that should be absolutely left in the hands of the political parties and the reason that I say that is that the, it's not only, it's not only list MPs but it's also electorate MPs that get there by, by virtue of being accepted by their political party, so that to say list MPs are in any way different from electorate MPs in the way that they've been selected is to ignore reality.

MR PEDEN: So are you ready for some questions Mr Stone?

MR STONE: Sure.

MR PEDEN: Just first I wanted to make sure I understand the point you make about the one electorate rule and you support the retention of the rule?

MR STONE: Sorry which point is this you're referring to?

MR PEDEN: This is in your second paragraph.

MR STONE: Yes.

MR PEDEN: Should the one electorate said threshold be kept or changed and you're saying keep it –

MR STONE: Yes.

MR PEDEN: I'm just wanting to check the basis of your support because you make a reference to administrative difficulties for Parliamentary services and –

MR STONE: I was being facetious there I think.

MR PEDEN: Okay. What's, why do you think it should be kept?

MR STONE: Why do I think – well, again I think I just make the point that if anybody, I mean independents don't have a great record of being elected to the Parliament of New Zealand over the years. Well not in the, not in the recent past anyway. So I just think that, simply that, if anybody's prepared to put themselves up and get over the threshold of being elected by or by favour by the greater proportion of the electors in any one electorate, then good on them.

MR PEDEN: So I don't think there's any suggestion that an independent member should not be able to keep their seat if they're elected. The question is whether if a member of a party contesting the party list is elected to an electorate –

MR STONE: Yes.

MR PEDEN: – and that party gets less than whatever the threshold is, less than 5% –

MR STONE: Yes.

MR PEDEN: – that party should nevertheless on the current law, is entitled to an allocation of list seats –

MR STONE: Correct.

MR PEDEN: Now do you support the retention of that?

MR STONE: Yes I do.

MR PEDEN: You do. And can you tell us why?

MR STONE: I think it would be fair to say that's not, that particular aspect is not something that's – that I've exercised my mind at all.

MR PEDEN: Okay, that's fine. By-elections you say that list candidates shouldn't – list members shouldn't be able to contest by-elections?

MR STONE: Correct.

MR PEDEN: Isn't that something that you can leave to voters to regulate? What would be the problem with a list member contesting a by-election. Can I just give you an example?

MR STONE: Yes.

MR PEDEN: If you think of, say, the Mana electorate –

MR STONE: Yes.

MR PEDEN: – the by-election in the last Parliamentary term. The National Party candidate in the Mana by-election was, is the candidate that contests the 2008 general election.

MR STONE: Correct.

MR PEDEN: And she also contests the 2011 general election –

MR STONE: Yes she did.

MR PEDEN: Why shouldn't she be able to contest the by-election?

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MR STONE: Simply I, simply because candidates put themselves up for a three year term or whatever the term of the Parliament might happen to be. And I simply feel that they effectively make a contract with the voting public at

– for that election campaign. I'm here for the duration as a list MP, and too often we see people seem to think that list MPs are not real MPs, that they are somehow of a different quality or a second class, if you will, and it's my view that allowing them to switch horses in midstream would tend to reinforce that view.

SIR HUGH: Isn't it arguable that they engage with the public to be an MP for three years?

MR STONE: Yes, they do.

SIR HUGH: Standing in the by-election, to take Mana as an example, unsuccessfully, simply meant that they were fulfilling that bargain with the public to remain in Parliament for the triennial?

MR STONE: But they were already on the list.

SIR HUGH: Yes.

MR STONE: So they didn't need to.

SIR HUGH: Didn't need to, but if list MPs regard themselves, or are regarded, as you suggested, as second class MPs –

MR STONE: No, I'm not saying that they are. I'm saying that is the perception that you pick up on the airwaves.

SIR HUGH: If that's the perception, that they're inferior to electorate MPs, why should they be denied the opportunity to improve their position?

MR STONE: I don't believe that they are inferior. I'm just saying that they stand for a three year period, and I think they are fulfilling a contract, if you will, with the electorate to make themselves in that position for a three year period.

SIR HUGH: Okay, I see.

MS HURIA: Yes, Mr Stone, I'm just interested in exploring a bit further your thinking around the political instability point that you raised around as a reason not to change the 5% threshold. Can you just talk to us a little bit more about what that looks like to you, political instability?

MR STONE: Israel.

MS HURIA: Is that likely in New Zealand?

MR STONE: If – I think if we had lower levels, lower thresholds, I think that would be entirely possible.

MS HURIA: Okay, thank you.

MR STONE: Maybe even Italy. I don't know.

SIR HUGH: Professor Roberts, any questions? Dr Arseneau? Thank you, Mr Stone, thank you for your help. Thank you for coming along. We're told that Mr McMahon is available to follow Mr Stone, even though he wasn't actually scheduled until 4.30. You've heard me saying to the others, Mr McMahon, that we've read your submissions and thought about them. It's up to you now. Would you care to elaborate?

TIM McMAHON: Yes, indeed. I'd particularly like to elaborate on two points, but I'll cover the others off as well. Really I've come to make sure that my thoughts on the two key points were heard. As far as the threshold, as I said in my submission, I believe the threshold, a threshold should be there for the party vote. I've suggested 2.5, because that would give three MPs, which I think is a number that you can sit as a party, but if it stayed at 5 that wouldn't greatly annoy me either, because I believe there needs to be a threshold for the reasons that have been given, to keep the single issue parties away from

there. However, on the one seat threshold, I believe that should be abolished. I don't believe you should have a one seat threshold. A vote for a candidate is not a vote for a party. I think that's been clearly shown in the last two elections, where people have voted for a candidate but definitely not the party. We're told the votes are equal. We're told that the Members of Parliament are of equal status, but they're not treated equally when that threshold is triggered with one member and currently you have to wait until you get 5% which is the equivalent of six members, so that would infer that if it's not changed that one electorate MP is the equivalent of six list MPs, which I don't believe is correct.

1445

By-electorate candidates, I also don't think that list MPs should be able to stand. I've listed my – the corollary is, is if they're equal, can electorate MP and electorate A stand as a by-candidate in election – as a sub in a by-election.

MR PEDEN: Would it change your view to know that there isn't anything stopping an electorate member, a member of parliament from an electorate contesting another by-election?

MR McMAHON: Well, does that mean that there's one list MP at the end of the exercise?

MR PEDEN: It would depend upon whether the –

MR McMAHON: If he was successful or if she.

MR PEDEN: If she was successful then you would expect them to resign their other electorate seat, you would?

MR McMAHON: Well that sort of leaves the same possibility, doesn't it, really? You know, my point is that I believe they're equal and the logic says that if they're equal, you know, why would you resign electorate A to stand in electorate B as an electorate member, the same is why would you resign as a

list MP to stand for electorate, you are an MP, you've been elected as an MP and you should stay as that MP.

Dual candidacy, no problem. I don't see a problem, I think. I think that's probably one of the logical ways you can do it, particularly for the parties that aren't currently in parliament. It gives them a high profile. They may never intend to win an electorate, but it gives them that profile to do so.

Ordering of a candidate list, no possible I don't think, practically possible. We've got parties that had good constitutions that can select. That is what you vote for, you vote for the list, you don't vote for the party, you vote for the list, so I think it is A, it's impractical and what you have now is quite good. It may allow people to sneak back in, as they say, but that's what the people voted for. They knew where they were on the list and they didn't want that many people.

Now the last point, well, the next one, overhang, this is the point I really want to make. There seems to be a total lack of knowledge in New Zealand throughout electorates of what an overhang can be, not what it has been but what it can be. I've canvassed a lot of people, I've canvassed at least 15 MPs, two cabinet ministers and one ex prime minister and not one of them could answer what is the maximum number of MPs under our current system and I've made the point in number 9.

In fact, I rang up the Electoral Commission before I was making this and I asked the people there what it was and I didn't delve too deep, but I was told 125, but I have a letter – you know, I've already – if you go to their website, the electorate calculator website and put in the appropriate figures, the actual maximum number of MPs we have right now is 190. Now, the mathematical probability of that is very slim, very slim, but it's still an outcome that could happen and no one has been told that, nowhere have we seen that in any material from any party or from the Electoral Commission and in fact I see that we've got one party which is the United Party is advocating that you must stand as an electorate as you are on the list.

Now, that would immediately eliminate any party that was a list only party ever getting power, because they've got to win, currently they've got to win 71 seats to get sole power because they've got to beat the elections and to get that 71 seats they've got to win 58% of the vote, the party vote. So, the party vote is actually – once we went from 60 electorate MPs and 60 list MPs to 70/50, the party vote is actually watered down, because to get a majority in the house now, a party without any electorate MPs would need to win 58% of the vote to get a majority in their own right. I'm not talking about coalitions, I'm talking about actual mathematics of this exercise.

So that probably covers the points I really wanted to make. I've pointed out item 7, the publicity side of this, people actually know. I would guaran – no, I wouldn't guarantee, but I would think that if somewhere before the last referendum that it became public knowledge in debate that the maximum number of seats was 190, there might've been less leaping about in support.

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Now, I actually support MMP, I think that it's given us a lot more stability and definitely toned down the wild swings that we've had, but I don't think they would've been accurately publicised as to what it means if we do have, let's say, a weird mathematical outcome. I used to work for the Statistics Department and I have got a degree in statistics, so that's one other thing, but the only person who's actually accurately answered the question was Dr Catt, who was the chairman of the – or the Chief Executive of the Electoral Commission. When I spoke to her, she said, "Oh, it's 120 plus the electorates is the maximum in there."

MR PEDEN: Thank you. The – on your discussion at issue 4, Mr McMahon, you talk about a minimum process being prescribed in the Act for party leaders to participate in forming a party list. Have you got a view of what that is proposed to look like?

MR McMAHON: Well, yeah, and I'm thinking something around where the Green Party do, where they actually have a wider democratic process within the party that supports that. I think if you look at the Labour and the National Party as the other two parties, they have a hierarchy that chooses it, but it doesn't get down to the grassroots. So I think that it should be something along the lines of the Greens, I do not know what their constitution is, but in that area, so that the wider, you know, if you become a financial member of a political party you would hope you have some say down through the process, and if I may, there's one point I forgot to make about the threshold. MPs that win an electorate, and let's use an example, the Mana Party or the ACT Party, as they did this time, but don't win a party, don't get to the party threshold, whether that be 5% or 2 and a half percent, I believe that they should be treated the same as an independent when calculating the number of seats.

MR PEDEN: Yes, I've noted that.

MR McMAHON: Because that would then – under the current Parliament there would be one less MP because the Māori Party won enough electorate – party votes to justify two, but they got three, so there'd be one – and Hone or Mana, ACT, and United have enough party votes in their own right to have one MP, regardless of – well, provided there's no threshold. So if we had a – and the other side of that is the funding that goes with that, the leaders' funding, you know, we've got a party, we've got three parties in Parliament now that have a leaders' budget, but they've got no one to lead. So what they do with it I'm not too sure, but if I could find out I could probably get a couple of free ales from them, but never mind.

SIR HUGH: Treating.

MR PEDEN: The other question that I had was in terms of the ratio of electorate seats to list seats, is your preference that –

MR McMAHON: I believe it should go back to where it was, 60, because that then is 50/50. If you win 50% of the party vote, you'll be entitled to 60 seats,

sorry, yeah, 60 seats, 50% of 120. So you'd have 60, and the party – you'd still struggle to, may struggle to get a Parliament, sorry, a Government, so yeah, I believe it should go back to – because that's what the 120 is predicated on. The 120 originally was predicated along 60/60. We've gone up by 10 electorate seats since '96, and we haven't had a Census for five years, seven, eight years, whatever it is. Well, the next Census, I imagine if they follow the same rule, we'll be up to 73, 75 electorate seats, which will then bring the list seats down even further and make that proportionality calculation even harder. There's a mate of mine, we talked about the need for people to be represented. The American House of Representatives haven't had an increase in the number of members since 1913, and they've tripled their population in that time, so other countries do it.

SIR HUGH: Thank you for coming along. I've just been told that Mr Jacobsen's cancelled, so the next scheduled submission is at 3.30, which will be New Zealand First with Mr Peters presenting. We'll take a break for 35 minutes.

HEARING ADJOURNS: 2.55 PM

HEARING RESUMES: 3.31 PM

SIR HUGH: Mr Peters, when you feel ready to proceed. The Commission's read both the original New Zealand First submission and the supplementary submission you circulated a few moments ago. The pattern we've adopted is to invite those presenting submissions to emphasise the main points. Perhaps any additional points they care to make and comment on the contents of other submissions, following which members of the Commission and our advisors feel free to ask questions. So perhaps you'd care to embark on that process. Given that we've only had a few moments to read the supplementary submission, you may care to enlarge on that a little more than might otherwise be the case.

WINSTON PETERS: Will it please the Commission, could I just make a slight amendment to paragraph 5 of the submission dated 23rd of April. At the end of that line, the first line where you see the word "Parliament". So, "New Zealand First has long advocated for a cap, for a cap of 100 MPs in Parliament," there should be an "and" so it reads, "And as the Royal Commission setting up, et cetera et cetera."

Well can I begin by saying that first of all the system we have got was chosen by the people because they perceived it to be a fairer system and it is a fairer system. But despite the good intentions of MMP, unequal population growth across New Zealand continues to threaten proportionality of list seats and as more and more electorates are created to account for the increase in population, while the number of MPs is capped at 120, MMP is gradually reverting back to First Past The Post. This agenda has been further, but propagated with the increase of Māori electorate seats and by adding more Māori electorate seats into Parliament the number of list seats is again reduced, despite the fact that it takes far fewer Māori adults to elect a Māori MP than it takes general seat adults or European or non-Māori adults to elect an MP in a general electorate seat and that system simply cannot be allowed to go on and be perceived to be fair.

Now we have long advocated for a cap of 100 MPs in line with the Robertson petition and as the Royal Commission setting up MMP forecast increased my representation under MMP, which has happened, and dramatically so, should lead to the abolition of the race-based seats. Unfortunately it has not, even though their proof since 1996 has been substantially in the form that the Commission forecast. Now this is outside the scope of the review. We firmly believe in a more balanced electorate MP to list MP approach with a cap of 100 MPs because after all it's a review of how MMP is working.

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Now public confidence in parliamentary processes, decisions and financial accountability would be increased in such an environment whereby there are fewer MPs and no race based electorates or representation and given that the political system has sold many of the assets of this country that used to be controlled by Ministers, we do not see why we need so many members of parliament. As a credit to both voters and the politicians that New Zealand's unique form of democracy was maintained but there have been cases where the electoral system has been tainted by a form of gerrymandering, that the architects of MMP did not foresee.

The stacking of certain electorates and the practice of one party taking over another party to gain an extra seat, in some cases to gain a contrived majority, that is an unhealthy development and an abuse of the electoral system. Despite that, we believe MMP has served New Zealand well especially in the light of the fact that there has been a unicameral parliamentary system, MMP ensures that the ruling party or parties is held to account both internally by coalition partners or externally by opposition parties or parties with a confidence and supply arrangement but no agreement beyond that.

Now we base our submission on the following: First of all the five percent threshold. We believe it's the right threshold. That it's demanding because it's a nationwide and not a state by state threshold as in some democracies but it is achievable and it also eliminates the extreme – the extremist or you

might say radical left or radical right fringe which destabilises some democracies. We believe that threshold served the interests of the New Zealand public insofar as that is important and any political party that attains the five percent threshold ought to be considered an independent political party in its own right.

Now the electorate seat and party vote threshold. For a particular candidate selected by a particular contingency is because that contingency believes the candidate, not necessarily the party, and this far more so under MMP will best represent their interests. The First Past the Post mentality has been eroded since MMP, has been the preferred system. With each subsequent election there are seemingly a growing number of voters who will split their party and candidates votes between parties and unusually, despite the lower socio-economic and it would seem education demographic, that is more to be seen amongst those voters than those who would regard themselves as the *crème de la crème* of electoral society.

In the 2011 general election in Wellington Central, despite a Labour candidate winning the electorate vote, the National Party received more party votes and that's not uncommon. Clearly voting preferences, political blocks and the individual personality and character of the candidate standing for election matter at least as much as the political party for which they are standing.

Can I just go onto the issue of the threshold of percentage that there should be for a party to get other than one elected electorate candidate into parliament. There should be a threshold of four percent party vote for a party having one electorate to be granted additional list MPs. We believe this will significantly reduce the abuse of the current MMP system by large parties propping up minor parties for their own gain. In fact it would dissuade those who think they can pervert the electoral process. Now on the issue of coat-tailing, in 2008 the Act Party won the seat of Epsom and 3.65% of the party vote, despite not cracking the five percent threshold this party gained one MP in Epsom plus four additional list MPs. Another party with far more votes missed out. This is not a sour grapes argument, it's just one that we

have never changed our view on and so we believe there should be a threshold of four percent of popular party vote in order for a party having one electorate seat to receive additional list MPs. The threshold of four percent would go a long way to eliminating the likelihood of the overhang anomaly.

Capacity to be both electorate and list candidates. I have listed there the reasons why we think that despite some latent jingoistic opposition to such a thing happening, why it should happen. Because you have experienced candidates working hard for the party in an electorate and for some parties they must, as part of their constitutional requirements, be both an electorate candidate to be a list candidate as well or they can be an electorate candidate and not a list candidate but they can't, they aren't, in the case of most political parties, eliminated from being either and the reasons are sound.

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You've got experienced candidates, you've got candidates who have worked hard for the party, you've got candidates who are best known to one group of people in New Zealand, namely the party organisation beyond any in depth knowledge of any other group such as the voters and as a consequence, we believe that the system we have now, although it might look anomalous to some, is indeed an invitation to a better qualified and experienced candidate than some of the alternatives that are currently being offered.

Competing against more experienced politicians within a given electorate, betters all candidate's public speaking, knowledge of local issues and political abilities plus their learning curve. In many instances, minor parties do not have, need as much funding as the larger ones. Candidate forums and political canvassing within an electorate enables the public to see all candidates on a more or less level playing field where they can be judged on their own merits as opposed to much funding, they or their party can muster. We also believe that the party should have the ability to determine the rank of candidates for a lot of reasons, but the primary one is, they know the candidates better than anyone else.

A list MP standing in by-elections, of course, we think they should be entitled to stand the by-election, if that is the electorate's wish, but you might have an issue of whether they have preferential or disguised or bailed funding underneath them and that may be a consideration for you to consider.

Now, on the question of party political funding, New Zealand First expresses grave concern to this MMP review on the base that it lacks credibility and integrity in past party funding policy. Some past decisions have been indefensible and recklessly biased. This Commission was told about that in 2011 and yet they gave the Greens 200% more than New Zealand First. The Act Party 60% more than New Zealand First and the Māori Party 6% more than New Zealand First and there isn't an actual poll like an electorate poll since 1993 that justifies the continuance of that sort of decision making. Now, we would beg to know why that decision was made because it was profoundly unfair and if you look at the votes, take the Māori Party vote, which was about a fraction of ours, how could they get 60% more or the Act Party, which again was a fraction of ours, get 60% more or the Greens who did not get more than two times New Zealand First's vote and has never achieved the vote that we achieved in 1996 get 200% more? This happens to be very, very important to us because some political parties do not have funding access to large sums as others most publicly have.

We have consistently showed in many political polls to be either wrong, inconsistent or downright misleading. In fact in the last election we promised to show the certain pollsters in this country that their polls weren't worth confetti and we believe we did. In the space of four months, we turned those polls upside down by a factor – in one case, of 600% and yet this Commission is going on making these decisions on polls which in my view, the worst in the western world.

In most democracies, Canada, United States, USA, Australia, if there's a variance of above 3% in the pollsters' findings, they actually need, as an industry, to try and sort out what is wrong with their methodology. Here the appearances of 14% and they all ended visually, going on saying, "We are

right and we don't care what everybody else thinks." If we're going to have official groups making their decisions on that and the newspapers wasting countless hours and the audio/media wasting countless hours of time and days talking about the polls, I think we've got a right, all of us and this Commission as well, to demand a better more scientific result in what is, at worst not a great science, but it must add a more scientific elements than what we're seeing in this country and I make that again my comparison. You don't see this in Canada, Australia, United States and the UK, why are seeing it out in New Zealand?

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One last thing that's not really, I suppose, is part of the Commission's mandate, but nevertheless, the question of expenditure caps and expenditure by electorate is important, and you must have real and actual comparisons when the costings are made, and not a thing that has crept in called mates' rates, which is surely an invitation for corruption and disguising over-expenditure. May it please the Commission.

SIR HUGH: May I just respond to those last remarks, Mr Peters, by saying that historical political polls were merely one aspect the Commission took into account in allocating its broadcasting funding, and when it comes to do it again, it will take historical polls into account, which will obviously be affected by your party's better standing. It's certainly only one of the issues the Commission took into account. Perhaps it would seem that our task is to consider aspects of the MMP voting system. It's a little difficult to see that those remarks fall within the rubric of this Commission's Review. Anyway, Mr Peden?

MR PEDEN: Thank you.

MR PETERS: Well, with respect, that might be your view, but if we're going to talk about a review of MMP, then some of the issues that are so dependent upon its continuance about which I oppose is surely part and parcel of your considerations, and if we're going to talk about historic polls, then maybe the

actual poll that the electors have given you is a more accurate one than the ones in the closing months before you make your decision, with respect.

SIR HUGH: A decision was made in the middle of last year, and slightly varied as time went on. The polls – if that decision comes to be made again by this Commission, then in three years' time, two and a half years' time, it will take account of all the information available to it at that point, including the polls at that stage. Mr Peden?

MR PEDEN: Thank you. Mr Peters, on the thresholds that New Zealand First is proposing, the 4% and one electorate seat threshold that you're proposing, I'm just trying to understand what the, I suppose the principle behind that is, because there's been a number of submissions made to the Commission about the one seat rule as it currently stands, suggesting that it's arbitrary and unfair in its effect. With a 4% threshold, so long as a party has succeeded in winning one seat, isn't that going to be open to the same sorts of concerns?

MR PETERS: I admit the possibility of what you're aiming at, accepting it is far less likely to be open to those concerns. When you're asked why the electorate seat and any other percentage candidates being added as Members of Parliament, frankly, I don't believe the public's ever understood that. We haven't been given a sound answer to that, and I'm not able to give you one today, but if we're going to have such a system, and to remove the likelihood of the arising of the overhang anomaly, New Zealand First is saying that 4% is a far safer figure.

MR PEDEN: Would it not be simpler to have a 5% threshold or perhaps a 4% threshold and leave aside the one seat rule?

MR PETERS: That could be a very reasonable view to take, excepting we think that the lower you raise the threshold, and ours is a difficult threshold because it is nationwide, and it's much easier in other countries to get a state 5% threshold achievement, nevertheless, we think it's fair, and the parties are up to what they – any value to the electorate they should be able to get 5%,

and if you fail you just fail. It's no use blaming everybody else and changing in the goalposts. We are still for 5%, but we do think that there is an accommodation for a seat like Epsom, then you should be required to – or Wellington Central, or Ohariu, rather, as well, you should be required to get any others in to get at least a significant acceptable percentage. We think 4 is about that figure.

MR PEDEN: Would you also be happy with just having the 5% threshold and no one seat rule?

MR PETERS: We'd be happy with it, but we're trying to be reasonable here to those who would not be happy with it.

1550

MR PEDEN: Thank you. With the, your submission on the ordering of party lists and there's been a number of submissions made to the Commission that party members should have a, an ability to be able to vote the ranking list candidates with perhaps an option for the party leadership to have a, a moderating role in relation to whatever the result of that election process was so long as the overall process is transparent. So in other words it's publicly available. Do you have a comment on that?

MR PETERS: I think in practice, the party gets to choose the people who decide the list placings. So there's a level of democracy in that already. The problem with the wider, more attractive, superficially more attractive approach is that it opens itself up to some very, very distasteful consequences.

Any political party that doesn't see itself as nationwide is not going to last long but often in the kind of vote, voting environment which is envisaged by your comment, all sorts of prejudices can come in and the geography of the country's forgotten, the gender of the country is forgotten, despite the fact that women are far more proportion of the population than males are, and then you've got a number of other factors which are critical for a political party,

including background experience, and one of which just happens to be loyalty and time in the party.

So in a sense, you would like to widen it further than the case that pertains to most political parties but I believe there's a lot of democracy in it already and yet you've got to protect the, ah, capacity for the party to be realistically seen as having a nationwide base and members from all over the country in parliament and reflecting the make up of the country, including the gender factor as well. And I think if you don't confine it to that number and you widen it up, broaden it too wide, you get the Justin Bieber factor, and you know how temporary those personalities are and also you open it up to pretty significant events that border on corrupting the political choices of a political party by, you know, the hiring of PR people for a candidate and money, sort of, giving the candidate far greater exposure than others who may be of greater merit. I admit for you, it's a very difficult question though and I'm just saying, putting our view.

MR PEDEN: On the, if the one seat rule was to be removed, hypothetically, the, the chance of overhang would actually increase as a consequence. Would – say for example, if, if the, I think the result for the 2008 election would have seen something like eight additional seats in parliament if the one seat rule hadn't applied at that election. Would you see that as a problem? And would you be comfortable with a, a mechanism which basically maintained the size of parliament at 120, so in other words, applying the mechanism which is currently in the Act to deal with independents who are elected? In the case where an independent was elected, you would only allocate 119 quotients, not 120 quotients and there would be no overhang.

MR PETERS: Well, you cite, you were citing the 2008 election, what about the 2011 election? I don't think that either Ohariu or Epsom would have been won were it not for the fact that they were able to hold out, "If you vote for me, you might get others to help the National Government." I don't think either of them would have won.

MR PEDEN: Quite possibly. But the – I suppose my question is, if there was a larger overhang as a consequence of removing the one seat rule, would you consider it appropriate to have a mechanism in place to keep the house at the size of 120 or would you comfortable with a six or eight additional members, for example?

MR PETERS: I'd be comfortable with an overhang if it was comprised of truly independent Independents.

SIR HUGH: Ms Huria?

MS HURIA: Just a point of clarification if I may Mr Peters, just page 5 of the submission, the second paragraph. The first paragraph refers to the democratically – it's around the determining and ranking of candidates again and I know that you have addressed that but I'm just a little unclear myself. The first paragraph says that, "The democratically elected Board of Directors does the list ranking," and then it talks about, the next paragraph talks about the party and the board of a political party have greater knowledge of the candidates and that's why they're in the best place to draw up the party list. Have I misses something there, is it the Board of Directors who draws up the list or –

MR PETERS: The Board of the Directors is the body from which the board list, of the list ranking is chosen but some have to be excluded, that as a Board of Directors have to be excluded because in some political parties they may end up as being candidates themselves which excludes them so it is the same – they come from the same group, that is the Board of Directors but they're a lesser number, usually because of that sort of contaminant of the democratic process of voting for themselves so they're eliminated from the word go.

MS HURIA: So the Board of Directors actually does the list ranking apart from those who are being considered?

MR PETERS: That's right.

MS HURIA: Thank you.

SIR HUGH: I've got no questions thank you, again Mr Peden's gazumped me. Dr Arseneau any questions? Professor Roberts?

PROFESSOR ROBERTS: Mr Peters, on page 4 you say, you refer to (inaudible 15:57:32-43) today, bring back the electoral intent of the Act. I've got two questions, is that what you'd like to see and (inaudible 15:57:51) would you also apply to (inaudible 15:57:55-59). So in the last Parliament for example we had (inaudible 15:58:02-05)?

MR PETERS: Yes there's been a few of those but let me just say first of all that when the 'waka hopping' legislation was proposed by Labour it was very attractive to the electorate and they I believed probably won the election on issues like that, if not that one. Excepting they put a sunset clause in which showed that their commitment had no integrity whatsoever. If it was sound – well if it was a sound principle then, why would it change later? So we've always been a supporter of it where a party, where a list MP is concerned and as for an electorate MP, well that MP has also, has always got the duty, I believe, if he or she feels so betrayed by the party's position which usually is the case where the party has changed the position not the candidate or not the MP, then they can call a by-election. It's over to them to put their option and their decision to the electorate to seek a new and fresh mandate. And two of us since 1954 have done so.

PROFESSOR ROBERTS: But you don't think it should be mandatory for electorate MPs (inaudible 15:59:22) as well?

MR PETERS: Well because they won the electorate, no it should not be mandatory but every moral and ethical compunction that there should be would require them to do that, if they are people of honour, but maybe that

eliminates what I'm talking about. But you're bound to go, if you disagree you're bound to resign and go to the electorate in my view.

SIR HUGH: Thank you, Dr Arseneau do you have any questions? Thank you very much Mr Peters, thanks for your presentations.

1600

MR PETERS: Thank you.

SIR HUGH: Thank you for your presentation. The next presentation is Mr Do. Thank you for coming along, Mr Do. Thank you for your submissions. As I've said every time now, we've all had a chance of reading them, so if you'd just care to comment as you've heard others commenting, that would be helpful.

DAVID DO: Cool. Well, thank you very much. I'm quite excited to be submitting to this Review, and obviously this is my own personal opinions in my submission, but I submit as obviously a voter, someone who's relatively young, someone who was a student and is now a graduate, who was a student representative but is now a worker but, you know, a citizen. Citizens are really passionate and concerned about how to make our democracy better, and that's why I campaigned for MMP last year in the election, so I'm very pleased to be able to submit on how to make the system better. So in my oral submission, I just want to focus on why the party vote threshold should be lowered, why it should be 3% and not 4%, and certainly not 5% or higher.

So I want to reiterate a few things in my written submission and then expand a bit on that, and I think the overarching MMP reform should be led by a sense of maximising proportionality with a touch of pragmatism, and so I believe more specifically any reform to MMP needs to maximise proportionality, minimise wastage party votes, ensure every person's vote counts equally, and recognise and embrace the fact that New Zealand is now firmly a multiparty democracy, and of course to also recognise that parties are the chief

representatives for us in Parliament, not independent MPs, and that's a key step in our political system that can't be reversed. So reform needs to accommodate that fact, that parties are the chief vehicle for representation, but also accommodate the increased importance of non-geographical consequences. The Reform should be about what's best for voters, and the system needs to best facilitate the choices they want to make in an election.

Obviously when we move from MMP, the 5% threshold and the one seat threshold, that helps ease that transition. Obviously you as a Commission are well-placed to be bold in proposing the next steps in the evolution of our political system, and certainly I'd hope that reform would not entirely focus on preserving self-interest for political parties. I'm certainly personally disappointed, but not surprised, that the self-interest of some parties' submissions when they propose keeping the party vote threshold at 5%.

So I would move on to talking about the party vote threshold, and why lowering it is better for our democracy and for all voters, and I just – I guess I'll talk about how I kind of approached thinking about that question, because I think, to be honest, the way we all think about this question is going to be a bit of psychological thinking and a bit of scientific thinking, so it's about what feels right but also the data might tell you, and inevitably your decision-making and your deliberations will probably reflect both strands of thinking.

So firstly I tried to think, firstly, well, what's a kind of a psychological way of thinking about what the right number is for this threshold. Is there, you know, as humans, is there some sort of, you know, biological, psychological way our brains work when we think about how we want to compromise or so forth? You know, are there ways when we can't get 100% satisfaction we, instead, satisfice? We just get what's good enough. So my own feelings with this are that, you know, I strongly feel that we should not be restricting you political forces or parties in our country. I don't feel that's fair, and that's why I don't really understand or sympathise with the arguments that say we should lift the threshold above 5%. I just feel that's – I just don't understand the justification for barring smaller parties from having fair representation. I just feel it's

antidemocratic. So really I guess it boils down to me a bit like the choices that Goldilocks faced with the bear house. You know, for me 5% is too cold. 0% is too hot. 4% needs some salt, and 3% tastes just about right. That's kind of how I feel about this kind of threshold.

1605

And then we move on to how would we look at data and evidence for this, so I tried in my submissions to think how can we use numbers to justify a certain threshold or not and that's in paragraph 19 and so I thought, well, maybe one way is to compare a party vote threshold with how many votes a party would need to win a certain number of electorates and a very rough calculation is that you know, 5% of a party vote is cast out at this election would mean about two electorates worth of votes and if we assume that to when an electorate, who is getting half the votes cast in that electorate, then a party vote equivalent to winning two electorates would be about 57,000 votes, that's about half the current threshold, it's about 2.5%. If you bump up to the equivalent of winning three electorates, then it's about 3.8%, so if you split the difference it's about 3%.

And I guess obviously as Commission, you have an opportunity to fully explore all the possibilities of the various scenarios with this threshold and I've proposed what I think feels right and seems right to me. The other thing, obviously, is to recognise that political parties in parliament need to be functional and I think they need to have a sufficient critical mass to represent the constituency that they might have and I think we all know the saying, you know, two is company and three is a crowd, well, if you look at the one MP parties in parliament right now, United Future, Act and Mana, I mean you know, they're alone in parliament, they have limited capacity, they're not really fully functioning parties and are always below 1.5% in the polls.

So, the question is, are they really viable parties, is it, you know, what is the bar for having a party in parliament and I think that you need some critical mass and that's why I've suggested a 3% threshold rather than a zero percent threshold which would reduce the kind of proliferation of one man bands in a

way, so, you know, one is a loner, two is company, three is a crowd, but it's a functional crowd when you talk about MPs in parliament.

I finally just want to address the argument that people say that lowering the threshold will increase instability in the political system and I don't really agree because the fact is no matter what voting system you have, you need to get the confidence in parliament, you need to get a majority of seats and you get the risks of instability with the current system with one MP parties anyway, so I don't think it's a valid argument and if in the future the country is as highly polarised and ambivalent to having more than one political block dominate parliament, well, that is how the votes rule and the system should only be set up to reflect the voter's wishes, now what the voters have voted for and wished for, I mean, that's another matter, but the voting system, which is what we're thinking about, that should only facilitate the voter's wishes as best we can.

And also the other argument is that we need to recognise that having had MMP for 15 years now it has brought about a more consensual way of policy making and a political culture, I think, and I think political players in parties which are deliberately fractious and quite unstable, I think they will be easily singled out by public opinion and they will sort of self elect out, you would think.

So that is kind of my oral submission. I think party threshold should be lowered for psychological and database reasons and that's my key focus, thank you.

SIR HUGH: Thank you Mr Do. Mr Peden?

MR PEDEN: Thank you, and thank you for your submission and I congratulate you on its clarity and you've managed to make quite a lot of very effective submission in just two pages.

I liked your approach to the combination of psychology and data, so – and I can – if there is a 3% threshold adopted, it may well end up being called the goldilocks clause.

At the bottom, at the end of your submission you talk about the overhang and not being, saying you're not terribly concerned about it, but if the one seat and that may be because you're advocating quite a low threshold, but if, for example, it was a 4% or a 5% threshold, and the one seat rule was to go, then as you've probably heard us discussing, the chance of overhang may well increase. In that case, would you think that there was a case for having a mechanism in place to restrict the level of overhang that might occur?

1610

MR DO: Yeah, I think there would be a case if it does end up sorting proportionality. So I personally I'm not very wedded to having the overhang but it's only been – it's only occurred most – quite recently really so I don't know if that's a systemic thing or just a one-off political factor but if it's shown and demonstrated to reduce proportionality then it makes sense to remove that.

MR PEDEN: And could you just elaborate on your thoughts about the ratio between electorate and list MPs and the advice that the select committee in 2001 had from the Statistics Department was that population projections suggest that we are not going to get to a point where it's going to be an issue in terms of being able to maintain proportionality anytime soon but you seem to be talking about re-balancing really the number of electorate seats in this seat. I'm just looking at paragraph 21.

MR DO: Okay, yeah I just sort of echoed the general sentiment that there might be that hypothetic futurist that it will affect proportionately. So it would be sensible to just put a written or a legal safeguard for that I think.

SIR HUGH: What's your Goldilocks factor for the ratio between electorate seats and list seats?

MR DO: I don't know, I'm not sufficiently qualified to answer that.

DR ARSENEAU: Again can I echo, it was a great submission because it's very precise. So the Goldilocks factor is 3% and on the electorate seat side am I right in saying you would get rid of that entirely?

MR DO: Oh you mean the one electorate for – yeah I would have to get rid of that in conjunction with lowering the party vote threshold because it distorts proportionality and because of the recent examples we've seen of perverse outcomes.

DR ARSENEAU: That's good and very clear.

PROFESSOR ROBERTS: I echo that except for the fact that (inaudible 16:12:44) electoral population quota being required at approximately 57,000 voters, so that's the electoral population, not the number of voters, the number of voters on average is about 43,000 per electorate, which would probably increase your two test, two electorate test to a three test.

MR DO: Oh okay.

PROFESSOR ROBERTS: No I enjoyed the attempt to quantify your suggestion, I found it very helpful.

MR DO: Yes.

SIR HUGH: Thank you Mr Do, thank you for your contribution.

MR DO: Thank you very much.

SIR HUGH: Mr Paterson. Thank you very much Mr Paterson for your submission. You've obviously had a great deal of work in preparing it and all

the annexes. Would you care to talk to it and perhaps if there is any additional points you wish to cover.

NICHOLAS PATERSON: Yes the main, I focus on three factors, firstly, the five percent party vote threshold, dual candidacy and the construction of party lists but the main thrust of my submission is on that first point. Unlike the previous submitter, I do not think that removing the threshold entirely will make Goldilocks' porridge too hot. I did do the Sainte-Laguë, I'm not sure how to pronounce that word, calculations for all years and what effect it would have if the threshold was lowered. I mainly found that it would not affect government stability at all in any election if the threshold was completely removed. So if we go through.

1615

The main reason why I think proportionality is desirable is that I don't think that any person should be subject to a law when they are not represented in the parliament that makes that law. So if a person – obviously people have a choice not to vote, but if they decide to vote, they should be represent – as far as possible, I believe they should be represented, and I think it is unjust that they are subject to a law which they have no say on.

So, as I looked at the 1996 general election data, and it was a bit of a funny year, apparently, due to the break-up of the coalition Government, but if there was no threshold, National on 42 seats could hold a minority coalition Government with the support of New Zealand First on 16 seats and ACT on seven, so in my opinion a Government could have been reasonably formed. I don't make any mention to the continued stability of that Government because I can't see any reasonable threshold would have prevented the break-up of that coalition since it was the two major parties that ended up breaking up.

The 1999 election, a Government was formed between Labour and the Alliance, with a confidence and supply agreement with Greens. If there was no threshold, the same Government could have been formed with Labour at 48, Alliance at nine and Greens at six.

2002, if there was no threshold, the Government could still be formed if there was an additional support of Greens with six seats, so that – they would have been one short of the threshold, the current Government of Labour and Progressives would have been one short, so you would have needed to add Greens, but considered on the previous arrangements that is not an unreasonable request.

If there had been no threshold at the time of the 2005 election, there would have been absolutely no change to the number of seats the Government had, as it was only National, the opposition, that lost one seat to Destiny New Zealand.

At the time of the 2008 election, the Government could have remained if there was no threshold with National on 55, ACT at four, United Future at one, and Māori at five.

Same again at 2011. If there had been no threshold, the Government could have remained, with National holding 57, Māori holding three, and ACT holding one seat, and United Future holding one seat, giving them 62 seats out of the 121 seat Parliament.

I note one fact of issue in the 2011 results is that the sale of state assets was obviously a major platform of the National Government. I am not certain that if the threshold had been removed that the National Government could have passed that, given the Māori Party did not vote for that legislation. However, we can't be completely sure because the Conservative Party with three seats would have been in there, and they didn't make a statement. I don't know if they would have gone with that legislation or not, or equally concessions could have been made to the Māori Party that may have caused them to vote for that, in support of that legislation.

So based on the data from all the general elections held under MMP, the removal of the thresholds would not have affected the ability of stable

Governments to be formed as a result of those elections, though the removal may have meant the 2011 National-led minority Government may not have been able to pass a piece of legislation to pay for that reform. This is only speculative, as it seems reasonably possible, if not probably, that legislation would have been passed, and I do not think speculation can be sufficient grounds to limit proportional representation. I am not convinced even if the legislation would not have been passed if we were certain that that would be enough evidence to justify the limit in proportional representation, because I consider it's more can a Government be formed rather than the lead party in that Government pass every piece of legislation that it campaigned on. Proportional rep – the beauty of proportional representation somewhat is that it requires consensus, and I – in my opinion, New Zealanders voted for proportional representation because it meant that one party could not rule. I don't know. I mean, the survey would be the appropriate way of getting that figure, but it's a reasonable assumption given the two main contenders were FPP and MMP.

1620

So, on that basis I do not see that there's any justification to place a threshold on party votes in the legislature in that it is manifestly unjust to do so as it requires that people who voted are subject to laws which they did not have any say on.

If we move on to dual candidacy. I submit that a candidate who stands for election should be permitted to be a candidate on the party list. If a candidate fails to win an electorate, it does not necessarily follow that electorate does not want the person to be in parliament. There could be a number of reasons for that. Assuming the current threshold remains for bringing members to parliament, so I don't get by weigh in, it says at 5%. Electorate may vote strategically for an electorate candidate to get into parliament. For example, what happened in the last election in the district of Rodney whereas Act was voted in but it does not necessarily mean that Rodney electorates disliked Paul Goldsmith.

MR PEDEN: You're thinking of Epsom?

MR PATERSON: Epsom, sorry, sorry, I'm getting Rodney Hyde and Epsom confused. It's a bit as ironic as Helensville and John Key.

Additionally, a voter may vote for a candidate who is not the candidate for their preferred party on the basis that that candidate is the best for their electorate. But it does not follow that they consider that candidate for their preferred party should not be in parliament, so they might consider them a very competent minister, in fact, that could be a reason a minister is tied up with ministerial work and therefore has less time to devote to their electorate, so I don't see the rationality behind this.

I submit that the real issue on the dual candidacy argument is actually the drawing up of party lists, that the fact that voters don't get a say of who is in the list, so I'll move onto that area.

Party lists should be – I do think party lists should be determined by voters, this is because the public has an obvious interest in ensuring that those who get into parliament via the party list are confident and work for the interest of the public.

here are two broad ways to go about this, firstly to have the party list ranked by members with each one getting one vote and the list being final or, to have voters re-rank or affirm a party list at a poll booth. There are somewhat obvious problems with either of those methods. I mean, the reason I suggested the latter is as in the poll booth matter is that I am somewhat concerned that with swing voters and so you would have to, if you wanted to vote in the party list, you would have to change your party membership before every election and be relatively sure of who you were going to vote for on the day, so that's one problem. The other problem of course is that the poll booth is – I don't think that a person should be able to vote – amend a party list for a party that they don't vote for and so there's issues around the secrecy of

ballots, I don't know how you would administratively do it, to ensure that a persons only admin the party list in respect to the party that they vote for.

Those are my submissions on those topics and if you have any questions I'd be happy to answer them.

MR PEDEN: On the threshold –

MR PATERSON: Yes.

MR PEDEN: As I hear you, Mr Paterson, you're recommending no threshold because there's no evidence to justify the kinds of problems that the threshold is in place to avoid –

MR PATERSON: That's exactly what I'm saying.

MR PEDEN: I suppose my question would be, though, if there hadn't been a threshold, would we have seen the same voting behaviour patterns?

MR PATERSON: Well, yes, that's obviously a reasonable question and I had thought about that, sorry, I forgot to mention on that. There is an obviously – we can't be sure, but it's reasonable to assume that a threshold deterred people from voting for a certain party in the belief that that party may not pass the threshold and instead voted for another party that they believed would get through the threshold, either through an electorate seat or through the 5%.

1625

I have two things – I'm comfortable with the threshold being completely removed. I – as I stated before I am adverse to speculation and I could, I couldn't see how it would manifest – even if the threshold was removed and say, I mean Aotearoa Legalise Cannabis Party which one's got a seat in one of the elections, ended up getting three seats, I don't see how that could manifestly destabilise the Government. It seems that, well it seems to me, one that parties have, are in there to get power and they'll do, by any means

necessary to form a stable Government but the other thing is I just, I'm just not sure on the data that that would actually change the – I'd have to go through it but I'm not sure on the data that that would actually change the results.

MR PEDEN: WELL THE, I SUPPOSE THE OTHER CONSIDERATION IS AT THE MOMENT WE HAVE A SYSTEM OF MMP WHICH YOU MIGHT CHARACTERISE AS A MODERATE PR SYSTEM AND AS HAS BEEN OBSERVED THERE'S NO SUCH THING AS A PERFECT ELECTORAL SYSTEM AND I'VE HEARD YOUR CONCERN TO MAXIMISE THE REPRESENTATION OF EVERY VOTER TO ENSURE THAT THEY, THEY HAVE A LEGITIMATE STAKE IN THE LAWS THAT ARE PASSED BY THE PARLIAMENT. BUT THE SUBMISSION, SOME SUBMISSIONS MADE TO US HAVE SUGGESTED THAT NEW ZEALANDERS DON'T WANT A LOT OF EXTRA SMALL PARTIES IN THE PARLIAMENT, SO IS THERE A BALANCE TO BE STRUCK BETWEEN THE DESIRE FOR PROPORTIONALITY AND PARTIES WHICH ARE OF A SIZE AND SUBSTANCE THAT, CERTAINLY BEYOND TWO OR THREE MEMBER PARTIES?

MR PATTERSON: My answer is no, there isn't a balance to be struck. That's my opinion. My – obviously I don't speak for the entire country. But I – before I come to that point, explain that point I do think that and I'm not too sure what the legislation is on this but I would hope that if there was a – that any change to the threshold would actually be done by a popular referendum instead of an arbitrary legislation. So for example, so I advance that if there was a referendum on that then there's – a zero, there's a lot of justification to place an option of removing the threshold entirely and given the evidence it does seem to me that that is the logical thing to do.

Now on the two, three I'm just, I'm unconvinced that these two-member, three-member parties actually pose any threat to a big party in a sense and I'm unconvinced that it's less, of less benefit to have them there so because obviously these, I mean in the House, obviously as they vote against certain practices and it wasn't going to affect Government stability, I mean yes their

presence is almost negligible. But it's where it comes into those members being on select committees, those members being able to debate issues, that is where it changes, that is where the representative issues change and that's where the laws can be made better. Just because someone represents a minority view doesn't mean that the view is illegitimate and it also doesn't mean that their view cannot be used for the benefit of the whole. It doesn't mean that they can say, hold on why don't we look at this idea and the compromise may be better for society as a purely rational argument, then the majority view that the Government wanted to pass through. And I really don't, I just don't see any advantage to it. On a practical level I do not see any advantage to removing those parties from the – from parliament. The only – to me the only advantage can be government stability and I'm certainly not advocating for government instability.

1630

MR PEDEN: Thank you. Just one last question, you may have asked Mr Peters about suggestions that have been made in submissions for party members to be able to list – to rank list, along the lines that you'd suggested and you may have heard his concerns which in effect seem to be suggesting that that may be counter – that may compromise the ability of a party to present a geographically balanced, gender balanced party list. I wonder if you would like to comment on that?

MR PETERSON: My only comment to that is that I would imagine that the system, if all party members to vote on the list wouldn't simply be a Single Transferable Vote system or Preferential Vote – sorry Preferential Vote system, that you would have ranking the candidates but that the party would decide what it wants and that people would be able to amend the list as they see fit. So the real concern there isn't – the real issue around it is getting around this issue of party members being quite high up in the list or party members even being in a list at all that the majority – the majority of the party members just simply don't want there and so it's not to, I guess, make the process completely democratic and everyone gets a vote and it's all – I can see Mr Peters' point on that quite clearly. It obviously is a cause of concern

that, especially on the gender balance issue I would think, I'm not too sure how geographic affects voter moods but on the gender balance issue I would think that's an issue but I would see it as really an affirming or re-ranking situation rather than a rank situation, start up from scratch. So I'm not too sure that would really affect the concerns Mr Peters has.

SIR HUGH: The helpful work you've done for us on what would have been the composition of parliament with the varying thresholds over the six elections, including if there had been no threshold is certainly helpful but of course those results were achieved in an atmosphere where voters knew those were the five percent, one seat thresholds.

MR PETERSON: Yes.

SIR HUGH: If there were no thresholds would that no provide an impetus for the proliferation of parties, perhaps even a massive proliferation? Would it make the hurdles to registration the effective gateway to parliament?

MR PETERSON: That is an issue I hadn't significantly thought about. I have thought about certain parties, the parties that were there getting more votes.

SIR HUGH: Well put it this way. Assuming parties could get registered and stood they'd be bound to get some votes and if there's no threshold what's the parliamentary result?

MR PETERSON: Well I'm not too – they're bound to get, obviously they'll probably be bound to get the votes of the 500 financial members that they must have but if you look at the lowest, for example, if we look at the lowest number at the no threshold level in 1996, which was the lowest number is 8449. So even these parties that jump in, I guess, so they'd still need 8449 votes to even get a seat and I just don't see that as realistic that all these parties are going to come in with over eight, almost eight and a half thousand votes.

SIR HUGH: All right, that's interesting. You suggested, in terms of ranking on party lists, that one possibility might be ranking in the poll booth.

MR PETERSON: Yes.

1635

SIR HUGH: Is that practical?

MR PATERSON: It's unfortunate. I mean I suggested it as a possibility but I obviously see the practical concerns of it. I guess the issue is can we – if people are given the option of re-ranking, I obviously think that they should only be re-ranking either for a party that they're a member for or the party that they're voting for.

SIR HUGH: So they'd essentially have to have two votes. One, I vote for the X party and two, I want to rank the X party's candidates in the following order?

MR PATERSON: Yes, yes, so they essentially have those – in addition to their own electorate vote.

SIR HUGH: Oh, yes.

MR PATERSON: The issue between whether you obviously have – a party member can only re-rank, is I – is obviously there's a number of swing voters every year between the two major parties and between major parties and minor parties. If there wasn't, we would have significant changes in electoral results. So, if we were going down that road, I do see a concern around people having to decide significantly before the election, one, who they're going to vote for so they can re-rank in terms to get party membership and then re-rank the list. They just – I see that as an issue, but it may be –

SIR HUGH: I understand the practicality in your first proposal for the ranking, I'm just taxing you with the practicality of re-ranking in the poll booth.

MR PATERSON: I think is –

SIR HUGH: Even if you confine it to the party's candidates for whom that person is voted.

MR PATERSON: Yes, I do, I obviously see practical issues with it. I'm not denying it. I think it could – it may be possible to be done, but it's whether the practicalities offered are preferable, you know, the issues around it are preferable to the issue of essentially knocking out swing voters from being involved in the party re-ranking.

SIR HUGH: Thank you. Dr Arseneau?

DR ARSENEAU: Can I just clarify, because you said at the end of your submission you want the public to have some say on ordering and it can either be done – two ways, have the party that's ranked by party members or the polling booth –

MR PATERSON: Yes, of course.

DR ARSENEAU: And you'll leave it up to us to decide. So can you give us an idea of which of those two would be your preference?

MR PATERSON: My preference would be the second one, entirely, but the reason I haven't gone into it too much is as Sir Williams said, there is just a lot of practical issues with that option and I haven't fully explored them. I'm not even sure if I could fully explore them as a simple member of the public, but if it could be done and it wasn't unreasonably taxing to do so, then that would be my preferred option, just simply because it would give people who I imagine that there's a lot of people that don't decide until two weeks, a week before the election that, well, I know I don't, that before who I'm going to vote for and so I just see a lot of difficulty around having to register for a party membership and re-rank the list if you wanted to be involved in that process.

PROFESSOR ROBERTS: I've just got one question I would like to ask and I like the presentation of the data, do you think that in 1993 the country would've voted for MMP with no threshold whatsoever?

MR PATERSON: No, I don't think so, but I'm not sure if I would answer no now. Because I think there's – I think there is some fear, obviously, that it would create unstable government and I am – from the data and even taking into account the possibility of certain parties getting all the votes or more parties being in there, I am not certain, to any extent, that government stability would be compromised and so that is, if that was represented in public then they can make the choice.

1640

Obviously what would be compromised by having more parties in parliament is the ability of the government to form the policy on which it ran on. That could be conceivably compromised so it depends on whether New Zealanders, as I do, feel more strongly that the, on the fact that, that everybody who votes should be, as far as possible, represented in parliament because they are subject to the laws that parliament makes or whether New Zealanders feel, no, we are better just to go with more the policy of the major party. So I'm, I'm not too sure what, where New Zealanders sit on that.

MR PEDEN: Thank you Mr Paterson.

MR PATERSON: Thank you.

SIR HUGH: Thank you for your help and the hard work you put into your paper. Now the last submission for today is Chuan-Zheng Lee. Mr Lee, would you care to come up?

CHUANG-ZHENG LEE: So I want to thank the Commission for providing this opportunity to submit. I covered a number of issues in my submission though my intent is to focus on the earlier parts of my submission which are the parts that I put a lot more, more thought into. The issues in the later sections are

namely dual candidacy and preferential voting and overhang issues that I expect other submitters have probably covered in much more depth than myself.

But there are three major issues that I would like to emphasise to the Commission today. The first is to do with the party vote threshold. So as you know, I support abolishing the party threshold, party vote threshold outright for what I think are similar reasons to what many other submitters who also support abolishing the threshold would have put.

But the core message that I want to push is that abolishing the threshold should go hand in hand with modifying the Sainte-Laguë method, to make the first divisor 1.4 instead one, so that pushes what might be termed the effective threshold up to about 0.6%. And the reason for that is because if you do abolish the threshold, a party then needs to get – under the unmodified Sainte-Laguë method, a party needs to get one in 240 votes to get one seat and it seems a bit unfair, a bit disproportionate to me, that you can get half of 120 votes and then get one entire seat in parliament, so I think the two go hand in hand. So abolishing the threshold shouldn't mean a 0.4% effective threshold, it can be higher with, and it's still effectively no threshold.

The second core message is to do with the one seat threshold. Now obviously the one seat threshold becomes redundant if I get my way with the party vote threshold but if we assume that the party vote threshold is retained, I would still hold that the one seat threshold should be abolished, but moreover, I don't think there's a need to design a system in a way that would increase the risk of overhang and I propose a method whereby it wouldn't increase the risk of overhang and I admit slightly that the – well, the method itself may be non-trivial but the results are quite intuitive.

The basic idea is of the non-overhang 120 seats in parliament, a party that misses the threshold, the party vote threshold but wins an electorate would get either their proportional entitlement, as per normal, or the number of

electorates that they won, whichever is the lesser, and if there are overhang seats, then the overhang seats go on top of that.

And so I don't think there's a need for the one – for – abolishing the one seat threshold, even if the party vote threshold is retained, to increase that risk of overhang.

MR PEDEN: Sorry, can I – you don't think there's a need to?

MR LEE: Oh yes, yes, so I don't think that would increase the risk of overhang if we designed the system in a way that would lead to that result.

MR PEDEN: Are you saying that there's no reason to keep the one seat electorate rule to avoid that risk?

MR LEE: Correct.

MR PEDEN: Right, thank you.

MR LEE: Sorry, that should have been clearer. The third core message is to do with the electorate to list ratio. I don't take a position on what the exact electorate to list ratio would be but what I would say is that if we do think it's a concern, I think fixing the electorate's, the number of electoral districts in stone is probably not the best option. I think it's better to set it around some number and then allow for some elasticity.

1645

And the reason for that is because if we fix it at an exact number, there's a risk with the way electoral districts work with the North and South Island but either you would need to have an electoral district that crosses between the North and South Islands which you know isn't permissible under the status quo and I don't think should be permissible. I think Wellington and Marlborough are a bit too distinct to legitimately put them in the same electorate.

Or you would need to tolerate the quite, or what I think are quite significant differences in the electoral district quotas between the North Island and the South Island so for that reason I don't think it matter if the number of electoral districts varies a little bit from year to year. The only cause for concern would, when – would be when the number of electoral districts balloons beyond, well balloons significantly, greater to the extent that it would distort proportionality. So those are the main messages that I would want to push.

I comment on other things so I do support allowing dual candidacy and I support with, I luke-warmly support semi-open party lists. I oppose Preferential Voting and I'm fine with the current overhang rule except for the discrepancy between non listed parties and listed parties but I certainly, those first two sections are the ones that I hope will be the most useful to the Commission.

SIR HUGH: Thank you.

MR PEDEN: AS SIR HUGH HAS SAID, I THINK IT'S A VERY USEFUL SUBMISSION AND VERY, VERY CLEARLY EXPRESSED. SO I DON'T ACTUALLY HAVE VERY MANY QUESTIONS BECAUSE IT'S SO CLEARLY EXPRESSED.

MR LEE: That's comforting.

MR PEDEN: YOU'VE SAID YOU HAVEN'T PUT AS MUCH THOUGHT INTO THE OVERHANG POINT AS YOU'VE PUT INTO SOME OF THE OTHER POINTS THAT YOU MAKE BUT YOU'VE I THINK DISCUSSED OVERHANG IN TWO SECTIONS IN YOUR SUBMISSION. YOU GO INTO IT IN SOME DETAIL IN SECTION 5 OF YOUR SUBMISSION AND YOU OUTLINE THERE A WHAT YOU, I THINK, DESCRIBE AS A COMPROMISE. I'M WONDERING IF YOU CAN JUST BRIEFLY EXPLAIN WHAT IT IS, THE OBJECTIVE OF THE APPROACH THAT YOU PROPOSE. WHAT IT IS THAT YOU'RE TRYING TO ACHIEVE HERE?

MR LEE: Is this a reference to the independents and not as the parties or is this –

MR PEDEN: **YES THE INDEPENDENTS AND REALLY I'M LOOKING AT – HAVE YOU GOT YOUR SUBMISSION IN FRONT OF YOU?**

MR LEE: Yes I've got it in front of me.

MR PEDEN: **YES 5.24 THROUGH TO 5.27 – THE – I SUPPOSE WHAT'S REALLY IN MY MIND IS WHY DON'T WE JUST APPLY SECTION 1918 TO ANY SITUATION WHERE AN OVERHANG OCCURS SO YOU KNOW THE PROVISION IN A LEGISLATION WHICH PROVIDES FOR A SITUATION WHERE AN INDEPENDENT IS ELECTED –**

MR LEE: Mhm.

MR PEDEN: – and there we allocate, say, one independent is selected, we allocate 119 quotients rather than 120. So you've got another proposal, can you just tell me what, why you're going down the path you are?

MR LEE: So my proposal would interestingly, actually apply similarly to independents as they describe them. So I would have, so if an independent wins a seat I would have that seat be removed from the Saint-Laguë method. Where I think the change is, is a party wins multiple electorates and I think the principle that I was trying to put was that as far as we can make it there should be no substantive difference between a party that decides to contest the party vote and a party that doesn't decide. It decides not to contest the party vote.

So my understanding of the status quo is that a party that, and this has never happened obviously, but a party that decides not to contest the party vote and hypothetically win say three or four seats, all of those three or four seats will then be removed from the 120 seats and there won't be any overhang seats. And it strikes me as inconsistent that if that same party had run for Parliament

in the party vote and won say .5 or 1% of the vote, then those same seats would be overhang seats and that to me is a discrepancy. So I did put some thought but I found it quite hard to get my head around I have to say. It's – overhang's not a very simple issue but my compromise was that all parties and for the purpose of this discussion, it means that an independent is a party to himself or herself, would get exactly one non-overhang seat, regardless of – so if they didn't, if they ran for the party vote and they didn't meet the effective threshold, they would still get that one seat and no more, and if they did exist then they would get that same one seat but no more, and that way you would have the parties treated in the same way.

1650

MR PEDEN: So your purpose is to treat independents and parties contesting the party vote in the same way?

MR LEE: Yes.

MR PEDEN: Is that the only thing that you're trying to do, or are you trying –

MR LEE: Essentially.

MR PEDEN: –to reduce the size? So were you –

MR LEE: Oh, it's not just independents. It's also parties not contesting the party vote.

MR PEDEN: Sure. So would it also meet your purpose then just to apply 191 to all?

MR LEE: To all, so to abolish overhang?

MR PEDEN: Yes.

MR LEE: So that would achieve that same outcome, and that is indeed an option that I acknowledged. I have some reservations about that in the sense that overhang seats – so overhang, in terms of proportionality, overhang's always bad, if you look at it only in terms of proportionality. So the question becomes, which is less bad? If a party wins, say, five electorate seats and some of them are overhang, five out of 120, assuming that they didn't win enough party votes to get those five seats, is marginally more disproportionate than five out of 123 or five out of 124, so that's my basis for preferring the keeping of overhang, though I don't pretend that it's a particularly strong basis, given the difference is so marginal, but if I were looking at it – I mean, if I were a member of a major party or a very large minor party and one of my seats got removed from me because someone else, someone who didn't contest the party vote won overhang electorates then, you know, I can't imagine I'd feel particularly pleased about that, with respect to the system.

MR PEDEN: Thank you. On the discussion of preferential voting on the party vote, now, I think you described yourself as lukewarm.

MR LEE: On preferential voting.

MR PEDEN: On preferential voting. In what circumstance would you want to see preferential voting adopted for the party vote?

MR LEE: I was lukewarm on semi-open party lists, not preferential voting.

MR PEDEN: Semi-open party lists, right.

MR LEE: So in what circumstances would I support –

MR PEDEN: I think you've discussed preferential voting in relation to the party vote. Do you want to just go over –

MR LEE: Sure. So if I get my way with the party vote threshold and it is abolished, then in my view, like, the whole discussion to do with preferential

voting to do with the party vote becomes redundant again. There's no need for it. There may be some argument about the effective threshold, but I don't think it stands, though my opposition to preferential voting weakens slightly if we were to keep the party vote threshold, and the reason for that is because I think where there's a party vote threshold voters for parties that are near the threshold will have to watch the polls closely. They'll need to vote largely based on tactics rather than actual preference, and that creates a bit of a catch-22 for the party.

The party – if the party vote threshold is 5% and the party's polling on 4.8%, the party, voters for that party may well leave that party which, of course, is further away from the threshold because they think it's not voting at the threshold, so I weaken my opposition slightly for that, but even then I would still only extend it to a second choice only. I do have concerns about complicating the voting system and for that reason I wouldn't support more than two choices. I think most voters for minor parties would be able to choose a second party which is almost certain, or pretty much certain to make it into Parliament over the party vote threshold, so that would be where I would stand on that.

MR PEDEN: Thank you.

SIR HUGH: I've got no questions. Thank you. Like the others, I was impressed by the clarity of your paper, but I think the political scientists might want to ask you some questions. Dr Arseneau, do you want to start?

DR ARSENEAU: I'm really intrigued by your semi-fixed number of – yes, and the split in terms of the South Island. Can you walk through that and sort of indicate what the sort of likely implications would be?

1655

MR LEE: Okay, so the objective is to prevent the number of electoral districts spiralling out of control if that hypothetically were to happen without introducing a cross island electorate or significant interisland disparity in terms

of the actual district quota. So, the way you would do it, the basic idea and I've explained the method in some detail, but the basic thing behind it is you choose – at the moment I think it's fixed at 16 South Island electorates. The basic idea is to choose the number of South Island electorates, so you would do it for different numbers of South Island electorates and you would take the result to completion as using the same method as we use currently and you would do that for different numbers of South Island electorates and you would choose the result that was closest to your ideal number of electorates.

So the implications would be simply that this whole question of information to electoral seats there's then not really a huge risk if there's a massive population migration from the South Island to the North Island of us having too many electoral districts to maintain proportionality, so the other implication of course is that and which is perhaps more interesting is if there's a constant migration from the South Island to the North Island, the number of electoral districts in total will vary over time, and it won't vary by going up or down, it'll go up or down, one or the other, I think it goes up, and then at some point, the number of electoral districts in the South Island will drop by one and the number of electorates will go down, so that's perhaps the only intuitive caveat to that, but hopefully that explains the idea, because to some extent.

PROFESSOR ROBERTS: Would it make any difference to your idea if one were to have one electorate that could cross the boundaries, between the North and South Islands because after all we do already have an electorate that does that, that's called Te Tai Tonga.

MR LEE: Oh, of course, it crosses between Wellington and the South Island.

So, if we took the view that a cross island electorates weren't an issue, then I agree, it would be easier just to fix the number of electoral districts in stone and leave it there.

It is – even my knowledge of geographic distributions among the Māori voters is not that great, so I don't know if the cross island electorate or the

Te Tai Tonga electorate is as much of an issue as say a Wellington/Marlborough electorate and a general one, that would eliminate that.

SIR HUGH: So that, the approach you're you have been describing is the approach that appears in para 2.2.7 on page, starting on page 12 of your submission?

MR LEE: That is correct.

SIR HUGH: Can you explain a little more fully to me as somebody whose maths is nowhere near as strong as yours, just how we read your figure 1 on page 14?

MR LEE: Sure, the figure on page 14, okay, so, what I've graphed here is – so on the horizontal axis is the proportion of people living in the South Island and on the vertical axis is the difference between the electoral quotas of the two islands. So, at the moment, so when we calculate the electoral quotas or the electoral districts under the status quo, we do it for the South Island, we find the South Island electoral quota and then we try to pick the number of North Island electorates that is closest, that would meet the quota closest to the South Island. So, there's always going to – because we insist on electoral districts being wholly contained within the South Island or within the North Island for the general, there's always going to be a difference in the average electoral district quota between the two islands.

So, what this graph attempts to show is how that difference would vary with the proportion of people living in the South Island. So, for some very lucky percentages, it's exactly 20 point something, 20.0 something by the looks of it, that where it hits zero, just above the 20%, at some percentages like that point, the number of the electoral district quota for the South Island and for the North Island will just, by coincidence, be the same, but most of the time that won't be the case. So, what I need to do here is I need to contrast, what would happen if we had a fixed number of electoral districts and what would

happen if we had a semi-fixed number of electoral districts and is it an attempt to show via the green line, that having a semi-fixed number, so allowing the –

SIR HUGH: I need to interrupt because our submissions are only monochrome.

MR LEE: So the line at the bottom –

SIR HUGH: Two of our submissions are only monochrome, so that's the green at the bottom there?

MR LEE: The green one is the one that runs along the bottom and it's green, I've deliberately coloured it green because it's good, that's the one that you want.

SIR HUGH: Yes.

MR LEE: So, the green line, the green line towards the bottom shows that if we allow elasticity in the number of electorates, so if it's not 70 exactly, say, if we allow it to vary around 70 by some small number, it won't be as unfair on either island, because their electorates will be bigger than the other island and –

SIR HUGH: I think I follow that. Anything arising out of that? Thank you very much indeed Mr Lee, that's a most impressive piece of work and we should perhaps wrap wet towels around our heads to try and understand and work on it, but thank you very much for coming along.

MR LEE: Thanks very much for the opportunity.

SIR HUGH: That completes the submissions for today, what time do we start in the morning? 9.15 in the morning, so we'll adjourn until then.

HEARING ADJOURNS: 5.01 PM