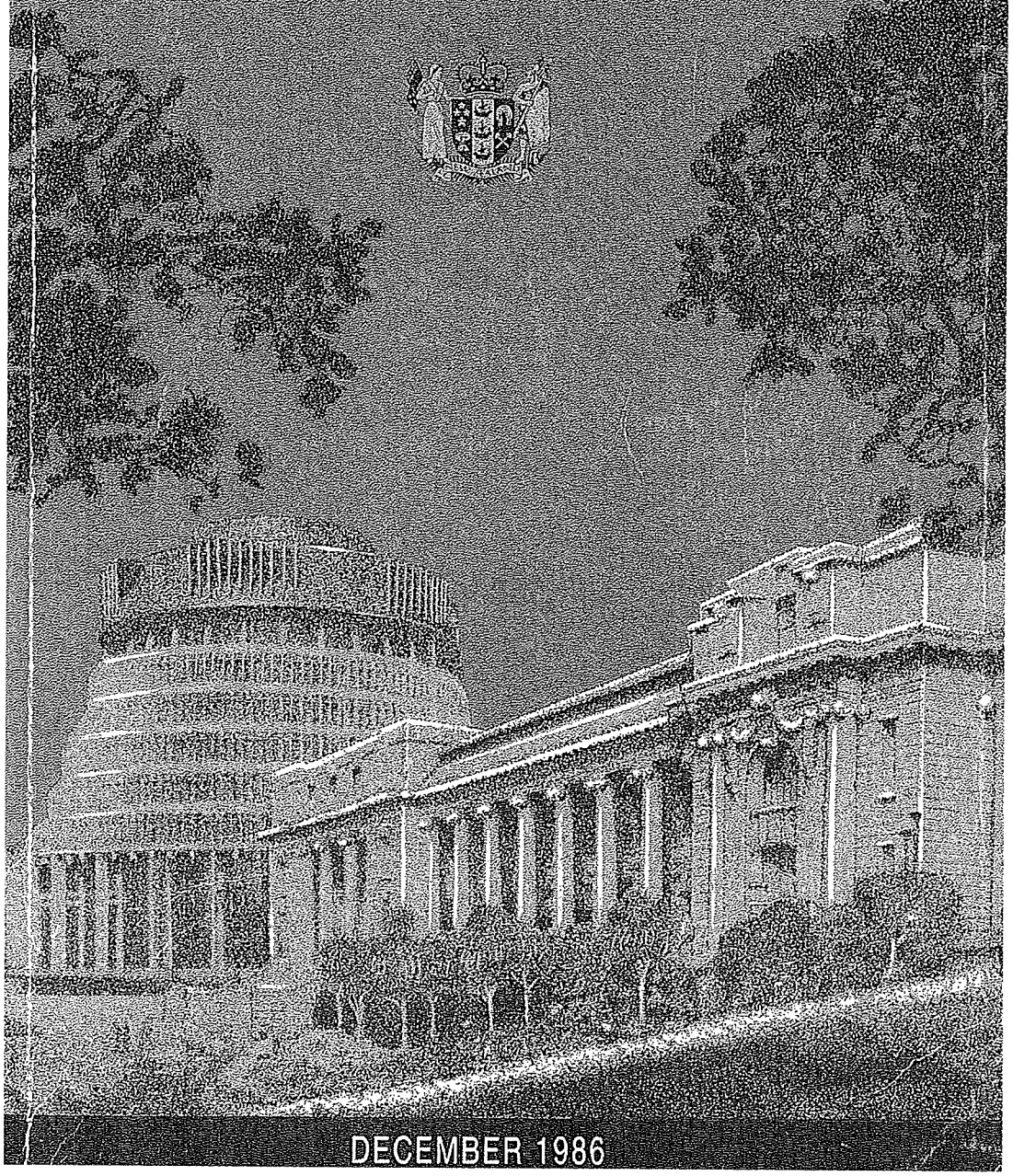
REPORT OF THE ROYAL COMMISSION ON THE ELECTORAL SYSTEM

RCES, 1986

TOWARDS A BETTER DEMOCRACY



DECEMBER 1986

H. 3

Report of the

Royal Commission on the Electoral System

"Towards a Better Democracy"

December 1986

Price Code: H

List of Tables

Table 2.1	New Zealand election results, 1935-1984 ..	15
Table 2.2	Women representatives in different legislatures	17
Table 2.3	How SM might have worked, 1969-1984 ..	40
Table 2.4	Summary of *Bundestag* election results, 1949-1983 (list vote)	46
Table 2.5	Seats in relation to first preference votes, Irish elections 1938-1982	47
Table 2.6	Result of election held in constituency of Carlow-Kilkenny, November 1982	79
Table 3.1	Maori as approximate percentages of total population 18 years and over in trial STV constituencies	114
Table 4.1	Sizes of some democratic Parliaments in relation to population	129
Table 7.1	Non-licensing referenda in New Zealand ..	169
Table 8.1	How direct State funding would have been allocated after the 1981 and 1984 elections	228

List of Figures

Figure 3.1	18 trial STV constituencies	115
Figure 3.2	6 trial STV constituencies	116
Figure 5.1	44 illustrative MMP constituencies	153
Figure 5.2	16 illustrative MMP constituencies	154
Figure 9.1	Suggested form of plurality ballot paper ..	256

Letter of Transmittal

To His Excellency The Most Reverend Sir Paul Alfred Reeves, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Knight Grand Cross of the Royal Victorian Order, Principal Companion of the Queen's Service Order, Governor-General and Commander-in-Chief in and over New Zealand.

MAY IT PLEASE YOUR EXCELLENCY

Your Excellency's predecessor by Warrant dated 18 February 1985 appointed us to be a Royal Commission on the Electoral System and to report under the stated terms of reference.

We were originally required to present our report by 31 October 1986 but this date was extended by Your Excellency to 19 December 1986.

We now humbly submit our report for Your Excellency's consideration.

We have the honour to be
Your Excellency's most obedient servants
J.H. WALLACE, Chairman
J.H. DARWIN, Member
K.J. KEITH, Member
R.G. MULGAN, Member
W. WERETA, Member

Dated at Wellington this 11th day of December 1986.

PREFACE

The establishment of this Royal Commission reflected concern that it was time a far-reaching and searching examination of our electoral system was undertaken. The Commission was given very wide terms of reference which required consideration not only of our electoral system but also of various other parliamentary and political arrangements.

Following our brief we have carried out an extensive and wide-ranging inquiry. At the outset we gave consideration to the methods by which we should work. For instance, we initially contemplated the issue of research and discussion papers, coupled with the holding of seminars. We concluded that working in that way could have valuable educative results both for us and for the New Zealand public, but that the time available for the completion of our Report did not permit such a course. We accordingly decided that the best procedure was to call for submissions from all who were interested, while at the same time conducting our own detailed research and consultation. We also arranged for a number of background articles to be written and published in the news media.

We were pleased with the results yielded by the above procedures. Indeed, towards the end of our inquiry we found there was a tendency towards repetition which indicated to us that we had cast the net sufficiently widely. We received 804 written submissions, many of which were lengthy and the product of much work and learning. Because we advertised for submissions not only in the public notice columns of newspapers but also on television, in the press and in poster displays in all post offices, we obtained views from a broad cross-section of the New Zealand public. We also made specific approaches to various organisations, groups and individuals to tap their particular knowledge and experience. These included the New Zealand Institute of Economic Research (Inc.), the Reserve Bank of New Zealand, business groups, the Institute of Policy Studies, the Local Government Commission, the Office of the Clerk of the House of Representatives, and the Pacific Island Affairs Advisory Council. Plainly, we cannot mention the details of every submission, but many had an important bearing on our deliberations and the names of all those who made written submissions are recorded in Appendix C.

Many of those making submissions commented favourably on being given the opportunity to express their views. For our part we wish to record our real appreciation of the time and trouble taken by those who made submissions to us. From them all we learned a great deal about the thoughts and attitudes of New Zealand people concerning our electoral system.

All those who wished also had the opportunity to support their submissions with a personal appearance before us. As a consequence, we held public hearings in Auckland, Wellington and Christchurch. We also thought it appropriate to give to representatives of all political parties the opportunity to make both an initial and a closing submission

at public hearings. All the hearings were of considerable value to us and allowed for more detailed exploration of the issues. In that regard we also express our appreciation of the work of Mr C.J. Thompson in his capacity as counsel assisting the Commission.

Especially because of the term of reference concerning Maori representation, we made a particular effort to ascertain the views of Maori people, making it clear that we were happy to receive either written submissions, or oral submissions prepared and presented in ways consistent with Maori custom. Arrangements were made through the New Zealand Maori Council for hui at 5 marae suggested by the Council (1 marae for each of the North Island Maori Electoral Districts and 2 in Southern Maori because of the size of that electorate). In the North Island the hui were arranged and conducted by affiliates of the New Zealand Maori Council, and in the South Island by Te Huinga Rangitahi. Although attendances at the hui were not large, they nevertheless enabled us to hear a considerable range of Maori opinion, both in the cities (Auckland and Christchurch) and in areas of traditional Maori settlement (Dannevirke, Te Teko and Waitara). In addition, a number of Maori groups and individuals made written submissions or chose to attend ordinary hearings.

Bearing in mind that, for reasons of impartiality, it was not thought appropriate to appoint to the Commission anyone who had been a member of the House of Representatives, we considered it important to make a particular effort to hear the views of MPs. These included a range of past and present MPs, together with groups of MPs selected by each of the 3 political parties having members in the House. We also arranged to meet the Maori MPs.

In addition to inquiries by correspondence, various members of the Commission were able to visit the Federal Republic of Germany, the Republic of Ireland, Australia, Canada and the United Kingdom to pursue inquiries concerning matters of particular relevance to our work. Although for reasons of cost and time our overseas inquiries were very compressed, we found them to be exceptionally informative and valuable in clarifying our views. We wish to express appreciation to the many people in each country who so willingly gave us their time, knowledge and experience. Appendix D lists the individuals and organisations we saw. We are also grateful for the considerable assistance provided by the Ministry of Foreign Affairs in making the arrangements for the inquiries.

We came to the conclusion that, for our benefit and for the benefit of those who will in due course consider our recommendations, it would be desirable to have accurate and factual histories both of the development of our electoral system and of Maori representation. This is primarily because any electoral system is to a crucial extent the product of the specific history and environment of the country concerned. We are grateful to Mr B. Ritchie of the Justice Department who wrote almost all the general history and are sad to record that he died during the course of our inquiry. We are also grateful to Professor M.P.K. Sorrenson

of Auckland University who used his extensive knowledge to write the history of Maori representation. The histories are published as Appendices A and B to our Report.

Commission members have received quite exceptional assistance from our two research officers, Dr P.R. Harris and Mr L.D. Holden. We cannot overstate their value to the Commission and we wish to place on record our indebtedness to them in relation to both the quality and extent of their work. We also express our gratitude to our Secretary, Mr J.W. Haugh who contributed greatly to the efficient operation of the Commission, and to Mrs W.M. Rennie and Mrs E.A. Grant who, assisted from time to time by other stenographers, coped magnificently with a massive volume of typing and other secretarial work.

Finally, we wish to thank the representatives of the Government departments who assisted us. All departments with an interest in the electoral system made valuable submissions to us. In addition, the relevant departments gave us considerable assistance with many aspects of our inquiry.

CHAPTER 1 : INTRODUCTION

THE PEOPLE, THEIR PARLIAMENT AND THEIR GOVERNMENT

1.1 This Report is about our democracy. It is about the way New Zealanders give their consent to the exercise by Parliament and the Government of great public power.

1.2 That power is great, first, because of the pervasive involvement of Government in our everyday national life. Government is expected to do many things—to protect the rights and freedoms of all groups and individuals within New Zealand, to maintain peace and order, to promote national unity while maintaining cultural diversity, to protect and advance the nation's prosperity, to provide an equitable level of economic and social welfare and the means for all to attain a high degree of personal development, to undertake major projects and to be an important trader, and to be involved in the regulation and direction of significant parts of the economy. Governments do these things in a complex world in which nations are increasingly interdependent. Membership of the world community brings with it important constraints, and places on our Governments even larger responsibilities.

1.3 Second, our constitution places almost no limits on the powers of Governments to carry out their large responsibilities. Parliament has supreme law-making powers; the Government of the day has the support of and general control over the House of Representatives; it has extensive direct powers both in its own right and by delegation from Parliament; its powers in and through the House are not restrained by a Second Chamber; there are no general legal restrictions, such as might be found in a bill of rights, on the exercise of the Government's powers both in Parliament and outside it; and there is no constitutional decentralisation of power as in a federal system.

1.4 These large responsibilities and powers rest on and must be justified by democratic principle, by the consent of the people. The primary way in which the people give their consent is through elections. What specifically are elections for? Our elections choose Parliaments. They also in fact choose Governments with the powers and responsibilities mentioned above. The electoral system that has these major consequences is accordingly of critical importance for New Zealanders. How is their consent to be given through the electoral process?

1.5 The question who may vote in elections was largely answered last century. Major changes were made then towards universal adult suffrage and the equal power of territorial constituencies to elect their own representatives to Parliament.

1.6 The critical question now is about the fairness and equality of the ways in which the votes of New Zealanders, at the national rather than the constituency level, are turned into representation in Parliament and into the establishment of a Government. The present New Zealand

answer, so far as it relates to representatives in Parliament, was essentially given centuries ago in England: individual representatives were and still are elected by getting more votes than the other candidates in their territorial constituency. The consequences of that unchanged method are, however, dramatically different today.

1.7 These days the business of the elected parliamentarians is different, their relationship to other State officials is different, and their relationship to the Sovereign is different. In the very early days of the English Parliaments, the business of those locally elected parliamentarians was principally to give advice—along with other more important advisers—to the Sovereign on the settlement of the affairs of private individuals. Their responsibility now, particularly if they are in Government, is different and much more important. The change in responsibility in part reflects the fact that Parliament now is the essential source of law and not just an occasional adjunct to and supporter of the Sovereign. It also reflects the fact that those elected members who have the support of the House now have the principal, and indeed exclusive, role as the Queen's Ministers and responsible advisers. Finally, the Queen, or the Governor-General, acts in all but the most extreme cases only on their advice. Those elected Ministers are responsible for that advice and for their other actions to the electorate who put them there and whom they represent. The people have become sovereign. They choose their Parliaments and, more important, their Governments.

1.8 The context in which parliamentary elections are fought is also fundamentally altered by the critical part played by nationwide political parties, established in the past century or so. It is the political parties inside and outside Parliament that in reality present the electorate with a choice of Government. They provide the candidates and prepare the policies between which the voters choose. The parties' decisions on candidates and policies are based on their perceptions of the national well-being. They provide a vital link between the people, the Parliament and the Government. They are essential to our democracy.

1.9 All these changes mean that the principal purpose of elections is now in fact to enable the people to decide in accordance with the electoral law which of the competing political parties will provide the Government. The question we must answer is whether our electoral system—in significant measure unchanged since its establishment in England long ago—now best serves different purposes in a different country, community and century.

1.10 The experience of other democratic countries is varied. In some, the English inheritance has continued (although some countries, such as the United States, have separated the election of the government from the election of the Parliament). Many others have adopted quite different systems which give prominence to the national character of the election of the Parliament and the government and which formally recognise the crucial role of political parties in modern democratic government.

1.11 For New Zealand we must as well take account of our unique history as a former British colony, with an indigenous Maori people, which has accepted and enfranchised members of various communities including significant groups from the Pacific, Europe and Asia. Our electoral system should reflect our experience as members of a relatively small, culturally diverse society which has developed a particular version of Westminster parliamentary government, noted, among other things, for its intimacy, responsiveness to the public, and high degree of responsibility for the well-being of its people.

1.12 The answer must especially depend on principles. As the discussion already indicates, the important principles are above all the representation of the people and democracy.

1.13 Representation, the oldest of the principles in our constitutional history, at first meant that the members represented their local community, the group that sent them to the Parliament. That could include and continues to include representation by the individual member acting as an agent on behalf of constituents in their dealing with Government. The members also represent the people by mirroring, at least in part, their varying characteristics; that is to say, Parliament should ideally have within its membership individuals from all major groups in society. Next, as parties developed, the member became in a general sense also a representative of the policies of the party endorsing that member as a candidate and accordingly a representative of the supporters of that party. In that sense too, members were part of a 2-way process between Parliament and the people. It is that party element that has come to have the major importance, in particular for the electoral system. The representatives, in other words, now have regard not just to their local community and the people whose characteristics they share. They must as well in varying degree weigh the interests of other groups, particularly those whose support or at least tolerance is significant for their party's electoral success as a whole.

1.14 Democracy is the fundamental principle of our constitution. It associates the people of the country with their own Governments, treating each member of the people equally. The principle and practice of representation mean, though, that our democracy is, in general, indirect. The people choose from among themselves those who are to have the powers and responsibilities of Government. The process of choice should to the fullest extent possible give each member of the community an equal part in the choice of the Government and a fair opportunity to participate in the process.

1.15 The electors' conferring of responsibility on the Government is, of course, limited. For one thing, it is bounded by time, and the people can and do from time to time withdraw it. That fundamental power is central to our later discussion of the term of Parliament. For another, citizens in groups and as individuals retain extensive freedom to work out their own destinies. And they participate directly (for instance, through consultative processes) in political and governmental

processes important to them. We later consider whether that participatory role should be broadened through the use of referenda.

1.16 Those ideas of autonomy and participation suggest some important limits on any unqualified version of majority rule. How, for instance, is the balance to be struck between majority power and minority right, or between the sovereignty of the people exercised through Parliament and the rule of law, or between the right of elected Governments to have their policies enacted into law and the protection of fundamental social and constitutional values? The very asking of these questions shows that the answer cannot always lie with simple majority decision-making. Indeed, those with that authority often themselves recognise that their authority is limited by understandings of what is basic in our society, by convention, by international obligations, and by ideas of fairness and justice. For instance, the power of a simple majority of the members of Parliament to determine basic features of the constitution, and thereby perhaps to look to their own particular partisan interest, is fettered by the requirement that key elements of the electoral system can be amended only if three-quarters of the members of Parliament agree or the people in a referendum approve.

1.17 The nature and basis of Maori representation—one of our major terms of reference—similarly indicates some of the limits in our polity of majority decision making. What role have autonomous Maori institutions to play? In what circumstances is it more appropriate to use the model provided by the Treaty of Waitangi of 2 peoples negotiating and agreeing with one another? When should Maori rights and interests (such as those covered by Article 2 of the Treaty) achieve a special recognition in the substance of the law or in the process used to make decisions? Or when is the law and its processes to be determined by the general recognition in Article 3 of the Treaty that the Maori belongs, as a citizen, to the whole community?

1.18 To recapitulate, our Governments have great powers and great responsibilities. Their exercise of those powers and fulfilment of those responsibilities is legitimate only because it arises from the consent of the people, or, to put it another way, because it is based on the political sovereignty of the people. How is that consent to be given? How is that popular sovereignty to be exercised? These questions as they arise within the electoral system are the major questions presented by our terms of reference. We are required to answer them on the basis that New Zealand will continue as a constitutional monarchy (rather than a republic), with a unicameral (and not a bicameral) Parliament, with a parliamentary Government (rather than a separately elected executive), and with a unitary (rather than a federal) structure. We are also not asked to consider questions—often raised with us—about the organisation of local government. The questions that we have been asked to consider can be stated simply and in a logical sequence as follows:

(a) Who should be able to vote and to be a candidate in parliamentary elections?

(b) How should voting support for candidates, parties and groups in the community be translated into the election of members of Parliament and the establishment of Governments?

(c) How in particular should the Maori people be represented through the electoral system?

(d) How many MPs should there be to exercise the powers and meet the responsibilities of Parliament and the Government?

(e) How should the boundaries of electorates be determined?

(f) How often should the people have an opportunity to choose a new Government?

(g) Should the people have the opportunity through referenda to participate in a more direct way in the making of legislation and the determination of policy?

(h) How should the fairness of the operation and the administration of the electoral system be ensured? In particular:

How, if at all, should parties and candidates be controlled in their electoral activity and assisted by the State to ensure that the electorate is able to make an informed choice between competing candidates, policies and parties?

How should the system be administered to ensure its fair working?

1.19 Because of its importance we consider the second of the above questions—the voting system—at the outset. The conclusions we reach there are largely independent of those in other chapters, the recommendations in which can, for the most part, be acted on by themselves.

1.20 These questions are at the heart of our democratic and constitutional system. In attempting to answer them we have endeavoured to assess the facts and to weigh the principles discussed above and developed further in later chapters. We have tried as well to expose our reasoning so that those who consider the Report can assess for themselves the validity of our recommendations.

accept as indicated in para. 2.53 that our plurality system has long been accepted as legitimate. We find it difficult to choose between MMP and STV on this criterion, but we see MMP as preferable to STV on the grounds that it is likely to be more closely proportional, and that it retains single-member constituencies.

Conclusion

2.179 In the preceding discussion of the respective strengths and weaknesses of MMP, STV and plurality, we have endeavoured to present a fair appraisal. Of the 2 proportional systems, MMP and STV, it is our view that for New Zealand MMP is clearly superior. It is fairer to supporters of significant *political parties* and likely to provide more *effective representation* of *Maori* and other *minority and special interest groups.* It is likely to provide a more *effective Parliament* and also has advantages in terms of *voter participation* and *legitimacy.* With regard to SM, we are conscious that a complete move away from plurality represents a major change and that there might be attractions in making lesser modifications to our system aimed at remedying some of its defects in a more gradual and incremental manner. However, we do not consider SM sufficiently overcomes the key deficiencies of plurality. In terms of fair representation of the supporters of political parties and other groups and interests, it is a palliative rather than a true prescription for improvement.

2.180 As between MMP and plurality, we accept that we should recommend a complete change only if we are fully satisfied that a new system will remedy major defects in plurality without introducing greater deficiencies of its own. Applying that standard, the Commission unanimously recommends the introduction of MMP.

2.181 In those areas where plurality has major weaknesses, MMP results in substantial improvement. It ensures *fairness between political parties* because there is a distinct party vote and seats are distributed in proportion to the level of nationwide support for each party. There is no bias against minor parties so long as they cross the 4% threshold. There are no accidental advantages or disadvantages to parties depending upon how their support is spread through the country. In terms of *voter participation,* MMP represents a significant improvement over plurality in that the 2 votes allow voters to concentrate their attention on electing a Government as well as choosing the best constituency representative. Moreover, in terms of the overall result most votes do count and are clearly seen to count. In the key area of *Maori representation,* where plurality is clearly deficient, MMP offers to Maori both the ability to exercise real influence through a common roll with no separate Maori roll and the opportunity to elect through the lists candidates who reflect the Maori viewpoint. The national lists are also likely to provide more *effective representation of,* and influence for, other *minority and special interest groups* than does plurality. Finally, in terms of *legitimacy* MMP is, and will be seen to be, much fairer than plurality in giving representation to parties and other groups or interests.

This, we believe, is significant in terms of preserving confidence in our electoral process in a more diverse society.

2.182 In those areas where plurality is commonly regarded as having strengths we consider that MMP has comparable, though sometimes different, advantages. Thus in terms of *effective government*, we see MMP introducing changes because coalition or minority Governments may become more likely, though by no means inevitable. The evidence from other democracies with proportional systems indicates that where there is a reasonable threshold which prevents the proliferation of minor parties, governments remain at least as effective, and possibly more so if proportionality results in the adoption of more consistent, consultative and broadly supported policies. Likewise, in terms of *effective representation of constituents*, MMP retains single-member constituencies and we do not see either system as clearly preferable. Similar considerations apply to the ability of both systems to assist *political integration*, though we incline to the view that changes in New Zealand society render MMP preferable to plurality in that all significant sections of the community have an effective part in the political process, and parties with a reasonable degree of voter support have the opportunity to obtain representation. Simply because it fails to reflect the diversity in our society, plurality may in the long term be less integrative. In relation to *effective parties*, we believe the systems are comparable, though MMP has an advantage because of the assistance the list gives in obtaining a balance between interests requiring representation. Finally, we consider MMP probably has an advantage over plurality in terms of assisting an *effective Parliament* because it encourages election of members who may choose to concentrate on policy issues. Overall, then, we consider MMP to be the best voting system for New Zealand's present and future needs.

Recommendation:

- **1.** The Mixed Member Proportional system as set out in para. 2.116 should be adopted.

2.183 **Other Systems**. Although we are satisfied that MMP is to be preferred to all other systems, there are differing views amongst Commissioners about where STV should be ranked in relation to plurality and SM. With regard to SM, members of the Commission are agreed that that system would be an improvement to plurality, and one which we would like to see introduced if there is not to be a change to MMP.

2.184 **Cost.** We recognise that there would be some cost factors associated with a change to MMP. The greatest cost would arise in relation to the increase in the size of the House by some 20 or so MPs, this in our view being essential if MMP is to operate effectively. The cost of additional members arises, however, whether or not a change is made to MMP, since we consider the House should be increased to the same extent if we remain with the plurality system. Details of the cost of increasing the size of the House are given in Chapter 4, para 4.31. Apart