THE ELECTORAL LAW OF NEW ZEALAND

A BRIEF HISTORY

Department of Justice
Wellington

3rd
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1 The Colonial Period

1.1 On the 14th of August 1839, Captain William Hobson was instructed by Lord Normanby, Secretary for War and the Colonies, "to adopt the most effective measures for establishing amongst [those living in New Zealand] a settled form of Civil Government". Normanby referred to the finding of a Committee of the House of Commons of 1836, that the riches which would be obtained for Great Britain by the acquisition of New Zealand could not be justified in view of the cost to the natives. Such a step would "be too certainly fraught with calamity to a numerous and inoffensive people, whose title to the soil and to the Sovereignty of New Zealand is indisputable, and has been solemnly recognised by the British Government". He also noticed, however, that by 1839 over 2,000 British subjects, many of doubtful character, had settled in New Zealand, and that large tracts of land had already been purchased from the Maori. The coming establishment, by the New Zealand Company, of settlements further south, it may be assumed, influenced Normanby's instructions. To quell this "spirit of adventure", he suggested the negotiation of a treaty with the Maori, whose:

own welfare would, under the circumstances I have mentioned, be best promoted by the surrender to Her Majesty of a right now so precarious and little more than nominal and persuaded that the benefits of British protection, and of Laws administered by British Judges would far more than compensate for the sacrifice by the Natives of a National independence which they are no longer able to maintain. It was in response to these instructions that the Treaty of Waitangi was negotiated.

1.2 Also in 1839, Lord Durham published his Report on British North America. There he argued for a system of responsible government for Canada. By this he meant government in which the Ministers were responsible to an elected assembly rather than to a Governor or to the Imperial Government. Edward Gibbon Wakefield was a member of Durham's entourage when he visited Canada, and the latter was also a member of the original New Zealand Company. It was to be expected, therefore, that these ideas of self-government would be reflected in the settlements established in New Zealand by Wakefield. Charles Buller, who also travelled with Durham to Canada and had connections with the New Zealand Company, argued in the House of Commons in 1845 for self-government as the appropriate response to the tension created by the Waipau massacre of 2 years earlier.

1.3 Such views inevitably led to conflict between the settlers in these settlements, and the Governor, as representative of the British Government and protector of the interests of the Maori. In Auckland opposition to the Governor was if anything more violent than was the case in the Wakefield settlements, but for different reasons. There, in the 1840s, opposition to the Governor centred around a group which came to be known as the "Senate". This group's support came from 2 sections of the community whose interests were specifically related to
the acquisition of land. These were the settlers who had been in Auckland before the signing of the Treaty of Waitangi, and were waiting for their purchases of land, made before 1840, to be validated, and the merchants and tradesmen of the town, who were critical of the way the Government had disposed of land in the town area. Thus while dissatisfaction with the Governor’s power was widespread, there was no unity in opposition. The differing reasons for the wish for self-government were to be the cause of much future political conflict.

1.4 It was, nevertheless, the New Zealand Company settlements through their representatives which were able to influence the British Government in the 1840s. When a Select Committee of the House of Commons was appointed in 1844 to examine colonial matters, its chairman was Lord Howick, later Earl Grey, who was one of Wakefield’s Colonial Reformers. The Committee’s draft report reflected that allegiance. The Company’s land claims were upheld and the administration of Hobson severely criticised.3

1.5 It was only after it became clear that its hope of proprietary government was illusory, that the New Zealand Company pressed for representative government. Lord Stanley, the Secretary of State, early in 1845 did not believe the colony was yet ready for self-government. W. E. Gladstone, who succeeded Stanley in the same year, was more sympathetic. Influenced by Wakefield, he prepared a Bill which would have divided New Zealand into 2 colonies and created representative institutions. Gladstone lost office in 1846, and his place was taken by Earl Grey who, with the help of Charles Buller, moved the Bill through Parliament.

1.6 The New Zealand Constitution Act of 1846 divided New Zealand into 2 provinces, New Ulster in the north, and New Munster in the south. In each of these 2 districts the Governor was to constitute elective municipal districts. These districts had the right to elect members of their respective provincial Houses of Representatives. The franchise was given to those in occupation of a tenement, and able to read and write English.

1.7 The national Government consisted of a General Assembly comprising a Governor-in-Chief, an appointed Legislative Council, and a House of Representatives, members of which were appointed by the 2 provincial Houses of Representatives, from their own members. The functions of the General Assembly were strictly limited. It had control of duties and customs, the establishment of a Supreme Court and determination of its jurisdiction, the regulation of the coin, the determining of weights and measures, the regulation of the Post Office, the establishment of laws for bankruptcy, the erection and maintenance of lighthouses, and the imposition of shipping dues. All other matters were to be dealt with by the 2 provincial Houses of Representatives.

1.8 The requirement of literacy in English for the right to vote effectively excluded the Maori population from the franchise.

1.9 The Act provided for the Maori population to continue to be governed by its own laws and customs in all dealings among its own
members, and for particular districts to be set apart as areas in which those laws and customs should be observed.

1.10 Copies of the Bill were circulating in the colony in December 1846, and the Governor, George Grey, was officially notified in April 1847. Alarmed at the implications of the Act for the Maori, he wrote on 3 May to Earl Grey severely criticising the Bill. After pointing to the indignation the Maori would feel if reduced to a state of relative inferiority after they had ceded the sovereignty of their country to the Queen, and the development among them of a sense of national unity, Grey continued:

At present, the natives are quite satisfied with the form of Government now existing, and as the Chiefs have always ready access to the Governor, and their representations are carefully heard and considered, they have practically a voice in the Government, and of this they are well aware; but under the proposed constitution they would lose their power, and the Governor would lose his influence over them, in fact the position of the two races would become wholly altered, and the Governor would, I fear, lose that power which I do not see how, he can well dispense with, in a country circumstances as this.5

Grey's arguments were successful in persuading Earl Grey that the Act should be suspended for 5 years, and on 13 December 1847 a Suspending Bill was introduced into the House of Commons. With the passing of this Bill, the first attempt to introduce a form of self-government into New Zealand came to an end.

1.11 The division of the colony into 2 provinces, New Ulster and New Munster, was, however, preserved by Grey. In November 1848, the Legislative Council passed the Provincial Councils Ordinance. This provided for the Provincial Councils to consist of not less than 9 members, to be comprised of members of the Executive Council of the province, or members appointed by the Governor. Although the Council for New Ulster never met, that for New Munster survived until 1850. At that date a clash between Grey and Edward Eyre, whom Grey had appointed Lieutenant Governor of the province, led to the abandonment of what had never been a popular institution with the settlers.

2 The Provincial Period

2.1 While Sir George Grey succeeded in deferring the Constitution Act of 1846, the difference between himself and those of the settlers who were pressing for self-government was less that of whether the settlers should achieve that end than how soon it should be obtained.

2.2 Grey himself, in 1848 in a dispatch to Earl Grey, suggested a new constitution. Each of 2 provinces was to have a Legislative Council. Two-thirds of its members would be elected, and one-third nominated. The General Assembly would consist of a nominated Legislative Council and an elected House of Representatives. The
members for each province would be determined by the European population.

2.3 Voting would be open to all European males who could read and write, and owned property worth £30 or occupied a town house worth £10 a year or a country house worth £5. The vote was also to be given to such Māori as owned property worth £200 or more, or who had been granted a certificate by the Governor authorising them to vote. This was a wide franchise, and Grey commented,

I have been influenced by the desire of including among the voters all those persons who have acquired or are acquiring small properties on which they intend to reside themselves during the remainder of their lives and to settle them on their children.¹

Such persons, he believed, would be those most likely to have a real interest in the country’s future prosperity.

2.4 A number of areas of jurisdiction relative to the provinces, similar to those in the Constitution Act, were reserved for the General Assembly. It was also required that the Governor approve any provincial legislation. He also had power to amend any provincial constitutions.

2.5 The passing of the Suspending Bill was also to provoke vigorous resistance from the settlers which soon became organised in the form of a number of Constitutional Associations. The first was launched in Wellington in December of 1848. The views of members of the Associations varied considerably. The most radical was possibly that expressed by some members of the Nelson Association. Its committee drew up the following list of principles:

1 A parliament, consisting of an upper and lower house, both elected.
2 A governor, appointed and paid by the Crown, removable by the vote of two-thirds of each house.
3 Triennial parliaments, annual elections.
4 Universal manhood suffrage.
5 Ballot voting.
6 No membership qualification for the lower house.
7 Ex officio members removable by a vote of two-thirds of each house.
8 Government to have absolute power in local matters.
9 All bills for raising and appropriating of revenue to originate in the lower house.
10 Acts can be replaced by two-thirds of each house.
11 No salaries from civil list except for those of judges.
12 Municipal corporations for each settlement.²

This programme was somewhat modified, under the influence of E. W. (later Sir William) Stafford, before being forwarded to Earl Grey but is reflective of Chartist ideas current in the early years of the Colony.
The assumption behind these words would appear to have been that the granting of 4 seats to the Maori was a temporary measure until such time as the fact that the tribal nature of Maori land ownership denied Maori the vote was rendered irrelevant by the issue of Crown grants. This "temporary provision" was expressed to have a duration of 5 years.

2.85 For the purposes of the Act, a Maori was defined in Section 2 as "a male aboriginal native inhabitant of New Zealand of the age of twenty-one years and upwards and shall include half-castes." This meant that Maori electors achieved a universal manhood franchise over a decade before European voters.

2.86 The question of whether Maori or Europeans should represent the Maori voters was a matter of some contention in the debate on the Bill. It will be remembered that Graham in 1865 had recommended that the Maori be represented in Parliament by Europeans. Richmond, on this occasion, expressed the fear that European representatives would turn out to be "land jobbers, Maori traders, and other go-between of the Natives and the Europeans." In the event, the Act provided for the election of Maori representatives in Section 6, as follows:

Such members shall be chosen respectively from amongst and by the votes of the Maori inhabiting each of the said districts who shall not at any time theretofore have been attainted or convicted of any treason felony or infamous offence and shall be otherwise qualified as hereinafter provided.

The reference to "treason felony or infamous offence" reflected the view of members of the Government that the 4 seats were to be seen in some sense as a reward to the Maori who were loyal to it during the Land Wars.

2.87 The boundaries of the electoral districts were, according to Section 8, to be declared by proclamation by the Governor. Carleton criticised this, arguing that the Governor could, by manipulating the boundaries, determine the outcome of elections. In spite of the apparent return to the principles of the original Constitution Act of 1852 of this Section, Charles Heaphy's opinion was accepted that "the necessity of the Governor defining the Native districts, for the separation and dispersion of tribes would render any other mode of procedure impracticable. The electoral districts must be tribal." 60

2.88 The Maori Representation Bill was introduced into Parliament on the same day as the Westland Representation Bill. In that the Maori electoral districts gave 3 more seats to the North Island and 1 to the South Island, the Government was able to ensure a balance in the number of new seats offered to each Island.

2.89 That the new Maori seats were needed to facilitate the purchase of Maori land was denied by Carleton. He commented that, "the Natives were, under 'The Native Lands Act, 1865', taking out their Crown Grants as fast as possible, and the moment a Native touched his Crown Grant, he became just as privileged as any European." 61
2.90 The New Zealand Herald commented that Crown grants would give the Maoris exactly the same share in the representation of the country which the European settlers enjoy. To this they are entitled. They are entitled to no more. The better means, therefore, to effect the object would, we think, be to facilitate, in every possible way, the working of the Native Lands Courts—both as regards routine and expense. To remove all obstructions to their free and impartial working; to cause them to be held as frequently and as conveniently to Maori requirements as possible.53

And, it might have been added, for European requirements.

2.91 The young Hone Heke, asked in 1895 about the value of the creation of the Maori seats, said that "There were no great hopes cherished of the political experiment; in fact, the natives took no interest at all. They were ignorant of what it meant".54 He also denied that the creation of the seats was the result of agitation from the Maori. With the expiry of the Act in 1872, the duration of the Maori districts was extended for a further 5 years by the Maori Representation Act Amendment and Continuance Act. H. K. Taiaoa, member for Southern Maori, had moved an amendment that the Maori members be increased to 5. The motion had, however, been defeated on a point of order. Four years later, Taiaoa introduced the Maori Representation Act Continuance Bill, by which means it was hoped to increase the Maori members to 7. This too failed. The rest of the Bill, however, was passed. Its substance is contained in Section 2:

"The Maori Representation Act, 1867" as amended by "The Maori Representation Act Amendment and Continuance Act, 1872" shall be and is hereby continued in operation, and shall remain in operation until expressly repealed by an Act of the General Assembly.

Thus, the 4 Maori seats became a permanent part of the country's electoral system.

2.92 After the creation of the 4 Maori seats, Parliament continued its ritual of re-drawing the electoral boundaries. In 1870, the Representation Act divided the country into 68 European electoral districts, returning 74 members. Fox, the Premier, in introducing the Bill, alluded to the uncertainty of the principles upon which, in the past, electoral districts had been created, and stated that:

We have based our representation upon provincial representation; we have endeavoured to assess that which we conceive a fair proportion of members, not in each district, but in each Province, as it has always been...54

A Select Committee was to be appointed to define the boundaries of the districts within each Province. Stafford's doubt that "any good will come from the proposed relegation to the Committee"55 appears to have been justified, for in 1871 a Representation Act Amendment Act
was required to correct the boundaries of most of the electoral districts, as defined in the schedule of the 1870 Act.

2.93 In the new Parliament 30 members came from the North Island, and 44 from the South Island. The Gold Field Electoral Districts were abolished. However, the Qualification of Electors Act of 1870 and the Miners Right Extension Act of 1872 preserved the validity of the miner’s right as a qualification for voting within the ordinary European electoral district in which that person’s goldmine was situated.

2.94 Two other important acts of 1858, the Registration of Electors Act and the Registration of Elections Act, were both repealed and replaced by new Acts of the same name, in 1866 and 1870 respectively. The alterations in the new Registration of Electors Act were mainly minor, concerned with speeding up the process of validating property qualifications, although the appointment of Revising Officers was now placed in the hands of Judges of the Supreme Court.

2.95 The Regulation of Elections Act 1870 not only replaced the earlier Act of the same name, but also the Corrupt Practices Act of 1858. While, like the earlier Act, it provided for election by show of hands, the procedure it outlined in the event of a call for a poll was quite different. Not only were booths to be provided:

Each booth shall be so divided or arranged that there shall be in the same one or more inner compartments opening only into that part of the booth in which the ballot box is kept and the Returning Officer or his Deputy shall provide in every such compartment pencils or pens and ink for the use of the electors and shall also provide for each booth a ballot box having a lock and key and with a cleft or opening therein capable of receiving the ballot papers herein mentioned.

If any person shall knowingly and wilfully enter any of the compartments aforesaid while any other person shall be therein or if any person being in any such compartment shall wilfully remain there for a longer time than such as shall be reasonably required for the purpose of striking out the names from his ballot paper or if any person shall otherwise wilfully obstruct or unnecessarily delay the proceedings at any such polling he shall on conviction forfeit and pay for every such offence a penalty not exceeding £50.

2.96 These 2 sections, which introduced the secret ballot into New Zealand’s electoral system, were largely the culmination of the work of W. H. Reynolds, member for Dunedin City. Bills providing for the secret ballot were unsuccessful in 1858 and 1865. Reynolds introduced Bills to the same end in 1867, 1868, and 1869, and although they were unsuccessful, this pressure was in the end responsible for the inclusion of the secret ballot in Fox’s Government Bill of 1870. The actual legislation was based on that existing in Victoria.

2.97 The Act also provided for the appointment of 1 scrutineer each by the candidates standing for election. Clearly, much of the concern
about misconduct at elections had diminished by 1870. The Act gave the Returning Officer power to demand a declaration against bribery, and penalties were provided against personation. It was also provided that no polling booth should be in a house licensed to sell alcoholic drinks, but the concern, again, over alcohol consumption had obviously all but disappeared. The stress in the Act was on ensuring orderly administrative procedures, and basically laid down the form of the electoral process, as experienced by the voter to the present day.

3 Uncertain Years

3.1 With the passing of the Abolition of the Provinces Act in 1875 the central Government acquired greater power and responsibilities and it was to be expected that the structure of Parliament and the electoral system would be re-examined.

3.2 The most immediate response to the increased importance of the House of Representatives was the Representation Act of the same year. This increased the number of European members to 84. The Bill, however, was promoted as a temporary measure until electoral districts could be brought into line with other administrative divisions of the country being created in response to the abandonment of the Provincial Councils. Consequently most of the districts were left unchanged, only a few new districts being created in heavily populated areas.

3.3 Two issues were raised in the debate on the Bill's second reading that were to result in the most significant pieces of legislation during the next 20 years. The first was, inevitably, the question of the appropriate grounds for representation. Sir George Grey remarked of the Bill that "What we hoped for in this Bill was a true representation of population; but nothing of the kind has been given us". He argued that new seats had been created on the grounds of wealth alone. Bowen, who had introduced the Bill, replied:

If we were to attempt to place the representation of this country on a purely population basis, the effect would be to throw the whole of the representation, or the greater part, into the power of a few centres, and to leave very large districts almost wholly unrepresented.

3.4 The other issue was that of the apparently interminable changes which were necessary to adapt the representation to the changing population. To criticism that the Bill did nothing to solve this problem, Bowen replied:

In my opinion, no Parliament can be dissolved without redistribution, when a country is growing and changing, ..., and where the population in some places has increased absolutely 50 per cent during the life of one Parliament. I say it is necessary to reform the representation of Parliament every five years, as long as this is the case.

3.5 The Registration of Electors Act of the same year, was introduced as a Private Member's Bill, this time by M. J. Stewart,
this outcome. Two aspects of the original Bill, which were not adopted, are of interest as foreshadowing later events. Speaking to the Bill in 1879, Hall commented:

In the first place, by the 10th clause, it was proposed to abolish the old fashion of a nomination at the hustings by a proposer and second, and to provide that a qualified person desiring to become a candidate might nominate himself by a nomination paper sent in not less than seven days before the day appointed for the poll. If he did that, however, he would be called upon to deposit £10, so that the country should not be put to the expense of a contested election unless there was some reasonable ground for it. ... The £10 would be returned to him if he polled not less than fifty votes. ... 21

3.31 Stout had, in fact, attempted to introduce written nominations in his unsuccessful Electoral Bill of 1878. Speaking a year later, Hall referred to a part of the Bill, describing the process of voting, which was clearly an attempt to introduce a form of proportional representation:

The Bill provided that, in all cases in which three members were to be elected by one constituency, no elector should give more than two votes, so that if there should be a slight majority of one way of thinking in a large constituency, and the minority be a large one, the minority should not be entirely unrepresented. In cases of that kind, the effect of such a provision would be that the majority would return two members, and a large minority would return one member. That was a provision which had been introduced in the United Kingdom in large towns, and he had never heard of it not working well. This was the only point in which the present Bill differed from the one which was before the Committee last session. 22

3.32 This proposal was however rendered redundant by the Representation Act of 1891, which created 31 European electoral districts, each returning 1 member. In moving the second reading of the Bill, Hall had commented, “If I could induce the House to consider this question in the manner which I believe most satisfactory, I would ask it to assent to a Bill based on what is called Hare’s system”. 23 Such a system was, however, rejected by the House, and Hall responded by stating that “it seems to me that the only other mode of securing something like that representation of minorities, which is not only just but expedient, is to divide the country into single electoral districts”. 24

3.33 Hall argued that “The leading principle upon which the Bill is framed is that of representation on the basis of population”, and the seats were distributed among the provinces according to the percentage of the population found in each. Within each province, however, Hall introduced a system of distribution similar to that outlined in Grey’s Representation Bill of 1879. This allowed for the variance from the quota of the population in country electoral districts to be somewhat greater than was the case for other electoral districts.
3.34 The country quota was to be an important element in the
country's electoral system for almost 60 years, and it came to be a
means of strengthening the rural interest as important as the property
qualification in the past. It was justified by Hall as follows:

The towns have much larger facilities for exercising political
influence than the country districts. They get information more
readily; they can get at their representatives more readily; and
there are also a considerable number of persons representing
country districts who, if they do not actually reside within the
towns, are practically connected with them. So that in a great
many cases, even if the towns did not elect any
representatives at all, they would in reality be well represented.
Of course it will be understood that I do not for one moment
suggest that such should be the case, but I am showing that
there are many methods by which towns can utilise their
representation much more effectually than the country
districts. This applies to some extent also to districts which I
may call suburban. We therefore propose in this Bill that the
quota for the country districts shall be less than the quota for
town districts by, as nearly as possible, 25 per cent.26

3.35 Between 1871 and 1881, the European population of New
Zealand increased from 254,928 to 487,889. This rapid increase in
population created some anxiety about the stability of electoral districts,
and gave rise to pressure for a fixed number of seats and a more
rational method of determining boundaries. The fact that this increase in
population appeared to be taking place in the North Island led members
from that Island to argue for more representation. This was also argued
for on the grounds of contribution to the revenue, and the greater
number of Maori population in North Island Maori districts. Although
these arguments were not effective, W. J. Hurst, member for the City of
Auckland West, successfully moved that the Bill be amended to the
effect that the Act should continue in operation only until 1887.

3.36 With the taking of the census in 1886 and the approaching
termination of the 1881 Act, the question of the distribution of seats
again became an issue. The movement of population towards the North
Island had not, in the event, been as dramatic as many North Island
members had hoped. Over a decade was to pass, in fact, before the
number of North Island members was to pass that of the South Island.
Even so, few members, especially South Island members, can have
looked forward to presiding over this shift of power with much pleasure.
By now the Stout-Vogel ministry was in power. Speaking on the subject
in June of that year, Stout stated his own views on representation:

I have held the opinion for many years that this matter of
representation ought to be dealt with automatically after each
census, on a scheme which will prevent it coming on the floor
of this House periodically. And, after all, we must look at
population as the only thing practicable to be guided by.27
Determination of the boundaries of Maori electoral districts remained in the hands of the Governor.

4.5 The Liberal Government of these years was increasingly gaining support among small farmers, especially as a result of the leasehold tenure introduced in 1892 by J. McKenzie, the Minister of Lands. The lack of sympathy towards the large land owners among these voters found some reflection in the Electoral Act Amendment Act of 1895. There the non-residential qualification was abolished, although the validity of existing registrations was retained. A non-residential qualification was defined in the Electoral Act of 1893 as "a freehold or leasehold qualification . . . of which residence forms no part". This change was promoted by Seddon as giving effect to the principle of "one man one vote, one man one registration on one roll", and effectively diminished the value of the freehold qualification.

4.6 Seddon explained how this was achieved:

If a man has property in several districts, those [votes] held in respect of property are practically dormant votes, and when a by-election takes place he may, by transferring the registration, exercise them, or he may, if he is disposed to do so, at the general election . . . I say no such power should be given to any person in the colony. It means giving a preference to property over manhood, and I believe, myself, we should have as our electoral basis manhood pure and simple.\(^3\)

4.7 This Act also strengthened the rural vote in a minor way by extending the elector's right to include musterers. The Electoral Act Amendment Act of 1900 also redefined a "seaman" in line with the removal of the property qualification.

4.8 The Corrupt Practices Prevention Amendment Act of 1895 was an attempt to make membership of the House of Representatives more accessible to poorer members of the community. In particular, the Act stated that no payment for election expenses should be made except by the candidate. Any claim against the candidate would have to be sent in within 30 days of the election. In introducing the second reading of the Bill, Seddon explained the implication of these sections:

They all heard that there had been no corrupt practice, no payment of expenses; but, after a given period, these election costs were presented. That system was an unfair one. It prejudiced the chances of a poor man with a wealthy man. People who performed these services held over their accounts for six months, and then the claims came upon candidates, and the candidates found them to their cost subsequently. He thought that these accounts should be rendered within a certain number of days after election. That was the law in Great Britain at the present time.\(^4\)

The total expenses for a candidate were set at £200.

4.9 Equally important were the 4 statutes, passed between 1896 and 1903, relating to representation. The Representation Act
Amendment Act of 1896 split the Representation Commission into two, creating 1 each for the North and South Islands. For the North Island, the Surveyor-General and the Commissioners of Crown Lands for Auckland and Taranaki were the 3 official members. Two unofficial members were appointed to each Commission. The 2 Commissions were to initially sit together to determine the number of seats for each island, and then each Commission would separately determine the boundaries of the electoral districts in the Island for which they were responsible. The legislation appears only to have had the purpose of speeding up the procedure for determining the electoral boundaries, and thus the preparation of the rolls.

4.10 The Representation Act of 1900 increased the number of European members to 76. When one considers that this was to remain the number of members until 1967, the introduction of the Bill appears remarkably casual. Seddon commented:

I should not have touched this representation question had it not been for the fact that in the debate on increasing the numbers of Ministers I was told, from all sides of the House, that it would give too great representation to the members of the Treasury benches unless we increased the number of representatives in the House.6

Further, in view of his opinion that "from time to time as population increases we ought to have increased representation", 6 and his preference for more members rather than for "chopping and changing the boundaries of the electorates, every five years, as we have been doing...",7 the persistence of the number of seats determined on by this statute needs, perhaps, some explanation. The reason is possibly to be found in the fact that the number of members had come to be seen as related to the question of whether Parliament should be controlled by individuals or parties.

4.11 It will be remembered that the Hare system, which had been widely supported in the 1870s and 1880s, was generally considered to be favourable to individuals rather than parties in Parliament. The Canterbury Trades and Labour Council's encouragement to its members, in 1890, to "vote only with your party",8 however, was typical of a growing trend in the country's political life.

4.12 In 1891 a Constitutional Reform Committee was set up by Parliament to examine the governments of other countries "with a view to such modifications of the existing system of government in New Zealand as will diminish the evils of the present party-system...".9 The Committee's conclusions were relatively conservative. It commented that "many and very serious evils are inseparably connected with, and spring from, the system of party government here".10 It found the most deplorable aspect of party government to be the tendency for public moneys to be used by the party in power to strengthen its position. It also recommended "the present Government of the Swiss Federation"11 as a suitable model for this country.
effect*. The Chief Electoral Officer was to head an Electoral Department charged with co-ordinating the work of the Registrars, 1 of which would be appointed for each electorate. After the closing of the general roll each year, the Chief Electoral Officer was required to print a roll, and the Registrar for each district was to prepare and print a supplementary roll. These printed rolls were the legal rolls.

4.22 With the organisation of the rolls on a national basis, Ward noted that "special machines have been imported for the purpose of consecutively numbering the electoral claims and rights ...". Interest in mechanising the electoral process extended to including in the Act a provision for the experimental use of vote-counting machines.

4.23 The organisation of the rolls on a national basis was clearly linked to their expected wider use. Ward commented:

There is also the advantage of having in the course of time an expert staff, which will greatly facilitate the issue of the rolls when required for a referendum or a by-election, or in the contingency, in the near future, of the Education Boards or municipalities or other public bodies desiring to use these rolls for the purposes of their elections.18

4.24 Although the Act provided for the Chief Electoral Officer to be responsible to the Colonial Secretary, under whose jurisdiction electoral matters had come in the past, in the following year the Electoral Department became a branch of the Department of Internal Affairs. As was later explained,

the reason why the electoral work was originally with Internal Affairs, and why it was transferred back to Internal Affairs in 1945 [sic] was that it is desirable to have the whole electoral system, that is, Parliament and local body, under the one general control, and that the Parliamentary electoral system is tied up with the constitutional work affecting Parliament etc., that is handled by Internal Affairs.19

4.25 Ward had hoped in this Act to provide for the preparation of rolls for the Maori electoral districts, but had been dissuaded by the lack of time before the forthcoming election. Maori representation was, however, the subject of lengthy comment in the debate on the second reading. Support for discontinuing Maori representation, for which the preparing of Maori rolls was a preliminary step, was frequently expressed, by members of all parties. Massey commended that "I believe that the time is coming when the special representation of the Maori race will be done away with".20 T. E. Taylor, member for Christchurch City, argued that "Maori representation in the year 1905 is an anomaly and an absurdity, and something that cannot possibly be defended, and that the experience of that special class representation has been disastrous".21 J. (later Sir James) Carroll, Minister of Maori Affairs, argued:

I do believe that the Natives would be better off if the Maori Representation Act ... were repealed ... At the present time
the whole Native population of the colony is represented by only four members, consequently the representation must be of a restrictive order. But if you make a change in the direction of allowing the Natives to be placed on the general roll, you will have Native interests, especially in the North Island, represented by every member from the districts in which there are Maori constituents, with the exception, possibly of the cities. It does not necessarily mean that there must be a majority of Maoris in a district to insure proper representation for them on the part of their representative. The very fact of Natives being on the roll and exercising their privilege as voters will bring the representative or candidate to attention at once...

The only Maori member to speak on the issue, Hone Heke, however, defended Maori representation:

I say, it is entirely ungenerous on the part of the European community and the European members of this House to raise the question to do away with the Native voice in Parliament. Let me take Cape Colony as an illustration: what is the position there in regard to the franchise? The question raised by the European community there is not to continue the assimilation of the franchise. The Natives and Europeans there vote for one candidate, whether that candidate may be European or Native, and the cry raised there during the last few years has been to urge upon the Government of the Colony to bring down legislation to do away with the right of the franchise extended to the Natives. And why? Because the Europeans recognise that the Native population is a large one, and they fear, according to their ways of looking at things, that there is a danger—that instead of having a European Parliament there is a possibility in the near future of the Europeans being controlled by a Native Parliament.

This statement is of interest in that it marks a shift in the Maori attitude towards the Maori seats from one of indifference, to one of determination to retain them as important symbols of, and means to, the survival of their cultural identity.

4.26 With the passing of the Reprint of Statutes Act 1895, a Commission had been established to prepare an edition of Consolidated Acts. These included the Electoral Act. After 1908 the electoral law was to be found, virtually unchanged from the Electoral Act of 1905, in Division II of the Legislative Act.

4.27 An unusual innovation in the law was, however, to be introduced in the Second Ballot Act of 1908. This Act provided that no candidate should be elected to Parliament unless he had over 50 per cent of the votes. Where that did not occur in the first ballot a second ballot was to be held in which the only candidates would be the 2 who polled highest in the first ballot. This was essentially a form of preferential voting. Ward, commenting on the Bill, stated that it was
based on "the very important principle that the majority should rule in
everything".24 And examining the electoral returns for 1899, 1902, and
1905, he had come to the conclusion that, "Anomalous as it may
appear, the tendency is to return a larger number of men representing
minorities to the House of Representatives".25 Ward's arguments here
must be read in conjunction with his arguments against multi-member
city electorates. Both express a fear of the success of a "minority" or
third party, or even of a third party having any impact on the electoral
result. It was no secret that the third party in question was the Labour
movement. Massey commented that "There is not a man in this
House—there is not an elector throughout the length and breadth of
this country, who does not know it is brought down for party purposes;
brought down to prevent vote-splitting...".26

4.28 As party government developed in New Zealand, the fact that
it did not evolve into a 2-party system until 1935 meant that, outside the
arena of Parliament, an intense debate took place over which electoral
system would most appropriately cope with the complex political
situation.

4.29 In 1911, G. Fowlds, member for Grey Lynn, and a Liberal
member sympathetic to Labour aspirations, introduced a Proportional
Representation and Effective Voting Bill. This allowed for the country to
be divided into 19 electoral districts, returning between 3 and 6
members. The method of electing members was as follows:

4. Each voter shall have one vote only, but may vote in the
alternative for as many other candidates as he pleases not
exceeding four; and his ballot-paper shall be deemed to be given
to the candidate opposite whose name is placed the figure "1"
but it shall be transferable to the other candidates in succession,
in the order of priority designated by the figure set opposite their
respective names in the event of its not being required to be used
for the return of any prior candidate.

5. Subsection one of section one hundred and thirty of the principal
Act is hereby repealed, and in lieu thereof the following is
substituted, namely:

(1.) The voter, having received a ballot-paper, shall retire into one
of the inner compartments provided, and shall there, alone
and secretly, insert opposite to the names of the candidates
for whom he wishes to vote the figures "1", "2", "3", "4", "5",
in the order of his preference but shall not place the same
figure opposite more than one name. ...

The count of votes proceeded by first dividing the total number of
unrejected ballot papers by the number of members to be elected, plus
1. A candidate who achieved the quota on the strength of the first
preference votes was declared elected. Votes for that candidate other
than those needed for his election were transferred to other candidates
according to the voters' second choices. The candidate with the lowest
number of votes was eliminated and his votes transferred to the
continuing candidates according to the voters' second choices. These
processes were continued until the required number of candidates had achieved the quota and were declared elected.

4.30 This Bill only reached its first reading before disappearing with the collapse of the Ward Government.

4.31 A number of Liberal members were not alone in being sympathetic to the system of proportional representation. In their manifestos for the election of 1911, the Reform Party promised that the Legislative Council would be replaced by a Council elected by a system of proportional representation, and the Labour Party promised that the Legislative Council would be abolished and members of the House of Representatives elected by a system of proportional representation.

4.32 One other Act of these last years of the Liberal Government may be noted. After the election of 1906 one of the judges presiding at the hearing of an election petition relative to the Northern Maori seat had severely criticised the legislation governing the conduct of elections in Maori electorates. As a result the law on this matter was revised in the Legislative Amendment Act of 1910. In particular, voting by show of hands was abandoned in favour of voting by declaration. On the question of a Maori roll, Ward commented “I think more time should be given to the Maoris before we compel them to adopt the European system of elections”.27

4.33 This Act also provided for an electoral census. While the legislation had enjoined Registrars to make every effort to ensure that all eligible persons were on the rolls, and Police Officers, Post Masters, Clerks of Court, and other Government officers were encouraged to assist in preparing them, this had not proved an adequate means of ensuring complete rolls. Thus in 1905, with the establishment of the Electoral Department, staff were appointed to systematically place persons on the roll. The provision of a census, which could take place from time to time as directed by the Minister, placed responsibility for all eligible persons appearing on the roll in the hands of the Government rather than the voter.

5 The Reform Period

5.1 When the Liberal Party lost power in 1912, it was replaced briefly by the Government of Thomas MacKenzie. He had supported the Second Ballot Bill in 1908 because “I am dissatisfied with our electoral law in every respect, and I am going to support any change that may be proposed, in the hope that finally we may obtain some useful measure”.1

5.2 During his own brief Government, a Bill was drafted which would have introduced a system of preferential voting, and thus displaced the Second Ballot Act. This Bill attempted to embody the best features of the systems in operation in Victoria and Western Australia, and the recommendations of the English Report on Electoral Systems of 1910, relative to a preferential voting system for single-member electorates. The making of second and further preferences was made optional in line
with the systems in Queensland and Western Australia, and unlike the provisions of Victorian legislation of the previous year.

5.3 The voter was required to place the figure 1 opposite the name of the candidate to whom he gave his first preference, and the figures 2, 3, 4 etc, opposite the names of other candidates in order of preference. If, on counting the first preference votes, it was found that no candidate had received a majority, the candidate with the lowest number of votes was declared defeated. His ballot papers were then distributed among the remaining candidates according to the second choice indicated on them. This procedure was continued until a candidate was found to have an absolute majority.

5.4 This Bill disappeared with the defeat of the Mackenzie Government. The Legislative Amendment Act of 1913, the first piece of legislation passed by Massey's Reform Government, made 2 significant changes in the law. In the first place, the figure of tolerance relative to the quota for each electoral district was changed, in the case of urban electoral districts, from 100 to 250.

5.5 The second important provision of this Act was that of abolishing the second ballot in line with Massey's election promise. He had originally hoped to achieve this in the following year as part of an Electoral Bill. But there was clearly some pressure for urgent change of the existing system in the community at large. In 1912, at the time of the drafting of the preferential voting Bill, the Chief Electoral Officer had written to G. W. Russell, who as Minister of Internal Affairs was in charge of electoral matters, that:

In view of the movement that is on foot in Wellington to form a league to urge the adoption of proportional representation as against the preferential system now under consideration by the Government, might I suggest that the Honourable Prime Minister cable to the Premier of Tasmania for information in connection with the proposed amendment of the Electoral Law? 2

5.6 With the change of Government, F. M. B. Fisher had been placed in charge of the electoral system. Fisher was a supporter of proportional representation.

5.7 In 1913 the Chief Electoral Officer was sent to Tasmania to examine that state's system of proportional representation. He reported:

Regarding the application of proportional representation to New Zealand there would be no difficulty so far as the parliamentary poll was concerned, but I see very great difficulties in the way of carrying out a poll under the proportional system (which requires large constituencies) simultaneously with the licensing and national prohibition polls. The whole position would become exceedingly complicated. 3

He also commented that in Tasmania few voters understood the system by which they elected their representatives.
5.8 It is not clear how seriously the difficulties presented by the requirements of the licensing poll were taken, but in areas where such problems were absent some effort was made to push forward with the introduction of proportional representation.

5.9 The Local Elections (Proportional Representation) Act of 1914, provided that:

In lieu of marking his voting paper in the manner prescribed by the principal Act, the voter at an election pursuant to this Act shall place in the squares respectively opposite the names of three candidates the figures 1, 2, and 3, so as to indicate the order of his preference. He may also indicate the order of his preference for as many of the other candidates (if any) as he pleases by placing in the squares respectively opposite their names other figures next in numerical order after those already used by him.4

This system was described by Fisher, in introducing the Bill’s second reading, as “being the Tasmanian system, with a slight variation upon the lines which were indicated by Lord Courtney, and that is: it should not be compulsory to extend the preference right through the ballot paper to the full number of candidates.”5 The system was intended to be experimental and its use by local bodies was optional. It was used in various Christchurch local body elections until 1933, but remained in legislation as an option until the 1960s.

5.10 Over many years dissatisfaction had been growing over the working of the Legislative Council. In 1891 the Liberal Government on coming to power had passed a Legislative Council Act which made all future appointments to the Council of 7 years duration only, with the possibility of re-appointment. This had apparently had little effect in ensuring the easy passage of Bills passed by the House of Representatives. In 1896, at a time when prohibition was a sensitive electoral issue, the Council had thrown out an Alcoholic Liquors Sale Control Bill. Furthermore, only by a number of ingenious strategies was Seddon able to get the Council to pass an Old Age Pensions Bill in 1891, and in 1901 it had repeatedly blocked a Referendum Bill. This Bill attempted to make liquor legislation, and the subject of Bible-reading in schools, matters to be decided by referenda. The possibility of using the referendum as a way of getting Bills passed which had been blocked by the Council was reflected in other legislation.

5.11 Steward also introduced at this time a series of Legislative Council Election Bills. Although these were unsuccessful, the need for change in the Council, if not its abolition, had become, as already noticed, the cry of both the Reform and Labour candidates during the 1911 election campaigns. Thus in 1914 the Massey Government passed the Legislative Council Act.

5.12 In that statute, the Council was made elective, a somewhat elaborate system of proportional representation being introduced. The number of seats being 40, the Representation Commissions meeting together were required to distribute these seats between the North and
5.21 Although the most discussed electoral matter of the time, the
debate on the most appropriate voting system for the country was not in
the end to result in any legislation. Those laws which were in fact
passed were a very miscellaneous group.

5.22 The Legislative Amendment Act of 1914 allowed for the
registration of Maori voters, though this was never acted upon. It also
extended the electoral right to theatrical performers.

5.23 No legislation relating to the electoral system was passed
during the First World War, except the Parliamentary Elections
Postponement Act of 1916, which effectively deferred elections until the
end of the war.

5.24 In 1919, the Women's Parliamentary Rights Act, following
British precedent, extended the same conditions relative to being a
member of the House of Representatives to women as applied to men.

5.25 With elections occurring again in 1919, it was also found
necessary in that year to arrange for votes to be cast by the members
of the armed forces in New Zealand but unable to be in their electorates.
While the Expeditionary Forces Voting and Electoral Rights Amendment
Act provided for what was seen as a unique situation, the experience
gained in administering that statute may have facilitated the
introduction shortly afterwards of postal voting.

5.26 This form of voting had been considered since as early as
1918. In the following year the Chief Electoral Officer drew the attention
of the Prime Minister to the fact that a system of voting by post was in
use in Victoria and that it gave general satisfaction. Even so a system
of voting by post was slow to develop in this country owing to a
preoccupation at this time with the secrecy of the vote. Postal voting
was finally introduced in the Legislature Amendment Act of 1927. A. D.
McLeod, in introducing the second reading of the Bill, commented, "My
officer informs me that it is copied practically in toto from the
Commonwealth Act".

5.27 In the same year an Electoral Act was passed. It was entirely a
consolidating measure.

5.28 In the Report of the Representation Commission in 1917, the
North Island Commission had commented:

This Commission desires to call special attention to the
difficulty experienced in obtaining electoral boundaries that will
conserve community of interest and at the same time keep the
population of each electorate within the limits at present
prescribed by the Act. It is of the opinion that the obtaining of
suitable boundaries would be facilitated by increasing the
"margin" allowed in respect of rural population from 550 to
1,000.11

This recommendation was taken up, one assumes, with some alacrity
by the Government in the Legislature Amendment Act of 1920 where
the tolerance provided for was in fact 1,250. Not surprisingly, McCombs
opposed the measure, and also took the opportunity to attack the
country quota as striking "at the root of the whole of the principles underlying our representative institutions—that people, and not land, shall be represented". 12

5.29 In introducing the second reading of what was to become the Legislature Amendment Act (No. 2) of 1924, which introduced compulsory registration, Massey commented that:

We have had enrolments by Post Office Officials, and we have had enrolment by temporary employees of the State who were sent through the country for that purpose. None of those systems have proved satisfactory, and at best they have turned out to be mere expedients. In connection with every one of them we have had the usual stock of complaints after elections. 13

5.30 In 1921 Dounie Stewart had stated in Parliament that compulsory registration was under consideration. 14 Later in the same year, a time of relatively severe economic depression, the Chief Electoral Officer, writing to the Prime Minister, had introduced another factor into the deliberations.

I believe the expenditure in connection with a General Election could very materially be reduced if a system of compulsory enrolment and notification of change of address were adopted for compiling Parliamentary Electoral Rolls. It is the large amount expended on additional clerical assistance that makes the expenditure so high. The amount that could be saved in this direction alone is estimated at £14,000. 15

The compulsory compilation of the rolls, the legislation for which was also based on the Commonwealth Act, was found to be both effective as to numbers of voters enrolled, and inexpensive in that £10,000 was saved compared with the cost of compiling the rolls for the 1922 election. 16

5.31 There was from that year until the coming to power of the first Labour Government only 1 piece of significant legislation. Even that turned out to be transient in its effect. The Electoral Amendment Act of 1934 increased the length of the parliamentary term to 4 years. In 1932, the Finance Act had extended the term of the existing Government by 1 year to 1935 on the grounds, as Forbes commented, that "There has been no period in the history of this country when things have been so difficult, and naturally any man with forethought must realise that it will take some time to so arrange our plan of readjustment as to enable this country to get back to normal conditions". 17 At the same time he also expressed a preference for a permanent 4-year period over a 3-year period. In speaking to the Bill in 1934, he argued:

As far as one can see, the business confronting every Government in the civilised world is becoming greater and greater, heavier and heavier year by year; and it is in the interest of this country and of every other country that there should be sufficient stability and a sufficiently long term of
office to enable the Government to think out its measures and put them into effect... The more one examines the principle of the extension of the life of Parliament, the more one is convinced that, having in mind the real interest of the people of the country, a longer term than three years would be beneficial... If honourable gentlemen opposite are fortunate enough to be in office at any time, they will agree with me that, if a policy is to be carried out, it requires some little time... to enable the people of the country to understand and appreciate it.10

The following year the Labour Party was to have an effective opportunity to comment on Forbes's arguments.

6 The First Labour Government

6.1 The Labour Party came to power in 1935, and in 1937, by means of the Electoral Amendment Act, restored the term of Parliament to 3 years. In committing the Bill, H. G. R. Mason said only that:

Whatever may be thought as to the question of the proper life of Parliament, as far as this Government is concerned, it believes that Parliament is a trustee for the people and should not enlarge the life of Parliament except in so far as the people have definitely assented to that enlargement. Pursuant to that view, the Government has taken steps to restore to the people the right which they previously had, a right which, it seems to this Government, was wrongly taken from the people.1

Mason is here saying that such a change should have been submitted to the electors, at an election, before it became law.

6.2 The major part of the Bill, and the debate, concerned itself with bringing the procedure for Maori voting more into line with that of the elections for European seats.

6.3 In its 1928 election manifesto, the United Party had promised "To provide the Maori Electors with a Roll for the Four Maori Electorates [and] in the absence of such a Roll, the scrutineers will be allowed in the Public Booths".2 With the death of Ward in 1930 and the replacement of his Government by that of Forbes, however, no legislation was to be passed. W. A. Veitch, who was Minister in Charge of the Electoral Department under both Governments, had asked the Chief Electoral Officer in October of 1930 about the feasibility of preparing Maori Rolls, and the latter had replied that he saw "no difficulty in carrying out the work, although it is quite possible that at first Maoris would be somewhat dubious about enrolling under the compulsory provisions, as applied to Europeans".3 Nothing ensued at that time.

6.4 The possibility of scrutineers being present in booths during polling in Maori electorates had for many years been argued from a number of quarters. As early as 1922 members of the Arawa tribe had unsuccessfully petitioned the Prime Minister for scrutineers to be present while Maori electors exercised their vote.4
6.5 In 1931 H. E. Holland raised the question in Parliament of whether it would be possible to "introduce legislation to bring the Electoral Act, in its relation to scrutineers in the booths of Maori polls, into line with the section of the Act governing the appointment and functions of scrutineers of pakeha polls?" In the draft of a reply, which was apparently not delivered, it was stated that "It is not considered desirable to amend the Electoral Law in the direction suggested, as under the present system of voting by Maoris [i.e. by declaration] the secrecy of the ballot could not be so easily maintained if persons other than the officers were allowed to be present during the voting hours".

6.6 A year later attention had shifted to ensuring the secrecy of the poll. Tiritiratene asked in Parliament:

Will the Prime Minister take immediate steps to amend the electoral laws, with the object of placing the Maori people on the same electoral footing as the pakeha and to enable elections of Maori members to Parliament to be conducted on the same basis of secrecy as those of all other members of Parliament?" He further described the system of Maori elections under the existing system as "extremely farcical". Forbes answered that this matter would be gone into when the electoral law was again examined.

6.7 This reply indicated that the Government had no intention of proceeding with either the preparation of the Maori rolls or increasing the secrecy of Maori elections in the foreseeable future. The matter, however, was kept alive to some degree by a resolution of the Public Accounts Committee in 1934, to the effect that:

The Committee desires to call the attention of the Government to the present unsatisfactory position in respect to the facilities afforded the Maori when voting for Parliamentary candidates; there being at present no electoral roll for Maori voters.

Further, half-caste Maori voters have the option of voting for either European or Native candidates, and there is very little method of preventing the half-caste Maori from exercising two electoral votes, and under these conditions the abuse of the voting privileges by Natives is facilitated.

6.8 When asked by Forbes to comment on this recommendation, the Chief Electoral Officer replied:

I am doubtful as to whether the time is opportune to call upon the Maoris to register in the same manner as Europeans, as the compilation of a reliable roll would be a somewhat difficult task and lead to confusion on Election Day. There are many Maoris who are educated and capable of filling up an application for enrolment form, but the great majority of Maoris would experience difficulty.

With regard to the method of voting, I do not see any difficulty in devising a system which would give general satisfaction, and suggest the following proposal for your consideration:
6.34 On 19 May 1948 a meeting of officers of the Electoral Office and Department of Maori Affairs, convened to arrange a method of compiling the Maori rolls, had made a number of recommendations to Fraser as the Minister of Maori Affairs. These included:

1. That the registration of votes at the last General Election be taken as the basis of the Roll to be prepared.

7. That Maoris wishing to vote on next Election day who are not on the Roll should be given facilities to vote by declaration; but this concession should not be given publicity until after the rolls have closed. This concession is suggested to avoid disfranchising any person through official or personal omission under the new voting procedure.

8. That in all other details as to registration of Maori voters, the Electoral Department's usual administrative procedure be adopted.

9. That the rolls for the four Maori Electorates should be compiled in the Chief Electoral Office.

6.35 These recommendations were taken up on 3 August 1948 in a memorandum to the Prime Minister from the Chief Electoral Officer. While noting that a roll could in fact be created by proclamation, the latter suggested that, "to remove any doubt as to the extent to which certain parts of the European system should be modified for the Maori, the position should, I think, be clarified by statute." He then suggested that the above recommendations be endorsed by statute.

6.36 Thus the Electoral Amendment Act of 1948 gave statutory authority for the creation of Maori rolls, while at the same time providing for the retention of the Maori right to vote by declaration. It also provided that the preparation of the Maori rolls be centralised in the Chief Electoral Office.

6.37 The Act also took account of the Public Accounts Committee's view of 1934 that a Maori roll would remove the ambiguity in the status of half-castes. Nash, introducing the Bill's second reading, said: It also clarifies the position as to half-castes, and gives them the option of being registered either as Maori or European in the various Maori or European electoral districts. Previously they could register as Europeans only, and vote as such. If they were not registered, they automatically had the right to vote as Maoris.

6.38 The manner in which the Bill was dealt with was, perhaps, as important as its contents. While the 1945 Electoral Amendment Bill had been debated with considerable bitterness, parts of this Bill were clearly the result of agreement before it was introduced into Parliament. On 8 July 1948, Fraser in Parliament took the opportunity of thanking the Leader of the Opposition and others for the assistance they gave in agreeing to certain papers being used in connection with the preparation of the Maori electoral roll. These papers apparently related to the centralisation of the preparation of the rolls. In August
they had been passed by Fraser to the Chief Electoral Officer, with the request that the latter confer with the Leader of the Opposition. The Chief Electoral Officer reported to the Prime Minister on 15 September that he had discussed the matter with Holland and later, at his request, with the Dominion Organiser of the National Party, T. G. Wilkes. Agreement had been reached that the rolls should be prepared in the Chief Electoral Office.

6.39 This movement of discussion of the electoral law and administration out of the arena of Parliament began in the years of "unity" during the war and was to become characteristic of the handling of such legislation for some years in the future.

6.40 A number of minor discrepancies in the law revealed by the Raglan Election Petitions 46 were also rectified. These related to voting by declaration, and the inspection of declarations by scrutineers.

6.41 The Act also abolished the seaman's right. Postal voting was now the preferred means of voting for seamen, and the seaman's right was now seen as redundant. The limit of election expenses was also raised to £500.

7 The Electoral Act 1955

7.1 With the abolition of the country quota the most overt discrimination between rural and urban electoral districts disappeared. Tension of this kind subsequently came to be reflected elsewhere and more obliquely. With the victory of the National Party in 1949, the new Government re-examined the functions of the Representation Commission. In particular, in the Electoral Amendment Act of 1950, the use of the "adult" population figure as that upon which the distribution was based was replaced by the "European" population figure. This was arrived at by excluding the Maori, persons in prisons or mental institutions, and those residing on ships, in hotels, hospitals, or armed services establishments.

7.2 When the Electoral Amendment Bill of 1945 was being debated, R. G. Gerard had commented in relation to the use of the "adult" population figure: "Does the Minister realise what that means in New Zealand where three children are born in the country to every two in town?" The implication clearly was that the use of the "adult" population figure by the Representation Commission would result in the boundaries being drawn in a manner favourable to urban interests. The same point was made in 1950 by T. C. Webb in speaking to the Electoral Bill of that year. On the other hand, T. H. McCombs, son of J. McCombs, criticised the abandonment of the "adult" population figure as "actually equivalent to about an 8 per cent country quota", 2 and as a measure which in effect handed over power to rural areas.

7.3 The same preoccupation manifested itself in considerations of the figure of tolerance relative to the quota for each electoral district. It has already been noted that in 1946 the Representation Commission had recommended increasing the tolerance allowed from 500 people to 7½ per cent of the quota in order that better consideration might be
districts and Europeans standing as members for Maori electoral districts. No change is made in the qualifications for registration as electors...[5]

8.10 The reply of the Leader of the Opposition, N. E. Kirk, suggested a more sympathetic attitude to integration than was seen 2 years earlier in his Party.

As the Minister knows, I took the opportunity on a recent occasion of saying the time had come for the Maoris to be able to enrol, as a matter of choice, on either a European roll or a Maori roll. This does not appear to have been accomplished in the Bill the Minister is introducing. Instead, he says that any person, Maori or European, may contest either a Maori seat or a European seat.

This means that separate rolls are going to be maintained, that the principle of separate representation is going to be maintained, but that any Maori may contest any European seat and any European may contest any Maori seat. It seems to me that it might have been a much wiser step to have moved towards integration by leaving the Maori an area of choice to enrol either as a European or as a Maori elector, thus automatically giving him the right to contest a seat either as a European or as a Maori. [6]

8.11 On 2 July 1969 the Deputy Leader of the Opposition, H. Watt, presented a petition to Parliament on behalf of the 11,000 signatories requesting that the age of qualification for voting be lowered to 18 years. This was the culmination of considerable social pressure over a number of years. Parliament lowered the voting age to 20 in the Electoral Amendment Act of the same year. Marshall, in introducing the Bill's second reading, commented:

If we are to admit young people of 20 to the rights of citizenship and of exercising the vote we must review their other legal disabilities and face the larger question of the general age of majority. I have already told the House that the Government is undertaking this review...we are not committed to an over-rigid approach or an across-the-board change. We are looking at each case on its merits.[7]

The Opposition supported the Bill, but clearly would have preferred the voting age to be lowered to 18 years.

8.12 In 1967 the Chief Electoral Officer had suggested to the State Services Commission the possibility of using computers in the preparation of the electoral rolls. Thus, in 1968, a feasibility study was conducted by the State Services Commission to consider its viability. The study recommended the establishment by computer of a master record which once established, could be kept up-to-date from information as it came to hand. It further noted that "The most logical point at which to carry out this process is at the District Electoral Office, where staff would have local knowledge of the electorate".[8]
8.13 In 1969, the electoral rolls for 6 Wellington electorates (Porirua, Western Hutt, Karori, Wellington Central, Island Bay and Miramar) were prepared by computer. This experiment was considered to have been in general, successful, and it was recommended that computer coverage be extended to all electorates.

8.14 In 1970, a sub-committee of the Public Expenditure Committee, chaired by M. A. Connelly, was appointed to consider the economics and administration of the Registrar-General's Division of the Department of Justice. It confined its recommendations to the activities of the Electoral Office. A number of recommendations of the sub-committee were implemented in the Electoral Amendment Act of 1971. These included the increase of the limit of members' election expenses to $1,500.

8.15 Among the sub-committee's more important recommendations was that, "in the compilation of Maori electoral rolls, the printing of the full tribal name be dispensed with, but that tribal identification . . . and sex classification, be retained meantime". On this question, the sub-committee consulted the Secretary of Maori Affairs, who agreed that some Maori did not in fact know the tribe to which they belonged. However, he also "instanced cases where, but for the advantage of having the tribe recorded, it would not be possible to distinguish between voters".

8.16 The sub-committee also recommended that the party allegiance of a candidate be indicated on the ballot paper, and that more vigorous attempts be made to ensure that the names of all those who were entitled to vote should appear on the rolls.

8.17 It also found "That it is feasible and desirable for a single agency with computer facilities to be given the responsibility of undertaking enrolments for both parliamentary and local authority elections". As a consequence, it recommended that a single agency be established as quickly as possible, with the necessary electronic data processing facilities, to undertake the enrolment for both parliamentary and local body elections, and that the overall responsibility for its operation rest with the Chief Electoral Officer. The expectation was that the rolls for the 1972 election would be prepared by computer.

8.18 The sub-committee also examined the use of canvassers to ensure as complete an enrolment as possible. This was done in the United Kingdom, Canada, and Australia. Although it made no specific recommendation on this matter, it did suggest generally that Government "should play a more positive role in ensuring that those eligible to vote are enrolled", and indicated ways in which individual departments could contribute to this end. In discussing the work of canvassers, the sub-committee compared their work to that of taking the census.

8.19 In 1973 the Minister of Justice, Dr A. M. Finlay, set up a Parliamentary Select Committee to consider possible improvements to the Electoral Act. Its Chairman was J. L. Hunt, who had been a member
of Connelly's sub-committee. In the following year it published an interim report in which it recommended that the qualifying age for voting be lowered to 18 years. This was in any case Government policy, and it became law in time to apply to the Sydenham by-election, with the passing of the Electoral Amendment Law of 1974.

8.20 The recommendations of the Final Report of the Committee, published on April 16, 1975, were largely implemented by means of the Electoral Amendment Act of the same year. The recommendations that the size of the House of Representatives be increased to 121, and that a consolidating New Zealand Constitution and Electoral Act be passed, were not taken up.

8.21 A number of changes were of purely antiquarian interest. Statutory bans on bands, flags, and banners, and the use of committee rooms in licensed premises, were removed. Candidates were last allowed to provide a light supper for the public after an election meeting.

8.22 Others reflected wider social changes. British nationality was no longer a qualification for voting. Instead, all New Zealand citizens and all permanent residents were to be entitled to vote. The term "European" was replaced by the term "General" relative to rolls. The necessary period of residence in an electoral district, as an entitlement to vote, was also reduced from 3 months to 1 month.

8.23 Candidates were also allowed to appoint more than 1 scrutineer for each polling booth, though only 1 was permitted to be in attendance at any one time. The party affiliation of a candidate was now required to be placed on the ballot paper. Allowable candidate's expenses were increased to $2,000.

8.24 More important perhaps were the changes made in the Representation Commission. As it was intended that the rolls should also be usable for local body elections, the Chairman of the Local Government Commission was placed on the Commission. However, he was not allowed to vote. The ban on public servants as unofficial members of the Commission was altered to cover only those directly concerned with the administration of the Act. The time during which the Commission was required to report was increased from 4 months to 6 months.

8.25 On Maori representation, the Select Committee commented as follows:

Most submissions received by the Committee dealt wholly or in some part with the question of Maori representation. Nine submissions proposed that Maori seats should be abolished immediately or in the near future. On the other hand four submissions suggested that the number of Maori seats should be determined by the Representation Commission in the same way as those of "European" seats, namely on the basis of total population. This would obviously lead to an increase in the number of Maori seats...
Several submissions stated that on the basis of total population Maoris were under-represented and were entitled to seven seats. Because the figures for Maori population published after each census class all half-castes as Maoris, while for electoral purposes half-castes at present are given the option of deciding whether to vote on either roll, there are no exact figures for Maori population ...

On the other hand it does not seem opportune at this time to abolish the Maori electorates altogether. There were six submissions from Maoris or representatives of Maori organisations and not one of these submissions favoured the abolition of Maori electorates. The Committee must take note of this and also of the request for changes to provide for a different basis of representation.\textsuperscript{18}

8.26 The Select Committee also referred to Section 2 of the Maori Affairs Amendment Act 1974 which defined a Maori as "any person of the Maori race of New Zealand and includes any descendant of such a person".\textsuperscript{19} This became the basis of the legislation’s definition of a Maori:

"Maori" means a person of the Maori race of New Zealand;
and includes any descendant of such a person who elects to be considered as a Maori for the purposes of this Act .\textsuperscript{20}

8.27 It also recommended, in line with the suggestion that the number of Maori seats should be determined by the Representation Commission, that that body "determine the boundaries of the Maori seats using the same basic principles as are used for determining the boundaries of General seats".\textsuperscript{21} The Select Committee admitted the difficulty of identifying those who considered themselves to be Maori for these purposes, and consequently recommended:

that the total number of those wishing to enrol on a Maori roll together with their children under 18 be divided by the New Zealand quota and the quotient then obtained shall represent the number of Maori seats.\textsuperscript{22}

8.28 This recommendation was made only by a majority of members of the Select Committee. The Opposition argued, both in the Select Committee and in Parliament when the Bill was introduced there, that the number of seats should be determined on an adult population basis. This recommendation was incorporated in Section 8 of the Act.

8.29 Two other recommendations relative to the Maori representation were of great significance. These were that:

The Committee recommends that on the electoral enrolment form to be distributed with the census form at the time of every census, all adult Maoris be given the right to choose whether they wish to vote on the Maori or General electoral roll . . .

The Committee recommends that no person be able to transfer from a Maori roll to a General roll except at the time of a census.\textsuperscript{23}
This was an important change in that now all the Maori and not only half-castes had the option of choosing whether they wished to be on the Maori or General roll.

8.30 The combining of the enrolment of voters with the taking of the census was recommended by the Select Committee for both Maori and General electorates. The idea had arisen out of the growing interest in the use of canvassers to place people on the roll.

8.31 A number of submissions to the Select Committee had recommended that a question could be placed on the census questionnaire for the Maori to determine their own racial standing and ultimately the electoral roll on which they wished to vote.

8.32 A system was worked out whereby census enumerators delivered and collected separate enrolment cards concurrently with but independent of census questionnaires.

8.33 The Select Committee also recommended that the Post Office play an active part in the electoral process. Whereas the District Electoral Officers were at the time invariably officers in the Courts Division of the Department of Justice, the Select Committee recommended that these be replaced by officers appointed from the staff of the Post Office. However they also suggested that overall responsibility for the elections remain with the Chief Electoral Officer.

8.34 These recommendations were all adopted in the legislation of 1975. The enrolling of voters had thus become a somewhat complicated process. Enrolment papers were to be delivered and collected by census enumerators, who would then hand them over to the Post Office. From these cards in turn a national computerised roll was to be constructed by the Electoral Office. The unwieldy nature of this system, made more complicated by the law as it related to Maori enrolment, was to contribute in a major way to the problems that would be experienced with the rolls in the 1978 election.

8.35 The Electoral Amendment Act of 1976 repealed the Section of the 1975 legislation relating to the number of Maori seats, and reintroduced the legislation of the Electoral Act of 1856. This was the result of the change of Government in 1975, and of the new Government’s avowed policy of having no more than the 4 existing Maori seats. The adjustment of the boundaries of the Maori electoral districts was removed from the jurisdiction of the Representation Commission and returned to the Governor-General.

8.36 The 1975 legislation’s definition of “Maori”, and their right to choose which roll they wished to be placed on at the time of each census, remained unaffected. The Maori Option thus became a permanent institution.

8.37 The 1977 Amendment Act repealed further provisions of the 1975 Act. Prisoners, who had been enfranchised for the first time in 1975, were again disenfranchised. The residential qualification which had been reduced to 1 month in 1975 was restored to the former period of 3 months. The 1977 Act also repealed a provision of the 1975 Act
which had allowed qualified but unregistered electors to vote who
believed on reasonable grounds that they were or should have been
registered and who gave the issuing officer a completed enrolment
form. This had been in effect a form of election-day registration.
Notwithstanding the availability of this facility in 1975, there were still
44,997 special votes disallowed because the voters were not enrolled.
This was 22 percent of the total number of special votes received, a
proportion similar to that of subsequent general elections.

8.38 During the 1975 election campaign, individuals had associated
independently of party affiliations to publish material supporting the
candidacy of the Prime Minister, the Rt. Hon. W. E. Rowling. The 1977
Amendment Act provided that no advertisement for the promotion of a
candidate was to be published unless the publication of the
advertisement was authorised in writing by the candidate, or by a
political party where more than one candidate was supported. Every
advertisement authorised by a candidate was to form part of the
candidate’s election expenses, the limit of which was raised from $2,000
to $4,000.

8.39 On 20 June 1977 the boundaries of the General electoral
districts for the next general election were proclaimed in the Gazette.
The 1975 Amendment Act would have required the compilation of rolls
on the new boundaries within 3 months after the gazetting of the
proclamation. It did not prove possible to meet this deadline. The delay
was validated by the Electoral Act (Validation of Irregularities) Order
1978.

8.40 Various complications arose in implementing the new
enrolment system established by the 1975 Act. Electors were required
to re-enrol on census night, which was also the time when the Maori
Option had to be exercised. The responsibility for compiling rolls from
the forms derived from the census exercise had been transferred to
Post Office employees. The Chief Electoral Officer did however retain
overall responsibility. His inquiries soon convinced him that the census
re-enrolment had been far from complete. He decided that the cards
held for those who had not enrolled should be retained to avoid the
disenfranchisement of these electors. In this way many outdated entries
came to be in the 1978 rolls. The Hunua Electoral Court was to uphold
the validity of this action in respect of non-Maori electors, but different
considerations applied to registrations for a Maori electorate as this
required the exercise of an option in favour of the Maori roll. In October
1977 the Chief Electoral Officer called in all cards from the electorate
offices. Enrolment cards were thus centralised and held in alphabetical
order at the Chief Electoral Office in Lower Hutt. It was considered that
a centralised collection of cards was necessary to guard against
duplications of enrolment and infringements of the rule against
changing from a Maori to a General roll (or vice versa) outside the time
designated for the exercise of the Maori Option. The Hunua Electoral
Court held that while the centralisation of the cards was not authorised
and did involve breaches of duty by the electorate officers, the
8.49 The work of the Select Committee on the Electoral Law has, since its inception in 1979, focused mainly on the enrolment of electors. Its terms of reference have, however, not been confined to that aspect of electoral law. It has always had a general power to consider matters relating to the law and practice of parliamentary elections. Under its original terms of reference the Select Committee was specifically asked to consider such matters as the method of voting and the fundamental question whether the first past the post system of representation should be retained or replaced by an alternative system.38 When this matter came to be considered in 1981, the Committee recommended that the present system be retained.39 A minority of the Committee supported the establishment of a Royal Commission to carry out a detailed investigation into alternative methods of representation in the New Zealand context.40 When the Select Committee was reappointed in 1982 the question of alternatives to the existing system of representation was no longer included among the Committee's specific terms of reference. These were, first, the merits and feasibility of combined rolls, an item carried forward from the original terms of reference; second, the implementation of the new provisions on the electoral system; third, whether any further changes should be made to the electoral law and its administration in the light of the 1981 election, and fourth, the procedures required for the 1982 Maori option exercise.41

8.50 In its Third Report, the Select Committee was concerned to effect further refinements to the enrolment system and to clarify questions concerning the qualification of electors raised in the course of the Taupō Petition. One of these was whether an elector whose name lawfully appeared on the roll had to be qualified at the time of voting. The Committee recommended that the Act expressly state that this was a requirement. It also paid considerable attention to electors who, because of their unusual situation, were disadvantaged by the enrolment system. The Electoral Act provided that electors could not be registered unless they had resided in a district for a period of 3 months. The only exception was in the case of electors with an itinerant occupation and their spouses. The Committee proposed to extend that exemption to all those who, for whatever reason, had never attained a residential qualification in an electorate. Another group hitherto unable to vote were young persons who attained the minimum age of 18 years on election day. People who attained their residential qualification (3 months) on election day had been under a similar disability. The Select Committee recommended that electors in these 2 categories be allowed to enrol in anticipation of their qualifications as from the Monday before election day. These recommendations were implemented by the Electoral Amendment Act 1983. That Act also raised the limit of permitted election expenses to $5,000, also on the recommendation of the Select Committee.
The Select Committee was again reappointed on 17 August 1984, 1 month after the election of the fourth Labour Government. This time it was charged to consider (1) all matters relating to the electoral system which may be referred to it, and (2) such matters relating to the law and administrative procedures governing parliamentary elections as the committee thinks fit, especially in the light of the experience of the 1984 General Election, and in particular the merits and feasibility of combined rolls for parliamentary and local body elections.\(^{42}\)

It was, however, understood at the time of the Select Committee's reappointment that a Royal Commission on the Electoral System would shortly be established and that the scope of the Select Committee's inquiries would therefore be limited. The intention of establishing a Royal Commission had been announced as part of the Labour Party's "Open Government Policy 1984" during the general election. The Royal Commission under the chairmanship of the Hon. Mr Justice Wallace was established on 18 February 1985 to receive representations upon, inquire into, investigate, and report upon the following matters:

1. Whether any changes to the law and practice governing the conduct of Parliamentary elections are necessary or desirable;

2. Whether the existing system of Parliamentary representation (whereby in respect of each electoral district the candidate with the highest number of votes is elected as the Member of Parliament for that district) should continue or whether all or a specified number or proportion of Members of Parliament should be elected under an alternative system or alternative systems, such as proportional representation or preferential voting;

3. Whether the number of Members of Parliament should be increased, and, if so, how many additional Members of Parliament there should be;

4. Whether the existing formulae and procedures for determining the number and boundaries of electoral districts should be changed, and, in particular,—
   (a) Whether the redistribution of electoral districts should be based on total population or adult population;
   (b) Whether the allowance of 5 percent by which the population of an electoral district may vary from the quota should be changed;
   (c) Whether the membership and functions of the Representation Commission and the time limits and procedures governing its functions should be changed;
   (d) The feasibility of some form of appeal from decisions of the Representation Commission: