



The Governor-General of New Zealand

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Speech

Electoral Commission – Address to Returning Officers and Registrars of Electors

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E nga kaiwhakahaere o nga kowhiringa pooti a Iwi
Tena koutou, tena koutou, tena tatou katoa
He tau nui tenei mo koutou, he tau nui hoki mo te motu. Kia maia, kia manawanui, kia kaha.

I'm delighted to be here and have this opportunity to talk to you all about our democratic system.

New Zealand's electoral processes are essential for effective public participation in our parliamentary democracy. Public trust and understanding about those processes are never more important than in the lead up to a General Election.

It's the perfect time to reflect on our respective roles in the democratic process.

Your work as Returning Officers and Registrars of Electors is vital in fostering trust in our democracy.

As Governor-General, my role is to contribute to public understanding of the constitutional principles relevant to elections.

That includes the process of government formation following a General Election.

In recent years, democracies around the world have been grappling with some big issues:

- how to foster democratic dialogue and mutual understanding,
- how to manage and prevent division and polarisation, and
- how to tackle disinformation and risks of foreign interference in elections.

All these challenges need to be addressed in the context of an increasingly complex and siloed information environment.

They will not be resolved through our electoral processes alone.

However protecting the integrity of our electoral system is an essential step in addressing these concerns.

Like many others, I am concerned about declining voter participation, especially among young people.

Confidence in the fairness and transparency of the electoral system is a key element in encouraging New Zealanders to vote.

Or to put it another way, a lack of transparency or a sense that the system is unfair is likely to discourage participation.

One of the defining characteristics of our MMP system is proportionality, which delivers a Parliament where parties' shares of seats roughly mirror their share of the nationwide party vote.

The 1986 Royal Commission on our electoral system and the Electoral Commission's review of MMP in 2012 both noted that proportionality has the potential to enhance the perception of the fairness of New Zealand's electoral system.

However realising that potential depends on New Zealanders having an accurate understanding of the MMP system and how governments are formed.

That understanding will lead to an increasingly mature electorate, making informed choices about how to use their two votes.

In 2013 my predecessor, Sir Jerry Mateparae, spoke to the Press Gallery about the Governor-General's role in the process of government formation following a general election.

He explained that the negotiations between political parties that follow a general election are not the business of the Governor-General. That is a political process for those who have been elected to the House of Representatives.

P. The conventional role of the Governor-General is to ascertain where the confidence of the House lies, so that a government can be appointed.

In other words, the Governor-General looks for both quantity and clarity – the confidence of the House, expressed in clear and public statements.

Turning first to quantity: The formation of government depends on one or more parties being able to show that they are able to obtain the support a majority in the House of Representatives. By so doing they demonstrate that they have the confidence of the House.

The legitimacy of any government comes from having the support of a majority in a democratically elected parliament.

The current government – the Labour/New Zealand First coalition with Confidence and Supply from the Green Party – demonstrates how government formation has evolved under the MMP system.

For the first time, following the 2017 election, it was not the leader of the party with the single-largest share of seats who was able to secure a majority, and so form the government and be appointed as Prime Minister.

Despite not having the single largest share of seats, Jacinda Ardern, as Leader of the Labour Party was able to demonstrate “quantity”, having secured the support of more than half the elected members in the House.

Next to clarity. It is not enough for a party or grouping of parties simply to have the numbers in the House. They must also publicly communicate the result of their negotiations – in clear and public statements.

Those statements may be oral or written. Either way, they should set out in unambiguous terms the nature of the political arrangements agreed between the parties.

While not essential, a written public statement is preferable to oral statements alone, because it offers greater certainty and transparency.

This assists me to ascertain where the majority lies, and more generally, provides public accountability to the electorate.

The events following the 2017 General Election provide an example of how these arrangements can operate:

On 19 October 2017, Winston Peters announced publicly that New Zealand First would be going into coalition with the Labour Party. Jacinda Ardern stated that she had spoken to the incumbent Prime Minister, Bill English, who had acknowledged that the negotiations between the National Party and New Zealand First had ended.

This provided a good indication that there might not be a viable alternative. But it was still necessary to hear from the Green Party before I could be assured that one grouping of parties had secured the confidence of the House.

The Green Party had internal ratification procedures to go through. With those completed later that evening, the Green Party confirmed publicly that there was agreement between the Labour Party and the Green Party on confidence and supply.

At that point, although there were not yet any written agreements, the three parties had made sufficiently clear and public statements of their intentions regarding confidence and supply to satisfy both quantity and clarity.

The parties publicly signed written agreements five days later.

As I mentioned, written documents have the advantage of offering certainty and transparency about the matters agreed between the parties. I expect that the practice of preparing written agreements will continue.

Within the boundaries of quantity and clarity, there are various government formation arrangements that may emerge following an election.

The single party majority is well understood: If one party has a majority on election night then it is in position to demonstrate it has the confidence of the House of Representatives and can form a government.

The Governor-General's role is then to participate in the mechanics of the transition to the new administration.

Of course, even in this scenario, a party with a majority on election night might still choose to enter into an arrangement with another party.

There are other scenarios which may not be so widely understood.

In particular, where majority support for one party or group of parties is not immediately apparent following the election.

As I mentioned earlier, the result of the 2017 election demonstrated that under MMP a single party with the largest share of the votes will not necessarily be able to negotiate coalition and support agreements.

p. Without those agreements they cannot obtain the confidence of the House required to form a government.

Further, an incumbent Prime Minister has no entitlement to any preference in the government formation process. That Prime Minister, like the leader of any political party, must be able to demonstrate they have the confidence of the House, otherwise they might fail at the first hurdle of a confidence vote.

Matters of confidence include the Budget, the Address and Reply Debate and anything the Prime Minister declares to be a confidence vote.

A party or grouping of parties may be able to secure a majority sufficient to establish confidence even if it does not hold more than half the seats in the House.

For example, a party may state publicly and unambiguously that it will abstain from matters of confidence in favour of another party or grouping of parties. That would enable that second party or grouping to obtain a majority on matters of confidence. It would also provide the assurance of “quantity” that the Governor-General looks for.

I know that in some other democracies, like Canada, minority governments have taken office and have had to demonstrate at a later time that they can muster the support of a majority in the House – say, when a vote of no confidence is moved in them, or when seeking approval of their budget.

That is not New Zealand’s constitutional tradition.

The requirement that a proposed governing arrangement has the confidence of the House is something that Governors-General have always looked for.

A feature of coalition and confidence and supply agreements in New Zealand has been that one party might note that their support is given subject to one or more conditions being met.

The Governor-General’s concern here remains whether there are clear statements that a majority has been obtained.

The onus is on the politicians to clarify their position. Ultimately, if the parties make clear and unambiguous statements about their position on confidence and supply, the Governor-General would not inquire into how that support has been obtained.

Of course, in practice there can never be a guarantee that any agreement will hold for a full term. That is a matter of politics.

And even if an offer of support was expressly given for less than the full parliamentary term, the Governor-General could still appoint a government if the proposed governing arrangement could obtain the confidence of the House at the time of appointment.

But if an offer of support were only for a very limited duration – offering support for the first vote of confidence but no further for example – then it might be preferable for the Governor-General to encourage the parties to continue negotiating towards a clearer or more durable arrangement.

Before appointing a government in such circumstances, the Governor-General may therefore consider it appropriate to ask party leaders whether a support arrangement for a longer duration might in fact be possible with further negotiation

If that is not possible, or further negotiations proved fruitless, the Governor-General could still appoint a government, stating publicly that they had been advised that a support arrangement for a longer duration was not possible.

In such circumstances, the majority may well be insecure rather than stable. Once again, that is a matter of politics.

If the political parties cannot reach an adequate agreement and no government is formed following the return of the writs, Parliament must nevertheless meet.

This year, the latest that Parliament can meet again following the election is 26 November 2020.

At this point the Governor-General would deliver the Speech from the Throne, on behalf of the caretaker government.

Once the formalities of the state opening of Parliament were out of the way, there would be an opportunity for the party leaders to move a motion of confidence for the support of the House for a particular party or group of parties to be tested through confidence votes.

Depending on the view of the House, it might be that the incumbent caretaker Prime Minister would move the first motion, followed by the leader of the other major party moving an amendment to that motion.

A vote of no confidence in one or other party or group of parties is not sufficient – a positive vote of confidence in one party or group of parties is required for the Governor-General to appoint a government.

Ultimately, it is the Governor-General's function to try to give expression to the will of the House and thereby to the will of voters.

Q. Of course, it may well be that even at this point no party leader is able to muster the support necessary to win a confidence vote.

The question is then whether another election is required to resolve the situation. In that event, the incumbent Prime Minister would be bound by the caretaker convention.

Consequently, the Governor-General would expect the caretaker Prime Minister to consult other parties on any decision to advise the calling of another election, to ensure that the advice has the support of a majority of the House.

It is the responsibility of the members of Parliament to resolve matters so that the Governor-General is not required to consider dissolving Parliament and calling an election without ministerial advice.

I have attempted to be brief in my remarks on the process of government formation, but as you can see it can be a fluid and complex process.

Not easily summarised in other words!

This only reinforces the importance of continually working to ensure New Zealanders understand the electoral system, how their participation leads to representation in Parliament, and how governments are formed from amongst their elected

representatives.

We all have a role to play in this undertaking. In particular, the roles of the Electoral Commission, the Returning Officers and Registrars of Electors are key.

You are responsible for:

running an effective and impartial electoral system that New Zealanders understand and trust;

educating New Zealanders about enrolling and voting; and

working with communities to help them understand and take part in elections, especially communities with low participation rates.

I thank you for the work you will do over the coming months.

I hope that your efforts will be rewarded by a resounding turnout of the largest and broadest range of New Zealanders possible. And that those voters understand how their vote contributes to the representativeness of our Parliament and governing arrangements.

Kia ora huihui tātou katoa

Coronation of King Charles III



Acknowledging the new King of New Zealand