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Waka-juping is personal for Winston Peters. Photo: Lynn Grieveson



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COMMENT

MPs should be free to take an independent stand

NZ's political system relies on MPs holding those in power to account, even if that means going against the wishes of their party, writes Peter McKenzie

"The first duty of a member of Parliament is to do what he thinks in his faithful and disinterested judgment is right and necessary... His second duty is to his constituents, of whom he is the representative but not the delegate... It is only in the third place that his duty to party organization or programme takes rank. All these three loyalties should be observed, but there in no doubt of the order in which they stand under any healthy manifestation of democracy."

-Sir Winston Churchill on the Duties of a Member of Parliament

An uneasy political alliance collapsed in catastrophic fashion in the winter of 1998. Jim Bolger's National Government had formed a coalition in 1996 with the mercurial Winston Peters and the newly created United Future - despite the fact that Bolger had expelled Peters from the National party just three

5th

years prior. Maintaining positive relations between parties was a constant balancing act. It was an act which fell apart when Bolger was deposed by his Health Minister Jenny Shipley. Shipley would proceed to remove Peters from his role as Deputy Prime Minister and member of Cabinet.

Peters, needless to say, was dissatisfied with this turn of events. He removed his party from the coalition - spelling doom for Jenny Shipley's government, which could not survive without the votes New Zealand First had provided.

Or so Peters thought. Other members of his party had different ideas. Five New Zealand First MPs broke away and formed a new party called 'Mauri Pacific'. They sustained Shipley's National government for a year until the next election, leaving the rest of New Zealand First mouldering in Opposition.

These events seem to have scarred Peters. By all accounts, it has driven him to demand that the current government pass into law the '*Electoral (Integrity) Amendment Bill*', better known as the Waka-Jumping Bill. Indeed, some say it was a condition of his support for Jacinda Ardern's Labour-led coalition.

The Bill would require an MP to leave Parliament in two circumstances. First, if they chose to leave the party they were elected as part of. Second, if they were expelled from their party by the party leader (which could only happen if the leader has the support of at least two-thirds of the party's MPs).

If they were an electorate MP, they could call for a by-election and try to return to Parliament as an independent or with another party. If they were a list MP, they have no option but to wait for the next election and contest an electorate or enter on another party's list.

P. In the words of the Bill, a party leader may choose to expel an MP if they "*reasonably [believe] that the member of Parliament concerned has acted in a way that has distorted, and is likely to continue to distort, the proportionality of political party representation in Parliament as determined at the last general election*". Pretty subjective.

Currently any politician who enters Parliament can swap parties, or become an independent, and still remain an MP until the next general election (when they must try to win enough support to return with their new brand or party label).

The argument often made supporting the Bill is that it would protect party proportionality as established by voters. No longer could a single MP affect the balance of power in an unfair and anti-democratic manner. Instead it would be the people of New Zealand alone who could change how our Parliament is composed.

There is a principled obligation that exists for all MPs, whether electorate or list, to take independent stands if they deem it necessary.

The argument was far stronger when it was first made eighteen years ago as New Zealand adapted to the new world of MMP. Between 1996 and 2001, thirteen MPs changed their party affiliation while staying on in Parliament - which led to a short-lived law prohibiting waka-jumping between 2001 and 2005. However, since 2005 only four MPs have made similar jumps - a clear demonstration that our political culture has evolved.

That evolution is demonstrative of how the incentives experienced by individual MPs have changed since the early days of MMP. Remaining a part of a strong, existing party ensures a consistent flow of funding, publicity and volunteers during election campaigns. It means there is a reasonably large, professional

staff available to support you whilst in Parliament. It establishes a clear career path from backbencher MP to a Ministerial position. It could even allow you to gain the leadership of your party and become Prime Minister, which must be the secret dream of a fair few MPs.

Waka-jumping MPs must give that up. If we look all the way back to 1989 and at the 34 MPs who have changed parties over that time, none of them jumped from one of the major parties to the other (from Labour to National, or vice versa). Instead all of them became independents, or joined/created minor parties.

Our current political landscape pits Labour and National against each other. Any MP who jumped between them would be considered opportunistic and untrustworthy by both the public and the major parties. There would be little reason for their new party to prioritise them over more trusted, loyal party members and MPs. As a result their political position would be tenuous and it would be hard for them to accomplish political change.

Therefore the only option a waka-jumper has is to become an independent or to join a minor party with less power and fewer options than a major party. Or even better, create your own party. Unfortunately, independent MPs and members of minor parties still face a severe political predicament. For example, the political success of Peter Dunne's United Future or of Te Ururoa Flavell and Marama Fox's Māori Party depended entirely on the benevolence of the larger party they entered into a coalition with. These MPs and smaller parties have far fewer resources and staff to work with, constantly struggle for publicity, and are quickly and repeatedly sidelined by their political colleagues in other parties.

There is also another incentive for government MPs specifically not to rock the boat. New Zealand has partially combined our legislature and executive. The Cabinet which oversees our executive government is made up of MPs - members of the legislature. As a result, there is already a huge expectation that government MPs stay in line, so that controversy does not befall the government they campaigned for, and the colleagues they have spent so much time with.

Taking all this together, there are huge incentives to remain attached to your original party. Therefore the benefit of the proposed Waka-Jumping Bill in 'maintaining proportionality in Parliament' is severely limited - the circumstances in which proportionality might be threatened are rare.

While waka-jumping is rare, when it does take place it is usually important. Consider Tariana Turia's decision to leave Labour and start the Māori Party when the Foreshore and Seabed Act was introduced to Parliament - Turia felt she could not remain in Labour when it supported legislation which she described in Parliament as "*infused with racist overtones*".

Perhaps the best example is National MP Marilyn Waring's stand against Prime Minister Robert Muldoon in 1984. Waring, an unashamed feminist and scholar of international politics, declared that she would vote independently from National on issues of nuclear disarmament and rape. In her view, doing anything else would have been an unforgivable violation of her deepest held principles. While Waring did not officially change parties, she became an independent in all but name.

When MPs such as Turia and Waring feel so compelled to take these stands, they likely represent principles that are widely or deeply felt. Defending those principles is then a better defence of proportionality in Parliament than it is an attack. When Waring decided to vote for the Labour Party's nuclear-free legislation, she was doing so with the knowledge that 72 percent of New Zealanders supported her. Her stand made the vote totals in Parliament more proportionate, not less.

Having dismissed the proportionality argument supporting the Bill, let us consider its flaws. The main problem with it is that the power of individual MPs would be severely curtailed, despite it already being at an all-time low in our current era of strong political parties. Indeed, our current Attorney-General, the Hon. David Parker, declared that the Bill would have "*a chilling effect on an MP's freedom to express themselves inside and outside the House*". In the most obvious case, it prevents an MP from voting

against their party in order to prevent a piece of legislation from passing or draw public attention to its flaws - regardless of whether that MP planned to separate from their party or not. Going back to the case of Waring and Muldoon, had the crisis taken place in our era with this Bill in place surely Muldoon would be sorely tempted to just replace Waring in Parliament rather than pursue a snap election, even if she only planned to vote against their party on two issues.

Further, the Bill would also restrict the influence of individual MPs within the party decision-making system. An individual or small group of MPs could no longer even threaten to withhold their vote in order to secure concessions or changes to a proposed piece of legislation. If they carried through with the threat, they would be expelled from Parliament and other candidates found to be a more stable source of votes.

More fundamentally, the Bill would signal a shift in how our political system perceives MPs. No longer would they be a group of experts, policy-makers and individual thinkers. Instead they are a collective group to be controlled and corralled by their leaders. When such a signal is sent, backed by the law itself, we should not be surprised if MPs take it to heart and behave accordingly.

The response to this by supporters of the Waka-Jumping Bill has been that individual MPs should not have individual voices in the first place. Instead it is the role of a party as a whole to represent segments of the public.

The logic of this argument quickly falls down. If we take it to its extreme, there is no reason for individual MPs at all. Why not just have the leaders of respective parties sitting around the negotiating table, each wielding the respective number of proxy votes allocated to them at the last election? The reason we don't have a system like that is because we have up until now recognised the value of having myriad independent voices constantly challenging, debating and improving upon proposed ideas.

Indeed, there is a principled obligation that exists for all MPs, whether electorate or list, to take independent stands if they deem it necessary.

Let us first consider the role of electorate MPs. When our country decided to change electoral systems from First Past the Post (FPP), there were multiple options to choose from. Many of them entirely removed electorate MPs, instead leaving a Parliament entirely made up of MPs drawn from party lists. Needless to say, we did not choose such a system. The reason? We recognised the importance of having community representatives - individuals who could hear the concerns of their neighbours, see the unique problems facing local communities, and ensure that our national political system addressed those issues. If an electorate MP believes that the best way to ensure their constituents' concerns are heard is to take a public stand against a harmful decision made by their party, then that is not only their right, but their obligation - an obligation they could not fulfil if the Waka-Jumping Bill were to pass.

Further, electorate MPs are not elected solely because of the party they affiliate with. When you vote for your local representative, you make a conscious decision to vote for a name. A person. The party that endorsed them may provide a proxy through which you can understand many of their political beliefs. But it does not tell you everything. Nikki Kaye, representing the affluent electorate of Auckland Central, is far more liberal than the rest of the National Party caucus - as befits her role as the representative of a diverse, young urban centre. Similarly, Stuart Nash, representing the more rural electorate of Napier, is one of the most conservative members of the Labour caucus. As an electorate candidate, Kaye received 1425 more votes than the National Party received in party votes in her electorate. Nash outperformed his party even more significantly, receiving 5996 more votes than the Labour Party did in the electorate. They are distinct political entities, with people often consciously voting for them and not their party. As such, it would be entirely illegitimate for their party to hogtie them once in Parliament.

The arguments against restricting the freedom of list MPs is just as strong. List MPs serve multiple different roles. First of all, they represent social groups which are not geographically concentrated - for example, immigrant communities, religious groups or certain professions. In these cases, list MPs have the same obligation to stand up and speak out on behalf of these groups as an electorate MP does for their local community. The only difference between an electorate and a social group is that the latter is not geographically condensed, they still need and deserve the same level of political protection and representation.

List MPs are also often brought into Parliament as subject matter experts, whether it be Chris Finlayson's extensive legal background, Ron Mark's extensive military career, or the expertise of Julie-Anne Genter on transportation planning. The idea is to ensure that Parliament is guided by the brightest experts and industry leaders. It is the responsibility of these luminaries to ensure that Parliament truly listens to their recommendations about best practice, and that if it needlessly distracted by party political concerns or public relations challenges, that it is forced to return to what is in the best interest of the country.

Fundamentally, all MPs are given significant power and influence. They are provided with staff and resources (to varying degrees). They have access to formal powers such as written and oral questions which allow them great insight to the workings of our government. They are given public platforms of varying sizes, all sizeable, and are able to court media attention far more effectively than any private citizen.

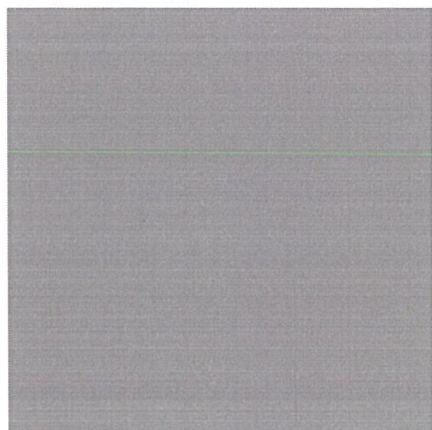
The reason these 120 individuals have been granted this influence is simple - they are expected to hold the powerful to account. Our political system relies on them doing so, even (and especially) if that means going against the wishes of their party. Otherwise we cannot be certain of the honesty and efficacy of our government. I hope that going forward our MPs can continue to fulfil that role.

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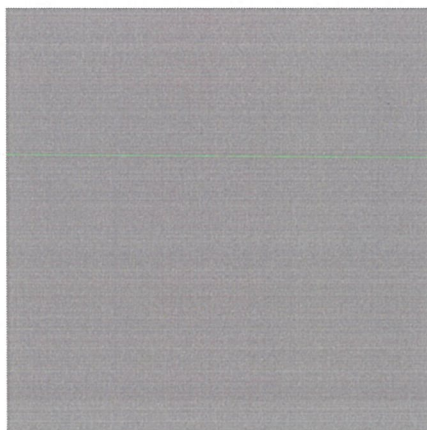
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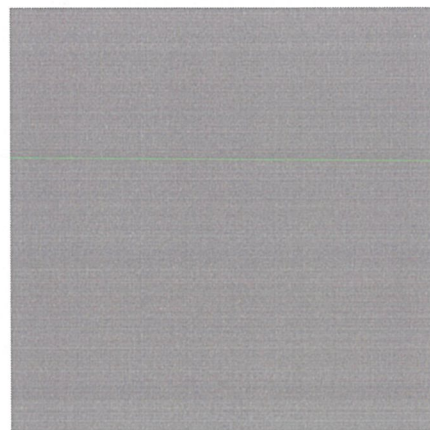


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