

4. Representation Under MMP

Composition of parliament

- 4.1 In 1993, Aotearoa New Zealand moved to the Mixed Member Proportional system (**MMP**), following a Royal Commission report on the electoral system and endorsement through public referendums. The first MMP election was held in 1996.
- 4.2 Under this voting system, people have two votes: one for the candidate they want to represent the area they live in and one for the political party they want to represent them.
- 4.3 Our parliament typically has 120 seats, made up of a combination of electorate seats and list seats. Currently, there are 65 general electorates and seven Māori electorates.¹ This means that, in the absence of any overhang seats, there would be 48 list seats.²
- 4.4 Both types of seats are important: electorate seats ensure local areas are represented, and list seats are primarily used to ensure the seats won by a party reflect its share of the nationwide party vote. List seats may also be used to represent diverse interests and groups.

Allocation of seats

- 4.5 After each general election, the Electoral Commission follows the Sainte-Laguë method of seat allocation, and the steps prescribed in sections 191 to 193 of the Electoral Act, to determine the number of seats that each party is entitled to.³

¹ The number of electorates can change. The Representation Commission reviews and adjusts electorate boundaries after each 5-yearly population census. The next boundary review will take place before the 2026 General Election.

² Following the 2023 General Election, the 54th Parliament had an overhang of two seats. A further seat was added after the Port Waikato by-election on 25 November 2023, which increased the number of list seats to 51 and the total number of seats to 123.

³ Currently, the law requires the allocation of 120 seats amongst qualifying parties using the Sainte-Laguë method. There is not a dedicated provision for how seats in parliament should be allocated if the election for one or more electorate seat is cancelled due to the death of a candidate. We discuss this briefly at the end of this chapter.

- 4.6 Electorate seats go to the candidates who win the most votes in each electorate. Candidates can represent a political party or be independent. List seats are added to any electorate seats won by each party until its share of seats in parliament reflects its proportion of the nationwide party vote, so long as it passed one of either:
- the **party vote threshold**: where a party receives at least five per cent of the nationwide party vote – this was about 142,500 votes in the 2023 election, **or**
 - the **one-electorate seat threshold**: where the party's candidates win at least one electorate seat.⁴
- 4.7 Where a party does not pass either threshold, it receives no list seats. The party votes for these parties are not included in the list seat allocation process.
- 4.8 The total number of seats a qualifying party is entitled to – electorate and list seats combined – reflects its share of the nationwide party vote. The party's entitlement is first filled by any electorate seats its candidates have won. Any remaining seats go to candidates from the party list, in the order that the party ranked them before the election (excluding any successful electorate candidates).
- 4.9 Where a party wins more electorate seats than it would be entitled to through its share of the party vote, it keeps the extra seat or seats, and the size of parliament is increased by that number of seats until the next election.⁵ These are called overhang seats. Further seats are allocated to other parties until the next election to make sure the number of seats those parties have remain in proportion to their share of the nationwide vote. However, if an electorate seat is won by an independent candidate, no additional seats are allocated.

Our consideration of MMP

- 4.10 The way seats are allocated determines the composition of parliament. Any changes to the MMP rules need to consider how they work in combination; changing or removing one component is likely to affect how the others operate, influencing voting habits and impacting election outcomes.
- 4.11 In the sections below, we consider the party vote threshold, the one-electorate seat threshold, overhang seats, and the ratio of electorate to list seats in turn. However, when coming to our recommendations, we considered the effect of each proposed change on the others.

⁴ Electoral Act 1993, section 191(4).

⁵ This right is protected by section 192(5) of the Electoral Act 1993. It provides that a party shall not receive any allocation of list seats if its representation through electorate seats is equal to or greater than the share of the party vote it would be entitled to, but that its electorate seats will not be affected or reduced accordingly.

- 4.12 We have also considered their overall impact on proportionality,⁶ representation (including Māori representation), the effectiveness of parliament, and the ability to form stable governments.
- 4.13 With these interactions in mind, our recommendations in this part of the report form a package and should be read together. We also note our recommendation in **Chapter 2** to entrench the calculation and allocation of seats in parliament and the party vote threshold.
- 4.14 As we note in the **Introduction**, this report was being finalised during the 2023 general election. Where possible, we have incorporated any information that was available about election results into relevant parts of this chapter. However, that information came too late to be part of our consideration of MMP, including our modelling to assess the impact of our recommendations on previous election results.

Party vote threshold

- 4.15 Under MMP, the primary representation threshold for parties is to win five per cent of the party vote. (The exception to this rule is where a party wins an electorate seat, which we discuss in **One-electorate seat threshold**, below.)
- 4.16 The party vote threshold allows parties to enter parliament without needing to win an electorate seat. In the 10 MMP elections so far, from 1996 to 2023, between three and six parties have crossed this threshold.
- 4.17 At the same time, the party vote threshold is a barrier to smaller or newly formed parties entering parliament. Permitting such parties in parliament would be more representative of voters' preferences. However, a proliferation of too many parties in parliament could lead to difficulties forming governments, unstable governing arrangements, and ineffective parliaments.
- 4.18 The party vote threshold aims to balance these two competing factors:
- a parliament that represents a wide range of interests
 - a parliament that is stable enough to allow for effective government and law-making.
- 4.19 To some extent, any representation threshold represents a compromise between these competing considerations.

⁶ Proportionality is the degree to which a party's share of the party vote corresponds with that party's share of the seats in the House.

Earlier recommendations

1986 Royal Commission on the Electoral System

The Royal Commission recommended:

- setting the party vote threshold at four per cent. It considered five per cent as “too severe” a barrier for new and emerging parties
- no threshold for parties primarily representing Māori interests (although this was recommended in the context of wider constitutional change that did not take place).

1993 Electoral Reform Bill

When the Bill that established MMP was introduced into the House, it set the party vote threshold at four per cent. The Select Committee report on the Bill recommended raising the threshold to five per cent but did not give a reason for this change.

2001 Justice Select Committee Inquiry into the Review of MMP

There was no agreement between the parties on the threshold, and no recommendation was made.

2012 Electoral Commission Review of MMP

The Commission:

- advised that the five per cent threshold was higher than it needed to be
- recommended it was lowered to four per cent. It thought this lowering could be done without risk to effectiveness or stability
- argued that reducing the threshold to three per cent could be implemented without significant risks, but that would be a step too far at that stage
- considered that the new threshold of four per cent be reviewed and reported on after three general elections.

The Commission’s view was that a party vote threshold below three per cent would be too large a departure from the balanced approach recommended by the Royal Commission and affirmed in referendums. It stated it would be contrary to public opinion, and in effect constitute a new voting system.⁷

⁷ Electoral Commission, 2012. *Report of the Electoral Commission on the Review of the MMP Voting System*, Wellington: Electoral Commission, p. 16.

Is there a case for change?

Arguments against change

- 4.20 In the first consultation, many submitters who answered our question about the party vote threshold supported the status quo. These submitters thought that the five per cent threshold ensured that parties represented in parliament appeal to significant numbers of people, which avoids fragmenting the political system and undermining the effectiveness of parliament and government.
- 4.21 Other arguments against changing the party vote threshold include:
- Governments and parliaments could become less effective with a lower threshold if more parties are involved in our governing arrangements. For example, more parties could lead to coalition arrangements that do not last the term of parliament. It could be harder for a government to agree on policies and take decisive action where appropriate.
 - A lower threshold could also lead to more deal-making between parties seeking to form a coalition government, either in electorate seats or after the election. This behaviour may be unpopular with voters.
 - A lower threshold may hamper the ability of parliament to function effectively. For example, a large number of parliamentary parties could impact on the Business Committee's ability to agree on the parliamentary timetable. It could also fragment the opposition, decreasing its ability to counter and debate government decisions, and deliver parties with too few members to participate in parliament effectively.
 - While broad representation and having diverse voices in parliament is an important feature of our system, a lower threshold risks electing extremist parties that may not share Aotearoa New Zealand's democratic ideals. A proliferation of such parties could detract from the effectiveness of parliament.

Arguments for change

- 4.22 Most submitters to the first consultation wanted a lower party-vote threshold, for several reasons:
- A lower party vote threshold makes it easier for parties to enter parliament, which increases the diversity of views represented and may also increase representation of Māori and other numerical minority populations.
 - The current threshold presents a high barrier for those parties. In the four elections before 2023, only four parties crossed the five per cent threshold, while between nine and 13 parties fell below it.



- Lowering the threshold would reduce the number of votes that do not count toward the allocation of seats and increase the representativeness of our parliaments.
 - Increasing the number of parties in parliament may also increase the choice of coalition partners, providing more routes to a parliamentary majority and reducing the likelihood that any one party can decide who will govern.
 - A lower threshold could still allow for the election of sufficient Members of Parliament (**MPs**) for a party to be able to operate effectively in parliament.
- 4.23 In its 2012 report, the Electoral Commission considered that about five MPs would be sufficient for a political party to be effective in parliament. This number of seats would be likely under a four per cent or under a 3.5 per cent threshold, for example.⁸
- 4.24 Some submitters supported a higher party vote threshold. These submitters argued the current threshold gives small parties undue influence when forming a coalition – undermining fairness in representation and potentially leading to government instability.

Our initial view

- 4.25 In our interim report, we recommended a party vote threshold of 3.5 per cent. In coming to this recommendation, we considered several different party vote thresholds, earlier reviews, the views of experts, submissions to our first consultation, data modelling, and academic research.
- 4.26 Our aim was to set the party vote threshold at the lowest possible level that would be consistent with maintaining an effective parliament and stable government, to achieve greatest representation in parliament. We acknowledged the merits of a four per cent or three per cent threshold but concluded that 3.5 per cent struck the best balance.

Feedback from second consultation

- 4.27 In the second consultation, submitter views on the party vote threshold were strong and divided but largely consistent with the arguments raised during the first consultation.
- 4.28 Submitters who supported our draft recommendation thought it would make parliament more representative of New Zealanders and their diverse political views and help build trust in our political institutions. A few submitters thought a lower party vote threshold may support more Māori MPs to enter parliament.

⁸ Ibid, p. 15.

- 4.29 Other submitters thought the threshold could be even lower (or removed altogether) and still provide for a stable government and effective parliament, but they generally considered 3.5 per cent to be a step in the right direction.
- 4.30 The Clerk of the House of Representatives noted that a threshold of 3.5 per cent may have implications for parliament's rules and procedures, House time, and select committees, which would need to be considered as part of implementation.
- 4.31 Many submitters supported the status quo of five per cent and a few thought it should be higher. These submitters were concerned about government stability, the fragmentation of parliament, small parties having undue influence over government formation, and single-issue or extremist parties entering parliament.
- 4.32 Some submitters thought a four per cent threshold would strike a better balance between increasing representation and ensuring the effectiveness of parliament. These submitters noted that this threshold would not fragment the vote as much and would reduce the risk of extremist parties entering parliament. It is also the threshold recommended by the Royal Commission in 1986.
- 4.33 A few advocacy groups raised concerns that more parties may run and be elected to parliament on platforms that seek to marginalise some communities, and that this may be seen as legitimising those views, bringing harm to those communities. They gave examples such as a party focused on anti-migrant policies.
- 4.34 Some submitters advocated strongly for second-choice voting to be introduced for the party vote (that is, an optional "back up" vote for another party if your first-choice vote did not pass the threshold), whether the threshold is lowered or not. They differentiated this idea from a full preferential voting system and noted it may improve voter participation rates, support sincere voting rather than tactical voting, reduce the proportion of votes that go to parties that cross neither threshold, reduce barriers for small and newly established parties, and only require a simple change to the ballot paper.
- 4.35 Some submitters called for broader changes to the voting system, such as a return to First-Past-the-Post, which were out of scope of the review.

Our final view

- 4.36 In response to submitter feedback to the second consultation, we reconsidered whether a four per cent or three per cent party vote threshold would strike a better balance between a representative parliament and an effective parliament. We acknowledge the strong arguments in favour of each option, and we note these below.
- 4.37 We maintain our view that a party vote threshold of 3.5 per cent – around 100,000 votes at the 2020 and 2023 elections – is the best compromise for Aotearoa New

Zealand at present. Political parties receiving 3.5 per cent of the party vote would be entitled to at least four seats in parliament, and most likely five.⁹

- 4.38 To some extent, any representation threshold is a compromise between competing considerations. In our view, lowering the threshold to four per cent does not go far enough in providing for a representative and proportionate parliament, while three per cent has a higher risk of ineffective and unstable governments and parliaments.
- 4.39 The current threshold presents a high barrier to small and emerging parties that has in practice operated to stop them gaining representation in parliament. A party vote threshold of 3.5 per cent would improve prospects for such parties to enter parliament, without significant risk of a proliferation of small parties in parliament. In the 10 elections since MMP was introduced, parties have only won between three per cent and 4.99 per cent of the party vote six times. The majority of parties contesting the party vote have won less than one per cent (see **Figure 4.1**).

Figure 4.1: The number of parties and their share of the party vote in MMP elections (1996 to 2023)

Year	5% or above	4 – 4.99%	3 – 3.99%	2 – 2.99%	1 – 1.99%	0 – 0.99%
2023	5	-	1	1	1	9
2020	4	-	-	1	4	8
2017	4	-	-	1	1	10
2014	4	-	1	-	2	8
2011	4	-	-	1	3	5
2008	3	1	1	1	-	13
2005	4	-	-	2	2	11
2002	6	-	-	-	4	4
1999	5	1	-	1	2	13
1996	5	1	-	-	1	14

- 4.40 A 3.5 per cent threshold could increase both voter choice and the choice of coalition partners for majority parties. This might in turn increase the diversity of views represented in our parliament.
- 4.41 A lower threshold may also reduce the number of votes excluded from the process for allocating list seats at each election (often referred to as “wasted votes”). The

⁹ Depending on the number of votes cast for parties that do not pass the party vote threshold.

number of votes discarded from the calculation of seats in parliament is sizeable. At the 2023 general election, about 160,000 votes (5.58 per cent of valid votes) went to parties that did not meet the party vote threshold or the one-electorate seat threshold and were, therefore, not included in the allocation of list seats. This was a considerable decrease from the 250,000 votes (7.71 per cent of valid votes) in 2020 to parties that did not cross either threshold, but an increase from the 120,000 votes (4.62 per cent of valid votes) in 2017.

- 4.42 Several countries function with a threshold between two and four per cent without instability.¹⁰ Our modelling of MMP election results before 2023 supports a 3.5 per cent party vote threshold (see **Table 2, Appendix 3**). Lowering the threshold to 3.5 per cent would only have affected the allocation of seats in 1996, 2008 and 2014. New parties would have entered parliament in 2014 (at a 3.5 per cent threshold) and in 1996 and 2008 (at either a 3.5 per cent or a four per cent threshold) but these changes would not have been likely to affect government formation, and proportionality would have been improved.
- 4.43 These results can only give an indication because a lower threshold would likely change both voter and party behaviour. However, in general, we are confident that lowering the threshold to 3.5 per cent would improve representation without leading to a proliferation of parties, avoiding either political gridlock or instability.
- 4.44 Our final view incorporates the consideration of other options that we noted but did not recommend in our interim report. We were not persuaded in our second consultation to adopt any of these options. For completeness, we repeat them here.

Representation of Māori

- 4.45 We considered retaining the party vote threshold but waiving the threshold for parties primarily representing the interests of Māori. The 1986 Royal Commission recommended this waiver instead of retaining the Māori electorates (alongside broader constitutional change). This approach could support the representation of Māori interests in parliament.
- 4.46 However, it is difficult to identify appropriate and sufficiently clear criteria for a political party representing primarily Māori interests. Concerns about this process led to the proposal being abandoned in 1993 when parliament was considering the change to MMP.
- 4.47 We share these concerns. Problems and uncertainties with a definition could affect the structure and development of parties focused on Māori and Māori interests in unforeseen ways. For example, there may be a diversity of definitions

¹⁰ For example, Denmark has a two per cent threshold, and Austria, Norway, and Sweden have four per cent thresholds.

of a “Māori party” in communities that do not fit the legislated definition, causing dispute amongst groups and harming Māori representation.

- 4.48 In **One-electorate seat threshold**, below, we discuss our recommendation to remove the one-electorate seat threshold and the impact that could have on Māori representation.

Other thresholds we considered

- 4.49 We considered retaining the five per cent threshold. In both consultations, some submitters supported this option. They felt it appropriately balanced diversity of representation and minority influence in government decision-making against the risks extremist parties might pose for the stability of government. However, we consider there is merit in a lower threshold to improve representation, and that the evidence shows the concerns around instability can be addressed.
- 4.50 We maintain our view that a threshold greater than five per cent would limit the representation of a wide range of interests, and we consider there is no evidence that a higher threshold is needed to maintain an effective parliament and stable government.
- 4.51 We heard from some submitters that the party vote threshold should be removed altogether, with all parties eligible for list seats. In practice, a default threshold of around 0.4 per cent would operate, simply because there are a limited number of seats available for allocation. With this default threshold there would be very few votes that did not count towards the final result, meaning the resulting parliaments would be highly proportional and represent a wide range of parties and viewpoints.
- 4.52 However, this default threshold would likely lead to numerous parties being represented in parliament, including small parties with very limited nationwide support. This outcome would fragment and could render ineffective both parliament and government. For example, in 2020 a party could have won a seat in parliament with as few as 12,000 votes, which likely would have resulted in 10 of the 17 parties contesting the party vote being elected to parliament (four more parties than the actual result).
- 4.53 We acknowledge the consistent support for a four per cent threshold from the Royal Commission, the Electoral Commission, the Justice Select Committee, and by some academics and submitters to this review. Lowering the threshold is often cited as the first of two steps, with a subsequent decision about whether it can be lowered further. A four per cent threshold would have made a significant difference to representation at the time that the Royal Commission recommended it. However, now with the advantage of 10 MMP election results to consider, we think that four per cent – requiring approximately 114,000 votes at the 2023 election – would still be higher than it needs to be.



- 4.54 We also considered whether the party vote threshold could be lowered to three per cent or if this amount of change (a 40 per cent reduction) would be too great a step to take in one go.
- 4.55 During engagement, we heard a lot of concerns about extremism and disinformation, particularly in relation to lowering the party vote threshold. We understand these concerns and note that these risks are higher in the current political climate than when MMP was reviewed by the Electoral Commission in 2012.
- 4.56 We think civics education has a significant role to play in mitigating extremism and disinformation, by supporting the health of our democratic institutions and supporting voters to make informed decisions. However, we agree with experts and the Electoral Commission's 2012 view that changes to the party vote threshold should be put in place incrementally.¹¹ Therefore, although the data supported the possibility of the threshold being lowered to three per cent (as the data did in 2012) without too much risk of a fragmented parliament, we do not recommend it at this time.

Preferential voting

- 4.57 We considered both full and partial preferential voting, in response to feedback from submitters that it should be introduced for either or both the party vote and electorate vote.
- 4.58 Full preferential voting would allow voters to rank their preferred parties or candidates (for example, they could select a first, second, and third choice). If a voter's first choice did not succeed, their vote would transfer to their next ranked party or candidate (and so on). Second-choice voting is an example of partial preferential voting, where voters have the option of selecting a "back-up" party or candidate. Both types of preferential voting could make it easier for smaller parties to get into parliament because voters could support smaller or newly established parties or candidates without fear their vote will not count in the make-up of parliament.
- 4.59 We acknowledge the strong support these options received from some submitters during consultation, particularly second-choice voting. However, we remain wary of changes that would complicate the voting process. Adding complexity to how MMP works could be counterproductive, particularly if introduced at the same time as other changes. For these reasons, we think improvements to representation are better realised by lowering the party vote threshold without adding additional complexity.

¹¹ Electoral Commission, above n 7, p. 16.

Interaction with our other recommendations

- 4.60 Lowering the party vote threshold interacts with our remaining recommendations in this chapter. We discuss these interactions as we work through the next topics.
- 4.61 In **Chapter 19** we express the view that education is a better way to counter extremist views about the electoral system than addressing them through the party vote threshold.

The Panel recommends:

- R7. Lowering the party vote threshold for list seat eligibility from five per cent of the nationwide party vote to 3.5 per cent.

One-electorate seat threshold

- 4.62 If a registered party wins at least one electorate (a general or Māori electorate), it is eligible for list seats even if it did not pass the party vote threshold.¹²
- 4.63 The one-electorate seat threshold is often referred to as the “coat-tail provision” because a party with strong support in a single electorate can bring in other MPs on the back of that support.
- 4.64 In six of the 10 elections held under MMP between 1996 and 2023, this provision has enabled at least one smaller party to gain additional representation in parliament. In most cases, the party or parties only gained one list seat but, in two cases, a party gained four list seats.¹³

Is there a case for change?

Arguments against change

- 4.65 In its 2012 review of MMP, the Electoral Commission noted that one rationale for maintaining the one-electorate seat threshold was that it can help increase the effectiveness of smaller parties entering parliament by enabling the workload to

¹² Electoral Act 1993, section 191(4).

¹³ The New Zealand First party was allocated four list seats in 1999 and the ACT party was allocated four list seats in 2008.

Earlier recommendations

1986 Royal Commission on the Electoral System

The Royal Commission recommended a one-electorate seat threshold as part of its MMP model. (In later years, several Commissioners identified this recommendation as a mistake.)

2012 Electoral Commission Review of MMP

The Commission:

- Recommended the abolition of the one-electorate seat threshold due to the arbitrary and inconsistent way it supported proportionality, and that it compromised MMP's core principles of equity and fairness.
- Reasoned that the one-electorate seat threshold confuses the purposes behind the two votes under MMP, and considered that any benefit to proportionality is outweighed by the negative impact on fairness. The abolition of the one-electorate seat threshold would result in all parties being treated in the same way, that is all having to cross the same party vote threshold.
- Stated that the purpose of the electorate vote is to elect a local representative. However, the one-electorate seat threshold goes beyond this purpose, and can significantly influence the make-up of parliament, by bringing in list MPs that would not otherwise be elected.

2017 and 2020 Electoral Commission post-election reports

In these reports, the Commission considered that the 2012 Review of MMP recommendations (addressing this aspect and others) would improve Aotearoa New Zealand's voting system and recommended that they be considered by parliament.

be shared amongst more MPs.¹⁴ Since the introduction of MMP, the one-electorate seat threshold has helped avoid seven instances of single-MP parties. It also happened to increase the number of MPs of Māori descent in some recent elections.

- 4.66 In the first consultation, many submitters who responded to our question on the one-electorate seat threshold supported keeping it. People who favoured retaining the one-electorate seat threshold considered it supports proportionality and representation. This view was held because parties that win an electorate but are under the party vote threshold nationally are still allocated list seats rather than having their party votes discarded.

¹⁴ Electoral Commission, above n 7, p. 19.

- 4.67 Some academics have noted that through the mechanism of the one-electorate seat threshold, local support leads to proportional representation at a nationwide level. For example, in 2002, the Progressives won a list seat with 1.7 per cent of the party vote after winning the Wigram electorate. Without the electorate threshold, the party votes for the Progressives would have not been included in the allocation of list seats.

Arguments for change

- 4.68 As noted by the Electoral Commission in its 2012 report, the one-electorate seat threshold has long been unpopular among a majority of people, particularly for the way it enables parties to gain additional representation in parliament on the back of strong support in a single electorate.¹⁵ People with this view see the threshold as unfairly favouring parties who have their support clustered in one electorate, sometimes as the result of political deal-making, rather than having significant nationwide support.
- 4.69 Almost all electoral experts and academics who responded to our question on the one-electorate seat threshold during the first consultation thought it was unfair or undermined the idea that the party vote should primarily determine the overall make-up of parliament in MMP elections. A widely used example of this effect is the 2008 election result, where the ACT party was awarded four list seats after winning the Epsom electorate, but the New Zealand First party did not get any MPs in parliament even though it received more party votes than the ACT party.
- 4.70 Many submitters to our first consultation called for change, with some noting the inconsistency in how the threshold supports smaller parties and, therefore, produces unequal election results. Another criticism of the one-electorate seat threshold is that it can result in excessive focus on a few electorates, as parties target these seats as a route to representation in parliament. There is a view that this threshold results in the voters in key electorates having a disproportionate influence over the final shape of parliament.
- 4.71 A few submitters thought the one-electorate seat threshold should be retained only in the Māori electorates to support the Crown's obligations under te Tiriti / the Treaty because Māori (as a numerical minority) are at a disadvantage when contesting the nationwide party vote.

Our initial view

- 4.72 In our interim report, we discussed the advantages and disadvantages of the one-electorate seat threshold, concluding that it is fundamentally unfair and should be removed.

¹⁵ Electoral Commission, above n 7, pp. 18, 20.

- 4.73 As an alternative, we considered and sought feedback on whether the threshold should be retained only for the Māori electorates to support the equitable participation and representation of Māori.

Feedback from second consultation

- 4.74 In our second consultation, submitters were strongly divided on whether the one-electorate seat threshold should be removed.
- 4.75 Both groups of submitters were concerned about fairness but had different views on what could be considered a fair election outcome:
- Those in favour of its removal thought it undermines the primacy of the party vote threshold, is open to manipulation by parties, and creates inconsistencies around which parties enter parliament.
 - Those opposed to its removal thought it had been good for smaller parties, supported proportionality, and provided a legitimate alternative pathway to representation in parliament to the party vote threshold.
- 4.76 A few submitters discussed the option of retaining the threshold for the Māori electorates. They raised concerns about how this would be perceived, and the impact it could have on future consideration of Māori political representation. At the same time, they felt a 3.5 per cent threshold would be a barrier for parties representing Māori interests. One suggestion was to raise the threshold to two electorate seats for the Māori electorates and remove it for the general electorates.

Our final view

- 4.77 We maintain our view that the one-electorate seat threshold should be removed if the party vote threshold is lowered to 3.5 per cent. This would mean parties that do not meet the party vote threshold are ineligible for any list seats but would keep any electorate seats they have won.
- 4.78 We recognise that, in several respects, the one-electorate seat threshold has contributed positively to our electoral system. It has:
- led to more representative parliaments than if it had not been in place and the votes for the relevant party discarded
 - supported the effectiveness of smaller parties by bringing in additional MPs to share the load.
- 4.79 However, the one-electorate seat threshold has led to disproportionate focus being placed on some electorates over others. This has resulted in the electorate vote of some voters having more power than others, which clouds the important principle that, in an MMP election, it is the party vote that should primarily determine the make-up of parliament.



- 4.80 It has also led to situations where two parties receive a similar number of party votes, yet only one party is represented in parliament because of where that support was located.
- 4.81 While the one-electorate seat threshold aims to support the effectiveness of parliament by reducing the number of parties with only one MP in parliament, in most cases parties have not gained any further seats. Over the 10 MMP elections between 1996 and 2023, parties with less than five per cent of the party vote passed this threshold 22 times but only gained additional list seats on seven of these occasions (that is, around a third of cases).

Representation of Māori

- 4.82 We acknowledge the concerns that some submitters raised about the impact that removing the one-electorate seat threshold could have on Māori representation, whether or not the party vote threshold is lowered.
- 4.83 If the threshold was retained only for those who won a Māori electorate seat, this would not necessarily guarantee increased Māori representation. The one-electorate seat threshold has on occasion resulted in more MPs of Māori descent entering parliament than would have occurred otherwise. However, crossing the threshold does not guarantee further seats – this depends on a party's share of the nationwide party vote. For these reasons, we do not think the one-electorate seat threshold should be retained as is, nor increased to two seats, for the Māori electorates only.
- 4.84 We think there are other, more reliable avenues to ensure Māori representation. In **Chapter 3**, we set out the recommendations that we think will better support Māori political participation and representation.

Interaction with our other recommendations

- 4.85 Currently, the one-electorate seat threshold compensates the five per cent party vote threshold by providing smaller and new parties with an alternative route to representation in parliament. In several previous MMP elections, parliament would have been less representative if the one-electorate seat threshold was not in place.
- 4.86 On its own, removing the one-electorate seat threshold would have a negative impact on proportionality and representation. However, these impacts are mitigated through our recommendation to lower the party vote threshold, so we recommend these changes as a package.
- 4.87 Our modelling shows that combining a lower 3.5 per cent party vote threshold with removing the one-electorate seat threshold achieves a good balance (compare **Table 1** with **Tables 2 and 3, Appendix 3**). Based on previous election results, three more small parties would have gained seats in parliament. Parliaments would also

have been more proportional and, in general, the outcomes of those elections would have been fairer.

The Panel recommends:

- R8. Abolishing the one-electorate seat threshold, provided the party vote threshold is lowered to 3.5 per cent.**

Overhang seats

- 4.88 An overhang seat occurs if a party wins more electorate seats than its share of the party vote otherwise would have entitled it to. This allocation can happen, for example, when a party's candidates win one or more electorate seats, but their party wins only a small number of party votes.¹⁶
- 4.89 When this occurs, that party keeps all the electorate seats it has won, but the number of list seats allocated to other parties is increased until the next election. Therefore, the size of parliament may vary depending on the election results.
- 4.90 Aotearoa New Zealand's first three MMP elections did not result in an overhang. However, five of the seven elections between 2005 and 2023 have required an overhang: one seat after the 2005, 2011, and 2014 elections, and two seats after the 2008 and 2023 elections.¹⁷

Is there a case for change?

Arguments against change

- 4.91 In the first consultation, many submitters who responded to our consultation question about overhang seats thought they should be retained. They saw the overhang seats as important for ensuring the proportionality of parliament. They considered overhang seats supported the primacy of the party vote in determining the composition of parliament, and reduced any distortions created by parties with local support that is greater than their national support. They also thought

¹⁶ For example, in 2014 United Future won one electorate but only won 0.22 per cent of the nationwide party vote, which would not have qualified it for any seats in parliament.

¹⁷ A further seat was added to the 54th Parliament after the Port Waikato by-election on 25 November 2023, bringing the total number of seats in parliament to 123.

Earlier recommendations

1986 Royal Commission on the Electoral System

The Royal Commission recommended that if a party won more electorate seats than its overall entitlement, extra seats should be created in the House until the next election. It stated that this was to be an “unlikely event.”

2012 Electoral Commission Review of MMP

The Commission:

- Recommended that if the one-electorate seat threshold was abolished, the provision for overhang seats should also be abolished. For example, in 2011, without the one-electorate seat threshold there would have been six overhang seats, which the Commission viewed as likely to be publicly unacceptable. Its modelling of previous election results indicated that removal of the overhang seats would have had a minimal impact on proportionality.
- Noted that there would be little point in abolishing overhangs if the one-electorate seat threshold remained.

that overhang seats ensure all parties receive the seats they are entitled to, either through winning electorates or through their share of the party vote.

4.92 We noted these further arguments against changing the overhang provisions:

- Removing the overhang provisions would unfairly favour parties with strong local support. Parties that win more electorate seats than they are entitled to (based on their share of the party vote) would get a “windfall”: they would retain their additional seats and get a proportional benefit because other parties would receive fewer seats.
- Abolishing the overhang provisions could encourage parties, candidates, and voters to act strategically in ways that could undermine proportionality.

Arguments for change

4.93 Many of the submitters to the first consultation who called for overhang seats to be abolished referred to the arguments made by the Electoral Commission in 2012. The Commission noted that if the one-electorate seat threshold were abolished, there would be a greater chance that parties would win more electorate seats than their party vote would entitle them to. That would then lead to more overhang seats being created to achieve a parliament reflecting party proportionality. The Commission argued that large overhangs would likely be unpopular with the public and create issues for governing.

Our initial view

- 4.94 In our interim report we noted that if the one-electorate seat threshold were abolished, as we have recommended, it may increase the frequency and number of overhang seats. This is because without the compensating effects of the one-electorate seat threshold, every electorate won by a party that did not cross the party vote threshold would generate an overhang.
- 4.95 We recommended removing the overhang provision so long as the one-electorate seat threshold was also removed. In practice, this would mean that the number of list seats to be allocated would reduce by the number of overhang seats.

Feedback from second consultation

- 4.96 Only a few submitters commented on our draft recommendation to remove the provision for overhang seats. Some supported the proposal and noted that it fitted with our package of recommendations for MMP, whereas others were concerned that removing the provision may distort the proportionality of future parliaments.
- 4.97 An electoral academic challenged our view that overhangs may increase substantially if our other recommendations are taken up (lowering the party vote threshold and removing the one-electorate seat threshold). They noted that smaller parties would have less need to target an electorate seat with a lower party vote threshold, so overhangs could be less common. In addition, they disputed whether past overhangs have been of much public concern.

Our final view

- 4.98 We maintain our view that it is best to remove the provision for overhang seats if the one-electorate seat threshold is removed, because of the increased likelihood of an overhang occurring. This would mean that if an electorate is won by a candidate from a party that does not meet the party vote threshold, that candidate is elected as an MP but the total number of list seats allocated amongst all the parties is reduced by one. This approach currently applies to seats won by independent candidates.
- 4.99 We are concerned that an increase in the number and frequency of overhang seats, with the associated unpredictable fluctuations in the size of parliament, could affect government formation and the running of parliament. Whenever an overhang is created, the government would need more votes to form and maintain the confidence of the House (for example, in a 126-seat Parliament, 64 votes would be needed). The unpredictable fluctuations to the size of parliament would also affect the costs of running parliament in an uncertain way.
- 4.100 When the Electoral Commission considered the abolition of overhang seats in 2012, it modelled what the impact would have been on the proportionality of

previous elections results and found it to be minimal.¹⁸ We repeated this modelling for elections up to 2020 and found the same result. While caution is required when using past election results to assess different arrangements, due to the impact different rules would be expected to have on voting behaviour, we think the modelling provides a reasonable indication that the abolition of overhang seats would not have an undue impact on the proportionality of our electoral system.

Interaction with our other recommendations

4.101 Due to the interdependencies between our recommendations, the changes we suggest to representation under MMP should be considered as a package:

- **Lowering the party vote threshold to 3.5 per cent** will lower the barrier to representation for smaller and newly established parties.
- **Abolishing the one-electorate seat threshold** will improve the fairness of our electoral system, but it should only be removed if the party vote threshold is lowered to provide other avenues to representation for smaller parties.
- **Abolishing the overhang provisions** will mitigate the risk of an increase in the number of overhang seats that might result if the one-electorate seat threshold is abolished.

4.102 We modelled the cumulative impact of our recommendations on previous election results up to 2020. We found that, generally, the changes would have resulted in more proportional and fairer elections (**Table 1, Appendix 2**).

4.103 For example, under the Gallagher Index (a widely used measure of proportionality), a perfectly proportional parliament has a disproportionality rate of zero.¹⁹ In 2012, the Electoral Commission noted that a rate of less than three per cent is generally an indication that an electoral system is, on balance, fair.²⁰ The bigger the number, the more disproportionate the parliament. First-Past-the-Post parliaments from 1946 to 1990 had an average rating of 10.66 per cent. Our modelling showed improved proportionality in most elections compared to current settings – for example, with our recommended changes, the parliament after the 2014 election would have rated 1.40 on the disproportionality index (down 2.32 from 3.72). However, proportionality would have been unaffected in the 2017 and 2020 elections.

¹⁸ Electoral Commission, above n 7, p. 22.

¹⁹ Gallagher, M., 1991. Proportionality, disproportionality and electoral systems. *Electoral Studies*, 10(1), pp. 33–51.

²⁰ Electoral Commission, above n 7, p. 22.



- 4.104 Another effect of our combined recommendations on previous election results is greater representation of small parties, although this effect is mixed, with fewer seats for the larger parties resulting in a transfer of seats from one smaller party to another. For example, in the 2014 election, our modelling shows that under our package of changes, there would have been three fewer seats for the National Party, one fewer seat for the Labour Party, the Green Party and Te Pāti Māori, with five seats going to the Conservative Party (**Table 1, Appendix 2**).
- 4.105 Further, there would have been two elections where the government of the day would have required an additional party to reach a parliamentary majority. We accept that, given the range of behaviour changes expected due to changing several key settings at the same time, the models may not accurately predict what might happen in the future. Nevertheless, these models provide added confidence of the overall effect of changing these settings.

The Panel recommends:

- R9. Removing the existing provision for extra seats to compensate for overhang seats, in line with our other recommendation to abolish the one-electorate seat threshold, which would result in fewer list seats being allocated.**

Ratio of electorate to list seats

- 4.106 When Aotearoa New Zealand shifted to the MMP voting system in 1993, the number of MPs was increased from 99 to 120.²¹ The Electoral Act does not specify a fixed number of electorate or list seats.
- 4.107 For the first MMP election there were 65 electorates (60 general electorates and five Māori electorates) and 55 list seats. Over time, changes in population have resulted in 72 electorates (65 general electorates and seven Māori electorates) and 48 list seats.

²¹ In its 1986 report, the Royal Commission noted that the ideal size for the House would be about 140 seats, but recommended that it increase to 120 seats. It saw 120 members as the minimum needed to provide for an effective parliament and maintain a strong relationship between constituents and their representatives. Royal Commission on the Electoral System, 1986. *Report of the Royal Commission on the Electoral System*, Wellington: House of Representatives, pp. 126–127.

- 4.108 The Electoral Act establishes a boundary review process that takes place every five years to see whether the population of each electorate remains about the same or if changes are needed.²² One or more general electorates may be added if the North Island population grows more quickly than the South Island population. Equally, changes to the Māori Electoral Population may result in changes to the number of Māori.²³
- 4.109 Each time a new electorate is created, the number of list seats to be allocated reduces by one. This raises several concerns because:
- list seats create a more diverse and representative parliament
 - list seats ensure proportionality – that is, that the composition of parliament reflects the party vote.
- 4.110 After an election, a party's electorate seats are tallied first, then list seats are used to ensure each party has a total number of seats in proportion to its share of the party vote. For this aspect of MMP to work, there needs to be enough list seats available to allocate.
- 4.111 If the rules stay the same and population growth continues in an uneven fashion, we will likely reach a point where there are insufficient list seats to maintain proportionality or a diversity of representation in parliament between list and electorate seats.

Is there a case for change?

Arguments against change

- 4.112 In our first consultation, some submitters who answered our question about the ratio of electorate to list seats supported maintaining the status quo. Many of these submitters had concerns about the role of list MPs and their perceived lack of accountability to voters.
- 4.113 Some submitters also considered that parliament has too many MPs already and that it should be reduced in size. Our Terms of Reference exclude us from

²² The boundary review process is discussed in detail in **Chapter 17**.

²³ It is uneven population growth, rather than the national population increasing, that necessitates changes to the number of electorates and their boundaries. This is because section 35 of the Electoral Act 1993 establishes that there are to be 16 South Island general electorates and that the North Island general electorates will change as needed so that the number of people in each electorate remains about equal across the two islands. Section 45 of the Electoral Act 1993 establishes a similar process for determining the number of Māori electorates. Section 191 of the Electoral Act 1993 provides that the remaining seats will be list seats.

Earlier recommendations

2012 Electoral Commission Review of MMP

The Commission suggested consideration be given to a 60:40 ratio of electorate to list seats to maintain both diversity of representation and prevent problems arising in maintaining proportionality in parliament. It considered it prudent to opt for a ratio of electorate seats to list seats well below where a problem may arise. Making an explicit recommendation on the size of parliament was out of scope of the review.

2017 and 2020 Electoral Commission post-election reports

The Commission reiterated its 2012 recommendations in its 2017 and 2020 post-election reports.

considering the size of parliament, except in relation to the ratio of electorate seats to list seats.

Arguments for change

- 4.114 Many submitters who responded to our question in the first consultation supported a fixed ratio. Submitters were concerned about the impact of declining list seats as the number of electorates grows. If there are not enough list seats, they cannot be used to “top up” a party’s seats to achieve proportional representation. Our parliaments would become less representative of the nationwide party vote over time.
- 4.115 A common argument is that list seats have also been important for widening demographic representation. Fewer list seats could, therefore, also result in a narrower range of demographic representation in parliaments.
- 4.116 Most of the submitters who indicated their preferred ratio supported a ratio of 60:40 for electorate-to-list seats, as recommended by the Electoral Commission in 2012. However, a few submitters preferred a 50:50 ratio.
- 4.117 Many of these submitters also supported the Electoral Commission’s recommendation to allow the number of MPs to rise with population changes. A few academics added that the size of parliament should always be an odd number to avoid deadlocks that may impact the formation of government.
- 4.118 If there are fewer list seats available to compensate for overhang seats, then the frequency and size of overhangs may increase significantly. If an election result generates several overhang seats, and there are insufficient list seats available, then extra seats would need to be awarded (under current settings). As the number of electorates and the chance of overhang seats increases, more overhang seats and larger parliaments are likely.



Our initial view

- 4.119 In our interim report, we recommended that the ratio of electorate to list seats should be fixed at 60:40 to ensure there are enough list seats to maintain parliament's proportionality and the representation of diverse communities. To maintain this ratio, the size of parliament would increase gradually in step with predicted population growth. We also recommended that there should always be an uneven number of MPs to avoid the possibility of a hung parliament (the situation where no party or coalition of parties can form an absolute majority).²⁴

Feedback from second consultation

- 4.120 Some submitters to our second consultation supported our draft recommendation to have a fixed ratio of electorate to list seats and to increase the size of parliament. These supporters thought it would preserve the proportionality of parliament over time, as well as the diversity brought by list seats. Some submitters also commented on the high workloads of MPs and thought that more MPs would support the effectiveness of parliament. The Clerk of the House noted funding would need to rise in line with the House size increasing.
- 4.121 Only a few submitters commented on the proposal for an uneven number of MPs. However, they strongly supported it and singled it out as a recommendation that could make a significant difference to future election outcomes by removing the possibility of a hung parliament.
- 4.122 Many submitters were strongly opposed to the size of parliament increasing. Most were comfortable with the status quo, in which the number of electorate MPs increases at the expense of the number of list MPs, and some were concerned about the cost to taxpayers. Other submitters suggested there should be fewer than 120 MPs, with some commenting that New Zealanders are overrepresented compared with other countries. A few submitters thought the size of parliament could be reviewed and changed periodically instead.

Our final view

- 4.123 Under the current law, the number of list seats in parliament is expected to continue to decrease due to changes in population growth, risking the proportionality and diversity of parliament.
- 4.124 At present, we have 72 electorate seats and 48 list seats in parliament, which is the same as a ratio of 60:40 (that is, three electorate seats for every two list seats). We

²⁴ We noted that the Terms of Reference for our review identify matters relating to the current size of parliament as being out of scope, except as it relates to the Electoral Commission's 2012 Review recommendation relating to the ratio of electorate to list seats. As such, we considered both matters in our draft recommendation to be within scope.



think that the ratio of electorate to list seats should be fixed now, so that the number of list seats does not decline further.

- 4.125 We did not receive any feedback during the second consultation that has persuaded us to shift from the initial view we provided in the interim report. Therefore, we confirm our recommendations to set the ratio of seats at 60:40, unfix the size of parliament, and require an uneven number of seats.

Fixing a ratio of electorate to list seats

- 4.126 Without a fixed ratio, the electorate vote could begin to have an outsized impact on the make-up of parliament, incrementally moving us away from the major benefits of MMP.
- 4.127 The diversity of demographic representation for some groups in parliament has increased considerably under MMP, largely due to the election of MPs from party lists. For example, between 1996 and 2011:
- 43 per cent of MPs elected from party lists were women, compared with 24 per cent of MPs elected from electorates
 - 21 per cent of MPs elected from party lists were of Māori descent, compared with 14 per cent of electorate MPs, including the Māori electorates— only five per cent of general electorate MPs were of Māori descent
 - MPs who openly identified as LGBTQIA+, Pasifika MPs, and MPs of Asian descent also increased.
- 4.128 Although it is difficult to assess with any precision, we may already be approaching the ratio of electorate to list seats at which proportionality may be at risk. There are different views on when this point is reached:
- International literature suggests that risks to proportionality can be expected at a 75:25 ratio of electorate to list seats.²⁵
 - In 2012, the Electoral Commission suggested problems might arise at ratios of electorate seats to list seats of 67:33 – that is, 80 electorate seats and 40 list seats in a 120-seat parliament – or even lower.²⁶
 - The Commission thought it was important to set the ratio well below where a problem may arise and suggested 60:40 (which is equal to the 72 electorate seats and 48 list seats that we have at present).²⁷

²⁵ Taagepera, R & Shugart, M.S., 1989. *Seats and Votes: The Effects and Determinants of Electoral Systems*. New Haven: Yale University Press, p. 131.

²⁶ Electoral Commission, above n 7, p. 25.

²⁷ Ibid, p. 27.

- 4.129 Our modelling of population growth scenarios suggests there may need to be 78 electorates by 2044 (and six fewer list seats than at present), resulting in a ratio of 64:36.
- 4.130 While there are differing views on what the exact ratio of electorate to list seats should be to avoid issues with proportionality, we think it is best to set the ratio lower than where problems are expected to arise. Therefore, we recommend setting the ratio at 60:40, which aligns both with the recommendations of the Electoral Commission and reflects the current composition of seats in parliament.

Allowing the size of parliament to change in line with population change

- 4.131 We acknowledge the strongly held views on how many MPs our parliament should have. However, if the ratio of seats is fixed without allowing parliament to increase in size, the number of people per electorate would become unequal, affecting representation and undermining fairness (the idea that each electorate MP represents roughly the same number of people).
- 4.132 The number of South Island general electorates is fixed at 16. If no more electorates could be created to reflect population growth differences, the number of people in each North Island general electorate and Māori electorate would become significantly greater than in the South Island general electorates.
- 4.133 Under a medium population growth scenario, by 2044 the South Island general electorates would each have about 76,000 people in them, but the North Island general electorates and Māori electorates would have 81,000 to 83,000 people. The South Island would be overrepresented in parliament. This inequity in the number of voters represented in each electorate could also be inconsistent with the active protection of Māori electoral rights under te Tiriti / the Treaty.
- 4.134 As an alternative, we considered whether to unfix the number of South Island general electorates. The change would allow all electorates to remain equal in terms of the population they represent, but modelling suggests the South Island would lose an electorate from 2038 onwards. This impact would exacerbate the existing issue of geographically large electorates in the South Island. This option would compromise the effectiveness of local representation (as each electorate MP would need to represent an increased geographic size, potentially reducing the quality of representation), so we do not support it. It would be unfair to South Island electors to further reduce their access to representation.²⁸
- 4.135 We recommend unfixing the size of parliament, so that it gradually grows in line with population changes. This would be similar to the approach followed under

²⁸ It should be noted that these challenges exist already in most of the Māori electorates, particularly Te Tai Tonga which spans the entire South Island, Stewart Island, the Chatham Islands, and parts of Wellington City and the Hutt Valley.

First-Past-the-Post between 1965 to 1993 (which saw parliament increase from 80 seats to 99 seats). It would continue to allow more electorates to be created over time, with extra list seats added to maintain a 60:40 ratio between electorate and list MPs.

- 4.136 Our modelling suggests the House would undergo incremental change from the current 120 seats to around 130 seats in 2044, based on a medium population growth scenario and before adjustment for an uneven number of seats, as discussed below (**Table 4, Appendix 3**). At this size, the numbers of representatives for the country's population would be in line with many other democracies.²⁹
- 4.137 Under our recommendation, if the boundary review process remains the same, the number of seats would be reviewed every five years, so would not necessarily change ahead of every election. We considered the suggestion raised by some submitters of manually adjusting the number of list seats from time to time. This change is unlikely to make a significant difference to how frequently the size of parliament changes, except that it would be reliant on the government being able to progress an amendment bill through parliament.
- 4.138 Although a larger parliament may be unpopular with some people, many would also oppose electorates either representing more people or a bigger geographic area, or electorates representing uneven numbers of people. We think the shift to an unfixed parliament balances fairness, representation, and proportionality and provides an enduring response to population growth. It ensures electorates contain similar numbers of voters and preserves the representation function of the list seats.

Requiring the House to have an uneven number of seats

- 4.139 In a parliament with an even number of seats, it is possible for an election to result in deadlock, where no party or group of parties can form a government because they each hold an equal number of seats. If this outcome eventuated, it could require another election to be held.
- 4.140 Our recommendation to require the House to have an uneven number of seats supports our objective of having an effective government and parliament.
- 4.141 A further step would be required after the boundary review process to implement this change. Whenever the total number of seats came to an even number (once the number of electorates had been determined and the number of list seats adjusted to meet the 60:40 ratio), a further list seat would be added.
- 4.142 As part of our modelling of different population growth scenarios and the impact on the size of parliament, we also looked at the additional impact of requiring an uneven number of seats. However, our modelling indicates that an additional seat

²⁹ For example, Norway, Sweden, Denmark, and Ireland each have around one representative per 30,000 people.

might not be needed very often. On the basis of the medium population growth scenario provided by Stats NZ, a compensating seat might need to be added on only three occasions over the next two decades to maintain an uneven number of MPs (**Table 4, Appendix 3**).

Interaction with our other recommendations

- 4.143 This recommendation has implications for the size of electorates and the boundary review process, which we address in **Chapter 17**.

The Panel recommends:

- R10. Fixing the ratio of electorate seats to list seats at 60:40, requiring parliament to be an uneven number, and allowing the size of parliament to grow in line with the population.**

Death of candidate during voting period

- 4.144 We note the unfortunate death of an electorate seat candidate during the advance voting period of the 2023 general election.
- 4.145 Currently, section 153A of the Electoral Act provides that when an electorate candidate dies or becomes incapacitated before election day, voters in that electorate continue to cast their party vote. However, the electorate vote is cancelled, and a by-election is called for that electorate. Similar provisions exist for candidates who die on election day or before final results are declared.
- 4.146 There is no dedicated provision for how seats in parliament should be allocated following the cancellation of an election for an electorate seat in these circumstances. Under the current law, the rest of the parliament is elected, and seats are allocated between parties that meet the representation threshold using the formula set out in sections 191 to 193 of the Electoral Act. This formula still requires the full allocation of 120 seats despite the cancellation of an election for an electorate seat. In practice, this means allocating one less electorate seat and one more list seat. The successful candidate in the subsequent by-election will then be an additional MP, creating an overhang in parliament.
- 4.147 We think this recent event necessitates an examination of the provisions for dealing with the death or incapacity of electorate candidates and the way that seats should subsequently be allocated. It is inconsistent with the current provisions in the Act for the treatment of independent candidates who are elected



to an electorate. The creation of a parliamentary overhang is also inconsistent with our recommendation that these should be removed. Equally, adding an additional MP after the election is complete would undermine our recommendation that parliament always have an odd number of MPs.

- 4.148 Given this event occurred as we were finalising our report, and we did not previously receive any submissions on this topic, we have not been able to consider all the implications of any potential changes. Rather than make a recommendation, we simply raise the issue as one requiring further consideration.



