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Tena koe

Independent Electoral Review Panel - Consultation on the Review of Independent Electoral Review | He ArotakePotitanga Motuhake

Thank you for the opportunity to comment on the propositions in the discussion document.

About Trust Democracy

The role of Trust Democracy is to strengthen public discourse, education and research on the state of democracy in Aotearoa New Zealand. We are a not-for-profit initiative, working to research, educate, and demonstrate how to make democracy work as it should. We provide spaces for deliberative dialogue to stimulate peoples' interest and participation in political discourse. Our goal is to contribute towards a society that values and promotes participation through public deliberation.

Introduction – the electoral system is not the same as democracy

While the purpose of the consultation is a functional review of the electoral system to uphold the rights of people within the established processes, the context surrounding democracy is misleading and creates tensions for public confidence. Democracy should not be reduced to voting alone. It needs citizen participation to keep it alive.

We suggest that a fairer electoral system would be founded on the principles of democracy. We support the United Nations' view which does not advocate for a specific model of government but promotes democratic governance as a set of values and principles to be followed for greater participation, equality, security and human development.¹ True democracy provides an environment that respects human rights and fundamental freedoms including:

- The freely expressed will of people is able to be exercised
- People have a say in decisions and can hold decision-makers to account
- Women and men have equal rights
- All people are free from discrimination.

The primary intention of the consultation is to seek social and political licence to push for a four-year term for Parliament and Government, and making it easier for New Zealanders to vote in elections. It does this by allowing enrolment up to and including election day and expanding the number of places where people can cast their vote. It also makes provisions to allow for future

development of an electronic electoral roll (not an electronic voting system) and for managing polling day disruptions.

Trust Democracy supports the intention to make it easier for New Zealanders to vote. The right to vote is a key part of our democracy and is protected in section 12 of the New Zealand Bill of Rights Act 1990 (NZBORA).³ We note that initiatives that would enable a greater number of New Zealanders to exercise their right to vote feature prominently in the discussion document.

Submission points

The Voting system

1. The size of electorates

- New Zealand has a low proportion of MPs in proportion to the population. We suggest that a larger electorate impacts on democracy and consider that MPs need smaller electorates to connect effectively, and enable effective citizen participation or representation.
- Better gains could be made if the system provided opportunities for citizen participation, including a more inclusive select committee process to give back benchers a chance, increase diversity, and encourage uptake of a range of engagement methods.

1.1 Party vote threshold

- We support a party vote threshold of 4%.

1.4 The ratio of electorate seats

- We support a 60:40 ratio to increase the number of MPs.

1.5 The term of Parliament

- Currently, we support the status quo remaining at three years.
- We suggest that while there are genuine issues regarding the quality and performance of governments that have a three-year term, there will not be 'social licence' for a longer term until the issues of a weak legislature that does not hold Governments to account or enable citizen participation in decision-making are addressed. There is a growing sense of unease about the short-term policy focus of recent parliaments and lack of checks and balances that impact on future democracy in New Zealand.
- Compared with worldwide election terms, New Zealand is an outlier with its three-year election cycle. The [Inter-Parliamentary Union](#) shows that 90% of countries globally, have four or five year- election terms. There are only a small number of unicameral Parliaments. Most parliaments have upper houses which provide additional opportunities for scrutiny and participation.

1.6 Setting the election date

- Government has a responsibility to provide certainty to the public and Parliament and a date enables the work programme to continue forward planning.
- We support retaining the right of the Prime Minister to set the date of the election in advance, and flexibility to set another date if Parliament breaks down or there is a major event, such as Covid.

1.7 Changes to the current rules around vacancies in Parliament

- We consider that the six-month period for stand down for vacancies disadvantages electorates and should be reduced to three-months.
- For resignation matters in general, more consideration should be given to the impact on electorates due to the lack of representation and ability to exercise democratic rights.
- Remove the 'Waka Jumping Act' as it does not respect the views of the electorate; rather it supports the view of the party. It chills the speech of Government and opposition backbenchers, and the Independent Electoral Review should seek an amendment to its terms of reference to enable it to conduct research amongst backbench MPs about their views on the Act and how it has affected their conduct and speech etc.

Voters

2.1 The age at which people gain the right to vote

- We note that Section 3 of the 1993 Act and Section 12 of NZBORA restrict voting to persons 18 years or older, and that there is no stated reason for this limit.

2.2 Voter Eligibility Rules

- Trust Democracy considers that the age at which people should become eligible to vote is 16 years, as this would remove the present inconsistency between the voting age and many other legal indicators of adulthood, such as:
 - The ability to leave school;
 - The obligation to pay income tax;
 - The age of consent for sex;
 - The ability to get married;
 - The ability to hold a driver's licence;
 - The ability to hold to a gun license.¹⁰
- There is a precedent for lowering the voting age: in 1969 the voting age was lowered from 21 to 20 years. In 1974 it was then lowered to 18 years.
- Some OECD countries have reduced their voting age to 16. In Austria and Norway voters aged 16 and 17 years have higher turnout than older voters.¹²
- Reducing the voting age increases the coverage and diversity of the electorate, which appears to be the primary goal of this discussion document.
- We suggest that the Review recommends that the voting age be changed to 16 years.

Changes to voter eligibility rules

- Remove the distinction between citizenship and permanent residency.
- Restrictions have a negative impact on people wanting to rehabilitate.
- Restrictions are inflexible, and people in prison need to keep the connection with participation in democratic processes such as voting.

2.24 Voting rights for prisoners

- Trust Democracy notes the discussion document does not discuss the failure to address the High Court's 2015 declaration that section 80(1)(d) of the Electoral Act 1993 (the Act) is inconsistent with NZBORA.

Voting is a Human Right

Article 21(3) of the United Nations Declaration of Human Rights, to which New Zealand is a signatory, states that:

- “The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”¹
- Article 25 of the International Covenant on Civil and Political Rights, which New Zealand has ratified, states that “Every citizen shall have the right and the opportunity ... to vote.”²
- Section 12 of NZBORA states that “Every New Zealand citizen who is of or over the age of 18 years has the right to vote.”³
- The rights and freedoms set out in NZBORA may only be limited under Section 5 of the Act where it is ‘reasonable’, ‘prescribed in law’ and where the limitation ‘can be demonstrably justified in a free and democratic society.’

The Prisoner Voting Ban violates Human Rights

In 2010, the Electoral Act 1993 was amended by the Electoral (Disqualification of Convicted Prisoners) Amendment Bill, to add section 80(1)(d), the prisoner voting ban.

- The NZ Council of Civil Liberties opposed the prisoner voting ban before the Select Committee in 2010, on the grounds that it violated section 12 of NZBORA.⁴ This is a position Trust Democracy agrees with.
- The Attorney-General at the time, Hon Chris Finlayson MP, declared the 2010 Bill inconsistent with the NZBORA, stating, “I consider that the Bill appears to be unjustifiably inconsistent with the electoral rights affirmed by section 12 of the Bill of Rights Act.”⁵
- In 2015 the High Court, in *Taylor v Attorney-General*, declared that: “Section 80(1)(d) of the Electoral Act 1993 (as amended by the Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010) is inconsistent with the right to vote affirmed and guaranteed in s12(a) of the New Zealand Bill of Rights Act 1990, and cannot be justified under s5 of that Act.”⁶
- In 2017, the Attorney General’s appeal of the High Court decision was dismissed by the Court of Appeal, indicating that the Court of Appeal agreed with the High Court.⁷
- In 2018, the Attorney General appealed again to the Supreme Court, who also agreed with the High Court.⁸
- In 2019, the Waitangi Tribunal ruled that: “Section 80(1)(d) of the Electoral Act 1993 breached the principles of the Treaty. The Tribunal further found that the Crown has failed in its duty to actively protect the right of Māori to equitably participate in the electoral process and exercise their tino rangatiratanga individually and collectively.”⁹

2.3. Changes to improve the enrolment process

- The current system is too restrictive and greater efforts should be made to reduce restrictions to enrolling. Rather than requiring people to enrol, people should be automatically enrolled when they are eligible.

2.5 Changes to current ways of voting, including special voting, to meet voter needs

- Advanced voting should be extended and increased.

2.6 Changes to make voting more accessible

- All voting places should comply with current accessibility standards, not just 12 places per electoral district as the law currently requires.

2.8 Dealing with emergencies and disruptions

- Voting was well managed during Covid. Special rules and provisions were successfully applied in 2020.

2.10 The power to decide to postpone an election or adjourn voting

- We support the proposals of Section 3B of the Electoral Amendment Bill (152-1) regarding the regulated period. In the event of unforeseen and unavoidable events we agree that the Chief Electoral Officer must consult with the Prime Minister, Leader of the Opposition and relevant experts.

2.11 Vote counting processes be improvements

- As many people vote before election day so delays in the count of special votes are a tension. Advance votes should be counted from 9am on polling day.

Parties and Candidates

3.1 Changes to the system for a party to become and remain registered

- We consider that no changes are needed.

3.3 Changes to the requirements parties must follow when selecting their party lists

- Section 71 of the Electoral Act states that parties must select candidates by the most democratic method. We note that voting is not the only or even the most democratic method of selecting representatives.¹¹ We therefore recommend that section 71 be amended to ensure that parties can use other democratic methods of candidate selection, such as random selection.

3.5. How should parties and candidates be funded?

- All parties need to follow the rules for publicity, events, and discretionary income channelled to parties.
- We are supportive of proposed changes and quarterly reporting but consider that the limit on anonymous donations should be reduced to \$500.00.

Electoral administration

4.1 Roles and functions of the Electoral Commission

- We support the Electoral Commission running elections for local government.
- Enforcement and electoral law (p.40) should be removed from the police and given to the Electoral Commission to manage.

4.4 The Corrupt practices list is already in the electoral role and available in libraries and should be published and made available online.

Other issues

Given the Terms of Reference, it is strange that the discussion document does not consider the issue of non-voting. Over 655,000 people were enrolled but didn't vote in the 2020 election. This is roughly equivalent to the combined populations of Wellington, Hamilton, Tauranga and Dunedin. In addition to this problem, the Electoral Commission reported that over 250,000 people were eligible but not enrolled. This is roughly equivalent to the combined populations of Rotorua, New Plymouth, Invercargill, Whanganui and Gisborne. Together, almost a quarter of those eligible to enrol and vote did not participate in electoral processes. This is an extremely serious issue for the legitimacy of the current system and we recommend that the Review includes this issue within its agenda. We note that previous efforts to address this issue (e.g., making enrolment easier,

education, awareness raising) have not made much difference. Automatic enrolment may make a difference but will not solve non-voting.

Children and adults should have access to civic education. Our education system and curriculum could do more to teach young people about democracy and the importance of voting. We refer the Committee to the civics education resources released by the Ministry of Education as part of the Government's Open Government National Action Plan 2018-2020 commitments.¹⁴

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