

FOREWORD

*Dean R Knight**

This special issue of the New Zealand Journal of Public and International Law contains articles reflecting on New Zealand's experience with the mixed member proportional (MMP) electoral system, along with the experience of other jurisdictions with similar proportional systems. The articles were initially presented at a symposium organised by the New Zealand Centre for Public Law entitled "MMP and the Constitution: 15 years past; 15 years forward".

The symposium took place on 26 and 27 August 2008, 15 years after the public referendum adopting this form of proportional representation and shortly before the country's fifth general election under MMP. Hosted in conjunction with the Victoria's Institute of Policy Studies and Birkbeck's Centre for New Zealand Studies in London – and generously supported by the New Zealand Law Foundation – the conference proceedings were simultaneously video-cast between Wellington and London. The purpose of the symposium was two-fold. First, it provided an opportunity to undertake a constitutional stock-take, to review the effect of MMP on the constitutional fabric of the country. Secondly, it allowed an opportunity to look forward to assess the likely constitutional challenges that MMP presents in the next 15 years. This issue contains revised versions of the papers addressing those two perspectives. Constitutional and political experts from New Zealand reflect on the effect on the parliamentary process, political parties and the operation of the executive. United Kingdom and European experts provide comparative perspectives on proportional representation generally.

The first set of articles from domestic constitutional and political science scholars – "views from inside" – discuss the experience of MMP and its effect on constitutional principles, processes and arrangements. Dr Ryan Malone examines the effect on the parliamentary process, concluding that Parliament no longer operates as a mere rubber stamp to the executive's legislative proposals. The days of New Zealand's Parliament being the "fastest law-maker in the West" are well gone! He wonders though whether the balance has perhaps tipped too far, with the fractured House and consequential need to garner (often differently constituted) majority support for each and every Bill sometimes making it difficult for the lead government party to implement its policy agenda. The increased role for, and significance of, political parties under MMP is explored by Associate Professor Andrew Geddis. In doing so, Geddis contrasts the way in which political parties have

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been regulated under FPP and MMP: from the time when their internal workings and election activities were barely regulated or recognised – with the individual electoral candidate being the primary focus – to a new era where the political parties take centre stage in the electoral process and are subject to greater supervision by electoral agencies and the courts. Although the predicted increased significance of political parties under MMP has been realised, Geddis does, however, question whether the move to greater supervision of political parties is as strongly causally related to the introduction of MMP as has been suggested. In the final article of this set of insider views, Professor Jonathan Boston and David Bullock look at the formation of multi-party governments under MMP. The need to form executive and legislative coalitions or other arrangements has been one of the most notable changes under MMP. Boston and Bullock examine the different forms of inter-party arrangements and the different ways the parties have sought to navigate the "unity–distinctiveness dilemma"; the need on the one hand to be able to garner enough support from other parties to govern effectively, while on the other hand still allowing those parties to maintain their distinctive identity. While they canvass the evolution of the full range of governance arrangements seen under MMP, they focus particularly on the now-commonplace "enhanced confidence and supply agreements", scrutinising closely the political and constitutional implications of "selective" Cabinet collective responsibility which has accompanied those agreements.

The next series of articles adopts a slightly different perspective – "views from outside". Professor André Kaiser from the University of Cologne offers a comparative perspective on why the New Zealand experience has produced minority coalitions with other legislative support from support parties, rather than majority coalitions or single-party minority governments. He also reflects on the effect of these arrangements on the role of the parliamentary opposition and contrasts the experience in New Zealand with the traditional model adopted in Westminster systems. Professors Raymond Miller and Jack Vowles present a different perspective on MMP and coalition governments: one from the electors themselves. Drawing on data from the New Zealand Election Study, they analyse different trends in public support for MMP over time, along with differences in attitude across different social variables. As well as analysing the support for particular electoral systems and for different forms of government composition, they also examine people's understanding of – and commitment to – the central proportionality principle that comes with MMP.

The final set of articles adopts a prospective perspective, contemplating the challenges MMP and proportional representation might bring constitutionally, politically and comparatively. Professor Joseph begins by looking backwards to suggest that MMP has had very little impact on the fundamentals of Westminster constitutional government, at most perhaps illuminating the significance of Cabinet government. Prognosticating from that past experience, Joseph raises three particular constitutional challenges presented by MMP. First, the future of reserved Māori seats; secondly, changes in national demographics and the effect on list seats caused by the fixed number of South Island electoral districts; and, more generally, the question of whether MMP will survive in the light of the moves to once again re-examine the form of the electoral system. Professors

Stephen Levine and Nigel Roberts touch in more detail on the question of the future form of the electoral system. They evaluate different ways the present MMP electoral system could be tweaked and improved in order to respond to some of the concerns expressed about the experience over the last 15 years. They offer concrete solutions to address the elements of the system that have caused public annoyance and frustration – without, as they say, throwing the baby out with the bath water and reverting to FPP or other electoral systems which do not yield full proportional representation. Finally, another comparative angle is presented, as Dr Jonathan Bradbury surveys the similar challenges in the United Kingdom. He examines the experience of the Scottish Parliament and National Assembly for Wales under the MMP electoral system – executive formation; parties and representation; executive–legislature relations – and comments on the challenges those jurisdictions face in the future. Bradbury also looks at the reform movement on the national level and the (rather mixed) prospect that proportional representation may be adopted for the British Parliament at Westminster.

The examination of these issues in a systemic fashion is quite apposite! Soon after the symposium was scheduled one of the main political parties announced its intention, if elected, to hold a referendum on MMP. With that party now leading the present government, the prospect of a referendum has since crystallised and once again the public will be invited to evaluate their preferred electoral system.

In that vein, it fair to say that none of the participants or authors seriously suggests the move to MMP was a mistake, or proposes a return to its predecessor, FPP. The move to MMP has been assessed to be a very positive one, with New Zealand taking the political and constitutional challenges in its stride. Political practice and constitutional principles have evolved incrementally to reflect and embrace the system of government produced by a proportional form of representation. While some of the authors acknowledge that there are some gremlins in the MMP system, they are characterised as being relatively minor in comparison to its overwhelmingly positive impact. And, in most respects, the gremlins are capable of being addressed by tweaking the legislative framework, rather than fundamentally altering the electoral system.

But readers will be able to make up their own minds on the efficacy of MMP. At this point, and to conclude, it might be appropriate to invite readers to recall the Royal Commission's criteria for judging voting systems:¹

- fairness between political parties;
- effective representation of minority and special interest groups;

¹ Royal Commission on the Electoral System "Report of the Royal Commission on the Electoral System: Towards a Better Democracy" (Government Printer, Wellington, 1986) para 2.1 (also cited as [1986-87] IX AJHR 1986 H 3).

- effective Māori representation;
- political integration;
- effective representation of constituents;
- effective voter participation;
- effective government;
- effective Parliament;
- effective parties;
- legitimacy.

As the Royal Commission noted:²

The best voting system for any country will not be one which meets any of the criteria completely but will be one which provides the most satisfactory overall balance between them, taking account of that country's history and current circumstances.

It is hoped that the analysis presented by the learned contributors to this issue will assist people undertaking that evaluation.

As this issue was in the final stages of production, we received the sad news of the passing of Professor Mike Taggart. A friend, colleague, mentor, scholar – all in all, a monumental figure in public law in New Zealand and the common law world. He is remembered in this issue, as Paul McHugh pens some brief reflections to honour one of public law's great scholars.

² Ibid.