

**SUBMISSION OF DAVID FARRAR  
TO THE ELECTORAL LEGISLATION SELECT COMMITTEE  
ON THE ELECTORAL REFERENDUM BILL**

**About the Submitter**

1. This submission is made by David Farrar in a personal capacity. I would like to appear before the Committee to speak to my submission.
2. I have over 15 years experience with the Electoral Act. As a former parliamentary staffer I advised National Prime Ministers and Opposition Leaders on the Act. I have been an electorate campaign manager and a national campaign staffer, requiring intimate knowledge of the Act. I also have blogged extensively on electoral issues.

**Executive Summary**

3. I support the Electoral Referendum Bill as an appropriate measure to allow New Zealanders to decide whether to continue with MMP or choose another electoral system, and urge the Select Committee to pass it.
4. I do propose some changes, for the consideration of the Select Committee, and the Government.

**Meaning of Referendum Advertisement**

5. Clause 30(2) provides for certain publications not to be treated as a referendum advertisement. The definitions are drawn from the Electoral (Finance and Advance Voting) Amendment Bill.
6. For both bills, I believe the current definitions may end up capturing as advertisements, expression of views that should not be considered an advertisement.
7. Specifically I **propose that Clause 30(2)(b) have the word “solely” replaced by “primarily”** in relation to news selected by an editor, as the test of “solely” is too narrow.
8. I also **propose that Clause 30(2)(f) relating to an individual publishing his or her views on the Internet delete the words “on a non-commercial basis”** as this could capture bloggers who have advertising on their blog. The key test is that the views are his or her personal political views.

**Registered Promoters**

9. I support the requirement for a promoter to register with the Electoral Commission if they spend greater than \$12,000 on referendum

advertising during the regulated period. This is a welcome additional transparency measure.

10. I do not support there being an expenditure limit on a promoter. There is no more important decision for voters than the choice of electoral system, and Parliament should not restrict individuals from promoting their views.
11. The New Zealand voter have shown they are very capable of not being overly influenced by high spending campaigns, and in fact often such campaigns have in fact become counter-productive. I have faith in the media, and others, to shine sunlight on any referendum campaigners.
12. I also note that any expenditure limit would be trivial for a person or group to get around. Overseas experiences have shown this clearly.
13. Clause 37(1)(d) specifies the contact details of registered promoters and their agents must be provide to the Electoral Commission. **I recommend the clause be amended to specify that the contact details must at a minimum include full names, dates of birth, physical address and contact phone numbers so the identity is fully transparent.** This also applies to Clause 43(2).

#### **Scope of MMP Review**

14. I welcome the proposed review of MMP, should the vote be for retention.
15. **I propose that the scope of the review include the 5% maximum tolerance from quota for electoral populations.** Without pre-arguing the issue, there is a strong case for a larger tolerance under MMP.
16. **I also propose that the review explicitly include any recommendations made by the 1986 Royal Commission,** which are not in the current Electoral Act. . This includes the proposal that Maori parties are exempt from the (5%) threshold for representation, in exchange for an end to the Maori seats, so would remove 56(3)(a). If the Royal Commission recommended it, I believe it it is worthy of reconsideration.

#### **Form for referendum voting paper.**

17. I believe it would be **preferable for the four options in Part B to be ranked through a preferential ballot,** rather than have one option selected through first past the post.
18. If voters vote for change in Part A, then the run off option in Part B may be chosen for the next referendum with as little as 25.1% of the vote.

19. One may end up with considerable tactical voting if FPP is used in Section 2. If a voter is very opposed to one option being selected, they may then vote for not their preferred option, but the option the polls tell them is most likely to beat out their least preferred option.
20. To use an actual example, let us say Jane dislikes FPP and whatever happens does not want that as the run off option. Her preference may be STV but the polls shows STV has 20% support, PV 18% SM 30% and FPP 32%. Tactically she may choose to vote for SM to stop FPP winning, rather than her true preference of STV.
21. A preferential ranked ballot in Part B will allow people to rank options in their true order of preference. There is a risk it will be a bit more confusing to ask voters to rank four options, rather than select one, but this can be mitigated by allowing them to only rank one or more options.
22. Also voters may choose to learn more about all four systems, if they realise they have to rank them, than just go for the system they feel they already know something about.

#### **Date of Second Referendum**

23. While this is outside the scope of this bill, I feel it would be useful to air this issue, as the Select Committee can make a recommendation in the commentary of the bill.
24. Initially I concluded that both referendums must be held with general elections to maximize turnout. We saw in 1992 a rather low turnout of 55% as that referendum was held separate to an election.
25. Upon further reflection I have concluded that the initial referendum that this bill establishes should remain timed to coincide with the 2011 general election. As it is an indicative referendum only, and one with multiple options, it would suffer from lower turnout if run as a stand alone referendum.
26. However I believe the second referendum would attract a very high turnout, even if held apart from a general election – for example in early 2013. As the vote would be binding, and would be to change the basic electoral system of New Zealand, I believe it would have a high turnout, even if standalone. I note that the stand alone 1997 referendum on compulsory superannuation had an 80% turnout, only 5% less than the 85% turnout in 1993.
27. The strongest reason however for a standalone second referendum is that without the distraction of a general election, there will be a much greater focus on the referendum, and the two options, and associated implications. A decision to change electoral systems will probably be a once in a lifetime decision for most voters, and it deserves having its own space and time to get as many voters as possible educated and

informed on the choice they have, rather than have it as a minor side-show to the general election.

#### Drafting of Alternate Voting System

28. Should voters vote for a change from MMP, the preferred alternative needs to be made into a statute that will become the new Electoral Act if it is voted for in the second binding referendum.
29. **I support the proposal by Graeme Edgeler that the Electoral Commission be tasked with producing the first draft of the alternate voting system**, just as they have been tasked with doing the first draft of a review to MMP if MMP is retained.
30. Parliament would still make the final decisions as to how the alternative voting system will precisely work, but by having the Electoral Commission do a first draft, it will make any changes by Parliament transparent. Details such as the number of electorate and list MPs in an SM electoral system will be critical details.

#### Counting of the Votes

31. I appreciate the desire to reduce costs by having the referendum votes counted after election night, and also the desire to have the results of the general election given priority.
32. However the proposed law removes some of the safeguards we have around voting, such as scrutineers and striking out of multiple voters. I believe the safeguards these provisions give us outweigh the concern over cost.
33. Hence I **propose that the referendum be counted on election night, following much the same processes as the general election, except that any counting at a polling place only commence once the general election ballots have been counted.**

In summary I urge the Justice and Electoral Committee to recommend the Electoral Referendum Bill be passed, with amendments as highlighted above.

**David Farrar**