



PSA submission on the Independent Electoral Review He Arotake Pōtitanga Motuhake

Prepared for the Independent Electoral Review Panel
November 2022

About the PSA and this submission

The New Zealand Public Service Association Te Pūkenga Here Tikanga Mahi (the PSA) is the largest trade union in New Zealand with over 83,000 members.

We are a democratic and bicultural union representing people working in the public service (including departments, crown agents, other crown entities, and state-owned enterprises); local government; tertiary education institutions; and non-governmental organisations working in the health, social services and community sectors.

For over 109 years people have joined the PSA to negotiate their terms of employment collectively, to have a voice within their workplace and to have an independent public voice on the quality of public and community services and how they're delivered.

We are committed to advancing the Tiriti o Waitangi of partnership, protection and participation through our work. Te Rūnanga o Ngā Toa Āwhina is the Māori arm of the PSA membership.

The PSA is affiliated to Te Kauae Kaimahi the New Zealand Council of Trade Unions, and we support their submission on this review.

Our submission is formed by our PSA values, Ngā Kaupapa o Te Rūnanga o Ngā Toa Āwhina, and our strategic goals.¹

Overview of our feedback and recommendations

As Aotearoa's main union for public and community services, the PSA has a strong interest in how our public institutions perform and how people in our communities can engage with them.

The PSA supports an electoral system in which:

- Everyone can access the institutions and infrastructure that enable them to participate in democracy, and barriers to this happening (especially for the most marginalised groups in society) are reduced
- Everyone can have trust and confidence in the institutions that form the basis of our democracy
- When people vote their votes matter.

These overarching principles guide our responses to the specific questions in this submission.

¹ [Our values, strategic goals](#) and [Ngā Kaupapa o Te Rūnanga o Ngā Toa Āwhina](#) are available on the PSA website.

Feedback on specific sections

Part 1: The voting system

Representation under MMP

1.1 What do you think the party vote threshold should be?

The PSA supports lowering the party vote threshold to 4%, as recommended by the Electoral Commission in its 2012 review of MMP. This was also our position when we submitted on the 2012 review.

The current threshold of 5% of the party vote or one electorate seat is unfair to parties that fail to make the 5% threshold but receive more votes than other parties that manage to win an electorate seat.

In a proportional parliamentary system where the percentage of seats per party is intended to reflect each party's proportion of votes, a vote for a party that fails to reach the threshold is effectively a wasted vote. The higher the threshold, the higher the potential number of wasted votes. In a system where everyone's votes should matter, the threshold should be as low as feasibly possible.

We acknowledge that the need to reduce wasted votes needs to be balanced with the need for stable and functional government. However, we note several examples of full-term Governments that have included a party represented by a small number of MPs², which demonstrates that parties represented in Parliament with less than 5% share of seats are not necessarily a barrier to stable government. This justifies lowering the threshold to at least 4% - and potentially even lower.

1.2 What are your views on the one electorate seat threshold?

The PSA supports the abolition of the single electorate threshold as recommended by the Electoral Commission in its 2012 review of MMP. This was also our position when we submitted on the 2012 review.

The current threshold of one electorate seat, when combined with the 5% party vote threshold, is unfair to parties that fail to make the 5% threshold but win more votes than other parties that manage to win an electorate seat. It is also open to manipulation when major parties effectively offer up electorate seats to potential coalition partners as a way of securing more seats than the parties' combined party vote would otherwise give them. Especially in a system in which opposing political blocks often reach close to 50% and the election outcome can be swayed by the fortunes of smaller parties, the disproportionate advantage gained by manipulating the system in this way can potentially decide the result of an election.

1.4 Do you think the ratio of electorate to list seats should be fixed? If so, what should the ratio be?

The PSA supports the principle of proportionality, where the share of votes a party receives is translated into seats in Parliament. We are in favour of a ratio that prevents the proportionality of Parliament from being distorted.

The parliamentary term and election timing

² For example: United Future from 2008-2017, ACT from 2011-2017, Te Pāti Māori from 2008-2017 and 2020-present.

1.5 What should the term of Parliament be?

The PSA does not have a position on the length of the parliamentary term. We note the balance between giving voters the ability to hold the Government to account regularly, and giving governments the ability and incentive to plan long-term and to effectively implement policy.

We consider the question of whether to extend the parliamentary term to be worthy of further consideration in a way that allows for widespread public participation.

Part 2: Voters

Enrolling to vote

2.1 What do you think the voting age should be?

The question of whether or not to extend the voting age to 16 is an important one that deserves widespread public debate. While we do not have a firm position on whether or not to change the voting age, we would support more widespread consultation on the question.

We note the draft report of the Review into the Future for Local Government has recommended lowering the voting age in local body elections³; we believe the voting age should be consistent across both parliamentary and local body elections, and that the time is right for this to be seriously considered in a way that facilitates broad public input.

We note that historically in many countries when public debate has occurred around extending suffrage, opposition is often strongest amongst those who already have the right to vote. It will be important for any process looking at the voting age to provide opportunities for those affected but currently unable to vote (ie, the 16 and 17 year olds whose suffrage is being debated) to contribute to the debate.

2.2 What changes, if any, should be made to voter eligibility rules?

The right to vote is a basic human right and as such should only be constrained in very limited circumstances where those constraints are necessary and justified. In the case of prisoners, the existing prohibition on voting is not justified, given:

- The Supreme Court has found that the disqualification places an unreasonable limit on the electoral rights guaranteed under the New Zealand Bill of Rights Act 1990.
- The Waitangi Tribunal found in 2020 that by prohibiting prisoner voting in the Electoral Act 1993 “the Crown has failed in its duty to actively protect the right of Māori to equitably participate in the electoral process and to exercise their tino rangatiratanga individually and collectively”, and recommended the immediate removal of this provision in the Act.⁴
- The Ministry of Justice advised in its regulatory impact statement that giving voting rights to prisoners regardless of sentence “would be the most consistent with the Treaty of Waitangi and the Bill of Rights Act 1993 and the most consistent with fundamental democratic values. This change would be consistent with the objective of maximising participation in the electoral system.”⁵

³ [He mata whāriki, he matawhānui](#). Review into the Future for Local Government, 2022. Page 171

⁴ [He aha i pērā ai? The Māori Prisoners’ Voting Report](#). Waitangi Tribunal, 2020

⁵ [Regulatory impact statement: Prisoner voting](#). Source: Treasury NZ website

2.2 What changes, if any, are needed to the Māori Electoral Option?

We support greater freedom for Māori voters to be able to move between the general roll and the Māori roll as they choose, rather than being restricted to the current four month period every five to six years.

Voting in elections

2.6 What changes, if any, should be made to make voting more accessible?

Voting needs to be accessible to all eligible voters. In the case of workers, this means voting needs to be available to people whose working requirements and working patterns make it more difficult for them to vote.

Election day isn't necessarily accessible for people who work on Saturdays and don't have the flexibility to take time out of their work day to vote. While we acknowledge and strongly support the availability of election voting leave under current law, we expect there are many instances of employees and employers who are unaware of the provision, as well as varying interpretations of "essential" work or whether employees have "had a reasonable opportunity to vote before starting work" that mean some employees aren't given access to this form of leave by their employers.

Similarly, the opening hours for advance voting locations sometimes aren't accessible for people who don't finish work in time to get to a polling place and don't have the flexibility to take time out of their day to visit a polling location.

The proportion of advance votes (compared to election day votes) has increased at every election over the last decade. This has demonstrated that for many people, voting at a time and location that's convenient during the election period is preferable to voting on election day. It stands to reason that making polling locations more accessible in terms of location and opening hours will make this option more attractive to more people who would advance vote but don't find the existing arrangements convenient enough.

2.7 Are the safeguards protecting the integrity of the voting process strong enough? If not, what changes should be made?

The increasing shift towards advance voting makes some of the safeguards on the voting process inconsistent, especially those safeguards in relation to election advertising. This can make the rules confusing for voters, and calls into question whether they are achieving their purpose if they are applied differently for one half of the population than the other. We note that following the 2017 election the Electoral Commission recommended Parliament reconsider the election day rules in light of the rise in advance voting and the contrast between the rules applying to advance voting and those applying on election day.⁶

The safeguards in place to protect people from undue influence on election day in 2020 would have been of no benefit to the almost 2 million people who had advance voted before that day. However, widening these safeguards to cover the entire advance voting period would not be feasible as it would effectively make it impossible to campaign for the weeks leading up to election day, and most likely reduce public interest in voting.

As a trade union we strongly value the ability of our members – and all New Zealanders – to be politically active and to express their political views. We note that each election a small number of voters fall foul of the law through actions such as stating on social media who they are voting for and why on election day – or in the case of local government elections, sharing photos of themselves in the act of voting. The prohibition on these types of activities on election day seems even more

⁶ [Report of the Electoral Commission on the 2017 General Election](#). Page 52

arbitrary given the rise in advance voting. We think there would be value in looking at these rules with a view to making them more consistent, and balancing the need to protect people from undue influence with the value of having an interested, politically active citizenry.

Part 3: Parties and candidates

Financing of parties and candidates

3.5 What changes, if any, should be made to political financing rules?

For the public to have trust and confidence in democratic institutions, we need a democratic system in which everyone can have equal influence and cannot use wealth to buy disproportionate influence in government decisions.

Aside from the conflicts of interest large-scale donations create at the individual donor-politician level, they also create a more general imbalance that favours the interests of the wealthy. We note a recent example discussed by Max Rashbrooke in which one party received \$1.8 million in donations (the equivalent to half their spending on contesting the previous election) in the space of a single month, almost entirely from a small group of people within the wealthiest 0.01% of the population.⁷ This type of funding imbalance means that parties are incentivised to look out for the interests of the most wealthy, and that parties aligned with the interests of the most wealthy are at an advantage in contesting elections.

We would like to see recommendations in the draft report to make the playing field both more even and more transparent.

Election advertising and campaigning

3.8 What restrictions, if any, should apply to election advertising and campaign spending? Who should the restrictions apply to?

As mentioned earlier (under question 2.7), the rules around election advertising are inconsistent, confusing and affect the ability for voters to freely express their opinions. There could be value in reviewing election advertising rules to:

- better align the rules during the advance voting period and election day, so that similar protections from undue influence apply whenever people are voting while not suppressing voter interest or hampering the ability of parties to campaign
- better distinguish between election advertising undertaken by parties and third-party organisations versus individual voters expressing opinions about who they want to vote for and why.

Part 4: Electoral administration

Disinformation, misinformation, and foreign interference

4.6 What, if anything, do you think should be done to reduce the risk of disinformation and misinformation influencing New Zealand's elections?

We are concerned by the emergence of disinformation as a threat to democracy.

⁷ [Rich list donors are great for political parties but not for democracy](#). Max Rashbrooke, Stuff, 2022

It affects not only the integrity of our electoral system, but also creates distrust in the work of government more generally, which puts public servants at risk. We note the analysis by Microsoft discussed in the recently released national security long-term insights briefing, showing that a spike in disinformation and propaganda preceded an increase in protests against the Government over a range of issues⁸. This rise in disinformation and misinformation contributed to the 2022 occupation of Parliament grounds, where a significant proportion of public servants working around the Parliamentary precinct found themselves subject to harassment and intimidation while trying to do their jobs.⁹

Protecting the population from the effects of disinformation requires an engaged, informed citizenry with the tools to recognise false narratives and manipulation. This requires a range of interventions that are much broader than electoral law, including high-quality civics education, transparent and accessible communication by government, and meaningful consultation with the public.

It also requires a less unequal society, where people have access to the income and the public infrastructure and services to be included in their community. "People who are grounded, situated, enabled to flourish and contribute, and connected to others are far less likely to experience negative health outcomes and far less likely to experience other negative outcomes: disconnection, information disorders, social exclusion, and participation in fragmented realities."¹⁰ This requires well-resourced public services, good wages, and fair taxation. Our submission on DIA's draft Long Term Insights Briefing "*How can community participation and decision-making be better enabled by technology?*" earlier in 2022 contains further recommendations for increasing social inclusion in online spaces.¹¹

Conclusion

We welcome the opportunity to participate in this consultation. This wide-ranging review provides an opportunity for us to rethink how the electoral system supports a well-functioning democracy. We look forward to providing input on the panel's ongoing work and draft recommendations in 2023.

For further information about this submission, please contact:

Andrew McCauley
Senior Advisor, Policy and Strategy
New Zealand Public Service Association
PO Box 3817, Wellington 6140
Phone: 027 2712642
Email: andrew.mccauley@psa.org.nz

⁸ [Let's talk about our national security: The National Security Long-term Insights Briefing](#). Department of Prime Minister and Cabinet, 2022. Page 9

⁹ [E tū and PSA members at parliament want protestors gone](#). PSA, 2022

¹⁰ [The Common Good or the Tragedy of the Commons? Social cohesion, trust, and the impact of misinformation](#). Kate Hannah, Speaker's Science Forum - Trust, misinformation and social in(ex)clusion, 2022.

¹¹ [PSA Submission to Department of Internal Affairs on its Draft Long Term Insights Briefing](#). 2022