



# On the Parliamentary Term

Striking the best balance of government effectiveness and accountability.

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## 1. Introduction

How long the parliamentary term should be and how the election date should be decided are questions of long-standing political and constitutional interest. According to Terms of Reference set out by Cabinet, they are also issues for the Constitutional Advisory Panel to consider.

This paper serves as our submission to the Constitutional Advisory Panel on the issue of the “length of the parliamentary term and whether or not the term should be fixed.”<sup>1</sup> It seeks to assist the Panel in its consideration of these issues via a thorough analysis of the arguments and related literature around the parliamentary term, evaluating the merits of reform and making recommendations.

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This submission is divided into six sections:

1. The first section introduces the rationale and terms of reference for this submission.
2. The second section sets the stage for this submission by exploring contemporary international terms of parliaments, the history of New Zealand's term, and the contemporary context within which questions about the length of the parliamentary term and whether that term should be fixed arise.
3. The third section discusses the role that the parliamentary term plays in the constitution and the manner in which the length of the term requires the balancing of accountability and effective government, and evaluates the arguments for and against changing the parliamentary term.
4. The fourth section considers the extent to which the adoption of MMP has improved the accountability of parliament by changing who claims executive power and how the legislative process works.
5. The fifth section evaluates the question of whether and in what form the term should be fixed, and how any change should be implemented.
6. The sixth and final section gives our conclusions and recommendations based on the foregoing analysis.

It has been said that extending the term is an “obvious and warranted reform.”<sup>2</sup> At first blush this may seem intuitively correct, but there are compelling and reasonable arguments on both sides of this debate, with “room for genuine differences of view.”<sup>3</sup> Before we dive into the analysis, Professor of Public Policy Jonathan Boston's words about issues like the parliamentary term are worth quoting:<sup>4</sup>

“...many of the issues...are complex and do not lend themselves to easy answers. In other words, the ‘best’ approach, to the extent that one can be discerned, is not self-evident. An additional complication lies in the fact that the merits of specific reforms...cannot be determined in isolation from the wider political, institutional, and cultural context. Likewise, aspiring reformers need to understand the interrelated nature of the norms, conventions, practices, and statutes which comprise New Zealand's constitutional framework.”

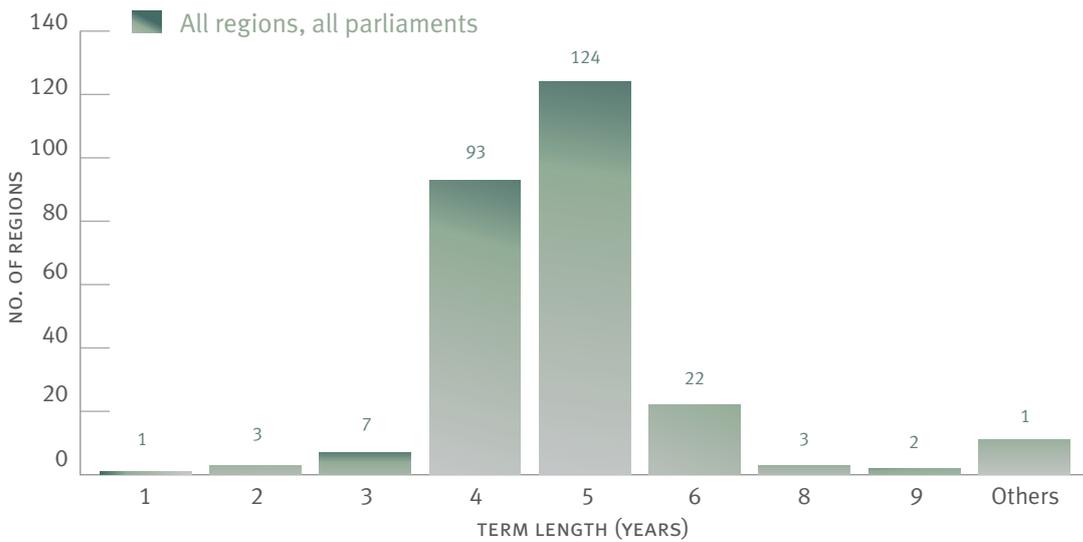
This is a complex question, and as such we need to explore the political, institutional and cultural contexts in which it arises to get to the heart of the matter. Widening the lens and looking broadly at the international situation is a good place to start.

## **2. International parliamentary terms, the history of New Zealand's parliamentary term, and the contemporary context**

### ***International terms of parliaments***

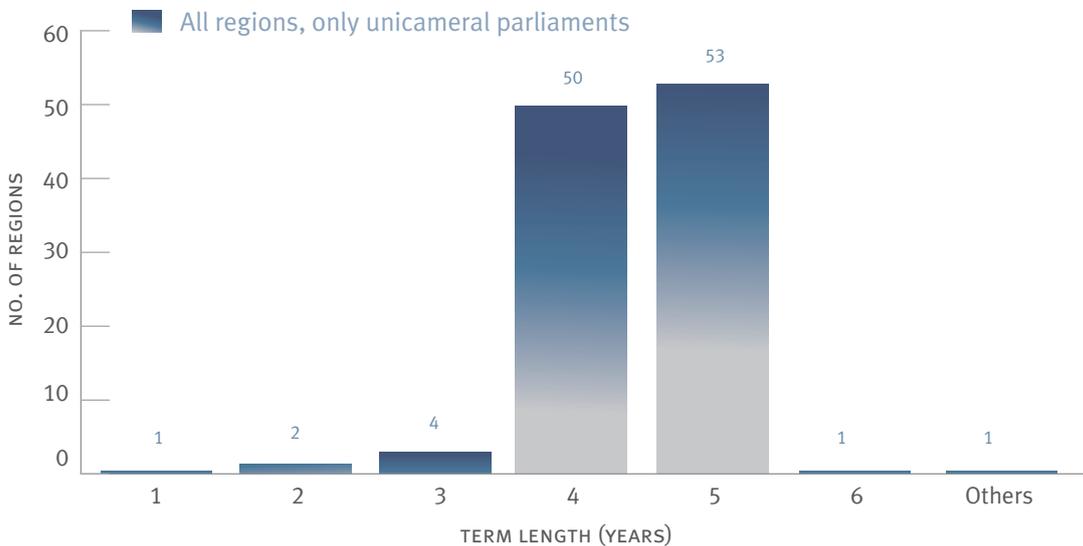
When bicameral and unicameral parliaments are considered together, the parliamentary terms across all regions and parliamentary structures range from one year to the lifetime of the individual members, with the vast majority of parliamentary chambers opting for either four or five year terms.<sup>5</sup> New Zealand's House of Representatives is one of only seven parliamentary chambers with a term of three years. The others are in Australia, Mexico, the Philippines, Qatar, El Salvador, and Nauru. Table 1 below shows the distribution of terms internationally.

**TABLE 1 - TERMS OF ALL PARLIAMENTARY STRUCTURES<sup>6</sup>**



Focusing on unicameral parliaments paints a similar picture, with the majority of countries surveyed favouring a four or five-year term.<sup>7</sup> More specifically: fifty-three countries (46.9 percent) have a five-year term, and fifty countries (44.25 percent) have a four-year term.<sup>8</sup> New Zealand joins three other countries (3.54 percent) with a unicameral parliament and three-year terms: Qatar, El Salvador, and Nauru. Table 2 depicts the parliamentary terms operating under a unicameral system.

**TABLE 2 - TERMS OF UNICAMERAL PARLIAMENTS<sup>9</sup>**



Looking more deeply into this data, it becomes clear that New Zealand is the only liberal democratic country with a unicameral system and a three-year term.<sup>10</sup> Other unicameral liberal democracies with proportional electoral systems<sup>‡</sup>—such as Israel, Sweden, Norway, Denmark and Finland—have four-year terms. New Zealand’s legislative progenitor, the United Kingdom, has a five-year term for its lower house.<sup>11</sup> And Germany, whose electoral system was the inspiration for New Zealand’s MMP system, has a four-year term.<sup>12</sup> Overall,

<sup>‡</sup> A country’s electoral system has an important affect on its constitutional arrangements, and, consequently, its electoral timetable. This relationship will be discussed with respect to New Zealand’s adoption of MMP from page 7 of this paper.

it is remarkably clear that parliaments—whether unicameral or bicameral—overwhelmingly favour a four or five-year term.<sup>13</sup>

***The history of New Zealand’s parliamentary term***

Inherited from the English political tradition, the parliamentary term in New Zealand was first established at five years in accordance with the New Zealand Constitution Act 1852. The five-year term remained in place until 1879, when the term was reduced to three years in a political climate of “considerable rivalry between central government and the provinces.”<sup>14</sup> This move was seen to be in response to a fear that the abolition of provincial government would “disproportionately strengthen central government at the expense of provincial interests.”<sup>15</sup> Since the 1879 reform, the three-year term has remained the norm with three brief exceptions for the First World War, the Forbes Coalition and the Second World War.<sup>16</sup> Table 3 briefly outlines New Zealand’s parliamentary term history below.

**TABLE 3 - NEW ZEALAND PARLIAMENTARY TERM HISTORY<sup>17</sup>**

YEAR	TERM LENGTH (YRS)	REASON
1854	5	English Political Tradition
1879	3	Post Abolition of Provinces
1916	5	First World War
1934	4	Forbes Coalition Government
1937	3	Repealed Forbes change
1941	4	Second World War
1967	3	Referendum: four-year term Rejected
1986	3	Royal Commission consider extending parliamentary term
1990	3	Referendum: four-year term rejected
2005	3	Constitutional Review suggests term as issue to be considered.
2010	3	Cabinet document suggests term issue to be considered.

Any deviation from the three-year term outside the World Wars has been met with strong public resistance. The Forbes Government extended the term to four years in 1934 without a mandate,<sup>18</sup> an unpopular measure that may have contributed to its election defeat in 1935.<sup>19</sup> The three year term was re-established in 1937.<sup>20</sup>

Since then, two referenda have been put forward to the electorate: one in 1967 and the other in 1990. The results of both referenda overwhelmingly favoured keeping the three-year term.<sup>21</sup> In 1967 and 1990, 68.1 percent and 69.3 percent of voters, respectively, rejected extending the term.<sup>22</sup>

***The current context***

More recently, while acknowledging the results of the referenda, Prime Minister John Key maintained that “the mood’s definitely changing with MMP.”<sup>23</sup> Evidence suggests that Key is right, with recent polls by Colmar Brunton and Research New Zealand showing that 56 percent and 58 percent, respectively, of those polled favour a four-year term.<sup>24</sup> These results—the highest ever in favour of a four-year term—are on the back of a survey undertaken in 2010 by the New Zealand Business Council for Sustainable Development that found 40 percent of respondents also in favour.<sup>25</sup> Polls are of course, indicative only.<sup>26</sup>

Key also declared his support for an extended, fixed parliamentary term, saying that “it makes a lot more sense to know when the date is and it makes more sense to have four years.”<sup>27</sup> In a rare display of cross-party consensus on a constitutional issue, this sentiment was soon echoed by leaders of coalition and opposition parties.<sup>28</sup> Given the shift in public opinion on the issue indicated by the polls, it would seem that there is a swelling tide of support for an increase in the parliamentary term. And yet a swelling popular tide of opinion,

cross-party consensus and international norms do not, on their own, make a valid argument for changing this aspect of New Zealand’s constitutional arrangements.<sup>29</sup> Further analysis and consideration of the issue is necessary.<sup>30</sup>

### **3. The constitution and the parliamentary term: balancing government effectiveness and accountability**

According to Oxford legal academic Dr. Richard Ekins, any constitution—written or unwritten—is “a framework for the exercise of public power” consisting of “rules that settle the allocation of authority and how that authority should be exercised.”<sup>31</sup> This framework is for securing the common good by “realising good government; limiting the prospect of the misuse of public power; enabling democratic self-rule; and maintaining the stability and unity of the political community.”<sup>32</sup> Striking the balance among these principles—which may be competing, complementary or sometimes both—is one of the more difficult aspects of drafting or amending a constitution.<sup>33</sup>

When it comes to the issue of the parliamentary term, we must weigh and balance two principles: that of realising good government and that of limiting the prospect of the misuse of public power. In other words, we must weigh and balance effective government and governmental accountability. A shorter term means greater accountability, giving New Zealanders more opportunities to tighten the reins on their elected representatives primarily—but not exclusively—through regular elections. But such a tight grip means perhaps less effectiveness, with reduced time for governments to do what they promised and to respond to problems as they arise. The opposite holds for a longer term: potentially greater effectiveness at the expense of a vital lever of accountability.

The 1986 Royal Commission Report offers the most comprehensive analysis available on the prospect of extending the term in New Zealand and on the need to balance effective government and accountability.<sup>34</sup> From submissions received, it observed that those in favour of extending the term generally held that government needs to have more time to develop and implement its policies—that there was a need for more effective government.<sup>35</sup> Those who wished to maintain the three-year term, on the other hand, generally held that voters must have the power to change the government at regular intervals to ensure politicians remained responsible to their constituents—that there was a need to retain governmental accountability.<sup>36</sup> Contemporary arguments are mostly variations on these themes.<sup>37</sup> We will now briefly consider these arguments individually, detailing their specifics and noting their detractors before coming to a conclusion regarding the two taken together.

#### ***A four-year term: greater effectiveness***

Under a three-year term, it is argued that there is only one “effective year” for governments to formulate and implement policy, not long enough for the government to be effective.<sup>38</sup> That is, politicians—and ministers in particular—spend the first year of their term learning the ropes; the second “getting things done;” and the third campaigning for re-election.<sup>39</sup> Professor Philip Joseph, a public law expert, called these the “settling in,” “working” and “election” years, respectively.<sup>40</sup> It follows that an extended term would allow a longer working period, giving more time for better law-making. This argument holds even when the government is returned, as is often the case in New Zealand, with ministerial and portfolio reshuffles usually resulting from new coalition or confidence and supply agreements.<sup>41</sup>

More frequent elections are also seen to be disruptive, resulting in “almost constant electioneering” and short-sighted legislation.<sup>42</sup> This means it is more likely that undesirable electoral-cycle influences may arise, such as governments seeking political advantage by introducing populist, short-term policies or partaking in rent-seeking behaviour.<sup>43</sup> Controversial policies and decisions, while potentially beneficial in the long-term, may also be delayed until after an election to minimise adverse electoral consequences.<sup>44</sup> In contrast, a four-year term, by virtue of its reduced frequency, would “encourage longer-term strategic planning and decision-making in government.”<sup>45</sup> This is arguably most evident with respect to economic policy.<sup>46</sup>

Extending the term would not only encourage more considered policies and decisions, it would also give voters more time to make an informed judgment on the government.<sup>47</sup> Policies which require a longer timeframe to demonstrate their benefits could be more accurately assessed, and it follows that they would be more likely to be introduced if this were the case. Governments, in turn, would also be able to present a more complete record of their achievements if they had four years between elections rather than three.

### ***Detractions***

Some argue, however, that a longer term is not necessary to achieve the desired improvements in governmental effectiveness. Even under a three-year term, governments may be capable of putting in more than one “effective year” of policy making. For one, it is likely that many ministers do not need an entire year to learn the ropes because they have either served before or understudied portfolios in opposition; in addition, they have a vast public service and party machine at their disposal to help them get up to speed.<sup>48</sup> Recent governments have also campaigned on a platform of “100 days of action,” whereby significant reform is promised—and subsequently implemented—in the first few months of the government being elected.<sup>49</sup> It could also be argued that in response to a dynamic media environment characterized by “mass communications, social and cultural complexity and the intense contestability of ideas,”<sup>50</sup> parties’ campaigning activities are not necessarily confined to the election year. And if controversial yet beneficial policies are more likely to be left until after an election, an extended term may also mean these are delayed further still.

As well, in New Zealand, governments have more often than not been given a second chance, affording them the confidence to plan for the next term and beyond. This means, in effect, that because governments usually last more than one term, a new government is not bedding in every three years, but, rather, at least every six. The Commission countered this as “largely irrelevant,” however, saying that the government’s actions will remain focussed on the next election regardless of whether they think they will be re-elected or not.<sup>51</sup>

### ***A three-year term: greater accountability***

The primary thrust of arguments around accountability underscore the view that governments must be held to account through regular elections to limit the potential misuse of their authority; the more often the better. Some commentators liken more frequent elections to “more democracy.”<sup>52</sup> It is argued that New Zealand’s relatively short term is a concrete constraint, giving voters the ability to pass judgment and constrain both parliament and government through democratic means. This is particularly pertinent given New Zealand’s unique lack of safeguards—not having an upper house or an entrenched bill of rights, for example.<sup>53</sup>

One of the stronger arguments for staying with the current term is that extending the term may not necessarily deliver all of the suggested benefits of effective government in practice, while elections are a known quantity that have been holding parliaments and governments to account since the inception of representative democracy.<sup>54</sup>

A shorter term may also ameliorate voter apathy, political neglect, and procrastination—all of which can negatively impact accountability. Less time between elections means that voters are less likely to lose interest in politics and become disengaged with the democratic process. Politicians are also more likely to act in the interest of the voters when the next election is not far off on the horizon.<sup>55</sup> A shorter term would also likely act as an “effective spur” to get “planning underway and legislation passed with proper efficiency.”<sup>56</sup>

### ***Detractions***

While elections do play a primary role in keeping parliament accountable to voters,<sup>57</sup> this is not the only way that accountability is exercised, and the effect can be exaggerated.<sup>58</sup> Other factors, like an unyielding media cycle in what eminent constitutional lawyer Geoffrey Palmer calls the “telecratic age” also provide scrutiny between elections,<sup>59</sup> keeping politicians on their toes and somewhat minimising the impact of the popular

vote. It is worth mentioning that many of the detractors of accountability-based arguments have already been made above as arguments in favour of effectiveness, and vice-versa.

### ***Conclusion***

On the whole, an extra working year would likely afford more considered law making and fewer electoral-cycle disruptions, and it would give voters more time to pass judgment on the government. An effective government demands sufficient time both to formulate and to implement policy, but at the same time they must not go unchecked. Governmental effectiveness must be properly balanced with accountability.

The Commission recognised this, especially within its own constitutional context which, it believed, did not offer enough accountability measures to enable a four-year term. It observed that:<sup>60</sup>

[New Zealand's] constitution places almost no limits on the powers of governments to carry out their large responsibilities. Parliament has supreme law-making powers; the Government of the day has the support of and general control over the House of Representatives; it has extensive direct powers both in its own right and by delegation from Parliament; its powers in and through the house are not restrained by a Second Chamber; there are no general legal restrictions as might be found in a bill of rights, on the exercise of Government's powers both in Parliament and outside it; and there is no constitutional decentralization of power as in a federal system.

Thus, in what was described at the time as an “executive paradise,”<sup>61</sup> cabinet dominated parliament and consequently the legislative process.<sup>62</sup> But parliament's lack of control over the government was not the only problem; voters too had a lack of control over parliament in a first-past-the-post (FPP) electoral system.<sup>63</sup> This particularly troubled the Commission, who cited the power given to the governing party, and the executive in particular, as a “key issue” to consider.<sup>64</sup> Therefore, despite the fact that it supported extending the term, it did not make a formal recommendation that a four-year term be adopted at that time, though it did leave the door open for such a recommendation to be made if and when additional restraints were introduced, like MMP.

We agree with the Commission's rationale. This begs the question though: while the mood may be changing with MMP as the tides of public and political opinion suggest, has New Zealand's adoption of MMP since the Commission's Report tipped the balance sufficiently to, in the words of Dr. Ekins, “make it possible for authorities to govern well, while also limiting the prospect of misuse of public power?” The following section will seek to answer this question.

## **4. Has MMP improved governmental accountability?: executive power and the legislative process**

The introduction of MMP following the 1993 referendum was a “seismic shift” that “irrevocably changed” New Zealand's politics.<sup>65</sup> The magnitude of this shift was immense, as a country's voting system is “the most important rule of the political game,”<sup>66</sup> affecting the way public decision-making power is distributed, exercised and legitimised.<sup>67</sup> Having survived the last referendum,<sup>68</sup> MMP is likely to remain with us for some time.<sup>69</sup> But has it increased governmental accountability?

Professor Andrew Geddis, an electoral law expert, highlights two significant changes as a result of the introduction of MMP that are worthy of attention here: who claims and wields the power of executive government; and how the legislative process works.<sup>70</sup> To inform whether the underlying conditions for an extended parliamentary term are more favourable today than they were in 1986, we will now consider the form and extent of the changes to the distribution of executive power and the legislative process.

### ***Distribution of executive power***

Democratic representation has changed significantly since FPP. Proportional representation and minority

governments have had a sizeable effect on government accountability. Seats won at an election now more closely represent voters' preferences, resulting in a more diverse parliament representing a wider range of groups and interests.<sup>71</sup> Minority coalition governing arrangements are also now the norm,<sup>72</sup> with the past six parliaments since the introduction of MMP taking this form more often than not.<sup>73</sup> Furthermore, the recent departure from formal cabinet coalitions towards more flexible inter-party governing arrangements have allowed ministers of minor parties outside cabinet to criticise the government in areas not pertaining to their portfolio, thus increasing the independence of "support parties."<sup>74</sup> These changes mean it is much more difficult for a single party to control the House and, subsequently, the passage of legislation.

Involving more parties in coalition arrangements limits the reach and scope of government activities. The importance of holding parliament—and cabinet in particular—to account has already been stressed in this submission.<sup>75</sup> As New Zealand remains aligned to the Westminster model, with its requirement of "responsible government," whereby the executive is both from and responsible to the legislature,<sup>76</sup> it is important to get this balance right. This was not the case under FPP, with parliament criticized as being merely a "rubber stamp."<sup>77</sup> But now under MMP the delicate interaction "between stable and firm political leadership from cabinet on the one hand and consultative, flexible leadership on the other hand" has been fundamentally altered.<sup>78</sup> Given New Zealand's constitutional arrangements, MMP is now perhaps "the only strong democratic safeguard the country possesses."<sup>79</sup>

This is not to say that the government has been stripped of all its influence under MMP. "Executive government still retains much power," reasoned Matthew Palmer, "[b]ut the need for these political transactions [of coalition government] is new and has ensured that Parliament has regained a centrality in New Zealand's constitutional structure that it had previously lacked."<sup>80</sup> Moreover, political consultant Ryan Malone supports this by arguing that the executive dominance from FPP is now a "creature of the past":<sup>81</sup>

"MMP was seen [by its supporters prior to introduction] as a means of restraining governments, of slowing them down, and of forcing them to engage with and incorporate wider parliamentary views than those of cabinet alone. There can be no question that this has been the outcome."

There is, therefore, ample evidence that the executive-legislative relationship has been fundamentally altered as a result of MMP. Parties not only have to negotiate with one another to form government, but also to pass Bills into law.

### ***The legislative process***

The legislative review processes and practices today, too, are "markedly different" from those under FPP.<sup>82</sup> Thanks to the more consensual style of politics and the wide range of groups and individuals required in deliberations, "policy-making is now slower [and] more complicated..." than before.<sup>83</sup> While urgency provisions have been used controversially to fast-track legislation, this is an issue irrespective of the electoral system or length of the parliamentary term.<sup>84</sup> This notwithstanding, MMP has indeed "significantly slowed the pace of legislation"—particularly from the government—"and enabled parliament to scrutinise bills in a much more rigorous fashion," as indicated by the thirty-three percent reduction in government bills enacted per year and the increased sitting time devoted to the bills that do pass since the introduction of MMP.<sup>85</sup> "Governments cannot push their legislative agenda through parliament at such speed," concluded Malone, "Parliament has become less of a roaring Ferrari and more of a sensible family wagon."<sup>86</sup>

Committees have also become more influential and independent as a result of the change in electoral system. This is because under minority governments, the government no longer necessarily commands an automatic majority on subject committees, nor are subject committees always headed up by a government MP.<sup>87</sup> While it is rare for committees to reverse a policy decision as they remain advisory and not authoritative, they do wield great influence—so much so that Geddis writes that committees have "developed into something of a de facto second chamber of parliament."<sup>88</sup>

Along with committees, public deliberation has also benefited from MMP's introduction. The Commission

thought that there was “likely to be a significantly greater degree of consultation and accommodation of other views with a consequent restraining effect on the powers of government” with a proportional system,<sup>89</sup> which has turned out to be true. MMP has “energised national politics” because of the greater representation of interests and identity groups.<sup>90</sup> A more consensual politics has indeed arisen, thanks to more parties winning representation in parliament, making more space for dialogue, disagreements and compromises between and within them.<sup>91</sup> It is also much more difficult for a single party to control not only the House, but committees too. Negotiations between minor and governing parties are required not just for government formation, but for general parliamentary business as well.<sup>92</sup> An example of this is the budget process, which has become more open and subject to additional consultation under MMP.<sup>93</sup>

## **Summary**

Joseph ties these two threads together with a lucid summary of how MMP—with its “coalition arrangements, support agreements on confidence and supply, cross-party negotiations and shifting voting blocs, issue by issue” — remains the “antithesis of the former FPP system”:<sup>94</sup>

“Minority government has transformed the dynamics of New Zealand politics. Governments cannot stage-manage their legislative programme as they could under FPP. Legislative policy is fully contestable. Government bills...may be defeated in the House without precipitating confidence issues. Governments must deploy political management strategies that can build legislative majorities at the pre-introduction stage. Ministers promoting bills must negotiate with coalition or support parties (and sometimes opposition non-support parties) over the content and shape of their legislation. They must accept sometimes extensive reworking of their bills in select committee and committee of the whole House as the price of having their proposals enacted. MMP governments do not enjoy the luxury of government majorities on their select committees or in the committee of the whole House. The imperative to build cross-party support has instated a separation between the executive and legislative branches that was lacking under FPP.”

Under MMP, executive power has thus been dispersed, limiting the prospect of misuse of public power; and the legislative process has been shored up, allowing authorities to govern better. While there are still a few rocks in the soil in the form of detractions, the ground nevertheless appears to be well tilled for the seeds of an extended term to be sown. Before we can conclude though, we need to consider any additional measures that may need to be taken if an extended term is favoured.

## **5. Implementation: a fixed term and a referendum**

At this point it is wise to acknowledge what Professor Jeremy Waldron calls “Parliamentary Recklessness” — New Zealand’s progressive stripping away “of safeguard after safeguard from the legislative process.”<sup>95</sup> While New Zealand retains the doctrine of parliamentary sovereignty and the democratic principle of self-rule, it is also preferable that checks and balances operate within the legislative processes of parliament rather than without.<sup>96</sup> Given this, a fixed term may offer a way to both make the most of the extended term while at the same time providing a compensatory check on the executive. The Commission also recommended that a four-year term be fixed.

Under the current arrangements, the governor general acts on the advice of the prime minister regarding when to dissolve parliament and to call a general election.<sup>97</sup> The prime minister can use this discretion at any time during the parliamentary term.<sup>98</sup> Fixing the term would limit this by prescribing a date on which an election must be called. Internationally, fixed terms are reasonably common throughout democracies.<sup>99</sup>

Such a measure is important in light of the preceding discussion, as extending and fixing the term are linked — that is, the longer the term is increased, the greater latitude there is for a prime minister to seek political advantage by calling an early election when the polls are favourable.<sup>100</sup> This has been likened to “a race in which the Prime Minister is allowed to approach it with his running shoes in one hand and his starting pistol

in the other.”<sup>101</sup> Given New Zealand’s relatively short parliamentary term, this has not been a significant issue here as the vast majority of prime ministers have governed as long as the term allowed—the first National Holland Government a notable exception after dissolving parliament with fifteen months left to seek a fresh mandate.<sup>102</sup> It is likely to become a problem, however, if the term is extended as international comparisons suggest that governments in countries with longer terms tend to choose politically advantageous times to call an election.<sup>103</sup> Furthermore, any advantage gained from an additional “working year” for government to develop and implement policy would be squandered if an early election were called for the sake of “naked political advantage.”<sup>104</sup>

A fixed term would not only assist in realising the benefits of an extended term, it would also be fairer and more predictable. The “unfettered power to decide the timing of the contest” gives significant power to the Prime Minister over opposition parties,<sup>105</sup> coalition partners and potentially even backbenchers—using the threat of a snap election to bring them in line.<sup>106</sup> Even if this is not used, the option to do so is still there, which can put other parties “off-balance.”<sup>107</sup> This is seen as procedurally unfair, particularly as the incumbent government already has inherent advantages, like the public service. There is also the potential to cause “cynicism” in the electorate.<sup>108</sup> Predictability is important too because, as the Commission noted, an early election “tends to be both destabilising and disruptive, with constant speculation about whether or when there will be an election.”<sup>109</sup> It is notable that John Key broke with tradition and announced the 2011 election date nine-months beforehand to avoid “playing politics” with the electoral cycle.<sup>110</sup>

Certainty would need to be paired with some flexibility, however, so a mechanism to accommodate the possibility of the collapse of a minority government is needed—often called a “safety valve.”<sup>111</sup> While MMP governments have been stable thus far with none having lost a motion of no confidence, the increased likelihood of minority coalition arrangements makes this mechanism especially important.

### ***The fixing method***

There are almost as many ways of fixing as there are parliaments with fixed terms.<sup>112</sup> Some countries forbid the possibility of an early election entirely, like Norway, where elections are held every four years without exception.<sup>113</sup> Others, however, like Sweden, recognise the need for a “safety valve” and operate with a “semi-fixed” term, whereby the government may call an early election.<sup>114</sup> Further methods to allow for early elections include giving the governor general or supreme court the power to decide whether to accept or to refuse a request for an early election, or legislating a recommended but unenforceable election date.<sup>115</sup> We, however, favour a solution based on the United Kingdom’s recent reforms under the Fixed Term Parliaments Act 2011,<sup>116</sup> which requires a parliamentary majority to vote in favour of an early dissolution.<sup>117</sup> This would trigger a process whereby parliament is given a period of time (fourteen days in the United Kingdom) to form an alternative government before it is dissolved and an election called. Alternatively, if there is broad cross-party support (two-thirds majority in the United Kingdom) for dissolution before the end of this period of time, then parliament may dissolve itself. Once a new government is formed the electoral clock will then be restarted, giving the incoming government as close to a full term as possible.<sup>118</sup>

This method differs from the current framework as it transfers the power of dissolution from the prime minister (advising the governor general) to parliament. Under minority government a consensus would have to be reached with other political parties before dissolution could occur.<sup>119</sup> The advantage of this approach is that it devolves decision-making power from one politician to many, likely fostering increased accountability and scrutiny. Thus if a government resigns, it is possible for a majority of politicians to refuse dissolution until negotiations regarding a replacement coalition government have failed.<sup>120</sup> Moreover, any decision to dissolve parliament would require an “open and public debate” to justify why parliament has chosen to deviate from the legislated timeframe.<sup>121</sup> While it is possible for fixed term legislation to be circumvented—as played out in Canada in 2008 when Prime Minister Stephen Harper sidestepped the recently introduced fixed term legislation by requesting that the Governor General act on his advice to dissolve parliament—it does create political incentives and norms that will likely reduce the chance of this happening.<sup>122</sup>

A fixed term implemented in this way not only aligns strongly with New Zealand’s constitutional arrangements but also transfers power and accountability from the government to parliament. Moreover, it makes room for the likely increased effectiveness of an extended term, resolves the current procedural unfairness of an unfixed term, allows for the possibility for political negotiation and re-formation of a government, and provides a degree of flexibility to accommodate the politically dynamic nature of MMP. If the term is to be extended, fixing it in this way makes a lot of sense.

### ***A referendum***

It also makes sense to foster broad and enduring agreement by requiring any change to the term to be dependent on gaining popular support through a referendum. Maximising social acceptance is an important ingredient for stable constitutional change.<sup>123</sup> While a supermajority of parliament could technically make this change,<sup>124</sup> holding a referendum is important to address concerns about politicians bestowing themselves with “more job security.”<sup>125</sup> To further minimise the potential for this to be seen as self-interested, the result of the referendum should not take effect until 2017 at the earliest, leaving little incentive for incumbent politicians as it won’t extend their next term should they be re-elected.

This leaves us with the proposition of extending to a four-year term by referendum, or staying with the status quo of three—which strikes the right balance?

## **6. Conclusion and recommendations**

After considering the arguments and New Zealand’s history, context, and constitutional arrangements in-depth, **a persuasive case can be made that a fixed, four-year term is likely to afford good government without unduly reducing accountability.** MMP has made enough of a difference to the way the powers of government are distributed and the legislative process carried out that the time is now right for New Zealanders—informed and engaged through the “Constitution Conversation”<sup>126</sup>—to consider and decide this question at a referendum.<sup>127</sup> If this eventuates, New Zealanders should approach the ballot box confident that a fixed, four-year term would make our great constitution even better. As distinguished political scientist Samuel Beer quipped, “representative government must not only represent, it must also govern.”<sup>128</sup> It’s time to let it.

### ***Formal Recommendations:***

- 1 That New Zealand’s parliamentary term is extended to a period of four years;**
- 2. That the term is fixed, with the date of the election—the last Saturday in November for example—set in mandatory legislation;<sup>129</sup>**
  - a. But if the government loses the confidence of the House,<sup>130</sup> the following process is triggered:**
    - i If no new government is formed within one month of the vote of no confidence, then parliament is dissolved;<sup>131</sup> or**
    - ii If before this one month deliberation period is over parliament passes a motion to dissolve itself by a supermajority (75 percent), then parliament is dissolved;<sup>132</sup>**
  - b. If parliament is dissolved mid-term (following either 2i or 2ii), the incoming government will serve as close to a full term as possible with the next election occurring on the same calendar date as (2); and**
- 3. That this legislation is implemented no earlier than 2017, dependent on gaining majority support through a public referendum.**

## ENDNOTES

- 1 New Zealand Ministry of Justice, *Terms of Reference - Consideration of Constitutional Issues*, <http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/consideration-of-constitutional-issues-1/terms-of-reference-constitutional-advisory-panel> (accessed 10 December 2012).
- 2 P. Joseph, "The Future of Electoral Law," in C. Morris et. al. (eds), *Reconstituting the Constitution* (New York: Springer, 2011), 237.
- 3 New Zealand Royal Commission on the Electoral System, *Report of the Royal Commission on the electoral system: Towards a better democracy* (Wellington: Government Printer, 1986), 165.
- 4 J. Boston, *Governing under proportional representation: lessons from Europe* (Wellington: Institute of Policy Studies, 1998), 119.
- 5 Inter-Parliamentary Union, *Parliaments at a glance: Term*, <http://www.ipu.org/parline-e/TermofParliament.asp?REGION=All&LANG=ENG&typesearch=1> (accessed 13 February 2013).
- 6 Inter-Parliamentary Union, *Parliaments at a glance: Term*, <http://www.ipu.org/parline-e/TermofParliament.asp?REGION=All&LANG=ENG&typesearch=1> (accessed 13 February 2013). Given this broad consensus, there is a dearth of research on the length of parliamentary terms.
- 7 This also holds when lower chambers and unicameral parliaments are considered together: with 50.26 percent having a five-year term; 39.9 percent having a four-year term; and 3.63 percent having a three-year term. Inter-Parliamentary Union, *Parliaments at a glance: Term*, [http://www.ipu.org/parline-e/TermofParliament.asp?LANG=ENG&REGION\\_SUB\\_REGION=All&typesearch=6&Submit1=Launch+query](http://www.ipu.org/parline-e/TermofParliament.asp?LANG=ENG&REGION_SUB_REGION=All&typesearch=6&Submit1=Launch+query) (accessed 13/02/2013).
- 8 Inter-Parliamentary Union, *Parliaments at a glance: Term*, <http://www.ipu.org/parline-e/TermofParliament.asp?REGION=All&LANG=ENG&typesearch=1> (accessed 13 February 2013).
- 9 Inter-Parliamentary Union, *Parliaments at a glance: Term*, <http://www.ipu.org/parline-e/TermofParliament.asp?REGION=All&LANG=ENG&typesearch=1> (accessed 13 February 2013).
- 10 For a table of countries classified as liberal democracies and their corresponding electoral systems see: D. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (New York: Palgrave Macmillan, 2011) Table A.1, 231. Interestingly, Sweden switched to a three-year term in 1970, and reverted back to a four-year term in 1994; enacted in 1995. [R. Congleton, *Improving democracy through constitutional reform: some Swedish lessons* (Massachusetts: Kluwer Academic Publishers, 2003), 29].
- 11 Soon to be a five-year fixed term. United Kingdom Government, *Fixed Term Parliaments Act 2010*, <http://www.legislation.gov.uk/ukpga/2011/14/contents/enacted> (accessed 14 November 2013). See page 9 of this paper for more on fixed terms.
- 12 See generally: New Zealand Royal Commission on the Electoral System, *Report of the Royal Commission on the electoral system: Towards a better democracy* (1986).
- 13 As the Royal Commission notes, however, international comparisons must be made with caution as different countries have diverse historical contexts and constitutional arrangements. Another factor to consider is that, unlike New Zealand, other parliaments are less likely to last their full term, showing that crude figures of maximum term length obscure the actual frequency of elections. [New Zealand Royal Commission on the Electoral System, *Report of the Royal Commission on the electoral system: Towards a better democracy* (1986), 153.] The United Kingdom, for example, has a five-year term, but the actual frequency of elections has been approximately four years since World War II. [R. Hazell, *Fixed Term Parliaments* (London: The Constitution Unit, University College London, 2010), 12-13.] This is in contrast to New Zealand, whose average term in practice has been approximately three years. [This figure was calculated using dates provided by Statistics New Zealand, *General Elections 1853-2011 - Dates and Turnout*, <http://www.elections.org.nz/events/past-events-0/general-elections-1853-2011-dates-and-turnout> (accessed 4 March 2013)].
- 14 New Zealand Royal Commission on the Electoral System, *Report of the Royal Commission on the electoral system: Towards a better democracy* (1986), 155.
- 15 P. Joseph, "The Future of Electoral Law," 238.
- 16 New Zealand Royal Commission on the Electoral System, *Report of the Royal Commission on the electoral system: Towards a better democracy* (1986), 155.
- 17 New Zealand Royal Commission on the Electoral System, *Report of the Royal Commission on the electoral system: Towards a better democracy* (1986), 155.
- 18 L. Webb, *Government in New Zealand* (Wellington: Department of Internal Affairs, Wellington: 1940), 38.
- 19 New Zealand Royal Commission on the Electoral System, *Report of the Royal Commission on the electoral system: Towards a better democracy* (1986), 155.
- 20 D. MacGee, *Parliamentary Practice in New Zealand* (Wellington: Dunmore Publishing, 2005), 111.
- 21 H. Gold, *New Zealand Politics in Perspective*, 3rd ed. (Auckland: Longman Paul, 1994), 465.
- 22 H. Gold, *New Zealand Politics in Perspective*, 465. The Royal Commission suggested a lack of public discussion and more pressing issues overshadowed the 1967 referendum. [New Zealand Royal Commission on the Electoral System, *Report of the Royal Commission on the electoral system: Towards a better democracy* (1986), 156-7.] Australia also unsuccessfully sought to increase its term from three to four years in a 1988 Referendum, with 67 percent rejecting the proposal. [Australian Parliamentary Library, *43rd Parliament Parliamentary Handbook of the Commonwealth of Australia* (Canberra: Department of Parliamentary Services: 2011), 395].
- 23 TVNZ, *Mood Changing Towards Less Frequent Elections*, <http://tvnz.co.nz/politics-news/mood-changing-towards-less-frequent-elections-key-5352131> (accessed 27 February 2013).
- 24 These polls surveyed 1000 and 500 New Zealanders respectively. Colmar Brunton, *ONE News Colmar Brunton Poll, 9-13 February 2013*, [http://www.colmarbrunton.co.nz/images/ONE\\_News\\_Colmar\\_Brunton\\_Poll\\_report\\_9-13\\_Feb\\_2013.pdf](http://www.colmarbrunton.co.nz/images/ONE_News_Colmar_Brunton_Poll_report_9-13_Feb_2013.pdf) (accessed 22 March 2013); Research New Zealand, Media Release: *Review of the New Zealand Constitution, 3 April 2013*, <http://www.researchnz.com/pdf/Media%20Releases/RNZ%20Media%20Release%20-%20Constitutional%20Review.pdf> (accessed 8 April 2013).
- 25 New Zealand Business Council for Sustainable Development, *Media Release: If there is to be electoral reform – do it faster*, 10 August 2010. <http://www.scoop.co.nz/stories/PO1008/Soo127/if-there-is-to-be-electoral-reform-do-it-faster.htm>, (accessed 22 March, 2013). The polling methodology met "the standard for producing optimal or reliable poll results." [P. Joseph, "The Future of Electoral Law," 220].
- 26 This was shown most famously when former Prime Minister Jim Bolger exclaimed "bugger the pollsters," following a considerable swing to Labour contrary to political pundits' predictions. [Quoted in P. Joseph, "The Future of Electoral Law," 220].
- 27 C. Trevett, "Leaders support four year term," *New Zealand Herald*, 7 February 2013, [http://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=10863886](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10863886) (accessed 11 February 2013).
- 28 A. Bennett, "Opposition parties give support to 4 year term," *New Zealand Herald*, February 8 2013, [http://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=10864070](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10864070) (accessed 11

- February 2013).
- 29 New York University Professor Jeremy Waldron remarked that too often policy makers point to one particular aspect of an international example as rationale for reform without reference to the other constitutional settings existing in that country. See: J. Waldron, *Parliamentary Recklessness: Why we need to legislate more carefully* (Auckland: Maxim Institute, 2008).
  - 30 This submission will be limited to considering the proposition of a four-year term, as the contemporary discourse surrounding the term in New Zealand has focussed on either keeping the existing three-year term or it extending by one year to a four-year term. Also, given New Zealand's reluctance in previous referenda to extend the parliamentary term by one year, extending it by two years seems extremely unlikely to be accepted by the public. Furthermore, New Zealand's lack of constitutional constraints—to be discussed from page 6 of this paper—also mean that a five-year term is not on the table for now at least.
  - 31 R. Ekins and D. Tomkins, *Constitutional Theory for the Constitutional Review*, (Auckland: Maxim Institute, 2013), 3. This upon nineteenth century English professor Albert Dicey's view that "[c]onstitutional law, as the term is used in England, appears to include all rules which directly or indirectly affect the distribution or the exercise of the sovereign power of the state." [A. Dicey, *Lectures Introductory to the Study of the Law of the Constitution* (London: Macmillan and Co., 1885), 24].
  - 32 R. Ekins and D. Tomkins, *Constitutional Theory for the Constitutional Review*, (2013), 3. For a discussion on what constitutes the common good see: S. Thomas, *Governing for the Good* (Auckland: Maxim Institute, 2008), 25-50.
  - 33 See New Zealand Royal Commission on the Electoral System, *Report of the Royal Commission on the electoral system: Towards a better democracy* (1986), 11.
  - 34 While accountability is used here for simplicity, the Royal Commission used the term 'voter sovereignty' to describe the principle that "[v]oters must have the power to change the Government at regular and frequent elections so that it remains responsible to them." [New Zealand Royal Commission on the Electoral System, *Report of the Royal Commission on the electoral system: Towards a better democracy* (1986), 155].
  - 35 New Zealand Royal Commission on the Electoral System, *Report of the Royal Commission on the electoral system: Towards a better democracy* (1986), 158.
  - 36 New Zealand Royal Commission on the Electoral System, *Report of the Royal Commission on the electoral system: Towards a better democracy* (1986), 163.
  - 37 For a good overview of the contemporary debate see: B. Edwards, "NZ POLITICS DAILY: A three or four year term?" *National Business Review*, <http://www.nbr.co.nz/article/nz-politics-daily-three-or-four-year-term-ck-135615> (accessed 9 February 2013).
  - 38 New Zealand Royal Commission on the Electoral System, *Report of the Royal Commission on the electoral system: Towards a better democracy* (1986), 159; J. Robson, *New Zealand: The Development of its Laws and Constitution*, 2nd ed. (London: Stevens & Sons, 1967), 50.
  - 39 P. Joseph, "The Future of Electoral Law," 237.
  - 40 P. Joseph, "The Future of Electoral Law," 237.
  - 41 P. Joseph, "The Future of Electoral Law," 237.
  - 42 K. Jackson, "Parliament," in R. Miller (ed.), *New Zealand Government & Politics*, 4th ed., (Melbourne: Oxford University Press, 2006), 171; P. Joseph, "The Future of Electoral Law," 239.
  - 43 K. Jackson, "Parliament," 170. For more on rent-seeking see: A. Krueger, "The Political Economy of the Rent Seeking Society," *The American Economic Review* 64, No. 3 (1974): 291-303.
  - 44 New Zealand Royal Commission on the Electoral System, *Report of the Royal Commission on the electoral system: Towards a better democracy* (1986), 159.
  - 45 P. Joseph, "The Future of Electoral Law," 239.
  - 46 The Royal Commission explored the link between an increased term and economic performance. New Zealand Royal Commission on the Electoral System, *Report of the Royal Commission on the electoral system: Towards a better democracy* (1986), 159. Prominent New Zealand business leaders also support an extended term on this basis. [W. Mace, "Support from business for longer terms," *Dominion Post*, 2 March 2013, <http://www.stuff.co.nz/dominion-post/business/8373511/Support-from-business-for-longer-terms> (accessed 15 March 2013).
  - 47 K. Jackson, "Parliament," 170.
  - 48 New Zealand Royal Commission on the Electoral System, *Report of the Royal Commission on the electoral system: Towards a better democracy* (1986), 158.
  - 49 For example, see National Party's "Post Election Action Plan" from 2008. [National Party, "National's Post Election Action Plan" (2008), [http://www.national.org.nz/web/post\\_election\\_action\\_plan.pdf](http://www.national.org.nz/web/post_election_action_plan.pdf) (accessed 20 May 2013)].
  - 50 E. McLeay, "Building the Constitution: Debates; Assumptions; Developments 2000–2010," in C. Morris et. al. (eds.) *Reconstituting the Constitution*, (New York: Springer, 2011), 15.
  - 51 New Zealand Royal Commission on the Electoral System, *Report of the Royal Commission on the electoral system: Towards a better democracy* (1986), 162.
  - 52 B. Edwards, "Political round-up: Democracy vs. governing: A 4-year term?" *New Zealand Herald*, 8 February 2013, [http://www.nzherald.co.nz/opinion/news/article.cfm?c\\_id=466&objectid=10864219](http://www.nzherald.co.nz/opinion/news/article.cfm?c_id=466&objectid=10864219) (accessed 9 February 2013).
  - 53 New Zealand Royal Commission on the Electoral System, *Report of the Royal Commission on the electoral system: Towards a better democracy* (1986), 158. New Zealand's relative lack of safeguards will be discussed in more detail below.
  - 54 New Zealand Royal Commission on the Electoral System, *Report of the Royal Commission on the electoral system: Towards a better democracy* (1986), 162-164.
  - 55 New Zealand Royal Commission on the Electoral System, *Report of the Royal Commission on the electoral system: Towards a better democracy* (1986), 163.
  - 56 New Zealand Royal Commission on the Electoral System, *Report of the Royal Commission on the electoral system: Towards a better democracy* (1986), 161.
  - 57 New Zealand Royal Commission on the Electoral System, *Report of the Royal Commission on the electoral system: Towards a better democracy* (1986), 4.
  - 58 With MMP, for example, (to be discussed in more detail from page 7 of this paper), approximately half of the MPs elected are done so via their party list, arguably shifting accountability from the electorate to the party hierarchy. [P. Joseph, "The Future of Electoral Law," 229-30.] Former Speaker Lockwood Smith supported this by saying in his valedictory speech that there "...has been a significant shift in the accountability of members...list members are very much accountable to their political parties, as they owe their place on the list to their party..." *New Zealand Parliament, Hansard*, 13 February 2013, [http://www.parliament.nz/en-NZ/PB/Debates/Debates/2/6/b/50HansD\\_20130213\\_00000032-Valedictory-Statements.htm](http://www.parliament.nz/en-NZ/PB/Debates/Debates/2/6/b/50HansD_20130213_00000032-Valedictory-Statements.htm) (accessed 19 March 2013).
  - 59 G. Palmer, "What is Parliament For?" *New Zealand Law Journal* 378, no.11 (2011), 2.
  - 60 New Zealand Royal Commission on the Electoral System, *Report of the Royal Commission on the electoral system: Towards a better democracy* (1986), 5. New Zealand's strong party discipline is another factor that deserves a mention here. See: J. Wilson, *Parliamentary Library Research Paper: Parliamentary Voting*

- Systems in New Zealand and the Referendum on MMP* (Wellington: New Zealand Parliamentary Library, 2011), 12.
- 61 L. Zines, *Constitutional Change in the Commonwealth* (Cambridge: Cambridge University Press, 1991), 47.
- 62 E. McLeay, "Cabinet," in R. Miller (ed.), *New Zealand Government & Politics*, 4th ed., (Melbourne: Oxford University Press, 2006), 201. Professor Andrew Geddis put this dominance down to an "almost complete fusion of the executive and legislative branches of government, allied to the almost complete absence of institutional checks and balances on the power of the executive government to advance its preferred policies through legislation." [A. Geddis, *Electoral Law in New Zealand: Practice and Policy* (Wellington: LexisNexis, 2007), 29].
- 63 A. Geddis, *Electoral Law in New Zealand: Practice and Policy* (Wellington: LexisNexis, 2007) 30.
- 64 New Zealand Royal Commission on the Electoral System, *Report of the Royal Commission on the electoral system: Towards a better democracy* (1986), 164.
- 65 P. Joseph, "MMP and the Constitution," *New Zealand Journal of Public and International Law* 7, no.1 (2009), 113. Political consultant Ryan Malone supports this too, writing that "MMP has brought about a permanent culture change as to the way in which governments interact with parliamentary parties." [R. Malone, *Rebalancing the Constitution: The challenge of government law-making under MMP* (Wellington: Institute of Policy Studies, 2011), 242].
- 66 T. Lundberg, "Electoral System Reviews in New Zealand, Britain and Canada: A Critical Comparison," *Government and Opposition* 42, no. 4, (2007), 473.
- 67 For a legal-procedural perspective on the relationship of electoral law and political representation see generally: A. Geddis, *Electoral Law in New Zealand: Practice and Policy* (2007), 9-23. See also: J. Vowles "Introducing proportional representation: the New Zealand experience," *Parliamentary Affairs* 53, no.4, (2000), 680-696; and A. Geddis and C. Morris, "All Is Changed, Changed Utterly? - the Causes and Consequences of New Zealand's Adoption of MMP," *Federal Law Review* 32, no.3. (2004) 453-457.
- 68 New Zealand Electoral Commission, *Results of the Referendum*, <http://www.elections.org.nz/events/past-events-o/2011-referendum-voting-system/results-referendum> (accessed 14 March 2013)
- 69 Professor Phillip Joseph argued that "[p]roportional Representation is now well bedded in the national psyche." [P. Joseph, "MMP and the Constitution," 134.]
- 70 A. Geddis, *Electoral Law in New Zealand: Practice and Policy* (2007), 32.
- 71 S. Levine, N. Roberts and R. Salmond, "A wider view: MMP ten years on," in S. Levine and N. Roberts (eds.), *The Baubles of office: The New Zealand general election of 2005* (Wellington: Victoria University Press, 2007), 458-459.
- 72 P. Joseph, "MMP and the Constitution," 118.
- 73 This was a predictable result because, as Political Scientist Kaare Strom noted: "countries most influenced by the Westminster model of democracy seem inclined to turn to minority governments rather than majority coalitions when their two-party systems fragment." [K. Strom, *Minority Government and Majority Rule* (Cambridge: Cambridge University Press, 1990), 90, cited in A. Geddis and C. Morris, "All Is Changed, Changed Utterly? - the Causes and Consequences of New Zealand's Adoption of MMP," 465].
- 74 J. Boston and D. Bullock, "Experiments in Executive Government under MMP in New Zealand: Contrasting Approaches to Multi-Party Governance," *New Zealand Journal of Public and International Law* 7, no.1 (2009), 75.
- 75 See conclusion on page 7 of this paper.
- 76 E. McLeay, "Building the Constitution: Debates; Assumptions; Developments 2000-2010," 16. The line between executive government and opposition has been blurred, however, with parties in some cases considered "in governance but not in government" in large part due to the inclusion of parties outside government accepting ministry positions. [T. Bale and T. Bergman, "A Taste of Honey is Worse than None at All? Coping with the Generic Challenges of Support Party Status in Sweden and New Zealand," *Party Politics* 12 (2006), 189, in A. Kaiser, "MMP, Minority Governments and Parliamentary Opposition," *New Zealand Journal of Public and International Law* 7, no.1 (2009):77].
- 77 R. Malone, "'Who's the Boss?' Executive-Legislature Relations in New Zealand under MMP," *New Zealand Journal of Public and International Law* 7, no.1 (2009): 20. See generally for a discussion on executive-legislature relations.
- 78 E. McLeay, "Cabinet," 199.
- 79 K. Jackson, "Parliament," 170.
- 80 M. Palmer, "Legislative Constitutionalism Ascendant? Constitutional Realism and New Zealand's Unwritten Constitution," paper presented at *Legislatures and Constitutionalism: The Role of Legislatures in the Constitutional State*, Centre for Constitutional Studies, Banff (25 July 2004), 12, cited in A. Geddis, *Electoral Law in New Zealand: Practice and Policy* (2007), 39.
- 81 R. Malone, *Rebalancing the Constitution: The challenge of government law-making under MMP*, 232. It is worth noting that Malone's conclusion depends on the nature of the governing arrangements, i.e. "minority governments are more constrained than a majority coalition, a single-party majority government even more powerful still."
- 82 A. Geddis, *Electoral Law in New Zealand: Practice and Policy* (2007), 39.
- 83 J. Boston, S. Church and T. Bale, "The Impact of Proportional Representation on Government Effectiveness: The New Zealand Experience," *Australian Journal of Public Administration* 62, no.4 (2003), 20.
- 84 See E. McLeay, C. Geiringer & P. Higbee, "'Urgent' Legislation in the New Zealand House of Representatives and the Bypassing of Select Committee Scrutiny," *Policy Quarterly*, 8, no.2 (Wellington: Institute of Policy Studies 2012), 12-22.
- 85 R. Malone, "'Who's the Boss?' Executive-Legislature Relations in New Zealand under MMP," 16.
- 86 R. Malone, "'Who's the Boss?' Executive-Legislature Relations in New Zealand under MMP," 16. There are problems, however, with the use of emergency provisions in New Zealand: cf. J. Waldron, *Parliamentary Recklessness*.
- 87 E. McLeay, "Parliamentary Committees in New Zealand: A house continuously reforming itself," 129; A. Geddis and C. Morris, "All Is Changed, Changed Utterly? - the Causes and Consequences of New Zealand's Adoption of MMP," 469. The appointment of non-government chairs is not required by the standing orders but done for "political reasons." [R. Malone, "'Who's the Boss?' Executive-Legislature Relations in New Zealand under MMP," 13].
- 88 A. Geddis, *Electoral Law in New Zealand: Practice and Policy* (2007), 39. Geddis' "de-facto" qualification is perhaps the result of the remaining shortcomings of the select committee system. For further discussion on these see: J. Waldron, *Parliamentary Recklessness*, 26.
- 89 New Zealand Royal Commission on the Electoral System, *Report of the Royal Commission on the electoral system: Towards a better democracy* (1986), 165.
- 90 P. Joseph, "MMP and the Constitution," *New Zealand Journal of Public and International Law* 7, no.1 (2009): 134.
- 91 For an explanation of the intra/inter-party dimension of MMP see: M. Shugart and M. Wattenberg (eds), *Mixed-Member Electoral Systems: The Best of Both Worlds?* (New York: Oxford University Press, 2001). See also: D. Farrell, *Electoral Systems: A Comparative*

- Introduction*, 2nd ed. (2011), 436. This is not to say the parliamentary culture is not adversarial or polarized—this of course remains to some extent. [J. Vowles, “Evaluating Electoral System Change: the Case of New Zealand,” paper presented at the *XVIII World Congress of the International Political Science Association*, Quebec City, August 2000, as cited in A. Geddis and C. Morris, “All Is Changed, Changed Utterly?” - the Causes and Consequences of New Zealand’s Adoption of MMP,” 475].
- 92 N. Aroney and S. Thomas, “A House Divided: Does MMP Make an Upper House Unnecessary for New Zealand?” *NZ Law Review* 2012 (2012): 426.
- 93 Treasury Ministers still hold significant influence, however. See generally: J. Boston and S. Church, “The budget process in New Zealand: Has proportional representation made a difference?” *Political Science* 54, no. 2 (2002): 21-43.
- 94 P. Joseph, “MMP and the Constitution,” 119-122.
- 95 J. Waldron, *Parliamentary Recklessness*, 18.
- 96 J. Waldron, *Parliamentary Recklessness*, 36.
- 97 G. Palmer and M. Palmer, *Bridled Power: New Zealand’s Constitution and Government*, 4th ed. (Melbourne: Oxford University Press, 2004), 44.
- 98 S17(1) of the Constitution Act 1986 limits the length of the parliamentary term to no longer than three years “from the day fixed for the return of the writs issued for the last preceding general election” <http://www.legislation.govt.nz/act/public/1986/0114/latest/whole.html#DLM94241> (accessed 22 March 2013). Legislation also calls for polling day to fall on a Saturday.
- 99 A 2005 study of 41 democracies showed that over two-thirds of them had fixed terms of some form. [H. Milner, “Fixing Canada’s Unfixed Election Dates: A ‘Political Season’ to Reduce the Democratic Deficit,” *Policy Matters* 6, no.6 (Institute for Research on Public Policy, 2005), 18.] There is limited space here to discuss the complex contours of different countries’ electoral timetable arrangements.
- 100 P. Joseph, “The Future of Electoral Law,” 233-236.
- 101 R. Holme, *Speech to the House of Lords*, 22 May 1991, *Parliamentary Debates, Lords*, (1991-92), Col. 245 cited in *Constitution Committee - Eighth Report: Fixed-term Parliaments Bill*, HL Constitution Committee (2010), para. 9.
- 102 New Zealand’s average term in practice has been just under three years. This figure was calculated using dates provided by Statistics New Zealand, *General Elections 1853-2011 - Dates and Turnout*, <http://www.elections.org.nz/events/past-events-o/general-elections-1853-2011-dates-and-turnout> (accessed 4 March 2013). The Muldoon and Clarke governments are other potential exceptions, but they only “manipulated the electoral cycle” by four months. [P. Joseph, “The Future of Electoral Law,” 233-236].
- 103 New Zealand Royal Commission on the Electoral System, *Report of the Royal Commission on the electoral system: Towards a better democracy* (1986), 166.
- 104 New Zealand Royal Commission on the Electoral System, *Report of the Royal Commission on the electoral system: Towards a better democracy* (1986), 166.
- 105 A. Geddis, *Electoral Law in New Zealand: Practice and Policy* (2007), 51.
- 106 J. Boston, *Governing under proportional representation: lessons from Europe*, (1998), 114.
- 107 A. Geddis, *Electoral Law in New Zealand: Practice and Policy* (2007), 51.
- 108 New Zealand Royal Commission on the Electoral System, *Report of the Royal Commission on the electoral system: Towards a better democracy* (1986), 166.
- 109 New Zealand Royal Commission on the Electoral System, *Report of the Royal Commission on the electoral system: Towards a better democracy* (1986), 166.
- 110 C. Trevett, “Key Confirms Election Date,” *New Zealand Herald*, 2 February 2011, [http://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=10703639](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10703639) (accessed 15 March 2013).
- 111 P. Joseph, “The Future of Electoral Law,” 233-235. See also A. Geddis, *Electoral Law in New Zealand: Practice and Policy* (2007), 52-55.
- 112 Space limitations preclude a lengthier discussion on this topic. For a more comprehensive discussion (written with the United Kingdom reforms in mind) see: R. Hazell, *Fixed Term Parliaments* (2010). See also: Parliamentary Library, *Research Paper: Parliamentary terms: fixed and flexible*, <http://www.parliament.nz/en-NZ/ParlSupport/ResearchPapers/7/1/5/0oPLLawr13021-Parliamentary-terms-fixed-and-flexible.htm> (accessed 20 May 2013).
- 113 J. Boston, *Governing under proportional representation: lessons from Europe* (1998), 116.
- 114 J. Boston, *Governing under proportional representation: lessons from Europe* (1998), 116. The incoming government will only serve the remainder of the term, however, which acts as a disincentive. For example, if an early election was called two years into the term, the incoming government would only have a further two years to govern before the next scheduled election.
- 115 A. Geddis, *Electoral Law in New Zealand: Practice and Policy* (2007), 52-55. The governor general already has this power, of course, but rarely uses it following the Westminster tradition of acting on the advice of the prime minister.
- 116 United Kingdom Parliament, *Fixed Term Parliaments Act*, 2011, <http://www.legislation.gov.uk/ukpga/2011/14/contents/enacted> (accessed 17 March 2013).
- 117 This could be in the form of a motion of no confidence.
- 118 In the United Kingdom, for example, if an early election is called “[t]he next scheduled election will then take place five years from the previous May [the United Kingdom’s legislated election date]. But if the mid term election is held before May, the next general election will be held four years later. So if there is a mid term dissolution in October 2011, the next general election would be in May 2016; but if the mid term election is in March 2011, the next election would be in May 2015.” This means that in practice the term for the incoming government may deviate somewhat—but never more than one year— from the legislated term length. [R. Hazell, *Fixed Term Parliaments* (2010), 30.]
- 119 The limitation of this approach is that if a majority government were in power, the prime minister would effectively retain the power to dissolve parliament at his/her discretion. This is tempered by the fact that it is unlikely given that minority coalitions are now the norm under MMP.
- 120 A. Geddis, *Electoral Law in New Zealand: Practice and Policy* (2007), 52.
- 121 A. Geddis, *Electoral Law in New Zealand: Practice and Policy* (2007), 52.
- 122 R. Hazell, *Fixed Term Parliaments* (2010) 31-32. This highlights that the role of the governor general under a fixed term needs to be addressed, or at least discussed, if changes are made to the current arrangements. Professor Robert Hazell also lists two German examples where no confidence motions were manufactured by a majority government to force an early election. Once again, while possible, this would also have political and electoral consequences. There is also less likelihood of this given New Zealand’s tendency towards minority government.
- 123 Constitutional Arrangements Committee, *Inquiry to review New Zealand’s existing constitutional arrangements* (Wellington: Government Printer, 2005), 5.
- 124 For a broader discussion on the various ‘levels’ of entrenchment with respect to the parliamentary term see: A. Geddis, *Electoral Law in New Zealand: Practice and Policy* (2007), 46-48.

- 125 A. Bennett, *New Zealand Herald*, “Opposition parties give support to 4 year term,” 8 February 2013, [http://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=10864070](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10864070) (accessed 5 February 2013).
- 126 This is a key role of the Constitutional Advisory Panel as per its Terms of Reference. New Zealand Ministry of Justice, *Terms of Reference - Consideration of Constitutional Issues*, <http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/consideration-of-constitutional-issues-1/terms-of-reference-constitutional-advisory-panel> (accessed 10 December 2012).
- 127 A view shared by Key. APNZ, “Key floats idea of four-year term,” *Otago Daily Times*, 25 February 2013, <http://www.odt.co.nz/news/politics/247112/key-floats-idea-four-year-term> (accessed 30 February 2013).
- 128 S. Beer, “The roots of New Labour: Liberalism Rediscovered,” *The Economist* 346, no. 8054 (1998): 25, cited in D. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed, (2011), 214.
- 129 For the distinction between mandatory and directory instructions see: A. Geddis, *Electoral Law in New Zealand: Practice and Policy* (2007), 51. It may also be worth including a provision, like the United Kingdom legislation, that provides the flexibility to allow for exceptional and significant events—like natural disasters for example—by giving the government the ability to defer the election date and the dissolution of parliament by up to two months of the scheduled date by statutory legislation. The statutory requirement provides scrutiny as means that any deviation would need to be explained to the public.
- 130 This threshold is consistent with current parliamentary practice.
- 131 The following three recommendations (2ai, 2aii, and 2b) are based upon the 2011 United Kingdom reforms, with changes to align with New Zealand’s constitutional context where appropriate. For example, the increased deliberation period in 2ai recognises that under MMP, discussions may take longer than two weeks to form a stable alternative government. [United Kingdom Parliament, Fixed Term Parliaments Act, 2011.]
- 132 This provides the “safety valve” to allow Parliament to call an early election if it is apparent that all attempts to form an alternative government have failed. A supermajority (which aligns with the reserved entrenchment provisions in the Electoral Act 1993) is required to ensure that a general consensus is reached before dissolution occurs.