



Cabinet

CAB Min (09) 31/13

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Minute of Decision

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Referenda on Mixed Member Proportional Voting System

Portfolio: Justice

On 31 August 2009, following reference from the Cabinet Domestic Policy Committee, Cabinet:

- 1 **noted** the contents of the submission attached to CAB (09) 495 and the options outlined in the paper on the timing and type of referenda on the voting system;
- 2 **invited** the Minister of Justice to submit a revised paper to Cabinet on 7 September 2009, if possible.

Rebecca Kitteridge

Secretary of the Cabinet

Reference: CAB (09) 495; DOM Min (09) 18/5

Distribution:

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 Secretary of the Cabinet

Cabinet Domestic Policy Committee

Referendum on Mixed Member Proportional (MMP) Voting System

Proposal

1. This paper invites Cabinet to make policy decisions on the timing and type of referenda on the voting system.

Executive summary

2. The Government is committed to giving New Zealanders the chance to have their say on the Mixed Member Proportional (MMP) representation system. The 2008 pre-election commitment was to “Hold a binding referendum on MMP by no later than 2011.” The three options developed for this paper are assessed against the following assumptions and criteria:
 - 2.1. timing and coordination;
 - 2.2. quality process for delivering parliamentary elections and referenda: the process for considering change should reflect the constitutional significance of decisions about New Zealand’s voting system; and
 - 2.3. cost effectiveness.

Option	Total cost	Referenda	Outcome Implemented
A	\$26.8m	<ol style="list-style-type: none"> 1. Postal referendum in 2010 (2 questions) 2. Legally binding postal referendum in 2012 (1 question) 	2014 general election
B	\$40.2m	<ol style="list-style-type: none"> 1. Postal referendum in 2010 (1 question) 2. Postal referendum in 2012 (1 question) 3. Legally binding postal referendum in 2015 (1 question) 	2017 general election
C	\$36.4m	<ol style="list-style-type: none"> 1. Referendum with general election 2011 (1 question) 2. Postal referendum in 2012 (1 question) 3. Legally binding referendum with 2014 general election (1 question) 	2017 general election

3. Having weighed up the pros and cons of each of the three options, I propose that Cabinet agree to Option C:

Option C – Referendum with single question held in conjunction with the 2011 general election. Government commits to act on the outcome → If the majority vote for change, postal referendum held in November 2012 → Legally binding referendum held in conjunction with the 2014 general election → New system in place for 2017 general election if there is a vote for change.

4. Option C comprises three referenda. The first referendum asks voters to decide, by answering “yes” or “no”, whether they wish to retain the current MMP voting system.
5. I consider it important that only one question is asked at the first referendum so that there is sufficient time for the Government to consider what alternative voting systems should be included in the second referendum question (should any subsequent referenda go ahead). Further, there must be sufficient time to prepare for each referendum as the voting system is a key component of our constitutional arrangements. Should there be a vote for change at the first referendum, the Government would need to prioritise the second referendum to ensure a quality process.
6. The least cost option overall is Option A which only requires two referenda. Option C is more costly than Option A because it requires three referenda. Under Option C, however, the first referendum would be held with the 2011 general election. This is estimated to be cheaper than conducting a referendum by postal ballot (proposed under Options A and B).
7. The issue of Māori representation in the House of Representatives is likely to arise in any referendum on our voting system. For timing reasons, the issue of Māori representation will be more complex to address if the first referendum question asks voters to select a preferred alternative voting system (Option A). Under Option A, the Government would need to consider, during 2009 and early 2010, the implications of alternative voting systems on the Māori seats. This would interrupt the process for establishing in early 2010 a group to consider constitutional issues, including Māori representation.
8. Holding the first referendum in conjunction with the 2011 general election will require two ballot papers: one for the referendum; and one for the parliamentary vote. Officials will advise me on how the risks associated with holding a referendum at the same time as a general election will be avoided or minimised. These risks include voter confusion and congestion on election day and the likelihood of a delay in the parliamentary count.
9. I propose that the Government should consider itself bound by the result of the first referendum if it is approved by a majority of those voting (51 percent or more). Holding this first referendum in conjunction with the general election is likely to ensure a high voter turnout.
10. I propose to report to Cabinet in October 2009 seeking approval to the:
 - 10.1. wording of the first referendum question;
 - 10.2. establishment and role of the Panel (which will conduct the publicity campaign) and other process matters;
 - 10.3. Parliamentary Counsel Office drafting a bill which is required for a referendum to be held in conjunction with a general election.
11. The funding for the first referendum and Panel will be addressed in the 2010 Budget process and as part of the 2011 general election funding bid.

12. The Cabinet paper will also provide advice on whether the Panel established for the first referendum can be used for any subsequent referenda. Officials will also provide advice on whether the information campaign for the first referendum should state that a vote to keep MMP will include a Government commitment to consider amending MMP in certain areas.

Background

13. The Government stated in the December 2008 Speech from the Throne that:

... it will give New Zealanders the chance to have their say on the Mixed Member Proportional (MMP) representation system that has formed the basis of the country's parliamentary elections since 1996.

This will take the form of a binding referendum, and if a majority of voters decide they want to consider other electoral systems, the new Government will offer them a choice of a range of systems to replace it.

14. The Relationship and Confidence and Supply Agreement between the National Party and Māori Party states that:

The National Party agrees it will not seek to remove the Māori seats without the consent of the Māori people. Accordingly, the Māori Party and the National Party will not be pursuing the entrenchment of the Māori seats in the current parliamentary term.

Both parties agree that there will not be a question about the future of the Māori seats in the referendum on MMP planned by the National Party.

Legal requirements

15. A referendum is a vote by all registered voters on a defined question or questions. Referenda can be held by postal vote, in conjunction with a general election, or by stand-alone ballot. **Appendix 1** provides information about the implications of holding a referendum by postal ballot, or in conjunction with a general election.

16. Referenda can be either indicative or binding. An indicative referendum is non-binding and does not require the result to be acted upon. A binding referendum has been defined as:

A referendum the result of which the government or Parliament is legally obliged to implement, or which the government or Parliament has undertaken to implement, or the result of which automatically brings an Act of Parliament into force (eg, the Electoral Act 1993) [MMP Review Committee, 2001].

17. Even though a referendum may be indicative (ie, not legally binding), the Government can commit itself to act on the results.

18. A referendum is held under one of the following laws:

- 18.1. Citizens Initiated Referenda Act 1993. All citizens-initiated referenda are indicative;

- 18.2. Referenda (Postal Voting) Act 2000. Government and citizens initiated referenda held by postal vote under this Act are indicative; and
- 18.3. enabling legislation. Enabling legislation is required to hold a referendum with a general election (whether binding or indicative), by stand-alone ballot (whether binding or indicative), or a binding referendum by postal vote.
19. In addition, a legally binding referendum on our voting system would require legislation on the preferred alternative voting system to be in place and ready to commence subject to the outcome of the referendum. This occurred in 1993. The commencement provisions of the Electoral Act 1993 provided that it would come into force if a majority of voters voted for the proposed MMP system at the 1993 referendum. This process gave three years to prepare for the first MMP election in 1996.
20. A government-initiated referendum needs to be supported by an independent publicity campaign. The Referenda (Postal Voting) Act provides for the Minister of Justice to appoint an independent panel to conduct the publicity campaign for an indicative government-initiated referendum held by postal vote.
21. The same advertising restrictions that apply to citizens-initiated referenda apply to referenda conducted under the Referenda (Postal Voting) Act. Advertisers promoting one of the answers to a question are subject to an expenditure limit of \$50,000. It is an offence subject to a fine of up to \$20,000 for any person to, either alone or in combination with others, knowingly spend more than the \$50,000 expenditure limit.
22. For a referendum provided for under its own enabling legislation, provision for an independent publicity campaign and regulation of advertising needs to be included.

Giving New Zealanders the chance to have their say on MMP

23. To give New Zealanders the chance to have their say on MMP, voters first need to indicate whether they want to change from the MMP system and choose their preferred alternative to MMP. If a majority of voters answer “no” to Question 1 in the table below, the remainder of the process is required. The Government would commit itself to act on the result.

Question (illustrative)	Comment
1. Do you wish to retain the current MMP voting system? (YES / NO)	Government agrees to be committed to act on the result (by law the referendum is indicative).
2. Which voting system do you prefer from the list of alternative voting systems (eg, first-past-the-post, preferential voting, supplementary member, or single transferable vote)?	Questions 1 and 2 can be asked in a single referendum, or separately in two referenda.
3. Do you wish to retain the current MMP voting system (YES / NO); or Do you wish to change to the preferred alternative? (YES / NO)	Legally binding referendum held if majority vote for change. Legislation in place to enable the binding referendum and to provide for the new electoral system, if required.

24. The length of the overall process is dependent upon the timing and number of referenda used. If there is a vote for change at the first referendum, a new electoral system could be in place, at the earliest, for the 2014 general election. Under this scenario, two questions are asked at the first referendum.

Threshold for acting on the result

25. For the Government to commit itself to act on the results of the first referendum, it needs to be clear about its threshold to act. I consider that the Government should consider itself bound by the result if it is approved by a simple majority of those voting, irrespective of the voter turnout.
26. This approach is consistent with the Electoral Act 1993. A change to the method of voting requires amending an entrenched provision in the Electoral Act, and one of the ways to achieve this is to secure a majority of votes of eligible electors.
27. Past experience also supports this approach, for example:
- 27.1. voter turnout for the 1992 indicative referendum on the voting system was 55.2 percent; and
- 27.2. in the 1997 indicative referendum on compulsory superannuation, the then Minister of Justice stated, “The Government will consider itself bound by the result if it is approved by a simple majority of those voting, irrespective of voter turnout.”

Options

28. The 2008 pre-election commitment was to “Hold a binding referendum on MMP by no later than 2011.” This paper presents three options for the first and any subsequent referenda, all of which give effect to the pre-election commitment. Under each of these options, the first referendum giving New Zealanders the chance to have their say on MMP would be held by 2011 and the Government can commit to act on the outcome (ie, it can consider itself bound by the result).
29. Decisions on subsequent referenda are needed now, because the first referendum voting paper must set out the process that follows as a result of the vote. There are a number of ways to run the referendum process. In developing the options, officials have focused on meeting the Government’s promise to give New Zealanders the chance to have their say on MMP, and to the Government’s commitment to act on the result. **Appendix 2** outlines the decisions that are needed to decide on the preferred option.
30. The advantages and disadvantages of each option are summarised in the table located after paragraph 42. The options are assessed against the following assumptions and criteria:

Timing and coordination:

The timing of the first and any subsequent referenda must take into account general and local body elections, other proposed changes to the electoral system (eg, electoral finance reform and the structure of electoral agencies), and the proposed group to consider constitutional issues. Further, if there is a vote for change, public expectation will be for timely implementation, so the overall process should not be too lengthy.

Quality process:

The focus is on ensuring the best process for developing and delivering quality parliamentary elections and referenda.

The Cabinet Office Manual outlines process requirements when a proposal affects New Zealand's constitutional arrangements: "Any proposal that will affect New Zealand's constitutional arrangements must be submitted to Cabinet. Where significant constitutional change is contemplated, issues of process and appropriate public participation must be clearly and fully addressed in the Cabinet paper."

Cost effectiveness:

The overall costs, risks and benefits of the options should be considered.

Option A – Postal referendum 20 August to 10 September 2010 with 2 questions. Government commits to act on the outcome → If the majority vote for change, legally binding postal referendum August 2012 → New system in place for 2014 general election if there is a vote for change.

31. Under Option A, there are two referenda. The first referendum would be conducted under the Referenda (Postal Voting) Act. Two questions would be asked. The first question would ask voters to decide, by answering "yes" or "no", whether they wish to retain the current MMP voting system. The second question would ask voters – regardless of how they responded to the first question – to choose their preferred alternative voting system from a short list. These alternative options need to be developed, with the starting point being the systems canvassed by the 1986 Royal Commission on the Electoral System, or those proposed in the 1992 referendum.
32. If a majority vote for change, a binding referendum asking voters to choose between MMP and the most preferred alternative option would be held by postal vote in 2012. Special legislation would be required to enable the binding referendum and to provide for the preferred alternative voting system (should a majority vote for change).
33. A new voting system would be in place for 2014 general election if there was a vote for change.

Option B – Postal referendum 20 August to 10 September 2010 with single question. Government commits to act on the outcome → If the majority vote for change, postal referendum October 2012 on options → Legally binding postal referendum November 2015 → New system in place for 2017 general election if there is a vote for change.

34. Option B requires three referenda. As with Option A, the first referendum would be conducted under the Referenda (Postal Voting) Act before the local government elections in October 2010. The difference is that the first referendum comprises a single question which asks voters to decide whether or not they wish to retain the current MMP voting system.
35. If a majority vote for change, a second indicative referendum would be conducted in October 2012, again under the Referenda (Postal Voting) Act, asking voters to choose their preferred alternative voting system. There would be a short list of options.

36. The third referendum would be binding and held in 2015 by postal ballot. It would ask voters to choose between MMP and the most preferred alternative option. Special legislation would be required to enable the referendum to be binding and to provide for the preferred alternative electoral system.
37. A new voting system would be in place for the 2017 general election if there was a vote for change.

Option C – Referendum with single question held in conjunction with the 2011 general election. Government commits to act on the outcome → If the majority vote for change, postal referendum held in November 2012 → Legally binding referendum held in conjunction with the 2014 general election → New system in place for 2017 general election if there is a vote for change.

38. As with Option B, Option C requires three referenda and the first referendum asks a single question.
39. Because the first referendum would be held in conjunction with the 2011 general election it requires enabling legislation. Legislation would need to provide for all aspects of the referendum, including the ballot paper and referendum question, publicity campaign, and administrative matters relating to the conduct of the referendum. Unless there is legislative change to the Electoral Act 1993 (including to an entrenched provision) there would be two ballot papers on election day: one for the parliamentary vote and one for the referendum.
40. If a majority vote for change, the second referendum would be held in 2012 under the Referenda (Postal Voting) Act asking voters to choose their preferred alternative voting system. Options would be listed.
41. Legislation would be required for the third binding referendum. This legislation would enable the binding referendum and would also provide for the preferred alternative voting system. The preferred alternative voting system would therefore be in place and ready to commence subject to the outcome of the referendum.
42. A new voting system would be in place for the 2017 general election if there was a vote for change.

Options: Advantages and disadvantages

Option	Advantages and disadvantages
<p>Option A</p> <p>Two referenda in total, both held by postal ballot. Total estimated cost is \$26.8 million.*</p> <p>1st referendum is held by postal ballot, August to September 2010. Two questions are put to voters (estimated cost \$13.4 million). Government commits to act on the outcome.</p> <p>If majority vote for change, 2nd legally binding postal referendum, August 2012 (estimated cost \$13.4 million).</p>	<p>Advantages</p> <p>1st referendum held before local government elections (October 2010) and before the main preparation for 2011 general election.</p> <p>Quality process because referenda not held with general elections. Low risk to preparation and conduct of general election. Voters able to consider referendum in isolation from “muddying effect” of holding with general election.</p> <p>Some cost savings possible by combining the registration process for the local body and referendum events.</p>

<p>New system in place for 2014 election if there is a vote for change.</p>	<p>May be more voter interest if voters can see end in sight. But voter apathy or confusion possible if the process is seen as rushed.</p> <p>Only two referenda held. Most efficient and cost effective option overall.</p> <p>Disadvantages</p> <p>Limited time to consider alternative voting system options to include in 1st referendum question.</p> <p>1st referendum, because it is covering two questions, has potential to raise debate about Māori representation (as occurred in 1992 referendum).</p> <p>Limited time for Panel to prepare for and conduct publicity campaigns for both referenda.</p> <p>1st referendum is at same time as electoral finance reform and possibly electoral agency restructure.</p> <p>Limited time to prepare for second binding referendum (including preparing a bill enabling the referendum and providing for a new voting system).</p> <p>Referendum by postal ballot more expensive than with general election.</p>
<p>Option B</p> <p>Three referenda in total. All held by postal ballot. Total estimated cost \$40.2 million.*</p> <p>1st referendum is held by postal ballot, August to September 2010. One question is put to voters (estimated cost \$13.4 million). Government commits to act on the outcome.</p> <p>If majority vote for change, 2nd indicative referendum held by postal ballot in October 2012 asking voters to choose between options (estimated cost \$13.4 million).</p> <p>3rd legally binding referendum held by postal ballot, November 2015 (estimated cost \$13.4 million).</p> <p>New system in place for 2017 general election if there is a vote for change.</p>	<p>Advantages</p> <p>1st referendum held before local government elections (October 2010) and before preparation for 2011 general election gets busier.</p> <p>Quality process because referenda not held with general elections. Low risk to preparation and conduct of general election. Voters able to consider referendum in isolation from “muddying effect” of holding with general election.</p> <p>Some cost savings possible (see Option A).</p> <p>Sufficient time for Panel to prepare for and conduct publicity campaigns for all referenda.</p> <p>More time to consider alternative voting system options to include in 2nd referendum question.</p> <p>Sufficient time to prepare for 3rd binding referendum (including preparing a bill enabling the referendum and providing for a new voting system).</p> <p>Disadvantages</p> <p>1st referendum is at same time as electoral finance reform and possibly electoral agency restructure.</p>

	<p>Voter apathy may occur because of length of time of whole process (but may be countered by publicity campaign encouraging voter turnout).</p> <p>Compared to Option A there is a longer period of time between first and last referendum and before any new system is in place.</p> <p>Most expensive overall option.</p>
<p>Option C</p> <p>Three referenda in total, two held with the general election and one by postal ballot. Total cost is \$36.4 million.*</p> <p>1st indicative referendum with single question held in conjunction with the 2011 general election (estimated cost \$11.5 million). Government commits to act on the outcome.</p> <p>If majority vote for change, 2nd postal referendum held in November 2012 asking voters to choose between options (estimated cost \$13.4 million).</p> <p>3rd legally binding referendum held with 2014 general election (estimated cost \$11.5 million).</p> <p>New system in place for 2017 election if there is a vote for change.</p>	<p>Advantages</p> <p>Sufficient time for panel to prepare for and conduct publicity campaigns for all referenda.</p> <p>More time to consider alternative voting system options to include in 2nd referendum question.</p> <p>Sufficient time to prepare for 3rd binding referendum (including preparing a bill enabling the referendum and providing for a new voting system).</p> <p>Voter turnout likely to be high, but voter confusion may also occur.</p> <p>1st referendum not as expensive as postal ballot option (Options A and B).</p> <p>Disadvantages</p> <p>Significant risks to quality of general elections and referenda. Voter confusion and congestion likely. Delay in parliamentary count likely. Risks can only be partially managed, and include amending an entrenched provision of the Electoral Act 1993.</p> <p>Voter apathy may occur because of length of time of whole process (but may be countered by publicity campaign encouraging voter turnout).</p> <p>Longer period of time between first and last referendum and before any new system is in place, compared to Option A.</p> <p>Expensive overall, compared to Option A.</p>

* All figures in this table combine publicity and administration costs

Comment

43. A timeline for each of the options is outlined in **Appendix 3**.

Option A

44. Option A asks two questions in the first referendum and it is held by postal ballot. Option A avoids the risks associated with holding a referendum with a general election, and it is the most efficient and cost effective of the three options.

45. Option A leaves insufficient time to prepare for and conduct the two referenda. It is not simply a matter of repeating the electoral referendum process of 1992 and 1993. The situation was different. Electoral reform had been topical for six to seven years prior to the first referendum. The two referenda followed an extensive public inquiry by the 1986 Royal Commission on the Electoral System. The laws required for both referenda, and the new Electoral Act, were developed in a condensed period under a First Past the Post parliamentary process.
46. More time is needed to prepare the question on alternative voting systems for the first referendum than provided for in Option A. The options considered in the 1993 binding referendum on the voting system would need to be assessed for their relevance in today's context, especially in light of New Zealand's 13 years of experience with MMP. Public participation needs to be provided for. Options would need to be assessed against criteria for considering an effective voting system, including effective Māori representation.

Option B

47. Option B asks one question at the first referendum and it is held by postal ballot. Option B avoids the risks of holding a referendum in conjunction with a general election. Of all the options it provides the most time to prepare for each referendum. It does not raise the issue of Māori representation to the same extent as Option A (refer section below on Treaty of Waitangi implications for further comment). It is, however, the most costly of the three options and the process is held over an extended period of time. A new voting system, if preferred, would not be in place until the 2017 general election.

Option C

48. Option C asks one question at the first referendum. As with Option B, it does not raise the issue of Māori representation to the same extent as Option A.
49. Option C also gives sufficient time to prepare for each referendum. In terms of the third referendum, to ensure the smooth delivery of the general election legislative change affecting a parliamentary election should be in place no later than the end of the second year in an electoral cycle. It is desirable that a bill proposing amendments to New Zealand's constitutional arrangements should receive at least six months at select committee. Option C gives sufficient time to prepare legislation for the third binding referendum.
50. Under Option C, the first of the three referenda would be held in conjunction with the 2011 general election, giving rise to risks of voter confusion and congestion, and a possible delay in the announcement of the preliminary parliamentary count on election night. Refer to **Appendix 1** for a discussion of the implications of holding a referendum in conjunction with a general election. The risks can be partially managed by combining the parliamentary and referendum ballot papers into a single ballot paper. Crown Law Office has previously advised that combining the ballot papers would require amending the Electoral Act 1993, and would include amending an entrenched section (section 168 concerning the method of voting). The section relating to the form of ballot papers (section 150) would also need to be

amended. Any legislative change involving the ballot paper is likely to be controversial.

51. The second referendum would need to be prioritised after the 2011 general election. By early 2012, the Government would need to make decisions on the draft question on alternative voting systems, funding and the process for cross-party consultation on the question. Preparation for the publicity campaign would also need to start early in 2012, and the campaign itself would likely follow the Māori Option exercise (which may run from March to July 2012). A new voting system, if supported by a majority of voters, would not be in place until the 2017 general election.

Proposal

52. Having weighed up the advantages and disadvantages of each of the three options, I propose that Cabinet agree to Option C.
53. I consider it important that one question is asked at the first referendum so that there is sufficient time for the Government to consider what alternative voting systems should be included in the second referendum question (should any subsequent referenda go ahead). Further, there must be sufficient time to prepare for each referendum as the voting system is a key component of our constitutional arrangements. Should there be a vote for change at the first referendum, the Government would need to prioritise the second referendum to ensure a quality process.
54. Option C is more costly than Option A if all the proposed referenda go ahead. Because the first referendum is held with the 2011 general election, it is estimated to be marginally cheaper than conducting a referendum by postal ballot (as proposed under Options A and B).
55. For the first referendum to be held with the general election, there will not be a combined ballot paper (ie, there will be one ballot paper for the parliamentary vote and a second ballot paper for the referendum). Officials will advise me on how the risks associated with holding a referendum at the same time as a general election will be avoided or minimised.
56. The publicity campaign for the first referendum on the MMP voting system is likely to include factual information about New Zealand's experience under MMP, the consequences of a vote for change and a vote for the status quo, the process and timeframe for any subsequent action (eg, further referenda and timeframe to introduce a new voting system) and likely costs of change. The campaign will need to take account of the voter information programme that will be conducted by the electoral agencies over the same period. These matters will be covered in the next Cabinet report (October 2009). That report will also consider whether the information campaign should state that a vote to keep MMP will include a Government commitment to consider amending MMP in certain areas should the public debate on the referendum call for it.

Treaty of Waitangi implications

57. The 1986 Royal Commission on the Electoral System noted that the Māori seats have come to be regarded by Māori as an important concession to, and the principal expression of, their constitutional position under the Treaty of Waitangi.
58. The issue of Māori representation in the House of Representatives will arise in the debate surrounding any referendum on our voting system. Some voters will want to know about the future of the Māori seats before casting their vote. The information campaign can outline the Government's position, which is to not remove the Māori seats without the consent of the Māori people (refer to the Relationship and Confidence and Supply Agreement between the National Party and Māori Party).
59. During the lead-up to the 1992 referendum on the voting system, there was debate about what the alternative voting systems might mean for Māori representation in the House. For the potential upcoming referendum question on the alternative voting systems, information would need to be provided about the implications of each voting system on the Māori seats.
60. For timing reasons, the issue of Māori representation will be more complex to address if the first referendum question asks voters to select a preferred alternative voting system (Option A). Under Option A, the Government would need to consider during 2009 and early 2010 the implications of alternative voting systems on the Māori seats. This would interrupt the process for establishing the terms of reference and composition of a group to consider constitutional issues, including Māori representation, by no later than early 2010.

Next steps

61. Subject to Cabinet's decisions in this paper, the next steps are:

Date	Activity
October 2009	Cabinet paper seeking agreement to the: <ul style="list-style-type: none"> • wording of referendum question; • role of the Panel, the scope of the publicity campaign, and process matters; • Parliamentary Counsel Office drafting a bill. The funding for the first referendum and the Panel will be addressed in the 2010 Budget process and as part of the 2011 general election funding bid.
February 2010	Cabinet Legislation Committee and Cabinet agree that the bill providing for the referendum be introduced into the House.
March 2010	Bill introduced, first reading and bill referred to select committee.
October 2010	Select Committee reports back to the House.
November 2010	Bill passed. Appointments and Honours Committee and Cabinet agree to composition and terms of reference for Panel. Officials will consider whether the same Panel can be used for any subsequent referenda.

December 2010 to April 2011	Panel prepares for publicity campaign.
April to general election day 2011	Panel conducts publicity campaign.
2 nd half of 2011	General election and first referendum.

Consultation

62. This paper was prepared in consultation with the Chief Electoral Office, Electoral Enrolment Centre, Electoral Commission, the Crown Law Office, Te Puni Kōkiri and the Treasury. The Department of the Prime Minister and Cabinet was informed of this paper.

Financial implications

63. Funding is required to conduct referenda whether they are held in conjunction with the general election or by postal vote. Detailed costing work has not been undertaken and figures are preliminary only.
64. Funding is required for the Chief Electoral Office to administer the first referendum. The Chief Electoral Office is not funded for this responsibility and must seek funding as required. The Chief Electoral Office advises that a conservative estimate of the additional costs of holding a referendum in conjunction with a general election, using untested staffing assumptions, is \$5.5 million. The Electoral Enrolment Centre advises that the enrolment costs for the first referendum can be absorbed with the other enrolment costs associated with the 2011 general election.
65. The estimated enrolment and administration cost of holding a referendum by postal vote is \$7.4 million.
66. Funding will be also required for an independent Panel to prepare and run a publicity campaign. The estimated cost of appointing an independent Panel, preparing and conducting a publicity campaign is \$6 million.
67. The total estimated costs for administration and publicity is \$11.5 million if the referendum is held in conjunction with a general election, and \$13.4 million if the referendum is held by postal ballot.

Estimated costs (administration of referenda and publicity)

	Option A	Option B	Option C
1st referendum	\$13.4 million	\$13.4 million	\$11.5 million
2nd referendum	\$13.4 million	\$13.4 million	\$13.4 million
3rd referendum	n/a	\$13.4 million	\$11.5 million
Total	\$26.8 million	\$40.2 million	\$36.4 million

68. The costs associated with the development of the legislation under all options can be met from existing Ministry of Justice baselines.
69. Subject to Ministers' decisions on this paper, the Ministry of Justice in consultation with the Chief Electoral Office, Electoral Commission, Electoral Enrolment Centre and the Treasury, will develop a detailed funding proposal. For Option A, the funding for the first referendum and Panel would be addressed in the 2010 Budget process and as part of the 2011 general election funding bid.
70. Under Options A and B, funding approval for the first referendum would be needed earlier and would be sought in the proposed October 2009 Cabinet paper. Funding for any subsequent referenda will be considered at the appropriate time.

Human rights, gender implications, disability perspective

71. The proposals outlined in this paper appear to be consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. A final view will be possible at the time of the next Cabinet report, when justificatory material is provided and considered.
72. The proposals outlined in this paper have no specific gender or disability implications.

Legislative implications

73. Special enabling legislation is required to hold the first referendum in conjunction with the 2011 general election (Option C). An MMP Referendum Bill was awarded a category 4 priority (to be referred to a select committee in 2009) on the Government's 2009 Legislation Programme [CAB Min (09) 12/14 refers].

Regulatory impact analysis

74. A regulatory impact analysis is not required for the enabling legislation because the proposed legislation deals with administrative procedures, and does not impact on business, consumers, or the public.

Publicity

75. I intend to issue a media release outlining Cabinet's decisions on this paper and next steps.

Recommendations

76. The Minister of Justice recommends that the Committee:
 1. **note** that the Government is committed to giving New Zealanders the chance to have their say on the Mixed Member Proportional (MMP) representation system, and that the 2008 pre-election commitment was to "Hold a binding referendum on MMP by no later than 2011";
 2. **note** that the three options presented in this recommendation give effect to the pre-election commitment:

- 2.1. **Option A:** Postal referendum 20 August to 10 September 2010 with 2 questions. Government commits to act on the outcome → If the majority vote for change, legally binding postal referendum August 2012 → New system in place for 2014 general election if there is a vote for change;
- 2.2. **Option B:** Postal referendum 20 August to 10 September 2010 with single question. Government commits to act on the outcome → Postal referendum October 2012 on options → If the majority vote for change, legally binding postal referendum November 2015 → New system in place for 2017 general election if there is a vote for change;
- 2.3. **Option C:** Referendum with single question held in conjunction with the 2011 general election. Government commits to act on the outcome → If the majority vote for change, postal referendum held in September 2012 → Legally binding referendum held in conjunction with the 2014 general election → New system in place for 2017 general election if there is a vote for change;
3. **note** that decisions on subsequent referenda are needed now, because the first referendum voting paper must set out the process that follows as a result of the vote;
4. **agree** to Option C for the first and any subsequent referenda on the MMP voting system;
5. **note** that although the first referendum is indicative (ie, not legally binding), the Government would commit itself to act on the outcome
6. **agree** that the Government will consider itself bound by the referendum result if it is approved by a majority of those voting (51 percent or more);
7. **note** that because the first referendum under Option C is held in conjunction with the general election:
 - 7.4. a high voter turnout is likely; and
 - 7.5. legislation is required to enable the referendum;
8. **note** that officials will advise me how the risks associated with holding a referendum in conjunction with a general election, including with two ballot papers, will be avoided or minimised;
9. **invite** the Minister of Justice to report to Cabinet in October 2009 seeking approval to the wording of the referendum question; role of the Panel (which will prepare and conduct the publicity campaign) and other process matters; and Parliamentary Counsel Office drafting a bill;
10. **note** that the funding for the first referendum and Panel will be addressed in the 2010 Budget process and as part of the 2011 general election funding bid;

11. **note** that the Minister of Justice will consult with support parties on the proposals in the paper following Cabinet, subject to Ministers' agreement to those proposals; and
12. **note** that the Minister of Justice will issue a media release outlining Cabinet's decisions on this paper and next steps.

Hon Simon Power
Minister of Justice

Date signed:

Appendix 1: Postal Ballot versus general election

Postal ballot versus general election

1. Referenda on our electoral system can be held either by postal ballot, or together with general elections, or by some combination of these two methods. The stand-alone ballot option is not considered here because of the high costs involved.

Implications of holding by postal vote

2. The Referenda (Postal Voting) Act 2000 was enacted to provide a simple and cost-effective means of conducting referenda. Its passing was influenced by the experience in the 1999 where two citizens-initiated referenda were held with the general election. This caused voter confusion, congestion in polling places, and significantly delayed the announcement of the preliminary results.
3. The Justice and Electoral Select Committee in its report on the 1999 General Election recommended that serious consideration be given to holding referenda by postal vote, rather than holding referenda at general elections. The Committee was concerned about the additional administrative challenges referenda pose, the fact that the issues raised by referenda become “muddied in the agitation of the electoral contest”, and the confusion caused to voters about the voting process.
4. Postal voting enables voters to focus on referenda questions without the distraction of a parliamentary electoral process. They are particularly suited to complex questions including multiple questions. Voters would have a three week period within which to consider the information and cast their vote.
5. Under the Referenda (Postal Voting) Act the referendum election day, a Friday, would be set by Order in Council with the voting period beginning three weeks earlier. The Chief Electoral Office would post voting papers and explanatory material to all eligible electors, including overseas voters with a registered overseas postal address. Voting papers would be returned by post to a central processing centre. Voting papers would be progressively processed (but not counted) at the time they were returned using scanning technology. All voting papers processed by the close of the poll would be electronically counted soon after the close of the poll. Remaining voting papers would then be processed and a final result produced.
6. Voter participation can be determined by subject matter. The 1997 government-initiated referendum on compulsory superannuation was conducted using the postal ballot approach. There was a high rate of participation with an 80.3 percent turnout.
7. A referendum on our electoral system should generate high public interest and consequently high voter turnout. However, as evidenced by the 1992 indicative referendum on the electoral system, a high turnout cannot be assured. This referendum was conducted by a stand-alone ballot and turnout was 55.2 percent. Participation is likely to have been higher with a postal vote. This has been the experience with local authority elections. The publicity campaign for the referendum will also be important for encouraging voter participation.

Implications of holding referendum with a general election

8. In general, the same requirements that apply for the conduct of a general election apply to the conduct of a referendum held together with a general election. This means the referendum voting papers are issued and counted by polling place and electorate, not as a single national vote.
9. Holding a referendum with a general election makes an already complex process more complex.
10. It would take officers longer to issue the two voting papers (general election and referendum) to each voter. There would be twice as many voting papers and ballot boxes to process. More polling place staff, including more inquiry officers, would be required to manage the additional and more complex workload. This would impact on the size (and potentially the number) of polling places, supplies and training required. There is a risk of staff training being inadequate.
11. The risk of voter confusion, congestion in polling places and delay to the timing of the announcement of the preliminary parliamentary count is also increased.
12. Holding the referendum with a general election therefore risks the credibility of the election and the timely formation of a new government. If the referendum contained more than one question these impacts would be exacerbated.
13. From the 1999 experience, where two citizens-initiated referenda were conducted with the general election, we can expect that some voters would be confused by the additional voting paper and would ask polling place staff questions about the issues and the process. Voters would take longer to mark their papers. They would require help to find the right ballot box.
14. A high voter turnout is assured by combining the referendum with the general election. Turnout for the 1993 binding referendum into the voting system was 85.2 percent.

Managing the risks of holding a referendum with a general election

15. Trying to run a referendum at the same time as a general election will have unavoidable adverse impacts on the administration of the election. However, if the Government wishes to hold the referendum with the general election, the impact on the timeliness of the parliamentary count can be reduced by implementing the options discussed below.
16. *Combine the parliamentary and referendum ballot papers into a single paper.* A combined ballot paper would speed up the issue of voting papers and simplify the reconciliation and sorting required before the preliminary count can begin. It would also reduce the number of additional staff required to manage the referendum. A combined ballot paper with a single referendum question could be accommodated without increasing the current size of the ballot paper. If the referendum asked more than one question, the size of the ballot paper would probably need to increase. This would increase the cost and complexity of printing the ballot paper and complicate the download and fax back of ballot papers for overseas voters to an extent that may make this option unworkable.

17. Crown Law Office has previously advised that combining the ballot papers would require amending the Electoral Act 1993, and would include amending an entrenched section (section 168 concerning the method of voting). The section relating to the form of ballot papers (section 150) would also need to be amended. Any legislative change involving the ballot paper is likely to be controversial.
18. A combined voting paper would require an amendment to the Electoral Act. Crown Law Office has previously advised that changing the ballot paper would require amending section 168 of the Electoral Act (which prescribes the method of voting). Section 268 of the Act provides that 75 percent majority of members of the House of Representatives is required to amend section 168. Section 150 concerning the form of ballot paper would also need to be amended. Any legislative change involving the ballot paper is likely to be controversial.
19. *Referendum not counted on election night.* The referendum part of the ballot paper would not be counted on election night. Instead, the referendum would be counted in Returning Officers' headquarters during the official count period. The final result would be declared approximately two weeks after election day. Because of the combined paper, the referendum voting papers would be sorted by electorate and reconciled in the polling place as part of the process for undertaking the preliminary count of the parliamentary vote. Not counting the referendum on election night would reduce the impact on the timing of the preliminary count of the parliamentary vote. However, the fact that no preliminary result is produced for the referendum would indicate that the referendum was of secondary importance. It might raise questions about the integrity of the process.
20. The Chief Electoral Office advises that if there were separate parliamentary and referendum ballot papers the reconciliation process and sort in polling places on election night would be significantly more complex than for a combined paper.
21. Without a reconciliation and sort of the referendum papers in the polling place, there would be no record from the polling place of how many papers there were to count. The absence of this record would be a major gap in the integrity of the process. Some parliamentary ballot papers would inevitably be mixed up amongst the referendum papers and, therefore, be unaccounted for on election night. Moreover, the referendum papers would not be sorted into electorate order. If, as would be expected, an electorate by electorate result was required, the referendum papers would have to be sorted after election day and then transported to the appropriate Returning Officer for counting. This sort would be a major task requiring a large staff resource. It would ordinarily be done by the 16,000 plus polling place staff on election night rather than by the 2500 headquarters staff usually employed during the official count. It would further delay the referendum count.

Appendix 2: MMP Referendum decisions required

December 2008 Speech from the Throne

The government “will give New Zealanders the chance to have their say on the Mixed Member Proportional (MMP) representation system that has formed the basis of the country’s parliamentary elections since 1996.

This will take the form of a binding referendum, and if a majority of voters decide they want to consider other electoral systems, the new Government will offer them a choice of a range of systems to replace it.”

Decision 1: Referendum process

EITHER:

A two step referendum process – up to two referenda are held

The **first** referendum asks two questions, such as:

- Do you wish to retain the current MMP voting system? YES/NO
- Which electoral system do you prefer from the list of alternative voting systems (e.g. FPP, PV, SM, STV)?

If the majority vote for change, a **second** legally binding referendum asks voters to choose between MMP and the preferred alternative voting system. Before this referendum, legislation is in place and ready to come into force if a majority choose the alternative voting system.

OR:

A three step referendum process – up to three referenda are held

The **first** referendum asks voters if they wish to retain the current MMP voting system.

If a majority vote for change two more referenda are held.

The **second** referendum asks voters to choose their preferred alternative voting system from a short list.

The **third** referendum is legally binding. It asks voters to choose between MMP and the preferred alternative voting system. Before this referendum, legislation is in place and ready to come into force if a majority choose the alternative voting system.

Decision 2: Referendum mechanism

Option A: Postal Ballot

The **first** postal referendum (20 August to 10 September 2010) has two questions. The Government commits to act on the outcome.

If there is a vote for change, a **second** legally binding postal referendum occurs in August 2012.

If voters choose a new electoral system, this would be in place for the 2014 general election.

Option B: Postal Ballot

The **first** postal referendum (20 August to 10 September 2010) has a single question. The Government commits to act on the outcome.

If there is a vote for change, a **second** postal referendum occurs in October 2012 on options.

If there is a vote for change, a **third** legally binding postal referendum occurs in November 2015.

If voters choose a new electoral system, this would be in place for the 2017 general election.

Option C: Referenda with general elections and one postal referendum

The **first** referendum (occurs with the 2011 general election) has a single question. The Government commits to act on the outcome.

If there is a vote for change, a **second** referendum occurs in November 2012 by postal ballot on options.

If there is a vote for change, a **third** legally binding referendum occurs with the 2014 general election.

If voters choose a new electoral system, this would be in place for the 2017 general election.

If 2 step process

If 3 step process

EITHER

OR

MMP Referendum analysis of options

EITHER: A two step referendum process

The **first** referendum asks two questions, such as:

- Do you wish to retain the current MMP voting system? YES/NO
- Which electoral system do you prefer from the list of alternative voting systems (e.g. FPP, PV, SM, STV)?

If the majority vote for change, a **second** legally binding referendum asks voters to choose between MMP and the preferred alternative voting system. Before this referendum, legislation is in place and ready to come into force if a majority choose the alternative voting system.

Option A: Postal Ballot

The **first** postal referendum (20 August to 10 September 2010) has two questions. The Government commits to act on the outcome.

If there is a vote for change, a **second** legally binding postal referendum occurs in August 2012.

If voters choose a new voting system, this would be in place for the 2014 general election.

Benefits

- First referendum held before local government elections (October 2010) and before preparation for 2011 general election.
- Low risk to preparation and conduct of general election.
- Some cost savings possible (combine the registration process with the local body elections).
- The most efficient option overall. The total cost of two postal referenda is approximately \$28m. Each postal referenda costs approximately \$14m, comprising:
 - Administration \$8m
 - Publicity \$6m

Issues

- Limited time to:
 - develop the question on the alternative voting systems for first referendum
 - prepare for and conduct public information campaigns for both referenda
 - develop and enact a bill to provide for a new voting system.
- Asking voters to consider alternative voting systems will raise the issue of Māori representation (as occurred in 1992 referendum).
- Referenda by postal ballot are slightly more expensive than those held with a general election.

Estimated costs

- Two referenda by postal ballots. Each costing:
 - Administration \$8m, plus
 - Publicity \$6m
 - = \$14m x 2
 - **TOTAL = \$28m**

OR: A three step referendum process

The **first** referendum asks voters if they wish to retain the current MMP voting system.

If a majority vote for change two more referenda are held.

The **second** referendum asks voters to choose their preferred alternative voting system from a short list.

The **third** referendum is legally binding. It asks voters to choose between MMP and the preferred alternative voting system. Before this referendum, legislation is in place and ready to come into force if a majority choose the alternative voting system.

Option B: Postal Ballot

The **first** postal referendum (20 August to 10 September 2010) has a single question. The Government commits to act on the outcome.

If there is a vote for change, a **second** postal referendum occurs in October 2012 on options.

If there is a vote for change, a **third** legally binding postal referendum occurs in November 2015.

If voters choose a new voting system, this would be in place for the 2017 general election.

Benefits

- Sufficient time to:
 - Develop the question on the alternative voting systems for second referendum
 - prepare for and conduct public information campaigns for all referenda
 - develop and enact a bill to provide for a new voting system.
- Low risk to preparation and conduct of general election.
- Some cost savings possible (combine the registration process with the local body elections).

Issues

- The most expensive option overall.
- Change over an extended timeframe.

Estimated costs

- Three referenda by postal ballot. Each costing:
 - Administration \$8m
 - Publicity \$6m
 - = \$14m x 3
 - **TOTAL = \$42m**

Option C: Referenda with general elections and one postal referendum

The **first** referendum (occurs with the 2011 general election) has a single question. The Government commits to act on the outcome.

If there is a vote for change, a **second** referendum occurs in November 2012 by postal ballot on options.

If there is a vote for change, a **third** legally binding referendum occurs with the 2014 general election.

If voters choose a new voting system, this would be in place for the 2017 general election.

Benefits

- Sufficient time to:
 - fully develop the question on alternative voting systems for second referendum
 - prepare for and conduct public information campaign for all referenda
 - develop and enact a bill to provide for a new voting system.
- High voter turnout for first and third referenda likely because it takes place at the same time as the general election.
- First referendum (with general election) will be less expensive than the postal ballot option.

Issues

- Significant risks to quality of general elections and referenda including:
 - Voter confusion and congestion.
 - Delay in parliamentary count possible.
- These risks can be partially managed through a combined ballot paper, but:
 - changes to the ballot paper require a 75% majority in the House because the provisions relating to the ballot paper are entrenched; and
 - only one question can be asked (there is not room on the ballot paper for two questions).

Estimated costs

- If two ballot papers are used, the cost of administration for each referenda is \$7m making the total cost approximately **\$40m**
- Two referenda held with general election (one ballot paper). Each costing:
 - Administration \$5.6m
 - Publicity \$6m
 - = \$11.6m x 2 = \$23.2m
 - + one referendum by postal ballot = \$14m
 - **TOTAL = \$37.2m**

Appendix 3: Timing for the Options

		Option A	Option B	Option C
2009	June			
	July			
	August			
	September			
	October	Cabinet decisions on referendum question	Cabinet decisions on referendum question	Cabinet decisions on referendum question
	November	Cross party process to consider referendum question?	Cross party process to consider referendum question?	PCO drafts bill
	December	Executive Council approval of referendum question	Executive Council approval of referendum question	
2010	January	Panel appointed and prepares for publicity campaign	Panel appointed and prepares for publicity campaign	Cabinet Legislation Committee considers bill
	February			
	March	Panel conducts publicity campaign (approx. 5 months)	Panel conducts publicity campaign (approx. 5 months)	Bill introduced and referred to select committee
	April			
	May			
	June			
	July			
	August	First indicative referendum conducted by postal vote	First indicative referendum conducted by postal vote	Select Committee considers bill
	September			Select committee reports back to the House
	October	Cabinet considers referendum outcome and decides next steps		Legislation enacted
	November			Panel appointed
	December	Bill drafted for binding referendum and alternative electoral system		Panel prepares for publicity campaign
2011	January			
	February		Cabinet considers referendum outcome and decides next steps	
	March	Cabinet Legislation Committee considers draft bill	Cross party process to consider referendum question?	Panel conducts publicity campaign (approx. 5 months)
	April		Executive Council approval of referendum question	
	May	Select Committee considers bill		
	June			
	July			
	August	Select committee reports back to House		
	September			
	October	General election	General election	General election and first indicative referendum
	November			Cabinet considers referendum outcome and decides next steps
2012	December	Panel appointed and prepares for publicity campaign		Cross party process to consider referendum question?
	January			Executive Council approval of referendum question
	February		Panel appointed and prepares for publicity campaign	Panel appointed and prepares for publicity campaign
	March	Bill enacted	Panel conducts publicity campaign (approx. 5 months)	Panel conducts publicity campaign (approx. 4 months)
	April	Panel conducts publicity campaign (approx. 5 months)		Second indicative referendum conducted by postal vote
	May			Cabinet considers referendum outcome and decides next steps
	June			Bill drafted for binding referendum and alternative voting system
	July	Binding referendum conducted by postal vote		Cabinet Legislation Committee considers bill
	August			Bill introduced and referred to select committee
	September			Select Committee considers bill
2013	October			Select committee reports back to the House
	November			Legislation enacted
	December			Panel appointed and prepares for publicity campaign
2014	January	Implementation of new voting system		Panel conducts publicity campaign (approx. 5 months)
	February			
	March	Electoral agencies prepare for general election		General election and binding referendum
	April			
	May			
	June			
	July			
	August			
	September			
	October	General election	General election	Implementation of new voting system
	November	New system used in general election (if there is a vote for change)		
	December			Electoral agencies prepare for general election
2015	January			General election (under new system if there is a vote for change)
	February			
	March		Panel appointed and prepares for publicity campaign	
	April			
	May		Panel conducts publicity campaign (approx. 5 months)	
	June			
	July			
	August			
	September			
	October		Third binding referendum conducted by postal vote	
	November		Implementation of new voting system	
	December		Electoral agencies prepare for general election	
2017			General election (under new system if there is a vote for change)	