Part 5

The Future of Electoral Law

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Electoral systems lie at the heart of the democratic process. They provide the vital link between voters’ preferences and the institutions of representative government. They embody the rules through which political competition is conducted. Electoral system design is thus crucially important. Not surprisingly, therefore, electoral law remains one of the most controversial areas of constitutional discourse across the democratic world.

New Zealand is no exception. For many decades there has been vigorous debate over many key features of the country’s electoral law. With little doubt the most controversial issue has been the system of representation, and in particular whether New Zealand should embrace a proportional or majoritarian system. For much of the twentieth century, a majoritarian system (that is, a simple plurality system) was the favoured approach. But following the recommendations of a Royal Commission in the mid 1980s, New Zealanders voted in 1993 to adopt a Mixed Member Proportional (MMP) electoral system. This was introduced in 1996, and the sixth election under MMP will be held in November 2011. But MMP remains strongly contested. Accordingly, the National-led government has agreed to hold a referendum at the time of the 2011 general election on whether MMP should be retained or replaced (and, if the latter, which of several other electoral systems is the most preferred). If voters choose to replace MMP, there will be a second referendum in 2014 in which the current electoral system will be pitted against the most favoured alternative system. If a majority of voters choose to support the retention of MMP in late 2011, then attention is likely to focus on ways in which MMP might be modified in order to address some specific concerns. One of these is magnitude of the threshold which parties need to cross in order to secure seats in Parliament via the party vote. It is currently five per cent, which is relatively high by international standards. Another concern lies in the fact that this threshold does not apply if a party wins at least one constituency seat. Many regard this rule as unfair and potentially destabilising.

The first three chapters in Part 5 discuss various aspects of electoral law reform. In Chap. 11, the Minister of Justice (Hon Simon Power) reviews recent changes in New Zealand’s constitutional arrangements and outlines the various changes being
instituted by the National-led government. These include the repeal of the Electoral Finance Act, the establishment of a new Electoral Commission (which will assume the responsibilities of the Chief Electoral Office, the existing Electoral Commission and the Chief Registrar of Electors), and the holding of at least one (and possibly two) referenda on the future of MMP. He also foreshadows the government’s plans to undertake a wider review of constitutional matters, including the controversial issue of separate Māori representation. The initial details of this review are outlined in the Appendix at the end of this volume.

In Chap. 12 Charles Chauvel, the Labour Party’s spokesperson on electoral matters, discusses the reasons why New Zealand adopted the MMP electoral system in the mid 1990s and assesses whether the new arrangements have delivered their hoped-for benefits – especially in terms of a fairer system of representation and an improved policy process. In his view, MMP has unquestionably resulted in a more representative Parliament, with a much higher proportion of women and much better representation of ethnic minorities. He also argues that MMP has enhanced public trust and confidence in the country’s political system, improved the level of inter-party consultation, strengthened the select committee system in Parliament, and slowed the legislative process. Whether these claimed virtues provide sufficient grounds for voters to support the retention of MMP in the forthcoming referendum remains to be seen.

Philip Joseph, in Chap. 13, tackles four critical electoral issues: the retention of separate Māori seats, the future of MMP, the idea of a fixed parliamentary term, and the length of the term of Parliament. In keeping with Charles Chauvel, Professor Joseph favours the retention of MMP. While acknowledging certain imperfections, he argues that proportional representation has “energised national politics, increased the contestability of political decision-making, and enhanced the representational diversity of Parliament”. Against this, he proposes the abolition of the current regime of separate Māori representation and advocates a four-year fixed term. He fully recognises, however, that neither of these changes is likely. In the case of Māori representation, the matter remains too divisive politically for early action. In relation to the term of Parliament, New Zealanders have already rejected a four-year term in referenda on two occasions, and there is currently little political interest in the concept of a fixed term.

In the final chapter in Part 5, Caroline Morris addresses a very different set of issues, namely how to minimise misbehaviour by MPs and what to do when such misbehaviour is detected. The context for this discussion is a series of recent scandals in Britain and New Zealand involving the misuse of parliamentary and ministerial expenses. In the case of Britain, the expenses scandal in 2009 resulted not merely in many MPs choosing not to contest the 2010 general election, but also prosecutions for fraud. The chapter assesses various forms of “soft” and “hard” regulation, in particular the promulgation of stronger codes of conduct, greater reliance on parliamentary privilege (including suspension and expulsion), the establishment of an independent external regulator, and the use of a device known as the recall election. Under a recall, voters in a constituency can force a by-election under certain conditions (for example, where their MP has engaged in
serious wrongdoing and where a sufficient number of voters have signed a petition). The author argues that there is no perfect system for addressing misconduct by parliamentarians. Nevertheless, such misconduct needs to be taken seriously. Her preference is for a mix of methods for monitoring and sanctioning unacceptable behaviour, including both internal parliamentary controls and external oversight. This strongly suggests the need for further reform in New Zealand where Parliament continues to rely solely on internal processes, namely codes of conduct and parliamentary privilege.