

## **Submission to the Senate Standing Committee on Legal and Constitutional Affairs**

### **Nationhood, National Identity and Democracy**

My name is Thomas A. Stephen, I am 18 years old and am deeply concerned about the future of democracy in Australia and the implications which may arise if nothing is done.

#### **Explanatory—**

The following paper relates to ‘Sustaining democracy’ and makes the case for the House of Representatives to adopt a system of Proportional Representation under the Mixed Member Proportional System (MMP), however with a few changes to ensure its success in Australia (MMP+).

**MMP+** a form of MMP. The total number of seats is fixed to a number set by Parliament, 60% of those seats are for local divisions, the remaining 40% for list seats. Unlike New Zealand voters mark only one ballot under a preferential system. The party or independent group vote dictates the proportion of seats each group gains (the primary vote is used to calculate the regional representation via the d’hondt quota, to be included in the calculation a party must win an electorate or 5% of the primary vote. If seats still remain, the party with the lowest primary vote is excluded and votes are distributed proportionally, this process continues until all seats are filled), these seats first being filled by politicians who won an electorate, the remaining seats parties have won are then filled by a list submitted by the political parties and groups prior to the election.

This system is a merger of the Australian voting systems and New Zealand’s. For voters very little changes – the way they mark the ballot remains the same. However, they will now receive both a local representative and an assurance that voting for a party other than the majors will count.

***Essentially MMP+ is a mixed member proportional system that uses instant run off voting for electorates and party/group based single transferrable voting for the list seats – all on one ballot.***

I hope honourable Senators will enjoy reading this submission and will take on board that democracy should be about our entire community. We may disagree with how our fellow electors vote but we shouldn’t silence them. If you have any enquires please contact me.

Thomas A. Stephen.

## **A Proportional Westminster System – Following New Zealand’s Lead.**

Australia’s Federal Westminster System has been operating for the last one hundred years, and despite what was originally intended the system has evolved over time. The biggest non-constitutional changes in Australia since 1901 have rested in our electoral laws, which occurred during 1918 and 1949 respectively with the introduction of preferential voting in the House of Representatives<sup>1</sup> and the Senate, before the Senate changed to Proportional Representation by the Single Transferrable Vote<sup>2</sup>. Australia has been the exception as, in other Westminster Democracies, governments have moved away from Majoritarian electoral systems and towards more Proportional Systems which increase satisfaction in democracy as well as instil confidence among electors that their vote counts. New Zealand serves as the greatest example for Australia moving away from a majoritarian system to a proportional system. This bears the question, to enhance Australian democracy and confidence within our democratic institutions, should Australia adopt New Zealand’s Mixed Member Proportional?

In 1996 the New Zealand Parliament adopted the ‘Mixed Member Proportional System’ known as MMP<sup>3</sup> after a royal commission was commenced by the New Zealand Labour Party<sup>4</sup>. Following the 1990 and 1993 elections New Zealanders become disillusioned and disenfranchised over their political system<sup>5</sup>. The National Party which secured over fifty percent of the seats only secured thirty-five percent of the electorates vote, while the New Zealand Labour Party secured a percent less at thirty-four percent they secured forty-five percent of the seats. The biggest issue for New Zealanders was other parties and political groups such as Alliance, who won eighteen percent of the electorates support but only two percent of the seats. The findings of the royal commission found while the results of the single member constituencies were accurate, and that the electorate believed it was important to have local representatives it was no longer appropriate to have a political body which did not accurately reflect the national popular vote<sup>6</sup>. The Commission settled on a new system called MMP. In this system the number of seats remains the same, while the number of electorates is reduced

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<sup>1</sup> Australian Parliament House, ‘3. The electoral and party systems’ 2019.

[https://www.aph.gov.au/About\\_Parliament/Senate/Powers\\_practice\\_n\\_procedures/platparl/c03](https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/platparl/c03)

<sup>2</sup> Australian Parliament House, ‘3. The electoral and party systems’

<sup>3</sup> Tracey-Ann Johnson-Myers, *The Mixed Member Proportional System: Providing Greater Representation for Women? A Case Study of the New Zealand Experience* (Kingston, Jamaica: Springer, 2017), 19-20.

<sup>4</sup> Jack Vowels, “The Politics of Electoral Reform in New Zealand”, *International Political Science Review* 16(1) (1995): 102-104.

<sup>5</sup> Heylen Research Centre. *One Network News/Heylen Political Polls*, (Auckland, Helen Research Centre, 1992)

<sup>6</sup> New Zealand Government, *Royal Commission on the Electoral System: towards a better democracy*, (Auckland: NZGPO, 1986), 8-9.

to be sixty percent of the total seats<sup>7</sup>. With this system, voters cast two votes on a single ballot, the first (known as the electorate vote) for a local representative elected by ‘First Past the Post’, and the second for a political party or independent group (known as the party vote). The party or independent group vote dictates the proportion of seats each group gains, these seats first being filled by politicians who won an electorate, the remaining seats parties have won are then filled by a list submitted by the political parties and groups prior to the election<sup>8</sup>. A party that doesn’t win an electorate must pass a five percent hurdle to enter parliament<sup>9</sup>. In the event a party wins too many electorates an overhang is created. An overhang seat means if a party wins too many electorates the total seats in the House is increased, and they keep the additional seat. This system ensured the main criteria established was achieved: local representatives are maintained; and the Parliaments composition will always be proportional to the popular vote.

The Australian House of Representatives has used a modified version of First Past the Post since 1919 known as the Instant Run-Off Voting System (IRV) or Preferential Voting<sup>10</sup>. This system is designed to reduce and minimise the implications of the spoiler effect<sup>11</sup>. However, IRV maintains many of the issues First Past the Post boasts. Such issues include, gerrymandering, the lack of proportionality to the popular vote, and the ability to encourage political diversity<sup>12</sup>. Many of these issues can be seen in modern Australia especially in the 2019 Federal Election. The Australian Labor Party (ALP) won thirty-three percent of the first preference vote in the House won forty-four percent of the seats, the Greens won ten percent of the entire popular vote and got a single seat representing zero-point-six percent of the House. While the Liberal National Party of Queensland (LNP) won eight percent of the vote but won fifteen percent of the seats<sup>13,14</sup>. This discrepancy in votes to seats is comparable of New Zealand in the early 1990s and comes at a time of low support in Australian Democracy among electors<sup>15</sup>. It is clear the existing system is failing voters and the nation. The question shouldn’t

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<sup>7</sup> New Zealand Government, *2012 MMP Review*, (Auckland: NZGPO, 2012), 25-31.

<sup>8</sup> New Zealand Government, *Royal Commission on the Electoral System*, 43-44.

<sup>9</sup> Michael Gallagher and Paul Mitchell, “New Zealand: The Consolidation of Reform?” in *The Politics of Electoral Systems*, (Oxford: Oxford University Press, 2005), 4.

<sup>10</sup> Australian Parliament House, 3. *The Electoral and Party Systems*.

<sup>11</sup> Charlie Caruso, “Does the Preferential Voting System Improve Democracy?”, *Medium*, February 24, 2019, Available at: <https://medium.com/@charliecaruso/does-the-preferential-voting-system-improve-democracy-931ac1f5ff81>

<sup>12</sup> William H. Riker, “The Two-Party System and Duverger’s Law: An Essay on the History of Political Science”, *American Political Science Association* 76(4) (1982): 753-766.

<sup>13</sup> Australian Electoral Commission, “2019 Federal Election” 18 May 2019. <https://tallyroom.aec.gov.au/HouseDefault-24310.htm>

<sup>14</sup> Antony Green, “Federal Election 2019 Results” *ABC News*, 28 May 2019. Accessed 28 May 2019.

<sup>15</sup> Prof. Mark Evans and Prof. Gerry Stoker, “Australians’ trust in politicians and democracy hits an all-time low: new research”, *The Conversation*, 5 December 2018.

be based on why the Australian public has lost faith in democracy, but why are we not addressing it through electoral reform that benefits our electors.

With growing discontent for democracy, Australia should follow New Zealand and other Westminster Parliamentary Republics lead and adopt a more proportional electoral system. Yet with many Australians apathetic, and due to voting differences at a State level, a few changes should be made to the Mixed Member Proportional System to ensure its success in Australia. The first issue of MMP, is electorate seats are determined by FPTP. This would mean the re-introduction of the spoiler affect in Australia and although this wouldn't affect the national outcome – the preferential system creates a more comfortable environment for electors to approach more preferred members. Under First Past the Post in the northern Brisbane seat of Lilley, a traditionally safe Labor seat, 2019 would have seen the LNP elected instead the ALP, despite the fact the left leaning parties (the ALP, Greens and Socialists) had a majority of the first preference vote<sup>16</sup>. If Australia were to adopt MMP optional preferential voting should remain for electorates and allow for an easier transition for electors. To avoid confusion for electors in the difference of the ballot papers for the House party vote and the Senate above-the-line voting, instead of following New Zealand and Germany and have voters mark a single party<sup>17</sup>, Australia should adopt a preferential d'hondt system. In this modified system votes will not mark an extra ballot paper like in Germany and New Zealand, instead the primary vote from electorates should be aggregated to minimise voter confusion and cost of an additional ballot. However, if a party or group fails to win an electorate or reach the five percent threshold, the party with the lowest vote should be eliminated and their vote distributed to their second preference – this should be continued until all parties have either five percent of the vote or have won an electorate. Once that is complete then the proportion of seats each group obtains should be calculated. Under this preferential d'hondt system the spoiler affect between parties around the three and four percent mark will be minimised and the preference flows of micro parties may support them, this is designed to avoid the issues faced in Germany where there are six main parties with minor parties of similar ideology struggling to poll greater than two percent of the party vote, and around eight percent of the electorate is scattered among thirty

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<sup>16</sup> Australian Electoral Commission, “2019 Federal Election – Lilley” 28 May 2019.  
<https://tallyroom.aec.gov.au/HouseDivisionPage-24310-169.htm>

<sup>17</sup> ACE – The Electoral Knowledge Network, “Electoral Management – Ballot Papers (German)”, 2019.  
Available at: [http://aceproject.org/main/samples/em/emx\\_b027.pdf](http://aceproject.org/main/samples/em/emx_b027.pdf)

parties in this ‘awkward zone’<sup>18,19</sup>. By ensuring the preferential system at the electorate level we will minimise the effects of the spoiler effect faced in countries like the United Kingdom and also Germany<sup>20</sup>.

It could also be argued that a significant downside of MMP is the overhangs and differing sizes of the Parliament. This is avoidable and it would be strongly advised that a fixed number of seats is maintained. In New Zealand overhangs are maintained allowing the Parliament to fluctuate, however this has only ever been slightly<sup>21</sup>. In Germany it’s a different story. The Reichstag used to use the ‘just keep it’ system like New Zealand, however the German Constitution (German Basic Law) requires the Reichstag to be proportional to the popular vote (either nationally or state by state)<sup>22</sup>. In 2008 the Constitutional Court of Germany declared that the existing electoral law was no longer satisfying this requirement<sup>23</sup>. The court gave the Bundestag only three years to resolve the issue. The compromise created by the CDU, CSU, SPD, FDP and Greens introduced overhang seats so that the chamber would be increased so that the party’s vote percentage would be equal with the percentage of seats including overhangs<sup>24</sup>. In the following elections the Bundestag swelled from 598 seats as a base, to 631 in 2013 and again in 2017, this time swelling to 709 members. To avoid this matter of overhangs a different system of overhangs should be introduced. As Australia has no constitutional requirement for proportional voting, but has the nexus, the number of seats shall remain fixed. If a party wins more electorates than it is entitled it should keep them and the corresponding number of list seats allocated to other parties should be eliminated. This system will result in a fixed number of MPs and avoid the issues faced by Germany and New Zealand. The change to a new electoral system (MMP+) will be a radical re-shacking of Australian politics. Since 1945 no party other than the Liberal National Coalition or Labor Party has

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<sup>18</sup> Federal Returning Officer, “Federal Election 2017: Final Result” 12 October 2017. Available at: [https://www.bundeswahlleiter.de/info/presse/mitteilungen/bundestagswahl-2017/34\\_17\\_endgueltiges\\_ergebnis.html](https://www.bundeswahlleiter.de/info/presse/mitteilungen/bundestagswahl-2017/34_17_endgueltiges_ergebnis.html)

<sup>19</sup> Tobias Gerhard Schminke, “EU Elections in Germany: which minor parties will make it?”, *Europe Elects*, 11 May 2019..

<sup>20</sup> Marek M. Kaminski, “Spoiler Effects in proportional representation systems: evidence from eight Polish parliamentary elections, 1991-2015”, *Public Choice* Springer 176(3), 2018, 441-460.

<sup>21</sup> Returning Officer, “New Zealand Election Results”, *New Zealand Electoral Commission*, 2017 <https://electionresults.org.nz/>

<sup>22</sup> Deutsche Bundestag, “Article 38, Sub Article 1”, *German Basic Law*. 13 July 2017

<sup>23</sup> “Federal Constitutional Court decision on the Federal Election Law”. Bverfg.de. 3 July 2008. Available at: [https://www.bundesverfassungsgericht.de/entscheidungen/cs20080703\\_2bvc000107.html](https://www.bundesverfassungsgericht.de/entscheidungen/cs20080703_2bvc000107.html)

<sup>24</sup> “Bundestag: Deutschland hat ein neues Wahlrecht” [Germany has a new electoral law]. *Die Zeit* (in German). 22 February 2013. ISSN 0044-2070. Available at: <https://www.zeit.de/politik/deutschland/2013-02/bundestag-wahlrecht-beschluss>

formed government<sup>25</sup>. The only example of another political party being involved in government is the 'Red Green' Coalition of Julia Gillard, however no Greens member served in cabinet. In fact, the last time a non-government member sat in cabinet was during World War 2, when Australia was governed by a practical Grand Coalition of the Labor, Country and United Australia Parties. Many, such as Associate Professor Lydia Miljan believe the introduction of a multi-party system will lead to instability as Westminster Systems rely heavily on stable majority governments to operate<sup>26</sup>. Fears also lie in extremist parties gaining a national voice. However, both the New Zealand House of Representatives and the ACT's Legislative Assembly show evidence against this. The first New Zealand Parliament under MMP had 6 political parties with seats, this peaked in 2005 and 2008 when there were 8 political parties<sup>27</sup>. Since 2008 the number of parties in the House has fallen and currently sits at 5<sup>28</sup>, with polls currently predicting only 3 parties will have seats if an election were held today<sup>29</sup>. In the ACT it's a similar story after the first election in 1989 the house boasted 5 political parties, in 1992 and 2001 it reached 4, but since the 2001 election only three political parties have entered the house, those being: the ACT Labor Party; the Canberra Liberals; and the Greens<sup>30</sup>. In fact, on closer analysis the 2016 ACT election resulted in 85% of electors casting a primary vote in favour of those three parties<sup>31</sup>. Many have argued the reasoning for the reduction in political groups comes down to a single point. The responsiveness of parties to public opinion under Proportional Representation. Under MMP NZLP have adopted numerous policies to try and increase their popular vote, such as the Kiwibuild program, popular among New Zealand First supporters<sup>32</sup>. In the ACT we've seen the Labor Party adopt more environmentally friendly policies such as the Civic Tramline in an attempt to curb the popularity of the Greens and increase its primary vote<sup>33</sup>. It is especially clear after the 2019

<sup>25</sup> National Archives of Australia, "Australia's Prime Ministers – Timeline" 2018.

<sup>26</sup> Lydia Miljan, "Proportional Representation Voting Systems Breed Unstable Governments", 6 September 2018.

<sup>27</sup> New Zealand Parliament, "Parliamentary Parties" 2019. Available at: <https://www.parliament.nz/en/mps-and-electors/political-parties/>

<sup>28</sup> Elections, Electoral Commission, "2017 General Election" 2017. Available at: [https://www.electionresults.govt.nz/electionresults\\_2017/](https://www.electionresults.govt.nz/electionresults_2017/)

<sup>29</sup> Claire Trevett, "Claire Trevett: Poll puts Labour support up after mosque attacks but tax is back in debate" *New Zealand Herald*, 11 April 2019. Available at: [https://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=12221107](https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12221107)

<sup>30</sup> Antony Green, "Past Election – ACT Election 2016" *ABC News* 2016. Available at: <https://www.abc.net.au/news/elections/act-election-2016/guide/past-elections/>

<sup>31</sup> Australian Capital Territory Electoral Commission, *Report on the ACT Legislative Assembly Election of 2016* (Canberra: ACT Government, 2016),

<sup>32</sup> Henry Cooke, "Where KiwiBuild is at with one year to build 1000 houses" *Stuff*, 2 July 2018. Available at: <https://www.stuff.co.nz/national/politics/105107864/where-kiwibuild-is-at-with-one-year-to-build-1000-houses>

<sup>33</sup> Shane Rattenbury MLA, "Greens say dump Monash Drive to protect our environment for the future" *RiotACT!*, 4 April 2019.

General Election, that the major parties are being abandoned in droves by voters, who either support micro-parties or don't vote at all. In the ACT and New Zealand this simply isn't the case as parties have acted swiftly with public opinion, representing the views of the wider community.

With a growing disappointment and dissatisfaction Australia should follow the lead of other Westminster Democracies and adopt a more proportional electoral system in the House of Representatives. Despite the claims of those who disagree, New Zealand has proved that we can have an electoral system that has local representatives, is proportional, and provides stable, effective and responsible government in the Westminster tradition.



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