July 2010

Report 8

2058

Effective Māori Representation in Parliament

Working towards a National Sustainable Development Strategy

MCGUINNESS INSTITUTE

Project 2058: Report 8

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This report forms part of *Project 2058*, the Institute's flagship project.

Report name *Effective Māori Representation in Parliament: Working towards a National Sustainable Development Strategy*

Citation Please cite this publication as:

McGuinness Institute (2010). *Project 2058 Report 8 – Effective Māori Representation in Parliament: Working towards a National Sustainable Development Strategy*. [online] Available at: www.mcguinnessinstitute.org/publications/project-2058-reports [Accessed date].

Published First published by the Sustainable Future Institute Ltd, June 2010

ISBN 978-1-972193-27-3 (paperback)
ISBN 978-1-972193-28-0 (PDF)

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About the Institute The McGuinness Institute (formerly the Sustainable Future Institute) is an independently funded non-partisan think tank. The main work programme of the Institute is *Project 2058.* The strategic aim of this project is to promote integrated long-term thinking, leadership and capacity-building so that New Zealand can effectively seek and create opportunities and explore and manage risks over the next 50 years. It is hoped that *Project 2058* will help develop dialogue among government ministers, policy analysts and members of the public about alternative strategies for the future of New Zealand.

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Authors: Wendy McGuinness and Nicola Bradshaw

Note: This report is one of a number published by the Sustainable Future Institute (now the McGuinness Institute) as part of *Project 2058*. Throughout 2014 these reports are progressively being reissued, substantially unchanged, under the McGuinness Institute imprint.

Acknowledgements

This report could not have been written without the considerable assistance and advice of Denise Brown of Statistics New Zealand, David Henry of the Electoral Commission, Moira Fraser of the Parliamentary Library, Professor Philip Joseph of the Canterbury University School of Law, and Dr John Wilson, a visiting lecturer in public policy at the School of Government, Victoria University of Wellington. Furthermore, the Institute was fortunate to have the guidance of Dr Anthony Cole, Wayne Silver and Dr Huhana Smith, whose assistance has been invaluable. Lastly, a special thanks to our editor Susan Brierley, and to Miriam White and Perrine Gilkison, who completed the research and assisted with the analysis. Naturally any errors or matters of opinion expressed within the report are my own.

Wendy McGuinness
Chief Executive

Preface

Me tu te tangata ki korero i runga i te marae kia whitikia e te ra kia puhipuhia e te hau.

A man should stand and speak on the marae where his words are exposed to the bright sun and blown about by the wind. (Māori proverb, quoted in Walker, 1987: 80)

The proverb quoted above provides a fitting context for this report. As a think tank focused on exploring New Zealand's long-term future, it is important that this institute not only explores areas that are straightforward and uncontroversial, but also takes the time to investigate issues that are complex and contentious. The topic of this report – Māori representation in Parliament – clearly falls into the latter category. While effective representation has been an ongoing goal articulated by many Māori over time, there is little clarity as to what the successful achievement of such a goal would look and feel like in practice. The challenge for us was therefore to produce a report that endeavoured to simplify the complex and reframe the contentious, so that current thinking is not only 'exposed to the bright sun' but is able to be 'blown about by the wind'.

This report adds to an ongoing conversation about the conflicting goals apparent in Māori representation – the contrasting desires for separatism and togetherness. Many scholars have noted that the Māori desire for self-determination has been a constant theme in Māori and non-Māori relations since the signing of te Tiriti, however the contrasting theme of togetherness has also been present. Lt-Col Sir James Henare, a former commander of 28 Māori Battalion, when talking about the servicemen who fought to protect their homes and their country, expressed it this way: 'Never in the history of our country has there been a more common or profound conviction that we are all necessary to one another. To separate is to court disaster.'

Māori representation is of critical importance to the future of all New Zealanders, not just Māori New Zealanders. Building a nation that is robust, yet sufficiently flexible to manage risks and pursue opportunities, depends on the ability of all its peoples to live and work together with a high level of harmony. The aim of this report is to explore ways to achieve long-standing harmony through effective parliamentary representation.

Wendy McGuinness

Executive Summary

A number of democratic processes exist within government, of which parliamentary representation is the most critical yet least understood. This report explores whether separate parliamentary representation for Māori is effective, and if not, what mechanisms could be implemented to improve the quality of representation in the future. The report traverses this contentious and complex terrain in the hope that it will generate greater discussion so that existing problems are not passed on to future generations.

This research forms a part of the Institute's *Project 2058* research project, which focuses on mechanisms to build a nation that is able to meet the needs of current and future generations. The overarching purpose of the report is set out in Section 1, with a detailed explanation of the methodology in Section 2. Within the methodology, two key concepts are described, both of which frame the discussion contained in the remainder of the report. The first is the notion that four components of political representation exist: the setting, the interest being represented, the constituents, and those representing the constituents. The second concept is that in order to assess effectiveness, at least four distinct views of parliamentary representation must be considered: 'formalistic', 'descriptive', 'symbolic' and 'substantive' representation. There are a number of limitations to this research; notably, the research only considers options to improve the effectiveness of Māori representation within a system of mixed member proportional (MMP) representation. Further, it was impossible to explore the effectiveness of separate parliamentary representation for Māori in isolation; as such this report goes beyond this topic and ventures into effective systems of representation for all New Zealanders.

The discussion is then broken up into three parts: the past, present and possible futures of Māori representation in Parliament. Section 3 explains how New Zealand's current system of separate representation evolved (the past); Section 4 identifies nine questions as a way of exploring our current system, and Sections 5 to 13 go on to discuss each of these questions in detail (the present). Section 14 identifies possible events that are likely to shape parliamentary representation in the long term (the future). Section 15 proposes both a new parliamentary representation system for New Zealand and a work programme to explore this and other alternatives in more detail, before considering the implications for a National Sustainable Development Strategy (NSDS).

The key findings relating to our nine questions are summarised below:

1. Can we, the people of New Zealand, have confidence that all MPs act in the best interests of all New Zealanders?

We found that there is no formal obligation on Members of Parliament to act in the best interests of New Zealanders. We believe the Oath of Allegiance sworn by Members of Parliament should be modified to include an obligation to act in the best interests of all New Zealanders – past, present and future.

2. Internationally, what mechanisms are used to improve representation of selected groups in society?

We found that representation of selected groups in society can be achieved through elected representatives, an advisory role or regional mechanisms. It is clear that in designing a system to deliver elected representatives of selected groups in society into Parliament, reserved seats and thresholds are important mechanisms to consider. We believe that it would benefit New Zealand to review the range of systems in use globally and to critically evaluate whether their successful elements may be relevant to our local context. These international experiences may provide useful insights into our system, and highlight the range of options available to strengthen our parliamentary representation. However, any option must be able to deliver the outcomes that New Zealanders desire, based on our unique history, culture and values.

3. How is the quality of Māori representation currently tested?

We found that the most commonly used method of testing the effectiveness of Māori representation is to compare the percentage of Māori MPs in the House of Representatives with the percentage of New Zealanders of Māori descent. We believe that although this is a useful test of descriptive representation, it does not test substantive representation, and that more useful indicators should be explored.

4. How does Māori representation compare with that of Pacific and Asian people in New Zealand?

We found that the available data was not comparable. However, based on the information that was available, there appears to be greater disparity between population figures and representation for New Zealand residents of Pacific and Asian ethnicity than for those of Māori descent. We believe that it is important to assess the impact that any proposed changes to the current system of parliamentary representation may have on the representation of other ethnic groups.

5. Are Māori electorate seat calculations, enrolment and turnout optimal?

We found that (i) electorate seat calculations are based on total population and are complex but meet legal requirements; (ii) enrolment for Māori electors when compared with non-Māori electors is not significantly different, whereas (iii) turnout for Māori voters when compared with non-Māori voters is significantly lower. Low turnout is considered to be influenced by a number of demographic characteristics within the Māori population; for example, the high numbers between 20 and 30 years of age, the lower income levels, and lower levels of formal education. We believe that it is particularly important to address the low turnout of Māori voters in order to maintain the legitimacy of our democracy.

6. What impact did the 2008 Māori roll election results have on parliamentary representation?

We found that the Labour Party gained 49% and the Māori Party gained 28% of the total party votes on the Māori roll. In contrast, the Labour Party candidates gained 36% of electorate votes (and two Māori electorate seats), whereas the Māori Party candidates gained 56% of electorate votes (and the other five Māori electorate seats). We believe that Māori interests should be pursued in the House of Representatives but question whether recent developments will be in the best interests of Māori and all New Zealanders in the long term.

7. Are the Māori electorate seats effective?

We found that there has been an ongoing debate about the effectiveness of the seats. Support for the retention of the seats has largely centred on their role as a symbol of te Tiriti, whereas support for their removal has centred on their inability to deliver effective representation for Māori. The strength and diversity of feeling around this issue indicate that any democratic consensus will require an agreed process, supported by accurate, relevant and comprehensive information, and extensive public debate. We believe that separate Māori electorate seats are unlikely to deliver the optimal parliamentary representation system, and consider more effective mechanisms should be found.

8. If the 1986 Royal Commission's proposal had been fully implemented, would Māori representation be more effective today?

We found that the 1986 Royal Commission on the Electoral System presented a package of recommendations that were thoroughly developed and supported by sound principles. We believe that the proposal presented in 1986 remains relevant, and that if the full package had been enacted in 1993, Māori interests would be better represented today.

9. What are the relationships between separate parliamentary representation, te Tiriti and the constitution?

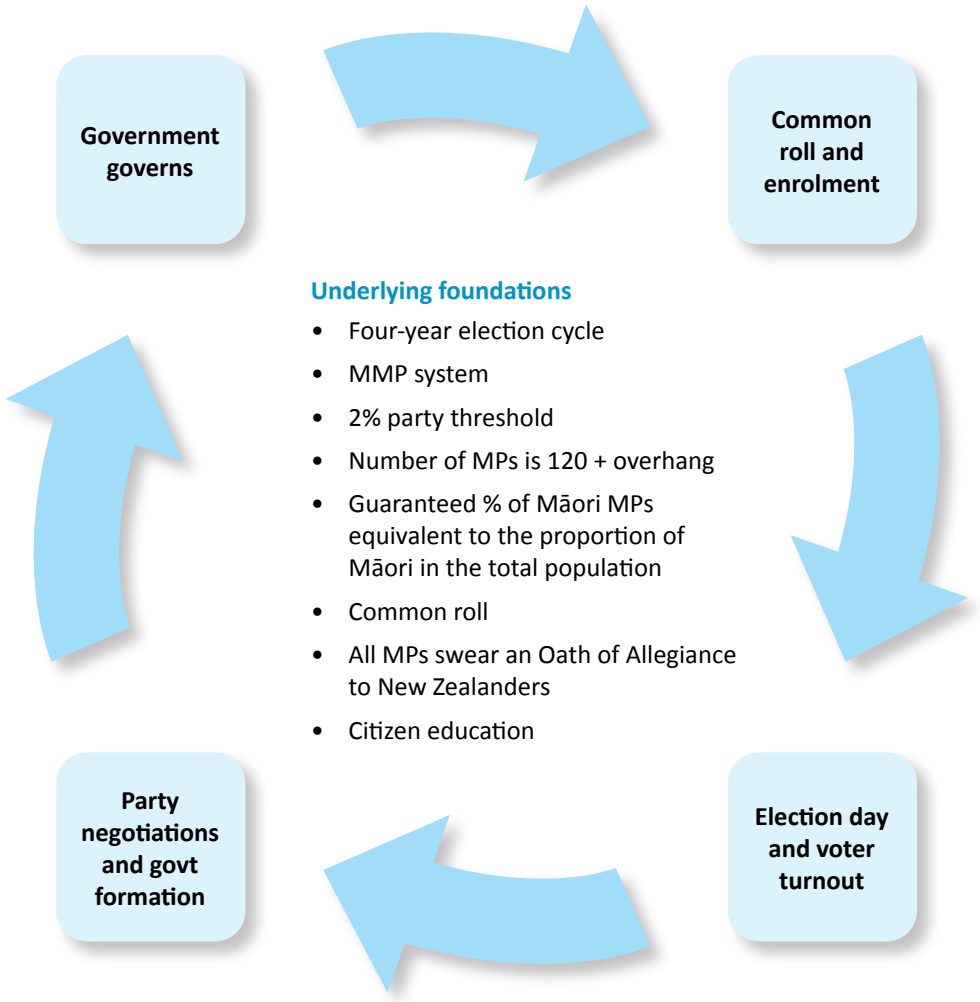
We found that separate representation for Māori has become a symbol of te Tiriti, even though te Tiriti does not formally bind New Zealand to this particular model of parliamentary representation. The importance of te Tiriti as one of New Zealand's founding documents is threatened by the uncodified status of New Zealand's constitution. We believe that separate representation should be assessed in terms of effectiveness in practice, as distinct from its role as a symbol of te Tiriti. The formal links between te Tiriti and the constitution should be clarified, and a work programme undertaken to improve the quality of our constitution.

After answering these questions, we reflect on the current system (see Figure 2, page 5) and the system proposed by the Royal Commission on the Electoral System in 1986 (see Figure 16, page 67). We then propose our own alternative system, which is described in Figure 1. The Institute's proposal fits between the current system and that put forward by the Royal Commission, in that although it proposes a common roll, it still guarantees representation for Māori by using the party lists to meet any potential shortfall. If under-representation were to occur in the future, Māori MPs from the party lists would be selected first, to ensure the number of Māori MPs reflected the proportion of Māori in the general population.

Importantly, we acknowledge that te Tiriti is not well embedded into New Zealand's constitution, and that the Māori electorate seats are arguably one of the few mechanisms that represent te Tiriti today. Hence it is difficult to develop an argument that suggests the removal of the Māori electorate seats, without offering Māori an equivalent or better mechanism to recognise te Tiriti and ensure Māori rights, culture and knowledge are recognised and honoured by government. Therefore, any changes need to be developed slowly, following thorough and informed public debate and consultation. To this end, we have suggested a work programme, as outlined in Table 11 (see Section 15.2). In designing the work programme, we identified three priority areas: (i) New Zealand's constitutional framework and parliamentary representation system, (ii) the accountability and transparency of Members of Parliament, and (iii) civic education.

Given the current government's proposed timeline for the establishment of 'a group to consider constitutional issues including Māori representation' and the forthcoming referendum on the future of MMP in 2011, it is timely for all New Zealanders to address these issues. An inclusive and reflective work programme such as we suggest could bring New Zealanders together to explore, discuss and consider our collective progress, gain consensus over what values bind us together and accept those that are different, in a way that both inspires and guides future generations. These suggestions are clearly ambitious, but we believe it is essential that this generation finds a way forward; this may be our country and our heritage, but we are also the guardians of our children's future.

Figure 1. The Parliamentary Representation System – the Institute's Proposal



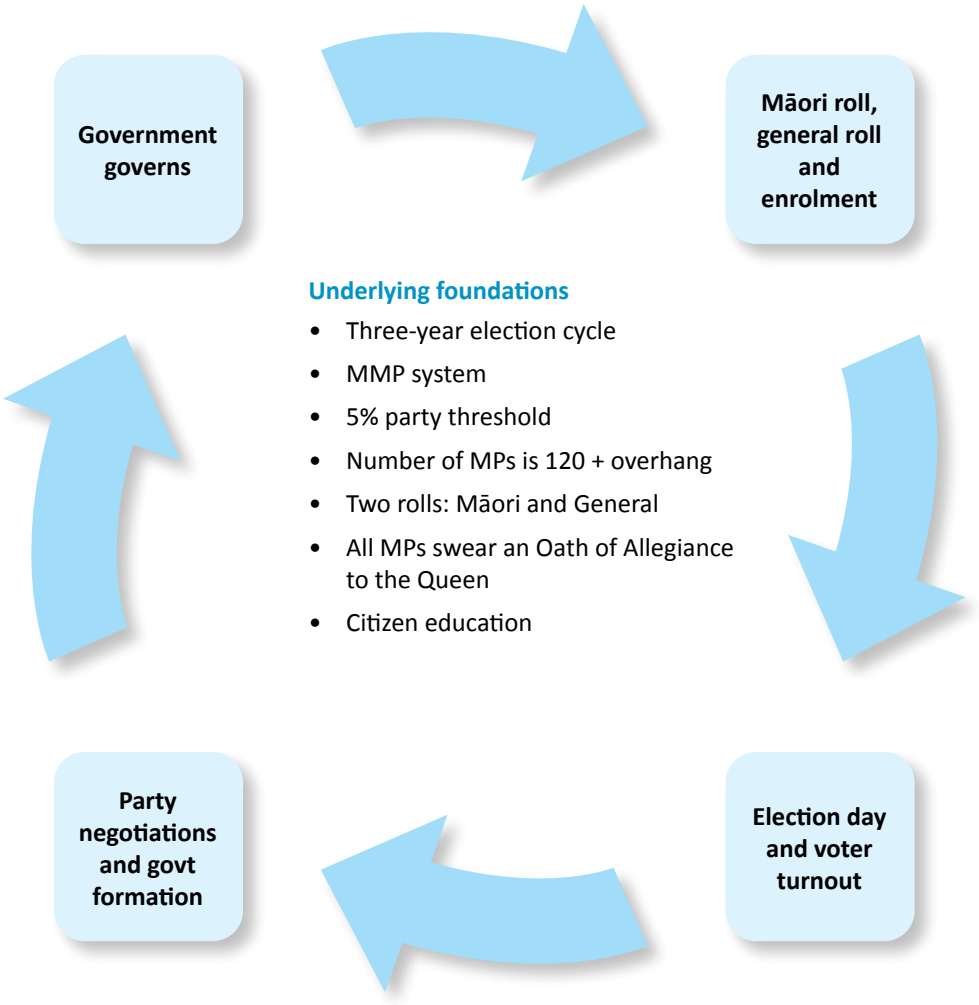
1. Purpose

This report explores the question of whether the current system of separate parliamentary representation for Māori is optimal, and if not, what mechanisms could be implemented to improve the quality of representation in the future.

To achieve our purpose and answer these questions we evaluate the various aspects of our current parliamentary representation system in the context of achieving effective Māori representation. In this report, the parliamentary representation system is considered to comprise both the electoral process and its underlying foundations (see Figure 2). The electoral process refers to the ways citizens, voters and representatives engage with the three-year cycle. The underlying foundations refer to the structural elements that exist beside the electoral process; they are the core features of the system that, while enduring, are still able to be changed. Notably, there is considerable interaction between the two, in that the underlying foundations of the system affect both how parliamentary representation operates in practice and how citizens engage with the system throughout the electoral process.

This report focuses primarily on the foundations underlying our parliamentary representation system. We do address the electoral process, but mostly in terms of how the foundations of the system impact on the process. It is the system's foundations that we consider have the most influence on New Zealand's ability to achieve effective representation.

Figure 2. The Parliamentary Representation System – the Current System



To some extent this report covers similar ground to that considered by the Royal Commissioners in their 1986 report on the electoral system. However, this report is not as wide, in that we have not reviewed other electoral systems; rather, we have assumed that some form of Mixed Member Proportional (MMP) system will continue, and have restricted our research and analysis accordingly.

This research is central to the Institute's *Project 2058*, as the quality of Māori representation in Parliament is likely to be a significant factor in shaping New Zealand's long-term future. For that reason, both our institutions and our elected representatives must be critically assessed at regular intervals to ensure that the former pursue the public interest, and the latter genuinely represent the people of New Zealand. This is essential for the long-term sustainable development of New Zealand as a nation and therefore the implications of these findings need to be considered in the development of a National Sustainable Development Strategy. If Parliament does not effectively represent and work to progress the goals of New Zealanders, our ability to achieve a sustainable and harmonious future is at risk.

1.1 Project 2058

The strategic aim of *Project 2058* is to promote integrated long-term thinking, leadership and capacity-building so that New Zealand can effectively seek and create opportunities and explore and manage risks over the next 50 years. In order to achieve this aim, the *Project 2058* team are working to:

1. Develop a detailed understanding of the current national planning landscape, and in particular the government's ability to deliver long-term strategic thinking;
2. Develop a good working relationship with all parties that are working for and thinking about the 'long-term view';
3. Recognise the goals of iwi and hapū, and acknowledge te Tiriti o Waitangi;
4. Assess key aspects of New Zealand's society, asset base and economy in order to understand how they may shape the country's long-term future, such as government-funded science, natural and human-generated resources, the state sector and infrastructure;
5. Develop a set of four scenarios to explore and map possible futures;
6. Identify and analyse both New Zealand's future strengths and weaknesses, and potential international opportunities and threats;
7. Develop and describe a desirable sustainable future in detail, and
8. Prepare a *Project 2058* National Sustainable Development Strategy. (SFI, 2009a: 3)

1.2 The McGuinness Institute

The McGuinness Institute, formerly the Sustainable Future Institute, is an independently funded think tank based in Wellington, New Zealand. Earlier work by the Institute has indicated that New Zealand is well behind on its international obligations to develop and implement an NSDS (SFI, 2007). It is hoped that *Project 2058* will help develop dialogue among government ministers, policy analysts and members of the public about alternative strategies for the future. With this in mind, this report is a step towards the Institute's goal of preparing an NSDS for New Zealand.

2. Methodology

Our research on Māori representation was initially intended to fit in a section within Report 7: *Exploring the Shared Goals of Māori: Working towards a National Sustainable Development Strategy* (SFI, 2010a). However, as this work progressed, we found the terrain increasingly complex and unclear. This ultimately resulted in a further six months of work and a complete rewrite, the outcome of this initial work being two major reports, of which this is Report 8: *Effective Māori Representation in Parliament: Working towards a National Sustainable Development Strategy*. This report forms part of a package of ten research reports and working papers:

1. Report 7: *Exploring the Shared Goals of Māori: Working towards a National Sustainable Development Strategy* (SFI, 2010a);
2. Report 7a: *Environmental Goals of Iwi and Hapū: Six case studies* (SFI, 2009b);
3. Working Paper 2009/02: *A Methodological Approach to Māori-focused Research* (SFI, 2009c);
4. Working Paper 2009/03: *Identifying the Shared Goals of Six Māori Organisations* (SFI, 2009d);
5. Working Paper 2009/04: *Statistics: A selection of available data associated with shared Māori goals* (SFI, 2009e);
6. Working Paper 2010/02: *Institutions and Mechanisms Designed to Progress the Goals of Māori* (SFI, 2010b);
7. Working Paper 2010/03: *The Evolution of New Zealand as a Nation: Significant events and legislation 1770–2010* (SFI, 2010c);
8. Report 8: *Effective Māori Representation in Parliament: Working towards a National Sustainable Development Strategy* (the current report);
9. Working Paper 2010/04: *The 2008 Election: Reviewing seat allocations without the Māori electorate seats* (SFI, 2010d), and
10. Working Paper 2010/05: *The Treaty settlement process: An overview of the Waitangi Tribunal and the Office of Treaty Settlements* (SFI, 2010e).

Together these reports work towards meeting Objective 3 of *Project 2058*, which is to recognise the goals of iwi and hapū, and acknowledge te Tiriti o Waitangi. The methodology of this work is informed by the wider methodological framework of *Project 2058*; see *Project 2058 Methodology: Version 3* (SFI, 2009a).

2.1 Objectives

The primary purpose of Report 8 is to explore the goal of effective Māori representation in Parliament; however, it also feeds into *Project 2058*'s ultimate aim – to prepare a National Sustainable Development Strategy (NSDS). To this end, we have developed five objectives to help us achieve the broader purpose of this report:

1. To develop a working definition of effective representation;
2. To explore the history of separate Māori representation in New Zealand;
3. To gain an understanding of the key strengths and weaknesses of the Māori representation gained through our current system of Mixed Member Proportional (MMP) representation with separate Māori electorate seats;
4. To consider mechanisms for improving the effectiveness of Māori representation within New Zealand's parliamentary system of representation, and
5. To consider an optimal system of representation that provides a firm foundation for a National Sustainable Development Strategy.

2.2 Position Statement

The methodology, the discussion and the resulting conclusions of this report reflect the personal views and experiences of the author and the research team. We believe that New Zealanders understand cultural issues through the perspective of their own personal experiences. With this in mind, brief outlines of the author's background and those of the research team are provided below.

Wendy McGuinness (Author)

Wendy McGuinness is the founder and chief executive of the McGuinness Institute, formerly the Sustainable Future Institute. Originally from the King Country, Wendy completed her secondary schooling at Hamilton Girls' High School and Edgewater College. She then went on to study at Manukau Technical Institute (gaining an NZCC), Auckland University (BCom) and Otago University (MBA), as well as completing additional environmental papers at Massey University. As a Fellow Chartered Accountant (FCA) specialising in risk management, Wendy has worked in both the public and private sectors. In 2004 she established the Sustainable Future Institute as a way of contributing to New Zealand's long-term future. Wendy also sits on the boards of Futures Thinking Aotearoa and the Katherine Mansfield Birthplace.

Miriam White (Primary Researcher)

Miriam White is originally from Tauranga and has a Bachelor of Design (Honours) from Massey University in Wellington. She has worked for the Sustainable Future Institute since 2006. In addition to *Project 2058* Miriam has worked on *Project Genetic Modification*, and in April 2008 she co-authored two reports: *The History of Genetic Modification in New Zealand* and *The Review of the Forty-Nine Recommendations of the Royal Commission on Genetic Modification*.

Perrine Gilkison (Secondary Researcher)

Ko Wharepapa te maunga
Ko Motueka te awa
I whānau ai au i Whakatā
I tipu ake ai au i Mapua
E noho ana au i te Whanganui-ā-Tara

Perrine, who is originally from the Nelson region, graduated from Victoria University of Wellington in 2007 with a Bachelor of Arts (History). Her main areas of interest are New Zealand and Pacific history, with a particular focus on oral histories. She has been working as a research analyst and as librarian at the Institute's James Duncan Reference Library, and has recently begun work towards an Honours in History at Victoria University.

2.3 Method

Taking into consideration both the objectives and the position statement above, the following method of information collection and analysis has been adopted. To provide transparency, Appendix 1 shows the page numbers in this report where particular population and electoral figures have been used.

2.3.1 Information collection

The report draws on published material written in English, which was easily accessible and in the public domain. Hence much of the data contained in the report has been gathered from government websites and publications, academic journals and books, and articles in the press. In addition, we were fortunate to obtain oral information in the form of written summaries of the 1984 National Hui on the Treaty of Waitangi, Te Papa debates, and a number of ministerial speeches; however, we acknowledge that there exists a wider oral debate which this topic both invites and demands, which is beyond our ability to consider with our current resources.

In a few instances it was necessary to contact experts in the field to confirm facts or obtain additional information. In these situations, this information has been recorded in the report and referenced as personal communication.

2.3.2 Method of analysis

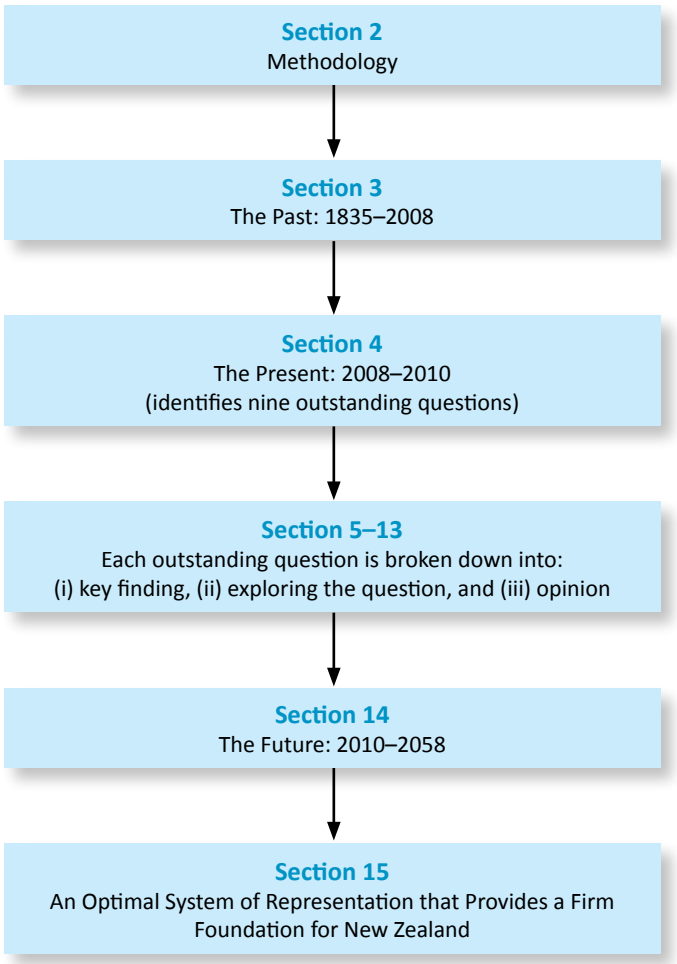
The frame of the past, present and future of Māori representation in Parliament has guided our research process and structure. The first task in the preparation of the report was to gather information on the history of Māori representation in Parliament, which is summarised in Section 3 (the past).[1] Following this we developed an understanding of Māori representation in Parliament today and then identified nine research questions for further study; see Section 4 (the present). These questions are explored in Sections 5 to 13. Each of the nine questions is discussed in terms of (i) a summary of the key findings, (ii) presentation of the evidence, and (iii) our interpretation of the evidence – in other words, the opinion of the Institute. This method is designed to allow others to use the information to help develop their own opinions.

Section 14 considers future events that are likely to shape parliamentary representation in the long term (the future). This discussion leads into Section 15, which considers how our current system of parliamentary representation might evolve and the implications for the development of a National Sustainable Development Strategy (NSDS) for New Zealand.

2.3.3 Structure

The structure of the report is outlined below.

Figure 3. Structure of the Report



1 Also see the timeline in Working Paper 2010/03 (SFI, 2010c). For a comprehensive bibliography detailing past discussions of Māori representation, see *Elections NZ: Māori and Pacific peoples' electoral participation in NZ – annotated bibliography* (Electoral Commission, 2006a).

2.4 Terminology and Key Concepts

During the preparation of this report it became increasingly important to develop clarity over a number of key concepts and the use and interpretation of commonly used terms. The following discussion aims to explain how these concepts and terms interlink, and how this thinking permeates the remainder of the report. Additional terminology is explained in a glossary at the end of the report (see page 93), including relevant Māori terms.

Throughout this package of reports the use of te reo Māori has been promoted as the best method of communicating Māori concepts. In an effort to maximise readability and, more importantly, to ensure meanings are not changed or lost through the use of abbreviated 'translations', definitions have not been included within the body of the reports.

2.4.1 The distinction between the electoral system and the parliamentary representation system

In this report, the parliamentary representation system is considered to comprise both the electoral process and its underlying foundations. The electoral process refers to the ways in which citizens and representatives engage with the three-year cycle, whereas the underlying foundations refer to the structural elements that exist beside the electoral process. The term 'electoral system' has been used to describe fundamentally different systems of parliamentary representation such as Mixed Member Proportional (MMP) and First Past the Post (FPP).

2.4.2 The four components of parliamentary representation

At its most basic level, parliamentary representation is 'the activity of making citizens voices, opinions, and perspectives "present" in the public policy making processes' (Dovi, 2008: 1). It is not possible to reflect on all the academic literature on such an important and evolving topic; however, it is useful to consider representation in terms of its four components: the setting, the interest being represented, the constituents, and those representing the constituents (ibid.: 2). We discuss each in terms of New Zealand's current system of parliamentary representation.

i. Setting

The setting refers to the way the other three components interact. New Zealand's current parliamentary representation system is outlined in Figure 2 (page 5). The key characteristics of the system are: a three-year electoral cycle; the use of a system of Mixed Member Proportional representation; a 5% party threshold; a House of Representatives comprising 120 MPs (plus overhang); two electoral rolls – the Māori roll and the general roll, and an Oath of Allegiance to the Queen. The population of electors enrolled in Māori electorates and general electorates are commonly described as the Māori electoral roll and the general electoral roll respectively; however, it is important to note that this system essentially exists within one common database.

ii. Interest

The report focuses primarily on the parliamentary representation of one group of New Zealand's population – those of Māori descent (or ethnicity).

iii. Constituents

Broadly speaking, the term 'electoral constituency' is used in two ways: to refer to the group of people who have voted for a particular representative or party, and to refer to the group of people who are eligible to vote for a particular representative or party. A third, non-electoral, constituency is the group of people whose interests a representative or party looks after and pursues (Rehfeld, 2005: 35).

All of these interpretations are consistent with the MMP system. Notably, the *party vote* decides the number of seats, and therefore the number of list MPs each political party will be allocated (party constituencies), whereas the *electorate vote* decides who will be the local Member of Parliament (local representative constituencies) (NZ Govt, 2009a).

iv. Representatives

Importantly, Parliament includes not only the House of Representatives, but also the Sovereign (represented in New Zealand by the Governor-General) (House of Representatives, 2006a).[2] For the purposes of the following discussion, the focus is on the first of these, the House of Representatives.

The two components, *constituents* and *representatives*, are inter-linked, and have been further enhanced in New Zealand by the introduction of list MPs under an MMP system (see Figure 4). Constituents now have more options regarding who they 'choose' to represent *their* interests in the House based on the issue or demographic that they identify with (for example, it could be their local electorate MP, a list MP or a Minister). Similarly, Members of Parliament may have a range of views as to who are their constituents (for example, those who voted for them in their local electorate, their entire local electorate population, a lobby group or a party-based constituency). This creates a complex and diverse landscape of relationships and accountabilities which are continually being negotiated by both constituents and representatives.

Figure 4. Four Types of Member of Parliament (MP)

General-electorate MP: The MP who is the elected local representative for a particular general electorate.
Māori-electorate MP: The MP who is the elected local representative for a particular Māori electorate. A Māori-electorate MP is similar to a general-electorate MP, except that their representation is geographically more spread out. Legally, a Māori-electorate MP does not have to be of Māori descent.[3]
List MP: An MP who gains a seat in Parliament based on the number of votes their party receives.
Māori MP: Any of the MPs above who identify themselves as Māori. This identification may be by descent or ethnicity. In 2008, the Parliamentary Library listed 20 MPs who identified themselves in the media as Māori (see Appendix 2); see also discussion in Section 7.1.1.

2.4.3 Four views of effective parliamentary representation

The first objective of this report was to develop a working definition of effective representation that would enable us to assess the effectiveness of Māori representation in Parliament. Although we were unable to find a concise working definition, we did find a conceptual framework for discussing effectiveness. Hanna Fenichel Pitkin, in her influential work on the concept of political representation, considers that at least four different views exist. (Dovi, 2008: 4–5; Pitkin, 1972):

i. *Formalistic representation* focuses on institutional arrangements, and how representatives gain authority and constituents can make representatives accountable. Pitkin defines formalistic representation in terms of a transaction that takes place at the outset, before representation takes place (Pitkin, 1972: 39). She suggests two diametrically opposed sub-views of formalistic representation, one being authorisation, which is 'the giving of authority to act', the other being accountability, which is 'the holding to account of the representative for his actions' (ibid.: 11).

ii. *Descriptive representation* focuses on the extent to which representatives resemble the demographics, interests or experiences of their constituents. Pitkin defines descriptive representation in terms of 'proper composition' (ibid.: 60), and as meaning 'accurate reflection' (ibid.: 65). This concept of representing 'means being like you, not acting for you' (ibid.: 89) and as such does not necessarily deliver 'leadership, initiative or creative action' (ibid.: 90).

iii. *Symbolic representation* focuses on the meaning that a representative has for those who are being represented. Pitkin defines symbolic representation in terms of human beings who 'stand for a nation just as the flag does' (ibid.: 92), and as such emphasises the symbol's power to evoke feelings or attitudes (ibid.: 97). 'Since the connection between symbol and referent seems arbitrary and exists only where it is believed in, symbolic representation seems to rest on emotional ... responses rather than on rational justifiable criteria' (ibid.: 100). Hence, 'If we start from the symbols, and define representation on that basis, the entire concept becomes skewed and distorted in the direction of symbolising' (ibid.: 98). Therefore, '[i]t makes no sense to ask whether a symbol represents well, for there is no such thing as miss-symbolising' (ibid.: 110).

2 This raises questions over the type of representation provided by the Governor-General, which is an area that deserves further study, but is beyond the scope of this paper.

3 Any person who is eligible to stand as a candidate in a general electorate is also eligible to stand for a Māori electorate seat, regardless of their ethnicity or place of residence (Chief Electoral Office, 2005a).

iv. *Substantive representation* focuses on the policy outcomes being achieved for constituents by their representatives. Pitkin defines substantive representation in terms of 'acting in the interest of the represented, in a manner responsive to them. The representative must act independently; his action must involve discretion and judgement; he must be the one who acts' (ibid.: 209).

To summarise Pitkin's thinking in regard to these four views:

- Descriptive and symbolic representation are usually considered in terms of 'standing for' (ibid.: 111) inanimate objects and not in terms of activity, 'so it makes no sense to talk about his role or his duties and whether he has performed them' (ibid.: 113).
- Formalistic and substantive representation are usually considered in terms of 'acting for' (ibid.: 111) as a way of explaining the ongoing tension that exists between institutionalisation and purpose (ibid.: 235), in that 'we require functioning institutions that are designed to, and really do, secure a government responsive to public interest and opinion' (ibid.: 234).
- The challenge is 'to construct institutions and train individuals in such a way that they engage in the pursuit of the public interest, the genuine representation of the public; and at the same time, to remain critical of those institutions and that training, so that they are always open to further interpretation and reform' (ibid.: 240).

Since her book *The Concept of Representation* was first published in 1967, Hanna Fenichel Pitkin has become one of the most prominent political theorists on the subject of representation. Considered together, the four views outlined above offer a language that can be used both to analyse New Zealand's current system of representation and to explore methods for improving representation in the future.

2.4.4 The three types of representative regime

Bernard Manin, another political theorist, maintains that little has changed over the last 200 years in regard to the way representatives are selected and public decisions made. He calls these constant elements 'principles of representative government':

1. Those who govern are appointed by election at regular intervals.
2. The decision-making of those who govern retains a degree of independence from the wishes of the electorate.
3. Those who are governed may give expression to their opinions and political wishes without these being subject to the control of those who govern.
4. Public decisions undergo the trial of debate. (Manin, 1997: 6)

Manin goes on to describe three types of representative regime, in order to typify the relationship between representatives and the represented. He does this by identifying the dominating types of representative government within each regime, those which we interpret as the key players in public policy development: parliamentarianism (the Member of Parliament); party democracy (the political party), and the audience democracy (the media), and discusses each in terms of the four principles (ibid.: 202, 235). Manin considers that only one type of regime predominates in one country at one point of time (ibid.: 202).

Considering Manin's theory in relation to New Zealand, the dominant regime currently appears to be the political party model, rather than parliamentarianism or the media. It is interesting to see that the parliamentary historian John E. Martin (2006) notes that this was not always the case. Martin states that 'in the nineteenth century the electoral mandate was indirect, in that elected representatives largely acted as "trustees" for their constituencies' (2006: 120). This infers that a parliamentarianism model initially existed. Martin describes a shift in the 1890s, when 'party dictates began to take precedence over members' unrestrained freedom' (ibid.: 126). However, he goes on to argue that even 'as late as 1928, a new government was formed on the basis of members' votes in the House rather than directly as a result of an election' (ibid.: 121). Members independent of parties disappeared during the 1940s, resulting in strong party cohesion and discipline, which allowed Cabinet dominance (ibid.: 128). Martin states:

> The country had in the short space of four decades or so shifted markedly from a loose fractional form to a highly organised form of party politics in which the executive held sway over Parliament. (ibid.)

Today, this dominance becomes apparent in Parliament when members have the opportunity to vote for or against a bill. In this situation, 'split party votes' (when members of the same party cast votes both for and against an issue) are rare. There is nothing in the Standing Orders to prevent split votes occurring (House of Representatives, 2008a: 50–51).[4] Rather, internal party process (or in some cases, agreements on confidence and supply) limit its occurrence. This is important in the context of *where* policy platforms are predominantly formulated (in this case, it is within parties, not in the House of Representatives or through public dialogue). With debate taking place behind closed doors and only the subsequent 'party line' being brought to the House, independent and robust debate is limited.

In New Zealand, political parties follow their own understanding of what is best for the country (therefore acting as trustees) rather than simply following the expressed concerns of their constituents (acting as delegates). This distinction is discussed further by Dovi (2008: 2). The assumption that New Zealand has adopted a primarily political-party type of regime is taken into account in forming the conclusions in Sections 14 and 15.

2.4.5 The distinction between descent and ethnicity

Descent refers to ancestry, while ethnicity is about cultural affiliation. These concepts relate to the collection and interpretation of population and electoral figures. The census asks all people in New Zealand on census night to (i) identify whether they are of Māori descent, and (ii) identify what ethnic group or groups they belong to. Where appropriate, this report draws a distinction between descent and ethnicity; and census data, estimates and imputed data. Further, the sources for both population and electoral figures are provided in Appendix 1.

Information on ethnicity is collected for administrative and policy purposes and is used in official statistics (Kukutai, 2004: 91). Ethnicity is defined as 'the ethnic group or groups that people identify with or feel they belong to', and as having some or all of the following characteristics:

- a common proper name
- one or more elements of common culture which need not be specified, but may include religion, customs, or language
- unique community of interests, feelings and actions
- a shared sense of common origins or ancestry, and
- a common geographic origin. (Statistics NZ, 2005: 1)

Once ethnicity data has been collected in the census it is adjusted to produce population estimates. These adjustments are generated to provide data between census dates for the population residing in a particular area at a given time.[5]

Statistics New Zealand defines Māori descent in the following way: 'A person has Māori descent if they are of the Māori race of New Zealand; this includes any descendant of such a person' (Statistics NZ, n.d.). Information on descent is used for electoral calculations under Section 3 of the Electoral Act 1993. In 1996 it was decided that census data relating specifically to Māori descent should be imputed to provide a more accurate figure for electoral calculations. This is because significant numbers of people answer 'don't know', or fail to specify an answer to the Māori descent question. Imputation allocates a 'yes' or 'no' response to these people based on the responses of others with similar attributes. This final imputed Māori descent figure is used to determine the Māori electoral population (Statistics NZ, 2000a: 6).

4 The *Standing Orders* outline procedure for voice, party and conscience votes in Parliament.

5 Statistics New Zealand defines 'population estimates' in the following way: in order to produce estimates the data is adjusted to account for net census undercount and those who are temporarily overseas on census night, and updated for demographic change (births, deaths and net migration) since the last census (Statistics NZ, n.d.).

2.4.6 The New Zealander ethnicity

In completing this report, it became apparent that the term 'New Zealander' needs to be carefully used, particularly when discussing census or ethnicity data. This is because 'New Zealander' is a specific ethnic group that New Zealand residents increasingly identify with. In the 2006 census, 11.1% of the total population of New Zealand gave a 'New Zealander' response to the ethnicity question compared with 2.4% in 2001 (Statistics NZ, 2007a: 1). In 2006, the public debate surrounding the ethnicity question prior to the census may have contributed to the increase in respondents who identified as being 'New Zealander' (ibid.:1). The New Zealander response does not have a tick box option, primarily to keep data consistent with previous censuses, which means that 'New Zealander' must be written under the 'other ethnicity' option (ibid.). In this report, to avoid confusion over the two uses of the term, we have not used 'New Zealanders' in a general sense when talking about population data and instead have referred to 'New Zealand residents', 'New Zealand's population' or 'people in New Zealand'.

2.4.7 The relationship between iwi and hapū

It has become increasingly difficult to report with confidence on the governance relationship between iwi and hapū. For example, when using the term 'iwi', is the inclusion of 'hapū' automatically inferred? If not, should the two terms be used together when referring to both groups, as in 'iwi and hapū'? Or should the reverse order, 'hapū and iwi', be used?[6] The matter is further complicated by the fact that some hapū are affiliated with more than one iwi. In this report we have used 'iwi and hapū', unless to do so would be inaccurate. We also acknowledge the importance of marae and whānau in Māori social structure.

2.4.8 Te Tiriti o Waitangi and the Treaty of Waitangi

We acknowledge the differences between the Māori and English texts of the Treaty of Waitangi/te Tiriti o Waitangi, and note that for some, alignment with the content or essence of a particular text is expressed through a conscious decision to use either 'Te Tiriti o Waitangi' or 'The Treaty of Waitangi'. We also observe that 'te Tiriti' and 'the Treaty' are commonly used interchangeably. We are aware of the underlying politics of language, and that engaging with this is necessary. We have chosen to use te Tiriti o Waitangi and the Treaty of Waitangi interchangeably in this report. We do not align with a particular stance; rather, this usage reflects our belief that 'the Treaty is a living document to be interpreted in a contemporary setting' (Hayward, n.d.: 475), and that between the two versions common principles exist that can be developed and implemented in good faith and partnership. An overview of the differences between the two texts is provided in Appendix 3 of Report 7 (SFI, 2010a).

6 Huhana Smith in her doctoral thesis (Smith, 2007) preferred 'hapū and iwi'. The importance of hapū as a political entity was also stressed by Sir Edward Taihakurei Durie, former Chief Judge of the Māori Land Court (E. Durie, personal communication, 10 November 2009). Sir Edward considers that the customary power base in Māori communities rested with hapū, and that the use of the term 'iwi' was adopted after the signing of te Tiriti to denote a regional grouping of hapū. He emphasises that the use of 'iwi' over 'hapū' centralises the power base within Māori society, and that Māori must be aware of this issue and consider whether this is a shift in power that they support (ibid.).

2.4.9 The concept of sovereignty

The question of sovereignty can be a contentious issue, particularly as there exist a wide range of views as to what the concept means in practice. This difficulty was expressed by one of the original fathers of international law, Lassa Oppenheim:[7]

> There exists perhaps no conception, the meaning of which is more controversial than that of sovereignty. It is an indisputable fact that this conception, from the moment when it was introduced into political science until the present day, has never had a meaning which was universally agreed upon. (Oppenheim, 1928: 129)

Sovereignty is often understood to have two dimensions, the first being internal and the second external. An internal perspective focuses on the relationship between a sovereign power and the subjects under its authority, whereas an external perspective concerns the relationship between a sovereign power and other states. Although this report does not discuss sovereignty directly, much of the report does consider representation in terms of internal sovereignty, the relationship between a government and its people.[8]

Interestingly, the concept of sovereignty is currently being tested at a hearing of the Waitangi Tribunal (established under The Treaty of Waitangi Act 1975), where Ngāpuhi hapū are asking the tribunal to affirm whether the hapū ever ceded sovereignty to the Crown when their leaders signed the Declaration of Independence in 1835 and te Tiriti in 1840. 'Tribunal members will have to make a call on what those Ngāpuhi leaders thought they were signing, and further what they understood would flow from signing those documents' (Tahana, 2010). The outcome may have significant implications for the constitutional framework of New Zealand.

2.5 Limitations and Boundaries

The topic of Māori representation is inherently complex and challenging, as evidenced in the work of those who have gone before us. For example, the 1986 Royal Commission on the Electoral System noted when considering the nature and basis of Māori representation in Parliament:

> This terms of reference requires the Commission to confront some of the most complex and difficult issues of democratic politics – those concerning minority representation. (Royal Commission, 1986: 81)

It is important to acknowledge that the goal of achieving effective Māori representation sits within a system of parliamentary representation whose ultimate purpose is to provide fair and effective representation for all New Zealanders. Therefore, although in developing our recommendations we have focused on improving Māori representation, we have not considered this goal in isolation. Rather, we have taken a holistic perspective and considered how change may affect the whole system – including trade-offs, tensions and synergies. Thus, the work programme we propose (discussed in Section 15) aims to improve the effectiveness of Māori representation while maintaining the well-being of the whole system in the interests of all New Zealanders. This means that the Institute's proposal puts forward a number of ideas outside of our initial brief, such as the length of the parliamentary term and changes to the Oath of Allegiance, both of which warrant research in their own right. The rigorous examination that these ideas require, both individually and as a package, is beyond the scope of this report. Thus, significant further research and public engagement are necessary.

Within the report, we also make a number of assumptions. Firstly, we assume that some form of Mixed Member Proportional system will continue; hence, we have not focused our research and analysis on other types of electoral system or more radical options for improving Māori representation. Secondly, we consider debate over the public interest occurs within each political party, rather than in the House or in the public arena. This has implications for the Institute's proposed parliamentary system, discussed in Section 15. Additional assumptions are stated in the text.

7 Lassa Oppenheim was a 'German jurist and teacher of law who was best known for his Positivist approach to international law' (Encyclopedia Britannica, 2009).

8 The Sustainable Future Institute's James Duncan Reference Library contains a significant number of publications that explore this issue.

The parliamentary representation system can be approached from the perspective of the type of roll, then the type of vote or vice versa. In this report, we have tended to approach this topic from the perspective of the first; that there exist two rolls, and on each roll electors can make two votes, one for a political party and one for a candidate in their electoral district. For example, in Section 10 we attempt to answer the question – what impact did the 2008 Māori roll election results have on parliamentary representation? An alternative approach is to use the two types of vote as the defining characteristic, in that New Zealand's two-vote system creates a common electoral roll for electors to use their party vote, and a system of separate rolls for electors to use their electorate vote in order to select their preferred candidate to represent their electorate district in the House of Representatives. Further, as our focus is on Māori representation, we do not always investigate the trends on the general roll in as much detail as the Māori roll. As such, although we make observations about trends in voter behaviour and electorate results on the Māori roll, a lack of comparison of trends between rolls limits our ability to attribute a cause or causes to changes over time.

Nor does this report take into consideration the nature of representation provided by the Governor-General, other than to note this area requires further research (see footnote 2). At the other end of the spectrum, this report does not discuss or take into consideration local representation, such as discussed under the Royal Commission on Auckland Governance. There are, however, significant developments occurring in this area, which readers may wish to investigate.[9] To understand the quality of Māori representation in New Zealand, changes in local representation over time should also be studied.

We have also not thoroughly explored the issue of the representation of Māori who live in Australia, although this is mentioned in Section 14.1 (v). However, the movement of Māori to Australia is a significant trend that should be studied further, in terms of both the reasons for the trend and the long-term implications.

This report looks at Māori representation in comparison with non-Māori representation, and by so doing traverses some very difficult terrain. Comparisons are not always meaningful, and some New Zealanders may consider that any form of comparison between ethnic or social groups reinforces the deficit model. We acknowledge those concerns, but believe issues about inequality can only be answered by considering well-being in terms of all peoples.

Lastly, it is important to acknowledge that the methodology, the discussion and the resulting conclusions of this report reflect the personal views and experiences of the author and researchers. We believe that New Zealanders understand cultural issues through the perspective of their own personal experiences, and that these all have their limitations. Furthermore, a wealth of unpublished material exists in this area, with countless conversations and discussions taking place both publicly and privately that do not reach publication. Since the Institute is not a key participant in these conversations, this report is informed primarily by published material.

Taking into account that this report traverses inherently complex and challenging issues, it is our intention that it should add to the dialogue in a positive manner, doing no harm, but rather empowering and uniting New Zealanders to form a common view of our future.

9 For example the Ngāti Porou settlement, offered by the government in December 2009, will give the iwi 'the right to "enhance influence" on Gisborne District Council resource management decision-making that might affect the iwi' (NZCPR, 2009).

3. The Past: 1835–2008

In this section we explore the history of Māori representation in New Zealand. For a timeline of key legislation, documents and events see Working Paper 2010/03 (SFI, 2010c),[10] and for a more detailed account of the events touched on within this section see 'A History of Māori Representation in Parliament' (Sorrenson, 1986), which was included as Appendix B in the *Report of the Royal Commission on the Electoral System 1986.*

3.1 The Declaration of Independence, 1835

By the 1830s European trade and settlement in New Zealand was rapidly increasing, which in turn led to the desire for more clarity over governance (Sorrenson, 1986: 7). At this stage New Zealand was not recognised as being 'within his Majesty's Dominions', meaning the British recognised Māori sovereignty. However, they also recognised the need to protect Māori from the lawlessness of British subjects, and to this end James Busby was appointed British Resident in New Zealand in 1833 (ibid.). Although, in effect, Busby had very little real authority, in 1835 he did succeed in persuading a group of 35 northern chiefs to sign a 'Declaration of Independence'. Later, several chiefs from the south added their names to this document (ibid.).

The intention behind the declaration was to ensure British protection in the event of threats such as those posed by 'Baron de Thierry', who sought to establish a personal kingdom in New Zealand. The agreement was significant for two reasons: it brought together Māori chiefs in a manner that had the beginnings of a Māori Parliament, and it meant that Britain had formally acknowledged Māori sovereignty (ibid.). The declaration 'asserted the independence of New Zealand, with all sovereign power and authority resting with the hereditary chiefs and tribes' (MCH, 2009a). Although the British government had initially tried to influence the interaction of Māori and British settlers through the missionaries, by mid-1839 the British government had decided to appoint William Hobson as consul to New Zealand 'to obtain sovereignty over all or part of New Zealand with the consent of a sufficient number of chiefs' (ibid.).

3.2 Te Tiriti o Waitangi, 1840

The purpose of te Tiriti was to ensure the safety and stability of both Māori and non-Māori populations, and to transfer Māori sovereignty to the British Crown in a manner that would be considered valid under international law (King, 2003: 151–167). This culminated in the signing of te Tiriti o Waitangi in 1840. The Treaty was signed by representatives of 'Her Majesty Victoria Queen of the United Kingdom of Great Britain and Ireland' (British Crown) and, by September 1840, over 500 chiefs (MCH, 2009b).

In Article 1 of te Tiriti, Māori ceded kawanatanga (Māori text) or sovereignty (English text) to the British Crown. Article 2 guaranteed Māori tino rangatiratanga (Māori text) or 'full, exclusive and undisturbed possession' (English text) over lands, villages, properties and treasures; it also granted the British Crown pre-emptive right of purchase of lands. Article 3 of te Tiriti granted Māori 'all the Rights and Privileges of British Subjects', and consequently equal standing to European settlers.[11] Legal historian Matthew Palmer concluded that 'the reality of New Zealand's constitution in 1840 was that public power was shared between the British Crown and Māori', but the terms on which that shared power was exercised 'were unspecified *both* in the Treaty and in reality' (Palmer, 2008: 79).

3.3 The Establishment of New Zealand's First System of Representative Government, 1840–1858

On 21 May 1840 Lieutenant-Governor Hobson proclaimed 'British sovereignty over all of New Zealand: over the North Island on the basis of cession through the Treaty of Waitangi and over the southern islands by right of discovery' (MCH, 2009b). This led initially to New Zealand becoming a dependency of New South Wales for a year, but by 1841 New Zealand had become a separate Crown Colony in its own right (ibid.).

10 Working Paper 2010/03: *The Evolution of New Zealand as a Nation: Significant events and legislation 1770–2010* (SFI, 2010c) has now been published as a book entitled *Nation Dates: Significant events that have shaped the nation of New Zealand* (McGuinness & White, 2012).

11 For more information on te Tiriti and the controversy surrounding its interpretation, see Section 2.3 of Report 7, *Exploring the Shared Goals of Māori: Working towards a National Sustainable Development Strategy* (SFI, 2010a).

The New Zealand Constitution Act (UK) 1852 established the first system of representative government for New Zealand (MCH, 2009b):

> At the national level, a General Assembly is established, consisting of a Legislative Council appointed by the Crown and a House of Representatives elected every five years by males over the age of 21 who own, lease or rent property of a certain value. (ibid.)[12]

The first 37 Members of Parliament were elected to the House of Representatives in 1853, and the first Parliament met in Auckland in 1854 (ibid.). While the New Zealand Constitution Act granted voting rights to all New Zealand males who owned or leased land of a minimum value, as Māori men often lived on communally owned land with only customary titles, many of them did not qualify for the vote (Parliamentary Library, 2009a: 3). This meant that in order to vote, Māori were forced to change communal land titles to individual ones, and Crown Grants (certificates of title) could be issued to individual Māori for specific blocks of land (ibid.: 5–6). Since the New Zealand Constitution Act left the issue of responsibility for Māori affairs largely unresolved, land ownership became increasingly contentious, leading to confusion and conflict between the early ministries and the Governor (ibid.: 3–4).

3.4 The Establishment of the Māori Electorate Seats, 1858–1890s

By the early 1860s the responsibility for Māori affairs had largely been transferred from the British to the colonial government. However, a combination of Māori land acquisition policies, restricted political participation and uncertainty about responsibility for Māori affairs caused dissatisfaction and a feeling of alienation among Māori, who began to seek alternative methods of representation. This resulted in the beginning of the Māori King movement and a call for a separate Māori Parliament. Although the first continues today, the latter failed to progress (Parliamentary Library, 2009a: 6–7).

In 1865 the Native Rights Act reaffirmed Māori in legislation as subjects of the Crown (Parliamentary Library, 2009a: 8). It was with this in mind, and in consideration of the Māori contribution to taxation revenue, that the Māori Representation Act 1867 was enacted as a temporary measure to ensure Māori representation regardless of property ownership (Joseph, 2008: 8; Parliamentary Library, 2009a: 11).

The 1867 Act established three Māori electorates in the North Island and one in the South Island, for which initially both European and Māori could stand. There was a separate Māori roll for men aged 21 or over, which excluded those convicted of a criminal offence, meaning those who rebelled against the Crown were not eligible to vote (Parliamentary Library, 2009a: 10). This resulted in four seats for a population of 56,000 Māori, compared with 72 seats for 171,000 Europeans (ibid.: 11), a ratio of 14,000 Māori per Māori electorate and 2375 non-Māori New Zealanders per general electorate.

The Māori electorate seats in Parliament were established by the Māori Representation Act 1867, with the first Māori elections being held in 1868 (MCH, 2009b). By 1876, a Bill was introduced 'providing for an increase in Māori representation in the House to 7 members, but the Bill was not passed' (Sorrenson, 1986: 24). In the same year, Parliament was petitioned by the Ngatikahungunu tribe for Māori representation to be 'in the same proportion as the representation is of the European race by European members' (ibid.).

Although the original intention was that once Māori land had been converted to individual titles there would be no need for separate Māori electorate seats (Parliamentary Library, 2009a: 10–11), the Māori Representation Act 1867 was extended indefinitely under the Māori Representation Acts Continuance Act 1876 (Joseph, 2008: 5). This change in thinking was possibly due to a combination of factors, including a lack of progress with individualisation of Māori land, European MPs' concerns about how an influx of Māori onto the general roll would affect their own seats, and a desire not to extend the vote to all taxpayers (ibid.: 11–12). At this stage only Māori were allowed to stand for the separate Māori electorate seats.[13]

12 'In 1879, following the abolition of the provinces in 1875 and the consequent increase in power of central Government, the term was reduced to 3 years, largely with a view to making Governments more accountable to the electorate. Since then, the 3-year term has been altered on only three occasions' (Royal Commission, 1986: 155).

13 This was later changed; see the Electoral Amendment Act 1967, pages 19–20.

There are differing opinions as to the motive behind the Māori Representation Act 1867. The conventional view put forward by historian Alan Ward is that 'the Māori seats stumbled into being' and that no one at the time expected the system of separate representation to endure (Sorrenson, 1986: 20). However, there is also evidence that the Māori electorate seats 'owe somewhat more to a sense of idealism and justice than is often granted', reflecting a genuine, moral desire to achieve Māori political and legal equity (Parliamentary Library, 2009a: 1). Dr John Wilson of the Parliamentary Library concludes that it was most likely a combination of the two (ibid.: 13). Furthermore, Ward notes that at the introduction of the Māori electorate seats in 1867 there was 'some grumbling by members who objected to exceptional legislation for Māori at a time when all special provisions were supposed to be ended' (Ward, 1973: 209). Ward also discusses the objections voiced by Walter Mantell, the former Native Minister, who believed that 'wider Māori enfranchisement on the common roll would give them more effective representation' (ibid.).

Following the decision to keep the four Māori electorate seats, the Electoral Act 1893 split the Māori and European electoral systems even further. The Act meant that only 'half-castes' or Māori who had a freehold estate above a certain value might still vote in the European electorates. This would, however, mean losing their votes in the Māori electorates (Vasil, 1990: 173).

Throughout the 1880s, Māori presented hundreds of petitions to the New Zealand government, which often referred to the Treaty. As these calls by Māori for the rights promised to them were not heeded, other avenues were explored. In 1882 and 1884, Queen Victoria received two petitions based on the Treaty of Waitangi from deputations led by Ngā Puhi and Waikato respectively. King Tāwhiao's 1884 deputation also claimed that clause 71 of the 1852 Constitution Act could be interpreted as providing for Māori custom and self-government (Orange, 2004: 101–103). Calls for a Māori Parliament were also strong amongst these delegations. Two later deputations also went to England in 1914 and 1924 (ibid.).

In 1894, Mahuta Te Wherowhero was elected as the third Māori King (Foster, 1966). In 1903, as a result of ongoing land discussions with Premier Richard John Seddon, Mahuta was offered, and accepted, a seat in the Legislative Council and Ministry – a position he retained until after Seddon's death in 1906 (ibid.). The kingites held a convention in 1907 at Waahi pa in the Waikato where 'under the guidance of Tupu Tangakawa Te Waharoa, the "King" movement was revitalised and Mahuta withdrew from politics' (ibid.). In 1910, Mahuta's membership of the Legislative Council lapsed and he was not reappointed (ibid.).

3.5 The Neglected Era, 1900s–1986

The Electoral Commission acknowledges that after being set up, the Māori electoral system was largely neglected, and that it was not run on the same lines as the European alternative (Electoral Commission, 2005a). Although concerns about the system continued to be raised, these concerns were largely not acted upon.[14]

There were significant differences between the ways the two rolls were treated. For example, a secret ballot system was introduced for the European seats in 1870, while the Māori electorate seats relied on a show of hands until 1910, after which the system was changed to a vote by declaration to a returning officer. But it was not until 1937 that the Electoral Amendment Act established a secret ballot system for Māori (Parliamentary Library, 2009a: 16). Surprisingly, the Māori electorate seats also had no official electoral rolls until 1948–49 (Electoral Commission, 2005a). During this time there were other disparities as well, including:

- National referenda voting rights excluded Māori until 1949 (Parliamentary Library, 2009a: 17).
- European electors were required to register from 1924, while Māori were exempt from this until 1956 (ibid.).
- There were differences in the way the electoral population was calculated until 1975 (ibid.: 19).
- Differences in the way in which electoral borders and numbers were determined for European and Māori seats persisted until 1981 (ibid.).

14 For example, in 1905 there was debate in the House of Representatives about separate Māori representation (see Section 11.1). In addition, in 1925 a Memorandum for Cabinet stated that there was 'ground for the contention that the backwardness of a large section of the Māori people in education, in social and moral conditions and in other respects that fit them as citizens of the Dominion, may be due to the sense of grievance they feel, rightly or wrongly, that an injustice was done to them in the past, which the Government had not investigated or sought to remedy' (Hickford, 2009: 189).

Two other amendments of note occurred during this period:

i. 1967: Ethnicity of candidates

The Electoral Amendment Act 1967 allowed anyone, regardless of ethnicity, to stand in both the Māori and the European seats (Parliamentary Library, 2009a: 15).[15] This meant that there was no legal guarantee of Māori representation. However, it could be argued that this worked in reverse as well, allowing Māori to compete for a greater level of representation in Parliament.

ii. 1975: Māori Electoral Option

In 1975 the Electoral Amendment Act created the Māori Electoral Option, which would coincide with each census (Electoral Commission, 2005a). The option allows electors of Māori descent to choose whether to enrol on the general or the Māori roll. This Act also directed that the number of Māori electorate seats be determined in the same way as the general electorate seats (Department of Justice, 1986: 86). However, in 1976, after a change of government, the Act was repealed and the number of Māori electorate seats remained fixed at four regardless of the outcome of the Māori Electoral Option (Electoral Commission, 2005a).[16]

3.6 The Royal Commission on the Electoral System, 1986

In 1986 the Royal Commission on the Electoral System was convened.[17] Its terms of reference (Royal Commission, 1986: xiii–xiv) covered all aspects of the electoral system. We have summarised these points as:

1. election law and practice;
2. the system of parliamentary representation;
3. the number of Members of Parliament;
4. formulae and procedures for electoral district calculations;
5. Māori representation;
6. the parliamentary term;[18]
7. the role of referenda;
8. limits on election expenses; and
9. any other questions relating to the electoral system.

Notably, the 1986 Royal Commission on the Electoral System identified three sets of principles underlying its thinking. The first serves as an understanding of the collective functioning of Parliament, the second outlines ten criteria for judging voting systems and the third laid out five principles of Māori representation.

The Commissioners noted that the number of MPs considered necessary to run the House of Representatives should be assessed in terms of the 'various individual and collective functions of MPs and the House of Representatives':

a. to represent constituents;
b. to represent the nation as a whole;
c. to provide an effective Government; and
d. to enact legislation and scrutinise the actions of the executive.

(Royal Commission, 1986: 117)

15 This was contrary to legislation under the Māori Representation Acts Continuance Act 1876.

16 This remained the case until the passing of the Electoral Act 1993.

17 For more information on the Royal Commission on the Electoral System 1986 and excerpts from its report see Appendix 3.

18 After consideration of the competing tensions of the population's fundamental democratic right to elect and change government through regular elections (voter sovereignty) and the need for government to develop and implement cohesive and effective policies (effective government), the Commissioners recommended that '(a) a referendum should be held no later than December 2009 to determine whether the term of Parliament should be increased to four years, and (b) the referendum should include a proposal to limit the power to seek a dissolution' (Royal Commission, 1986: 166).

The Commission also developed ten criteria for judging voting systems[19] and laid out five principles of Māori representation. The five principles of Māori representation were to be applied in a manner which met 'the requirements of electoral equality and fairness to all political parties, candidates, and voters' (ibid.: 89). The Commissioners noted that the principles were, of course, related, 'although the relationships among them differ in degree from one to the other', while others 'if carried to their full extent, may also be mutually incompatible' (ibid.). They are:

a. Māori interests should be represented in Parliament by Māori MPs.

b. Māori electors ought to have an effective vote competed for by all political parties.

c. All MPs should be accountable in some degree to Māori electors.

d. Māori MPs ought to be democratically accountable to Māori electors.

e. Candidate selection procedures of the political parties should be organised in such a way as to permit the Māori people a voice in the decision of who the candidates are to be. (ibid.: 88)

The Commissioners commented that the Māori electorate seats had not been positive for Māori, and that they would achieve better representation through a proportional party list system such as MMP.[20] It was their recommendation that 'there would be no separate Māori constituency or list seats, no Māori roll and no Māori option', but they did suggest two additional measures as a type of insurance policy: (i) constituency boundaries would be required to take into account the 'community of interest among the members of Māori tribes',[21] and (ii) 'the 4% threshold be waived for parties primarily representing Māori interests ... to provide future incentive for other parties to take proper account of Māori concerns, and to enhance the chances of the Māori people mounting a successful electoral challenge if they become dissatisfied with the performance of the existing parties' (ibid.: 101).[22] After spending some time considering the future of the Māori electorate seats and exploring a range of options the Commissioners concluded:

> Overall, we consider New Zealand's system of separate Māori representation with plurality to be seriously deficient in providing for the effective representation of the Māori people. Moreover, as we point out in Chapter 3, separate representation works against the development of mutual understanding between races ... (ibid.: 19)

3.6.1 Advantages and disadvantages of MMP without the Māori electorate seats

The Commissioners believed this package of recommendations, represented in Figure 5 (page 23), would deliver the advantages and disadvantages listed below (see paragraphs 3.74 to 3.88 of the Commissioners' report). The following points summarise our understanding of what the Commissioners considered to be the key advantages. To provide clarity, excerpts from the report are included:

- **Increased competition and incentives**

  The votes of the Māori people would be electorally significant to all parties. There would be active party competition for Māori support and for list and constituency votes. Parties would be compelled to select Māori candidates for high list places in winnable constituency seats ... Māori issues and Māori concerns would be effectively represented within the New Zealand political system. (Royal Commission, 1986: 101–102)

19 These included fairness between political parties, effective representation of minority and special interest groups, effective Māori representation, political integration, effective representation of constituents, effective voter participation, effective government, effective Parliament and legitimacy (Royal Commission, 1986: 11–12). These principles also informed those presented in the 1992 *Guide to the Electoral Referendum* (Electoral Commission, 2010).

20 MMP employs a system of proportional representation in which the number of seats each party holds in Parliament is proportional to its share of the overall party vote (Electoral Commission, 2006b; NZ Govt, 2009a). Therefore, despite the split roll for electorate seats, the party vote is regarded as the most important under MMP since it ultimately determines the distribution of seats in Parliament.

21 This concept was implemented in the Electoral Act 1993, s45(6), under Māori Representation: 'In dividing the Māori electoral population equally between the Māori electoral districts, due consideration shall be given to— (a) the existing boundaries of the Māori electoral districts; and (b) community of interest among the Māori people generally and members of Māori tribes; and (c) facilities of communications; and (d) topographical features; and (e) any projected variation in the Māori electoral population of those districts during their life.'

22 This concept was not implemented as originally intended. The Māori seats were kept, and the threshold was set at 5% and applied to all political parties.

- **Increased participation by Māori**

  [The Commissioners] expect Māori political participation would rise under an MMP system. There would be strong incentives for Māori to become involved politically in established parties or in a Māori party … We would thus expect the enrolment and turnout of Māori voters to be higher than under our present system. (ibid.: 102)

- **Better local representation**

  Māori voters would have a local constituency MP to whom they could appeal for assistance. (ibid.)

- **Better Māori representation by Māori MPs**

  All Māori voters would also have access to several Māori MPs elected from different parties' lists. (ibid.)

  Tribal boundaries [would] be taken into account in drawing constituency boundaries. (ibid.: 105)

  The possibility of success for a Māori Party – heightened by the waive of the threshold – would further ensure that all major parties tried to win Māori votes. (ibid.: 102)

- **A reduction in costs**

  A reduction in the division of our electoral system. (ibid.: 103)[23]

  Eliminate[s] the need to continue with a Māori roll, a Māori option, and different voting arrangements. (ibid.: 105)

- **Additional focus on a common interest**

  Encourage[s] growth of understanding between Māori and non-Māori, and the desire on the part of both to look to the common interest. (ibid.: 103)

  Would be of real benefit in helping to break down separateness and division within our community in the sense of encouraging Māori and non-Māori to look to the interests of the other. (ibid.: 105)

The disadvantages were discussed specifically in paragraph 3.78 of the Commissioners' report, in the context of what would be lost as a result of the Māori electorate seats, roll and option being removed, notably:

- **Loss of a guaranteed level of representation**

  There would be no guaranteed representation. (ibid.: 102)

  It is possible for Māori people to be represented in Parliament by Māori MPs from parties that most Māori did not support. (ibid.)

  Nor are MPs from a party list directly accountable to those they represent. (ibid.)

- **Lack of territorial base**

  Māori list MPs who were not constituency candidates or were not from a Māori party may be without a firm territorial base. [On the other hand, Māori list MPs may] decide to divide the country so that each could concentrate on constituency work in a particular geographic area. (ibid.: 102–103)

The Commissioners noted that 'we do not regard these difficulties as significant compared to the advantages we are convinced would be brought by the system of Māori representation we have suggested for MMP' (ibid.: 103). They recommended that any changes to the system of Māori representation should be delayed until a decision was made on 'whether or not the Mixed Member Proportional system should be introduced' (ibid.: 106). They also stated that 'the MMP system should not be introduced unless there is majority approval at a referendum' (ibid.: 105). A pictorial representation of the Royal Commissioners' package of recommendations is contained in Figure 16, page 67. This is significantly different from what was actually introduced in 1993 (see Figure 2, page 5).

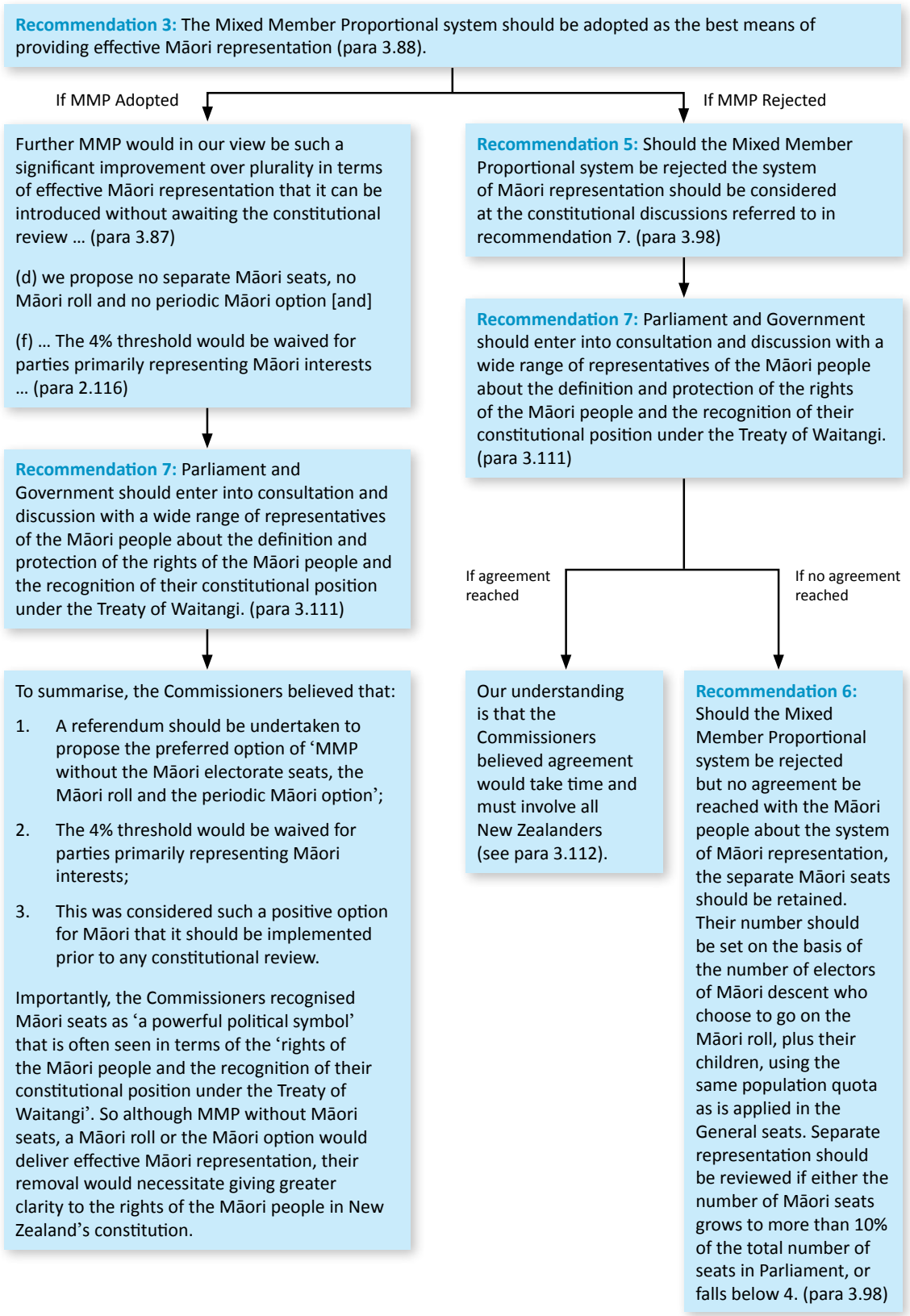
3.7 The Introduction of MMP, 1993

Following the report of the Royal Commission, a number of Māori began to defend the existence of the Māori electorate seats, and as a consequence the seats were retained when MMP was established six years later, under the Electoral Act 1993 (Electoral Commission, 2005a). One issue of contention continues to exist within the Electoral Act 1993, in that although the general electorate seats are entrenched under the Act, the Māori electorate seats are not.[24]

23 We have assumed that this quote refers to the additional resources required to manage two rolls rather than one.

24 Effectively this means that the legislation governing Māori representation in New Zealand can be repealed by a majority vote in the House of Representatives, whereas any changes to the general electorate seats require a 75% majority vote, or a referendum (Parliamentary Library, 2009a: 21). However, the entrenchment provisions in section 268 of the Electoral Act 1993 are not in themselves entrenched; Parliament could repeal or enact any of the provisions with a simple majority.

Figure 5. Flowchart of Significant Recommendations by the Royal Commission, 1986
Source: Adapted from Royal Commission, 1986; the shaded boxes contain excerpts from the report.



3.8 Inquiry into the Review of MMP, 2001

In 2001, as part of a statutory requirement under s264 of the Electoral Act 1993, a committee was set up to complete an 'Inquiry into the Review of MMP', the purpose of which was to assess the effects of s35 and s36 of the Act on the operation of the electoral system (the electorate boundary-setting process); the provisions relating to Māori representation, and whether there should be a further referendum on changes to the electoral system. Under the Act, the inquiry had to be carried out by 2002, with no requirement for another later inquiry. The committee received 290 submissions from a wide range of people and groups, who expressed a correspondingly wide range of opinions (House of Representatives, 2001: 30). From the submissions, nine main issues on Māori representation emerged. These were:

- whether or not to retain separate Māori representation;
- whether to retain or abolish the Māori electoral option;
- if [the Māori electoral option is] retained, how frequently should it take place;
- the electoral population tolerance level for the Māori electorates;
- the definition of the 'Māori electoral population';
- if the system of separate Māori representation is continued, whether the Māori electorate seats should be entrenched;
- whether to waive the threshold for representation for Māori political parties;
- the criteria used when determining Māori electoral boundaries; and
- further consultation on the form of Māori representation.

  (House of Representatives, 2001: 20)

The committee concluded that there was little consensus over whether the Māori electorate seats should be abolished or retained, and whether the provisions in the Electoral Act 1993 that deal with Māori representation should be entrenched (ibid.: 5–6).

3.9 Setting the Context

Before leaving this section, it is important to acknowledge that while many New Zealanders have worked hard to progress effective representation, there remains little clarity over what effective representation would look and feel like in practice, and little consensus over how to get there. Nevertheless, the quality of scholarship and principle-based discussion emanating from the Royal Commissioners and academics like Sorrenson should be commended. New Zealanders may not be able to agree on the solution, but there exists an accurate record as to how and why our parliamentary representation evolved into the system we have today.

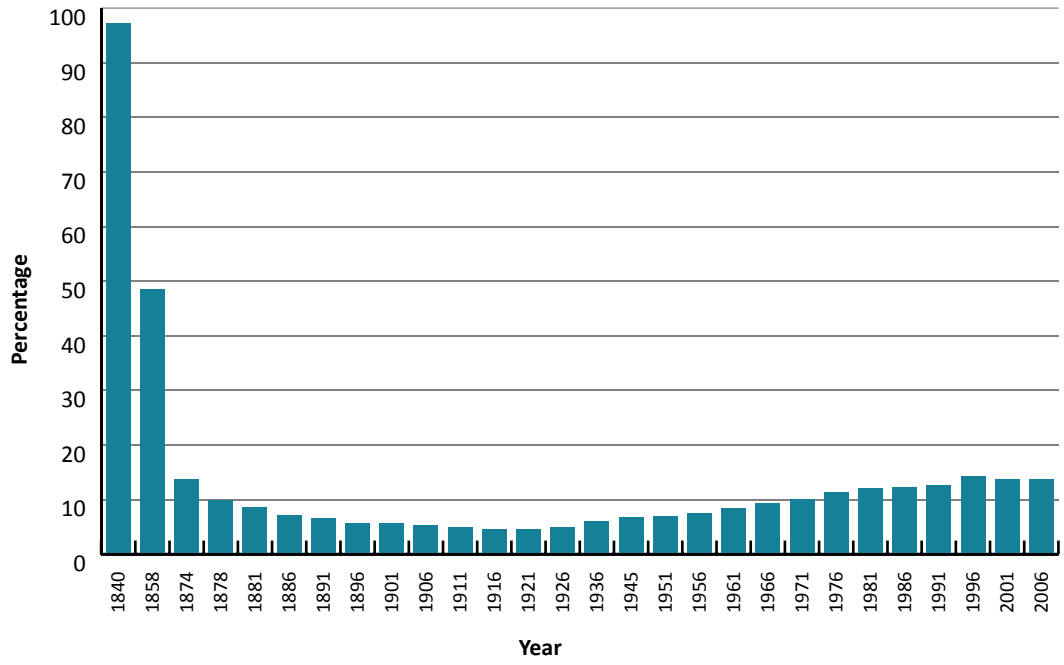
4. The Present: 2008–2010

This section links the historical context explored above with a critique of the current parliamentary representation system. It identifies a number of outstanding questions, which are further explored in Sections 5 to 13. To establish the background for this discussion, we begin with a brief assessment of: (i) changes in population over time, (ii) the overall 2008 election results, and (iii) the 2008 election results in the Māori electorates.

4.1 Population Growth

The Māori population has grown as a proportion of the total New Zealand population since reaching a low of 4.5% of the total national population in the 1920s (compared with the 1840 figure of 97% of a total population of about 72,000) (see Figure 6 below) (Belich, 1996: 178). By 2006, 14% of New Zealand's increasingly ethnically diverse population claimed Māori ethnicity, a proportion which is projected to continue to grow into the future (Statistics NZ, 2010). Projections over time are discussed in Section 14.

Figure 6. Māori Population as a Percentage of Total Population 1840–2006 (Based on Census Figures)[25]
Source: Belich, 1996: 178; Statistics NZ, 2009a



25 All these figures are census-night population counts, excluding the figure for 1840, which is based on a commonly cited estimate (see Belich, 1996: 178). However, the reporting and definition of ethnicity in censuses has changed over time, so these figures should be treated with caution. Furthermore, it should be noted that there are larger increments in time between the first three data points on the x-axis than for subsequent years.

4.2 The Overall Election Results, 2008

Under the current MMP system, if a candidate wins an electorate seat, their party will have a presence in Parliament even if the number of votes they receive remains under the 5% threshold.[26] Not only do they gain the electorate seat, but they also gain a number of list seats corresponding to the number of party votes they receive. Over time, this characteristic of the MMP system has helped several parties (United Future, ACT, New Zealand First, Jim Anderton's Progressive and the Māori Party) to have a presence, and an influence, in Parliament. This is reflected in the figures in the following paragraph, where some parties gained more seats than they would have based on the party vote alone.

In 2008, the election resulted in a change from a Labour-led government to a National-led government. Using the Chief Electoral Office's 'overall status' of party votes, the National Party gained 1,053,398; the Labour Party 796,880; the Green Party 157,613; New Zealand First 95,356; ACT 85,496; the Māori Party 55,980; Jim Anderton's Progressive Party 21,241, and United Future 20,487 party votes (Chief Electoral Office, 2008a). This resulted in 122 seats in the House, with 58, 43, 9, 0, 5, 5, 1 and 1 being allocated to these parties respectively. Of these 122 representatives, 20 identify as being of Māori descent (Parliamentary Library, 2008: 9).

Interestingly, the combined small-party vote remained low; in 2002 it was 38% of the party vote, in 2005 it was 20%, and in 2008 it was 21%. Curtin and Miller (2010: 122–123) argue that the one-seat threshold for electorates creates an illusion of a healthy and diverse multi-party system.

An important outcome of this election, in terms of Māori representation, was the negotiation of a *Relationship and Confidence and Supply Agreement between the National Party and the Māori Party* (NZ Govt, 2008), which led to the formation of a new government shortly after the election. It is of particular note that, given the National Party's Confidence and Supply Agreements with the ACT Party and United Future, this agreement with the Māori Party was not essential for National to form a government. However, the agreement lays the foundation for a more stable government during this term, and provides the opportunity for the two parties to develop a closer relationship.

This agreement included a statement on the status of the Māori electorate seats, in which the National Party '[agreed] it will not seek to remove the Māori seats without the consent of the Māori people', and accordingly, 'the Māori Party and the National Party will not be pursuing the entrenchment of the Māori seats in the current parliamentary term'. However, both parties did agree to 'the establishment (including its composition and terms of reference) by no later than early 2010 of a group to consider constitutional issues including Māori representation' (NZ Govt, 2008). To date, there has been no further public notification of the establishment of this group.

26 For example, in the 2008 election, the ACT Party won one electorate seat, which meant it gained another four list seats, giving the party five seats in the House (Chief Electoral Office, 2008a). As a result, 3.65% of the party vote resulted in the ACT Party gaining 4.1% of the seats in Parliament.

4.3 The Māori-electorate Election Results, 2008

In this sub-section, we summarise the election results in terms of the Māori electorate seats. Table 1 shows that the Māori electorate seats have changed hands regularly in the last few years, but at the last two elections the Māori Party has won the majority of the seats.[27] In 2008, five Māori Party MPs and two Labour Party MPs were elected to the House of Representatives through the Māori electorate seats.

Table 1. Political Parties Holding Māori Electorate Seats, 1996–2008[28]
Source: Chief Electoral Office, 1996; 1999; 2002; 2005b; 2008b

Māori Electorate[29]	1996	1999	2002	2005	2008
Hauraki-Waikato	n/a	Labour	Labour	Labour	Labour
Ikaroa-Rāwhiti	NZ First	Labour	Labour	Labour	Labour
Tāmaki-Makaurau	n/a	n/a	Labour	Māori Party	Māori Party
Te Puku o te Whenua	NZ First	n/a	n/a	n/a	n/a
Te Tai Hauāuru	NZ First	Labour	Labour	Māori Party	Māori Party
Te Tai Tokerau	NZ First	Labour	Labour	Māori Party	Māori Party
Te Tai Tonga	NZ First	Labour	Labour	Labour	Māori Party
Waiariki	n/a	Labour	Labour	Māori Party	Māori Party

Interestingly, at the 2008 election only two of the 63 general electorate seats were won by MPs who identify themselves as Māori (see Appendix 2). This means that only two out of the 20 Māori MPs (10%) present in the House of Representatives today were elected through general electorate seats. Seven of the 20 (35%) were Māori electorate MPs and the remaining 11 (55%) were list MPs.

4.4 Nine Outstanding Questions

Although both National and the Māori Party have agreed that there will not be a question about the future of the Māori electorate seats in the forthcoming referendum on the MMP system, to be held during the 2011 election (NZ Govt, 2008), there is still an imperative to understand whether New Zealand is achieving effective representation for Māori, and indeed for all New Zealanders. To date, there appears to be little consensus over whether the Māori electorate seats should remain, and whether or not MMP should continue.[30, 31]

27 The Māori Party was born in the wake of the passage of the Foreshore and Seabed Act 2004, which damaged Labour's traditional support base in the Māori population.

28 It is important to note that as electorate boundaries are regularly reviewed (and are moved as necessary by the Representation Commission), electorate populations may not be directly comparable over time. Key changes include the incorporation of Te Puku o te Whenua into Ikaroa-Rāwhiti after boundary changes made as a result of the Māori Electoral Option in 1997; considerable changes to the boundaries and names of Hauraki-Waikato over time (see Parliamentary Library, 2005a, 2005b), and the creation of the seventh electoral district, Tāmaki Makaurau, as a result of an increase in the Māori roll following the 2001 Māori electoral option (Representation Commission, 2002: 11).

29 The Māori electorate seats may be contested by any political party, since any person who is eligible to stand as a candidate in a general electorate is also eligible to stand for a Māori electorate, regardless of their ethnicity or place of residence (Chief Electoral Office, 2005a).

30 Television New Zealand reported that a poll taken between 8 and 10 September 2009 found that 42% of New Zealanders were not in favour of MMP, 13% were unsure, and 45% were in favour (NZPA, 2009a).

31 The government is preparing for a referendum on the electoral system to be held at the time of the 2011 general election, which would ask voters if they want to change from MMP to another system. If a majority of people vote for a change, a binding second referendum could be held at the 2014 election, to choose between MMP and the most preferred alternative system according to the 2011 referendum (NZ Govt, 2009b).

Underlying this report is a concern that New Zealanders do not have the necessary information to discuss these issues, let alone make quality decisions. Furthermore, there appears little agreement as to what institutions and mechanisms should be used to help form consensus over these issues. This is something that could be explored by 'the group' established under the agreement between the National and Māori parties to consider 'constitutional issues including Māori representation' (NZ Govt, 2008: 2), but the actual process needs to occur outside the ambit of the political parties, in a transparent, inclusive and culturally sensitive manner.

We believe this is not simply an issue for Māori New Zealanders, but an issue for all New Zealanders. For this reason we have identified and explored the following nine questions, as we believe they form an important base upon which to assess the effectiveness of New Zealand's current system of parliamentary representation:

Question 1: Can we, the people of New Zealand, have confidence that all MPs act in the best interests of all New Zealanders?

Question 2: Internationally, what mechanisms are used to improve representation of selected groups in society?

Question 3: How is the quality of Māori representation currently tested?

Question 4: How does Māori representation compare with that of Pacific and Asian people in New Zealand?

Question 5: Are Māori electorate seat calculations, enrolment and turnout optimal?

Question 6: What impact did the 2008 Māori roll election results have on parliamentary representation?

Question 7: Are the Māori electorate seats effective?

Question 8: If the 1986 Royal Commission's proposal had been fully implemented, would Māori representation be more effective today?

Question 9: What are the relationships between separate parliamentary representation, te Tiriti and the constitution?

These questions are discussed in Sections 5 to 13, which establish the background for our discussion on the future landscape (Section 14), and the ways in which the current parliamentary system could be modified to improve representation (Section 15).

5. Question 1: Can we, the people of New Zealand, have confidence that all MPs act in the best interests of all New Zealanders?

We found that there is no formal obligation on Members of Parliament to act in the best interests of New Zealanders.

We believe the Oath of Allegiance sworn by Members of Parliament should be modified to include an obligation to act in the best interests of all New Zealanders – past, present and future.

5.1 Exploring the Question

We discuss this question in terms of (i) Māori-electorate MPs, (ii) Members of Parliament and (iii) Members of Cabinet:

i. Māori-electorate MPs

There are no specific obligations on Māori-electorate MPs.

ii. Members of Parliament

The website of the New Zealand Parliament states that an MP is to act as an intermediary between the people and the House of Representatives, implying that MPs are delegates, rather than trustees (see discussion in Section 2.4.2):

> Each member has the dual role of representing the people's views to the House and the Government and of representing the actions of the House and the Government to the people. (House of Representatives, 2006a: 2)

However, even this dual role is not carried over into the oaths taken by MPs. Currently, MPs swear an Oath of Allegiance,[32] which in practice only requires allegiance to the Queen, not to the people of New Zealand:

> I, …, swear that I will be faithful and bear true allegiance to Her [*or* His] Majesty [*Specify the name of the reigning Sovereign, as thus:* Queen Elizabeth the Second], Her [*or* His] heirs and successors, according to law. So help me God. (s 17, Oaths and Declarations Act 1957)

This creates no formal obligation to represent the best interests and needs of constituents; therefore MPs are arguably guided only by a moral obligation and a desire to be re-elected. In 2007, in response to this lack of any legal obligation to act in the interests of all New Zealanders, four minor parties – ACT, the Green Party, the Māori Party and United Future – created and signed a code of conduct that stated, among other things:

> We accept that we have a duty to act in the interests of the nation as a whole, the House, our constituents, and the public … The purpose of the Code of Conduct is to assist members in the discharge of their obligations to the House, to their constituents and the public. (Office of the Speaker, 2007)

The four parties then urged other MPs to sign the voluntary code, with the intention that if enough MPs signed, it could be adopted by Parliament and included in the Standing Orders (ibid.). Our understanding is that no other MPs signed the code.

32 See Constitution Act 1986, s11(1): 'A Member of Parliament shall not be permitted to sit or vote in the House of Representatives until that Member has taken the Oath of Allegiance in the form prescribed in Section 17 of the Oaths and Declarations Act 1957.'

iii. Members of Cabinet

MPs who take the Executive Councillors' oath (which is required if they are to join the Executive Council)[33] are usually, but not always, Cabinet members, or ministers outside Cabinet. This oath requires Executive Councillors to counsel and advise the Governor-General 'for the good management of the affairs of New Zealand'. Importantly, this does not create any obligation to consider the concerns, needs or desires of all New Zealanders or to report back to citizens on their decisions.

> I, …, being chosen and admitted of the Executive Council of New Zealand, swear that I will to the best of my judgment, at all times, when thereto required, freely give my counsel and advice to the Governor-General for the time being, for the good management of the affairs of New Zealand. That I will not directly nor indirectly reveal such matters as shall be debated in Council and committed to my secrecy, but that I will in all things be a true and faithful Councillor. So help me God. (s 19(1), Oaths and Declarations Act 1957)

5.2 Opinion

Underlying the following discussion is the view that Members of Parliament have a duty as trustees rather than as delegates, who would simply have a duty to express the concerns of their constituents in the House (see discussion in Section 2.4.2).

In a democratic political system, the majority rules, hence some form of protection also needs to exist to ensure Members of Parliament are obliged as trustees to act in a way that represents all people, not just a dominant or vocal group in society. This obligation would be of benefit to Māori, and to all other minority groups within New Zealand society. Such an obligation could easily be implemented through the system of oaths. We discuss these ideas in the order in which they are explored above.

i. Māori-electorate MPs

While all electorate MPs are considered to have an obligation to represent their electorates, we do not consider that Māori-electorate MPs should have a formal obligation to represent Māori interests alone. Such an obligation, if formalised, is likely to be unacceptable to New Zealanders, in that such a narrow focus may be considered self-serving, rather than nation-building.

ii. Members of Parliament

We consider all MPs should be formally obliged to act in the interests of all New Zealanders.

iii. Members of Cabinet

Cabinet members, arguably the most important representatives of the public interest, are obliged to give counsel to the Governor-General, but are not obliged to act in the best interests of New Zealanders. We consider this omission must be rectified.

We believe the solution is to amend the current Oath of Allegiance to include an obligation to act in the best interests of all New Zealanders – past, present and future. Such an action would deliver an important aspect of *formalistic representation* to our current parliamentary representation system.

33 See *Cabinet Manual*, para. 1.24: 'Once appointed, the Prime Minister advises the Governor-General on the appointment of the other Executive Councillors. After the Executive Councillors have been appointed, a meeting of the Executive Council is convened, and the Councillors take the oaths or affirmations prescribed in the Oaths and Declarations Act 1957' (DPMC, 2008).

6. Question 2: Internationally, what mechanisms are used to improve representation of selected groups in society?

We found that representation of selected groups in society can be achieved through elected representatives, an advisory role or regional mechanisms. It is clear that in designing a system to deliver elected representatives of selected groups in society into Parliament, reserved seats and thresholds are important mechanisms to consider.

We believe that it would benefit New Zealand to review the range of systems in use globally and to critically evaluate whether their successful elements may be relevant to our local context. These international experiences may provide useful insights into our system, and highlight the range of options available to strengthen our parliamentary representation. However, any option must be able to deliver the outcomes that New Zealanders desire, based on our unique history, culture and values.

6.1 Exploring the Question

We discovered a variety of options for minority representation at a governance level and a brief world-wide overview of different approaches is provided below.

Firstly, many countries have seats reserved in legislation for 'identifiable ethnic or religious minorities' (IEAT, n.d.). For example, Lebanon has split its parliamentary seats between Muslim and Christian candidates (Lebanese Parliament, n.d.) and in Singapore at least one member in a party's team of candidates must belong to a minority race (Parliament of Singapore, 2009). In India, there are seats reserved for 'scheduled castes and tribes' (IEAT, n.d.), and the President may nominate up to two Anglo-Indian Members of Parliament if he or she feels that they are not adequately represented (Lok Sabha Secretariat, 2009). Seats in 46 of Fiji's 71 single-member districts are reserved for voters of specific ethnic groups (indigenous Fijian, 23; Indian, 19; Rotuman, 1; 'other', 3) (IEAT, n.d.). Other examples of reserved seats in legislation include: Colombia ('black communities'), Croatia (the Hungarian, Italian, Czech, Slovak, Ruthenian, Ukrainian, German and Austrian minorities), Jordan (Christians and Circassians), Niger (Tuareg), Pakistan (non-Muslim minorities), Palestine (Christians and Samaritans), Samoa (non-indigenous minorities), Slovenia (Hungarians and Italians) and Taiwan (the 'aboriginal' community) (ibid.).

How seats are reserved and the threshold for entry of representatives or parties into Parliament are key considerations in designing a system to deliver elected representatives. The United Nations-led International Election Assistance Team (IEAT), following a request by the Iraq Council of Representatives for assistance in the drafting of electoral law, put forward these two mechanisms of reserved seats and thresholds, used either separately or together, as key options for delivering guaranteed parliamentary representation of selected groups in society (IEAT, 2008).[34]

Alternative methods exist to support the election of political representatives. In America, redrawing district boundaries has been used as a strategy to increase African-American and Latino political representation, by creating 'majority districts'. Changes to district boundaries in 1990 led to a significant increase in the number of African-American officials elected nationwide. However, this has been controversial; it is unclear whether increased descriptive representation improves substantive representation and, for example, whether these minorities are still able to influence outcomes in other white districts. This approach also presumes members of an ethnic minority share political interests, and potentially encourages racial balkanisation (Bird, 2003).[35]

Secondly, there exist groups based on descent or religion that have an advisory role to Parliament. We found examples of separate elected minority parliaments for indigenous people, such as the Sami Parliament, and of advisory groups for ethnic and religious groups, such as the Young Muslim Advisory Group – see Table 2. In these cases, their role appears to focus primarily on advising government on issues relevant to their community (see Niemczak & Jutras, 2008; YMAG, 2009).

34 We further explore these two mechanisms in Working Paper 2010/04, *The 2008 Election: Reviewing seat allocations without the Māori electorate seats* (SFI, 2010d).

35 The term 'balkanise' is defined as to 'divide (an area) into smaller mutually hostile states' (Deverson & Kennedy, 2005).

Lastly, a range of regional mechanisms are used to strengthen parliamentary representation, such as the territorial governance system established in 1999 in the Nunavut Territory, Canada. This is a part of the public governance system, and thus is not considered a form of self-government.[36] The territory covers over two million square kilometres and in 2006 had a population of nearly 30,000, approximately 85% of whom were of Inuit descent (Nunavut Bureau of Statistics, n.d.). Unlike other Canadian provincial legislatures, the Nunavut Legislative Assembly uses a model that emphasises consensus and is non-partisan; therefore *all* elected members choose the Premier and Cabinet Ministers. Its jurisdiction extends to certain areas that are reserved for central government in other territories, yet the Nunavut government is also considerably decentralised, granting decision-making authority to the three regions within its territory.

6.2 Opinion

Internationally, guaranteed parliamentary representation for separate groups is achieved through diverse mechanisms, all of which grant varying degrees of power and autonomy. It would benefit New Zealand to review the range of systems in use globally and to critically evaluate whether their successful elements might provide useful insights for adoption into our system. Table 2 illustrates three broad ways to improve parliamentary representation: (i) to provide a right to vote in Parliament through a reserved seat, where an individual is an *elected representative* in Parliament, (ii) to provide a voice to Parliament through an *advisory role*, where an institution is established to provide guidance to Parliament, and, (iii) to provide a voice to Parliament through *regional mechanisms*.

Table 2. Models of Separate Representation

	Descent (D)	Religion (R)	Gender (G)
Elected representative in Parliament (E)	ED e.g. New Zealand	ER e.g. Lebanon	EG e.g. India[37]
[Central] Advisory role to Parliament (A)	AD e.g. Sami Parliament[38]	AR e.g. Young Muslim Advisory Group[39]	AG No examples found
Regional representative role to Parliament (R)	RD e.g. Nunavut Territory, Canada	RR No examples found	RG No examples found

New Zealand should monitor international developments and trends, in particular ways in which reserved seats are being used and adapted to suit local contexts. These international models may provide useful insights for our system. However, it is important to recognise that New Zealand's parliamentary representation system has developed in its own unique cultural and historical context, and that this must be taken into account when defining effective representation, and developing relevant principles and standards.

36 'Like any bureaucratic body, the government of Nunavut will be responsible for the operation and administration of the new territory ... Nunavut's government has 10 departments, each headed by a minister; MLAs [Members of the Legislative Assembly] without ministerial portfolios will perform the role of the opposition. Territorial elections will be held every five years by popular vote. Federally, Nunavut is represented by one Member of Parliament and one Senator' (Vlessides, n.d.). To learn more about this model, see Vlessides (n.d.) and Government of Nunavut (2005).

37 In March 2010, India's upper House of Parliament passed an historic bill under which a third of the legislative seats would be reserved for women in both national and state parliaments. Before becoming law, the bill must be passed by the lower house, and approved by 15 of India's 28 states. 'The proposal is an attempt to correct some of the deep gender disparities in India, where women suffer disproportionately from illiteracy, poverty and low social status. If signed into law it would raise the number of female representatives in the 545-seat lower house to 181 from the current 59. It would nearly quadruple the number of women in the 250-seat upper house' (Burke, 2010). The Women's Reservation Bill (Constitution Amendment Act) proposes that one-third of the seats in any election be reserved for women candidates, although no seat would be reserved for a female candidate more than once in any three consecutive elections (Lok Sabha Secretariat, 2010).

38 The elected Parliaments of the Sami people in Finland, Norway and Sweden '... are subordinate to the national Parliaments and typically function as advisory bodies on issues affecting the Sami' (Niemczak & Jutras, 2008: 2).

39 One such example is the Young Muslim Advisory Group, based in the United Kingdom (YMAG, 2009).

7. Question 3: How is the quality of Māori representation currently tested?

We found that the most commonly used method of testing the effectiveness of Māori representation is to compare the percentage of Māori MPs in the House of Representatives with the percentage of New Zealanders of Māori descent.

We believe that although this is a useful test of descriptive representation, it does not test substantive representation, and that more useful indicators should be explored.

7.1 Exploring the Question

How best to test the quality of representation by Māori MPs is an important but difficult question. The most commonly used method is to compare the percentage of Māori MPs in the House of Representatives with the percentage of Māori in New Zealand's resident population – a test of descriptive representation, in that it attempts to check whether the number of people of Māori descent in the general population is reflected in Parliament.

7.1.1 Descriptive representation test

While the Māori electorate seats have existed for many years, it is only recently that the number of Māori MPs in Parliament has increased. From 1896 until 1967, Māori (except 'half-castes') were not allowed to stand as candidates in European seats. Although the law was changed in 1967, it was not until 1975, when National's Ben Couch (standing for Wairarapa) and Rex Austin (Awarua) were elected, that Māori were successful in 'general' electorates (Electoral Commission, 2005a).

Using this test, Figure 7 illustrates the potential impact the Electoral Amendment Act 1967 and the Electoral Act 1993 had on descriptive representation.

Figure 7. Māori MPs as a Percentage of the Total Number of MPs in the House of Representatives, 1868–2008
Source: Electoral Commission, 2006c; Foyer, 2008; Parliamentary Library, 2009a: 26–32

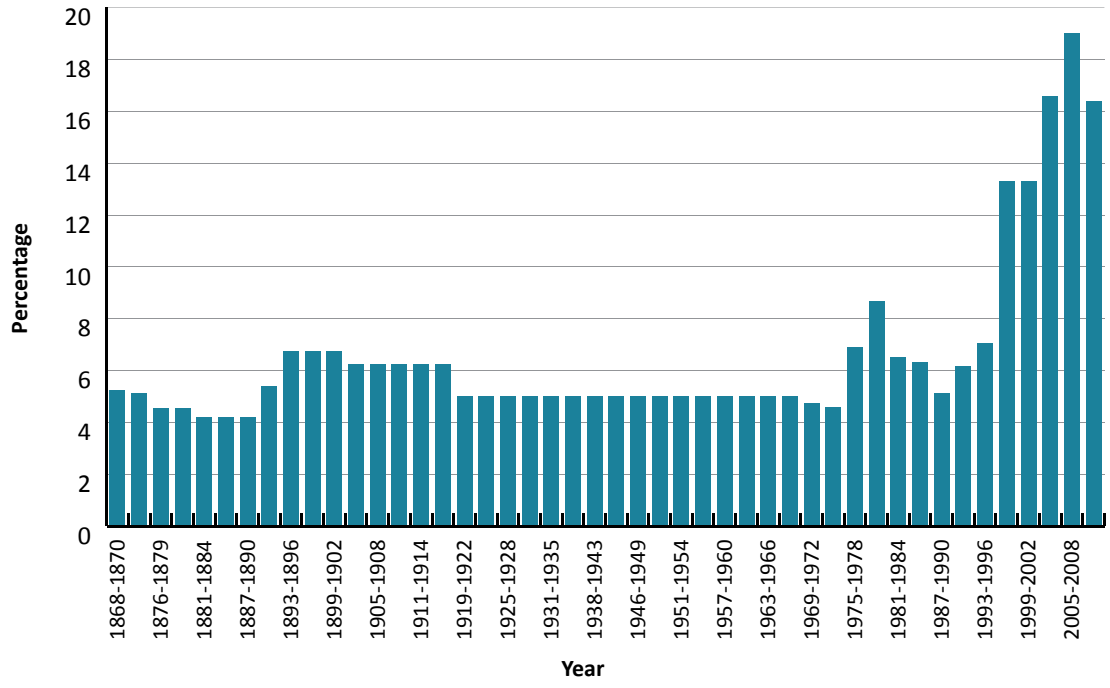
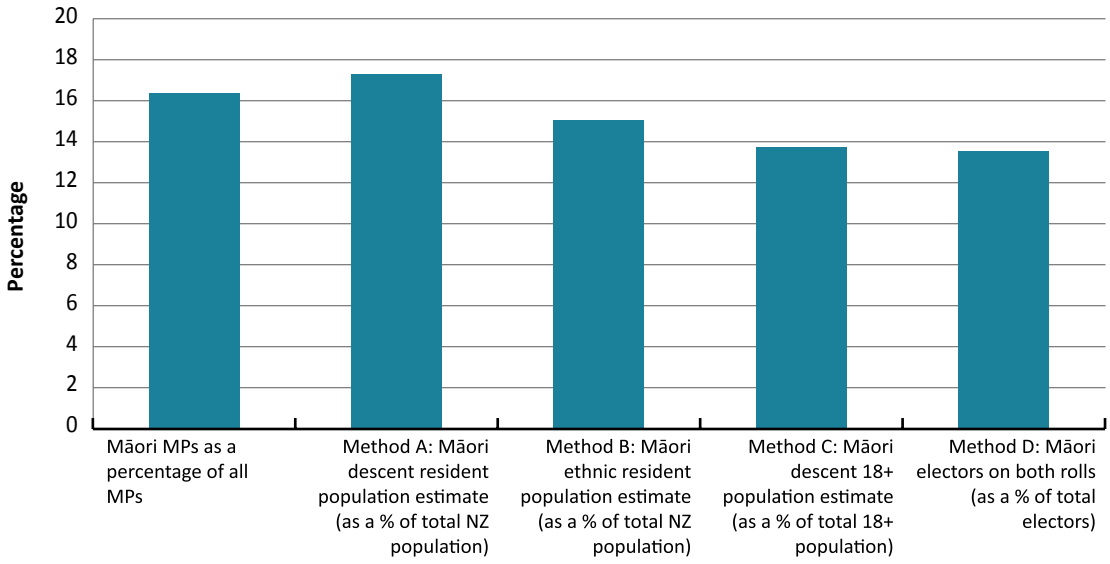


Figure 8 compares the percentage of Māori MPs (by publicly acknowledged ethnic affiliation) in the House of Representatives (i.e. 16.4%) with the percentage of Māori in the New Zealand population, using four different Māori population figures. Thus, under Method A, the commonly used method of estimating population figures, 16.4% is compared with 17.3%, suggesting under-representation of Māori in the House of Representatives in 2008. However, when we look at Methods B to D, the percentage drops below 16.4%; to 15.0%, 13.7% and 13.6% respectively, suggesting over-representation in the House. This shows that depending on the figures used, a different perspective as to the extent of Māori representation is gained.

Figure 8. Descriptive Representation Test: Four Alternative Methods, 2008
Source: Electoral Commission, 2009a; Parliamentary Library, 2008: 9; Statistics NZ, 2008a, 2008b; J. Wilson, Parliamentary Library, personal communication, 15 September 2009



Notes to Figure 8

Method A – 17.3% (commonly used method)
The estimated total Māori descent resident population is compared to the total New Zealand resident population in 2008. The former includes all New Zealand residents who identify as being of Māori descent, a figure larger than the Māori ethnic population (Method B). The Māori descent figure is used by the Chief Electoral Office and the Parliamentary Library to report on the electoral process, and in most statutes, such as the Electoral Act 1993 (Kukutai, 2004: 91).

Method B – 15.1%
The estimated Māori ethnic resident population refers to New Zealand residents who identify as Māori. Ethnicity figures are primarily used for administrative and policy purposes (Kukutai, 2004: 91). They are more widely used than descent figures and, unlike descent figures, they are publicly available as estimates up to 2009. This makes ethnicity figures a more workable dataset, but unfortunately less comparable with electoral data. As at June 2008, the Māori ethnic group made up 15.1% of the total New Zealand population (Statistics NZ, 2008a, 2008b).

Method C – 13.7%
The 18+ estimated Māori descent population is based on the same data as Method A, but includes only those aged 18+ years. As at June 2008 the Māori 18+ population was approximately 13.7% of the total New Zealand 18+ population (J. Wilson, personal communication, Parliamentary Library, November 2009).

Method D – 13.6%
This figure is based on those of Māori descent on both electoral rolls in 2008. It does not take into account those of Māori descent who are either not of voting age or are not registered to vote. Indication of Māori descent is given when a person enrols, and so is independent of census figures. As at November 2008 those of Māori descent made up 13.6% of the total electoral roll (Electoral Commission, 2009a). This option is included here to provide a wider context, but in reality population is a more relevant figure than enrolled electors.

The usefulness of the descriptive representation test explored in Figure 8 is dependent on the appropriateness and accuracy of two key variables: the number of Māori MPs, and the figure chosen to measure the number of Māori people in the population. We look at each of these variables in turn, and then consider the wider debate around this test.

Variable 1: Calculating the number of Māori MPs

Finding an accurate way of measuring the number of Māori MPs is challenging. The Parliamentary Library met this challenge by listing MPs who 'identified themselves as being of Māori descent' in published sources such as media interviews and speeches (J. Wilson, Parliamentary Library, personal communication, 15 September 2009). In practice, the accuracy of this method of 'identification' could be questioned, as not all MPs will necessarily disclose their descent or ethnicity in the media. Further, the approach taken by the Parliamentary Library is arguably more likely to provide an indication of ethnicity – a cultural affiliation – rather than ancestry.

To be useful, the figure used to represent the number of Māori MPs must be: (i) comparable (i.e. *descent* is compared with *descent* or *ethnicity* is compared with *ethnicity*); (ii) complete (all MPs are asked to state if they are of Māori ethnicity or descent), and (iii) verifiable (the figure must be accurate in that it is able to be independently verified to ensure no errors are made).

In 2008, according to the Parliamentary Library's figures, 20 MPs identified themselves as Māori, meaning that 16.4% of the MPs in the House of Representatives were Māori (Parliamentary Library, 2008: 9; see also Figure 8). Appendix 2 contains a list of the 20 MPs identified in this way. Yet the number of Māori MPs is often disputed. For example, while the Parliamentary Library notes that there are currently 20 Māori MPs, Tariana Turia, co-leader of the Māori Party (Turia, 2009) and Professor Philip Joseph of the University of Canterbury School of Law (Joseph, 2009: 4) both consider there are only 18, which would reduce this percentage from 16.4% to 14.8%. This difference indicates not only the risk of using different figures and the difficulty of defining ethnicity, but also reflects the problem of small numbers – in other words, a change in the perceived descent of two MPs has a significant impact on the potential conclusions of the test.

Variable 2: Calculating the size of the Māori population in New Zealand

The Parliamentary Library relies on an estimated figure for the Māori descent population to measure Māori representation.[40] We compare three other options to calculate the level of Māori representation and consider whether any of these provide a more meaningful result. From our perspective, the key question is whom are Māori MPs representing: Method A – those of Māori descent; Method B – those of Māori ethnicity; Method C – those of voting age and of Māori descent, or Method D – Māori registered on either electoral roll.

Much of the debate around representation has focused on descriptive representation and whether New Zealand is currently under- or over-represented. Below are three examples of how this point has been discussed.[41]

1. The Parliamentary Library, in its report *Final Results 2002 General Election and Trends in Election Outcomes 1990–2002*, stated that a significant point was reached in 2002:

   > Until 2002 Māori representation in Parliament did not reflect the proportion of Māori in the general population – to be expected, perhaps, given that only after 1967 were Māori permitted to stand for general electorate seats. The 2002 election is therefore significant in that for the first time in New Zealand's political history the proportion of Māori in the general population (16%) is reflected in the proportion of MPs who are Māori. (Parliamentary Library, 2002: 4)

40 The descent population is required under Section 3 of the Electoral Act 1993.

41 Note that in example 1, the Parliamentary Library refers to 20 Māori MPs (the figure we have relied upon throughout the report), whereas examples 2 and 3 refer to 18 Māori MPs.

2. Professor Philip Joseph of the University of Canterbury School of Law, in his working paper *The Māori Seats in Parliament*, prepared for the New Zealand Business Roundtable, explored whether MMP delivered what the Royal Commission envisaged. Professor Joseph considered that when the percentage of Māori members holding list or constituency seats in Parliament exceeds that of the relative national population, Māori electorate seats will form a reverse type of discrimination based on ethnicity (Joseph, 2008: 11–12).

3. In 2009 Tariana Turia explained:

> A common challenge is that the Māori seats are redundant within an MMP environment. Yet if we examine that proposition in the light of the 2008 Parliament we find that the 18 Māori MPs represent just 14.8% of Parliament's membership – lower than the 17.7% of the population identified as Māori.
>
> If we took out the seven Māori seats, eleven Māori MPs equates to just nine percent of the membership of Parliament. So the argument that Parliament has come of age and that Māori representation makes the Māori seats unnecessary doesn't work. (Turia, 2009)

All three of the examples above show how reaching equivalent representation is considered pivotal to the debate about effective representation; however, we have concerns about the accuracy and usefulness of this test over time. While it may test descriptive representation in terms of reflecting the general population, it does not test substantive representation, which is clearly the optimal test. For further discussion of this point in relation to Pacific and Asian populations, see Section 8.

7.2 Opinion

Highlighted below are our observations regarding the Māori MP test, and two additional tests that we suggest may be useful in assessing the quality of Māori representation.

7.2.1 Test 1: Descriptive representation test based on number of MPs (current test)

We suggest this test needs to meet three criteria: that the data is comparable, complete and independently verifiable. Whether the test uses ethnicity or descent is a matter of choice, however it is important to consider that ethnicity, as an expression of cultural self-identification on an MP's part, may be indicative of a greater affiliation with, and desire to represent, 'Māori interests' than self-identified Māori descent. Furthermore, this test should not be used in isolation; other options for testing the quality of Māori representation are necessary for the success of the system. Our key concerns with this test, in order of the earlier discussion, are:

i. The current test compares the percentage of MPs of Māori ethnicity with the percentage of the New Zealand population of Māori descent, and this is not an equivalent comparison.

ii. The base number of Māori MPs is so small that a change of one or two MPs greatly affects the conclusions.

iii. The figures for MPs who identify as being Māori and those for the Māori ethnic and descent populations all come about through self-identification, and are therefore difficult to verify.

iv. Māori MPs who identify as being Māori do not necessarily actively represent a Māori constituency, while non-Māori MPs may actively represent the interests of Māori; see, for example, James FitzGerald's 1862 proposals.[42]

v. When the current test indicates that over-representation has occurred, this may lead some groups within New Zealand to advocate changes to the system to limit this over-representation.

42 One of the first attempts to enfranchise Māori was in 1862. 'The member for Ellesmere, James FitzGerald, moved in Parliament that Māori be given representation in both Houses of Parliament. He proposed three measures: the first for one or more Māori chiefs to be included in the administration of the government, the second for the appointment of Māori nobility to the Legislative Council and the third for a "fair representation in this House of [Māori who] constitute one-third of the population of the colony". FitzGerald's resolution was narrowly defeated by 20 votes to 17' (Joseph, 2008: 6).

7.2.2 Test 2: Descriptive representation test based on effectiveness in Cabinet

Like the previous test, this test also assesses representation in terms of numbers, but in this case numbers of members of Cabinet who have pursued the goals held by Māori. While the presence of Māori in Cabinet has been well-documented since 1868, we found little research that analysed the effectiveness of ministers in pursuing the goals of Māori. This would be an interesting area to research further, but it is beyond the scope of this report. What follows are a few key observations for consideration.

In 1894 Sir James Carroll became the first Māori to hold a 'European' seat in Parliament (King, 1996: 161),[43] and he was later to become the first Māori to hold the position of Minister of Native Affairs, which he did from 1899 to 1912 (NZ History, 2007a). During this time he also served as acting Prime Minister (King, 1996: 161). Interestingly, Carroll did not support the concept of separate seats for Māori. Michael King writes:

> Carroll believed strongly that the most rewarding strategy for Māori parliamentarians was to compete with Pākehā on their own terms and, where possible, to beat them. (ibid.)

Māori-electorate MPs have also gained positions in Cabinet other than that of Minister of Native/Māori Affairs. For example, Sir Maui Pomare served in the Cabinet from 1912 to 1928 (King, 1996: 161) and was the Minister of Health from 1923 to 1926 (Butterworth, 2007).

Currently, the Māori Party occupies a strategic position[44] in National's minority government through the negotiation of a Confidence and Supply Agreement with the National Party, and the appointment of the Māori Party co-leaders, Tariana Turia and Pita Sharples, as ministers outside Cabinet (House of Representatives, 2008b).

These examples raise questions around the importance of representation in Cabinet and the role of a minister outside Cabinet. For example, could one argue that the existence of a Minister of Native/Māori Affairs is a form of separate representation? Should an assessment of the quality of separate representation take into account whether a Māori representative occupies a position in Cabinet, how Māori ministers are pursuing Māori goals within other portfolios, and how other Māori MPs are pursuing Māori goals? In our view, such aspects of Māori representation in Parliament should be taken into account when reviewing the whole system.

7.2.3 Test 3: Substantive representation based on assessing outcomes

This test goes wider and deeper than the previous two, the aim being to measure substantive representation, as described in Section 2.4.3. Understanding outcomes over time would require assessing (i) the quality of process, in particular whether issues are understood and addressed; (ii) whether policy goals are relevant and meaningful for Māori, and (iii) whether outcomes are in line with policy goals. This would lead to the evaluation of the effectiveness of policy in achieving Māori goals. Relevant areas of exploration could include:

- Level of clarity and consensus with regard to Māori goals and issues;
- Existing processes to understand and develop successful outcomes to Māori goals and issues;
- How electorate MPs are working to understand the views of Māori constituents;
- How effectively Māori MPs, particularly in majority parties, are able to address Māori issues in Parliament;
- How Māori goals and issues are perceived as being complementary to those of the non-Māori population, and whether they are widely supported by the non-Māori population;
- How effectively Parliament is working to develop and implement optimal outcomes; and
- The effectiveness of the Minister of Māori Affairs, Te Puni Kōkiri and other relevant government institutions and mechanisms.

43 No other Māori MP would do this until 1975 (NZ History, 2007a).

44 An example that illustrates this influence is the importance of the support of the Māori Party to National's Emissions Trading Scheme (ETS) Bill, which was only passed as a result of Māori Party support, achieved through a deal between the two parties (NZPA, 2009b).

These and other areas should be considered in order to gain a better understanding of the level of satisfaction with policy outcomes. We recognise that diverse mechanisms have been used to progress Māori goals and issues in the past. Examples include the 1975 hīkoi relating to issues of land ownership, and the 2004 Foreshore and Seabed hīkoi.[45] Notably, the Waitangi Tribunal was set up in 1975 at a time when protests about unresolved Treaty grievances were growing (Waitangi Tribunal, n.d.) and the Foreshore and Seabed Act 2004 is planned to be repealed later this year.[46]

We question why such mechanisms have been necessary; are they a sign of ineffective representation in Parliament, or simply a way of pursuing goals using mechanisms that are culturally aligned with Māori values and beliefs. Without further research, it is difficult to fully assess the quality of substantive representation in Parliament. Furthermore, as ethnic diversity increases and a greater number of the New Zealand population identifies with more than one ethnicity, we expect measuring *substantive representation* will become increasingly important.

To conclude, in order to establish whether representation is effective, there must be consensus over the method (or methods) of testing the quality of that representation. In our view, Test 1: 'Descriptive representation test based on number of Māori MPs' is useful to a degree, but more effort needs to be put into ensuring the data used is comparable, complete and verifiable. The other two tests, although more challenging, may actually provide more useful information to consider and discuss, and may lead to an improvement in the quality of representation for all New Zealanders in the long term. These ideas are developed further in Section 15.

45 See Working Paper 2010/03 The Evolution of New Zealand as a Nation: Significant events and legislation 1770–2010 (SFI, 2010c).

46 Cabinet agreed 'to pursue replacement legislation that will: repeal the Foreshore and Seabed Act; remove Crown ownership of the public foreshore and seabed and replace it with a non-ownership model for the public foreshore and seabed; restore the right of Māori to access the High Court to seek customary title, and recognise the Crown can negotiate with mandated iwi on an individual basis for recognition of their customary interests' (NZ Govt, 2010a).

8. Question 4: How does Māori representation compare with that of Pacific and Asian people in New Zealand?

We found that the available data was not comparable. However, based on the information that was available, there appears to be greater disparity between population figures and representation for New Zealand residents of Pacific and Asian ethnicity than for those of Māori descent.

We believe that it is important to assess the impact that any proposed changes to the current system of parliamentary representation may have on the representation of other ethnic groups.

8.1 Exploring the Question

It is possible conceptually to apply the descriptive representation test to other groups with different ethnic backgrounds, but in practice the data available was not comparable. However, we felt it was important to consider other minority groups of significant population size, and have therefore persevered. The results of our assessment are shown in Table 3, but before considering the findings it is important to point out the two major weaknesses in our approach:

i. There was no equivalent data as figures for Pacific and Asian descent populations are not available,[47] and there are no estimates for 2008 generated from the 2006 census ethnicity data. It has therefore been necessary to use ethnicity figures from the 2006 census.

ii. Some MPs may be from more than one of the stated ethnicities, raising further concerns about the usefulness of this measure as a way of assessing representation between ethnic groups.

Given these significant weaknesses, the findings in Table 3 suggest there may be a proportionately greater disparity of representation in Parliament for New Zealand residents of Pacific and Asian ethnicity than for New Zealand residents of Māori ethnicity.

Table 3. Parliamentary Representation of Māori, Pacific and Asian peoples in New Zealand
Source: Parliamentary Library, 2008: 9; Statistics NZ, 2006a: 1, 4; J. Wilson, Parliamentary Library, personal communication, 15 September 2009

	Māori (see footnotes)	Pacific Peoples (ethnicity)	Asian (ethnicity)
% of total NZ population	17.3% (2008)[48]	6.6% (2006)[49]	8.8% (2006)[50]
% of MPs	16.4% (2008)[51]	4.0% (2008)	4.9% (2008)
Disparity (percentage points)	0.9	2.6	3.9

8.2 Opinion

Pacific and Asian communities also have an interest in ensuring their voices are heard in Parliament, and this interest is likely to increase over time, particularly if the Pacific and Asian populations continue to grow as a proportion of the total national population, as Statistics New Zealand's projections suggest will occur (Statistics NZ, 2010). Any discussion of changes to the current parliamentary representation system should therefore also consider the impact of those changes on the effective representation of other major ethnic groups.

47 Descent figures are collected only for the Māori population. This information is collected at census as it is required under Section 3 of the Electoral Act 1993 for electoral calculations; the figure from the 2006 census was adjusted by the Parliamentary Library to arrive at the 2008 Māori descent estimate population (Statistics NZ, 2000a).

48 The figure used here is a descent figure; see explanation in Figure 8, Method A.

49 As noted above, figures for descent populations of Pacific and Asian peoples are not available for 2008, hence the use of 2006 ethnicity figures.

50 See footnote 49.

51 The figure used here is neither a descent nor an ethnicity figure; see explanation of how 16.4% was derived in Section 7.1.1.

9. Question 5: Are Māori electorate seat calculations, enrolment and turnout optimal?

We found that (i) electorate seat calculations are based on total population and are complex but meet legal requirements; (ii) enrolment for Māori electors when compared with non-Māori electors is not significantly different, whereas (iii) turnout for Māori voters when compared with non-Māori voters is significantly lower. Low turnout is considered to be influenced by a number of demographic characteristics within the Māori population; for example, the high numbers between 20 and 30 years of age, the lower income levels, and lower levels of formal education.

We believe that it is particularly important to address the low turnout of Māori voters in order to maintain the legitimacy of our democracy.

9.1 Exploring the Question

What follows is our understanding of the current electoral process. For the purposes of this report, the Māori electoral process has been divided into three stages: (i) the calculation of the Māori electoral population; (ii) the enrolment (electors), and (iii) the electoral turnout (voters). Table 4 outlines these stages, and compares the Māori roll with the general roll. Each stage is treated consequentially, and is discussed in turn.

Before going into the detail, it is important to understand how the number of electorates and the electoral boundaries are calculated for both the Māori and general electorates. This is determined every five years, after each census and Māori Electoral Option (Chief Electoral Office, 2006; Electoral Commission, 2006e). The size of the residential population, or quota, in each electorate is legislated under s35 and s45 of the Electoral Act 1993.[52] In 2006, these calculations resulted in 63 general electorates and seven Māori electorates (Statistics NZ, 2006b: 7). Statistics New Zealand provides a detailed explanation of the mathematics underlying the electoral calculation system (Statistics NZ, 2006b).

52 The residential population allocated to each electorate, including those not eligible or enrolled to vote, is known as the electorate quota; there are always 16 electorates in the South Island. In 2006, the quotas were calculated as: General North Island, 57,243; General South Island, 57,562, and Māori New Zealand, 59,583 (Statistics NZ. 2006b: 7).

Table 4. Electoral Population, Enrolment and Turnout – Comparing Rolls
Sources: Chief Electoral Office, 2008c; Electoral Commission, 2009a

	Māori Roll		General Roll	
Stages	**Description**	**Election (2008)**	**Description**	**Election (2008)**
(i) Electoral Population	The *Māori electoral population* is a figure representing both the persons registered as electors of the Māori electoral districts and a proportion of the persons of New Zealand Māori descent under the age of 18 years. The proportion is determined by dividing the total number of persons registered as electors of Māori electoral districts by the number of persons of New Zealand Māori descent registered (Parliamentary Library, 2009b: 20). See Section 9.1.1.[53]	Māori electoral population 416,750	The calculation for the *general electoral population* takes the total New Zealand population and subtracts the Māori electoral population.[54]	General electoral population 3,612,868
(ii) Enrolment (electors)	The number of people of Māori descent who are eligible to vote and choose to be enrolled on the Māori roll.	Total enrolled 229,666 (55% of Māori electoral population)	The number of people in New Zealand who are eligible to vote and are enrolled on the general roll. This includes Māori who do not choose to be on the Māori roll.	Total enrolled 2,761,093 (77% of general electoral population)
(iii) Turnout (voters)	The number of people enrolled on the Māori roll who cast a vote on election day.	Voter turnout 143,334 (62% of those enrolled; 34% of the Māori electoral population)	The number of people in New Zealand enrolled on the general roll who cast a vote on election day.	Voter turnout 2,233,146 (81% of those enrolled; 62% of the general electoral population)

53 The calculation for the Māori electoral population is prescribed under Section 3 of the Electoral Act 1993 and is used to determine the number of people within, and the number of, Māori electorates.

54 The calculation for the general electoral population is prescribed under Section 3 of the Electoral Act 1993 and is used to determine the number of people within, and the number of, general electorates.

9.1.1 The calculation of the Māori electoral population

Electoral representation is based on the total resident population of New Zealand (thus including those who are ineligible to vote). The Māori electoral population is a proportion of the total resident Māori descent population, and determined by the proportion of the eligible Māori descent population who have chosen to be on the Māori roll. The calculation of the Māori electoral population (MEP) is complex, and entails use of the following formula:

$$\text{Māori Electoral Population} = \text{Māori descent } (d) \times \frac{\text{Māori roll } (m)}{[\text{Māori roll } (m) + \text{Māori on general roll } (g)]}$$

where d is the number of persons of Māori descent counted in the census, m is the number of persons on the Māori roll, and g is the total number of Māori registered on the general roll (Statistics NZ, 2006b). We describe all three below.

The number of persons of Māori descent counted in the census (*d*)

The Māori population is currently calculated in four different ways, resulting in four different figures, as shown in Table 5. The Māori electoral population is calculated using the figure from the fourth category, the *usual resident Māori descent population (imputed)*. This figure is based on census information, imputed as explained in footnote 57 below. As the outcome is sensitive to the figure used, the choice of population figure can be significant.

Table 5. Four Measures of Māori Population, 2006
Sources: Statistics NZ, 2006a; 2006b: 4; 2006c: Tables 1, 27; 2008b

	1. Usual resident Māori ethnic population (census)[55]	2. Estimated usual resident Māori ethnic population (estimated)	3. Usual resident Māori descent population (census)[56]	4. Usual resident Māori descent population (imputed)[57]
	Ethnic		Descent	
Total Māori population	565,329	624,300	643,977	721, 431
Percentage of total New Zealand population[58]	14.0%	15.5%	16.0%	17.9%

The number of persons on the Māori roll (*m*), and the total number of Māori registered on the general roll (*g*)

Both these figures are discussed in Section 9.1.2 below. The number of eligible Māori who choose to be on the Māori roll (rather than the general roll) determines the number of Māori electorate seats (Statistics NZ, 2006b). Table 6 below shows the resulting Māori electoral population from 1996 to 2006, as a percentage of the *estimated usual resident Māori descent population* and of the *estimated New Zealand population*. It can be seen from Table 6 that both percentages are increasing over time.

55 The Māori ethnic population is the total number of people in the Māori ethnic group. It includes those who cited Māori as their sole ethnic group or as one of their ethnic groups (Statistics NZ, 2006c: Table 2).

56 The Māori descent population is the total number of New Zealand residents who identify as being of Māori descent, a figure that is larger than the Māori ethnic population. The descent figure is typically used by the Chief Electoral Office and the Parliamentary Library to report on the electoral process, as being of Māori descent is all that is required for a person to register as a Māori elector (Statistics NZ, 2000b).

57 Imputation is applied to census data to create a more accurate Māori descent population figure at the geographic levels required for electoral purposes (Statistics NZ, 2000a: 6). Also see glossary.

58 There were 4,027,947 people who usually live in New Zealand ('usual residents') on census night in 2006 (Statistics NZ, 2006a).

Table 6. Māori Electoral Population, 1996–2006
Sources: Chief Electoral Office, 2008c; Statistics NZ, 2000b: 7; 2000c: Table 20; 2006b: 4; 2007b: 4; 2007c: Table 3; 2008a

	1997	2001	2006
Total Māori electoral population	336,997	371, 765	416,750
As a percentage of 'Māori descent population (imputed)'[59]	53.6%	55.4%	57.8%
As a percentage of total 'estimated resident population' in New Zealand[60]	9.0%	9.6%	10.0%

9.1.2 Enrolment

The enrolment process occurs when those who are eligible register on either the general or the Māori electoral roll; they are then referred to as electors. People of Māori descent can choose to enrol on the Māori roll during the five-yearly Māori Electoral Option, which coincides with census year, but cannot be held in an election year (Electoral Commission, 2005b).

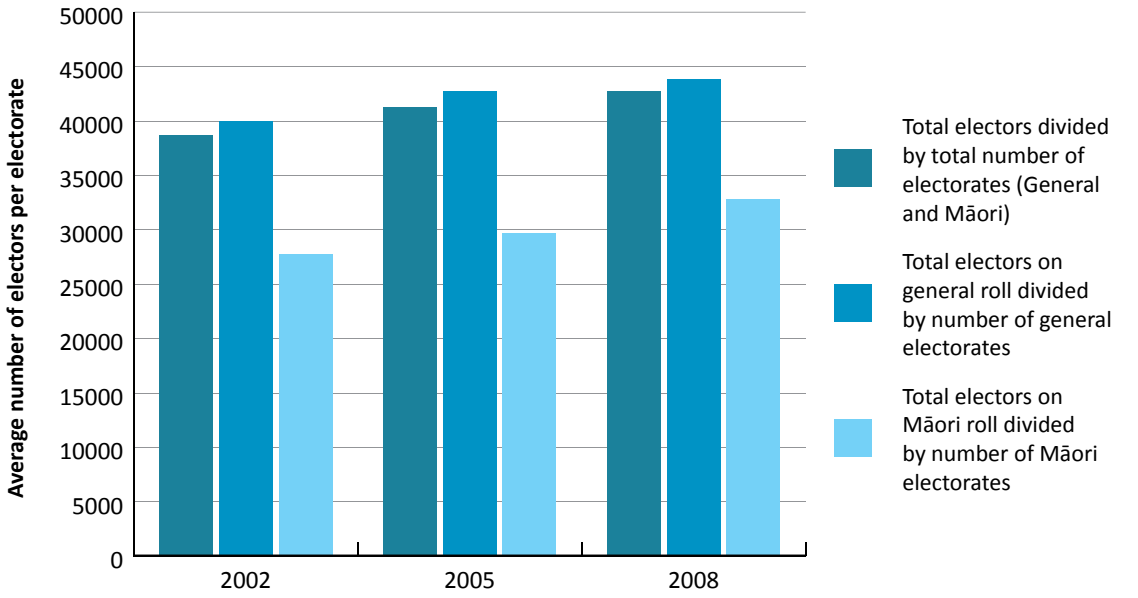
As the quota is roughly equal for all electorates, it is interesting to reflect on the difference between the number of enrolled electors per general electorate and the number of enrolled electors per Māori electorate (see Figure 9, p. 44). In 2008, Māori electorates had on average 32,809 enrolled electors, while general electorates had on average 43,827 enrolled electors (Electoral Commission, 2009a), a difference of about 11,000 electors. This means that the number of enrolled electors in an average Māori electorate is only 75% of the average number of enrolled electors in a general electorate.

This significant difference between the average number of electors enrolled means that an elector on the Māori roll gains considerably more 'value' (as in obtaining more representation) from casting their electorate vote than an elector on the general roll.

59 The Māori descent population (imputed) for each of these years was 1996: 628,429; 2001: 671,293; 2006: 721,431. 'Māori descent population (imputed)' means the Māori descent population counted at census and then adjusted for electoral calculations (Statistics NZ, 2000b: 7; 2006b: 4; 2007b: 4).

60 Total estimated resident population was 1996: 3,732,000; 2001: 3,880,500; 2006: 4,184,600. The 'estimated resident population' in New Zealand is an estimate of all people who usually live in New Zealand at a given date. This estimate is based on the census 'usually resident' population count, updated for residents missed or counted more than once by the census (net census undercount), residents temporarily overseas on census night, and births, deaths, and net permanent and long-term migration between census night and the date of the estimate (Statistics NZ, 2008a).

Figure 9. Average Number of Electors per Electorate, 2002–2008
Source: Electoral Commission, 2009a; 2009b; Statistics NZ, 2006b: 7



A major reason for this difference is the significantly higher proportion of Māori people who are too young to enrol (Electoral Commission, 2007). Notably, the percentage of people of voting age in the non-Māori descent population is about 78%, compared with 59% of the Māori descent population.[61]

Further, the enrolment data in Table 7 indicates that the 92.7% of the total Māori descent voting-age population enrolled is only slightly less than the 94.1% of the total non-Māori New Zealand voting-age population – a difference of 1.4 percentage points. This disparity is not significant enough to be a priority. One factor which can affect the enrolment of eligible electors is the failure of individuals to renew their addresses on the electoral roll resulting in their mail being returned to the Electoral Enrolment Centre as undeliverable. In June 2008 in the lead up to the national election, 49,641 New Zealanders were removed from the Electoral Roll for this reason (Electoral Enrolment Centre, 2008). This affects Māori enrolment numbers especially, as Māori are over-represented within this group (Māori Party, 2010).

Table 7. Enrolment Data, 2008
Source: Electoral Commission, 2009a; Statistics NZ, 2008a; J. Wilson, Parliamentary Library, personal communication, 15 September 2009

Total New Zealand population enrolled		Total Māori New Zealand population enrolled			Total non-Māori New Zealand population enrolled	
Estimated 18+ New Zealand population 2008	3,185,200	**Estimated 18+ Māori descent population 2008**	437,400	13.7% of total NZers	**Estimated 18+ non-Māori NZ population 2008**	2,747,800
Total population on both the general and Māori electoral rolls 2008	2,990,759	**Total declared Māori NZers on both rolls 2008**	405,430	13.6% of total NZers	**Total declared non-Māori NZers on general roll 2008**	2,585,329
Percentage of population enrolled	93.9%		92.7%			94.1%

61 Figures for 2008 show that: 437,400 [Māori descent 18+]/739,039 [Māori descent population] x 100 = 59.2% [percentage of residents of Māori descent 18+] (J. Wilson, Parliamentary Library, personal communication, 15 September 2009). 4,268,900 [total population] – 739,039 [Māori descent population] = 3,529,861 [non-Māori descent population]. 3,185,200 [total eligible electors] – 437,400 [Māori descent eligible electors] = 2,747,800 [total non-Māori eligible electors]. 2,747,800 [total non-Māori eligible electors]/3,529,861 [non-Māori descent population] x 100 = 77.8% [percentage of residents who are not of Māori descent and are eligible to vote] (Statistics NZ, 2008a; J. Wilson, Parliamentary Library, personal communication, 15 September 2009).

9.1.3 Turnout

Voter turnout is the proportion of enrolled electors who cast a vote at a polling station on the day of a national election; they are referred to as voters. Turnout in Māori electorates has been consistently lower than in general electorates to the point where, in 2008, the turnout in the highest performing Māori electorate was lower than in the lowest performing general electorate (Chief Electoral Office, 2008c; Electoral Commission, 2009a). In 2008, 62% of those people who were on the Māori roll voted, whereas 81% of those on the general roll voted, a difference of 19 percentage points (Parliamentary Library, 2008: 12).

Seen together, all three stages in the process deliver the outcome shown in Figure 10 below:

Figure 10. Average Number of Voters per Electorate, 2002–2008
Source: Chief Electoral Office, 2002; 2005c; 2008c

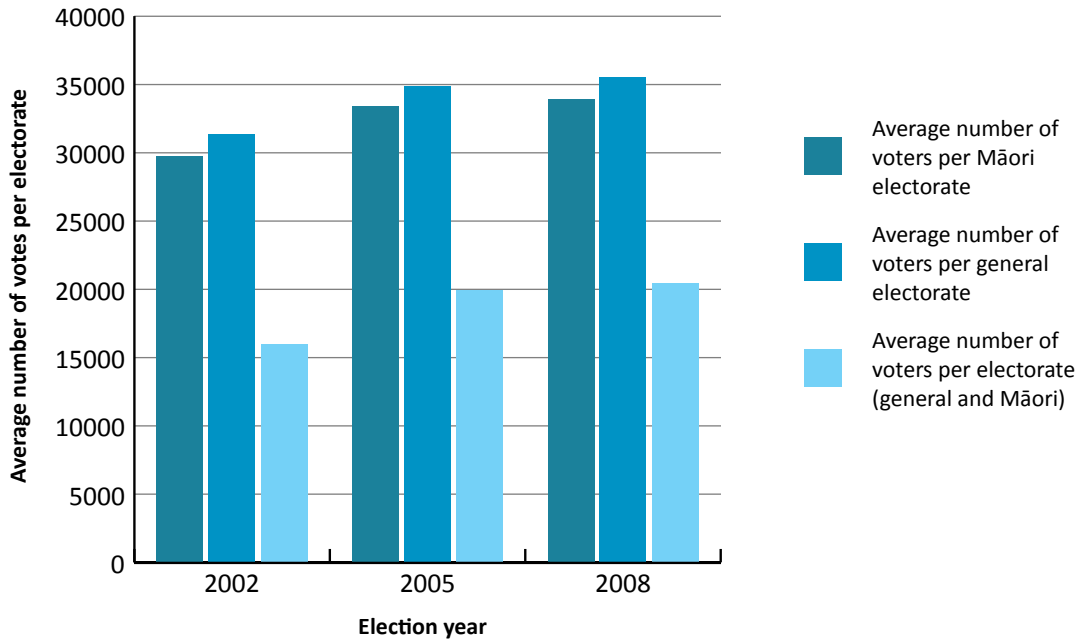
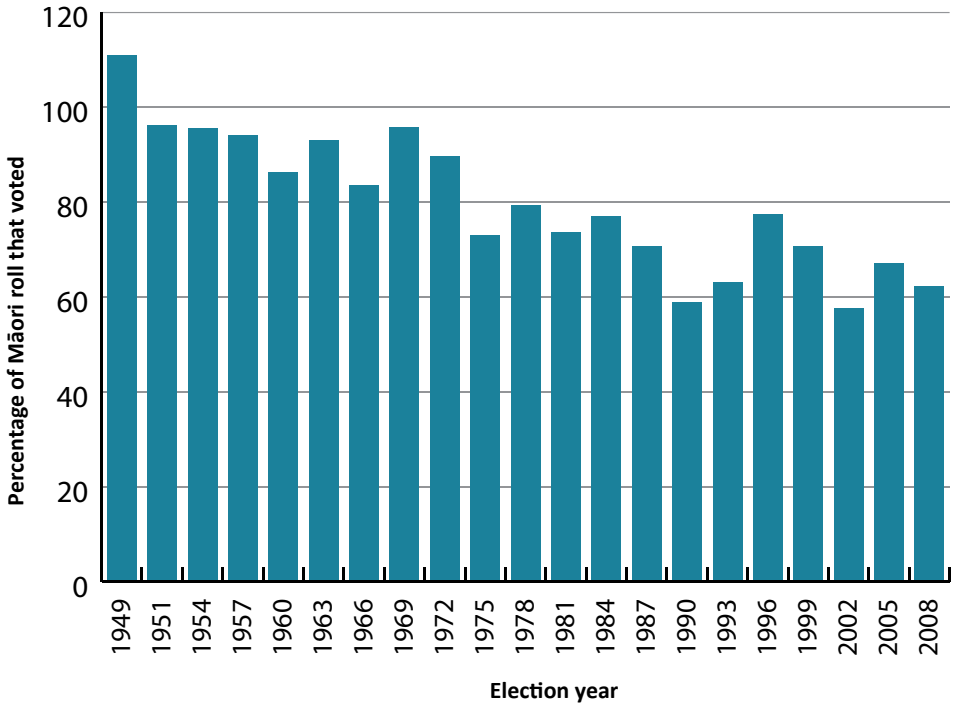


Figure 11 shows that the turnout of voters on the Māori roll has fallen over time. It is notable that while turnout on the Māori and general rolls differ significantly, both rolls show a trend of declining turnout over time (see Vowles, 2006: Figure 1).

Figure 11. Māori Roll Turnout, 1949–2008[62]
Source: Parliamentary Library, 2009a: 18



While Māori are just as likely to enrol as non-Māori, they are much less likely to cast a vote. In 2004, the Electoral Commission initiated the 'Māori electoral participation research programme', using focus groups, interviews, an extensive literature review, and quantitative analysis completed by UMR Research. The final report was released by UMR in 2006. It recognised that many demographic characteristics are predictors of low turnout, such as age, income and education. The Māori population is, on average, more youthful, and has lower levels of both income and formal educational achievement than non-Māori, factors which all influence the lower levels of turnout in the Māori population (Electoral Commission, 2007; UMR Research, 2006a: 5; 2006b: 5). Interestingly, data from the 2002 election showed that Māori non-voters were less likely to be on the Māori roll, however 2005 election data indicates that this gap is closing.[63]

Research NZ was contracted by the Electoral Commission to conduct a literature review of Māori participation and engagement in public decision-making processes. While the review covers a wide range of local and central government decision-making processes, its findings are relevant in the context of electoral participation. Research NZ suggests the following factors influence the low participation of Māori in decision-making processes: alienation from Māori and Pākehā systems, or preference to operate within a Māori system; procedural difficulties and systemic complexities; lack of understanding or familiarity with the system and a fear of losing face; distrust of the system, and the impact of under-representation and/or being a minority voice (Research NZ, 2006: 12–13).

To conclude, Table 8 summarises the key information from the three consecutive stages in the electoral process: (i) electoral population, (ii) enrolment, and (iii) turnout. It shows that 65.6% of people within an average Māori electorate do not vote (due to ineligibility or low turnout) and so are being represented by the votes of only 34.4% of the electorate. The general electorates show almost the opposite, with 38.1% of people not voting, and so being represented by the votes of 65.6% of the electorate.

62 The 1949 turnout figure shows a percentage above 100% due to the fact that no roll of Māori electors was prepared before 1949, and Māori electors were not required to register before 1956; hence it was possible for qualified (i.e. 18+) but unregistered Māori voters to cast a vote (J. Wilson, personal communication, Parliamentary Library, 18 March 2010).

63 While non-voting among Māori on the Māori roll remained basically steady (moving from 12% to 11%), non-voting among Māori on the general roll fell from 16% in 2002 to 10% in 2005 (UMR, 2006b: 5).

Table 8. General and Māori Electorate Statistics, 2008
Sources: Chief Electoral Office, 2008c; Electoral Commission, 2009a; Statistics NZ, 2006b: 7

Stage	Description	Formula	Māori Electorate	General Electorate[64]
(i) Electorate population	**Quota**	(a)	59,583	57,243
(ii) Enrolment per electorate (electors)	**Average number of electors**	(b)	32,809	43,827
	% of quota enrolled	(b/a) x 100	55.1%	76.6%
(iii) Turnout per electorate (voters)	**Average number of voters**	(c)	20,476	35,447
	% of electors that voted	(c/b) x 100	62.4%	80.9%
	% of quota that voted	(c/a) x 100	34.4%	61.9%
	% of quota that did not vote	[(a-c)/a] x 100	65.6%	38.1%

9.2 Opinion

We discuss the outstanding issues raised in each of the stages below.

9.2.1 The calculation of the Māori electoral population

The method of calculating the Māori electoral population is worth reconsidering in light of the growing importance of the Māori electorate seats as a measure of representation, and because the steady growth projected for the Māori population in the next 20 years will have a direct effect on the electoral system.[65] From the above discussion, two issues remain outstanding.

i. Which data is best – descent or ethnicity?

It is necessary to clarify who is 'Māori' in order to understand who is being represented and to assess the quality of representation that they are gaining. It therefore would be beneficial to better understand where and how both descent and ethnicity data are currently used. The choice of 'descent' over 'ethnic' population data for the Māori electoral calculations may be inappropriate, considering that the Māori ethnic population is the standard figure used with regard to administrative and policy purposes in New Zealand (Kukutai, 2004: 91). The underlying question is: should the electoral calculations take into account all those who are of Māori ancestry, or should it be based on those who identify themselves as Māori, regardless of their ancestry, and are therefore more likely to be a part of the Māori community and desire Māori representation? Kukutai (2004: 95) states that the common view within Māori communities is that to be considered Māori you must both identify as Māori and be descended from a Māori ancestor. It is important to note that the concept of ancestry aligns with the Māori concept of whakapapa which traditionally underlies being Māori (ibid.: 91). In view of this, Kukutai (ibid.: 94) suggests a solution in the form of a 'core Māori' group. This would be a Māori population defined by ethnicity, descent and iwi affiliation, in which only those who identify with all three would be included. According to 2001 statistics this would encompass approximately two-thirds of the total Māori descent population.[66]

64 The quota for the North Island has been used as there are a greater number of North Island electorates, and the difference between the two was considered insignificant – the quota for the North Island is 57,243 and the South Island is 57,562 (Statistics NZ, 2006b: 7).

65 Figure 2 in Report 7 (SFI, 2010a) shows ethnicity population projections used by Statistics NZ (2010). We found no projected Māori descent figures, although the report of the Representation Commission (2007: 150) does include projected population variations by electorate to 2011.

66 According to 'Census 2001: Iwi Highlights', 88% of the Māori descent population who could name an iwi also identified as ethnic Māori (454,479 x 0.88 = 399,941) (Kukutai, 2004: 94). Thus, 399,941/604,110 [2001 census Māori descent population] x 100 = 66.2% (Statistics NZ, 2006c: Table 27).

ii. How best to obtain accurate data that is independently verifiable?

When registering to enrol one is required to be truthful under s85 of the Electoral Act 1993. This is important because descent is a legal requirement for registering on the Māori roll, and as such there should be a verification process to monitor this. Kukutai's (2004) 'core Māori' group approach could be one way to solve this issue. Registering with an iwi requires identification of whakapapa. Although iwi affiliation in the census does not require an iwi registration, it could be required for registering on the Māori roll, making it an 'iwi Māori roll'. The obvious issue with this is that it would disenfranchise those who have no knowledge of their iwi yet still strongly identify as Māori and are of Māori descent. This is the case for many Māori who have lost contact with their iwi through the process of urbanisation (ibid.). Provisions for these Māori would need to be considered.

9.2.2 Enrolment

When comparing those eligible to enrol with those that actually enrolled, there is no significant disparity between Māori and non-Māori New Zealanders (see Table 7). However, when looking more deeply into the differences that exist between rolls, Table 8 indicates that due to the differing age structure of the two electoral populations, those who are not eligible to enrol make up a much higher proportion of the Māori electoral population than the general electoral population. This can be seen by the fact that 55.1% of the Māori electoral population is enrolled, compared to 76.6% of the general electoral population (see Table 8). From our perspective, although important to understand, it is not a significant issue of concern for effective representation.

9.2.3 Turnout

Low turnout of Māori voters is a major issue. Low turnout, in combination with a relatively high proportion of the Māori population being under 18, means that on average only 34.4% of all people in a Māori electorate cast a vote on election day. In practice this means those who vote gain considerably more influence with their electorate vote when compared with those on the general roll (see Figure 10, p. 45).

In view of the low voter turnout and the resulting impact on the effectiveness of the Māori roll, it is important to consider ways in which turnout can be encouraged. It is beyond the scope of this report to identify all options, but those we came across in literature included:

- Lowering the voting age to 16. This was suggested by Sue Bradford of the Green Party in 2007 as a part of the Civics Education and Voting Age Bill. The thinking behind this was that 'lowering the voting age and teaching them civics can help young New Zealanders get on track to being better informed, more engaged citizens' (Bradford, 2007).
- A form of compulsory voting system. A compulsory voting system was introduced in Australia to combat a similar problem, and could be considered for New Zealand. Importantly, the Australian system offers the option to select a non-vote.[67]
- Developing effective education and social marketing to encourage and support Māori to engage in the electoral process and understand the parliamentary representation system.[68]

67 Interestingly, compulsory voting for federal elections in Australia appears to have been implemented after the 1922 elections, when turnout dropped to less than 60% (Evans, 2006: 5). This percentage is comparable to the turnout of registered electors on the Māori roll in 2008.

68 See the findings of the Waitangi Tribunal's *Māori Electoral Option Report* (Waitangi Tribunal, 1994a, 1994b, 1994c); also, the Electoral Commission's 'Māori electoral participation research programme' was initiated to 'help the commission and others in policy development and the planning of outreach and education programmes to increase Māori electoral participation' (Electoral Commission, 2007).

10. Question 6: What impact did the 2008 Māori roll election results have on parliamentary representation?

We found that the Labour Party gained 49% and the Māori Party gained 28% of the total party votes on the Māori roll. In contrast, the Labour Party candidates gained 36% of electorate votes (and two Māori electorate seats), whereas the Māori Party candidates gained 56% of electorate votes (and the other five Māori electorate seats).

We believe that Māori interests should be pursued in the House of Representatives but question whether recent trends will be in the best interests of Māori and all New Zealanders in the long term.

10.1 Exploring the Question

In the 2008 election, the Māori Party won five and the Labour Party two of the seven Māori electorate seats (see Table 1, page 27). However, this result does not portray the underlying tensions that exist in terms of voter preferences and the outcomes they delivered. The 2008 election results enabled the Māori Party to gain 4.1% of the seats in Parliament, more than their 2.4% share of the total party vote. In 2005, the Māori Party gained 3.3% of the seats in Parliament, more than their 2.1% share of the total party vote, indicating an increasing disparity. In 2008 the gap was 1.7 percentage points, whereas in 2005, the gap was 1.2 percentage points. However, it is important to note that the Māori Party's share of the party vote does not accurately reflect their wider support base. Many Māori Party supporters chose to express their support through their electorate vote, and strategically give their party vote to the major party that they would prefer to see the Māori Party work with in government.

Reviewing the 2008 election results was difficult, as there is not a large body of independent analysis of either voting behaviour or results. In our research we have drawn on the New Zealand Election Study (NZES), which since 1990 has monitored democratic processes and voter behaviour in New Zealand using public questionnaires (NZES, 2008), and on Levine and Roberts' (2010a) overview of voting behaviour.

In exploring this question, we have taken a four-pronged approach. Firstly, we look at trends in enrolment during the 2006 Māori Electoral Option. Secondly, we look at trends in voting behaviour on the Māori roll, as the way the votes are cast determines who holds the Māori electorate seats and who gains the largest party vote. Next, we compare the split voting between the Māori roll and the general roll, to determine whether any significant voting differences have emerged from operating a two-roll MMP system. Lastly, we assess the outcome of the Māori roll election results in terms of influence gained in Parliament.

10.1.1 Enrolment on the Māori roll

With the passing of the Electoral Act 1993 and the resulting introduction of MMP, the Māori Electoral Option took on new significance. The number of Māori electorate seats would no longer be fixed at four; instead the number of people on the Māori roll would determine the number of Māori electorate seats, using a similar quota to that which determined the number of electorates serving the general roll (Joseph, 2008: 10).[69] This provided an additional incentive for Māori to register on the Māori roll, as increased enrolments would increase the number of Māori electorate seats. The subsequent growth in the Māori roll saw the number of Māori electorate seats gradually rise from four in the 1993 election to seven in the 2002 election – this remains the number in the House today (Parliamentary Library, 2009a: 21). By comparison, the number of general electorate seats has increased from 60 in the 1996 election to 63 in the 2008 election (Electoral Commission, 2006f; Representation Commission, 2007).

69 See Electoral Act 1993, s35(3) and s45(3). See also Joseph (2008) for a thorough discussion of the Māori electorate seats.

The effect of these changes is represented in the following two figures. Figure 12 shows the steady increase in the number of electors on the Māori roll. By 2008, 13.6% of the enrolled population was of Māori descent, 56.6% of whom chose to be on the Māori roll. In contrast, in 1990, just under 40% of the eligible Māori descent population were on the Māori roll.

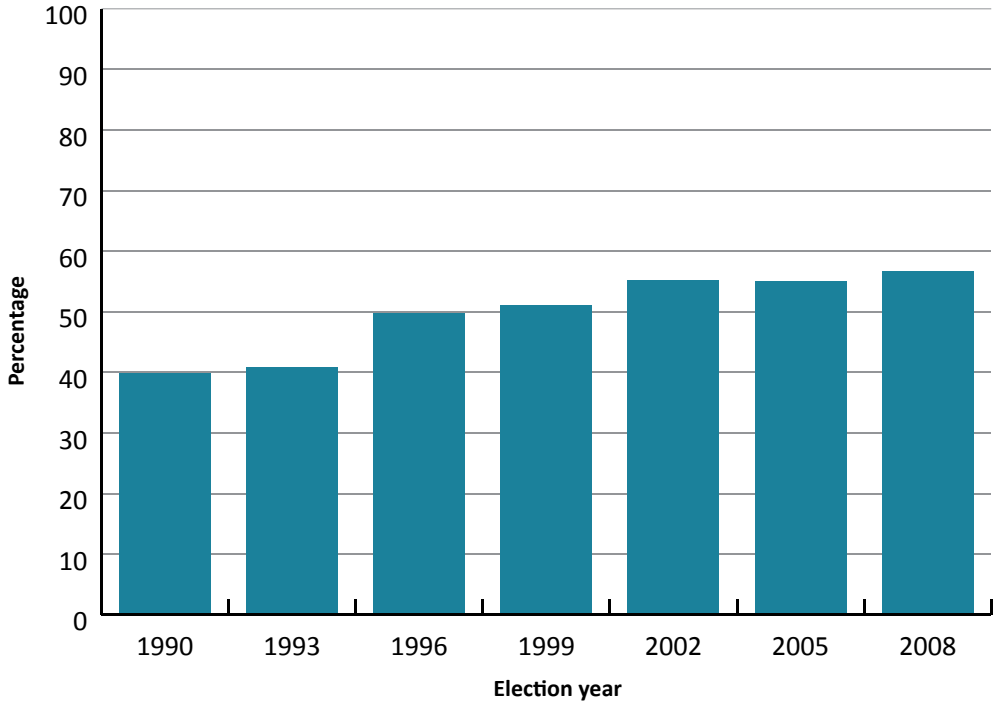
Figure 13 compares the cumulative increase in voters of Māori descent on the Māori electorate roll and the general electorate roll, and shows that between 1990 and 2008 the Māori roll experienced a cumulative increase of 146,647.[70] This is a much larger increase than the Māori descent population on the general roll, which cumulatively increased by 50,355 during the same period (Parliamentary Library, 2009a: 18). Notably, this timeframe included both the introduction of MMP, which allowed the number enrolled on the Māori roll to determine the number of Māori electorate seats, and four Māori Electoral Options, held in 1994, 1997, 2001 and 2006 (Electoral Enrolment Centre, 2005, 2006a; Waitangi Tribunal, 1994a).[71]

In the most recent Māori Electoral Option, two key trends were apparent:

- New electors of Māori descent strongly favoured the Māori roll: 77% of new electors of Māori descent chose to be on the Māori roll (7914 out of 10,280 enrolments).
- Of already enrolled electors of Māori descent, significant movement between rolls took place: 66% of movement between rolls was from the general roll to the Māori roll (14,294), and 34% was from the Māori roll to the general roll (7294) (Electoral Commission, 2006g).

Although the number of enrolments in 2006 was not sufficient to gain an eighth Māori electorate seat, if current trends continue then the next option, expected in 2012, is likely to deliver this eighth seat.[72]

Figure 12. Percentage of Māori Descent Electors on the Māori Roll, 1990–2008
Source: Parliamentary Library, 2009a: 18

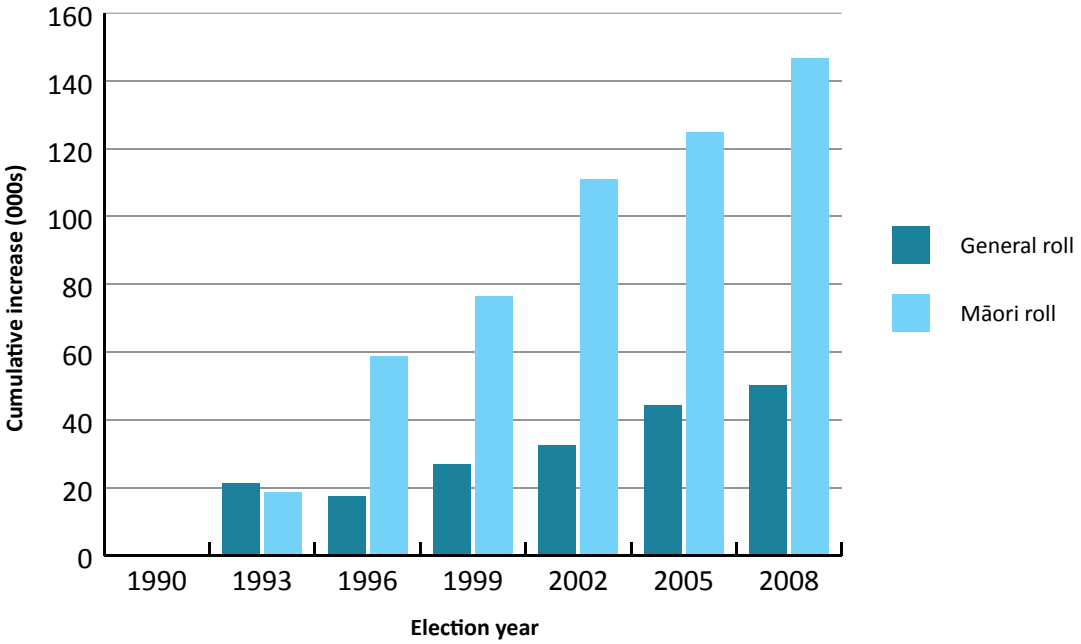


70 Anyone who is eligible to enrol to vote and is of New Zealand Māori descent may enrol on the Māori roll (Electoral Enrolment Centre, 2006b).

71 The Māori Electoral Option provides Māori with the opportunity to change between the Māori and general rolls. The option occurs approximately every five years, as close to the census as possible, but not in an election year. The next occurrence is scheduled for 2012 (Electoral Enrolment Centre, 2005).

72 The method for calculating the number of Māori electorates depends on a number of variables (see Section 9.1.1). If no other variables were changed, and during the 2006 option 60% rather than 56.6% of Māori on the electoral roll had chosen to be on the Māori roll, there would have been an eighth Māori electorate seat. See the Electoral Act 1993, sections 35(3) and 45(3) for the calculation guidelines.

Figure 13. Cumulative Increase in Electors of Māori Descent on Māori and General Rolls (1990 Baseline)[73]
Source: Parliamentary Library, 2009a: 18



The Māori Electoral Option influences our electoral system, as the number of electors of Māori descent who choose to enrol on the Māori roll is one factor that affects the number of North Island general electorates and the number of Māori electorates. Therefore, it is of strategic advantage for parties that are likely to win seats in the Māori electorates to encourage eligible electors to move to, or enrol for the first time on, the Māori roll. For example, at the time of the most recent Māori Electoral Option, the Māori Party campaigned to encourage new electors to enrol on the Māori roll and those on the general roll to move to the Māori roll (Māori Party, 2006). Therefore, in the future we can expect political parties with an interest in the Māori electorate seats to campaign not just at election time but also in the lead-up to the Māori Electoral Option.

10.1.2 Voting behaviour of those on the Māori roll

Here we consider in further detail differences in the ways voters used their party and electorate votes in the Māori and general electorates in the 2008 election. Under MMP, voters are able to cast a split vote – giving their electorate and party votes to different parties. Analysis of split voting data allows one to gain a deeper understanding of voter preferences. Importantly, there are two ways to understand and analyse split voting:[74]

1. *Split vote by party vote:* Analysis of split vote by party vote involves looking at voters according to the party they gave their party vote to, and then analysing who these voters gave their electorate vote to (i.e. a candidate from which party).
2. *Split vote by electorate vote:* Analysis of split vote by electorate vote involves looking at voters according to the party representative they gave their electorate vote to, and then analysing which party these voters gave their party vote to.

New Zealand First (which gained 70% of 'Other' votes, or 6% of all party votes),[75] the National Party and the Green Party all gained a small proportion of the party votes (see Figure 14). In contrast, the Māori Party can be seen to have gained a clear majority of the electorate votes, while Labour gained close to one-third.

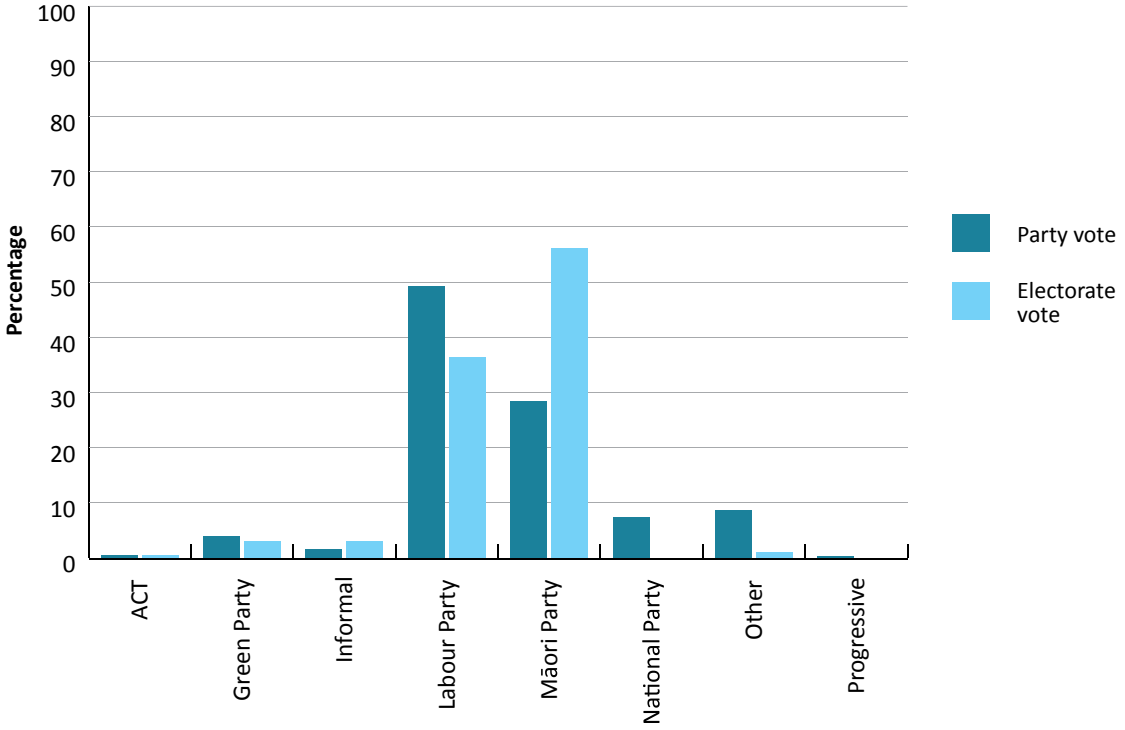
73 The timing of the Māori Electoral Options is a key factor behind the intermittent sharper increases in the number of voters enrolled on the Māori roll. Māori Electoral Options have been held in 1994, 1997, 2001 and 2006.

74 See also discussion in *2008: Key to Victory* (Levine & Roberts, 2010b: 35).

75 Based on figures from the Chief Electoral Office (2008d, 2008e, 2008f).

Before analysing the results further, it is important to note that since the National Party, Jim Anderton's Progressive and United Future did not put forward candidates in the Māori electorates, voters on the Māori roll who gave their party vote to any of these parties had to split their vote. This is indicated by the zero electorate votes for these political parties (shown by the absence of a right-hand bar in Figure 14).

Figure 14. Māori Roll: Party and Electorate Votes by Political Party, 2008
Source: Chief Electoral Office, 2008d, 2008e, 2008f



Notes to Figure 14

Informal refers to 'a vote at a General election, by-election or referendum that is not a *disallowed vote* but does not satisfy the clear intention test' and therefore is unable to count towards any electorate candidate or party's vote count (Electoral Commission, 2006d).

A disallowed vote refers to a vote at a general election, by-election or referendum that is not eligible to be counted, for example because it was cast for an electorate vote by a person who is not a registered elector for that electorate, because it arrived after the deadline for receipt of special votes, or because there was some irregularity in the way it was issued. Sometimes called an invalid vote (ibid.).

Other (as used exclusively in Figure 14) refers collectively to all political parties that did not succeed in gaining representation in Parliament in 2008 (in other words, not listed above).

It should be noted that the statistics show that there are approximately three times more 'informal' votes cast in Māori electorates than in general electorates (that is, votes that do not meet the 'clear intention test'). Across general electorates an average 0.45% of party votes and 0.97% of electorate votes are classified as informal, whereas in Māori electorates 1.55% of party votes and 3.04% of electorate votes are classified as informal (Chief Electoral Office, 2008f). This difference is significant enough to warrant further exploration.

As stated above, there are two ways to understand and analyse split voting; here we explore both ways of analysing the 2008 election results, but please keep in mind that the difference between the two is theoretical, since there is no way of knowing which approach, if any, reflects the way voters actually acted.

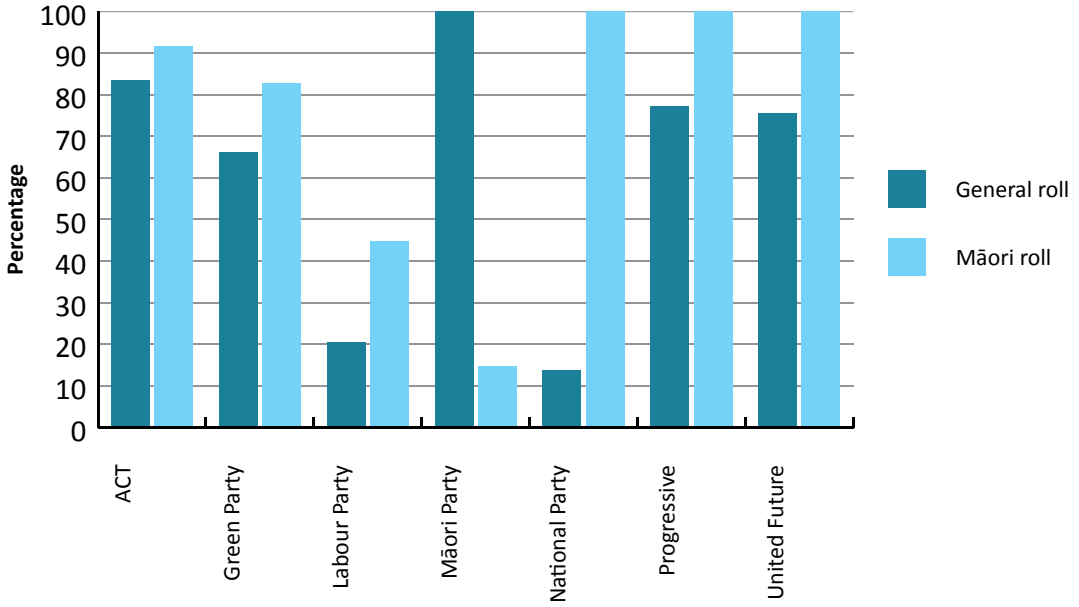
10. QUESTION 6: WHAT IMPACT DID THE 2008 MĀORI ROLL ELECTION RESULTS HAVE ON PARLIAMENTARY REPRESENTATION?

i. Split vote by party vote

Here we consider voters who give their party vote to a particular party, and then their electorate vote to a candidate from a different party.

All voters in the Māori electorates who gave their party vote to National, United Future or Jim Anderton's Progressive Party had to split their vote, since those parties did not stand candidates in the Māori electorates. Similarly, all voters in the general electorates who gave their party vote to the Māori Party had to split their vote, since the Māori Party did not put forward candidates in any of the general electorates. This is reflected in Figure 15 by the fact that the National, United Future and Jim Anderton's Progressive votes were 100% split on the Māori roll, and the Māori Party votes were 100% split on the general roll.

Figure 15. Split Vote by Party Vote, 2008
Source: Chief Electoral Office, 2008d, 2008e



In terms of the general roll, the National and Labour parties have far lower levels of vote splitting by party vote than any of the minor parties – less than 14% and 20% of their voters respectively. Unlike minority parties, both National and Labour have the resources and support to put forward candidates in every electorate. In 2008, these two parties gained 81.82% of all electorate votes and won all except three general electorate seats (Chief Electoral Office, 2008g). In contrast, minority party supporters are far more likely to give their electorate vote to a candidate from a different party, as indicated by the high percentages of split voting by party vote (see high right-hand bars in Figure 15).

In terms of the Māori roll, those who give their party vote to the Māori Party are far less likely to cast a split vote by party vote than those who vote for any other party; less than 15% of those who voted for the Māori Party with their party vote cast a split vote (see low right-hand bar in Figure 15). In contrast, Labour Party voters on the Māori roll are far more likely to split their party vote; 44.7% of those who gave their party vote to Labour gave their electorate vote to a candidate from a different party (Chief Electoral Office, 2008d, 2008e).

ii. Split vote by electorate vote

Here we consider voters who give their electorate vote to a candidate from a particular party, and then their party vote to a different party.

When looking at the data from this perspective, those who gave their electorate vote to a Māori Party candidate are likely to have given their party vote to a different party. Approximately 56% of those who voted for a Māori Party candidate gave their party vote to a different party (based on figures from the Chief Electoral Office, 2008d, 2008e, 2008f). This figure is indicative of the Māori Party's dominance in the electorate vote in the Māori electorates.

Unfortunately, it is difficult to make any further assessment of 'split voting by electorate vote' since statistics based on this analysis are not publicly available. We suggest it would be useful if such statistics were available along with those on 'split voting by party vote'.

10.1.3 Implications for the next three years

In the 2008 election, the Māori Party did not put up any candidates in general electorate seats; however, the party won five Māori electorate seats, and 2.4% of the party vote.[76] This 2.4% equates to 28% of the party vote on the Māori roll and 0.7% of the party vote on the general roll. As a result of winning the five electorate seats, the Māori Party gained 4.1% of the seats in Parliament, an outcome that helped the party negotiate a confidence and supply agreement with the National Party (NZ Govt, 2008) (see excerpts in Section 4.2).

Before the agreement, the National Party stated in its pre-election 'electoral law policy' document that it wished to see all New Zealanders on the same electoral roll (National Party, 2008: 1). However, following the 2008 election, it was agreed between National and the Māori Party that the Māori electorate seats would not be removed without the consent of Māori, nor would they be entrenched during the current parliamentary term or addressed in the upcoming referendum (NZ Govt, 2008). As a result we have an impasse, which is intended to be resolved through the establishment of a group under the National and Māori parties' agreement to consider 'constitutional issues including Māori representation' in 2010 (NZ Govt, 2008: 2).

10.2 Opinion

The following discussion highlights how enrolment on the Māori roll, and the voting behaviour of those on the roll, impacted on the results of the 2008 election. Following this we try to identify the long-term implications if the current trends prevail.

i. Enrolment on the Māori roll

The number of enrolments on the Māori roll, in conjunction with the electorate quota, forms the basis for calculating the number of Māori electorate seats, and therefore the number of Māori-electorate MPs in the House of Representatives. Under the 2006 Māori Electoral Option, 66% of those who chose to change rolls moved from the general roll to the Māori roll, while 34% chose to move the other way (Electoral Commission, 2006g). Despite this uncertainty, the proportion of the Māori descent population on the Māori roll is increasing over time, suggesting that overall there is growing support for the Māori roll. This is particularly noticeable among new electors, 77% of whom chose to enrol on the Māori roll. There is a considerable amount of fluidity between the two rolls; it appears that their composition is not stable and may continue to change significantly over time.

76 The Māori Party received 55,980 out of 2,344,556 party votes (Chief Electoral Office, 2008a, 2008g). The percentage figure was up from 2.1% in 2005 (Curtin & Miller, 2010: 123).

ii. Voting behaviour of those on the Māori roll

MMP allows for a more sophisticated expression of preferences than the previous FPP system, in that voters on both rolls are able to take a strategic approach to the way they cast their party and electorate votes. This is reflected in the fact that, with respect to the Māori roll, the Labour Party was the dominant political party by *party vote* while the Māori Party was the dominant political party by *electorate vote* (see Figure 14).

The reason for this difference is likely to be that the electorate vote is actually being used as a party vote by Māori voters. An electorate vote for the Māori Party is in practice delivering a Māori Party MP into the House, in much the same way a zero threshold would operate under the recommendations of the 1986 Royal Commission (see Section 12). We would expect this trend to continue, as it is unlikely the Māori Party could ever achieve the 5% threshold (without putting forward candidates in the general electorates); it is more likely voters will increasingly split their votes, and those on the Māori roll are likely to become increasingly strategic voters.[77] For example, if our understanding is correct, if a voter supports the Māori Party (by giving it their party vote) they are likely to split their vote in 15% of cases (see Figure 15 above), whereas if a voter supports a Māori Party electorate candidate, they are likely to split their vote in 56% of cases (Chief Electoral Office, 2008d, 2008e, 2008f). To explore this trend over time, we suggest statistics on 'split voting by electorate vote' should be made available for all parties.

iii. Influence during the next three years

The implications of the 2008 election results for New Zealanders are two-fold:

- The Māori Party has arguably gained significant influence over public policy. The election result meant that while the Māori Party gained 2.4% of the party vote, it was able to gain 4.1% of the seats in Parliament, and arguably significant influence over public policy. However, to some degree this difference is due to the strategic voting of those on the Māori roll, in that they used their *electorate vote* to elect the Māori Party, and their *party vote* to elect the political party that was seen as the best partner to the Māori Party, as discussed above.
- The majority of the Māori descent population did not use their party vote to support the Māori Party. In 2008, there were 405,430 people of Māori descent enrolled on both rolls.[78] Turnout for the Māori roll was 62.4% (see Table 8, p. 47), therefore if you assume that this was similar for Māori across both rolls, approximately 252,988 votes were cast by voters of Māori descent. Since the Māori Party gained 55,980 party votes (Chief Electoral Office, 2008f), this suggests that, at most, only 22% of the Māori descent population who voted gave their party vote to the Māori Party, meaning that at least 78% voted for a different party.[79]

In 2008, for the Māori Party to gain the same level of influence without a separate Māori roll, it would have needed to pass the 5% threshold, which it currently seems unlikely to do. To do this the party would have needed to win at least 117,828 party votes from the two rolls, significantly more than the 55,980 party votes it gained. To explain the reliance of the Māori Party on the Māori electorate roll, of the 55,980 party votes it gained in 2008, 71% (39,883) were gained from the Māori roll alone.

iv. Implications for the long term

A two-roll MMP system enables a political party to grow and influence policy, not through the party vote, but through a separate electorate vote on the Māori roll. Although a race-based political party is not a new concept (see Working Paper 2010/03: *The Evolution of New Zealand as a Nation: Significant events and legislation 1770–2010* [SFI, 2010c]), the current system arguably may lead to further differences between rolls, and therefore parliamentary representation.

77 In other words, voters will optimise the value of their party vote. In the case above, if the voter on the Māori roll uses their electorate vote to support a minority political party (one likely to sit under the 5% threshold), their party vote would theoretically have no value if it was used to support the same political party. Hence a strategic voter will search out ways to ensure both their votes have value, which would mean supporting an alternative political party that would benefit from receiving their party vote.

78 As at 2008, there were 229,666 Māori on the Māori electoral roll and 175,764 Māori on the general roll (Electoral Commission, 2009a).

79 This calculation assumes that New Zealanders of non-Māori descent did not give their party vote to the Māori Party. However, where non-Māori New Zealanders did give their party vote to the Māori Party, it would result in reducing the 22% and increasing the 78% accordingly. Further, it is important to keep in mind that the party vote was not pursued by Māori Party supporters, as many voters may have used their electorate vote to support the Māori Party, and their party vote to support another political party who could partner with the Māori Party.

Assuming the status quo continues, New Zealand might expect to see the following:

- **More Māori electorate seats in Parliament**
  Based on the current trends, New Zealand might see an eighth electorate seat in the near future.
- **Emergence of a stronger political party based on race**
  The Māori electorate seats have been won by three different political parties since 1996 (see Table 1, p. 27), but in the last two elections a party based on race – the Māori Party – has been the dominant winner of these seats.
- **New political parties based on race**
  Numerous Māori-interest political parties have existed throughout time; hence one can expect other parties to pursue the Māori electorate seats in the future.
- **Barriers to political parties entering Parliament**
  In 2008 the Māori Party and the Labour Party dominated the electorate and party votes respectively in the Māori electorates. It is not clear why the National Party, Jim Anderton's Progressive Party and United Future did not stand candidates in the Māori electorates – whether it was because these parties consider they do not have an electorally significant constituency in these electorates, they do not have sufficient resources to fund a campaign in these electorates or they do not have candidates who wish to stand in these electorates. It should also be noted that the Māori Party did not put forward candidates for the general electorates, meaning barriers may exist on the general roll as well.
- **The Māori Electoral Option may become a significant part of future electoral campaigns**
  The best way for the Māori Party to work toward increasing the number of seats it holds in Parliament is to encourage electors to enrol on the Māori roll. By doing this the Māori Party, in effect, campaigns twice in an effort to influence political outcomes; once during the lead-up to the Māori Electoral Option and once during the lead-up to the election. While we were unable to find evidence of other political parties campaigning around the Māori Electoral Option, this could potentially happen in the future.
- **Electioneering increasingly focused on the particular characteristics of each roll**
  New Zealand may also see the evolution of two new forms of electioneering – one type aimed at electors from the Māori roll, in which two rival 'Māori-interest parties' pursue Māori electorate votes,[80] the other aimed at the leaders of the 'Māori-interest parties', in which two major political parties pursue pre-election agreements (rather than votes). In this case we may end up with two major parties on the Māori roll partnering with two major parties on the general roll. Importantly, however these relationships play out in practice, the common theme is that while the current parliamentary system exists, New Zealand should expect further differences between the rolls. These differences might be expressed in terms of policies being pursued, partners being pursued, electors being pursued, and types of vote being pursued. So what initially started out as a simple idea under FPP is likely to become increasingly complex and unwieldy.

To conclude, if the status quo continues, New Zealand is likely to see more Māori electorate seats, more strategic voting, and perhaps the emergence of new political parties pursuing Māori interests. Therefore in order for parliamentary representation to be effective, all political parties need to work increasingly hard to ensure 'Māori interests' are pursued within their parties and a 'national interest' is pursued in Parliament. However, under our current system, there seems little incentive to do either.

80 For example, the Māori Party and a new party established by one or a number of prominent iwi.

11. Question 7: Are the Māori electorate seats effective?

We found that there has been an ongoing debate about the effectiveness of the seats. Support for the retention of the seats has largely centred on their role as a symbol of te Tiriti, whereas support for their removal has centred on their inability to deliver effective representation for Māori. The strength and diversity of feeling around this issue indicate that any democratic consensus will require an agreed process, supported by accurate, relevant and comprehensive information, and extensive public debate.

We believe that separate Māori electorate seats are unlikely to deliver the optimal parliamentary representation system, and consider more effective mechanisms should be found.

11.1 Exploring the Question

In this section we briefly highlight the key themes relating to separate representation that have previously been put forward publicly.

Before looking at more recent expressions of the debate over separate Māori representation, it is worthwhile to consider two different arguments put forward in Parliament in 1905. During the second reading of the Electoral Act 1905, Minister of Māori Affairs James Carroll argued against separate Māori representation (Department of Justice, 1986: 49–50). His thinking aligns closely with that set out by the Royal Commission on the Electoral System more than eighty years later:

> I do believe that the Natives would be better off if the Māori Representation Act … were repealed … At the present time the whole Native population of the colony is represented by only four members, consequently the representation must be of a restrictive order. But if you make a change in the direction of allowing the Natives to be placed on the general roll, you will have Native interests, especially in the North Island, represented by every member from the districts in which there are Māori constituents, with the exception, possibly of the cities … It does not necessarily mean that there must be a majority of Māoris in a district to insure proper representation for them on the part of their representative. The very fact of Natives being on the roll and exercising their privilege as voters will bring the representative or candidate to attention at once …
>
> (Carroll, quoted in Department of Justice, 1986: 49–50)

In the same debate, Hone Heke defended the seats:

> I say, it is entirely ungenerous on the part of the European community and the European members of this House to raise the question to do away with the Native voice in Parliament … And why? Because the Europeans recognise that the Native population is a large one, and they fear, according to their ways of looking at things, that there is a danger – that instead of having a European Parliament there is a possibility in the near future of the Europeans being controlled by a Native Parliament.
>
> (Heke, quoted in Department of Justice, 1986: 50)

The Department of Justice goes on to note that Heke's statement is of interest in that it 'marks a shift in the Māori attitude towards the Māori seats, from one of indifference to one of determination to retain them as important symbols of their cultural identity, and a means to its survival' (ibid.).

In the following sections we look at more recent thinking. Importantly, what follows is not an in-depth summary of the literature; rather, it identifies some of the ideas and thoughts of prominent thinkers over the past thirty years.

11.1.1 McLeay, 1980

The factors for and against the Māori electorate seats were considered by political scientist Elizabeth McLeay in 1980. Overall McLeay argued that 'theorists of representation have not sufficiently considered the claims of minorities to legislative representation' (McLeay, 1980: 43). The seats have, in her view, achieved a link between the state and Māori, though their effectiveness is limited by the level of acceptance from both the 'political elite' and Māori themselves. Despite this, McLeay considered that 'the seats have attained a symbolic importance that should not be under-emphasized' (ibid.: 61).

McLeay looked at some factors that impeded the full acceptance of the Māori electorate seats, including: the value Western political models place on equality in voting; the fact that preferential treatment of any group of people indicates separate classes of people; the fact that, although indigenous and the largest minority group in New Zealand, Māori are one of many minority groups that might benefit from special treatment; and the fact that Māori voting practices are interpreted by many as indicating a lack of faith in the Māori electorate seats (ibid.: 49–50).

She looked at reasons for the retention of the Māori electorate seats, such as the disparities between Māori and non-Māori, and the lack of political recognition these disparities receive; the validity of bicultural values; the particular attention required to address the social disadvantages Māori face, as well as the need to recognise these disadvantages through structural and political functions (ibid.: 50–51). McLeay also suggested that Māori require representatives whose primary objective is to concentrate on Māori issues and to act as intermediaries between Māori and non-Māori, rather than representatives with split loyalties (ibid.). However, in weighing up the cases for and against the Māori electorate seats, she acknowledged that the complex nature of the debate and the role of the Māori MP means that 'the majority of legislators and almost certainly the majority of New Zealanders fail to understand these arguments and feel that, eventually, the seats must go' (ibid.: 51).

11.1.2 Royal Commission on the Electoral System, 1986

In 1986, the Royal Commissioners reached the view that the system of separate representation under MMP would not be necessary to achieve effective Māori representation (see discussion in Section 3.6 and Figure 5). They concluded that 'the MMP system with a common roll offers what we consider to be optimal conditions for the effective representation of Māori interests' (Royal Commission, 1986: 113). The proposed common-roll MMP system would have no Māori electorate seats, Māori roll or Māori option, but would waive the 4% vote threshold required to gain a share of allocated seats for parties that primarily represented Māori interests, to ensure that such parties could gain representation (ibid.: 101). The perceived advantages and disadvantages of MMP without the Māori electorate seats have already been discussed in Section 3.6.1. Briefly, the advantages are seen as: (i) increased competition and incentives; (ii) increased participation by Māori; (iii) better local representation; (iv) better Māori representation by Māori MPs; (v) a reduction in costs, and (vi) an additional focus on a common interest. The disadvantages identified focused on: (i) the loss of a guaranteed level of representation, and (ii) the lack of a territorial base for Māori MPs.

11.1.3 New Zealand Election Study Survey, 2000

In 2000, the New Zealand Election Study prepared a report for the Electoral Commission on the opinions of New Zealand electors about MMP (NZES, 2000), which included the following questions about separate Māori representation:

> **Question 1. Do you think the future of the Māori seats in Parliament should be decided by Māori, or by all New Zealanders?**
>
> 75 per cent responded 'all New Zealanders', only 20 per cent 'Māori alone' … Māori on the general roll follow the same pattern as other New Zealanders on the issue of who should decide, while Māori roll respondents are only a little more likely to say 'Māori alone'.

Question 2. What do you think should be the future of the Māori seats? Do you think we should get rid of the Māori seats, keep the six we have now, or have more Māori seats?

41 per cent responded that we should keep the present six seats, 40 per cent that we should get rid of them, and 7 per cent that we should have more Māori seats. This indicates reasonable support for the continuation of the status quo, but not for an acknowledgement of a fundamental Māori right to independent representation regardless of the preferences of all New Zealanders … Māori on the general roll are more supportive than others on the general roll, while Māori on the Māori roll are of course most strongly in favour, 50 per cent believing there should be more Māori electorates. (ibid.: 34–35)

The study found that the data indicated 'considerable support for the continued existence of the Māori electorates', and that 'a proposal to abolish them would not have majority support' (ibid.: 35). The question pertaining to the future status of the Māori seats generated similar answers in a survey carried out in 2008, in which 38% of respondents felt that the seats should go, 37.1% thought they should be kept, and 12.5% supported an increase in the number of Māori seats; 12.7% responded that they did not know (Vowles, 2008).

11.1.4 Inquiry into the Review of MMP, 2001

In 2001, the Terms of Reference of the Inquiry into the Review of MMP included the review of provisions of the Electoral Act 1993 that deal with Māori representation. The submissions received by the committee identified nine outstanding issues relating to Māori representation (see Section 3.8). These submissions demonstrated diverse opinions and suggestions of ways forward. As a result, the committee only made two recommendations for the current system of Māori parliamentary representation. These were:

- That there be no waiver of the threshold for representation for parties that represent primarily Māori interests (the status quo to remain)
- There should not be any … additional legislative measures to support or enhance parliamentary representation of tangata whenua, and that this responsibility should rest with individual political parties through their candidate selection procedures (the status quo to remain) (House of Representatives, 2001: 5).

The committee failed to reach consensus or near-consensus on the remaining issues. In particular, the committee noted that it remained divided on the following two points:

- whether the Māori seats should be abolished or retained
- whether the provisions in the Electoral Act 1993 that deal with Māori representation should be entrenched. (ibid.: 5–6)

11.1.5 Electioneering, 2004–2008

New heights of public debate were reached in 2004, when many New Zealanders heard then National Party leader Don Brash's 'Nationhood' speech, which argued for the removal of the 'anachronism' of the Māori electorate seats in Parliament (Brash, 2004).

In response, many Māori leaders voiced their concerns about the possible removal of the seats, and some went as far as proposing additional mechanisms for improving Māori representation, above and beyond those currently in place. For example, the Federation of Māori Authorities suggested:

> It is also a time for Māori to think strategically about their place in the political system and the ideas are coming through, some include:
>
> a. Entrenching the Māori seats so that they can't be abolished at the whim of a simple majority in Parliament. Some may view this as State paternalism in a democratic political system;
>
> - That Māori should be automatically enrolled on the Māori roll with the option to choose to go on the general roll. It is very interesting to note that Māori can only opt to go on the Māori roll every five years, when elections are held every three years; and
> - Understanding the relationship Māori have with the Government in any constitutional reform and advocating for that recognition in any process. (FoMA, 2005)

This debate continued in the lead-up to the 2008 election. Table 9 provides a summary of policy statements regarding the separate Māori electorate seats.

Table 9. Political Party Policies on Māori Electorate Seats, 2001–2009

Political Party	Policy Statement
National Party	'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.' (NZ Govt, 2008: 2) Prior to entering into the relationship of supply and confidence with the Māori Party, National's policy on the seats was to 'begin a constitutional process to abolish the Māori seats once all historic Treaty claims have been settled, which we anticipate will be in 2014'. (National Party, 2008)
Labour Party	Labour 'will continue to support the will of Māori to retain the Māori seats in Parliament, so that fair and inclusive representation is guaranteed'. (Labour Party, 2008: 351) In 2008, Helen Clark explained that Labour's support for the seats did not include entrenchment. Clark stated there was 'obviously no need to entrench them with a Labour government because we're absolutely committed to the seats staying'. (Tahana, 2009)
Green Party	The Green Party supports 'the entrenchment of the Māori seats so that there is guaranteed Māori representation in Parliament'. (Green Party, 2008: 2)
ACT New Zealand	In 2001, ACT stated it would 'press for abolition of Māori seats' (ACT Party, 2001). By April 2008, the party had decided to put up candidates in all seven Māori electorates, 'despite its policy to abolish them' (*Dominion Post*, 2008). In October 2008, prior to the general election, party leader Rodney Hide stated in the 'kingmakers' debate that he would 'support entrenching the Māori seats to put them in line with the general seats'. (TVNZ, 2008)
Māori Party	'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'. (NZ Govt, 2008: 2) Prior to entering into the relationship of confidence and supply with the National Party in November 2008, the Māori Party promoted the entrenchment of section 45 of the Electoral Act (Māori Party, 2008). Tariana Turia stated in 2009 that the party would support the seats 'for as long as tangata whenua see these seats as synonymous with the indigenous voice, and a legitimate means of meeting the Crown's treaty obligations'. (Turia, 2009)
Jim Anderton's Progressive Party	No policy statement was found.
United Future	United Future's policy is to 'hold an early referendum on the future of the Māori seats in Parliament, as United Future believes that no ethnicity should have special privilege above others in our proportional electoral system'. (United Future, n.d.) In 2005, Peter Dunne criticised the National Party's plan to abolish the seats. He stated that 'United Future does believe the Māori seats should go – but we don't support a crash-through-or-burn approach to an important and sensitive constitutional issue'. (United Future, 2005)
New Zealand First Party	New Zealand First is also in favour of abolishing the separate Māori seats. The party's policy on the issue is that 'while New Zealand First supports the proposition of one single franchise … none-the-less the decision to abolish Māori seats is a decision for the people to make'. (NZ First, n.d.) Interestingly, New Zealand First won all five Māori electorate seats in the 1996 election. (Chief Electoral Office, 1996)

11.1.6 Te Papa Treaty Debates, 2005–2010

The annual Te Papa Treaty Debates (beginning in 2005) have discussed many issues relating to Māori representation. In 2009, one debate centred solely on the future of the Māori electorate seats. After Derek Fox (a journalist and Māori Party candidate) and Professor Philip Joseph (from the University of Canterbury School of Law) had debated the issue, the Chair concluded that the future of the Māori electorate seats remained a hotly contested issue (Te Papa Tongarewa, 2009).

During the debate, Fox argued for the retention of the Māori electorate seats, stating that 59% of New Zealanders view te Tiriti as the country's founding document; that the Māori electorate seats enhance democracy and provide an independent voice; that the removal of the seats would worsen the low turnout of Māori voters; that the Crown's attempt to provide equal rights is not producing equal outcomes (i.e. substantive representation); that the Māori electorate seats are the only place where Māori make the decisions (i.e. formalistic representation), and finally that the seats should only be removed once the percentage of seats in Parliament held by Māori is equal to the percentage of Māori in the total New Zealand population (i.e. descriptive representation). Fox sees the seats as an important symbol for Māori (i.e. symbolic representation), and suggests that to remove this symbol would be to remove part of that which it symbolises – the partnership between the Crown and Māori (Te Papa Tongarewa, 2009).

Joseph's rebuttal was much in line with a paper he wrote for the New Zealand Business Roundtable (Joseph, 2008), in which he explored the effectiveness of the Māori electorate seats. Joseph proposed the abolition of the Māori seats based on the concept that they are unnecessary for the effective representation of Māori in Parliament and, in fact, are likely to result in the over-representation of Māori in the near future (ibid.: 5, 11–12). He believes, in line with the findings of the Royal Commission in 1986, that the removal of the seats would result in an acceleration of Māori MPs holding general seats, and that it would encourage all political parties to promote Māori interests (ibid.: 13). His argument for the abolition of the seats centred on the following four factors: the seats are anachronistic; they institutionalise Māori separatism; they represent a form of reverse discrimination, and they threaten to manipulate MMP electoral outcomes through creating 'overhang' (ibid.: 21–22). Joseph argued that the Māori electorate seats are not a right under te Tiriti (ibid.: 17–18) and that they should not be entrenched (ibid.: 19). However, he also recognised that the removal of the Māori seats would elicit a negative reaction from many Māori, including Māori Party members and supporters (ibid.: 21).

11.1.7 Sullivan, 2010

In 2010, Ann Sullivan, Associate Professor of Māori Studies at the University of Auckland, put forward her thoughts as to why this tension still remains. Sullivan noted that democracy is a contested concept underpinned by two notions – equality and individual liberty. The first of these is based on the inference that everybody is the same, and therefore is in line with the notion of 'one person, one vote'. The second is often equated with liberalism, and supports the notion of the 'right to be different'. Sullivan concludes that those who object to dedicated Māori representation do so because of a clash between ideas of achieving equality and the desirability of recognising difference (Sullivan, 2010: 257–264).

11.2 Opinion

Although we found some evidence-based discussion that attempted to assess the effectiveness of separate Māori representation (as noted above), we had expected to find a great deal more published research and opinion. So while debate about the Māori electorate seats has been occurring for many years, it seems as if the discussion is so complex and the final decision so contentious that no individual or government has been able to marshal a totally convincing argument for either the retention or the abolition of the seats.

This is likely to be due to the symbolic nature the seats have acquired – as it is difficult to argue against a symbol, since symbols seem to rest on emotional responses rather than rational and justifiable criteria. Further, as Pitkin suggests, if the analysis starts with symbols, the whole concept becomes skewed in the direction of symbolising (1972: 98) (see discussion in Section 2.4.3). This may explain why the debate has focused on a binary outcome – either for or against the seats – rather than taking the perspective of finding an optimal form of parliamentary representation for New Zealand based on substantive representation. In other words, we have lost the ability to discuss this issue rationally in terms of effectiveness with regard to the goals of Māori New Zealanders, which is explored in Report 7 (SFI, 2010a), and the outcomes for all New Zealanders.

For the purposes of this discussion, we focus on (i) the effectiveness of the Māori electorate seats, (ii) the complexity they add to the electoral process, and (iii) their symbolism. Importantly, this is not a discussion about whether other forms of minority representation are valid, just whether this form, the separate Māori electorate seats, should continue in its current form. The following discussion attempts to provide clarity to the debate in terms of the effectiveness of Māori electorate MPs, in order to work towards an optimal form of parliamentary representation for New Zealand. This discussion leads to our proposal for a new parliamentary representation system in Section 15 (see Figure 18, page 84).

In order for the separate Māori electorate seats to be considered holistically effective, the seats need to be effective for both New Zealanders on the Māori roll and those on the general roll. A lack of representation may lead to political instability, therefore all New Zealanders have a vested interest in minority interests being well represented in Parliament. It is necessary to discuss the effectiveness of separate Māori electorate seats in terms of representation of both the Māori electoral population and the national population.

i. Representation of the Māori electoral population

In order to be effective, representation must be positive for Māori. For the purposes of this discussion we draw on the Royal Commissioners' report, which laid out five principles of Māori representation:

a. Māori interests should be represented in Parliament by Māori MPs.

b. Māori electors ought to have an effective vote competed for by all political parties.

c. All MPs should be accountable in some degree to Māori electors.

d. Māori MPs ought to be democratically accountable to Māori electors.

e. Candidate selection procedures of the political parties should be organised in such a way as to permit the Māori people a voice in the decision of who the candidates are to be. (Royal Commission, 1986: 88)

We set out to use this framework to test the current situation with regard to Māori-electorate MPs, posing the following questions in response to these issues.

a. Are Māori interests represented in Parliament by the seven Māori-electorate MPs? Unfortunately, we were unable to answer this question, due to a lack of evidence-based research.

b. Are Māori electorate seats competed for by all parties? We believe the answer to this question is no. Since 2004, the National Party has not put forward candidates for the Māori electorate seats (Chief Electoral Office, 2005d, 2008e, 2008f) on the basis that 'National has a policy to wind up the Māori seats' (National Party, 2004). Interestingly, in the 2008 election, the Māori Party did not put forward candidates in general electorates (Chief Electoral Office, 2008f).

c. Are the seven Māori-electorate MPs accountable to Māori electors? Again, the lack of evidence-based research makes it difficult to answer this question. However, we do note that the issue of accountability was raised during the 1984 National Hui on the Treaty of Waitangi, where it was suggested that there was a need to improve the monitoring of the political performance of Māori parliamentarians acting on behalf of Māori people (Levine & Vasil, 1985: 183–185). We found no other documents that raised this concern, but suspect it remains an issue, at least in part as a result of the large geographical areas Māori-electorate MPs are expected to cover.

ii. Representation of the national population

The Commissioners noted that the number of MPs considered necessary to run the House of Representatives should be assessed in terms of the 'various individual and collective functions of MPs and the House of Representatives':

a. to represent constituents;

b. to represent the nation as a whole;

c. to provide an effective Government; and

d. to enact legislation and scrutinise the actions of the executive. (Royal Commission, 1986: 117)

Again, we have posed questions based on this framework to test the current situation for Māori-electorate MPs.

a. Are the seven Māori-electorate MPs required to represent the nation as a whole? We believe the answer to this question is no. The discussion in Section 5 highlights the fact that currently the Oath of Allegiance only requires allegiance to the Queen, not to the people of New Zealand. However, members of four minor parties – ACT, the Green Party, the Māori Party and United Future – have created and signed a code of conduct that states, among other things:

> We accept that we have a duty to act in the interests of the nation as a whole, the House, our constituents, and the public … The purpose of the Code of Conduct is to assist members in the discharge of their obligations to the House, to their constituents and the public. (Office of the Speaker, 2007)

b. Are the seven Māori-electorate MPs improving the effectiveness of government? Once again, the lack of evidence-based research makes it difficult to answer this question. However, the effectiveness of these MPs is questionable. For example, it is interesting to note that in recent years public protests have raised awareness of Māori grievances, suggesting that the option of pursuing issues solely through the Māori-electorate MPs, or even Māori MPs in general, has not been as effective as originally hoped.[81] From our perspective, there are at least three possible reasons for this:

1. Māori-electorate MPs are not listening to their constituents;
2. Māori-electorate MPs are not able to voice their constituents' concerns; and
3. Māori-electorate MPs who voice constituents' concerns do not have enough influence in the House to have those concerns acted on.

The lack of a framework to assess the various individual and collective functions of each type of MP in the House of Representatives means that New Zealand misses the opportunity to gain clarity over the effectiveness of not just Māori-electorate MPs, but also general and list MPs. Without such as assessment, there is no way to benchmark progress and lift the quality of representation.

Democracy needs to be responsive but stable to deal effectively with future uncertainties, challenges and opportunities. Central to this is the role of the informed citizen who actively engages in the democratic process. We consider that the current system does not facilitate an optimal level of engagement, and that the Māori electorate seats add a further layer of complexity. This does not assist in achieving certainty around democratic process and the representativeness of outcomes. Furthermore, a system in which the boundaries of Māori electorate seats are laid over those of the general electorate seats does not create clear lines of responsibility or accountability between constituents and MPs.

Central to the achievement of representative outcomes is an electoral process that all citizens are able and motivated to engage with; therefore it is essential to gain an understanding of the barriers to electoral participation. We believe that appropriate engagement and improved availability of information are necessary to overcome these barriers.

Frequently the debate over the Māori electoral seats centres on separate representation being an effective symbol of te Tiriti. In our view, there are many symbols of te Tiriti, and the seats' symbolism should not be considered to a greater degree than their function. New Zealand's system of representation should be assessed first and foremost in terms of its ability to deliver effective representation. This country does not need a symbol of te Tiriti that distorts or limits Māori representation, but one that embodies partnership and delivers an effective voice in Parliament.

To conclude, the concepts of equality and liberty (discussed by Sullivan above) and the four views on representation (discussed in Section 2.4.3) are both useful in explaining the differences of opinion over the Māori electorate seats. How different New Zealanders, and the nation collectively, give weight to the values of equality and liberty has implications for how we understand the effectiveness of representation achieved through Māori-electorate MPs. For example, to what extent is it acceptable to have different rules or treatment for different sub-populations, such as Māori, in order to achieve equality of outcomes?

81 Two big drivers of change for Māori in the last forty years have been the public protests about unresolved Treaty grievances (which led to the establishment of the Waitangi Tribunal in 1975) and the controversy surrounding the Foreshore and Seabed Act 2004. Although the Bill was eventually passed, it is expected to be repealed – see footnote 46. The Bill was the catalyst for the establishment of the Māori Party in 2004. See also discussion on the Waitangi Tribunal and the foreshore and seabed controversy in Report 7, *Exploring the Shared Goals of Māori: Working towards a National Sustainable Development Strategy* (SFI, 2010a).

Current strategies to engage with Māori kanohi ki te kanohi with the intention of improving enrolment and voter turnout (for example, see Research NZ, 2006: 128) could be considered an example of where different treatment to achieve equality of outcomes is acceptable. However, one of our overriding challenges is for government to develop a clear and transparent rationale in support of initiatives that attempt to address social inequality, and clear and transparent milestones that indicate when that support can be removed.

In the long term, it is in the interests of all New Zealanders that all groups in society are effectively and fairly represented, and that one group should not be disadvantaged through the representation of another. If New Zealand does not have a healthy, inclusive and open democracy, all those who live here will ultimately be disadvantaged.

In order to assess the effectiveness of the Māori electorate seats we draw on the four views of representation (as put forward by Pitkin; see Section 2.4.3). Table 10 outlines our observations.

Table 10 . Assessing the Māori Electorate Seats in terms of the Four Views of Representation

Type of Representation	Comments
Formalistic	The Māori electorate seats are considered to be formalistic, to the extent they are an institutional arrangement created to give representatives authority to act. However, we found the current system does not provide a framework for constituents to hold representatives accountable, apart from being voted out at the next election (as per the general electorates).
Descriptive	The Māori electorate seats are considered to be descriptive to the extent that they aim to ensure the Māori voice in the general population is reflected in Parliament. However, we found that they aimed to provide a minimal level of representation, based on a separate roll rather than a proportion of the population.
Symbolic	The Māori electorate seats are considered to be symbolic, to the extent their existence is considered to symbolise te Tiriti. However, we found they were not considered to be a symbol of parliamentary representation.
Substantive	The Māori electorate seats are considered to be substantive, to the extent that the Māori voice is both heard and acted upon. However, we found there were few effective mechanisms to measure that this voice was heard and that goals were achieved.

We believe that separate Māori electorate seats are unlikely to deliver an optimal parliamentary representation system and that other options should be explored. The disparity of views is a problem, and one that will not be resolved unless New Zealanders work to understand this diversity of opinion and find common ground. This demands quality processes, independent evidence and consensus.

Further, this level of disparity should not be passed on to future generations simply because it is challenging for the current generation to resolve. Risks exist even if the status quo continues. The drivers supporting the status quo appear to be either (i) a desire for peaceful short-term co-existence, or (ii) a paternal response that implies the majority will look after the minority. Instead we would prefer to see New Zealanders work together to develop a system that will give all citizens an equal opportunity to participate in the electoral process and equal rights to be represented effectively in Parliament.

There are also alternative methods of ensuring a minimum level of representation, such as reducing or waiving the proportional threshold for parties primarily representing Māori interests, or introducing a guaranteed percentage of representation (see discussion in Section 15). However, before exploring the alternative options, it is important to have an understanding of what impact the removal of the Māori electorate seats would have on the current system of parliamentary representation if the Royal Commissioners' recommendations had been implemented (see Question 8).

Only when there is greater clarity as to the risks, costs and benefits (real or perceived) of all available mechanisms can an informed discussion of potential alternatives take place.

12. Question 8: If the 1986 Royal Commission's proposal had been fully implemented, would Māori representation be more effective today?

We found that the 1986 Royal Commission on the Electoral System presented a package of recommendations that were thoroughly developed and supported by sound principles.

We believe that the proposal presented in 1986 remains relevant, and that if the full package had been enacted in 1993, Māori interests would be better represented today.

12.1 Exploring the Question

The report of the Royal Commission on the Electoral System is over 300 pages long, and the reasons for its recommendations are discussed in detail. Figure 16 provides a diagrammatical representation of the key recommendations relevant to this report. In 2009, some 23 years after the 1986 Royal Commission, Tariana Turia, co-leader of the Māori Party, reflected on progress by stating:

> The Royal Commission on the Electoral System in 1986 argued that the representation of the Māori seats in practice, at that time, was far less than it deserved. **The review described representation in the Māori seats as ineffective at actually protecting Māori interests**, suggesting also that often Māori MPs copped the blame for unpopular policies. As a result of these findings, the Commission proposed to abolish the seats. But they underestimated the **symbolic power** that Māori themselves saw in these seats; a power that has been latent for too long. And so their conclusions are worth repeating for the record, 'The Māori seats have nevertheless come to be regarded by Māori as an important concession to, and the **principal expression of, their constitutional position under the Treaty of Waitangi**'. An expression that we in the Māori Party give our complete commitment to supporting, for as long as tangata whenua see these seats as synonymous with the indigenous voice, and a legitimate means of meeting the Crown's treaty obligations. [Bold added] (Turia, 2009)

Clearly the function and symbolism of the Māori electorate seats will be difficult to untangle. It is for this reason that Turia's statement above is so useful, in that it recognises symbolic representation as 'the principal expression of, [the Māori] constitutional position under the Treaty of Waitangi'.

12.2 Opinion

In order to understand the basis upon which the Commissioners developed the package of recommendations, we review their five principles of Māori representation in terms of the four views of representation described in Section 2.4.3. From our perspective (as indicated by the square brackets below), four of the principles were *formalistic* and one was *descriptive*, but none of the five could be considered *symbolic* or *substantive*:

a. Māori interests should be represented in Parliament by Māori MPs [descriptive]

b. Māori electors ought to have an effective vote competed for by all political parties [formalistic]

c. All MPs should be accountable in some degree to Māori electors [formalistic]

d. Māori MPs ought to be democratically accountable to Māori electors [formalistic]

e. Candidate selection procedures of the political parties should be organised in such a way as to permit the Māori people a voice in the decision of who the candidates are to be. [formalistic] (Royal Commission, 1986: 88)

However, this is not the full picture. Notably, before presenting these principles, the Commissioners acknowledged 'the symbolic significance of the Māori seats' (Royal Commission, 1986: 85), showing an understanding of symbolic representation, and discussed 'Māori political interests' in terms of influence on public policy (ibid.: 86), reflecting an understanding of substantive representation. Therefore only after acknowledging all four views of effective representation did the Commissioners decide to focus on the formalistic and descriptive forms. In other words, by focusing on these two, the Commissioners believed that they were putting forward the system most likely to achieve optimal representation for Māori. This is not to say the other two views of representation were not considered – they clearly were. Rather, perhaps the Commissioners believed that creating a system built on effective formalistic and descriptive representation would ultimately deliver effective symbolic and substantive representation.

The members of the 1986 Royal Commission on the Electoral System considered that the change to MMP did not require the Māori electorate seats to be carried over (see Figure 16) and that the goal of effective Māori representation could be achieved under a common roll with a waived threshold for parties that primarily represented Māori interests. They believed that:

> In the event that Māori were to become dissatisfied with the performance of the existing parties, their vote, if it were organised, could be marshalled behind a Māori party. (Royal Commission, 1986: 99)

Therefore, in the context of the abolition of the Māori electorate seats, the Royal Commission recommended a 4% threshold that could be waived for 'parties primarily representing Māori interests' (ibid.: 101). However, in the 1993 Department of Justice report on the Electoral Reform Bill, officials considered that 'the concept of a party "primarily representing Māori interests" is problematic' due to it being subjective and difficult to define, as cited in the *Report of the MMP Committee: Inquiry into the review of MMP* (House of Representatives, 2001: 26).

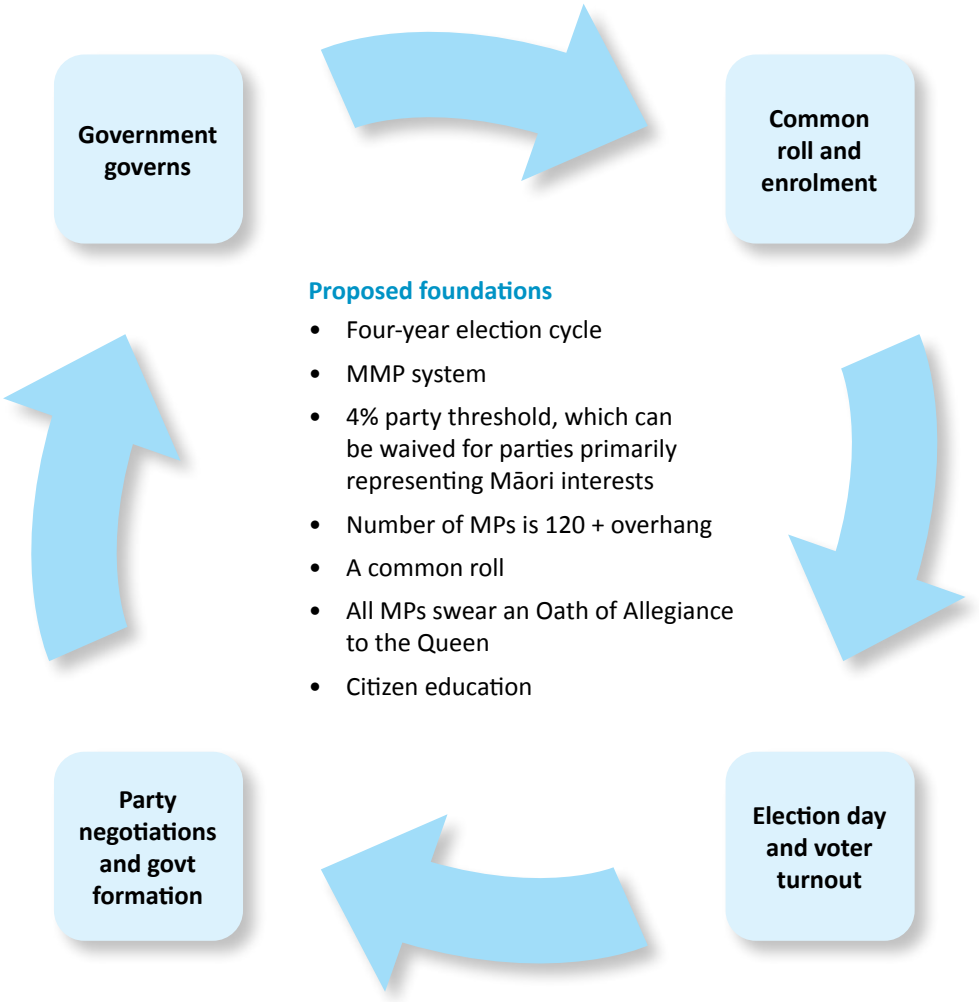
There are arguments both for and against a threshold. Generally speaking, arguments in favour of a threshold (or for a higher threshold) highlight the greater stability achieved through greater ease of forming governments and passing legislation, and the elimination of more extreme elements. Arguments against a threshold (or for a lower threshold) suggest this would achieve more democratic and representative outcomes, more enfranchised electors and less distortion of voting behaviour, and would allow new parties to form (Bishop, 2006).

Interestingly, the current threshold of 5% for all political parties is relatively high in comparison with other MMP systems internationally (House of Representatives, 2001: 49).[82]

82 The threshold is 2% in Denmark, 1.5% in Israel and 4% in both Norway and Sweden (House of Representatives, 2001: 49).

12. QUESTION 8: IF THE 1986 ROYAL COMMISSION'S PROPOSAL HAD BEEN FULLY IMPLEMENTED, WOULD MĀORI REPRESENTATION BE MORE EFFECTIVE TODAY?

Figure 16. The Parliamentary Representation System – the Royal Commission's Proposal, 1986



The impact of removing the Māori electorate seats and waiving the threshold for parties primarily representing Māori interests (as outlined in Figure 16) would likely be three-fold.

Firstly, in the 2008 election, the Māori Party would have gained four list seats in the House of Representatives (rather than no list seats if the threshold stayed at 5% for all parties).[83] This of course assumes that the Māori Party is considered to be representing 'primarily Māori interests'.[84]

Secondly, if the recommendations were implemented, the threshold would have been set at 4% for those parties not pursuing primarily Māori interests (rather than 5%), which means that in the 2008 election the New Zealand First Party would have crossed the threshold and gained five seats in Parliament.[85] Taking into account statements in the media by New Zealand First candidates, this would have delivered a further two Māori MPs in the House of Representatives, raising the total number of Māori MPs by one. Importantly, not only would the number of Māori MPs have increased, but they would have been more evenly distributed across all political parties, ensuring wider debate on Māori issues. This would also reduce the likelihood of, or need for, one political party developing a race-centred perspective. It is critical for nation-building that all views are heard, and that no one view is able to exert undue influence over others.

83 See Appendix 4.

84 The Royal Commissioners stated: 'We have suggested the 4% [implemented as 5%] threshold be waived for parties primarily representing Māori interests whereas other parties would have to win that proportion of the list vote or at least 1 constituency seat in order to be entitled to any list seats.' (Royal Commission, 1986: 101)

85 See Appendix 4.

A third impact, although of less significance, is the saving of public funds. Under this system there would be no need to administer the Māori roll and complete the additional calculations of the Māori electoral population.

The Royal Commissioners considered that under their proposed system all political parties would be competing to represent Māori interests, resulting in Māori MPs being selected for 'high-list positions' and 'winnable constituencies' (Royal Commission, 1986: 102). It is our belief that the Commissioners were right, that with the removal of the Māori electorate seats and the waiving of the threshold for parties primarily representing Māori interests, Māori political participation would increase and representation would become more effective as Māori votes would become 'electorally significant to all parties' (ibid.: 101).

The table in Appendix 4 (Option 3) shows how the Royal Commissioners' recommendations might have altered the allocation of seats in the House of Representatives following the 2008 election. There are some assumptions underlying this process, which are discussed in more detail in Working Paper 2010/04, *The 2008 Election: Reviewing seat allocations without the Māori electorate seats* (SFI, 2010d). The key assumption is that we expect voting behaviour would be different under the system recommended by the Royal Commissioners, in that electors who had previously been on the Māori roll would have a greater incentive to give their party vote to the Māori Party than formerly. For example, if we assumed the support gained by the Māori Party for the Māori electorate seats (76,836: 2008) was reflected in the party vote, the Māori Party may have gained five list seats.[86] This outcome suggests that although the Māori Party may have gained the same number of seats in the House under the existing system and the Commissioners' proposed system, the latter may actually have delivered a more 'representative' outcome, since representation of Māori would be a higher priority across all political parties. Furthermore, this option could also create an environment where parties representing Māori interests could more effectively campaign to all New Zealand citizens, not just those on the Māori roll, and could possibly develop wider political support.

To conclude, effective representation of constituents is complex and the degree to which it is achieved depends on one's viewpoint. The discussion above highlights the breadth and depth of thinking undertaken by the Commissioners, and the way in which they attempted to design a democratic system that would ensure effective representation for Māori. From our perspective, their foresight was correct, and as such, their package of recommendations is worth reconsidering today.

86 See Appendix 4.

13. Question 9: What are the relationships between separate parliamentary representation, te Tiriti and the constitution?

We found that separate representation for Māori has become a symbol of te Tiriti, even though te Tiriti does not formally bind New Zealand to this particular model of parliamentary representation. The importance of te Tiriti as one of New Zealand's founding documents is threatened by the uncodified status of New Zealand's constitution.

We believe that separate representation should be assessed in terms of effectiveness in practice, as distinct from its role as a symbol of te Tiriti. The formal links between te Tiriti and the constitution should be clarified, and a work programme undertaken to improve the quality of our constitution.

13.1 Exploring the Question

This question is complex, and requires accurate information, transparent processes and careful dialogue in order to develop an agreed way forward. The question is discussed here in three separate but linked sub-questions: (i) Is separate parliamentary representation guaranteed under te Tiriti o Waitangi? (ii) Is separate parliamentary representation a symbol of te Tiriti o Waitangi? and (iii) Is te Tiriti formally part of our constitution?

13.1.1 Is separate parliamentary representation guaranteed under te Tiriti o Waitangi?

As discussed in Section 3.2, in 1840 public power was shared between the British Crown and Māori, however the terms on which that shared power was exercised 'were unspecified both in the Treaty and in reality' (Palmer, 2008: 79). Under te Tiriti, Māori ceded kāwanatanga (Māori text) or sovereignty (English text) to the Crown (Article 1); Māori were guaranteed tino rangatiratanga (Māori text) or 'full, exclusive and undisturbed possession' (English text) over lands, villages, properties and treasures (Article 2), and the protection and rights of the Queen's subjects (Article 3).[87] There is a great deal of debate over what was intended by the different terms, but there was no guarantee of separate representation under te Tiriti and the Māori electorate seats were established twenty-seven years later for reasons not related to te Tiriti (see discussion in Section 3.4).

Interestingly, by the 1960s and 70s, Māori politics were less focused on te Tiriti than debates are currently. Historian James Belich notes that early generations of Māori activists were initially undecided about the significance of te Tiriti (Belich, 2001: 478). As young Māori activists became more vocal in the 1960s, they challenged the complacency towards the disadvantaged position of Māori that was exhibited by both Māori and non-Māori leaders, and this dissatisfaction eventually became focused on te Tiriti. According to Professor Andrew Sharp of the University of Auckland's Department of Political Studies, by the mid-1980s most Māori had left behind any notion that te Tiriti was 'a fraud', appealing to it rather as a standard of justice between Māori and the Crown (Sharp, 2005: 308).

By 1994, the *Māori Electoral Option Report* had commented:

> In constitutional terms this [the broader principles of the Treaty] could be seen as entitling Māori to a measure of autonomy, but not full independence outside the nation state that they helped to create in signing the Treaty. This qualified autonomy can take various forms, including separate Māori representation in the New Zealand Parliament. (Waitangi Tribunal, 1994b: 2)

Further, the Tribunal found that:

> … the Crown is under a Treaty obligation actively to protect Māori citizenship rights and in particular existing Māori rights to political representation conferred under the Electoral Act 1993. This duty of protection arises from the Treaty generally and in particular from the provisions of Article 3. (Waitangi Tribunal, 1994c: 1).

87 Full texts of the Treaty in both English and Māori are available on the Ministry for Culture and Heritage's website (MCH, 2007a).

In recent years the concepts of separate Māori representation and te Tiriti have become increasingly intertwined, and many New Zealanders now see the Māori electorate seats as synonymous with te Tiriti. As such, the role of separate representation as a symbol, and the relationship between te Tiriti and the constitution, are increasingly relevant but also increasingly complex. We discuss each of these in turn.

13.1.2 Is separate parliamentary representation a symbol of te Tiriti o Waitangi?

While the Royal Commission on the Electoral System acknowledged that the 'Māori seats may well be the principal symbol of Government's recognition of the Māori people's special standing' (Royal Commission, 1986: 109), the Commissioners made it clear that the seats were not, and never had been, 'an appropriate means of securing the Māori constitutional position' (ibid.: 110). However, this view was not shared. In 1993, Justice Edward Taihakurei Durie stated:

> Like the Treaty of Waitangi, the Māori Parliamentary seats stand as an enduring symbol of their constitutional status – and historical statements of principle, like symbols, are essential tools in rebuilding our national identity. (Durie, cited in Katene, 2010: 95)

As noted in Section 12.1, Tariana Turia stated in 2009 that she and the Māori Party believed the Royal Commission had 'underestimated the symbolic power that Māori themselves saw in these seats; a power that has been latent for too long' (Turia, 2009). Turia went on to pledge the Māori Party's support for the seats 'for as long as tangata whenua see these seats as synonymous with the indigenous voice, and a legitimate means of meeting the Crown's Treaty obligations' (ibid.).

13.1.3 Is te Tiriti formally part of our constitution?

Treaty of Waitangi historian Claudia Orange notes that Hobson knew that a number of leading chiefs had not signed te Tiriti,[88] but did not mention this fact to the Colonial Office in Britain (Orange, 2004: 41). The question remains whether the British would have pursued this proclamation had they known the full situation. Secondly, when Hobson proclaimed British sovereignty over all of New Zealand in 1840, it was only 'over the North Island on the basis of cession through the Treaty of Waitangi' (the southern islands were by 'right of discovery')(MCH, 2009b). So in 1840, arguably, te Tiriti only formed part of New Zealand's constitution in terms of the North Island. As quoted previously, historian Matthew Palmer put it this way: 'the reality of New Zealand's constitution in 1840 was that public power was shared between the British Crown and Māori', but the terms on which that shared power was exercised 'were unspecified *both* in the Treaty and in reality' (Palmer, 2008: 79).

Appendix 5 sets out the main features of New Zealand's constitution in 2010,[89] of which the principal formal statement is the Constitution Act 1986 (Governor General, n.d.). The Act 'recognises that the Queen – the Sovereign in right of New Zealand – is the Head of State of New Zealand, and that the Governor-General appointed by her is her representative in New Zealand' (ibid.).

Our constitution is, by international standards, incredibly fluid, in that it is a mix of documents, legal decisions and practices. New Zealand is one of only three countries that do not have a full, entrenched, written constitution (the others are Britain and Israel) (NZ Govt, 2004: 1). The status of te Tiriti within the constitution remains confusing and complex.[90] Sir Geoffrey Palmer, president of the Law Commission, wrote in 1997:

> The Treaty of Waitangi's place in Aotearoa's constitutional and legal system is not yet defined. It is half out and half in the legal system, depending on the degree to which the principles of the treaty are contained in statutes passed by Parliament. (Palmer, 1997: 312)

88 Reasons for signing were varied, as were reasons for not signing. It is noted that many chiefs did not sign out of a desire to retain full control over their affairs or because they were not given the chance; 'no meetings were held from Wanganui to Mokau, and most of the Hawke's Bay and Wairarapa chiefs were not invited to sign' (Orange, 2004: 41–43).

89 A constitution is about public power, in that it 'describes and establishes the major institutions of government, states their principal powers, and regulates the exercise of those powers in a broad way' (Governor General, n.d.).

90 'The process of treating, and the subsequent agreements signed throughout 1840, were important from a prudential, even ethical or moral, point of view, but they did not *constitute* the new political and legal system that created a people subject to law ... The Treaty process was not constitutive' (Sharp, 2005: 310–311). Sharp considers that New Zealand has a triple mix of constitutional ethics, in that it has legal (or official) constitutionalism; Treaty (or Māori) constitutionalism, and whakapapa (kin-based) constitutionalism – of which the latter is proposed mostly in the name of iwi and hapū.

13. QUESTION 9: WHAT ARE THE RELATIONSHIPS BETWEEN SEPARATE PARLIAMENTARY REPRESENTATION, TE TIRITI AND THE CONSTITUTION?

Many New Zealanders believe that te Tiriti forms part of this country's broader constitution. The *Cabinet Manual* (DPMC, 2008) lists, in addition to the brief Constitution Act 1986, six sources of the constitution, of which te Tiriti (ibid.: 2) is the fifth; see text in Appendix 5. Thus, while the *Manual* acknowledges that te Tiriti has a role, the ideas expressed within the text are not consistent with the concept of te Tiriti being the founding document of New Zealand.

While the ambiguity of te Tiriti's position in New Zealand's constitutional law has created a void in terms of the rights of Māori, the inclusion of its principles within multiple pieces of legislation has to some extent recognised te Tiriti in case law. Since te Tiriti was signed in 1840, its role has continually been studied, discussed and debated by all sectors of society – not just in relation to our nation's past, but also with regard to its long-term future. Importantly, the 2005 *Inquiry to Review New Zealand's Existing Constitutional Arrangements* noted that:

> The issues surrounding the constitutional impact of the Treaty are so unclear, contested, and socially significant, that it seems likely that anything but the most minor and technical constitutional change would require deliberate effort to engage with hapū and iwi as part of the process of public debate. (House of Representatives, 2005: 23)

Before reaching any useful conclusions about te Tiriti's place in relation to New Zealand's constitution, it is appropriate to understand how others see the current constitution. Former New Zealand Prime Minister (1989–1990) and current President of the Law Commission Sir Geoffrey Palmer believes a written constitution would bring together the various elements of our existing arrangements. To this end he has prepared a draft written constitution,[91] based on the New Zealand Constitution Act 1986 together with The New Zealand Bill of Rights Act 1990 and the Treaty of Waitangi, as an appendix in his book *Bridled Power: New Zealand government under MMP* (Palmer, 1997: 314, 312, 333).

Another former Prime Minister, Mike Moore, believes that it is timely to reconsider the quality of our constitution:

> I once opposed having a constitution because of our European traditions and enlightenment values, which we reject at our peril. Now I'm for change because we are eroding these age-old principles. The present direction is visionless, dangerously ad hoc, short-term, and confusing. Democracy is about who runs the country. A constitution is about the limits of Government. Constitutional change ought not to be rushed or hurried, and only to be entered into after deliberate, detailed and sober consideration, consultation and reflection … New Zealand's system is not in a desperate state of disrepute or disrepair – it's not broken. But it could be further damaged by incremental changes. (Moore, 2008)

Most recently Simon Upton, a former cabinet minister, has entered the debate. He suggests that any future constitutional review should primarily focus on workable institutions that can cope with whatever accommodations New Zealand may have to make in a world 'shorn of Western hegemony'. Upton questions what kind of constitutional framework would enable improvisation and negotiation – what he calls 'constitutional plumbing' (Upton, 2010).

Overall, there appears to be an emerging imperative to put in place a constitutional framework capable of meeting the needs of all New Zealanders in the medium term. This point has not been lost on the Labour Party,[92] the Māori Party or the National Party,[93] each having indicated some commitment to exploring the idea of constitutional change for New Zealand.

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91 The 2005 *Inquiry to Review New Zealand's Existing Constitutional Arrangements* made the distinction between written and unwritten, and, more importantly in its eyes, codified and uncodified, constitutions (House of Representatives, 2005: 7, 83–85). A codified constitution enshrines societal consensus as to its content; it usually centres on a single document, is 'entrenched' and fully legally enforceable, and contains mandatory reform procedures (ibid.: 84).

92 It is interesting to note that in 2003 Helen Clark, the Labour Prime Minister at the time, recommended that the terms of reference for the Select Committee established to conduct an inquiry into the New Zealand constitution should focus on process rather than substantive reform, stating that 'given that a constitution reflects a country's national identity, this inquiry needs to be approached with care. Any change is likely to require a lot of time, public involvement, education and discussion. The focus of the Committee's review reflects this need for a measured approach' (NZ Govt, 2004: 2, 5). Clark also recommended that the process should include representation from all those parties in Parliament that wished to participate (ibid.: 2). The Committee's findings were presented in the 2005 *Inquiry to review New Zealand's Existing Constitutional Arrangements* (House of Representatives, 2005).

93 See Section 4.2, which discusses the National Party/Māori Party agreement for the proposed 'establishment (including its composition and terms of reference) by no later than early 2010 of a group to consider constitutional issues including Māori representation' (NZ Govt, 2008: 2).

13.2 Opinion

Below is a summary of our thinking.

13.2.1 Is separate parliamentary representation guaranteed under te Tiriti o Waitangi?

In 1840, the British Crown declared in te Tiriti o Waitangi that it would ensure qualified autonomy within the nation state (Articles 1 and 2) and protect Māori citizenship rights (Article 3). It is clear that te Tiriti does guarantee the right to effective representation, however separate parliamentary representation, in the sense of Māori electorate seats, is not guaranteed.

13.2.2 Is separate parliamentary representation a symbol of te Tiriti o Waitangi?

Firstly, as outlined above, there exists an important link between parliamentary representation and te Tiriti. Effective parliamentary representation is not only an expression of the values contained in te Tiriti but also an avenue through which they can be better achieved within the framework of the nation-state. Therefore, if effective parliamentary representation is not developed, progress towards achieving those values of te Tiriti will be slow.

Secondly, it is vital to decouple the achievement of the goal from the importance of the symbol, so that symbolism does not stand in the way of effectiveness. Therefore, in terms of parliamentary representation, New Zealand should first centre the debate on the attainment of effective representation, and then, choose an appropriate symbol.

The Māori electorate seats have become increasingly symbolic in recent years, perhaps in part because they are the dominant mechanism through which parliamentary representation of Māori constituencies is currently achieved. It is understandable that some New Zealanders hold strong views on retaining the Māori electorate seats as a symbol of te Tiriti. However, do the Māori electorate seats provide substantive representation? There is reason to explore options to improve representation of Māori constituencies and the symbols of the Treaty partnership. We believe providing more clarity over the role of te Tiriti in New Zealand's constitution offers such an opportunity.

13.2.3 Is te Tiriti formally part of our constitution?

Clearly the relationship between te Tiriti and the constitution is dynamic. The relationship has evolved since 1840 and we expect it to continue to evolve. Below we consider the past, current and desired trajectories of this evolution.

In 1840, the role of te Tiriti in New Zealand's constitution was uncertain for at least three reasons: the misunderstanding over the intention of the document; many chiefs did not sign the Treaty; and British sovereignty, on the basis of 'cession through the Treaty of Waitangi', was only claimed for the North Island (see earlier discussion). What is apparent is that from the nation's early years a clear and active group of Māori recognised their right to representation within the nation-state, often with reference to te Tiriti – for example, as indicated by a number of petitions based on the Treaty which were submitted to the government and the Queen (see Section 3.4). It could be argued that the government has at times acknowledged this right; for example, through Prime Minister Seddon's allocation of a seat in the Legislative Council of the national government to the Māori King Mahuta in 1903 (Waitangi Tribunal, 1997: 469). Although the constitutional framework has changed over time, it has not yet evolved to provide explicit incorporation of te Tiriti (which is only referenced as a constitutional document in the *Cabinet Manual* – see Appendix 5). However, its evolution has affected the notion of 'the Crown'. New Zealand's eventual adoption of the Statute of Westminster in 1947 (some 16 years after it was passed in the United Kingdom) is of particular relevance as it granted the New Zealand government the right to alter the 1852 Constitution Act. The potential weakening of this tie between the original treaty partners is a point of concern for some Māori (Cox, 2003: 14).

13. QUESTION 9: WHAT ARE THE RELATIONSHIPS BETWEEN SEPARATE PARLIAMENTARY REPRESENTATION, TE TIRITI AND THE CONSTITUTION?

Today, one hundred and seventy years later, public power could not be considered to be shared between the British Crown and Māori. The 'Crown' today is defined as meaning 'Her Majesty in respect of the Government of New Zealand' (Electoral Act 1993); however, the role of the British Crown in the practical operation of New Zealand is extremely limited. Today, it could be argued that New Zealand is part of the British Crown on paper only. The New Zealand government has autonomy in all aspects of its operation, including the election of the sovereign's representative in government (the governor-general);[94] and as the New Zealand identity continues to develop, it is increasingly more affiliated with its neighbours than with the British Crown.[95] So where do the descendants of those who signed te Tiriti stand today? We would argue that the Treaty partner, the British Crown, still exists, as do the rights and responsibilities that the Treaty outlines. However, today, the British Crown does not have the ability to deliver on the promises made in 1840. The New Zealand 'Ministers of the Crown', on whose advice the governor-general (the sovereign's representative) must act, are today the functional centre of national government,[96] and are in a position to deliver on those promises. We would argue that te Tiriti is currently a part of our constitution only to the extent that it is acknowledged in New Zealand law. Perhaps te Tiriti was flawed from its inception; it was hurried into being to solve a complex problem. Many New Zealanders continue to feel those ripples of dissatisfaction today. Regardless, te Tiriti remains our founding document and a base from which we must move forward. An optimal way forward, however, is less clear.

In 2040, it will be 200 years since the signing of te Tiriti, and we aspire to our nation reaching this milestone with a robust and just constitutional framework. We believe the opportunity is to create a 21st-century treaty: one that all New Zealanders can engage with together; one that respects our past (especially the purpose of te Tiriti), acts in the best interests of current New Zealanders and protects our resources and diverse cultures for future generations. Our thinking is that it is timely to prepare a written constitution for New Zealand – one that empowers the country to look forward by addressing the challenges inherited from our past, rather than leaving them for future generations to solve.

94 Since 1972 all governors-general have been New Zealand residents. Nowadays, about a year before the serving governor-general's term comes to an end, Cabinet selects a successor (NZ History, 2007b). 'The reserve powers (or the personal prerogative, as the governor-general's personal discretion is called) are confined to appointing or dismissing a prime minister, refusing a request to dissolve Parliament, forcing a dissolution of Parliament or refusing the royal assent to a bill where to grant it would be unlawful or would irreparably impair representative democracy. Listed that way, they sound impressive, but their exercise is, in all but exceptional circumstances, dictated by constitutional convention. On all other occasions, the non-partisan governor-general follows the advice of Cabinet ministers – politicians elected by the people' (NZ History, 2007c).

95 For example in 1948 New Zealand citizenship was established (Green, 2009). In 1975, the term 'European' was replaced by 'General' on election rolls (Department of Justice, 1986: 85). By 1977 New Zealand citizens were no longer considered British subjects under the Citizenship Act 1977 (Green, 2009). Notably, around this time New Zealand developed stronger relationships with Australia; the 1973 Trans-Tasman Travel Arrangement with Australia 'allowed Australian and New Zealand citizens to enter each other's country to visit, live and work, without the need to apply for authority to enter the other country... At 30 June 2009, an estimated 548,256 New Zealand citizens were present in Australia' (Australian Government, 2010).

96 'The executive branch of government is also the most closely connected to "the Crown", a term referring to our Sovereign monarch the head of state, in whose name the Treaty of Waitangi was signed. While there is deep but arcane constitutional confusion about the ramifications of the meaning of "the Crown", for most intents and purposes in reality it means, and its actions are directed by, Ministers – on whose advice the Queen or her representative is constitutionally bound to act' (Palmer, 2008: 130).

14. The Future: 2010 to 2058

In this section we briefly outline nine significant events or trends which we believe may shape Māori representation in Parliament in the future. Some of these are actual events which we know will occur; others are events or trends that are likely to occur. Taking these into account alongside the insights above, we then propose three ways forward and select our preferred direction, which we explore further in Section 15.

14.1 Nine Significant Events

i. Establishment of a group to consider constitutional issues including Māori representation, 2010 (proposed)

The current government, in the *Relationship and Confidence and Supply Agreement between the National Party and the Māori Party*, agreed to the 'establishment (including its composition and terms of reference) by no later than early 2010 of a group to consider constitutional issues including Māori representation' (NZ Govt, 2008: 2). The agreement states:

> 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. (ibid.)

Apart from the Prime Minister's statement in February 2010,[97] at the time of writing the government had made no further public announcements on the establishment of this group.

ii. MMP referendum, 2011 (confirmed)

Prior to the 2008 election the National Party promised that, if elected, it would hold a referendum on MMP no later than 2011. On 20 October 2009 it was announced that the first referendum on the MMP voting system would be held in conjunction with the 2011 general election.[98] The Electoral Referendum Bill 2010 had its first reading on 22 April 2010 and was referred to the Electoral Legislation Committee (House of Representatives, 2010a). The proposed referendum will include two questions:

> The first will ask voters if they wish to change the voting system from MMP. The second will ask what alternative voting system they would prefer, from a list of options. (NZ Govt, 2009b)

Importantly, as part of the *Relationship and Confidence and Supply Agreement between the National Party and the Māori Party*, the two parties agreed that 'there will not be a question about the future of the Māori seats in the referendum on MMP planned by the National Party' (NZ Govt, 2008). Public submissions on the Bill closed on 10 June 2010.[99] The Select Committee report is due on 22 October 2010 (House of Representatives, 2010b).

iii. New Electoral Commission, 2011 (confirmed)

Currently, three agencies are responsible for the administration of New Zealand's electoral system: the Electoral Enrolment Centre, the Chief Electoral Office and the Electoral Commission.[100] The Electoral (Administration) Amendment Bill was passed unanimously in Parliament on 19 May 2010 (NZ Govt, 2010c). It established a new Electoral Commission, combining the three existing agencies, as an independent crown entity, and transferred the functions of the Chief Electoral Office and the Electoral Commission to the new commission on 1 October 2010, in time to administer the 2011 general election. A further bill would be needed to transfer the role of the Chief Registrar of Electors, currently housed at the Electoral Enrolment Centre and contracted to New Zealand Post, to the new commission; the intention is to achieve this by October 2012. The aim of this initiative is to provide more efficient and integrated administration of the electoral system, along with a high level of independence and accountability.

97 Prime Minister John Key stated in February 2010 that the 'structure, terms of reference and the membership of this group will be released in due course, and consultation and hui across New Zealand will begin' (NZ Govt, 2010b: 22). Further, in May 2010 Māori Party co-leader Dr Pita Sharples advised that the group is yet to be established, 'as discussion is still taking place as to the terms of reference. Once agreed, the details will be made publicly available' (P. Sharples, personal communication, 24 May 2010).

98 The Prime Minister also confirmed this in his February 2010 speech, stating that the National Party intends to progress the 'introduction of legislation to hold a referendum on the future of MMP at next year's general election' (ibid.).

99 The Institute's submission raises concerns about the text in the referendum, the underlying process and the need for a comprehensive public engagement programme (SFI, 2010f).

100 A further independent body providing input into the electoral system is the 'Representation Commission', which determines the boundaries of general and Māori electorates.

iv. Māori Electoral Option, 2012 (confirmed)

The Māori Electoral Option scheduled for 2012 will allow electors of Māori descent to choose whether they are enrolled on the general or the Māori roll. The option is required to be held as close as possible to the five-yearly 'Census of Population and Dwellings', but it cannot be held in a general election year. The next census is due to be held in 2011 which, based on our three-year election cycle, means it will coincide with the next general election. Consequently, the next Māori Electoral Option will be held in 2012 (Electoral Commission, 2005b).

v. Proportionally higher Māori descent population living in Australia, 2020 (estimated)

The Institute believes that a considerably higher proportion of people of Māori descent will be living permanently outside New Zealand by 2020. Currently one in six Māori are estimated to be living in Australia and, as stated in Te Puni Kōkiri's document *Māori in Australia: Te Ao Moemoeā*, 'even a small ongoing amount of net out-migration from New Zealand to Australia will see this proportion steadily rise' (TPK, 2007: 164).[101] Reasons for emigrating often stem from internal pressures in countries of origin, such as inequalities, crime, discrimination and politics, and/or opportunities in foreign countries such as economic factors, lifestyle or a desire to join existing family there (ibid.: 41–43). The implications arising from this possible migration by Māori include the question of whether a case exists for a Māori electorate seat to be established in Australia. In a press release following the publication of *Māori in Australia*, the Māori Party put forward the idea that as there are now '92,912 people in Australia who identify themselves as Māori, maybe it is time to create a new electorate, Te Ao Moemoea' (Māori Party, 2007).

vi. Asian and Pacific populations are larger than the Māori population, 2026 (estimated)

The national ethnic population projections for the period 2006–2026 indicate that New Zealand's population will exhibit greater ethnic diversity in the future. Māori, Asian and Pacific populations will comprise an increasing proportion of the overall New Zealand population (Bromell, 2008: 32). The projections shown in Figure 17 (page 76) indicate that the Māori population, with a high birth rate and increasing life expectancy, is set to increase at a steady rate, resulting in a Māori population that could make up 16% of the total New Zealand population by 2026.[102] Interestingly, the Asian and Pacific Island populations are expected to increase at a much faster rate, with the Asian population equalling the Māori population by 2026. In contrast, the 'European or other' population is both ageing and proportionately in decline.

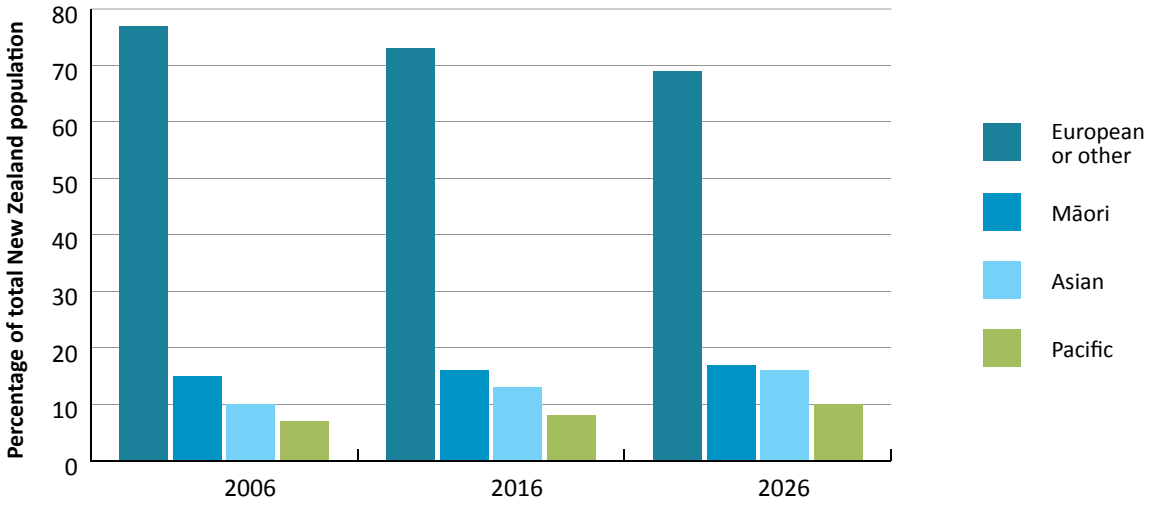
Furthermore, the total New Zealand population is projected to reach 5.75 million by 2061.[103] With the current trends in ethnic population projections in mind, it can be assumed that the Māori, Asian and Pacific Island populations will make up an even greater proportion of the total population (Statistics NZ, 2009b).

101 It is interesting to compare the number of New Zealanders of Māori descent living in Australia against the number of non-Māori New Zealanders living in Australia. Hamer's estimate of 126,000 Māori living in Australia in 2006 was based on a question in the Australian census which asked about ancestry (Hamer, 2008: 2). As an indication, the 2006 Australian census showed that there were 389,467 New Zealand-born people, of whom 160,681 identified themselves as having one or both parents born in New Zealand, and 92,912 identified themselves as having Māori ancestry (Australian Bureau of Statistics, 2006). These figures are from multiple response data. For further discussion of this issue, see Report 7, *Exploring the Shared Goals of Māori: Working towards a National Sustainable Development Strategy* (SFI, 2010a).

102 New Zealand's population increasingly identifies with one or more ethnic groups. For example in the 2006 census, 42.2% of Māori stated that they identified with European ethnic groups, 7.0% with Pacific peoples ethnic groups, 1.5% with Asian ethnic groups, and 2.3% also gave 'New Zealander' as one of their ethnic groups (Statistics NZ, 2006a: 2).

103 Based on mid-range projection Series five, which assumes medium fertility, mortality and migration (Statistics NZ, 2009b: Table 1).

Figure 17. Ethnic Population Projections, 2006–2026[104]
Source: Statistics NZ, 2010[105]



The implications of these changes are significant for iwi. Projections indicate that although Māori have been the largest ethnic minority group in the past (by population), and although they are also growing as a proportion of the New Zealand population, this position will soon be challenged by growing Asian and Pacific populations. As a consequence, iwi and emerging ethnic communities will need to develop and maintain good relationships, and the status of Māori as Treaty partner needs to be recognised and well-entrenched in New Zealand law. These projections do not take into account the possible effects of extreme climate change in the Pacific, which could mean these changes occur even earlier.

In addition, Māori are increasingly identifying with more than one ethnicity. As Māori outcomes and measures of well-being are very sensitive to how ethnicity is defined, this is an important consideration for anticipating trends. For example, an individual who identifies as being solely of Māori ethnicity is likely to fall into a very different set of demographics to one who identifies as being of Māori descent but not ethnicity (Futuremakers, 2008: 18).

vii. Bicentennial anniversary of te Tiriti, 2040 (confirmed)

How this country responds to the bicentennial of the signing of te Tiriti o Waitangi will indicate how well New Zealand as a nation has been able to overcome the challenges inherent in developing a society that is cohesive and harmonious and honours diversity. The centennial in 1940 was marked with celebrations that focused on 'a century of European effort and progress in New Zealand' (NZ History, 2008a) and 'Māori integration into modern New Zealand' (NZ History, 2008b) rather than on te Tiriti itself and what it represented.[106] Perhaps success in 2040 would be a nation able to celebrate a collective vision that not only acknowledges the aims of both signatories to te Tiriti in 1840 but is also strong enough to unite New Zealanders as a nation of many peoples.

104 'The estimates/projections for the "European or Other (including New Zealander)" group include people who belong to the European or Other Ethnicity groups defined in Level One of the standard classification. If a person belongs to both the European and Other Ethnicity groups they have only been counted once. Almost all people in the Other Ethnicity group belong to the New Zealander sub-group.' (Statistics NZ, 2010: 2)

105 This graph represents projected ethnic populations from 2006 to 2026. Series six was the projection series chosen for our purposes, and assumes medium fertility, mortality, net migration and inter-ethnic mobility (Statistics NZ, 2010).

106 Historian Jock Phillips identified several major themes in the celebration of the centennial of the Treaty in 1940. These included 'a century of good race relations; praise for the pioneer combined uneasily with tributes to material progress and New Zealand's natural beauty; an emphasis on the woman in the home; a view of government as beneficent and wide ranging; and a sense of New Zealand's identity as forged within the Empire' (Phillips, 2004: 281–282).

viii. Growth in immigration resulting from climate change, 2045 (estimated)

The Institute estimates that by this date the rise in sea level will significantly affect the livelihoods of populations in low-lying areas of the Pacific, and climate-change refugees will begin to arrive in New Zealand in significant numbers. The 2007 IPCC report states that sea-level rise is a critical issue for the small island state of Tuvalu (among others) (Parry et al., 2007: 703–706), and that 'for the most vulnerable small island states (those composed of low-lying atolls), this combination of global processes interacting with local socio-economic and environmental conditions puts the long-term ability of humans to inhabit atolls at risk, and that this risk constitutes a "dangerous" level of climatic change that may well undermine their national sovereignty' (ibid.: 706–707).

ix. New Zealand becoming a republic (uncertain)

Over the coming decades, the campaign from New Zealanders who would like to see New Zealand become a republic is likely to continue to build. Within the next fifty years, it is possible that New Zealand will have elected to become a republic. In April 2010, the Head of State Referenda Private Members Bill did not pass its first reading (68 noes to 53 ayes)[107] (House of Representatives, 2010c). The bill proposed a two-stage referenda process that would give New Zealanders the opportunity to vote for either: the monarch to remain Head of State; a Head of State to be elected through 75% parliamentary majority; or, a Head of State to be elected through national STV voting process (Head of State Referenda Bill, 2009; also see Green Party, 2010). Importantly, the proposed bill would have ensured that, if a Head of State was elected, the 'rights conferred and obligations imposed by the Treaty of Waitangi [would] continue as if this Act had not been passed' (Head of State Referenda Bill, 2009: s66).

These nine events indicate that New Zealand's parliamentary representation system will need to be robust yet flexible, in order to steer the country towards greater equality and well-being. The development of improved internal governance and cohesion is particularly important as we move from local and national governance into an age where regional and global governance have a growing impact. Further, the pace of change towards global governance is increasing as the world tries to grapple with climate change and other shared challenges, such as the threat of terrorism and increasing inequality.

In response to global governance, there is likely to be a parallel trend: an increasing desire for groups based on ethnic, religious, gender or other special interests to form strong global networks to share information and experiences, and to strengthen capacity to advocate for and advance their common interests. These trends will likely contribute to the continued evolution of democratic systems, as countries try to find ways to engage with these diverse groups and institutions, build public trust and improve governance outcomes. These trends imply that New Zealand must get its own house in order so that it is able to positively harness opportunities and effectively manage risks. We consider there exist three strategic ways forward.

14.2 Three Possible Future Directions for Parliamentary Representation

We outline three possible ways forward: (i) continue with the status quo; (ii) adjust the current MMP system, or (iii) change to another electoral system.

i. The status quo – the current system

Using Pitkin's four views of representation (described in Section 2.4.3), we assess the status quo, keeping in mind that formalistic and substantive are 'acting for' views of representation, whereas descriptive and symbolic are 'standing for' views of representation (Pitkin, 1972: 111).

In terms of *formalistic* representation, there is a significant focus on how representatives gain authority (through the separate rolls), but little clarity about how constituents can hold representatives accountable (other than through the political parties they represent) and little clarity over who they are accountable to. To help remedy this situation, the Institute makes two suggestions. Firstly, that the Oath of Allegiance sworn by MPs should be expanded to include an obligation to act in the best interests of all New Zealanders (see Question 1), introducing the concept that all citizens are able to hold representatives accountable during their term in Parliament. Secondly, that the constitutional framework is improved, and ideally leads to a new written treaty between all New Zealanders.

107 Ayes 53: New Zealand Labour 43; Green Party 9; United Future 1. Noes 68: New Zealand National 58; ACT New Zealand 5; Māori Party 4; Progressive 1 (House of Representatives, 2010c).

This could improve the formal links between our existing system of parliamentary representation, te Tiriti o Waitangi and our constitution. Arguably, this lack of clarity contributes to the existing tension around symbolic representation. Thus there is considerable work to do to improve the quality of formalistic representation in New Zealand. Ideally, a new written constitution could add the checks and balances necessary to enable New Zealanders to move to a four-year election cycle.

Further, we consider the following points should be considered and actioned. Notably, the turnout of Māori voters is currently significantly lower than that of non-Māori voters and the number of 'informal' votes cast in Māori electorates is significantly higher than in general electorates. In addition, achieving effective representation of Asian and Pacific populations is an area of increasing relevance, which requires on-going research and policy work.

In terms of *substantive* representation, although the 2008 election delivered significant policy gains for the Māori Party, it is unclear whether it achieved significant policy gains for all Māori. Given that at least 78% of voters of Māori descent on both rolls gave their party vote to a party other than the Māori Party (Section 10, page 49), outcomes need to be measured in terms of the goals of Māori, not the policy goals of the Māori Party. Based on our research, characteristics that suggest New Zealand may not be achieving substantive representation include the following:

- Separate seats perpetuate a perception that Māori representation is something to be addressed within the Māori electorate seats, and is therefore of less relevance to general roll electors and political parties that do not campaign heavily in the Māori electorates. It is clear, however, that policy outcomes that benefit Māori are relevant to all New Zealanders, as positive results for Māori ultimately benefit the nation as a whole (e.g. through reduced inequalities, a richer culture and improved social development).
- There is a greater likelihood of overhang in Parliament with the current party vote threshold, as a minority party can win more electorate seats than they would be accorded given their share of the party vote. Currently, overhang appears to be more likely to derive from outcomes in the Māori electorates (i.e. given current voting trends, the Māori electorates seem relatively more likely to elect a candidate from a minority party – in 2008, five out of seven candidates, compared to three out of 63 candidates in the general electorates). This outcome also contributes to the common view that such a party has influence in the House of Representatives which is disproportionate to the share of seats they are deserving of (as determined by their share of the party vote).
- Any minority party which solely campaigns for the Māori electorate vote inherently limits the maximum level of representation they may gain in the House of Representatives. This is based on the assumption that the number of Māori electorate seats will operate as a cap on the number of seats such a party may win.

The current system aims to provide for effective *descriptive* Māori representation. Using the test most commonly applied, the proportion of MPs who identify as Māori has increased since the introduction of MMP and is now 16.4%, which is roughly equivalent to the proportion of the New Zealand population that identifies as being of Māori descent (see Question 3). This being said, it is also important to acknowledge that the Māori electorate seats currently account for over one-third of Māori MPs (see Appendix 2), so it is difficult to know exactly how the removal of the Māori electorate seats would impact on the number of Māori MPs.

The approach we have adopted is to assess how different the seat allocations following the 2008 elections would have been without the Māori electorate seats (see Appendix 4). Our research indicates that if the Royal Commissioners' recommendations were fully implemented there would still have been 20 Māori MPs in the House (though with no overhang, their percentage in the House would have increased slightly from 16.4% to 16.7%). Thus, the current system does deliver descriptive representation.

In terms of *symbolic* representation, there is significant symbolic attachment to the Māori electorate seats, which must be taken into account in any review, evaluation or proposals to improve the existing system of representation. To this end, it may be useful to consider that Pitkin draws a distinction between conventional and non-conventional symbols, arguing that the first is simply a way of defining or recognising an entity, such as a flag or a key on a map, implying the symbol used is accepted by all to define a thing, whether it be a nation or entity. Pitkin then goes on to describe the creation and use of non-conventional symbols:

> To get people to believe in, accept, respond appropriately to a nonconventional symbol, one must arouse certain responses in them, form certain habits in them, invite certain attitudes on their part. Unlike making a descriptive representation, creating a symbol is apt to be a matter of working on the minds of the people who are to accept it rather than of working on the symbol itself. And since there is no rational justification for the symbolic connection, for accepting this symbol rather than that one, symbol-making is not a process of rational persuasion, but of manipulating affective responses and forming habits. (Pitkin, 1972: 101)

Given this distinction, it is worth considering if separate representation is a conventional or non-conventional symbol. This raises concerns over whether there exists a 'rational justification for the symbolic attachment' to the Māori seats and if it does exist, whether it is sufficiently well documented and recognised in the wider community to be more than a symbol. So while many New Zealanders may consider separate representation a 'symbol of te Tiriti', when broken down, the justification appears to be about 'standing for te Tiriti', rather than 'standing for effective representation'. This means that New Zealanders who see separate representation as a 'symbol of te Tiriti' may not give adequate consideration to separate representation in terms of effectiveness for Māori.

This leads any discussion on the effectiveness of separate representation into a discussion on te Tiriti and its role in New Zealand's constitution (see Question 9) and whether it could be argued that the 'symbol of te Tiriti' is acting as a barrier to *substantive* representation. As such, New Zealanders need to think carefully about which is more important – a symbol or effective representation.

The Institute's view is that ineffective parliamentary representation is not a valid way forward and as such effective representation must take precedence over a symbol of te Tiriti. Thus, the 'rational justification for the symbolic connection' between separate parliamentary representation, te Tiriti and the constitution requires significant clarification in order to facilitate effective representation for all New Zealanders.

For these reasons, the Institute concludes that the status quo does not deliver effective Māori representation and therefore is not operating in the best interests of New Zealanders.

ii. Adjusting our MMP system

The alternative system of MMP proposed by the Royal Commission on the Electoral System (see Figure 16) provides some insight into how a different model of MMP may impact on Māori representation. The Commissioners believed that their proposed system would have seen Māori MPs become more integral to political parties as all parties would need to compete for the Māori vote.[108] Subsequently, Māori issues, and those who brought them to the House, would gain an increased public profile (see Section 3.6.1 for a summary of the pros and cons of the Commissioners' proposed system).

In Question 8, we also reach the conclusion that the Commissioners' proposal – moving to one common roll and reducing the party threshold for parties primarily representing Māori interests – could maintain the existing level of *descriptive* representation. Furthermore, we believe *substantive* representation would be improved as 'Māori interests' would become more integral to the campaigning of all political parties.

iii. Change from MMP to a different electoral system

A change in electoral systems is a possibility in both New Zealand's short- and long-term futures. However, this is not explored in this report as the Institute has assumed that MMP will continue in some form. This may prove to be an incorrect assumption, depending on the result of the MMP referendum in 2011, however it is beyond the purpose of this paper to discuss the implications of various electoral systems. A change of electoral systems without duly exploring all options for improving the existing system would be premature. The system of MMP that is developing in New Zealand balances the key values of representativeness and stability; these are both key characteristics of a functioning democracy and as such are worth strengthening within the existing system.

108 There are challenges with the use of the term 'Māori MP'; see the description in Section 2.4.2 and discussion in Section 7.1.1.

14.3 Implications for the Future

Keeping in mind the principles of Māori representation set out by the 1986 Royal Commission (see page 21), we come back to our key question: do the Māori electorate seats and separate Māori roll help us achieve effective and democratic Māori representation under our current system of MMP? We conclude that the Royal Commission on the Electoral System's concerns were warranted, and that over time the Māori electorate seats are unlikely to deliver optimal representation. In our view, the current system of MMP with the Māori electorate seats should be reconsidered, particularly in view of the upcoming referendum on MMP. Therefore, of the three directions briefly outlined here, we propose further exploration of options to adjust MMP, in order to retain, but improve, our system of proportional representation. Section 15 explores several such options, and concludes with our suggestion of a new parliamentary representation system (see Figure 18). It also explores the implications of these findings for a National Sustainable Development Strategy.

Strongly held views exist around the Māori electorate seats; quality information, dialogue and reflection are necessary to effectively explore and understand these views and find areas of common ground. This process needs to be robust, open and respectful of the diversity of thoughts. Rushing through changes to the Māori electorate seats without the approval of both Māori and non-Māori New Zealanders would not only be socially divisive but would also be politically undesirable. Changes should not occur until consensus has been achieved through wide public engagement.

Furthermore, Recommendation 7 of the 1986 Report of the Royal Commission on the Electoral System still resonates with our thinking 25 years on:

> Parliament and Government should enter into consultation and discussion with a wide range of representatives of the Māori people about the definition and protection of the rights of the Māori people and the recognition of their constitutional position under the Treaty of Waitangi. (Royal Commission, 1986: 112)

In particular, the Māori electorate seats are sometimes seen as synonymous with the Crown's obligations under te Tiriti and the achievement of effective Māori representation. Therefore, any ambiguities in the relationship between Māori representation and the Treaty of Waitangi need to be clarified. Māori New Zealanders' support for improving our system of representation needs to be gained before any timeline of change can progress. Also necessary are strengthened partnerships between government and iwi to address factors underlying poor turnout, and the emergence of strong leadership aimed at improving processes and governance.

Furthermore, it is important that any decisions made to improve representation or constitutional systems receive cross-party support. It is essential that these fundamental components of our democratic nation-state are improved in a manner that maintains or enhances national cohesion and stability, and supports social and cultural diversity.

We believe that without this combination of consultation, feedback and resolution, New Zealanders are going to spend time, energy and resources talking past each other, rather than creating a united platform for moving forward. Education, knowledge and dialogue will be critical in finding a common ground, based on a shared understanding of how we could best achieve effective Māori representation. Such an approach will help us progress towards a more effective and equitable system that unites, rather than divides, society. In the following section we consider what can be done to improve our existing system of MMP.

15. An Optimal System of Representation that Provides a Firm Foundation for New Zealand

In this section we attempt to synthesise our research by firstly outlining the Institute's proposed alternative to the current parliamentary representation system, and then suggesting a work programme aimed at improving representation. We close by addressing how these initiatives would link into the development of a National Sustainable Development Strategy (NSDS) for New Zealand.

15.1 The Institute's Proposed Alternative Parliamentary Representation System

In order to put forward an alternative system of representation, it is critical to understand what the purpose of the system is and, more importantly, what values are driving this purpose. As stated earlier, we were not able to find a concise working definition of effective representation (see objective 1 in Section 2.1), but we were able to find four views to assess the effectiveness of parliamentary representation (see Section 2.4.3). Further, we found a number of principles and values that guide the following discussion. Notably, the 1986 Royal Commission on the Electoral System identified three sets of principles underlying its thinking, all three of which remain relevant today. The first serves as an understanding of the collective functioning of Parliament, the second outlines ten criteria for judging voting systems and the third lays out five principles of Māori representation (see Section 3.6, page 20). In addition to these values we believe it is important that New Zealand's parliamentary representation system:

- Defines, pursues and measures effective representation;
- Safeguards Māori voices in Parliament;
- Has an uncomplicated electoral process that is easy to understand and engage with;
- Does not discriminate against the election and participation of minority parties and minority party candidates, yet values stability and cohesion over time;[109]
- Has a transparent, accountable and verifiable electoral process and outcomes;
- Produces outcomes that are representative of voting behaviour and do not distort voter preferences;
- Values and utilises public participation and education as meaningful processes which ultimately improve policy outcomes; and
- Is valued by all New Zealanders.

At this time, based on the information above, we believe Māori interests (and indeed those of all New Zealanders) would benefit from an improved parliamentary representation system that is representative, easy to understand, simple to engage with, achieves outcomes for Māori and is able to be independently measured. As a way of exploring priorities to improve effective representation, we build on the vision and principles stated above and identify three priority areas for improvement:

1. New Zealand's constitutional framework and parliamentary representation system;
2. Accountability of Members of Parliament, and
3. Civic education.

15.1.1 Possible mechanisms for adjusting the parliamentary representation system

In our research we found a number of possible mechanisms that could be used to adjust the parliamentary representation system. The following list does not necessarily reflect the Institute's recommendations, since there are pros and cons to each mechanism that are not investigated here and cannot be assessed in isolation. Hence, some possible, though not necessarily optimal or complementary, options are outlined below.

109 MMP provides a pathway by allowing a new party to pursue an electorate seat first, then pursue the 5% threshold and then pursue the ability to become a significant party. Any system that provides barriers to this process is considered less effective, in that it stifles growth.

Within the House of Representatives

i. Introduce an oath obliging all MPs to represent all New Zealanders

The current oath could be modified to place clear responsibility on MPs to represent all New Zealanders. Other options include creating additional oaths for Māori-electorate MPs, general-electorate MPs, list MPs, and members of Cabinet (see Section 5). Ensuring MPs make a binding public commitment to represent all New Zealanders would add a further level of accountability.

ii. Change method of separate representation

Changes could include fixing the number of seats, removing the separate roll (and the Māori electorate seats), changing the ratio between list and electorate MPs, or entrenching the Māori seats.

iii. Waive or lower the 5% threshold for all parties

The concept of a threshold only came into existence under MMP. A lower threshold (or no threshold) would foster more representative election outcomes. The 5% threshold may explain the decline in the proportion of party votes that minority parties have gained in elections since the introduction of MMP.[110] Lowering the hurdle that minority parties must cross in order to gain seats in Parliament would arguably re-empower voters to cast a vote for a minority party. This would facilitate the entry into Parliament of minority parties that were addressing Māori issues, via the party vote. For example, if the threshold had been lowered to 2% for the 2008 election, both the Māori Party and the New Zealand First Party would have gained five list seats.[111]

iv. Waive or lower the 5% threshold for parties primarily representing Māori interests

The 1986 Royal Commission recommended that the 5% threshold (initially proposed to be 4%) for parties to gain entry into Parliament be waived for parties primarily representing Māori interests. This move would recognise that Māori have special interests that require effective representation but are a minority population that may struggle to elect a minority party to Parliament under the current 5% threshold. For example, with a low enough threshold, based on the 2.4% proportion of the party vote it gained in the 2008 election, the Māori Party would have won four seats in Parliament.[112] However, this option would present significant challenges to implement, due in part to difficulties in defining parties that 'primarily represent Māori interests'.

v. Increase the number of MPs in the House of Representatives

The number of MPs could be increased, but at 120 MPs New Zealand appears to have an average ratio of MPs to total population when compared with other countries (see House of Representatives, 2006b: 8). The committee considering the 2006 Electoral (Reduction in Number of Members of Parliament) Amendment Bill concluded that although there is a taxpayer cost associated with 120 MPs as opposed to 100, this cost is outweighed by the improved representation gained (ibid.). We also note that the Royal Commissioners considered 140 to be an optimal number of MPs, but recommended a move to 120 MPs as a more politically feasible decision (Royal Commission, 1986: 127–129). There is also some doubt whether raising the number of MPs would further increase the effectiveness of representation.

vi. Guarantee a percentage of Māori MPs equal to the percentage of Māori in the population

A guaranteed minimum number of Māori MPs, either as a proportion of party candidates or within Parliament as a whole, could be introduced. This could be similar to provisions to encourage minority representation that are in place in Singapore and India; see Section 6.

Central to this mechanism is that, in order to facilitate and enhance effective communication and improved representation of their interests in Parliament, these MPs would be accessible to their constituents. Increasing the accessibility and visibility of all MPs would increase their accountability, which is a cornerstone of effective representation.

Outside the House of Representatives

vii. Develop civic education programmes

Information and education in schools and the wider community on the rights and responsibilities of New Zealand citizens and their role in the electoral system must be relevant, targeted and easily accessible. Civic education that encourages debate and results in all citizens becoming actively engaged in New Zealand's political system will have flow-on effects on our standards of representation. Furthermore, it will facilitate greater collaboration between government and citizens, and encourage the political agenda to encompass the long-term needs of all citizens, across generations.[113]

110 Notably, the combined small-party vote decreased from 38% in 2002 to 21% in 2008 (Curtin & Miller, 2010: 122).

111 See Appendix 4 and Working Paper 2010/04: *The 2008 Election: Reviewing seat allocations without the Māori electorate seats* (SFI, 2010d).

112 However, it is important to recognise that the removal of the Māori electorate seats may change voting behaviours and outcomes (see Section 12).

113 See Demos' recent report *An Anatomy of Youth* (Hannon & Tims, 2010) for further elaboration on the role and potential of young people as engaged and active citizens.

viii. Redraw electorate boundaries to encompass more electorally significant Māori populations

To some extent this mechanism has already been implemented, in s35(3)f and s45(6) of the Electoral Act, which require communities of interest among Māori people and Māori tribes to be taken into account when drawing general and Māori electorate boundaries. This mechanism has also been used in the US (see Section 6.1), where it has proved to be controversial.

ix. Change the length of the election cycle

The length of the cycle influences both the time in which a government is able to progress its policies and the time electors have to assess a government's performance. Internationally, there has been a general move towards longer election cycles. Australia currently has a three-year electoral term although it is recognised that there are benefits in moving to a four-year fixed electoral term (Australian Collaboration, n.d.); the American Federal Government has a four-year term (US Constitution Online, 2010), as does Germany (Johns, n.d.). The Canadian government does not have a set electoral period, but has a five-year limit (Elections Canada, 2007). In the United Kingdom, the Parliament Act 1911 also established the maximum life of a Parliament as five years (House of Commons, 2008). Indicating a further swing towards longer election cycles, the new Conservative Liberal coalition agreement will put forward a motion to establish a five-year fixed-term Parliament; under this proposal Parliament could only be dissolved early if 55% or more of the House voted in favour (Gay & White, 2010: 3).

x. Appoint a Chief Kaumatua to sit alongside the Governor-General

A role could be established to elect a 'Chief Kaumatua'. This position could be similar to that of the Governor-General, with ceremonial and community responsibilities but without the constitutional function (see NZ Govt, n.d.). The Chief Kaumatua would not only be a symbol of te Tiriti, but could actively represent Māori interests. Such an option would not affect the democratic process to elect Members of Parliament, but would provide an additional mechanism that was a genuine representation of the partnership between the British Crown and Māori. The best means of electing such a figure would clearly be open to debate, and would need to take into account 'one person, one vote' democracy. One option is to revert to a common roll and then re-use the Māori roll to elect the Chief Kaumatua.[114]

xi. Establish a Māori Parliament that advises the nation's Parliament

This would involve the creation of a separate Māori Parliament, which would function as an advisory group to the House of Representatives, with some delegated powers. This role would represent and advance the interests of Māori within the parliamentary representation system. The Māori roll could be utilised to elect iwi or hapū and pan-tribal urban Māori representatives to this Parliament.

xii. Establish an independent advisory body on effective representation

An independent advisory body would have the mandate to review and report upon effective and equal representation issues, and in turn advise the government on such issues. The advisory body could be called the Effective and Equal Representation Council and would be independent of both the government and the electoral process. The Council's mandate would encompass long-term policy initiatives to ensure the effectiveness of representation of all New Zealanders in Parliament and of the resulting policy decisions and outcomes. It would also aid in the creation of a more equal society through all areas of public policy, including, but not limited to, health, education, justice, legislation, the environment and the economy. The Council could include sub-focus or task groups that had the function of acknowledging and reporting on the specific challenges faced by minority groups, including Māori. This mechanism could be progressed through the merged Electoral Commission (see Section 14.1 [iii]) or even through a Sustainable Development Council, which was proposed in Report 4: *Institutions for Sustainable Development: Developing an optimal framework for New Zealand* (SFI, 2008b).

xiii. Create an independent institute to improve our constitutional framework

An independent institute could be created to foster better public understanding of, and informed debate on, New Zealand's constitutional arrangements (see page 87; Recommendation 3 of the 2005 Report of the Constitutional Arrangements Committee on the *Inquiry to Review New Zealand's Existing Constitutional Arrangements*). Under this option, a written codified constitution[115] could be considered and then developed. Further, this option should define both the rights and the responsibilities of all New Zealanders, and include reference to (i) te Tiriti, (ii) the principles of te Tiriti or (iii) the purpose of te Tiriti.

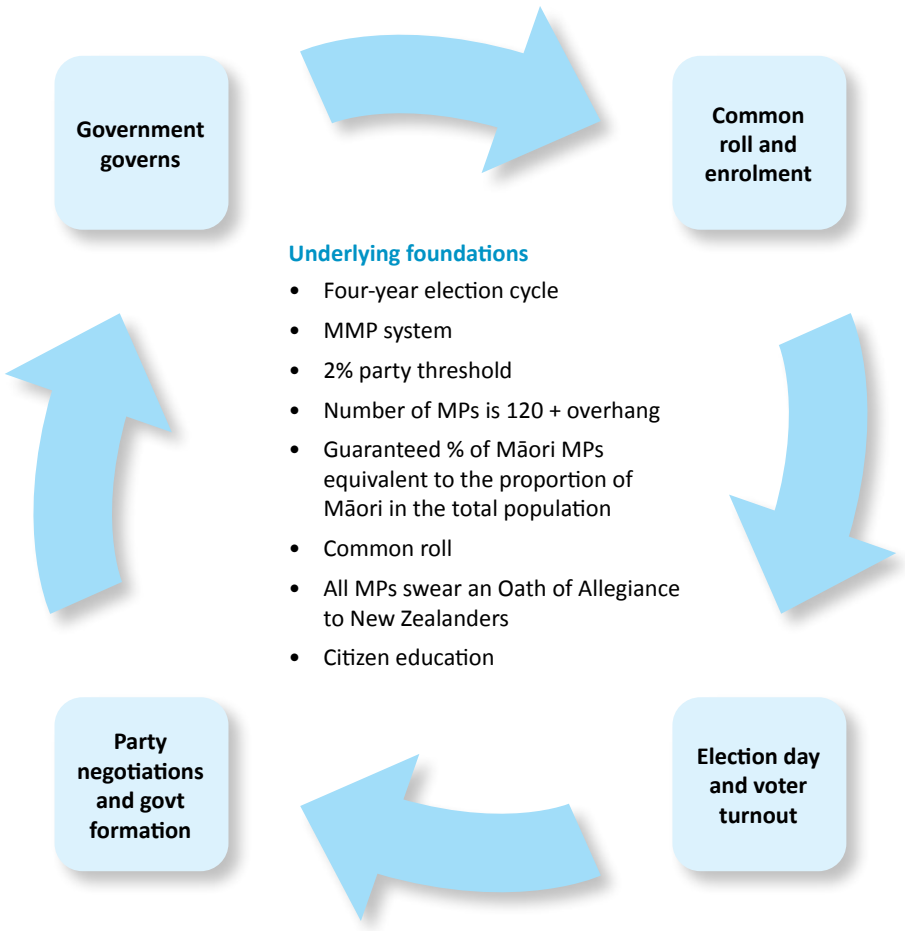
114 Further, the new Māori roll could be open only to those who are of Māori descent, identify as having Māori ethnicity, and/or are registered with an iwi.

115 See footnote 91.

15.1.2 The Institute's proposal

This proposal is a reflection of our thinking, based on our research to date. We hope this can feed into public debate and a national work programme to explore these issues and improve our system of parliamentary representation. Our preferred system of parliamentary representation is a system of MMP with one common roll and the use of a complementary suite of additional mechanisms to ensure that: (i) Māori representation is more effective and has a guaranteed minimum level; (ii) voter engagement and participation improves, and (iii) representatives are more accountable. Taking on board the options discussed above, we have considered the form of parliamentary representation we would prefer to see implemented in New Zealand. Any such system should improve the current system, align with set principles and be able to deal with future issues – in other words, it needs to be robust yet flexible. In keeping with our vision, we propose the following system – what we have called 'guaranteed representation' (see Figure 18 below).

Figure 18. The Parliamentary Representation System – the Institute's Proposal



Four of the above foundations are discussed in more detail below:

i. Four-year election cycle

We have considered the length of New Zealand's three-year election cycle and conclude that it is likely to hamper innovative and ambitious long-term planning. The three-year election cycle is more likely to drive politicians to focus on short-term gains, which translates in practice into one year of settling in, one year of activity, and one year of campaigning for the next election. Notably, in Australia, key points put forward in support of a four-year term are that it would: facilitate better economic planning for private and public sectors; provide government with longer periods of concentration on policy development and delivery; reduce the number and costs of elections, and improve parliamentary planning. Suggested disadvantages include the possibility that the public may have to endure an unpopular government for longer; voters would vote less frequently – thus the 'inherent wisdom' of voters is only relevant once every four years, and an unstable minority government would struggle for longer (Australian Collaboration, n.d.).

ii. 2% threshold for all political parties

The pros and cons of a higher or lower threshold are outlined in Section 12.2. We consider the merits of introducing a lower threshold are significant, and that any perceived disadvantages are manageable. Therefore, we have adopted a 2% threshold as a key feature of our alternative option.[116] We believe election outcomes would be more representative, in that a 2% threshold would reduce distortion of voter preferences as voters would feel more confident about giving their party vote to a minority party. The presence of overhang in Parliament would be reduced, and greater proportionality could be achieved. The potential for less stability and slower parliamentary processes could be managed through internal processes. We suggest a minimal threshold of 2%, as opposed to no threshold, on the basis that there should be a required level of support before a party is represented in the House.

iii. Guaranteed % of Māori MPs equivalent to the proportion of Māori in the total population

We believe this mechanism is at the centre of this debate. The current system creates an impression, but does not actually deliver optimal representation. This alternative, however, is driven by a desire to ensure that all political parties are incentivised to actively meet Māori needs in their policy platforms. In conjunction with the reduced party threshold, this would provide significant opportunity for the majority or minority parties that offer beneficial policies to Māori to gain proportionate representation in Parliament. We discuss five critical aspects of this foundation below.

a. Measuring representation

Central to this alternative is the introduction of a mechanism that would guarantee the presence of Māori MPs in Parliament equal to the proportion of the New Zealand population who are Māori. This requires a decision on how to define who is Māori and who is a Māori MP. In order to determine this, a thorough assessment of where and how both ethnicity and descent data are used would be useful. Descent data is based on ancestry, whereas ethnicity is based on self-identification and therefore they have quite different practical applications.[117] Most importantly, we believe that those in the New Zealand population who identify as being of Māori ethnicity or descent should have the right to guaranteed representation in Parliament – not under a separate roll, but by ensuring Parliament reflects the general population.

b. Elevated influence of Māori MPs

For the guaranteed representation system to work, Māori MPs must be effective representatives within their political parties. We expect that a guaranteed level of Māori representation and the associated political imperative for parties to meet Māori needs would elevate the influence of Māori MPs within their parties, improving effectiveness of representation. This process could be further enhanced by the creation of a new advisory group, whose role is to bring specific concerns of Māori to Māori MPs and as such to hold MPs accountable in a transparent and informed manner. There are a wide range of Māori institutions that could be associated with this role (see SFI, 2010a: Table 5).

c. Removal of the Māori roll

The separate Māori roll, the five-yearly Māori Electoral Option and the complex electoral population calculation would be removed. This would also remove a level of complexity from the electoral process, which we believe is currently a barrier to understanding the system and engaging with the process. It would also remove a significant cost, while delivering improved representation.

d. The need to create a new symbol of te Tiriti

We appreciate that much debate to date has centred on the role of the Māori electorate seats as a symbol of te Tiriti. However, if the current system is not delivering representation in an effective manner, ultimately it makes sense to improve the effectiveness of the system and develop more meaningful symbols of te Tiriti.

e. Ensuring the guaranteed percentage is met

Lastly, we discuss what would happen if under-representation resulted after election night. If the provisional proportion of MPs of Māori descent in the House of Representatives was less than required, a method would need to be employed to ensure representation was sufficient. The Institute's suggestion is that if Parliament was under-represented after election night, list candidates could be initially selected on Māori ethnicity or descent, until the number of Māori in the House of Representatives was comparable with the general population.

116 It is worth noting that a staged-option exists; to retain the Māori electorate seats at the first election after the lowering of the threshold, as a measure of good faith.

117 The Māori ethnic population is the standard figure used with regard to administrative and policy purposes in New Zealand (Kukutai, 2004: 91). The descent question in the census acts as a filter for the iwi affiliation question; it is also required for electoral calculations and used for legislative purposes (ibid; Statistics NZ, 1998).

In Working Paper 2010/04: *The 2008 Election: Reviewing seat allocations without the Māori electorate seats* (SFI, 2010d), we tentatively explore the implications that this proposal may have had on the 2008 election. It is difficult to apply the proposed system directly to the outcomes of the 2008 election, given that an alternative system would incentivise different voting behaviour. However, we can say that without the Māori electorate seats, 13 MPs who identify as being Māori would remain in 115 seats (11.3%). In order to reach the required number of 120 MPs, five additional seats would have to be filled. If these were all filled by Māori MPs, it would equate to 15% of the House (compared to 15.1% of the population identifying as being of Māori ethnicity, or 17.3% of the population who are of Māori descent). Given the influence of electors who had previously been on the Māori roll, in conjunction with different pressures for electors to vote for parties or individuals that address Māori issues, we believe the guaranteed level of representation could be achieved.

iv. All MPs swear an Oath of Allegiance to New Zealanders

This component of our proposed alternative option draws on Question 1, where we found that there is no formal obligation for MPs to act in the best interests of all New Zealanders. We believe that it would be in the best interests of New Zealanders if the Oath of Allegiance was modified so that MPs swore allegiance to all citizens of New Zealand – past, present and future.

15.2 Proposed Work Programme

During our research we found that New Zealand has made little identifiable progress on addressing issues surrounding Māori representation. In view of this, we believe that there is a strategic imperative to bring clarity over what processes and institutions should be put in place to resolve outstanding issues, and gain agreement over useful indicators to test progress. The following work programme proposes a process to address the three priorities identified earlier: New Zealand's constitutional framework and parliamentary representation system, accountability of Members of Parliament, and civic education. This work programme is further broken down into seven work streams. All seven are interlinked, and as such should be treated as one package, which aims to deliver New Zealand an effective parliamentary representation system for the 21st century.

We believe that a comprehensive work programme is both urgent and important for the following five reasons:

i. The upcoming constitutional review

The review contained in the National Party/Māori Party agreement proposed a 'group to consider constitutional issues including Māori representation', to be established no later than early 2010 (NZ Govt, 2008: 2). To date, there has not been a public statement announcing the establishment of this group.

The terms of reference for this review should take into consideration the findings of the 2005 Report of the Constitutional Arrangements Committee on the *Inquiry to Review New Zealand's Existing Constitutional Arrangements*. The committee noted New Zealand's constitution is not in crisis, but recognised the need to improve the level of public understanding of current arrangements as a prerequisite to any discussion of constitutional change (House of Representatives, 2005: 7–10). To this end it made a number of recommendations for the House of Representatives and government.

> **We recommend to the House of Representatives** that it considers developing its capacity, through the select committee system, to ensure that changes with constitutional implications be specifically identified and dealt with as they arise in the course of Parliament's work.
>
> **We make the following recommendations to the Government.**
>
> 1. Some generic principles should underpin all discussions of constitutional change in the absence of any prescribed process.
>
>   (a) The first step must be to foster more widespread understanding of the practical implications of New Zealand's current constitutional arrangements and the implications of any change.
>
>   (b) Specific effort must be made to provide accurate, neutral, and accessible public information on constitutional issues, along with non-partisan mechanisms to facilitate ongoing local and public discussion. (By majority)[118]

118 'The ACT New Zealand member dissents from public education proposals he considers susceptible to partisan promotion, as explained in the report' (House of Representatives, 2005: 5).

(c) A generous amount of time should be allowed for consideration of any particular issue, to allow the community to absorb and debate the information, issues and options.

(d) There should be specific processes for facilitating discussion within Māori communities on constitutional issues. (By majority)[119]

2. To foster greater understanding of our constitutional arrangements in the long-term, increased effort should be made to improve civics and citizenship education in schools to provide young people with the knowledge needed to become responsible and engaged citizens.

3. The Government might consider whether an independent institute could foster better public understanding of, and informed debate on, New Zealand's constitutional arrangements, as proposed in this report. (By majority)[120] [Bold added] (House of Representatives, 2005: 5)

ii. The MMP referendum

The referendum on MMP scheduled for 2011 creates an urgent need for New Zealanders to understand and explore the options for our parliamentary representation system. The Electoral Referendum Bill currently calls for voters to make an informed decision on two questions:

> (1) Should the current MMP voting system be retained? – I vote to retain the MMP voting system or I vote to change to another voting system; and
>
> (2) Regardless of how you vote under Part A [question 1], if there was a change to another voting system, which voting system would you choose? – I would choose the First Past the Post system [FPP] or I would choose the Preferential Voting system [PV] or I would choose the Single Transferable Vote system [STV] or I would choose the Supplementary Member system [SM]. [Bold removed] (Electoral Referendum Bill, 2010)

Hence, the referendum's success is contingent upon the population's ability to make an informed decision; we consider that before it is held there should be a work programme of research, public education and dialogue that explores the current challenges and opportunities. It is our hope that the 'group' is the vehicle to put forward an independent work programme that considers the whole system, befitting the critical role of our parliamentary representation system in shaping our future. We do not believe the current Electoral Referendum Bill, which excludes consideration of Māori representation in Parliament and the total number of Members of Parliament (Electoral Referendum Bill 2010, Clauses 54–58), is in the best interests of New Zealanders.[121] Democracy requires a whole systems approach and as such the components of a parliamentary representation system cannot be unpacked and analysed in isolation.

iii. 2001 Inquiry

The nine main issues on Māori representation that emerged as a result of the 2001 Inquiry into the Review of MMP should be addressed (see Section 3.8).

iv. Quality of representation

Concerns over inequality between different groups within society and within Māori in regard to voter turnout and the quality of representation continue to exist.

v. Global issues

Growing global issues need to be addressed, therefore representative government must be able to make tough decisions with the support and understanding of the public.

To this end, we have proposed a work programme that not only reviews the current system but also suggests ways to develop alternative parliamentary representation systems and processes that allow adequate space and time for deeper consideration of both the issues and the needs of all New Zealanders (see Table 11).

119 See footnote 118.

120 See footnote 118.

121 See the Institute's submission on the Electoral Referendum Bill (SFI, 2010f).

Table 11. Proposed Work Programme

Priorities	Method of Implementation	Desired Outcomes
(i) Improve New Zealand's current form of MMP and constitutional framework		
Short term (before 2011) Establish a work programme that builds capacity in government and in society Gain clarity over the purpose and definition of effective representation, particularly in relation to Māori and other minority groups	**Stream 1: Electoral System** Government ensures an independent work programme is implemented to inform the public about the process and implications of the referendum planned in 2011. • Explore the implications of operating two rolls under MMP, in particular vote splitting by electorate vote (see Question 6, pp. 49–56, and Question 7, pp. 57–64). • Implement mechanisms to ensure the Māori Electoral Option does not become a significant part of future electoral campaigns (Question 7, pp. 57–64). **Stream 2: Effective Representation** Establish an independent advisory body to review and report on effective and equal representation issues, and in turn advise the government on such issues. **Stream 3: Constitutional Framework** Government provides a detailed 'terms of reference' for the group established to review 'constitutional issues including Māori representation' (NZ Govt, 2008: 2). Members of this group should be non-partisan and independent of government.	There is greater clarity over what representation is trying to achieve. Representation is evaluated using appropriate indicators. All New Zealanders feel effectively represented in Parliament and that their participation in the political process is encouraged and valued in the decision-making process. Our parliamentary system of representation leads to policy outcomes that appropriately balance and meet the needs of our diverse population.
Medium term (after 2011) Review MMP (depending on results of the 2011 referendum) and review constitutional arrangements	**Stream 1: Electoral System** If the 2011 referendum finds a majority of support for MMP, a review of MMP should be established as per the proposed Electoral Referendum Bill. This should build on the 2001 Inquiry (see Section 3.8, page 24) and be completed before a possible 2014 MMP referendum. All information provided to the Inquiry is independent and findings are made publicly available before the referendum. **Stream 2: Effective Representation** The independent advisory body: • Develops high-level principles of 'effective representation' (See the Royal Commission's five principles of Māori representation, page 21).	A sound and transparent cross-party foundation for future improvement of MMP and our constitutional foundation is developed. New Zealanders gain improved understanding of the constitution.

Priorities	Method of Implementation	Desired Outcomes
	• Completes research into international models of separate representation (see Question 2, pp. 31–32). • Reviews parliamentary representation options, including consideration of the Royal Commission (Question 8, pp. 65–68) and the Sustainable Future Institute's proposal (page 84). • Develop a suite of complementary indicators to evaluate the effectiveness of Māori representation along the lines of the mechanisms (i) to (xiii) listed in Section 15.1.1 (see also Question 3, pp. 33–38). • Consider representation in terms of Pacific and Asian peoples (see Question 4, p. 39). • Consider and implement mechanisms to improve the effectiveness of Māori representation (including (i) to (xiii) outlined in Section 15.1.1, pp. 81–83). In particular reduce informals and increase turnout of voters of Māori descent (see Question 5, pp. 40–48). **Stream 3: Constitutional Framework** Findings from Stream 2 feed into Stream 3. • Broad consultation over effective representation and the role of te Tiriti in New Zealand's constitution takes place. • Cross-party dialogue for considering the development of a constitution takes place independent of the three-year electoral term. • The government, in consultation with all New Zealanders, establishes clarity over the role of te Tiriti in New Zealand's constitution (see Question 9, pp. 69–73).	
Long term (after 2014) Constitutional arrangements are strengthened	**Stream 3: Constitutional Framework** If there is agreement to progress constitutional reform, a committee is established with a mandate to develop a new written codified constitution for implementation in New Zealand by 2015.	Parliamentary representation and constitutional arrangements are representative, robust and flexible enough to meet the current and future challenges and opportunities our diverse population will face.

Priorities	Method of Implementation	Desired Outcomes
(ii) Improve accountability of Members of Parliament		
Short term (before 2011) MPs are obliged to represent all New Zealanders	**Stream 4: Oath** The 'Oath of Allegiance' taken by MPs is modified to require them to swear allegiance to all New Zealanders – respecting the past, representing the present, and improving New Zealand for future generations. The oath is to be used by all MPs in the next government (see Question 1, pp. 29–30).	MPs are assessed against and held accountable for the decisions they make and the actions they take in their role as elected representatives.
On-going MPs are more accessible to the public	**Stream 5: Research** Work is undertaken to clarify and strengthen the lines of communication between MPs and their constituents. • Research is regularly undertaken on New Zealanders' knowledge and perceptions on both the perceived and actual accessibility of MPs. • Relevant indicators are developed to assess and compare outcomes over time.	Constituents are aware of who their representatives are and how to access them.
(iii) Improve civic education		
On-going Public understanding of our parliamentary system and our electoral process improves	**Stream 6: An informed public** A public education campaign is undertaken and public dialogue facilitated with regard to the 2011 referendum and the options for our parliamentary representation system. • A government-initiated stakeholder engagement road show is undertaken. • Education strategies are developed to meet the needs of different demographics. • Relevant indicators are developed to assess and compare public understanding over time.	Electors engage in the electoral process. Informal votes are significantly reduced, particularly on the Māori roll. Voter turnout improves, and disparity in turnout between different demographic groups declines.
On-going Young New Zealanders gain quality civic education	**Stream 7: An informed youth** The existing civic education curriculum is reviewed for effectiveness and updated as necessary. • Relevant assessment systems are developed to assess and compare understanding over time.	The next generation of New Zealanders have a sound understanding of the system of parliamentary representation, engage with the system and know their rights and responsibilities as citizens.

15.3 Working Towards a National Sustainable Development Strategy

At this stage it is important to acknowledge that New Zealand, despite having committed to doing so in international agreements in 1997 and again in 2002, is yet to produce an NSDS.[122] *Project 2058*'s fifth report, *The Common Elements of a National Sustainable Development Strategy: Learning from international experience* (SFI, 2008a), found seven common elements existed within NSDSs implemented around the world (see Table 12).

In this section of the report we look at the role of an optimal parliamentary representation system in progressing a National Sustainable Development Strategy.

Table 12. The Seven Common Elements of an NSDS
Source: SFI, 2008a: 9

Seven Common Elements of an NSDS	Seven Strategic Questions
1. Background (to the strategy)	Where have we been and where are we now?
2. Vision (including desired outcomes)	Where do we want to be in the long term?
3. Principles (and values)	What do we believe in?
4. Priorities	What do we need to focus on?
5. Method of implementation	What do we decide to do and not to do?
6. Governance	Who is going to do what?
7. Monitoring progress	How well are we going?

In the future our country will face many issues, some of which will have unique implications for iwi and hapū. It is therefore critical that, firstly, a New Zealand NSDS exhibits clarity over the goals underlying Māori development, knowledge and customary practice, and secondly, effective parliamentary representation occurs so that those goals can be actioned effectively. Report 7, *Exploring the Shared Goals of Māori: Working towards a National Sustainable Development Strategy* (SFI, 2010a) addresses the first of these issues, while this report considers the latter, effective representation.

A New Zealand NSDS must meet the needs and represent the interests of all New Zealanders, including Māori. Past New Zealanders have shown great vision and determination in positioning New Zealand where it is today. The challenge for our generation is to build on New Zealand's current status, by working hard to create a unified and unique nation for the future. Our work in Report 7, *Exploring the Shared Goals of Māori: Working towards a National Sustainable Development Strategy* (SFI, 2010a), suggests a vision for New Zealand's future as 'One nation, many peoples, many iwi'. We use this vision as a way of framing the following discussion.

This report has drawn on four components of political representation (see Section 2.4.3) to aid our analysis of representation, particularly Māori representation, in Parliament today (Pitkin, 1972). It has become apparent that formalistic (the way in which institutional structures authorise and ensure accountability of our representatives) and descriptive (the extent to which representatives 'resemble' their constituents) views are currently given priority in assessing the design and function of our system. Although we support this approach, we also consider substantive representation, which focuses on outcomes and the extent to which representatives are acting in the 'best interests' of their constituents, should be given greater weight, particularly in the evaluation of the system. Underlying these components is the symbolic component of representation. Symbolism, when inadequate, may hinder beneficial change due to constituents' attachment to symbolic elements of a deficient system; however, it is also important not to understate the role of effective symbolism in gaining public acceptance of and support for our system.

122 New Zealand committed to two international targets: (i) the 'introduction' of an NSDS by 2002, which was set at a special session of the UN General Assembly (United Nations, 1997: 14), and (ii) the 'implementation' of an NSDS by 2005, which was set under the Johannesburg Plan of Implementation (UNDESA, 2002: 61). It was agreed that member states would take immediate steps to make progress in the formulation and elaboration of national strategies for sustainable development.

It is clear that building a nation cannot be left to chance. As the world's population and level of consumption increase, and resources are further depleted, the challenges for our small, remote country will inevitably become increasingly complex. Many emerging issues may be beyond our control, but effective representation is not one of them. Left unresolved, the issue of ineffective representation is likely to continue to bubble away, unnecessarily depleting goodwill and energy. A short-term strategy based on poor information and convenience is unlikely to deliver long-term strategic gains. To this end, given that effective representation in Parliament will shape New Zealand's long-term future, this report strongly supports the view that it is time to address this issue and get our House in order.

The public needs to be at the heart of this process, to continue to critically assess our institutions, and to ensure that our elected representatives genuinely represent the people of New Zealand. The current generation needs to take the opportunity to actively pursue the process of identifying, discussing, reflecting on, and then addressing outstanding issues. This task has been recognised in the *Relationship and Confidence and Supply Agreement between the National Party and the Māori Party*, which proposed the 'establishment (including its composition and terms of reference) by no later than early 2010 of a group to consider constitutional issues including Māori representation' (NZ Govt, 2008: 2).

Decisions on the future of the Māori electorate seats will inevitably be influenced by what Māori Party co-leader Tariana Turia has described as the 'symbolic power' that the seats hold for many New Zealanders (Turia, 2009). However, it is our conclusion that New Zealand needs to actively pursue effective representation, which is different from pursuing the essence of te Tiriti in symbolic terms. While both are important goals for this nation, the second goal is dependent on the first; in that if separate representation does not deliver an effective voice for all New Zealanders, any symbol will soon become irrelevant. The challenge is to build a nation that is more cohesive, equitable, and economically and environmentally sustainable. That means ensuring our parliamentary representation delivers what it promises – representation for each and every New Zealander.

At the heart of the Institute's *Project 2058* is a focus on mechanisms that are likely to deliver New Zealanders living in 2058 a nation that not only meets their needs, but also meets the needs of their descendants. This does not mean that the needs of New Zealanders living today are ignored, but that they are considered in terms of a long-term view. This idea of intergenerational responsibility underlies the meaning of sustainable development, in that it necessitates long-term thinking. In this report, the mechanism explored is effective representation, and the interest being assessed is the Māori voice. It is clear that any long-term strategy for New Zealand must, of necessity, demand effective representation for all New Zealanders, and in particular those of Māori descent, as New Zealand is the only country that is able to legitimately represent the many voices of Māori.

Glossary

Note: The following definitions derive from a variety of sources, and are referenced where appropriate.

Term	Definition
common roll	single roll for all voters (Royal Commission, 1986: 18)
constituency	a geographic area defined and named by the Representation Commission to elect a general-electorate MP or a Māori-electorate MP. More commonly called an electorate in New Zealand (Electoral Commission, 2006d). See Section 2.4.2 (iii) of this report for further discussion
constituent	a member of a constituency (Deverson & Kennedy, 2005: 233)
constitution	the body of fundamental principles or established precedents according to which a nation or other organisation is acknowledged to be governed (Deverson & Kennedy, 2005: 233).
elector	a person who has the right to vote to elect an MP (Deverson & Kennedy, 2005: 346). Also defined in the Electoral Act 1993 (s 3 [1]) as 'a person registered, or qualified to be registered, as an elector of any particular district'
electoral roll	the list of all the registered electors for a particular electorate, kept by the Registrar of Electors (Electoral Commission, 2006d)
electorate MP	a Member of Parliament elected to represent an electorate by winning a simple majority of electorate votes in that electorate (Electoral Commission, 2006d)
electorate quota	average size of the electoral population in each electoral district – this is calculated for Māori, North Island general and South Island general electorates (Statistics NZ, 2000b: 27)
electorate seat	a seat in Parliament held by an MP elected to an electorate (ibid.)
First Past the Post (FPP)	a voting system based on single-member electorates in which the candidate who wins a simple majority of votes is elected. Used in New Zealand before MMP was adopted (Electoral Commission, 2006d). Sometimes referred to as the Plurality Electoral System
general electoral population	total ordinarily resident population as shown in the last periodical census of population and dwellings, with the exception of the Māori electoral population as defined below (Electoral Act 1993, s 3 [1])
general roll	in New Zealand the larger of the two electoral rolls, comprising all electors who are not registered on the Māori roll (Deverson & Kennedy, 2005: 443)
hapū	kinship group, clan, tribe, subtribe – section of a large kinship group
hīkoi	a march or protest (Moorfield, 2009)
hui	a gathering, meeting, assembly, seminar, conference (Moorfield, 2009)
imputation	inserting a value when a respondent has not provided a valid response (Statistics NZ, 2006d: 4). In this report it specifically refers to inserting a 'yes' or 'no' answer, based on the responses of others with similar attributes, for people who answered 'don't know' to the Māori descent question in the New Zealand census.
indigenous	of or pertaining to the original inhabitants of a particular land or region (Deverson & Kennedy, 2005: 552)
iwi	extended kinship group, tribe, nation, people, race – often refers to a large group of people descended from a common ancestor
kanohi ki te kanohi	face to face, in person (Moorfield, 2009)
kāwanatanga	governance, a transliteration of governorship (MCH, 2007b)
list MP	an MP elected to Parliament from a party list (Electoral Commission, 2006d)

Term	Definition
list seat	a seat in Parliament held by an MP elected from a party list (ibid.)
Māori descent population	a person has Māori descent if they are of the Māori race of New Zealand. This includes any descendant of such a person (Statistics NZ, 2006d). Having Māori descent is required for a person to register on the Māori roll (Statistics NZ, 2000a)
Māori electoral population	a figure representing both the persons registered as electors of the Māori electoral districts and a proportion of the persons of New Zealand Māori descent under the age of 18 years. The proportion is determined by dividing the total number of persons registered as electors of Māori electoral districts by the number of persons of New Zealand Māori descent registered (Parliamentary Library, 2009b: 20)
Māori electorate	a geographic area defined and named by the Representation Commission which elects one electorate MP through the electorate votes of those on the Māori roll in that area (Electoral Commission, 2006d)
Māori-electorate MP	an MP occupying a seat derived from the Māori roll (see Figure 4, page 11)
Māori electorate quota	the Māori electoral population is divided by the South Island quota and rounded to give the number of Māori electoral districts. The Māori electorate quota is the Māori electoral population divided by the number of Māori electoral districts (Parliamentary Library, 2009b: 20)
Māori electorate seats	the seats in Parliament held by electorate MPs elected by those on the Māori roll voting in a Māori electorate. There are currently seven Māori electorate seats (Electoral Commission, 2006d)
Māori ethnic population	those people who state that Māori is their sole ethnic group or one of several ethnic groups (Statistics NZ, 2006c). Ethnicity refers to cultural affiliation (Electoral Commission, 2006d)
Māori MP	Any of the MPs above who identify themselves as Māori. This identification may be by descent or ethnicity (see Figure 4, page 11)
Māori roll	one of two New Zealand electoral rolls, comprising electors of Māori descent who have chosen to be registered on this roll rather than on the general roll, for which they are also eligible (Deverson & Kennedy, 2005: 683)
marae	a courtyard – the open area in front of the wharenui, where formal greetings and discussions take place. Often also used to include the complex of buildings around the marae (Moorfield, 2009)
Member of Parliament (MP)	a person elected to Parliament; under MMP, each Member of Parliament is elected as either an electorate MP or a list MP (Electoral Commission, 2006d)
Mixed Member Proportional (MMP)	the voting system New Zealand adopted in the binding referendum on electoral reform held in 1993. Each voter has two votes, one for a political party and one for a local electorate MP. Each party's share of all the seats in Parliament depends on its share of all the party votes, provided the party crosses the threshold by winning at least 5% of all the party votes or wins at least one general or Māori electorate seat. Each qualifying party receives enough list seats to add to its electorate seats to reach its total entitlement to seats as determined by its party votes (Electoral Commission, 2006d)
Plurality Electoral System	see 'First Past the Post'
population estimate	population estimates are produced using data from the most recent Census of Population and Dwellings, updated for estimates of the components of demographic change (births, deaths and net migration) since the last census. Population estimates based on the resident population concept (the estimated resident population) include adjustments for net census undercount and residents temporarily overseas (Statistics NZ, n.d.)

Term	Definition
Proportional Voting System	a voting system in which a political party's share of all the seats in Parliament is close to its share of the popular vote; there are many different types of proportional voting system, and many variations within each type. MMP is a proportional voting system (Electoral Commission, 2006d)
Single Transferable Vote (STV)	an electoral system of proportional representation in which a person's vote can be transferred to a second or further competing candidate (according to the voter's stated order of preference) if the candidate of first choice is eliminated during a succession of counts or has more votes than are needed for election. STV became an option for local authority elections in New Zealand from 2004 (Deverson & Kennedy, 2005: 1053)
Supplementary Member (SM)	an electoral system with electorate MPs and list MPs. SM differs from MMP because under SM only list seats are allocated proportionally, without taking account of the results in electorate seats, whereas in MMP the proportionality applies to all MPs (Electoral Commission, 2006d)
tangata whenua	local people, hosts, indigenous people of the land – people born of the whenua, i.e. of the placenta and of the land where the people's ancestors have lived and where their placenta are buried (Moorfield, 2009)
tino rangatiratanga	the unqualified exercise of chieftainship (MCH, 2007b)
voter	a person who votes in a general election, by-election or referendum (Electoral Commission, 2006d)
whānau	extended family, family group; a familiar term of address to a number of people (Moorfield, 2009)

Appendix 1 Population and Electoral Figures, 2006–2008

The following tables record the different population and electoral figures used in this report, and their sources.

Table 13. Population Figures, 2006 and 2008

Data	Population	Source	Page(s) in this report
4,268,900	Total NZ resident estimate 2008 (at June 30)	Statistics NZ, 2008a	47, 60
4,184,600	Total NZ resident estimate 2006	Statistics NZ, 2008a	58
4,027,947	Total NZ resident Census 2006	Statistics NZ, 2006a	54, 57
3,612,868	General electoral population 2008	Electoral Commission, 2008c	56
3,185,200	Total NZ 18+ resident estimate 2008	Statistics NZ, 2008a	60
2,747,800	Non-Māori descent 18+ resident estimate 2008	Statistics NZ, 2008a	60
739,039	Māori descent resident estimate 2008	Parliamentary Library[123]	47, 54, 60
721,431	Māori descent resident imputed figure for electoral calculations 2006	Statistics NZ, 2006b	57
643,977	Māori descent resident Census 2006	Statistics NZ, 2006c	57
642,900	Māori ethnic resident estimate 2008	Statistics NZ, 2008b	47
624,300	Māori ethnic resident estimate 2006	Statistics NZ, 2008b	57
565,329	Māori ethnic resident Census 2006	Statistics NZ, 2006c	57
437,400	Māori descent 18+ resident estimate 2008	Parliamentary Library[124]	47, 60
416,750	Māori electoral population 2008 (based on Māori descent population)	Electoral Commission, 2008c	56, 58
354,552	Asian ethnic Census 2006	Statistics NZ, 2006a	54
265,974	Pacific peoples ethnic Census 2006	Statistics NZ, 2006a	54

Table 14. Electoral Figures, 2008

Data	Population	Source	Page(s) in this report
2,990,759	Total electoral roll 2008	Electoral Commission, 2009a	59, 60
2,761,093	General electoral roll 2008	Electoral Commission, 2009a	56, 59, 64
2,585,329	Non-Māori on general roll	Electoral Commission, 2009a	60
405,430	Māori on general roll + Māori on Māori electoral roll 2008	Electoral Commission, 2009a	47, 60
229,666	Māori on Māori electoral roll 2008	Electoral Commission, 2009a	56, 59, 64, 69, 70, 76
175,764	Māori on general electoral roll 2008	Electoral Commission, 2009a	70, 76

123 The figures supplied by the Parliamentary Library are approximate and are not published figures. They have been supplied to Sustainable Future through personal communications and have been used in the absence of published figures.

124 See above.

Appendix 2 List of Māori MPs, 2008

Below is a list of MPs elected in 2008 who have identified themselves as Māori; seven are Māori-electorate MPs, eleven are list MPs and two are general-electorate MPs. In terms of political parties, seven are from National, seven from Labour, one from the Green Party and five from the Māori Party.

Table 15. Māori MPs Elected, 2008
Source: adapted from Geoffrey Anderson, Parliamentary Library (2009a: 32)

Member of Parliament	Party	Type of MP
Paula Bennett	National	General-electorate MP, Waitakere
Simon Bridges	National	General-electorate MP, Tauranga
Kelvin Davis	Labour	List
Darien Fenton	Labour	List
Te Ururoa Flavell	Māori Party	Māori-electorate MP, Waiariki
Aaron Gilmore	National	List
Hone Harawira	Māori Party	Māori-electorate MP, Te Tai Tokerau
Tau Henare	National	List
Parekura Horomia	Labour	Māori-electorate MP, Ikaroa-Rawhiti
Shane Jones	Labour	List
Rahui Katene	Māori Party	Māori-electorate MP, Te Tai Tonga
Moana Mackey	Labour	List
Nanaia Mahuta	Labour	Māori-electorate MP, Hauraki-Waikato
Hekia Parata	National	List
Mita Ririnui	Labour	List
Pita Sharples	Māori Party	Māori-electorate MP, Tamaki Makaurau
Georgina Te Heuheu	National	List
Metiria Turei	Green	List
Tariana Turia	Māori Party	Māori-electorate MP, Te Tai Hauāuru
Paul Quinn	National	List

Appendix 3 Report of the Royal Commission on the Electoral System, 1986

The following are the Terms of Reference for the Royal Commission:

> … to be a commission to receive representations upon, inquire into, investigate, and report upon the following matters:
>
> 1. Whether any changes to the law and practice governing the conduct of Parliamentary elections are necessary or desirable;
> 2. Whether the existing system of Parliamentary representation (whereby in respect of each electoral district the candidate with the highest number of votes is elected as the Member of Parliament for that district) should continue or whether all or a specified number or proportion of Members of Parliament should be elected under an alternative system or alternative systems, such as proportional representation or preferential voting;
> 3. Whether the number of Members of Parliament should be increased, and, if so, how many additional Members of Parliament there should be;
> 4. Whether the existing formulae and procedures for determining the number and boundaries of electoral districts should be changed, and in particular, –
>   a. Whether the redistribution of electoral districts should be based on total population or adult population;
>   b. Whether the allowance of five percent by which the population of an electoral district may vary from the quota should be changed;
>   c. Whether the membership and functions of the Representation Commission and the time limits and procedures governing its functions should be changed;
>   d. The feasibility of some form of appeal from decisions of the Representation Commission;
> 5. The nature and basis of Maori representation in Parliament;
> 6. The term of Parliament;
> 7. To what extent referenda should be used to determine controversial issues, the appropriateness of provisions governing the conduct of referenda, and whether referenda should be legislatively binding;
> 8. Whether the present limits on election expenses are appropriate and whether any limits on such expenses should be extended to political parties and to the amount of individual or total donations candidates and parties receive and whether such expenses should be defrayed wholly or in part by State grants and the conditions, if any, which should apply to such grants;
> 9. Any other question relating to the electoral system which you may see fit to inquire into, investigate, and report upon.
>
> (Royal Commission, 1986: xiii–xiv)

Table 16 contains a selection of relevant excerpts from the report of the 1986 Royal Commission on the Electoral System. These excerpts are not intended as a summary of the report, but merely to provide readers with the opportunity to read some of the actual text used by the Commissioners. The order of the text is extremely important; hence the subject headings are in italics.

Table 16. Report of the Royal Commission on the Electoral System, 1986
Source: Royal Commission, 1986

Excerpt	Paragraph
Chapter 2: The Voting System (pp. 11–80) *Terms of Reference 2: Whether the existing system of parliamentary representation (whereby in respect of each electoral district the candidate with the highest number of votes is elected as the member of Parliament for that district) should continue or whether all or a specified number or proportion of members of Parliament should be elected under an alternative system or alternative systems such as proportional representation or preferential voting.* (p. 11)	
Overall, we consider New Zealand's system of separate Māori representation with plurality to be seriously deficient in providing for the effective representation of the Māori people. Moreover, as we point out in Chapter 3, separate representation works against the development of mutual understanding between the races. (p. 19)	2.22
(d) A full discussion of Māori representation under MMP appears in paras. 3.73 to 3.88. For reasons which we discuss there, we propose no separate Māori seats, no Māori roll and no periodic Māori option. (p. 44)	2.116
Recommendation 1: The Mixed Member Proportional system as set out in para. 2.116 should be adopted. (p. 64)	2.182
Chapter 3: Māori Representation (pp. 81–116) Terms of Reference 5: The nature and basis of Māori representation in Parliament	
Introduction (pp. 81–89)	3.1–3.32
This term of reference requires the Commission to confront some of the most complex and difficult issues of democratic politics – those concerning minority representation. (p. 81)	3.2
The principles of Māori representation may therefore be listed as follows: a. Māori interests should be represented in Parliament by Māori MPs. b. Māori electors ought to have an effective vote competed for by all political parties. c. All MPs should be accountable in some degree to Māori electors. d. Māori MPs ought to be democratically accountable to Māori electors. e. Candidate selection procedures of the political parties should be organised in such a way as to permit the Māori people a voice in the decision of who the candidates are to be. (p. 88)	3.30
These principles must be applied in a manner which meets the requirements of electoral equality and fairness to all political parties, candidates, and voters. The principles are, of course, related, although the relationships among them differ in degree from one to the other. Some, if carried to their full extent, may also be mutually incompatible. No electoral system can meet them all. The MMP system which we have recommended for New Zealand is the one which we think strikes the right balance among them. (p. 89)	3.31
Separate Māori Seats under Plurality (pp. 89–98)	3.33– 3.63
The system of separate representation has served to isolate the Māori MPs politically by encouraging the non-Māori majority to regard Māori concerns as the sole preserve of separately elected MPs. At the same time, it has prevented Māori electors, particularly in areas where their numbers are large, from using their voting power to bring about a greater responsiveness on the part of both the individual non-Māori MPs and the political parties to the needs of the Māori community. By fostering the conditions under which Māori interests could be comfortably neglected by the general institutions of government, and by confining Māori voting power to separately elected seats, separate representation has weakened the influence of the Māori MPs. Moreover, members of the Māori community will remain powerless to rectify the situation through electoral means unless they can use their votes to make parties and Governments attentive to their concerns. (p. 91)	3.41

Excerpt	Paragraph
A Common Roll? (pp. 98–99)	3.64–3.68
An electoral system with a common roll would, we think, also offer Māori more scope for developing their potential voting strength in ways they themselves might choose. As their ranks would no longer be split between 2 rolls, Māori voters would form a large minority within the electoral system. Persons of Māori descent made up about 9% of the total population of voting age at the 1981 census. Were Māori voters organised in ways similar to black voters in parts of the United States, their votes could have a substantial impact on the fortunes of the political parties. An organised Māori vote could therefore have a positive effect on the way in which Māori issues are perceived by the parties. And in the event that Māori were to become dissatisfied with the performance of the existing parties, their vote, if it were organised, could be marshalled behind a Māori party. (pp. 98–99)	3.66
Depending on the nature of the common roll system, however, there could be disadvantages. As Māori would lose their guaranteed representation, it is possible there would be no Māori elected to Parliament. And even if Māori were elected, they and their non-Māori colleagues might well consider themselves to be more accountable to non-Māori voters. Non-Māori are the majority, and as such their votes carry more weight. Under these circumstances, a common roll could work against effective Māori representation. (p. 99)	3.67
A Common Roll Under Plurality (pp. 99–100)	3.69–3.72
A Common Roll Under MMP and STV (pp. 100–106)	3.73–3.88
We have suggested the 4% threshold be waived for parties primarily representing Māori interests whereas other parties would have to win that proportion of the list vote or at least 1 constituency seat in order to be entitled to any list seats. (p. 101)	3.75
A further potential disadvantage is that, although there may be Māori elected in the constituencies, Māori list MPs who were not constituency candidates or were not from a Māori party may be without a firm territorial base. On the other hand, political parties may well consider it to be in their interests to select Māori list candidates with a view to achieving a reasonable geographic or tribal spread, although this may not be reflected amongst those who are elected unless these candidates are high on the lists. The Māori list MPs from the various parties may, of course, decide to divide the country so that each could concentrate on constituency work in a particular geographic area, but party differences in the Māori community, though less marked than in other parts of society, could possibly make it difficult to achieve such an agreement. (pp. 102–103)	3.78
Recommendation 3: The Mixed Member Proportional system should be adopted as the best means of providing effective Māori representation. (p. 106)	3.88
Recommendation 4: There should be no change to the present system of Māori representation prior to a decision on whether or not the Mixed Member Proportional system should be introduced. (p. 106)	3.88
Māori Representation under SM (p. 106)	3.89–3.91
Because we suggested in Chapter 2 that SM should be considered if MMP is not adopted, it is necessary to examine Māori representation under that system. The SM system uses a number of supplementary seats which are allocated to parties in proportion to their votes, but SM differs from MMP in not being designed to achieve overall proportionality of all seats between the parties. The version of SM we consider most suitable for New Zealand is described in detail in para. 2.101. We suggest no special provisions for Māori representation: there would be no guaranteed Māori list or constituency seats, no Māori roll, and no option. All voters would vote for a constituency member and for a list. Under this system, it would be in the parties' interests to develop policies which responded to Māori concerns and to compete for Māori constituency and list votes. They would thus have an incentive to select Māori candidates for constituencies and particularly to put Māori in high positions on their lists. There would be an effective 5% threshold … for all parties to win a list seat, including a Māori party. While this system does not guarantee Māori candidates would be elected to Parliament, it makes it likely they would be. Māori candidates high on major parties' lists would be almost certain of election, and hence it is likely that a governing party would have some Māori MPs. (p. 106)	3.89
Māori Representation if MMP is not Adopted (pp. 107–108)	3.92 to 3.98
Recommendation 5: Should the Mixed Member Proportional system be rejected the system of Māori representation should be considered at the constitutional discussions referred to in recommendation 7. (p. 108)	3.98

Excerpt	Paragraph
Recommendation 6: Should the Mixed Member Proportional system be rejected but no agreement be reached with the Māori people about the system of Māori representation, the separate Māori seats should be retained. Their number should be set on the basis of the number of electors of Māori descent who choose to go on the Māori roll, plus their children, using the same population quota as is applied in General seats. Separate representation should be reviewed if either the number of Māori seats grows to more than 10% of the total number of seats in Parliament, or falls below 4. (p. 108)	3.98
Constitutional Arrangements (pp. 108–112)	3.99–3.111
Insofar as they have come to be regarded by many Māori as the principal expression of their constitutional position in New Zealand, the Māori seats in Parliament are a powerful political symbol. As the symbolic aspects of politics sometimes override more substantive considerations, the Commission believes the abolition of the seats could arouse strong feeling in the Māori community. The Commission therefore considers any recommended changes to the present electoral system should not only offer Māori better electoral and political prospects than those they enjoy at present, but should also include proposals for dealing with the constitutional issue which the abolition of the Māori seats raises. That issue arises in any event because, as we have intimated in para. 3.23,[125] the electoral system cannot be relied upon as the principal mechanism for the protection of all the rights and interests of a minority. Other arrangements are needed. (p. 108).	3.99
Although we understand and appreciate why Māori place such a high premium on the Māori seats, we do not think they are or ever have been an appropriate means of securing the Māori constitutional position … Thus while the Māori seats may well be the principal symbol of Government's recognition of the Māori people's special standing, their tenuous nature, in our view, makes them an unsatisfactory means of recognising the constitutional rights of the Māori people. (pp. 109–10)	3.102
Recommendation 7: Parliament and Government should enter into consultation and discussion with a wide range of representatives of the Māori people about the definition and protection of the rights of the Māori people and the recognition of their constitutional position under the Treaty of Waitangi. (p. 112)	3.111
Conclusion (pp. 112–113)	3.112–3.113
The parliamentary debates in 1867 suggest many MPs saw the introduction of the seats principally as a means of fostering Māori co-operation with European institutions and laws and not as a means of providing the Māori people with effective political representation … We also suggest a process for dealing with long-standing questions of the constitutional status of Māori which we consider ought to be undertaken whether or not there are to be major changes to our electoral system. We believe these issues are of concern to all New Zealanders and not just to Māori. (p. 113)	3.112
The MMP system with a common roll offers what we consider to be optimal conditions for the effective representation of Māori interests. It also offers Māori considerable scope for developing their potential voting strength and for charting their own political future. But in the end it is Māori themselves who must determine how much influence they and their representatives are to have in Parliament and in the wider political system. No matter how good the electoral system is, it will not work to their advantage unless the Māori people commit themselves to participation within it. (p. 113)	3.113
Chapter 4: The Number of Members of Parliament (pp. 117–129) Term of Reference 3: Whether the number of members of Parliament should be increased, and, if so, how many additional members of Parliament there should be. (p. 117)	
Introduction (p. 117)	4.1–4.2
Functions of Parliamentarians (pp. 117–122)	4.3–4.16
The number of MPs needed should be assessed in relation to the various individual and collective functions of MPs and the House of Representatives: a. to represent constituents; b. to represent the nation as a whole; c. to provide an effective Government; and d. to enact legislation and scrutinise the actions of the executive. (p. 117)	4.3

125 Para. 3.23 states: 'we believe the continued representation in Parliament of Māori rights and interests is essential because of the need to get protective arrangements in place and also because of the impact that economic and social policies geared to assist Māori might have upon them, and vice versa'. (p. 87).

Appendix 4 Reviewing Seat Allocations Without the Māori Electorate Seats, 2008

Table 17. Election Results 1996–2008; and 2008 Election Results Reviewed
Source: SFI, 2010d

	1996	1999	2002	2005	2008	2008 Recast: Possible Seats Gained			
						Option 1: Shift to a common electoral roll	Option 2: No threshold for parties representing Māori interests.	Option 3: Royal Commissioners' solution	Option 4: Change threshold for all parties
Variable (i): Removal of Māori seats	✓	✓	✓	✓	✓	Removed	Removed	Removed	Removed
Assumption relating to variable (i): Change in voting behaviour						It is assumed that without the Māori electorate seats, voting behaviour would change, resulting in the Māori Party's recast 2008 'party vote' being closer to its 2008 'electorate vote'			
Variable (ii): Change in threshold	5%	5%	5%	5%	5%	5% for all political parties (as in 1996–2008)	5%, but for those parties representing Māori interests, the threshold is removed	4%, but for those parties representing Māori interests, the threshold is removed	2% for all parties
National Party	44	39	27	48	58 (47.5%)	59 (49.2%)	57 (47.5%)	55 (45.8%)	55 (45.8%)
Labour Party	37	49	52	50	43 (35.2%)	45 (37.5%)	43 (35.8%)	42 (35.0%)	42 (35.0%)
Green Party	0	7	9	6	9 (7.4%)	9 (7.5%)	9 (7.5%)	8 (6.7%)	8 (6.7%)
ACT New Zealand	8	9	9	2	5 (4.1%)	5 (4.2%)	5 (4.2%)	4 (3.3%)	4 (3.3%)
Māori Party	0	0	0	4	5 (4.1%)	0 (0.0%)	4 (3.3%)	4 (3.3%)	4 (3.3%)
Jim Anderton's Progressive	0	0	2	1	1 (0.8%)	1 (0.8%)	1 (0.8%)	1 (0.8%)	1 (0.8%)
United Future New Zealand	1	1	8	3	1 (0.8%)	1 (0.8%)	1 (0.8%)	1 (0.8%)	1 (0.8%)
New Zealand First Party	17	5	13	7	0 (0.0%)	0 (0.0%)	0 (0.0%)	5 (4.2%)	5 (4.2%)
Alliance	13	10	0	0	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)
Total number of seats	120	120	120	121	122	120	120	120	120
Māori MPs in Parliament	16	16	20	23	20	15	19	20	20
% Māori MPs in Parliament	13.3%	13.3%	16.6%	19.0%	16.4%	12.5%	15.8%	16.7%	16.7%

Appendix 5 New Zealand's Constitution, 2008

What follows is an excerpt from the 2008 *Cabinet Manual*. For specific reference to the relevance of te Tiriti, see the second-to-last paragraph.

The New Zealand constitution: Its main features

The New Zealand constitution is to be found in formal legal documents, in decisions of the courts, and in practices (some of which are described as conventions). It reflects and establishes that New Zealand is a monarchy, that it has a parliamentary system of government, and that it is a democracy. It increasingly reflects the fact that the Treaty of Waitangi is regarded as a founding document of government in New Zealand. The constitution must also be seen in its international context, because New Zealand governmental institutions must increasingly have regard to international obligations and standards.

The Constitution Act 1986

The Constitution Act 1986 is the principal formal statement. The Act first recognises that the Queen – the Sovereign in right of New Zealand – is the Head of State of New Zealand, and that the Governor-General appointed by her is her representative in New Zealand. Each can, in general, exercise all the powers of the other.

The Act then deals with the Executive, the legislature, and the judiciary.

The provisions about the Executive emphasise its parliamentary character. Only Members of Parliament may be Ministers of the Crown and Parliamentary Under-Secretaries. One Minister may also act for another.

Parliament – the legislature – consists of the Sovereign and the House of Representatives. The members of the House are elected in accordance with the Electoral Act 1993. Each Parliament has a term of three years, unless it is earlier dissolved. The Governor-General has the power to summon, prorogue and dissolve Parliament. After each general election, Parliament is to meet within six weeks of the date fixed for the return of the writs.

The Constitution Act provides for Parliament to have full power to make laws; a Bill passed by the House becomes law when the Sovereign or Governor-General assents to it.

The Constitution Act reaffirms the constitutional principles about parliamentary control of public finance: the Crown may not levy taxes, raise loans, or spend public money except by or under an Act of Parliament.

The provisions about the judiciary also relate back to long established constitutional principle. To enhance their independence, the Judges of the Supreme Court, the Court of Appeal and the High Court are protected against removal from office and reduction of salary.

Other sources of the constitution

The other major sources of the constitution include:

[1] The prerogative powers of the Queen under which, for instance, the Queen issued the Letters Patent Constituting the Office of the Governor-General of New Zealand in 1983 and conferred her powers in respect of New Zealand on the Governor-General. The Queen appoints the Governor-General who, in general, exercises her prerogative powers. The Queen or Governor-General appoints and dismisses members of the Executive Council and Ministers of the Crown. Those powers are part of the common law. They exist independently of statutes, although statutes can, of course, limit or even supersede them.

[2] Other relevant New Zealand statutes, such as the State Sector Act 1988, the Electoral Act 1993, and the Judicature Act 1908, relating in turn to the three branches of government, as well as the Ombudsmen Act 1976, the Official Information Act 1982, the Public Finance Act 1989 and the New Zealand Bill of Rights Act 1990.

[3] Relevant English and United Kingdom statutes, such as Magna Carta 1297, the Bill of Rights 1688, the Act of Settlement 1700 (regulating succession to the throne among other matters) and the Habeas Corpus Acts, all confirmed as part of the law of New Zealand by the Imperial Laws Application Act 1988. These statutes also regulate the relations between the state and the individual.

[4] Relevant decisions of the courts, for instance, upholding rights of the individual against the powers of the state, and determining the extent of those powers.

[5] The Treaty of Waitangi, which may indicate limits in our polity on majority decision-making. The law may sometimes accord a special recognition to Māori rights and interests such as those covered by Article 2 of the Treaty. And in many other cases the law and its processes should be determined by the general recognition in Article 3 of the Treaty that Māori belong, as citizens, to the whole community. In some situations, autonomous Māori institutions have a role within the wider constitutional and political system. In other circumstances, the model provided by the Treaty of Waitangi of two parties negotiating and agreeing with one another is appropriate. Policy and procedure in this area continues to evolve.

[6] The conventions of the constitution, which in practice regulate, control and in some cases transform the use of the legal powers arising from the prerogative or conferred by statute. The most important conventions arise from the democratic character of our constitution.

[numbered brackets added] (DPMC, 2008)

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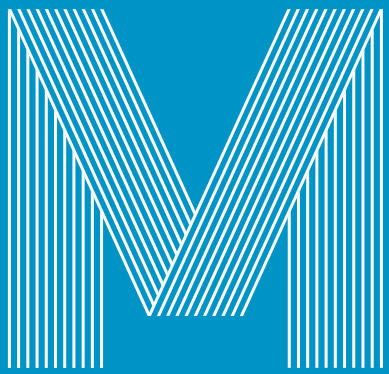

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