

Submission to INDEPENDENT ELECTORAL REVIEW on its:

Independent Electoral Review: Interim Report

Submitted by the New Zealand Council of Trade Unions Te Kauae Kaimahi
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This submission is made on behalf of the 31 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With over 340,000 union members, the CTU is one of the largest democratic organisations in New Zealand.

The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga), the Māori arm of Te Kauae Kaimahi (CTU), which represents approximately 60,000 Māori workers.

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1. Summary of recommendations

The CTU:

- 1.1. Supports requiring decision-makers to give effect to te Tiriti o Waitangi / the Treaty of Waitangi and its principles when exercising functions and powers under the Electoral Act (IER recommendation 4).
- 1.2. Recommends that further analysis and debate is required on the appropriate threshold for the party vote (IER recommendation 6). The threshold must strike a balance between enabling the broad representation of political interests and viewpoints and the ability to form effective and stable government.
- 1.3. Supports abolishing the one-electorate seat threshold (IER recommendation 7).
- 1.4. Supports removing the existing provision for extra seats to compensate for overhang seats, with fewer list seats allocated instead, if the one-electorate seat threshold is abolished (IER recommendation 8).
- 1.5. Supports fixing the ratio of electorate seats to list seats at 60:40, requiring parliament to be an uneven number, and allowing the size of parliament to grow in line with the population (IER recommendation 9).
- 1.6. Supports holding a referendum on the parliamentary term, supported by a well-resourced information campaign (including dedicated engagement with Māori communities and leaders) (IER recommendation 10).
- 1.7. Recommends that a referendum is held on lowering the voting age to 16 (IER recommendation 17).
- 1.8. Supports the intent of recommendation 22 (granting all prisoners the right to vote), but recommends that further discussion and debate is required on this complex issue.
- 1.9. Supports the intent of the proposed reforms to private financing of political parties/candidates (IER recommendations 53–61), but believes further analysis and debate is required over what the right settings are. We are

concerned by the proposal to limit the ability of trade unions to make political donations.

- 1.10. Supports increasing state funding for parties (IER recommendation 62), if there were to be significant reform to the private funding of parties.
- 1.11. Does not support removing the right paid time off to vote on election day.

2. Introduction

- 2.1. The CTU welcomes the opportunity to submit on the Interim Report from He Arotake Pōtitanga Motuhake | the Independent Electoral Review (IER). This IER's report and recommendations provides New Zealanders an opportunity to debate how best to strengthen and safeguard our democratic system. In a world in which democracy is being undermined by growing inequality, reactionary political movements, technological change, and geopolitical conflict, this task is more important than ever.
- 2.2. The IER's Interim Report contains 98 main recommendations as well as additional technical recommendations. Given the breadth of the report, this submission focuses only on what the CTU takes to be the most significant or consequential recommendations made by the IER.

3. Comments on selected recommendations

Rec 4: Requiring decision-makers to give effect to te Tiriti o Waitangi / the Treaty of Waitangi and its principles when exercising functions and powers under the Electoral Act.

- 3.1. The CTU supports this recommendation and believes it would be a positive step in the direction of redressing past breaches of te Tiriti o Waitangi / the Treaty of Waitangi, actively protecting Māori electoral rights, and providing equitable opportunities for Māori participation.

Rec 6: Lowering the party vote threshold for list seat eligibility from five per cent of the nationwide party vote to 3.5 per cent.

- 3.2. The CTU's view is that the party vote threshold must strike a balance between enabling the broad representation of political interests and viewpoints and the ability to form effective and stable governments. Currently, the CTU does not have a view on where exactly the party threshold should be set. The pros and cons of lowering the threshold appear to be evenly balanced at present, so we recommend that further analysis and debate is required on this issue.
- 3.3. On the one hand, it is possible that the current threshold is too high. Parties can receive significant numbers of votes and still miss the threshold, meaning the interests of those who voted for them are not represented in parliament. For example, 2,894,486 people voted at the 2020 General Election, meaning that to meet the 5% threshold a party had to get 144,724 votes. By contrast, if the threshold were 3.5%, a party would only have needed to get 101,307 votes. The 3.5% threshold would therefore better ensure the political viewpoints of New Zealanders are represented. Additionally, it is likely that minor parties would get more votes if the threshold were lower, as this would remove the fear of casting a "wasted vote".
- 3.4. On the other hand, lowering the party vote threshold could undermine the ability of parties to form stable governments, and may give minor parties excessive influence over policy. There is also the risk that lowering the threshold enables parties with extremist views to gain a foothold in parliament. Some European democracies have been destabilised by small extremist parties over the past decade, and the possibility of this occurring in New Zealand should be taken seriously.

Rec 7: Abolishing the one-electorate seat threshold.

- 3.5. Notwithstanding our comments above regarding the setting of the party vote threshold, the CTU supports abolishing the one-electorate seat threshold. The rule undermines the primacy of the party vote under MMP,

undermines the 5% threshold, and can mean some electorates have an outsized influence on the formation of government.

Rec 8: Removing the existing provision for extra seats to compensate for overhang seats, with fewer list seats allocated instead, if the one-electorate seat threshold is abolished, as recommended.

3.6. The CTU supports the removal of the overhang compensation provisions, on the basis that the corresponding recommendation to abolish the one-electorate seat threshold is also supported.

Rec 9: Fixing the ratio of electorate seats to list seats at 60:40, requiring parliament to be an uneven number, and allowing the size of parliament to grow in line with the population.

3.7. The CTU supports fixing the ratio of electorate seats to list seats at 60:40. This would help ensure proportionality is maintained over time. There is currently no ratio set to ensure balance is maintained between electorate and list seats. This means that, as the population grows over time and more electorate seats are added, the proportion of list seats will shrink. This could undermine the proportionality of parliament and a core principle of MMP, which is to ensure the makeup of parliament reflects the party vote.

3.8. The CTU supports requiring parliament to be an uneven number. This is a commonsense measure to help eliminate the risk of a hung parliament.

3.9. The CTU supports allowing the size of parliament to grow in line with the population. This will help account for varied population growth across electorates. It will also help ensure electorate MPs are able to effectively serve their electorates and that there are enough MPs to effectively conduct the business of parliament.

Rec 10: Holding a referendum on the parliamentary term, supported by a well-resourced information campaign (including dedicated engagement with Māori communities and leaders).

3.10. The CTU supports holding a referendum on extending the parliamentary term to four years. The CTU's view is that the parliamentary term must strike

a balance between ensuring government is able to effectively do the work of governing once elected while also being sufficiently accountable to the electorate. Our three-year parliamentary terms make New Zealand something of an international outlier, as most democracies have four-year terms. It is possible that the current three-year term doesn't provide government enough time to pursue necessary reforms and pass quality legislation.

Rec 17: Lowering the voting age to 16.

3.11. The CTU recommends that a referendum be held on lowering the voting age to 16. This could be done in conjunction with the referendum on the parliamentary term. There is little evidence to suggest that 16 is too young to be given the responsibility to vote or that there would be adverse consequences of doing so. Additionally, the literature on voting and non-voting shows that voting is a habit – i.e., that people who have voted in the past are more likely to be regular voters in the future. Lowering the voting age may therefore have the added benefit of encouraging life-long voting habits.

Rec 22: Granting all prisoners the right to vote.

3.12. The CTU supports the intent of this recommendation but believes this is a complex issue that requires further discussion and debate.

Recs 53–61: Reforms to private funding of political parties/candidates.

3.13. The CTU strongly supports the intent of the IER's recommendations on reforming private funding of political parties/candidates. New Zealand has a donations system that allows the wealthy to exercise a disproportionate influence over the electoral process. This issue is particularly important in the context of the well-documented widening of income and wealth inequality in New Zealand over the past three decades, the steady decline of party membership, which has made New Zealand political parties more reliant on private donors for funding, and the growth of dis- and misinformation that is eroding trust in democratic institutions. Reform is needed to improve the fairness and legitimacy of elections and election

outcomes, and to improve transparency and public trust in the political system.

- 3.14. The CTU therefore supports capping the amount that an individual can donate in a political cycle. We note that most established democracies place limits on how much an individual can donate annually, but New Zealand currently has no limit. As with the other thresholds discussed in the IER's report, the precise levels at which caps and thresholds are set are somewhat arbitrary. One justification given for the \$30,000 cap by the IER is that academic research has found that between a majority and two-thirds of New Zealanders support a donation cap somewhere between \$10,000-\$15,000 per annum. So a cap of \$30,000 per (three-year) electoral cycle (i.e., \$10,000 per year) is seen to have some political legitimacy. The CTU's view is that the cap should certainly not be any higher than \$30,000 per political cycle, as this is significantly beyond the means of most working New Zealanders. Consideration should therefore be given to a lower threshold.
- 3.15. The CTU believes further analysis and debate is needed on the issue of restricting the ability to donate to registered electors. We support initiatives that prevent wealthy individuals or families from making multiple donations through different entities such as corporations or trusts. However, our view is that democratic organisations, such as trade unions, that represent the interests of their members, have a legitimate mandate to donate to political parties.

Rec 62: Increasing state funding for parties.

- 3.16. The CTU supports the IER's recommendations to increase state funding for political parties on the basis that the private funding of parties was curtailed, as suggested in recs 53-61. It is in the country's interests to have adequately funded political parties that can engage in the "contest of ideas" and effectively represent the diverse views of voters. However, because there is currently limited state funding available for electoral purposes, political parties must actively seek private funding.

The right to paid time off on election day.

- 3.17. The IER discusses the merits of removing the election-day requirement that employers must allow workers to have paid time off on election day if they are not able to vote outside of their work hours. The IER's intention here is to align voting day laws with the advance voting period. As the IER writes, *"This provision is based on a presumption that voting mostly takes place on election day. It seems unlikely that a person would have no opportunity to vote before election day if there are at least 12 days of advance voting. For that reason, we think the provision could be removed."* The IER doesn't make a specific recommendation here but is interested in submitters' views on the matter.
- 3.18. The CTU opposes removing this requirement. Although more people are advance voting, it is important that people have every opportunity to vote on election day. First, although voter turnout has been improving from its 2011 low, between a quarter and a fifth of registered electors do not vote in general elections. In this context, it is important that all potential barriers to voting are removed to encourage turnout. Second, voters should be given the maximum amount of time to come to a decision based on all the available information. For some people, this can mean waiting until voting day to make a decision. This kind of informed engagement with democracy should be encouraged rather than penalised. Third, voting day is the last day a person can vote. If an employer refuses a worker time off earlier, then that worker may have another chance to vote, but if an employer refuses on voting day, then the person will lose their opportunity to vote. Finally, for some people, voting on election day is a meaningful civic ritual. Civic rituals are important components of democratic societies, and they should be actively enabled.
- 3.19. If the aim is to make voting day consistent with the advance voting period, then the CTU recommends that the right to paid time off to vote should be *extended* across the advance voting period. The current law applies to people on election day "who ha[ve] not had a reasonable opportunity of voting before commencing work". This could be amended to apply

throughout the pre-election period to anyone “who does not have a reasonable opportunity of voting outside of their working hours”.

4. Conclusion

- 4.1. This submission has commented on selected parts of the Independent Electoral Review’s Interim Report. The CTU looks forward to further engaging with He Arotake Pōtitanga Motuhake | the Independent Electoral Review on this important work.