

**Pressure Groups Under MMP:
A Study of Behaviour and Influence**

by

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Abbreviations

ACT – Association of Consumers and Taxpayers

ENPP – Effective Number of Parliamentary Parties

ETS – Emissions Trading Scheme

FPP – First-past-the-post

GPG – Guinness Peat Group

KFA – Kyoto Forest Association

MMP – Mixed Member Proportional

MP – Member of Parliament

NGO – Non-government Organisation

NLTF – National Land Transport Fund

NZCTU – New Zealand Council of Trade Unions

NZEEBW - New Zealand Energy and Environment Business Week

NZPA – New Zealand Press Association

RTF – Road Transport Forum

SEAFIC – Seafood Industry Council

SMRANZ – Scrap Metal Retailers Association of New Zealand

SOP – Supplementary Order Paper

UK – United Kingdom

US – United States

Abstract

This thesis examines the impact of MMP on pressure group behaviour and strategies. MMP altered the distribution of public policy decision-making power. As a consequence, it was expected to influence the strategies and behaviours of pressure groups seeking to influence public policy. The thesis finds that most expectations of pressure groups under MMP have been borne out. In particular, pressure groups have developed a wider range of political relationships and access points, have achieved more success through engagement with select committees and have been more willing to lobby and campaign publicly in opposition to Executive policy. In addition, it finds pressure groups have adopted an increasingly flexible and politically independent mentality and it finds there has been a blurring of boundaries between insider and outsider pressure groups. Finally, it concludes that policy influence has become more complex under MMP and created the need for increased pressure group sophistication.

Chapter 1 introduces New Zealand's pluralist traditions as well as the history and importance of pressure group activity. It describes the rationale for the adoption of MMP and the relationship between this electoral system and the public policy process – “the rules of the game” – within which pressure groups operate and seek to influence.

Chapter 2 provides an overview of the core political theory that underpins pressure group behaviour under different electoral systems – including theories of state structure and of weak and strong legislatures. It outlines the various methods of influence available to pressure groups and reviews the international literature to identify the main themes, strategies and tendencies that might be expected of pressure groups in an MMP environment. These include a drift in emphasis from Ministers and the bureaucracy to

Parliament and a broadening of Parliamentary relationships, a stronger focus on select committees, increased media and mobilisation activity, as well as some additional emphasis on quality information and political gamesmanship. These expectations are set out as five hypotheses for examination

Chapter 3 discusses and reviews the extent and nature of structural change to public policy decision-making in New Zealand under MMP – as an important context for the analysis of pressure group behaviour. It finds that MMP has delivered substantial structural change to the distribution of decision-making power, but that this has been highly variable and changed from one term of government to the next.

Chapter 4 first describes the methodology used for researching and reviewing pressure group behaviour and strategies under MMP. It sets out a qualitative approach that involved a mixture of expert interviews and public policy case studies.

Chapter 5 returns to and examines the five hypotheses set out in Chapter 2 and concludes that most expectations have been met, particularly the development of broader Parliamentary relationships by pressure groups.

Chapter 6 sets out those key conclusions and underlying themes beyond examination of the five hypotheses.

Chapter 1 – Introduction to Pressure Groups and MMP

A Pressure Group Culture

New Zealand has a pluralistic democracy. Governments are elected to make decisions on behalf of the population, but it is expected those decisions will be influenced by external pressures. Some influence is channelled via formal and highly legitimised institutions, such as Parliament and its select committees. Some is exerted via informal networks, the media and a range of campaign tools and techniques. And while there is, from time to time, public concern, suspicion or even accusation over the methods of influence adopted by certain pressure groups¹ or the extent of influence enjoyed by a particular group over a political party or the policy agenda², the role of pressure groups is an accepted feature of public and political life in this country.

In arguably the most comprehensive New Zealand academic work on pressure groups, Les Cleveland wrote that “central to the successful management of conflict is the democratic proposition that out of the clash of opinions over some problem or issue, the most acceptable course of action will present itself as the end product of a lengthy and complicated sequence of grumbling, complaint, interest-seeking, exploration and possible course of action, clarification of issues, criticism, debate, public-opinion sounding, expert consultation, reaching for consensus, formulation of policy, and final decision-making” (Cleveland 1972, 1). Cleveland may be open to accusations of bullish optimism, as it does not always seem to work out so tidily, but he did reflect, quite nicely, New Zealand’s

¹ For example, there has been concern about the influence of financial contributions to political parties (Young 2008, Norman 2008[a]).

² For example, the New Zealand Business Roundtable has been identified by some commentators as bearing an unhealthy influence over policy during the 1980s and 1990s (Harris and Twine 1998, Laugesen 2005).

tolerance of both pluralism's inefficiencies and the pursuit of interests. Thirty three years later, in 2007 and 2008, public and media reaction to constraints on third party political advertising in the Electoral Finance Act 2007³ illustrated the continuing strength of support for pressure group activity as a legitimate element of democratic debate.

Pressure group activity in New Zealand is not just accepted, it is also important and influential. Political theorists vigorously debate the extent to which public policy is shaped and driven by politicians and political parties as opposed to public opinion and pressure groups, but it is hard to dispute that in New Zealand at least, whatever the actual balance of influence, pressure groups play a substantial role in shaping our public policies. In addition to the influence of politicians, political parties and the media, the outcome of democracy and government in this country depends, "to a very considerable extent, on the strength, range of activity, resourcefulness and persistence of pressure groups" (Cleveland 1972, 1).

New Zealand has a rich history of pressure group activity and influence to explore. There are the high profile, high intensity, popular pressure movements that rose up in relation to specific events and issues such as female suffrage, the Vietnam War or homosexual law reform.⁴ There are the more subtle, often broader and longer term influence campaigns based on networks and relationships, undertaken by major corporate and sectoral interests, such as Federated Farmers, the Council of Trade Unions, environmental non-government organisations (NGOs), or the major telecommunications companies (Long 2006). There are also the thousands of submissions and representations made by individuals and groups of

³ The Electoral Finance Act 2007 sought to place limits on electoral advertising and introduce greater transparency. It drew fierce opposition from the media, from some political parties and from a range of interest and pressure groups – broadly on the grounds that through a mixture of confusion and over-zealous requirements the Act infringed on the ability of the public to express views and participate in the democratic process. It was repealed by the National-led government in February 2009.

⁴ See New Zealand History Online – www.nzhistory.net.nz

the general public in relation to an ongoing flow of policy, funding and legislative issues.⁵ Pressure group activity is a ubiquitous feature of New Zealand society and politics. Every day, media report or record some form of pressure group activity – from a march on Parliament to a select committee submission to a simple public statement about the latest government policy announcement.⁶

There are many forms of pressure groups and there have been many attempts to categorise and define them - from groups that people are born into to those they opt to join, from those which are long-term institutions to those that emerge in relation to a specific issue or event and then disappear. “Some are national, others local; some are giants firmly rooted in the public mind, others are little known” (Watts 2007, 4). This thesis is broadly concerned with those groups or organisations that Almond described as “associational” in 1960 (Almond and Coleman 1960, 115) – which people join in order to protect or promote either their own interests or those of a chosen cause. However, individual companies, for instance, are also within its scope.

Distinctions are sometimes made between pressure groups and movements, companies or think tanks (Watts 2007, 6-12, Grant and Allan 1989, 3-11). This thesis is primarily focused on intent and behaviour rather than form. It is concerned with those groups or organisations - whatever their membership, history or structure – that seek to influence government policy. This is similar to the approach taken by Watts, who concluded that “a pressure group is an organisation which is not a political party but which seeks to influence government through the political process, in order that it can affect the development of public policy”

⁵ For instance, the Finance and Expenditure Committee received 259 written submissions and heard 96 oral submissions in relation to the Emissions Trading Scheme legislation alone in 2008 (Chauvel 2008).

⁶ See www.scoop.co.nz – a media website that collects most of the pressure group media statements issued each day in New Zealand. It is not uncommon for 20-25 different pressure group statements concerning a variety of policy or political issues to be issued on any single day.

and that “all of the classifications alluded to have been the subject of regular criticism, encouraging writers such as Rhodes and others to place more emphasis on the way in which policy emerges rather than on the types of groups involved in its creation” (Watts 2007, 13).

Every instance of pressure group activity, and every one of the examples mentioned above, has a unique plot, circumstance, set of characters and outcome. In each case, the pressure groups involved applied a different strategy (or lack of) and different mix of campaign and influence techniques. The success or otherwise of pressure group activity has a major bearing on public policy outcomes. That success, in turn, is heavily influenced by pressure group strategy and behaviour. This thesis is about those strategies and that behaviour.

The Adoption of MMP

In a 1993 referendum the public voted in favour of changing New Zealand’s electoral system from First Past the Post (FPP)⁷ to Mixed Member Proportional representation (MMP)⁸, by a margin of 53.9 per cent to 46.1 per cent. The subsequent advent of MMP (first used for the 1996 national election), a form of proportional Parliamentary representation, delivered significant political and constitutional change. It changed the shape, composition and size of Parliament and redistributed power across different political institutions.

Perhaps because of their importance and the uncertain consequences of change, national electoral systems are not often changed. Electoral systems are, from time to time, incrementally modified and adjusted, but they have rarely been overhauled. According to

⁷ Under FPP, the country is divided into a series of geographic constituencies. The candidate with the most votes in any electorate is elected to Parliament and the party with the most elected MPs forms the government.

⁸ Under MMP the number of party members elected to Parliament reflects the proportion of votes received by each party. MMP differs from a pure proportional representation model by including members (approximately half the total number of MPs) elected by a geographic constituency (or electorate). These constituency MPs are deducted from the total number of a party’s Parliamentary representatives to retain overall proportionality.

John Wallace, former chair of the Royal Commission on the Electoral System and first chairman of New Zealand's Electoral Commission, "At the time of the Royal Commission Report [1986] there were very few instances of a country making a major change to its electoral system in other than revolutionary or near revolutionary circumstance" (Wallace 2002, 50). The novelty of New Zealand's electoral shift is part of its academic allure. It is something that has interested political analysts and commentators in the vast range of political changes that have flowed from the introduction of MMP.

It was not always anticipated or intended that MMP would bring about extensive constitutional changes. The initial drivers of electoral change in New Zealand were more modest and limited in scope. The important Report of the Royal Commission on the Electoral System, *Towards a Better Democracy* (Royal Commission 1986), was heavily focused on electoral issues, and particularly the issue of 'representation'. Six of the ten electoral assessment criteria used by the Royal Commission in preparing its report were explicitly concerned with representation and according to Sir Geoffrey and Matthew Palmer, "The logic of that report [*Towards a Better Democracy*] was founded firmly on the performance of the electoral system rather than upon the wider constitutional and structural issues ... " (Palmer and Palmer 2004, 13). The election-focused nature of that report is not surprising given public confidence in the FPP electoral system had been affected by a series of electoral anomalies and outcomes that had highlighted the representative limitations of that system. In both the 1978 and 1981 general elections, the National Party had secured the control of both the executive and Parliament despite receiving fewer total votes than the Labour Party. Further, despite receiving more than 20 per cent of the popular vote in 1981, the Social Credit Party was rewarded with only two MPs. In 1984, the New Zealand Party did not achieve a single MP despite securing more than 12 per cent of the total vote.

The latter part of the 1980s would deliver another, more constitutionally-focused, rationale for electoral change – the need to check the power of the Executive and compel a more consultative public policy decision-making process. Discomfort with the speed and extent of economic restructuring during the 1980s, plus the immediate social and economic displacement that resulted - arguably beyond the limit of public tolerance – fed the public appetite for electoral and constitutional change. Indeed, FPP became broadly associated with market liberal ideals during this period (at least as far as the former was perceived to make the latter possible). This placed New Zealand's long-standing electoral system in a very vulnerable position as opposition to the 1980s economic agenda intensified. Richard Mulgan was one who drew a connection between the 1980s economic reforms and FPP when he wrote that "New Zealand's democracy falls well short of the ideal standards set by the principles of pluralist democracy and, arguably, became even less equal and less democratic in the decade of restructuring,". He also claimed, in reference to the introduction of MMP, that "In so far as the new constitutional arrangements will impose a greater degree of consultation and compromise, they may be seen as a victory for the principles of democratic pluralism" (Mulgan 1994, 322).

By the time New Zealand was organising for a referendum on MMP in 1993, core constitutional issues such as Executive power, the role of Parliament and the need for more consultative government had become a key aspect of the philosophical battleground. They have featured strongly in academic literature and political commentary about the consequences and implications of MMP ever since.

The “Rules of the Game”

The relationship between an electoral system, in this case MMP, and pressure group strategy may not, at a glance, seem direct. Yet it is fundamental because the electoral system is intimately linked to the shape of a country’s political institutions and constitutional arrangements. It determines the size and composition of Parliament and, in turn, the respective powers of the Executive and Parliament. Accordingly, it has a major bearing on how public policy decisions are made. As Sir Geoffrey Palmer observed, “the rules of the constitution set up the rules of the political game,” and “the political game is important because the public policy outcomes of the country are determined by it” (Palmer and Hill 2002, 205). As rules change, it can be expected the behaviour of the players involved and affected, including pressure groups, will adapt.

Analysing pressure group behaviour in a political context is always difficult, given much activity takes place out of the public eye. Assessing pressure group performance is even more difficult given that public policy decisions are always the result of many contributing factors, decisions, motives and events. Nevertheless, there is extensive literature about how MMP redistributed decision-making power and re-organised the decision-making process. There is also considerable international literature discussing the strategy and behaviour of pressure groups in various constitutional environments, environments which share some of the key characteristics of New Zealand FPP or, conversely, New Zealand MMP. In conjunction with predictions and observations made by New Zealand academics about pressure groups under MMP, there is a sufficient body of knowledge to make some informed assumptions about the kind of behaviour and strategies that effective pressure groups could be expected to have adopted under MMP.

While there are too many pressure groups and far too many public policy decisions to attempt an aggregated performance assessment against those assumptions, it is possible to undertake an analysis of selected public policy case studies. It is also possible to interview, in depth, political players and experts that have been exposed to and observed the policy process, pressure groups, their strategies and behaviour during New Zealand's twelve years of MMP government.

This approach will provide a better understanding as to how New Zealand pressure groups have behaved under MMP, the strategies they have applied, whether they have behaved as expected; and if not, why not. That is the objective of this thesis.

Chapter 2 – Expectations of Pressure Groups under MMP

Pressure Groups and State Structure

Pressure group strategy and behaviour is influenced by a myriad of variables. Every pressure group is unique and every one operates in its own strategic and political environment. Yet, there are some variables that political theorists have tended to identify as being more important and having more influence on pressure group behaviour. Ball and Millard described a reasonably typical set of internal and external factors, including a group's aims and objectives, organisation, membership, assets and resources, the political system, political culture and party system (Ball and Millard 1986, 41-51). Non-political external factors, such as the strength of the media and social culture, are other variables that might be added to their list, which is certainly not exhaustive.

Each of these variables has been the subject of academic exploration, particularly the political system, which can have an enormous influence on the strategies, fortunes and influence of pressure groups. The strategic environment and behaviour of a human rights group in North Korea will be very different to that of a similar organisation in the Netherlands. New Zealand's shift from FPP to MMP was not a wholesale political upheaval. It was more subtle – a variation on a liberal democracy. For that reason much of the literature on pressure group behaviour in the context of contrasting political 'systems' (e.g. democratic versus totalitarian) tends to address issues of such scale and extreme as to be of limited value to somebody interested in the adoption of MMP in New Zealand. There are, however, some fundamental observations about the impact of state structure on pressure groups that apply across any political system and which go to the heart of understanding the more specific factors that shape pressure group behaviour.

There would be few that dispute the state's influence on societal players, including pressure groups. In fact, there are some 'statists' that place strong emphasis on the state as the primary determinant of pressure group behaviour and "urge us to look not only at the different way in which interest groups attempt to influence states but at the various ways in which the state influences interest groups" (Wilson 1990, 33). Wilson also observed that the "capacity of the state to shape interests is closely related to the structure of the state itself." Jordan and Richardson have argued that pressure groups are passive or at the mercy of the structure of the state. They described pressure groups as "chameleons" and argued "those that take their lobbying role seriously adapt their internal organisations and structure to suit the policy system in which they happen to operate" (Jordan and Richardson 1987, 147). This response – or adaptation - to the state and its structure, whether conscious or otherwise, whether immediate or gradual, will have occurred in the wake of the French Revolution, just as it will with the adoption of MMP.

Within the wider discourse on political systems, state structure and pressure groups is a narrower body of work that revolves around institutional - or constitutional - influences over pressure group behaviour, usually within liberal democratic boundaries. It is this work that supports informed speculation and assumption about expected pressure group behaviour in New Zealand under MMP - because while the introduction of MMP did not constitute political revolution, it did deliver substantial constitutional change.

The concept of a constitution requires some clarification in respect to most countries, but the need is even more pressing in the New Zealand context, given this country lacks any singular constitutional document, such as that found in the United States and, indeed, most

western democracies. In fact, it is more appropriate to refer to “constitutional arrangements” in relation to New Zealand.

Whatever their particular parts and assembly, constitutions and constitutional arrangements matter because they “have to do with the distribution, exercise and control of state power” and because they comprise “the rules – written and unwritten – which establish the powers and responsibilities of government, and which regulate relationships between the various parts of government, and between the government and citizens” (Shaw and Eichbaum 2008, 38).⁹ These “rules” are critical to pressure group influence and behaviour as they determine who decides public policy and how it is decided. Consequently, these rules are at the heart of this thesis.

Fragmentation of Power

Much of the literature concerning the behaviour of pressure groups in a constitutional context focuses on the strength of the Executive relative to the legislature or Parliament and, related to that, the extent to which the public policy decision-making process is consolidated or, on the other hand, fragmented. The most common comparison is between the constitutional arrangements and pressure groups in the United States and those in the United Kingdom, two countries regarded as sitting toward opposite ends of the liberal democratic spectrum of Executive strength (at least, in relation to legislation). The British Parliament is regularly characterised as impotent alongside an all powerful Executive. “All Executive policy and most legislation is conceived, framed, drafted and all but enacted in

⁹ It is important to recognise the scope of a country’s constitutional arrangements can be interpreted quite broadly and, in the case of New Zealand, can, for instance, be understood to include the Bill of Rights, Treaty of Waitangi and the Electoral Finance Act. These components of the constitution might be regarded as being about ‘rights’ – as opposed to those concerned with process, power and decision-making as is the focus of this thesis.

Whitehall” (Devlin Commission 1972, 5). The essential power of the British Executive (and relative impotence of its Parliament) rests in a FPP constitutional model that almost invariably delivers one party a Parliamentary majority, enabling the Executive to control legislation and brush aside Parliament’s dissenting voices.

FPP was New Zealand’s electoral system from the time of the country’s democratic inception until 1996. Although the last variation of FPP in New Zealand had different features to the British template (for example, New Zealand’s FPP Parliament had fewer MPs and no Upper House), it also constrained the role and influence of Parliament. Malone not only described Parliament as weak under FPP, but argued that even the Parliamentary caucus of the governing party was largely irrelevant. “FPP governments took office on the assumption that its back bench would provide it with an automatic majority in the House” (Malone 2008, 61) and “the role of the caucus was to peruse, debate and ultimately assent to government bills, but not to initiate them” (Malone 2008, 83).

The United States is viewed differently. Institutional and decision-making power is much more fragmented. Consequently, “an interest group that is cut out of the political process at one level, or loses a battle in one area, can usually find other arenas in which to launch a fresh challenge” (Tenbensen 2006, 530). The strength and influence of the legislature is a key feature of political decision-making in the United States. This is partly attributable to the more explicit division of power between the legislature and the United States Executive.

The reasons are not just structural and constitutional. In particular, United States political parties are less disciplined in the sense that elected representatives are far more likely to take an independent position on issues or even vote with rival parties. According to Levine and Roberts, “The United States literature on legislative behaviour is interesting in part

because it (correctly) views its subject matter, U.S. lawmakers, as ‘free agents’, able to determine their own destiny and course of action as issues and policies arise ...” (Levine and Roberts 2004, 42).

While there are still many differences between New Zealand’s MMP constitutional arrangements and the United States politico-legislative framework, the move to MMP has brought New Zealand closer to the United States in at least some key respects. It has involved a “small but significant” shift in power towards Parliament (Shaw and Eichbaum 2008, 68) and a more fragmented decision-making process. This tempered observation contrasts with that of Martin, who argued that MMP has “shifted the balance between Parliament and the Executive significantly back towards the former” (Martin 2004, 335). Significantly, there has been no single party majority since the advent of MMP. While membership of the Executive has continued to be dominated by one party, the Executive’s power has been constrained by, in the first instance, the requirement for, and terms of, post-election negotiations. Most importantly, it has been constrained by the need to secure multi-party support for the passage of all legislation. With successive Labour-led and National-led minority governments, that support has had to come from parties not even represented within the Executive – making the need for policy compromise even more critical. Consequently, “decision-making has become more open and contestable” (Martin 2004, 335).

Just as a collection of factional groups, potentially spanning both the Democratic and Republican parties, need to be brought together to carry legislation through Congress, it now takes negotiation and compromise on the part of several political parties to pass legislation in New Zealand. Under MMP, policy-making power in New Zealand has been diluted and the decision-making system, certainly the legislative process, has become far

more complex, iterative and dependent on negotiation and compromise at several stages. As a result, Parliament as an institution has become more influential - as have the individual members and parties that comprise Parliament.

The implications of the strengthening of Parliament extend well beyond Parliament itself. It will impact on the behaviour of the media, the bureaucracy and, no less, pressure groups. Quite predictably, where legislatures are strong (for example, the United States) pressure groups devote significant resources to trying to work through them, but where the Executive is dominant (for example, the United Kingdom and Japan), pressure groups use different tactics – concentrating on persuading Ministers and civil servants to accept their arguments (Wilson 1990, 21-33). This is a straightforward proposition – pressure groups will direct their energy towards parties and channels with greatest influence. As Robert Presthus wrote of Canada, “The Cabinet, of course, is typically regarded as the centre of authority and power within the parliamentary system. Its members presumably control the machinery of government through their individual command of the great departments, while collectively, they determine the major outlines of national policy. Since interest groups seek access at critical points in the political system, we should expect frequent interaction between them and ministers” (Presthus 1973, 236).

There is, however, more to pressure group strategy under MMP than the commonsense of focusing on power. There is the important question as to how that focus on power is best achieved. As already discussed, MMP has created a more complex public policy decision-making environment, not just for the policy-makers themselves, but also for those seeking to influence. “The lobbying process is ... likely to be more complicated and to occur at a greater number of stages of the policy development and legislative process” (Redward 1995, 39). Furthermore, as Presthus found in his empirical comparison of US and Canadian pressure

groups, not only did the American groups focus more on the legislature (given its relative strength and influence in US public policy decision-making), but they also displayed greater variation in their tactics (Presthus 1973).

Methods of Influence, Insiders versus Outsiders

The range of tools and options available to a pressure group seeking to influence public policy is extensive, whatever the particular constitutional arrangements. “Relevant decision makers can be contacted, media campaigns launched or members can be mobilized to exert pressure on politicians” (Binderkrantz 2004, 3). Watts identifies the Executive, the legislature, public opinion, and to a lesser extent the courts, as the primary influence levers (Watts 2007, 45-57). Sometimes pressure group literature organises these influence methods in two broad groupings – direct and indirect (Watts 2007, 45-57). Direct tactics and strategies involve contact with, and the attempt to influence, public policy decision makers, with a further distinction often made between action focused on bureaucratic players and action targeting politicians and political parties. Indirect tactics and strategies, which seek to bring about external pressure upon decision makers, can be divided into the use of media and the mobilisation of the public (Binderkrantz 2004, 5).

Any pressure group initiative or campaign will involve one, all or a combination of these levers. New Zealand’s response to greenhouse gas emissions and its Kyoto Protocol obligations is an example of a public policy issue that generated wide-ranging pressure group activity – both direct and indirect. Groups both supporting and opposing the government’s stance (as well as those with a more nuanced view) engaged directly with government officials through formal consultation processes, produced hundreds of select committee submissions, met and directly lobbied members of Parliament, party

spokespeople and policy leaders. Many of the same groups also engaged in widespread media activity, issuing press statements, holding press conferences and providing comment to interested journalists. Mobilisation was not such a feature of the final policy phase and the introduction of the Emissions Trading Scheme. However, mass tractor convoys and protests, along with a supporting petition, are regarded as having contributed significantly to the Labour-led government's decision, in 2003, to abandon a previous plan to introduce a research tax on methane emissions – “a fantastic victory for farmers” according to Federated Farmers President, Charlie Pedersen (Pedersen 2003).

Some “regard the pursuance of indirect strategies as the fall back option for groups excluded from direct access to decision making processes” (Binderkrantz 2005, 6). This contention is subject to debate. Others have argued that indirect strategies are not inferior or a second-best option, but are, instead, strategies for different circumstances or strategies that may supplement direct methods (Watts 2007, 35). However, there is general agreement that different types of pressure groups tend to utilize a different balance of indirect and direct methods. “Insider” groups are more likely to utilize direct methods and “outsider” groups are more likely to utilize indirect methods (Watts 2007, 34). As Tenbensen has argued:

Insiders ‘have the ear’ of government – they are typically involved in the formulation of policy, they are consulted over any changes that may affect their constituency. Insider status brings with it access to information about policy. It also confers a formal role on such groups (Tenbensen 2006, 527).

On the other hand, “outsider groups either do not want access or legitimacy or are unable to attain such recognition” (Watts 2007, 34).

During the 1970s, Cleveland described the largest and most important New Zealand pressure groups as “classic examples of semi-institutionalised groups to be found in frequent consultation with cabinet ministers and their departments” and observed that “whenever a major policy decision has to be made involving the economic and professional fields in which these groups are active, they are likely to be almost automatically consulted.” He listed, as examples, Federated Farmers, the New Zealand Federation of Labour, The New Zealand Employers’ Federation, the New Zealand Manufacturers’ Federation, the Associated Chambers of Commerce of New Zealand, the New Zealand Returned Services’ Association, the Public Service Association and the Medical Association of New Zealand (Cleveland 1972, 14). In 2008, Barrie Saunders reflected on how the position of these insider groups had changed:

If you go back 30 years, the powers in the land were, not necessarily in this order: the Manufacturers Federation, Federated Farmers, the Federation of Labour, plus the producer boards. Now they either don’t exist or the power has got dispersed (Scherer 2008).

Few would claim groups such as Federated Farmers or the Council of Trade Unions (CTU) are no longer influential. The power of these groups will always be determined by their composition. There are still large numbers of farmers and they continue to wield significant economic influence. Likewise, while union membership remains down on pre Employment Contracts Act¹⁰ levels, the CTU still represents hundreds of thousands of employees. So, they both remain very important pressure groups. However, more akin to the United States policy environment, MMP was expected to create a competitive environment for external influence and agenda setting. “In the future [under MMP], the range of parties and interests

¹⁰ The Employment Contracts Act 1991 reduced the legislative backing for unions, strengthened the direct relationship between employers and their employees and removed various obstacles to different types of employment contracts and working arrangements. According to Andrew Morrison, in 1996, union membership had almost halved in the five years following introduction of the Act (Morrison 1996, 7).

able to move issues onto the central political arena, and also to veto policy moves, will be wider” (Boston, Levine, Mcleay and Roberts 1996).

It is important to acknowledge that some of the changes in pressure group numbers and behaviour will, to some extent, be the result of variables and trends beyond MMP. It is notable that changes have been observed internationally and in countries where there has not been any significant structural shift in political structures and institutions. Watts observed that “Since the 1960s, there has been an astonishing rate of growth in the formation of issue and cause groups, some national, others operating at a grass roots level.” He attributes this “proliferation of pressure groups” to several factors, including: growth in the extent and scope of governmental activity, the growing complexity of modern life, improved communications that have facilitated association and organisation, an increasingly multi-cultural and multi-ethnic society, and the emergence of new post-materialist attitudes (Watts 2007, 5-6). Although Watts was writing of the United Kingdom, he could just as easily have been writing of New Zealand.

Wyn Grant has argued the traditional model – in which insider groups via direct methods were “more effective at exerting influence on decision-makers” – has been challenged in the United Kingdom, particularly by the rise of NGOs successfully using various methods of indirect influence (Grant 2001, 337-348). Binderkrantz has claimed this trend extended beyond the United Kingdom:

The insider/outsider debate has attracted most attention among British political scientists, but the described trends seem to be mirrored in other European countries. In Denmark ... researchers have argued that traditional corporatist structures have been under rupture in the last decades. Groups traditionally regarded as highly privileged have complained about

their exclusion from the central decision making processes, and a wider range of groups are now included in governmental hearing processes. Also, the media has gained increased importance in the political process as well as in the strategies pursued by interest groups (Binderkrantz 2004, 3).

Although it has rarely been the focus of academic work related to MMP, there is some discussion of pressure group behaviour in the New Zealand context. There are sections and chapters within general political or public policy works that either provide some predictions or discuss the place and behaviours of pressure groups in an MMP world (for example, Boston, Levine, Mcleay and Roberts 1996, Shaw and Eichbaum 2008, Palmer and Palmer 1997). In addition, there are a couple of Masters papers - one produced just prior to the introduction of MMP and one produced during the first term of MMP - dedicated to pressure group strategy (Redward 1995, Sellens 1998). These New Zealand works include some very important observations, but to build a more comprehensive picture of how pressure group strategy is likely to have been impacted by the move from FPP to MMP, and the associated fragmentation of decision-making, it is necessary to consider the international literature.

Very few liberal democracies within the past fifty years have substantially remodelled their constitutions like New Zealand, but there is a significant literature on pressure group behaviour within varying constitutional frameworks, particularly the United States and the United Kingdom. While this literature lacks specific reference to a transition from one constitution to another, it provides an opportunity for comparative analysis and, thereby, for drawing conclusions about New Zealand pressure group transition from an FPP constitution to an MMP variety.

Relationships and Points of Access

Much of the discourse on pressure group behaviour, strategy or tactics concerns relationships and points of access. Having relationships, contacts or, at a minimum, the ability to gain access are important for the transmission of information, ideas and policy arguments. The respective value of these points of access to pressure groups varies according to the constitutional framework and distribution of power between the Executive and the legislature, and is an influence on pressure group behaviour. “When legislatures gain greater power over the passage of statutes – and Cabinet power is thus constrained – the configuration of interest group/parliamentary relationships is thereby altered” (Boston, Levine, Mcleay and Roberts 1996, 155).

Under the FPP constitutional model, it was not just decision-making power that tended to be concentrated (in the hands of the Executive), but also pressure group influence. FPP suited better connected and better resourced insider groups. This concentration of influence amongst key insider groups is not surprising when the fundamentals of FPP decision-making are considered. Cabinet was secure and powerful. It did not face any significant decision-making competition. Consequently, the Cabinet and its composite Ministers were in a position to be selective as to which pressure group relationships they kept. They tended to keep the important relationships. This resulted in a mutually beneficial and somewhat symbiotic relationship that reinforced the position of both the politician and the pressure group. It provided the insider pressure groups with access and influence and it provided the Minister, Cabinet and government with policy information, endorsement and legitimacy. According to Boston, Levine, Mcleay and Roberts:

“New Zealand’s majoritarian political system has enhanced the discretion of decision-makers as to whom they wish to involve in consultation and negotiation ... Cabinet’s unequivocal power has meant that it has not had to consult, let alone negotiate, except where the government wants to legitimate its action, to gain information, and/or to simply the policy implementation process” (Boston, Levine, Mcleay and Roberts 1996, 161).

By comparison, “governments, in systems where authority is divided between different branches of government, are unable to enforce interest group unity by talking to only one interest group; the Executive cannot control which interest groups shall receive a friendly hearing in Congress, or vice versa” (Wilson 1990, 33). In this environment, different parties can source information from different groups and different groups can peddle their information, ideas and arguments to different parties. There is more of a contest for ideas, and, in turn, it is expected pressure groups will develop relationships across the political spectrum.

This presumption is supported by Jeffrey Berry’s analysis of pressure group behaviour in the United States. Berry concluded that “public interest groups devote significant amounts of time to trying to persuade ‘swing’ members of Congress to come over to their side”(Berry 1977, 222) and that “lobbying opponents, through friendly and unfriendly approaches, was found to be a common, not anomalous, trait among public interest groups.” He also found that while some members of Congress would be considered “lost causes”, “public interest lobbyists do not avoid people in government just because they are unsympathetic” (Berry 1977, 219). These conclusions probably owe as much to the historical independence of members of Congress from their political parties as they do to the strength of Congress as constitutionally enshrined. Nevertheless, it is this independence that contributes to an open and competitive legislative environment and justifies comparisons with MMP.

It is interesting to compare Berry's findings with comments by Holtzman about pressure group lobbying in the United Kingdom in an FPP environment. Not only does Holtzman consider that "the privileges and process of consultation with the Executive act as an inhibitor upon interest groups lobbying the Parliament," but that "interest group leaders are reluctant to jeopardize their good relations with the Executive" on the basis that "a lobbying campaign in Parliament could undermine the valuable position that the groups have achieved in the departments" (Holtzman 1966, 41). A direct and compelling comparison can be drawn by looking at the United Kingdom during the period of 1974-79. For the large part of this period, the Government lacked a majority, which "encouraged sectional groups to make greater use of contacts within Parliament to modify or overturn decisions" (Grant and Allan 1989, 68).

Accordingly, when New Zealand adopted MMP, it was anticipated there would be some shift in pressure group emphasis from the Executive and its ministers to Parliament and its members (Boston, Levine, Mcleay and Roberts 1996, 161). Pressure groups would "need to establish contacts with all coalition parties, and in the case of minority governments, may need to establish contact with the supporting parties. It may also be a rational strategy to lobby the opposition, as there is a chance that Parliament will be more open to private members' bills from the opposition" (Redward 1995, 39).

MMP was also expected to deliver more political parties to Parliament. In doing so it would result in both a wider range of political philosophies being represented and some philosophies and interests being advocated by multiple parties. For example, since the introduction of MMP, the Labour Party has had political competition for the advocacy and promotion of labour interests. Notably, the Alliance Party, the Green Party and the

Progressive Party have all been strong advocates of collective bargaining. New Zealand First was also a consistent advocate for increases in the minimum wage. It can be assumed MMP pressure groups would need a wider range of political relationships and access points to be effective.

Select Committees

Select committees are a point of access to the policy process for pressure groups wherever there is some kind of parliamentary model of government. In New Zealand they are primarily concerned with considering submissions and making recommendations in respect of legislation referred to them by Parliament, but they also have opportunities to investigate broader policy issues and set their own policy agenda. Unlike direct lobbying of politicians, public relations campaigns or even engagement with the bureaucracy (with the exception of formalised consultation processes), engagement with select committees tends to be more formal and structured.

New Zealand's FPP select committees were regarded by many as relatively ineffectual (Malone, 2008). Similarly, their FPP counterparts in the United Kingdom have been described as producing "a constant flow of reports which are rarely discussed in Parliament, and seldom make a stir ... rarely, in practice, do they make much impact on departmental policies" (Bruce-Gardyne and Lawson 1976, 141). By comparison, "the importance of committees in the Congress [in the US] and in most state legislatures cannot be overemphasized" (Holtzman 1966, 62). One of the main reasons for the different levels of influence between committees in the United States and those in the United Kingdom (or FPP New Zealand) is their relative independence. Select committees are comprised of the members of the legislature (in New Zealand's case, excluding members of the Executive).

Under an FPP model, the Parliamentary majority (particularly where that majority is substantial) enjoyed by the governing party means that select committees tend to be majority-controlled by the government. Consequently, FPP Executives are able to exert significant control over both the agendas and recommendations of select committees.

As an extension of MMP's impact on the composition of Parliament, particularly the expected arrival of multiple political parties and minority governments, the composition of select committees was expected to change. Government majority-controlled and chaired committees were expected to be much less common¹¹ and, correspondingly, the government's ability to control the agenda and recommendations of select committees was expected to be diminished. MMP would make select committees "more important to the passage of legislation" and increase "the scrutiny of government through select committee investigations" (Palmer and Palmer 1997, 15). Consequently, MMP select committees should have provided a more fruitful channel of policy engagement and influence for pressure groups.

However, unlike Congressional committee members in the United States, members of New Zealand select committees are still, first and foremost, members of political parties - and there was no compelling expectation they would be any more independent of their party under MMP than under FPP.¹² Furthermore, select committees themselves are not decision-making bodies. They are advisory bodies. If the Executive or Parliament ignores their recommendations the committees have no recourse. Therefore, it remained uncertain whether more diverse party representation on committees and non-majority control would

¹¹ Boston, Levine, Mcleay and Roberts observed that since the 1930s it was "an unheard of situation" for a government to be without select committee majorities (Boston, Levine, Mcleay and Roberts 1996, 69).

¹² According to the opinion leader MMP survey undertaken by Boston, Levine, Mcleay and Roberts in 1995, 43% of respondents felt party loyalty would be weaker under MMP, while 28% felt it would be stronger and 23% expected little change (Boston, Levine, Mcleay and Roberts 1996, 33)

translate into greater policy influence. That is, ultimately, what would influence pressure group behaviour.

The Bureaucracy

“The best way to influence Ministers is to influence the advice they receive” (Matthews 1993, 233). That is a strong proposition and the bureaucracy tends to be the Executive’s primary advisor. The bureaucracy comprises the many government agencies and officials who undertake research and submit advice at the behest of Ministers and Cabinet. The bureaucracy works for the Executive. Only occasionally (for instance, when servicing a select committee) does it work for Parliament.

The role and influence of the bureaucracy varies country to country. In the United Kingdom, Australia, France – countries with relatively strong Executives - it is regarded as strongly influential. “If [in the United Kingdom] a group had to choose only one point of access to the decision-making arena, it would invariably choose the bureaucratic arena” (Richardson 1993, 90). By contrast, in the United States “the bureaucracy does not enjoy that favourable position which characterizes public administration in Britain and on the continent” (Holtzman 1966, 63). This may be partly explained by the American political psyche and the inclination of the legislature to be suspicious of the bureaucracy (Holtzman 1966, 3), but it may also reflect the greater contestability of policy and fragmentation of power in the United States. Without the same ability to control the policy agenda, the United States Executive can not afford to rely on one source of information and advice to the same extent as its British counterpart, for instance.

MMP was expected to subject the bureaucracy to competition and impact upon its relative monopoly on advice to the Executive. Interestingly, almost a third of opinion leaders surveyed prior to the introduction of MMP believed the influence of senior public servants would increase under MMP (Boston, Levine, Mcleay and Roberts 1996).¹³ Boston, Levine, Mcleay and Roberts regarded this expectation as “open to doubt”, but nevertheless argued that “irrespective of the political complexions of governments under MMP, the role of the public service will be as vital as ever” and that it would remain “the principal source of ‘free and frank’ advice to Cabinet”. They did acknowledge that under minority governments there would be a shift in the balance of power between the Executive and the legislature that would affect both the political and bureaucratic arms of the Executive (Boston, Levine, Mcleay and Roberts 1996, 147).

In New Zealand, the period since the introduction of MMP has coincided with a trend towards the appointment of ‘political advisors’. These advisors, who are independent of the bureaucracy, are employed by Ministers to support and advise Ministers directly, particularly in relation to the political risk and opportunity implications of public policy decisions. This trend may be the result of a change in political management and communications practice and not directly related to MMP (for instance, it has occurred in the United Kingdom). However, these advisors can play an important role briefing Ministers and negotiating policy and legislation with support parties. Prior to the introduction of MMP, there was a view that ministerial advisers would further enhance the contestability of advice under MMP (Shaw and Eichbaum 2008, 18).

¹³ The reasons for senior public servants being expected to enjoy an increased influence under MMP included a more frequent turnover of governments and, therefore, ministers, as well as the greater time ministers would need to devote to inter-party negotiations at the expense of policy development (Boston, Levine, Mcleay and Roberts 1996, 146).

Under any constitutional system there will be examples of politicians making public policy decisions without, or contrary to, the advice of the bureaucracy, but where politicians, Ministers in particular, have less control over the public policy agenda, as was expected under MMP (Boston, Levine, Mcleay and Roberts 1996, 156), this should happen more frequently. However, as Richardson observed, in considering an influence strategy and the role of the bureaucracy within it, pressure groups “do not have to choose just one lobbying technique” (Richardson 1993, 90). Consequently, even if MMP did expose the bureaucracy to competition in its role as policy advisor, there is no certainty pressure groups will have placed any less emphasis on the bureaucracy as an avenue for policy influence under MMP.

Media and Mobilisation

The use of the media and the mobilisation of constituents or the public have always been important influence techniques for New Zealand pressure groups. These techniques include media releases, media interviews, press conferences, letter writing campaigns, marches, petitions and advertising campaigns. They can form a key part of any political influence strategy, through creating public awareness of an issue and elevating the sense of political risk or opportunity for decision-makers. MMP was expected to make public policy more sensitive to public opinion (Palmer and Palmer 1997, 195). In turn, it could be expected to influence the emphasis placed on media and mobilisation by pressure groups.

The literature suggests that stronger Executives should be relatively well positioned and more likely to resist public pressure and opposition to the policy agenda, while weaker Executives are likely to be more malleable. “Claims about the decline of Parliament and concentration of power within Prime Minister, Cabinet and bureaucracy are said to insulate policy-making from outside influences” (Stone 1996, 42). As long as FPP governments

possess a Parliamentary majority and a secure Executive, which has been the overwhelming norm in the UK and New Zealand, they are in a stronger position than an MMP government to weather short term public hostility and remain committed to their policy agenda. “The stability of British cabinets permits the Government and majority party to plan and carry out legislation; in effect, to govern with confidence over the long run” (Holtzman 1966, 41). The same applied to New Zealand FPP governments. Although an FPP government still needs to manage the risk of rebellion from within the governing party, it does not face the risk of a nervous or opportunistic support party deciding to renege on a policy commitment as a consequence of public pressure.

Holtzman was sceptical of the value of public relations campaigns in the United Kingdom. “Party discipline raises almost impenetrable barriers on important issues of policy, and public relations campaigns from the outside are both expensive and questionable in their effect” (Holtzman 1966, 42). Historically, party discipline in New Zealand has also been strong. In addition, as discussed above, there may also be a concern amongst pressure groups dealing with a powerful Executive that undertaking an aggressive lobbying campaign across Parliament or undertaking a highly visible public relations campaign will only alienate the Executive. It is not just time, resources and prospects of success that are considerations for pressure groups. The impact of public relations campaigns on strategic relationships is also important.

Finally, on the basis of a shift in decision-making power and the Executive’s diminished ability to dictate the policy agenda, MMP was expected to result in greater openness in policy-making and more extensive public debate on major issues (Boston, Levine, Mcleay and Roberts 1996, 129), again with implications for the influence of public opinion and public campaigning. “The public nature of debate and increased interparty negotiation, in a

Coalition cabinet or minority government Parliament, is likely to slow down the process of legislating and may increase the extent to which public consultation affects government policy” (Palmer and Palmer 1997, 15).

Information

Information is critical to public policy decision-making and fundamental to pressure groups. According to John Wright, “interest groups achieve influence through the acquisition and strategic transmission of information that legislators need to make good public policy and to get reelected”, and “most of what interest groups and lobbyists do involves acquiring expert information about policy and politics and reporting this information to legislators” (Wright 1996, 2). Furthermore, where power is more fragmented, where the policy environment is more contestable and where the policy process is longer and subject to more extended scrutiny, the value of information should be heightened. For instance, it has been observed that in the United States during the period from the 1970s to the 1990s “a divided government – with neither the Republican nor Democrats controlling both the White House and the Congress ... fuelled demand for intellectual ammunition on both sides” (Stone, 1996, 40).

The role of information was not a major theme within academic discussions of policy and pressure groups under MMP. However, it was an issue addressed by Palmer and Palmer, and their view supports the suggestion information would be increasingly important:

Perhaps the most effective weapon of the pressure group in an MMP environment is to provide all the relevant decision-makers with information about how a decision will affect people and to make rational arguments, based on that information as to why any policy

should or should not be adopted” and “despite the confidential nature of the decision-making process, most arguments in favour of a policy need, finally, to withstand the scrutiny of a public gaze (Palmer and Palmer 1997, 199).

Interestingly, during the early stages of New Zealand’s MMP experience, Executive Director of the New Zealand Business Roundtable, Roger Kerr (himself a critic of MMP) noted that counter to some predictions, “old-style, sectional lobbying” had by and large not returned under MMP. Instead, he argued “that long-term success in the public policy debate nowadays is about sound research and advocacy, not about visits to the Beehive or deal making behind closed doors” (Kerr 1998) - although he attributed this to factors other than MMP.¹⁴

Another consideration in relation to the role of information is that MMP policy was likely to be increasingly conceived and shaped by parties and politicians without access to the advice and information of government officials. Not only were government support parties expected to have an influence over policy and legislation through negotiations with the government, but even opposition parties would have an opportunity to shape policy through private members’ bills. Without those parties having access to a bureaucracy to provide the research and legislative drafting, there would be an information gap for pressure groups to exploit under MMP.

Presthus made an insightful distinction between two types of information used by pressure groups, “substantive” and “ideological”. Thus far, discussion has focused on the use of the former, “the objective, technical, feasibility components of a policy issue,” rather than the

¹⁴ “New Zealand has learned some hard lessons about the consequences of special interest politics, and that electoral systems are not the only factors that determine a country’s direction. Ultimately, other factors, such as the general climate of ideas, the realities of international competition, and the practical experiences of citizens count for more” (Kerr 1998).

latter, which relates to “party and political survival”. In any constitutional environment, both substantive and ideological information and arguments are critical tools of pressure group activity and engagement as both can deliver the necessary rationale for a policy decision (Presthus 1973, 82). Similar observations have been made in the New Zealand context. “Lobbyists may make clear and logical policy arguments based on solid information. Or they may engage in political threats or inducements. In the latter case, they may resemble politicians rather than advocates. Express or implied threats are a sort of political bargaining” (Palmer and Palmer 2004, 241).

There is experience and academic opinion to suggest the use of “ideological” information would be of greater value and importance to pressure groups under MMP. Wilson has argued that “when Executives are weaker, the overtly political tactics of interest groups are more important” and that “most American interest groups are more obviously involved in politics than their counterparts in countries with strong Executives” (Wilson 1990, 21). It was certainly anticipated that MMP would create opportunities for New Zealand pressure groups to “take advantage of tensions between coalition partners to attempt to influence the legislative programme” (Redward 1995, p38).

This suggests the need for pressure groups to demonstrate a level of political awareness, sophistication and even gamesmanship in order to be successful in an MMP environment. They would need to understand the perspectives of different parties and the reality of the compromises that are a part of the public policy process. Indeed, Palmer believed pressure groups would need to be quite sophisticated in the way they presented and organised their information if they were to advance their interests in the complex, multi-party, multi-philosophy MMP environment. As he commented in an interview in 2002:

Pressure groups are going to be more influential and ... they are going to be more influential in the policy-making process. But how influential will not depend so much on their political clout as on their policy-making sophistication; their ability to craft policy changes that are acceptable to a Parliament which is broadly representative of the public, and not peddle their own particular interests ahead of those. If they can subordinate their private interests for a wider set of interests, pressure groups are likely to be much more effective in the policy-making process than they are now (Palmer and Hill 2002, 114).

Five Hypotheses for Examination

MMP was expected to change New Zealand's political power and decision-making structures. Consequently, it was anticipated there would be changes to the environment in which pressure groups operate, to the relative value of different influence channels and techniques and, in turn, changes to the behaviour of pressure groups themselves. In addition to the expectations of New Zealand commentators and academics, there are assumptions that can be drawn about pressure group behaviour under MMP from the observation of pressure groups in democracies with stronger legislatures and more fragmented power structures.

Based on this collective observation and expectation, five hypotheses relating to pressure group influence and behaviour are set out below. These hypotheses are organised around the different channels and methods of pressure group influence discussed above.

The **first hypothesis** is that, on account of the wider distribution of decision-making power under MMP than FPP, pressure groups would develop a range of political and Parliamentary relationships and would be increasingly prepared to engage with politicians and political parties across the political spectrum.

The **second hypothesis** is that, on account of their more diverse composition, fewer government chairs and a much reduced likelihood of government-majority membership, select committees would become a more valuable channel of engagement and policy influence for pressure groups than they had been under FPP.

The **third hypothesis** is that, on account of the increased policy influence of Parliament and the increased influence of political parties not represented within the Executive (therefore, without any direct relationship with the bureaucracy), the bureaucracy would be a less important channel of policy influence for pressure groups under MMP. Pressure groups would, in fact, find themselves increasingly in competition with the bureaucracy as providers of advice and information.

The **fourth hypothesis** is that, on account of public policy under MMP being increasingly sensitive to public opinion and on account of a lesser risk associated with alienating a less powerful Executive, media and public/constituency mobilisation techniques would be more successful and more popular tools of pressure group influence under MMP than FPP.

The **fifth hypothesis** is that, on account of the greater contestability of policy and a longer, more consultative policy process under MMP than FPP, information would be an increasingly valuable resource for pressure groups – although the most effective use of that information will require a more sophisticated ability to tailor information and policy arguments according to a more complex political environment.

Chapter 3 –The Structural Context for MMP Pressure Groups

Real but Variable Fragmentation of Power

All of the expected changes in pressure group behaviour and the hypotheses discussed in Chapter 2 were derived from assumed structural shifts in the distribution of decision-making power. MMP was expected to fragment that power, thereby creating a more contestable policy environment and, in turn, resulting in increased lobbying of Parliament and engagement with select committees. The assumption of a shift in decision-making power is fundamental. Consequently, before entering into any analysis of pressure group behaviour under MMP and attempting to assess expectations versus the experience, it is necessary to have confidence the preconditions for expected change have been present.

There can be no disputing MMP has delivered real structural change to the balance of power between Parliament and the Executive. The figures and facts are compelling. Each MMP Parliament has comprised at least six political parties, while no more than three parties were elected to Parliament in any FPP national election between 1938 and 1990.¹⁵ No single political party has held an elected Parliamentary majority under MMP, while every national election under FPP between 1935 and 1993 delivered a single party Parliamentary majority.

Comparative calculations of the Effective Number of Parliamentary Parties (ENPP)¹⁶, as set out below in Table 1, illustrate a significant shift in the structure of Parliamentary power

¹⁵ Four parties, National, Labour, the Alliance and New Zealand First, were elected to Parliament in 1993 and by 1996, the number of parties represented in the House had grown to eight, as parties, factions and individual politicians positioned themselves for the first MMP election.

¹⁶ The ENPP is a commonly used political science tool for comparing the number of parties in different political systems, adjusted for their relative Parliamentary strength or, more specifically, their relative share of the Parliamentary vote. A higher ENPP indicates a greater distribution of power across the parties represented in Parliament.

after the introduction of MMP for the 1996 election. New Zealand's ENPP was at its highest following the 1996 and 2002 general elections, while the 2008 election delivered the lowest ENPP since the introduction of MMP.

Table 1 – New Zealand's Effective Number of Parliamentary Parties (1946 – 2008)

Election Year	ENPP
1946 – 1990	1.95 (average) ¹⁷
1996	3.76 ¹⁸
1999	3.44
2002	3.76
2005	2.98
2008	2.78 ¹⁹

MMP also resulted in very substantial changes to the composition and balance of power of Parliamentary select committees. Government majorities were the overwhelming norm on select committees under FPP. By comparison, Malone found that of the 51 subject select committees appointed at the commencement of each of the first four MMP governments (in 1996, 1999, 2002 and 2005), only two committees had a majority of government members²⁰ (Malone 2008, 150).²¹

¹⁷ Source for 1946-1990 data: Lijphart, Arend. *Electoral Systems and Party Systems: A Study of Twenty-Seven Democracies, 1945-1990*. (Oxford: Oxford University Press, 1994), p 162.

¹⁸ Source for 1996-2005 data: Levine, Stephen, Nigel Roberts and Rob Salmond. 'A Wider View: MMP Ten Years On' in Stephen Levine and Nigel Roberts, eds., *The Baubles of Office: The New Zealand General Election of 2005* (Wellington, Victoria University Press, 2007), p. 456.

¹⁹ Source for 2008 data: Calculations based on data in Chief Electoral Office, *The General Election 2008* (Wellington: Chief Electoral Office, Ministry of Justice, 2008), p 3.

²⁰ For the purposes of this analysis government MPs are defined as MPs belonging to Parliamentary parties represented within the Executive. Significantly, it does not include those MPs belonging to parties that were allocated Ministerial portfolios outside the Executive. For instance, it does not include a New Zealand First MP during the 2005-2008 term of government and it does not include ACT or Maori Party MPs during the current term. This is a reasonable definition given these MPs do not have party members represented at the Cabinet table and their parties are unlikely to be committed to support all government legislation. However, it is important to recognise that parties with Ministerial portfolios are likely to have a much closer working relationship with the government than traditional "Opposition" parties. So, while strictly speaking, it is accurate

Table 2 – Balance of power on subject select committees in MMP Parliaments²²

Election Year	Government Majorities	Split Committees	Government Minorities
1996	0	12	0
1999	1	10	2
2002	1	2	10
2005	0	3	10
2009 ²³	5	2	6

These structural changes to the distribution of power have had a direct influence on the policy, decision-making and legislative processes. This has been widely observed by New Zealand political academics and commentators (Martin 2004, Shaw and Eichbaum 2008), but it is Malone’s extensive comparative analysis of lawmaking under MMP versus FPP that is most comprehensive and compelling. He found that MMP had placed considerable constraints on a government’s control of legislation and resulted in a need for substantial compromise and inter-party negotiation “unthinkable” under FPP (Malone 2008).

to state the Executive has only controlled seven subject select committees since the introduction of MMP, through the government’s relationships with other parties represented across the various Ministerial portfolios (likely to be those parties that have agreed to provide the government, at a minimum, with “supply and confidence” support) it should be able to exercise a degree of influence over a greater number of select committee outcomes than the bare “government majority” numbers suggest. The definition of majorities and minorities has become somewhat blurred under MMP.

²¹ While the first National-New Zealand First government was a majority coalition government, “the allocation of committee seats to both coalition parties was such that the government did not hold a majority on any of the subject committees.” Rather, all 12 committees were evenly split between government and non-government MPs (Malone 2008, 150)

²² This table (for the election years 1996 – 2005) is taken from the data and table compiled by Malone (Malone 2008, 152). ‘Subject’ select committees are primarily concerned with the scrutiny of policy and legislation. They exclude both those select committees (Business, Officers of Parliament, Privileges and Standing Orders) primarily concerned with the operation and rules of Parliament and the Regulations Review committee. Also excluded are temporary committees brought together for the consideration of single, one-off issues.

²³ This select committee data was collected in October 2009. It was not included in Malone’s original table or analysis.

In regard to the government's choice and control of bills for introduction to the House, Malone found "the formation of coalition governments under MMP has provided parties with a greater capacity to bind, or prevent, governments from introducing bills", that MMP "has resulted in a noticeable reduction in Executive control as to which bills a government introduces into the House" (Malone 2008, 83) and that "political realities dictate that failure to ensure even a basic level of commitment to a bill among coalition parties and the requisite non-government parties before drafting is to risk committing time and resources to a proposal that a majority of the House is unwilling to support. This is a vastly different world to that in which FPP Ministers operated" (Malone 2008, 130).

This is consistent with Paul Swain's reflection that one of the most common and important inquiries made of Labour Ministers by Prime Minister, Helen Clark, was whether they "have the numbers?" (Swain 2008). Furthermore, once a bill has entered the House under MMP, select committees have become more influential, which has been reflected in Ministers needing to "work harder and be more flexible as to the content of their bills in order to secure something approaching the level of control Ministers enjoyed in relation to select committees under FPP" (Malone, 2008, p168). Changes to a bill at the final third reading stage were influenced by "the leverage that a non-government party enjoys when negotiating with the government", and "inter-party negotiation can result in the government having to support non-government amendments to ensure the progress of its legislation" (Malone 2008, 198-199).

Malone's analysis and conclusions are broadly consistent with the views of the politicians, public law specialists, government relations consultants and pressure group leaders interviewed during the interview phase of this thesis. For example, Swain described MMP as

having had “an enormous impact” on public policy decision-making through its distribution of power across Parliament and away from the Executive (Swain 2008) and Tim Clarke claimed “the breakdown of the Executive dominance of Parliament is real and tangible” (Clarke 2008).

Significantly, the predominant opinion is that these changes in governing structures and related changes to the decision-making process have had real implications for pressure groups. For instance, Clarke argued “there is now a greater capacity for public and private sector interest groups to affect and impact that [decision-making] process than there was in the past” (Clarke 2009). Nevertheless, there are risks in assuming this structural change will have necessarily translated into significant behavioural change on the part of pressure groups. When Sellens reviewed MMP pressure group strategy in 1998, she concluded that “in general, the changes have been modest rather than dramatic. The tactics and strategies are similar, the way select committees are lobbied is similar, the financial and human resources expended on lobbying is similar and the estimated influence of lobbyists is similar” (Sellens 1998, 43).

First, and very importantly, although structural change has been real, it has also been variable. The research and interview phase of this thesis coincided with the 2008 election, the period of transition from the Labour-led to National-led government and the first six months of that new regime. This timing was significant. It introduced another variation on MMP government, provided a reminder that no two MMP governments are the same and tempered any inclination to draw firm conclusions about the characteristics of MMP or pressure group behaviour based on only one (or a few) MMP government. The redistribution of power from the Executive to Parliament has varied from government to government, Parliament to Parliament, since the first MMP election in 1996. Swain commented that this

redistribution was “a bit faltering and stuttering at the start” (Swain 2008) and Mai Chen has drawn a sharp comparison between the 2008 elected National-led government and previous MMP governments, particularly the 2005-2008 Labour-led government:

Last year’s election delivered a shift of power in Parliament such that the new Government’s Cabinet and caucus, together with the caucuses of the support parties, are now closer to exercising the kind of “elective dictatorship” that was a feature of first-past-the-post governments. It reverses in part the dispersion of power away from the Executive to Parliament that was a feature of earlier MMP governments.

Chen also noted that during the last term (2005-2008) the “Labour-led government faced a set of select committees with an unprecedented degree of independence, and was forced to rely on the goodwill of minor parties to patch up legislation. This term the National Party has an outright majority on five significant select committees and with the help of just one support party MP from either its political left or right, also controls a further four. The result is that in nearly every area, the Government can control the agenda” (Chen 2009).

Table 2 (above) reinforces Chen’s comments. Having secured more MPs in the 2008 election than any other party under MMP, in September 2009 the National Party held a majority of members on five subject select committees, more than twice the total number of select committee majorities enjoyed by the four preceding MMP governments.²⁴

The focus of this thesis is pressure groups and it does not attempt a comprehensive analysis of the variable governing arrangements and governments experienced in New Zealand since 1996. However, in order to provide a picture of the variable political context in which

²⁴ These five committees were Government and Administration, Justice and Electoral, Health, Social Services and Transport and Industrial Relations (October 2009).

pressure groups have operated during that time it is necessary to provide some comparisons. New Zealand's first MMP government, the National-New Zealand First coalition of 1996-1998, was a two-party majority coalition. New Zealand First and National shared the Cabinet and between just the two parties controlled a majority in Parliament. Consequently, policy negotiation and discussion was still largely addressed within Cabinet and within the Executive. At least until the coalition splintered in 1998, the Executive dominance that was characteristic of FPP had, to a large extent, continued. MMP had impacted on other features of policy-making, notably via the post-election negotiation process. It had also introduced a two party leader dynamic to the Cabinet table. Yet, in its first couple of years, MMP had not significantly diluted Executive power. According to Sellens, in 1998:

The fact there was a majority government meant that the opposition parties had little influence over policy and legislation. This is likely to have affected the way lobbyists approached opposition parties. The findings of the research are likely to have been different if undertaken later in the year, when the government had a minority (Sellens 1998, 44).

By contrast, the 2005-2008 Labour-led government involved two parties, Labour and The Progressive Party, at the Cabinet table. Two others, New Zealand First and United Future, held Executive powers and Ministerial posts (but outside Cabinet) and the Green Party had policy responsibilities (but no Cabinet or Ministerial authority). The Executive did not control a majority in Parliament (except for the commitments it had secured for votes on confidence or supply)²⁵ and each piece of legislation was progressed on a case by case basis with support needing to be secured from at least two Parliamentary parties outside the Executive. "The last term [2005-2008] was particularly fluid" (Norman 2008).

²⁵ In the case of the Green Party, its support actually took the form of a commitment to abstain (and not to vote against) the government on confidence and supply votes.

The current National-led government is different again. Following a strong election performance, the National Party has 58 seats in Parliament (the most secured by any party under MMP). The National Party secured 45 per cent of the party vote in the 2008 election, 11 per cent more than its closest rival, the Labour Party. This was the highest percentage won by any party since the introduction of MMP. While it is still a minority government, the National Party has supply and confidence agreements with three parties (ACT, United Future and the Maori Party), a Memorandum of Understanding with the Green Party, and requires only four additional votes (from outside its own party ranks) to pass legislation. Consequently, it probably enjoys more control over the policy process than all but New Zealand's first MMP government.

Chen argued that the relative strength of the current National government's position was reflected in the substantive legislation it rapidly introduced and passed in the first phase of its term (for example, law and order legislation, Resource Management Act changes, Auckland governance legislation) (Chen 2009). As the National government's first term continued it began to encounter its own challenges in building majority support for key legislation, notably its revised Emissions Trading Scheme (Small 2009).

A Shift in Political Culture

In addition to the high degree of variability in the balance of power between Parliament and the Executive, MMP has resulted in wide-ranging and, often, unanticipated governing structures and arrangements, as observed by Chen:

Sixteen years after its introduction in 1993, the political parties have learned to operate under MMP, and have developed new constitutional conventions and practices as recorded in the Cabinet Manual. Our political culture has adjusted to the “agree to disagree” provisions, the different configurations of support, and novel approaches to the distribution of ministerial portfolios that allow mostly minority coalition governments to govern (Chen 2009).

Ministers outside Cabinet (including a Minister of Foreign Affairs), the 2009 Memorandum of Understanding between the National and Green parties and the granting of selected policy responsibilities to parties and MPs outside the Executive (for example, the Labour-led government’s decision to grant responsibility for the KiwiMade campaign to the Green Party) are all examples of the new approaches taken and arrangements reached between parties that have taken MMP government into territory not widely anticipated.

It is apparent these arrangements may not simply be a function of electoral outcomes, negotiations, personalities and the politics of the day. They also reflect a pattern, a learning and evolution in our political culture (Chen 2009). Current Prime Minister John Key has cited the inclusion of the Maori Party within the current government bloc and the National Party’s Memorandum of Understanding with the Green Party as signs of the further “maturing” of MMP (Wilson 2009). There has been a growing tendency for minor parties to enter into relatively flexible, non-committal working relationships of different forms with the major governing parties. This appears to reflect an increased willingness to address the politics of Parliament on an issue by issue basis and to work with whichever party necessary in respect to any individual issue. It seems structural change has precipitated a cultural or attitudinal political change – and that is a significant feature of the environment within which pressure groups now operate.

Non-Legislative Tools of Government

The focus of much of the expectation and analysis of the impact of MMP has been on legislation, including the work of Malone. It needs to be recognised that governments wield other instruments for influencing policy – notably government spending. The government's budget does require approval by Parliament on an annual basis. Consequently, the passage of the Budget will depend on a government's ability to negotiate either a coalition agreement or 'supply and confidence' from support parties. As far as the Budget is contingent on the deals made to secure its passage, government spending is influenced by MMP's redistribution of power between the Executive and Parliament. Furthermore, support parties, particularly coalition partners, have the ability to challenge or raise spending proposals with Ministers at any stage – even to make legislative support conditional on a particular funding commitment. The need to maintain a working relationship or to ensure future support for other budgets or legislation is a consideration for any Minister or government.

Nevertheless, the Executive still wields overall control and discretion over departmental budgets and the influence of MMP on government spending has not been as direct as upon the legislative process. There are numerous opportunities for governments to substantially shift public policy through spending decisions without the need to navigate Parliament. Transport policy is a good example. The 2008-elected National-led government's Transport Minister, Steven Joyce, re-focused the approximate \$3 billion annual National Land Transport Fund (NLTF) on road building and maintenance, reducing the previous government's planned spending on public transport, coastal shipping, walking, cycling and

road safety. The funding re-focus represented an additional \$1 billion in annual investment in state highways (Joyce 2009).

There are a range of other tools through which MMP governments can influence public policy without recourse to Parliament – for instance, by re-organising the bureaucracy, by re-programming departmental priorities or by making appointments to public agency boards and advisory groups. In May 2009, Minister of Foreign Affairs, Murray McCully, exercised his Executive authority to remove NZAID’s “semi-autonomous status within the Ministry of Foreign Affairs and Trade”, focus NZAID on “sustainable economic growth” (as opposed to poverty relief) and align aid with New Zealand’s “wider foreign policy interests” (McCully 2009). This was regarded as a substantial policy change by a number of political commentators and aid agencies (Espiner 2009[a]).

The Executive also wields delegated authority to administer secondary legislation (e.g. Regulations). While secondary legislation is not intended to materially influence “policy” and is subject to Parliamentary oversight via the Regulations Review Select Committee, the reality is that substantive policy is, at times, dealt with via Regulations for reasons of practicality and, in some cases, expediency.²⁶ In some instances, pressure groups have achieved significant public policy change by lobbying for government action that does not require primary legislation – and does not involve the challenge of navigating a controversial bill through an MMP Parliament. In 2009, the Road Transport Forum’s advocacy of an amendment to the Land Transport Rules²⁷, to permit trucks to carry heavier maximum loads on designated routes, is one example (Dearnaley 2009).

²⁶ For instance, In March 2008, the Minister of Finance, Hon Michael Cullen, introduced, via regulation, a controversial change to the criteria against which applications for substantial foreign investments in New Zealand are evaluated and approved under the Overseas Investment Act.

²⁷ Draft Land Transport Rule: Vehicle Dimensions and Mass Amendment [(No 2) 2009] Rule 41001/5.

The variability in the relative power of the Executive and Parliament under MMP, and the shift in political culture that has resulted from MMP along with the government's ability to utilise non-legislative instruments to deliver policy, provide a more comprehensive context for evaluating the extent and nature of pressure group behaviour change under MMP. The next chapter sets out the methodology and case studies used for that evaluation.

Chapter 4 – Interviews and Case Studies

A Qualitative Research Methodology

Analysing pressure group behaviour is a challenging prospect. First, it is difficult to draw clear lines and distinctions between different types of behaviour. Second, some pressure group activity and lobbying occurs behind the scenes. Third, it is difficult to evaluate the effectiveness of pressure groups and their different strategies because campaigns are often multi-dimensional, with several influence tools being applied at the same time, and because public policy outcomes are invariably the result of a myriad of factors and considerations, some of which are independent of pressure groups. Policy outcomes can be likened to “complex events” as described by Lecce and Francis, which are determined through the interactions of actors “who represent larger units – e.g. nations, parties, associations” (Lecce and Francis, 189).

Given this complexity, it was considered that a quantitative methodology was likely to be too difficult to design and not sufficiently sophisticated to make the distinctions or extract the behavioural and strategic insights necessary to meet the thesis’ objectives. Instead, a qualitative methodology was preferred, although it has been supported by relevant data and statistics as available. The qualitative research consisted of two main components – expert interviews and public policy case studies.

Expert Interviews

The first component of the research was expert or “elite” interviews. Although direct observation is arguably the optimal methodology for researching complex events, it is recognised that challenges of “accessibility and temporality” may require a researcher “to rely on the self-reports and recollections of the actors or the reports of other observers” (Lecce and Francis, 189). The political nature of policy-decision making and pressure group influence does not allow for direct observation by researchers, and that is one of the reasons expert interviews were undertaken.

A second rationale for the use of expert interviews was the need for the flexibility to explore key issues, potentially unanticipated, and to build a picture of decision-making dynamics, including the role and influence of different processes and institutions – as opposed to seeking views on decision-making processes that are already fully understood. As Johnson and Joslyn observed, elite interviews differ substantially from highly structured, standardised survey research methods and “a researcher is usually especially interested in an elite interviewee’s own interpretation of events or issues and does not want to lose the valuable information that an elite “insider” may possess by unduly constraining responses” (Johnson and Joslyn 1995, 262).

Ten politicians, pressure group leaders, consulting lobbyists and public policy experts were interviewed. There is inevitably some research risk related to the use of an elite interview methodology. Notably, there is legitimate concern that the sample selection can result in a bias that can limit the ability to generalise the findings. To mitigate this risk, the selection of interviewees was intended to provide a range of perspectives from those involved in shaping and influencing public policy from within and outside government – those who had made

public policy decisions and those who had sought to influence them, those who had lobbied, those who had been lobbied, those who had made select committee submissions, those who had received and considered them. The interviewees were selected on the basis of their general experiences and understanding of MMP and the public policy process, but in some cases their experience or involvement with certain legislative processes or policy decisions was also a consideration.

Those interviewed included: Paul Swain (former Labour Party Cabinet Minister); Russel Norman (Green Party co-leader); Tony Friedlander (Chief Executive of the Road Transport Forum and former National Party Cabinet Minister); Peter Conway (Secretary of the Council of Trade Unions); Charles Chauvel (Labour Party MP and former Chair of the Finance and Expenditure Select Committee); Barrie Saunders (Managing Director of Saunders Unsworth); Tim Clarke (Public Law Partner, Russell McVeagh); Doug Bailey (Public Law Consultant, Russell McVeagh); Sue Kedgley (Green Party MP); Matthew Hooton (former National Party advisor, political commentator and Managing Director of Exceltium Public and Corporate Affairs Consultancy). Brief biographies can be found in Appendix B.

First, the interviews were intended to elicit the experts' general views on how the public policy process and pressure group behaviour had changed under MMP. Subsequently, the interviews tested whether or not – and the extent to which – expected pressure group behaviours and the hypotheses set out in Chapter 2 had been borne out. Finally, the interviews explored specific public policy case studies and experiences. A copy of the interview template is attached as Appendix A.

As a supplement to the interviews, a second literature review was also undertaken. The objective was to identify any recent New Zealand academic literature or expert comment on

how MMP had changed the public policy process, pressure group behaviour or any relevant discussion of the thesis' key public policy case studies. There were a number of relatively recent academic works or commentaries that were valuable in underpinning (or in some cases forcing a reconsideration of) the opinions and observations expressed by experts. Ryan Malone's comprehensive analysis of legislation under MMP (Malone 2008), Shaw and Eichbaum's work on public policy outcomes in New Zealand (Shaw and Eichbaum 2008) and Palmer and Palmer's revised and updated (4th edition) *Bridled Power* (Palmer and Palmer 2004) provided especially important analytical background and analysis of the public policy and institutional changes experienced under MMP. Work and commentaries by Martin (Martin 2004), Chen (Chen 2009), Levine and Roberts (Levine and Roberts 2004) were also helpful.

Public Policy Case Studies

Case studies were the second component of the research and supported the interviews through providing a detailed examination of selected public policy decisions. Case studies tend to allow a researcher to develop a detailed contextual understanding of a subject or an event. The intention of the analysis (in conjunction with expert interviews) was to understand how pressure groups had engaged in the policy process – for instance, who had lobbied and how, what external pressure they had applied, what role the select committee had played and how final decisions had been negotiated and agreed.

The sources researched varied from case study to case study, but included a combination of Parliamentary debates (Hansard), select committee submissions, select committee reports, Cabinet papers, departmental advice, correspondence, reports and consultation documents,

media statements, newspaper and magazine articles and commentaries, political party and pressure group websites.

Case study methodologies often involve a risk related to selection. As per elite interviews, sample selection can also have a significant influence on findings and conclusions drawn from case studies, and the legitimacy of generalisations based on those conclusions. Therefore, it is important to acknowledge that the case studies considered in this thesis were selected on the basis that, at face value, they appeared to be illustrative of the types of outcomes possible under MMP, but unlikely under FPP. For instance, the Taxation Bill was subject to amendments contrary to the stated view of Ministers, and the Therapeutic Products and Medicines Bill was a government bill that had to be withdrawn due to lack of Parliamentary support. In addition, they are only a small sample of all the legislation and policy legislation effected under MMP. The average annual number of bills enacted during the first 10 years of MMP (1997-2006) was 107 (Malone 2008, 202).

On the other hand, it was simply impossible to review all public policy decisions. Furthermore, information and opinion on the selected case studies was accessible. This is not always the case. The key decision-making factors and influences in respect to many public policy decisions are obscure or hidden.

Furthermore, the case studies should not be considered in isolation. Through combining the case studies with the expert interviews, reinforced by relevant academic works, commentaries, data and statistics, the thesis' research methodology was intended to be pragmatic, multi-dimensional and sufficiently robust to test hypotheses and reach conclusions with confidence.

While a host of public policy examples are referenced in this thesis, there are four case studies that received particular investigation and are most frequently cited. Three of these case studies had been identified at an early stage of the research (the Emissions Trading Scheme, the Taxation Bill and the Therapeutic Products and Medicines Bill), while one was investigated following its identification during the expert interviews (the Waste Minimisation Bill). Consequently, an outline of these four case studies has been provided below. These outlines are not intended to provide detailed analysis of pressure group behaviour the decision-making process. Most of this analysis is undertaken subsequently, when the case studies, expert interviews and supporting research is drawn together in Chapters 5 and 6. The purpose of these outlines is to ensure familiarity with the case studies and sufficient context for later analysis.

Emissions Trading Scheme

The Emissions Trading Scheme (ETS) was a major, far-reaching public policy. The purpose of the Climate Change (Emissions Trading and Renewable Preferences) Bill was to apply a price to carbon within the New Zealand economy by introducing the ETS, and thereby meet New Zealand's obligations under the Kyoto Protocol. Its enactment was regarded by supporters as critical to New Zealand's response to global climate change, while its costs were expected to be felt across almost every section of the economy, prompting extensive media activity, policy engagement and lobbying on the part of many different pressure groups and interests.

Two of the affected sectors were forestry and fishing, but in very different respects. As with most industries, the introduction of the ETS was expected to add to the cost of running a fishing business, and as with other export industries, these costs were expected to have a

negative impact on the New Zealand fishing industry's international competitiveness.

Forestry, on the other hand, given the carbon absorbing qualities of wood, was concerned as to whether, under the ETS, carbon credits would be retained by the government or devolved to forest owners. In both cases, the industries argued the stakes were high. Both industries would enjoy some success in having their positions reflected in the final policy and legislation, but they would follow very different paths and achieve their objectives at different stages of the policy process.

Policy Background

Different policy options for responding to the Kyoto Protocol obligations and international concerns about carbon emissions and climate change had been discussed and debated in New Zealand for a number of years, as they had been around the world. It was a multi-layered and controversial debate. At the highest level there had been an ongoing dispute about the science of climate change and the need for any pricing of carbon at all. At another level, there had been arguments as to the best mechanism for pricing carbon and the merits of a carbon tax versus a market-based emissions trading scheme.

In addition, there was a myriad of sector-specific debates about the impact of carbon pricing upon international competitiveness and, in turn, the appropriate level and duration of government shelter from these costs and impacts for various industries. Going back at least a decade, there had also been ongoing policy discussion and consideration as to whether or not, and the extent to which, carbon credits should be devolved to forest owners and or retained by the Crown. It was within this complex policy context that the detailed policy design, consultation and legislative phases of the ETS took place under the 2005-2008 Labour-led government.

The Politics of the ETS

Given the scientific debate, the international nature of the Kyoto Protocol and emissions, the total population and total economy scope of carbon pricing, as well as the perceived scale of the risks and issues at stake, the ETS was a highly political topic. Furthermore, the legislative phase of the ETS coincided with an election year (2008). On one hand, the ETS was strongly supported by the Green Party and a wide range of environmental advocates and pressure groups. Conversely, it was strongly opposed by ACT and major industry groups concerned about the impact on competitiveness. The positions taken by other political parties and pressure groups tended to be more nuanced.

2007 was the year during which ETS policy began to take clear shape. It was the year during which the Labour-led government announced the essential framework of the ETS and first introduced the Climate Change Bill to Parliament. It was also a year characterised by a relative political consensus around the merits of an ETS:

It appears that the Government has a good level of cross-party support for the announced plans. Although the Greens are not happy about the long phasing-in period and, in particular, the delayed introduction for the primary sector, overall they support the ETS design. National has also come out in support of the package ...(Russell McVeagh 2007).

However, this ETS consensus did not last. As the ETS entered its legislative phase in 2008 and greater policy detail emerged, as the economy slowed, as industry pressure groups increased their lobbying and public activity and as the 2008 election drew closer, political support for the ETS weakened. Most significantly, the National Party withdrew its hitherto

support for the ETS in the form proposed by the Labour-led government in May 2008, leaving the fate of the ETS in the hands of New Zealand First and the Green Party. When National Party leader, John Key, announced this withdrawal of support, he argued:

Labour has been racing towards a political deadline - the 2008 election - and has been prepared to cut corners to get there ... National is not prepared to cut those corners - not when the financial security of Kiwis is at risk, and not when getting this wrong means exporting jobs, ratcheting up inflation, and viciously squeezing household budgets ... We believe that the current rushed timetable for the design of the ETS and the Select Committee process is reckless, given the importance of the issue. Therefore, I'm calling for a delay in the passage of this legislation (Key 2008).

The Climate Change Bill was subject to significant changes during the course of its passage through Parliament – the result of changing public attitudes and heightened cost of living concerns, select committee scrutiny and negotiations with support parties. In May, the government had made the significant decision to delay the inclusion of the transport sector within the ETS from 2009 to 2011, with the Prime Minister explaining she was “very conscious” of financial pressure on households - a move strongly opposed by the Green Party (NZPA 2008). Further changes to the bill were introduced following the nearly 1000 recommendations submitted by the select committee which reported back in June. However, the details of the ETS were not completed until the final hour following negotiations between the Labour government, New Zealand First and the Green Party. These negotiations would result in a number of changes being made to the bill immediately prior to its final Parliamentary reading and passing into law.

The Pressure Group Campaigns (KFA and SEAFIC)

The question as to how carbon credits would be treated in the event of an emissions trading system being introduced had been a point of policy debate for a number of years, but it was during the government's consultation over ETS design in 2007 that it became a particularly high profile issue and the forestry industry became mobilised. The Kyoto Forests Association (KFA) was established specifically to fight for forestry's interests in respect to the ETS.²⁸

The KFA's campaign was multi-dimensional. Forest owners were mobilised and encouraged to attend ETS consultation meetings to make their case and demonstrate their anger about the possibility of carbon credits being retained by the Crown. The KFA was highly visible in the media, issuing regular media statements and engaging with journalists. It also spent money on advertising, notably billboards, which established an especially high profile. Forest owners argued that government had previously signalled that carbon credits would be devolved to them in the event of a carbon regime being introduced, and that forestry investment had been influenced by this assumption.

The KFA campaign was also notable for its confrontational nature and willingness to engage in an aggressive dialogue with the government. On the one hand, the KFA and its spokesman, Roger Dickie, were prepared to describe the government as "stealing" or "thieving" their carbon credits and, on the other, the Minister of Agriculture and Forestry, Jim Anderton, accused the KFA of spreading "wilful ignorance and deceit" (Cumming 2007).

Despite this animosity, the government decided that forest owners would be devolved post 1990 carbon credits. This decision was revealed when the government's preferred ETS

²⁸ The New Zealand Forest Owners Association is the organisation that advocates for forestry's broader public policy interests.

framework, which would form the basis of the Climate Change Bill, was made public in late 2007. The KFA could claim a campaign success. The KFA would remain active and continue to advocate for additional amendments during the subsequent policy and legislative phases of the ETS, such as the devolution of carbon credits for pre 1990 forests, although not with the same degree of success.

The fishing industry did not run a high profile ETS campaign akin to the KFA's, but it was active in its policy engagement nevertheless. The Seafood Industry Council (SEAFIC) had, like many other sector groups, expressed strong concerns about the impact of the ETS on business competitiveness. For instance, it was one of 14 industry advocacy groups (others included Federated Farmers and the Road Transport Forum) to jointly send an open letter to all MPs in June 2008 claiming "the Climate Change bill, as reported back from Select Committee, has not taken heed of serious concerns raised by those in the productive sectors of the economy, the sectors which generate the export receipts and employment in New Zealand" (NZEEBW 2008).

SEAFIC's submission to the select committee argued that the fishing industry faced significant increases in fuel costs under an ETS and this would have a material impact on their ability to compete in an international market in which many of their competitors were not subject to carbon costs. Although the select committee had recommended some changes to the Climate Change Bill in response to the case made by SEAFIC, it did not recommend ETS relief similar to that being granted to other primary export sectors, such as agriculture, and did not meet the expectations of the fishing industry. "Our opposition to the Bill is due to the unfair treatment of the industry in respect of Government assistance ... it does not remove the gross injustice of denying the industry the support offered to everyone else" (Symmans 2008). The select committee process was, however, not the end of the road

for the fishing industry. Ultimately, through direct engagement, the industry was able to secure support from New Zealand First, who negotiated 50 per cent ETS relief for the fishing industry as a part of the final deal that saw the government secure the votes necessary to pass the ETS into law.

Waste Minimisation Bill

In May 2008, Trevor Munro, President of the Scrap Metal Recycling Association of New Zealand (SMRANZ), told the *New Zealand Herald* the Waste Minimisation Bill threatened the viability of the New Zealand scrap metal export industry (Smith J 2008). Four months later, following an eleventh hour lobbying campaign, Munro welcomed the same bill's passing into law.

We absolutely support the purposes and objectives behind this Bill. It recognises the importance of minimising the amount of material going to landfill, which is the core of our business as scrap metal recyclers ... We particularly applaud last night's amendment that has narrowed the definition of "waste" in the Bill, meaning scrap metal and other material that has been diverted from the solid waste stream will not be considered "waste", and will not be subject to many of the Bill's controls that would have hamstrung our attempts to grow New Zealand's 17th largest export industry (Munro 2008).

Policy Background

The main components of the Waste Minimisation Bill included a levy on industrial waste, targets for reducing waste in landfills and cleanfills, provision for producer responsibility programmes, and provision for public procurement programmes to spur the development of markets for products and services that result in waste reduction. Arguably the most

substantive aspect of the bill was the levy on industrial waste, “a blunt attempt at a Pigovian tax, to internalise environmental externalities” (Tanczos 2008). SMRANZ’s lobbying was primarily concerned with this levy.

The bill was several years in evolution. Its first iteration was drafted as a members’ bill²⁹ by Green MP, Mike Ward. By the time the bill received its first Parliamentary reading³⁰, in June 2006, Ward had lost his seat in Parliament at the 2005 election.³¹ Consequently, the bill was adopted, championed and introduced to Parliament by another Green MP, Nandor Tanczos. During its introduction to Parliament, Tanczos granted most credit to Ward, as well as acknowledging the work of Chris Teo-sherrell (a Palmerston North City Councillor and environmental advocate) and Lucy White (of the Zero Waste New Zealand Trust). “I do not claim any great wisdom for myself. I inherited the bill from Mike Ward, and I thank him for the valuable work he did. I also thank Lu White and Chris Teo-sherrell, who probably deserve more credit than any of the politicians do” (Tanczos 2006).³²

The Waste Minimisation Bill continued to be influenced and crafted by many different political players. Having started life as a private members’ bill, drafted by a combination of Green MPs and environmental advocates, it was subsequently subject to significant amendments by a select committee, adopted as a government bill and subject to further changes before finally becoming law.³³

²⁹ Members’ bills are one of four types of bills that can be introduced to Parliament (the others being government, local and private bills). “The main purpose of these bills is to provide MPs with the opportunity to influence legislation separate from the government. It is an important democratic mechanism which ensure that the order of business in Parliament is not the exclusive domain of the government” (Spindler 2009, 52).

³⁰ Bills undertake a passage through Parliament that requires three readings before they are passed into law.

³¹ Mike Ward was ranked 8th on the Green Party list for the 2005 election, but with the Green Party securing a disappointing 5 per cent of the total vote, only 6 Green MPs were elected to Parliament.

³² Nandor Tanczos, ‘Waste Minimisation (Solids) Bill’, First Reading, Parliament, 14 June 2006.

³³ Interestingly, from her analysis of members’ bills under MMP, Spindler concluded that “members’ bills have not experienced a significant increase in the number being passed into law since MMP. The number of bills which achieve success remains relatively low.” (Spindler 2009, 79).

The Politics of the Waste Minimisation Bill

After it was drawn from the ballot, Parliament voted to send the Waste Minimisation Bill to select committee by 68 votes to 51, with the Greens, Labour, the Maori Party, the Progressives and New Zealand First voting in favour, National and United Future voting against. However, the bill would have to wait two years and four days before it was returned to the debating chamber due to challenges securing sufficient political support for the bill.

Labour was generally supportive of the bill and then Minister for the Environment, Hon Marian Hobbs, explained that it was both consistent with Labour's environmental policy direction and timely given work underway at various government agencies (Hobbs 2006). Later, the government would adopt the bill as part of its own legislative agenda. According to Raukura Spindler:

It [the bill] was drawn from the ballot at a time when the government was already seriously considering the need for greater action on controlling the amount of waste produced in New Zealand, and thus it received good support from the government (Spindler 2009).

National was strongly opposed to the Waste Minimisation Bill in its original form, largely on the grounds of unnecessary bureaucracy and compliance requirements. "The Waste Minimisation (Solids) Bill is a garbage bill. It is PC rubbish that deserves to be thrown straight in the trash can. It is about wasting money, wasting paper, wasting energy, and—most important—wasting time" (Smith 2006). New Zealand First, while sharing a number of National's concerns, voted in favour of allowing the bill to progress to the select committee stage (Brown 2006).

The Waste Minimisation Bill is notable for the role and influence of the select committee.

When the bill was finally returned from select committee with unanimous support, following two submissions processes and hundreds of submissions, National MP Jacqui Dean told Parliament it had “been substantially rewritten” and that many of the National Party’s original objections to the bill – “things like the highly prescriptive requirements of compulsory waste plans ... the complex and bureaucratic layers of administration” had been omitted (Dean 2008). Veteran National MP, Nick Smith, was also prompted to comment on the role of the committee:

I have to say that out of all the select committees I have worked on, working on the Local Government and Environment Committee on this bill has been a pleasure. There has been a genuine process of engagement, with respective parties trying to do something of good in this area of waste management, and a willingness on the part of all parties to do a bit of compromising in order to try to come up with something that is workable (Nick Smith 2008).

Consequently, despite a long and quite difficult legislative path, when the Waste Minimisation Bill was returned from the select committee it enjoyed cross-party support. This was the political context within which the scrap metal industry would be lobbying for further, last minute amendments.

The Pressure Group Campaign (Scrap Metal Industry)

The scrap metal industry was alarmed at the impact the proposed waste levy would have upon its profitability and export competitiveness. According to Mai Chen, SMRANZ’s public law advisor, the issue came down to the definition of “waste”. “The definition chosen was very broad, including both material that is disposed of or discarded and recyclable material

that has not yet been recycled.” Consequently, “the Scrap Metal Recycling Association of New Zealand (SMRANZ) protested to [Russel] Norman, and to the responsible Minister” (Chen 2008).

Although there was some media coverage of the scrap metal industry’s concerns (Smith J 2008) and SMRANZ did make efforts to mobilise its constituency in protest against the bill, it is apparent that direct engagement and lobbying was the primary influence tool applied by SMRANZ. It is also apparent this direct engagement only gained traction late in the process and with the advice of a specialist public law firm. As Trevor Munro told the *National Business Review*, SMRANZ had been “completely ignored” (Robertson 2008) in policy development of the bill, and even the select committee, in delivering substantial change to the bill, had not addressed SMRANZ’s concerns.

Taxation Bill

On 13 April 2006, the Ministers of Finance and Revenue, the Hon Dr Michael Cullen and Hon Peter Dunne, issued a statement unequivocally rejecting calls by investment firm Guinness Peat Group (GPG) for changes to proposed foreign investment tax rules. The two Ministers went as far as to insist that “its [GPG’s] call for a special exemption makes no sense in terms of tax policy or fairness” (Cullen and Dunne 2006). Dunne also declared that “If GPG ... want to propose further changes, they are free to do so during the select committee’s consideration of the relevant legislation” (Dunne 2006[a]).

Yet only four days later the Government announced a 5-year holiday from the new rules for overseas portfolio investments and shares in certain types of widely held foreign companies that had a substantial New Zealand shareholder base. There was only one company that met

the criteria for the “holiday” included in the bill introduced to the House for its first reading, GPG. This reversal was not only rapid; it was also a source of political embarrassment seized upon by the Opposition. The current Prime Minister, John Key, was one of several National MPs to exploit the Government’s discomfort when he inquired whether it would “cave in to any other companies if they too start to take out full-page ads in the newspaper” (Key 2006). Key’s reference to full-page advertisements provides some explanation as to how GPG could achieve a comprehensive public policy reversal and victory in such a short space of time. It is only part of the explanation.

Policy Background

The Taxation (Annual Rates, Savings Investment and Miscellaneous Provisions) Bill was intended to reform the taxation of income from share investments and to introduce a more level taxation playing field for different kinds of investments. David Young provided a relatively straightforward explanation of a very complex issue:

Offshore investment is foreign to most of us. And the tax rules take some working out, too. Simply put, what tax you pay depends on a “Grey List” of seven countries. If you invest directly in a company in one of the Grey List countries, you just pay tax when you get dividends. Invest elsewhere and you’re hit with a capital gains tax. The idea behind the Grey List is to promote investment in countries with tax systems similar to ours and to discourage investment in tax havens ... Some believe that the list should be expanded to include more countries. But the Labour-led government, which worries that the system favours “sophisticated” investors, has gone the other way and announced that it will dismantle the Grey List, leaving just Australia (Young 2006).

Young also observed “those hardest hit will be senior employees of multinationals who have been paid in stock, and some investors in companies like Guinness Peat Group (GPG) ...” (Young 2006).

The bill was the outcome of an extensive consultation and policy process. Putting aside the preliminary policy work undertaken by officials, it was 18 months after the policy consultation document was released that enabling legislation was finally passed. That consultation document was met by approximately 800 submissions. Hundreds more submissions would be made to the Finance and Expenditure Select Committee during its consideration of the bill.

The Politics of the Taxation Bill

There was political history to the changes and objectives captured in the Taxation Bill. Both the Labour Government of the 1980s and the National Government of the 1990s had been unsuccessful in attempts to tidy up investment taxation rules. As noted by former Chair of the Finance and Expenditure Committee, Labour MP Shane Jones, “no one less than Sir Roger Douglas recently commented to me ... that this problem has bedevilled many Governments. It caused him some consternation and it defeated Ruth Richardson” (Jones 2006). Given this difficult political history and the exhaustive work undertaken by officials to bring the bill together, it was not surprising that the two responsible Ministers, Cullen and Dunne, were firmly committed to having the bill passed. Yet despite a general Parliamentary consensus that the existing investment taxation rules were inconsistent and distortionary, the bill’s legislative path was not assured.

In introducing the bill for its final reading, Peter Dunne claimed that “essentially, at the end of it, the differences between the parties come down to some relatively minor points” (Dunne 2006[c]). Nevertheless, the National Party had decided not to support the Government’s new investment tax regime. National voted against the bill going to select committee and it was, therefore, reasonable for Cullen and Dunne to assume the National Party was unlikely to vote for the Bill whatever the outcome of the select committee process (which proved to be the case). The Labour-led Government would need support from Parliament’s smaller parties.

While the Green Party supported the bill going to select committee, it sought more substantial taxation reform. This was not on the agenda. The Greens considered the bill did not resolve important taxation distortions (particularly the lack of a capital gains tax) – “Overall, it replaces a dog’s breakfast with a different kind of dog’s breakfast” (Fitzsimons 2006). The Green Party abstained on the final vote. ACT and the Maori Party also voted against the bill. The positions taken by the National Party, the Green Party, the Maori Party and ACT left the Labour-led government dependent on support from Peter Dunne’s United Future and, significantly, New Zealand First. Ultimately, the Taxation Bill was voted into law by 61 votes in favour (Labour, New Zealand First, United Future, the Progressives) to 53 against (National, ACT, the Maori Party) and 6 abstaining (the Green Party).

The Pressure Group Campaign (GPG)

GPG objected to the proposed legislation on the grounds that it would introduce a capital gains tax for those of its 28,000 New Zealand shareholders with at least \$50,000 in shares, because GPG, while a predominantly New Zealand-owned company, is domiciled in the United Kingdom. “GPG is peculiar. It has an office in London and is recognised here as a

foreign company. Yet, four of its five directors are Kiwis, as are 28,000 of its 32,000 shareholders” (Young 2006). The financial markets certainly viewed the proposal as a serious risk to GPG, with its share price taking a “pounding” according to the *New Zealand Herald* (Inder 2006[a]) and GPG even suggested publicly that it could pull out of New Zealand if the proposals were introduced (Inder 2006[b]).

From an early stage, GPG argued it should be given an exemption from the new rules and treated like an Australian company (the one country that would continue to be treated as per the previous Grey List). GPG’s campaign combined direct lobbying, aggressive media and grassroots activity. “Spearheaded by GPG’s New Zealand director Tony Gibbs, the campaign includes a dedicated website for shareholders, a planned advertising campaign aimed at ‘grassroots New Zealanders’ and intense political lobbying. GPG shareholders are being urged to write direct to Prime Minister Helen Clark and to attend the select committee hearings to consider the empowering legislation” (McManus 2006). The GPG Chairman, Tony Gibbs, was open about the fact that he “went down to Wellington and lobbied hard” (Hill Cone 2006), supported by a public law firm, Russell McVeagh.

Gibbs recalled “those people in corporate New Zealand who knew I was trying to do something basically said you will never, ever get anywhere” (Hill Cone 2006). Yet he returned from Wellington with a five year exemption for GPG, a significant achievement given the government’s initially intransigent position and publicly stated opposition to any special case allowance for GPG. This was also achieved in a relatively short period of time – following the policy and consultation work of the government but before the bill received its first reading in the House and before it was referred to a select committee.

Therapeutic Products and Medicines Bill

“After five years of fitful debate the government has given up its attempt to control a wide range of health products ... through a joint licensing agency with Australia” (*New Zealand Herald* 2007). The decision to suspend the Therapeutic Products and Medicines Bill represented the rare acknowledgement of Parliamentary defeat for an incumbent government. It was a particularly disappointing defeat for its primary champion over several years, Labour Cabinet Minister Annette King.

Policy Background

The Therapeutic Products and Medicines Bill was a long (nearly 400 pages) and complex bill. It sought to establish a new scheme for the joint trans-Tasman regulation of therapeutic products, covering the manufacture, supply, importing, exporting, and promotion of therapeutic products; the setting of quality, safety, and performance standards for therapeutic products; post-market monitoring; and the enforcement of the scheme’s requirements. It was also a bill with a “long and complex history” (Stewart 2006) that stretched across all three terms of the 5th Labour-led government (1999-2002; 2002-2005; 2005-2008).

In 2001, the Australian and New Zealand Governments first reached an in-principle agreement to establish a joint agency for the regulation of therapeutic products, with the fundamental objective of “removing unnecessary barriers to trade for Australian and New Zealand therapeutic products industries” (Ministry of Health 2002). This was followed by the signing of an agreement/treaty to implement the joint agency by the two countries’ Health

Ministers in December 2003. Yet it would be three further years and another election before a bill was introduced to Parliament. As ACT MP, Heather Roy, explained:

We have finally reached the point where, after 3 years of trying, the Government has managed to introduce this legislation, which was supposed to come before the House 6 months after the treaty was signed. Three years down the track there has been a great deal of wheeling and dealing to get to this point where the bill can be introduced into the House (Roy 2006).

The Politics of the Therapeutic Products and Medicines Bill

This was a policy and legislative initiative characterised by divergent views across Parliament, as well as a great deal of political dispute, accusation, negotiation and considerable political uncertainty. From the outset, Labour was firmly behind the establishment of a joint agency. It had decided there were trade and consumer safety benefits and, furthermore, it had negotiated the various agreements and commitments to implement the joint agency with the Australian government. It was clearly determined to deliver the legislation necessary to bring the agency to life.

Opposition to the bill reflected a range of policy and philosophical concerns, as well as political opportunity. The most significant opposition to the bill was provided by the Green Party and the National Party, because without the support of either Labour's majority was thin and dependent on an untidy collection of smaller parties (and independent MPs). The Green Party, marshalled by health spokesperson, Sue Kedgley, was staunchly opposed to the bill from 2002. The Greens were concerned about a combination of the loss of regulatory sovereignty, in addition to the cost and availability impacts on natural health business and

consumers. There was also proximity between their core political constituency and the natural health community that provided a strong political rationale for their involvement. Kedgley, in particular, was active in working with the natural health sector and mobilising opposition to the bill.

The National Party's opposition was interesting because it left the party prone to accusations of inhibiting more open trade and closer ties with Australia (both objectives it had publicly supported and advocated). However, despite support for the bill amongst sections of the medical community and business sector and accusations it was breaching its own principles for the sake of embarrassing an embattled government, the National Party stuck to its opposition based on concerns about compliance and regulatory costs.

In addition to explanations of political philosophy and opportunism, it is also apparent that some parties and politicians were aggrieved at the bill's management and that this may have stiffened their resolve in opposition to it. Kedgley commented that Annette King's decision to pre-empt the 2003 Health Select inquiry into a joint regulatory agency – by announcing the signing of the treaty with Australia – had a significant impact on attitudes towards the bill and towards the government's attempts to progress it (Kedgley 2009). Heather Roy recalled that this decision to pre-empt resulted in "a great deal of grumpiness in the select committee about that by all the Opposition members at the time" and that "we held what was widely agreed to be an unprecedented press conference. Members from all sides of the House—apart from those in the Labour Government—came forward and were united in their contempt ... " (Roy 2006).

It was a compromise (the "wheeling and dealing" referred to above by Roy), under which fifty per cent of the regulatory costs facing the complementary medicines sector would be

subsidised, that enabled Labour to secure support from New Zealand First and United Future to have the bill introduced to Parliament and directed to select committee, but only by the barest of margins (61 votes in favour and 60 votes against). “For New Zealand First, the achievement of a fifty percent subsidy and the protection of New Zealand’s sovereignty tips the scales in favour of supporting this bill going to a select committee so that constructive debate can begin” (Stewart 2006).

Even with the proposed subsidy, the bill continued to encounter strong opposition from sections of the natural health industry, much of it directed at the select committee process. Following the submissions process and its deliberations, the select committee majority concluded it could not recommend the bill progress. Despite the select committee’s recommendation, the Labour-led government continued to search for deals and compromises to secure the votes necessary for the Therapeutic Products and Medicines Bill to be passed into law, a challenge that became increasingly difficult when independent MPs Taito Phillip Field and Gordon Copeland announced they would vote against it (Hazelhurst 2007).

This forced the government to explore a range of options and compromises. At one stage, the possibility of a hitherto unlikely agreement with the ACT Party was touted (Trevett 2007). A compromise put forward by New Zealand First, in which complementary medicine businesses “would only need to meet the regulations of the trans-Tasman agency if they wished to operate in Australia” was explored, but also came to nothing. The Government finally conceded defeat in July 2007.

The Pressure Group Campaign

Opposition to the Therapeutic Products and Medicines Bill centred around confidence in the comparative safety of complementary medicines, the perceived high cost of the proposed regime (with implications for product cost and availability as well as business viability) and the consequent argument that it was inappropriate to impose a pharmaceutical model of regulation and licensing upon them (Government Administration Committee 2007).

The comments of several politicians reflect the significant profile and impact of the public campaign orchestrated by sections of the natural health industry, well supported by the Green Party. United Future MP Judy Turner is one example. “I have to say that this was the very first issue, on arriving in Parliament in 2002, that hit our desks. All the letters and emails—and I mean all of them—were from consumers of complementary products. In fact, we were so thoroughly lobbied by complementary medicine consumers that it took me some weeks to discover that the proposal actually included pharmaceuticals and medical devices, as well” (Turner 2006). As noted by Catherine Masters of the *New Zealand Herald*, “Some in the pro-vitamin lobby went ballistic about the bill. They went on marches, chanted and spent big money on an advertising campaign which suggested natural health businesses would go bust and products would disappear” (Masters 2007).

Kedgley gave much credit for the campaign to Dave Sloane and the NZ Health Trust, which Sloane set up to lead opposition to the bill. She also identified current National MP, then lawyer and lobbyist for the NZ Health Trust, Amy Adams, for the influential role she played. Another key group was Health Freedom New Zealand, an advocate for health consumer choice, and it was the bringing together of the mobilisation capability of groups such as Health Freedom New Zealand and the NZ Health Trust, along with the professional lobbying,

that made for such an effective - “almost text book” - campaign (Kedgley 2009). She also observed that this mobilisation, along with the flood of letters and emails to Parliamentarians and select committee members in the early stages, was especially important because until that point the “media [had] completely ignored the issue ... It was totally under the radar” (Kedgley 2009).

Having described the methodology for analysing and examining the five hypotheses set out in Chapter 2 and having provided a description of the key policy, political and campaign features of four case studies, the thesis now enters its key analytical phase. In respect to each of the hypotheses, Chapter 5 draws together the findings and observations from the expert interviews, supported by evidence and examples from the four case studies, as well as other relevant pressure group engagements, public policy decisions and outcomes.

Chapter 5 – Pressure Group Behaviour and Influence Examined

Examining the Pressure Group Hypotheses

Five hypotheses relating to the expected behaviour of New Zealand pressure groups under MMP were set out in Chapter 2. These hypotheses were based on the predictions and expectations of New Zealand academics and commentators as well as a review of the international literature, in particular, that literature relating to the behaviour of pressure groups in democracies with stronger legislatures and more fragmented public policy decision-making structures.

The five hypotheses are tested below based on the expert interviews and public policy case studies described in Chapter 4.

First Hypothesis: On account of the wider distribution of decision-making power under MMP than FPP, pressure groups would develop a range of political and Parliamentary relationships and would be increasingly prepared to engage with politicians and political parties across the political spectrum.

The consistent view of the politicians, public law specialists, government relations consultants and pressure group leaders interviewed is that pressure groups have, on the whole, met this expectation. They have developed a wider set of political relationships and attempted to influence policy through a range of political access points. This was a recurrent theme arising from the interviews and research. There have been several notable features of this important aspect of pressure group behaviour under MMP.

First, there has been an increased willingness to engage with political parties and politicians outside the Executive. According to Tony Friedlander:

The emphasis used to be on Ministers and their key officials with a slightly lesser emphasis on key opinion makers within the respective caucuses ... Now if you're looking, especially to oppose someone, you use the wider range of potential weaknesses that the government have got (Friedlander 2008).

Pressure groups have adjusted to the redistribution of decision-making power away from the Executive and reflected the reality of the numbers in Parliament. Each of the public policy case studies outlined in Chapter 4 involved pressure groups actively lobbying both the opposition and Parliament's minor parties. Furthermore, particularly in the case of the Taxation Bill, the ETS and the Therapeutic Products and Medicines Bill, GPG, the KFA and the natural medicines community were willing to engage in campaigns that involved a high level of confrontation with the Executive. They were prepared to openly court opposition parties and put their relationship with the Executive under considerable stress.

Significantly, it is evident the key to successful lobbying in opposition to Executive policy is the ability to take advantage of the balance of power in Parliament and, in particular, the ability to secure a political ally with "political leverage". Political leverage is the bargaining power enjoyed by a political party, politician or group of politicians in respect to a particular bill by virtue of the Executive's dependence on that party's support to pass legislation. The importance of political leverage or "the power at the margin" (Saunders 2008) was raised frequently during the expert interviews.

This political leverage is often exercised through carefully guarded inter-party negotiations held outside the public eye. Consequently, demonstrating direct links between the political balance of power and specific policy outcomes can be difficult. However, the lobbying and political engagement of the fishing industry and GPG in relation to the ETS and Taxation Bill respectively is illustrative of the success that pressure groups can achieve when they secure a political ally with leverage.

When the National Party withdrew its support for the Labour Government's ETS legislation - and with ACT, United Future and the Maori Party also voting against it - the fate of ETS legislation rested with New Zealand First and the Green Party. Lengthy negotiations between Labour, New Zealand First and the Green Party continued through July and August 2008 as both parties sought changes to the legislation. When New Zealand First leader, Winston Peters, finally declared New Zealand First's intention to support the ETS he lauded the concessions negotiated by his party to protect households and the elderly from the full costs of the ETS (Peters 2008). However, he failed to mention the Labour Party had also agreed to a clause granting the fishing industry relief from 50 per cent of its ETS liabilities.

This late amendment was clearly a compromise. There was no precedent for the granting of emissions credits to the extent of 50 per cent of an industry's liabilities in the legislation and SEAFIC had sought a substantially higher level of shelter. Nevertheless, it was a significant result for SEAFIC, particularly given it had been unsuccessful in achieving any meaningful ETS relief at either the consultation or select committee phases of the policy process. Although the fishing industry's win was not widely noted in the mainstream media it was observed in the blogosphere. Wellington-based political blog, The Hive³⁴, declared it was "amazed that

³⁴ The Hive (wellingtonhive.blogspot.com) was dedicated to the monitoring of developments in central, regional and local politics from its base in Wellington. It was established in November 2007 in reaction to the proposed

this is passing below the radar screen. The revised ETS contains an enormous new subsidy for the fishing industry. This was, surprise, surprise³⁵ negotiated by New Zealand First” (The Hive 2008).

New Zealand First also played a critical, and similar, role in respect to GPG’s exemption from the Taxation Bill. In fact, the GPG exemption is an even more striking illustration of the exploitation of political leverage given the government had so adamantly and publicly denied there was any policy rationale for the exemption. Again, the government was reliant on New Zealand First’s support to have the Taxation Bill passed into law.³⁶ In this case, the political leverage was exercised at an earlier stage of the policy process, prior to the bill’s introduction to the House, as alluded to by National MP Lockwood Smith during Parliamentary debate:

Why did he [Minister Cullen] just change the policy for investors in the Guinness Peat Group? I see Peter Dunne smiling. What or who twisted Dr Cullen’s arm on this ... Was it Winston Peters, who said to Dr Cullen that his support depended on that change being made? I would say there was a fair bit of murkiness in the background (Lockwood Smith 2006).

As these two case studies demonstrate, political leverage can be a very influential source of policy influence for pressure groups. It can even deliver substantial policy reversals on the part of government. However, the reality is that pressure groups, even under MMP, are only

Electoral Finance Act but also took a close interest in the Emissions Trading Scheme during 2008. The Hive has not been active since November 2008.

³⁵ The financial relationship between New Zealand First and fishing interests is well documented. For instance, it was revealed by the *Dominion Post* in 2008 that New Zealand First had received substantial undisclosed donations from the Vela family, who have significant commercial interests in the fishing sector. Former Minister of Fisheries, Hon Jim Anderton, also claimed that “Opposition from certain sections of the fishing industry, as well as from United Future and NZ First, meant the government couldn’t get a majority for the amendment [to section 10 of the Fisheries Act].” These amendments would have allowed the minister to take into account the “precautionary principle” when setting fish catch quotas. Anderton also remarked, “it is very disturbing to now read about the nature of the financial ties between the industry and some parties” (Thomas 2008).

³⁶ The Taxation Bill passed its final reading by 63 votes to 51. If New Zealand First had voted against the bill it would not have been passed.

able to profit from the political leverage in quite specific circumstances. It requires a relationship or a philosophical alignment with a party or political grouping that happens to wield negotiating power. It also requires a willingness to exercise that leverage given that party's own political style and objectives as well as the wider, longer term context of the party's political relationship with the government.

Second, pressure groups have been willing to engage with politicians and political parties right across Parliament. There was an overwhelming view amongst the experts interviewed that pressure groups cannot rely on a single political relationship or on engagement with only the two major parties to be effective. For instance, Peter Conway noted that MMP has made the CTU "much more aware of the need to have a broad base of coalitions with people" and that "the notion of partnerships and working together on things has become more important" (Conway 2008).

The expert interviews revealed many instances of pressure groups bringing together cross-party support for their policy views and positions on an ad hoc, issue by issue basis. For example, Tony Friedlander described bringing together the "combined forces of ACT, Labour and others to bear when National was in power [pre-1999 election]" and those of "ACT, United Future and New Zealand First to get changes to the Labour Government's approach." Matthew Hooton recalled mustering support from the Greens, the Maori Party, ACT and United Future to support the forestry sector's call for the devolution of ETS carbon credits (Hooton 2008) and Barrie Saunders described successful lobbying of parties across Parliament to prevent a ban on direct-to-consumer advertising being included in the Therapeutic Products and Medicines Bill.³⁷ As the then Minister of Health conceded in Parliament, "the Government's preference was to ban direct-to-consumer advertising.

³⁷ A ban of direct-to-consumer advertising of pharmaceutical products had been advocated by sections of the medical profession for some time, but was opposed by some consumer groups and the pharmaceutical industry.

However, it is clear that there is not the necessary support within Parliament for that to happen at this point” (Hodgson 2006).

The fate of the Therapeutic Products and Medicines Bill is another clear illustration of the success pressure groups can have, and have had, under MMP by mustering support or opposition for a policy from across multiple parties. Similarly, cross-party lobbying was the key to the scrap metal industry’s success in achieving the late redefinition of “waste” within the Waste Minimisation Bill. According to Mai Chen³⁸, this amendment could not have been achieved without the type of minority coalition government common under MMP (Chen 2008):

Neither the Greens nor the Minister would agree to see SMRANZ, so instead they went to the other parties. The National Party agreed to put up an SOP [Supplementary Order Paper] which would remove scrap metal from the definition of waste, and lobbying resulted in a majority commitment of 63 votes in favour of the National Party SOP.” In turn, “the Greens, the Minister’s advisers, and the Ministry for the Environment officials who had originally advised on the Government SOP then agreed to meet with SMRANZ” and a compromise SOP was negotiated between SMRANZ, the Greens and the Government (Chen 2008).

Despite these many examples of cross-Parliamentary pressure group engagement, there was a common view that some groups were yet to fully adjust to the MMP environment. The dynamics and decision-making structures of MPP are not fully understood by all pressure groups (Clarke 2008). Consequently, there remained a tendency, particularly amongst those pressure groups and organisations not regularly involved in lobbying, to operate according to a FPP mentality and to focus solely on “the Minister and the Opposition” (Swain 2008). In relation to each of the four case studies, many of the pressure groups involved were advised

³⁸ Mai Chen was SMRANZ’s public law advisor in respect to the Waste Minimisation Bill.

by government relations or public law experts (for example, the KFA, SMRANZ and GPG). That level of MMP understanding and awareness of the need for engagement with multiple parties cannot be assumed of other pressure groups.

Second hypothesis: On account of their more diverse composition, fewer government chairs and a much reduced likelihood of government-majority membership, select committees would become a more valuable channel of engagement and policy influence for pressure groups than they had been under FPP.

The most common view of the experts interviewed was that select committees had been more independent under MMP, had been more influential and had proved a more fruitful channel for pressure groups. This is consistent with the observations of a number of academics (Shaw and Eichbaum 2008, Martin 2004). However, the opinions expressed by the experts interviewed were certainly not uniform. In particular, there were differing explanations as to the reasons for select committee influence under MMP and quite different views as to the extent of that influence. The interviews and case studies also revealed a complex relationship between select committee processes and inter-party policy negotiations, with significant implications for the engagement and influence of pressure groups.

Shaw and Eichbaum described MMP select committees as “a critical point of entry into the legislative process” (Shaw and Eichbaum 2008, 59) and Parliament’s “best kept secret” - capable of effecting “a substantial difference to policy” (Shaw and Eichbaum 2008, 57). Their view from the outside is supported by Russel Norman’s from within. “Because of the numbers on select committees, we will often find ourselves with the deciding vote ... it gave us a lot of power over the past nine years and the submissions really mattered” (Norman

2008). The numbers referred to by Norman demonstrate the extent of structural change to select committees under MMP, as discussed and set out above in Chapter 3.

The lack of select committee majorities is viewed as one of the key reasons that pressure groups can achieve greater results through engagement with MMP select committees. As Norman observed, without a majority the government does not have the ability to control select committee recommendations. Of course, the Executive can ignore select committee recommendations if it chooses. Parliament ultimately determines the fate of legislation.³⁹ As Norman commented:

At the end of the day what the government is angling for is a majority in the House. Usually the numbers in the select committee will bear some relationship to the numbers in the House, so they'll have to do the negotiating at the select committee phase. It varies though – sometimes they'll just ignore the select committee (Norman 2008).

For example, the 2005-2008 Labour government sought to pass the Therapeutic Products and Medicines Bill despite the Government and Administration Committee recommending it not proceed.⁴⁰ However, an adverse recommendation from a select committee can undermine the perceived legitimacy of a bill, contribute significantly to public opinion and destabilise broader Parliamentary support, as was the case with the Therapeutic Products and Medicines Bill (Kedgley 2008).

Furthermore, even when select committee recommendations are ignored by the Executive they can still provide a platform for ongoing lobbying and longer term success. For

³⁹ Sellens has argued that the fact Parliament has the final word on legislation may have discouraged pressure groups from focusing on select committees and targeting the Executive instead (Sellens 1998).

⁴⁰ The Financial Advisors Act and the Major Events Management Act are other examples of bills in respect to which select committee recommendations were not adopted by the government (Clarke 2008).

example, in 2006, the Labour-led government chose not to act upon a recommendation by the health select committee that the government restore Plunket's contract for the provision of telephone-based nursing advice (Plunketline). The health committee had been chaired by Green Party MP Sue Bradford, and comprised MPs from a range of parties sympathetic to Plunket's position, including the Green Party, United Future, the Maori Party and National. Due to the Labour-led government's decision to ignore the select committee recommendation, there was no short-term result for Plunket from its submission to the committee. However, the awareness created by the submission and select committee report, along with associated media activity and lobbying⁴¹, led to the National Party committing to restore the contract in its 2008 election manifesto (NZPA 2008[b]).

A second explanation as to the greater influence and value of select committees to pressure groups under MMP is that the government contingent on MMP select committees tends to be more open-minded and more "malleable" (Conway 2008). They need to take a more flexible view if they remain uncertain as to the parties and compromises that will secure a Parliamentary majority for a bill. For their part, non-government and minor parties are also inclined to retain an open position in respect to legislation in its early stages, as indicated by Norman:

It is very common for us [the Green Party] to agree to support a bill to select committee, but make no further commitments ... there will be other times on occasion, where something's really big or important that the government seeks support for all stages, but generally we don't give it because you give away all your power and you haven't heard all the evidence (Norman 2008).

⁴¹ Some, including former Business New Zealand Executive Director Simon Carlaw, have actually argued that "select committees are most important for what happens around them – lobbying, media coverage, awareness campaigns etc" (Carlaw 2003).

Pressure groups, therefore, have an opportunity to achieve substantial shifts in government policy through select committee submissions. The Climate Change Bill is a good example of a bill introduced by the government with considerable policy questions and Parliamentary support still unresolved. According to Norman, submissions being made during the ETS select committee phase were being fed into the Green Party's negotiations with the government (Norman 2008). Charles Chauvel, chair of the select committee that reviewed the ETS legislation, also considered that public submissions had influenced the ETS and that most of the issues addressed in the final bill had been "ventilated" at the select committee stage (Chauvel 2009).

However, a number of experts and pressure group leaders remained unconvinced that the structural changes to select committees under MMP had resulted in any notable increase in the influence of select committees⁴² or considered the extent of select committee influence under MMP had not met the expectations that accompanied MMP's introduction. According to Clarke:

Yes [select committees] are leading to greater scrutiny, yes, they are leading to greater opportunity for pressure groups and, yes, pressure groups are obtaining amendments through the select committee stage that aren't necessarily desired by the government or the architects of the legislation But, no, the full capacity and independence of select committees has not yet been achieved ... I don't think it [the role of select committees] is anywhere near as significant and important as the architects of MMP and constitutional experts thought that it would be (Clarke 2008).

First, it was generally agreed that although MMP select committees now reflected the broader political diversity and fragmentation of Parliament, they have not developed "lives

⁴² Former Business New Zealand Chief Executive Simon Carlaw went further, not only claiming "the greatest impact that MMP has had on the select committee process is that lobby groups have to talk to more people," but that "select committees rarely influence, let alone change, policy decisions" (Carlaw 2003).

of their own” (Saunders 2008). There is often a government or Cabinet view as to what a select committee report should conclude and recommend (Conway 2008) and, in relation to matters of substantial policy or legislation that touches core philosophies, a party caucus will often require committee members to take a certain position or vote a particular way– which pressure groups are often not aware of (Swain 2008, Bailey 2008, Hooton 2008).⁴³

Second, the need for, and nature of, deal-making under MMP were cited as key constraints upon the role and influence of select committees. It was argued that the inter-party negotiations often result in policy deals being reached before draft legislation is introduced to Parliament or sent to a select committee for consideration (Clarke 2008, Friedlander 2008). As a consequence, the ability of pressure groups to shift policy through submissions is limited. Where possible, pressure groups need to exert their influence prior to the legislative phase (Friedlander 2008). GPG’s Taxation Bill campaign is a compelling example of a pressure group lobbying aggressively, and successfully securing a policy deal on its behalf prior to the bill being sent to a select committee. The KFA’s primary campaign objective, a commitment from the government to devolve post 1990 carbon credits, was also achieved prior to the drafting of the ETS legislation and in advance of the select committee phase.

The case studies also demonstrate that significant policy deals and compromises can be reached under MMP at very late stages of the policy process, following the select committee phase and sometimes producing policy outcomes never raised or contemplated during select committee submissions. In this case, the Climate Change Bill and the Waste Minimisation Bill provide clear examples. The policy deals between the Labour government, New Zealand First and the Green Party that secured the ETS, including the compromise that

⁴³ Doug Bailey also noted that “other policy issues and legislation will be less politically sensitive, perhaps more technical in nature, which tends to allow select committee members greater freedom and discretion, albeit this was also the case under FPP” (Bailey 2008).

saw the fishing industry receive emissions credits to cover 50 per cent of liabilities, were struck just prior to the Climate Change Bill receiving its final Parliamentary reading.

The expert interviews consistently emphasised the importance to pressure groups of understanding how the select committee phase of the policy process had been impacted by MMP. First, it was observed that select committees now operate parallel to inter-party negotiations under MMP (Norman 2008, Swain 2008). By contrast, the decision-making process under FPP was more linear and pressure groups could focus on each stage, including the select committee stage, in turn. Second, it was noted that pressure groups need to be aware there are opportunities to influence legislation beyond the select committee phase when inter-party negotiations and policy deals are yet to be finalised. According to Swain:

Just because something has been decided or recommended by a select committee doesn't mean that's where it ends. There are going to be trade-offs and deals being done right outside the select committee process (Swain 2008).

Norman cited the redefinition of “waste” achieved by SMRANZ within the Waste Minimisation Bill as an example of an amendment achieved through “heavy duty lobbying on behalf of the scrap metal dealers” subsequent and contrary to the report of the select committee (Norman 2008). Another example was the Employment Relations (Breaks, Infant Feeding and Other Matters) Amendment Bill 2008. Following from business interests and the late intervention of New Zealand First, the bill was amended to exclude the transport sector from its requirements (Conway 2008).

In relation to the Climate Change Bill, Chauvel claimed that select committee submissions were taken into account in inter-party negotiations and that “there weren’t many changes

the Greens or New Zealand First wanted at select committee that we couldn't accommodate." Nevertheless, he acknowledged there were a few changes to the ETS introduced contrary to the recommendations of the select committee, notably the emissions credits granted to the fishing sector - the "classic example of how a select committee can go so far, but can be trumped by what's finally the exercise of power – by ministers ... that's the way it works" (Chauvel 2009).

The influence and role of select committees under MMP has changed. Select committee members remain constrained by party positions as was the case under FPP. Inter-party deals reached in advance of legislation arriving with select committees have also limited the extent to which pressure groups can effect policy change through the select committee process. Yet, given the rarity of government majorities on committees and given Parliamentary support can often be unsecured or provisional when bills are sent to select committees, the outcome of the select committee process is now less pre-determined and predictable. This has created opportunities for pressure groups and there are examples of pressure groups that have profited from these changes.

The political and decision-making context within which select committees operate is more complicated under MMP. In particular, there is a complex and variable interface between the select committee process and inter-party policy negotiations. Often, select committee submissions supplement inter-party negotiations and contribute to the agreements that are reached. In some cases, however, inter-party negotiations can reverse or trump a select committee process or recommendation. This is not generally to the disadvantage of pressure groups. In fact, as was demonstrated by SMRANZ and SEAFIC in respect to the Waste Minimisation and Climate Change Bill, it allows pressure groups a final opportunity to achieve policy wins. However, this does require a relatively sophisticated awareness of the

political environment and the relationship between the select committee and the rest of Parliament. “I don’t think you can look at select committees without considering the broader strategic Parliamentary situation” (Hooton 2008). This awareness is far from universal. Unlike GPG, the KFA or SMRANZ, many pressure groups do not have access to expert public law or government relations advice. Consequently, they often remain “too focused on the select committee and the submission” and need to develop strategies for engagement before, during and after the select committee process (Swain 2008).

It is also very important to recognise MMP is not constant and that different MMP regimes can deliver quite variable political structures within which select committees will operate – with significant implications for pressure groups. During the first term of MMP government, the National-New Zealand First coalition majority (1996-98), Sellens concluded that “the wider diversity of parties, and therefore political opinion and ideology within select committees has not been fully exploited by lobbyists to create dissension within the committee, or to create a focus for media and public attention.” She argued that Cabinet was still powerful and this may have convinced pressure groups that select committees were not worth intensive lobbying. This contrasts with a generally more optimistic view of select committees and their value to pressure groups in 2008, a view shaped by three successive terms of MMP minority governments. In 1998, the then CTU Secretary, Angela Foulkes, claimed that select committees had not changed markedly with MMP, had no more power, and that “the only additional influence or power for lobbyists is if there is a division within government” (Sellens 1998, 35). On the other hand, current CTU Secretary Peter Conway described select committees as “starting with a more open negotiable position” and considered that select committees have been an increasingly worthwhile channel for pressure groups (Conway 2008).

Third hypothesis: On account of the increased policy influence of Parliament and the increased influence of political parties not represented within the Executive (therefore, without any direct relationship with the bureaucracy), the bureaucracy would be a less important channel of policy influence for pressure groups under MMP. Pressure groups would, in fact, find themselves increasingly in competition with the bureaucracy as providers of advice and information.

According to the politicians, pressure group leaders, public law and government relations experts interviewed, the role of the bureaucracy in shaping policy remains very important and the bureaucracy is still a critical relationship and point of access for pressure groups. Correspondingly, changes to the nature of pressure group relationships with officials were not a prominent feature of the research and interview findings. They were secondary in emphasis. Nevertheless, the nature of the pressure group relationship with the bureaucracy has changed. There has been an ability for pressure groups to achieve policy outcomes without engagement with the bureaucracy and, sometimes, despite the views and advice of officials.

“The role of officials is still very important” (Swain 2008) and there is no suggestion that under MMP pressure groups have placed any lesser emphasis on engagement with government officials through either formal policy consultation processes or through maintaining relationships with key officials and advisors. The Executive is still responsible for determining most of the policy and legislative agenda and, as the agent of the Executive, the bureaucracy still plays a very significant role in shaping policy and advising the government. In fact, as anticipated (Boston 1996), MMP has seen an increased emphasis on policy consultation by government agencies (Palmer 1999, Dunne 2006[d]), partly attributable to the need for minority governments to build a consensus around issues before seeking to

stitch together a Parliamentary majority for legislative action. The Taxation Bill and the Climate Change Bill are examples of bills introduced to Parliament following substantial public consultation carried out by government agencies on behalf of the Executive.⁴⁴

The continuing and substantial influence of the bureaucracy is illustrated by the emphasis placed on both structured and informal relationships by major pressure groups such as the CTU and Business New Zealand. For example, during the 2005-2008 term of the Labour-led government, CTU and Business New Zealand leadership met regularly with the Chief Executive and senior officials of the Department of Labour, while, below this leadership forum, departmental officials, CTU and Business New Zealand advisors were also regularly engaged and provided with policy papers for comment. Furthermore, this tripartite structure was supported by regular forums with the Minister of Labour. The Minister met fortnightly with the CTU, fortnightly with Business New Zealand and monthly with both organisations (Conway 2008).⁴⁵ It is not evident these structures and relationships can necessarily be attributed to MMP. They are likely to reflect the Labour government's style of political management and stakeholder engagement. However, they certainly support a view that pressure groups continue to place a high value on relationships with the bureaucracy. It also suggests that institutional pressure groups, such as the CTU and Business New Zealand, have retained a degree of 'insider' status under MMP despite the more fragmented policy and contestable policy environment.

The bureaucracy remains important, but it is also the case that MMP has "substantially altered the environment in which the public service advises on, implements and evaluates

⁴⁴ The Business Tax Review public discussion document was issued by the government in July 2005. The Taxation Bill was introduced to Parliament and sent to select committee for consideration in May 2006. It was voted into law in December 2006.

⁴⁵ Conway noted that this level of engagement did not occur during the 1990s and that these types of institutional structures and relationships with government agencies "had been wiped away" (Conway 2008).

public policy". Significantly, from the pressure group perspective, "the virtual monopoly they (officials) once held over advice has gone (although not exclusively as a result of electoral change), and they now compete for the minister's attention with other policy players in what has become a more cluttered, contested policy market" (Shaw and Eichbaum 2005,3).

This competitive environment was described by several of the politicians, lobbyists and pressure group leaders interviewed. It was regarded as having strengthened the hand of pressure groups in their efforts to influence public policy, and enabling pressure groups to achieve policy results "against the wishes of officials", which used to be very difficult without the supporting advocacy of a Minister (Clarke 2008).⁴⁶ In some cases, the bureaucracy can act as a strong and determined advocate for policy initiatives. Indeed, Sue Kedgley described officials as "hell bent" on the introduction of a trans-Tasman therapeutic regulatory regime (Kedgley 2009). The Emissions Trading Scheme was also cited as illustrative of the competition that can exist between the advice and information streams of officials and pressure groups. "Officials have a very pure view of how an ETS system works [but] those officials are now only one of a series of advice streams" (Swain 2008).

There have been two primary dimensions to the competitive dynamic between pressure groups and the bureaucracy. First, due to the more contestable nature of policy and the need for governments to gain a wider perspectives in order to build Parliamentary majorities, pressure groups have, at times, competed directly with officials as advisors to the Executive. In this respect, the role of political advisors has become increasingly influential and important to pressure groups. These advisors, appointed by the Executive and reporting

⁴⁶ Notably, Friedlander contended that, due to the time and energy required of Ministers negotiating policy and legislation with support parties, MMP has resulted in officials taking on greater policy formulation responsibility (Friedlander 2008). There is another view that the increased difficulty progressing legislation through Parliament has led to an increased use of secondary legislation, often administered and significantly influenced by the bureaucracy (Bailey 2008).

directly to Ministers, provide an alternative channel (to the bureaucracy) for communicating to Ministers. Relationships with these political advisors are important to pressure groups (Friedlander 2008, Conway 2008).

Second, pressure groups compete with officials through their relationships with, and the information they provide to, non-government political parties involved in policy negotiations and decision-making. Under MMP, the governing party is in a constant state of policy negotiation with support parties, which themselves have very limited access to the advice and information of the bureaucracy (except where they have been granted Executive positions)⁴⁷. In this environment, there is an opportunity for pressure groups to ensure they are sufficiently connected to non-government political parties to supply information and advice that enables those parties to successfully engage with both the Executive and its advisors in the bureaucracy.

For example, the Green Party was able to influence a range of policies - notably transport and environmental - from outside the Executive during the three terms of Labour-led government.⁴⁸ It was a relationship with the Green Party that enabled Zero Waste New Zealand to play an influential role in the developing the initial policy, drafting and legislative progress of the Waste Minimisation Bill (Tanczos 2006, Norman 2008). On the other hand, SMRANZ achieved a late amendment and redefinition of waste through its engagement with several parties and involvement in negotiations with officials, the Green Party and the Minister for the Environment (Chen 2008). In both instances, pressure groups were an alternative source of advice and information to the bureaucracy.

⁴⁷ Green MPs did have direct access to officials where they were granted responsibility for specific government programs, such as Buy Kiwi Made and Energy Efficiency, under the 2005-2008 Labour-led government.

⁴⁸ According to Paul Swain, the Green Party had a notable influence over transport policy and legislation during his term as Minister of Transport, on account of their status as a government support party (Swain 2008).

It is important not to overstate the change in the relationship between pressure groups and the bureaucracy under MMP. The bureaucracy remains a key player in the policy process and pressure groups continue to place a strong emphasis on their relationships and access to officials. However, MMP has increased the opportunities for pressure groups to bypass the bureaucracy and, where the need arises, to provide competitive information and advice to the Executive or channel it through non-governing political parties. Pressure groups have achieved significant policy outcomes contrary to the advice of officials (and often contrary to the Executive) as a result. And while some major pressure groups retain an institutional status and structural relationships with government agencies, MMP has increased the need for the government and its agencies to consult with a wider range of stakeholders and pressure groups.

The Fourth Hypothesis: On account of public policy under MMP being increasingly sensitive to public opinion and on account of a lesser risk associated with alienating a less powerful Executive, media and public/constituency mobilisation techniques would be more successful and more popular tools of pressure group influence under MMP than FPP.

MMP governments have been sensitive and responsive to public opinion (Swain 2008, Norman 2008). “If you can get the public or the media on your side that will help your case enormously” (Norman 2008).⁴⁹ There have been many examples of pressure groups undertaking media campaigns and mobilising their constituents or the general public in order to influence MMP public policy. The KFA campaign in relation to the ETS, GPG’s

⁴⁹ For example, in respect to the ETS, Charles Chauvel noted that as the campaign against the ETS mounted, it “resulted in an Executive decision to modify the ETS proposal and to push out some of the deadlines – principally for agriculture and stationary energy” (Chauvel 2009).

campaign in relation to the Taxation Bill and the campaign in opposition to the Therapeutic Products and Medicines Bill are all examples.

However, it is more difficult to establish that this sensitivity, and the willingness of pressure groups to engage in media and mobilisation activity, has been directly attributable to MMP. Pressure groups in New Zealand have a long history of this activity and governments have always been conscious of public opinion. Further, indirect influence levers, including media and mobilisation, are often pursued in conjunction with direct approaches to decision-makers. Consequently, their influence is difficult to isolate. Governments can also be reluctant to acknowledge that policy has been altered on account of a campaign, in case it is interpreted as a sign of political weakness, a compromise of principle, or encourages other groups to mobilise in respect of their issues.

Nevertheless, there is a general, if not universal, view amongst the experts interviewed that MMP has increased the influence and value to pressure groups of media and mobilisation activity, particularly through the potential to create a sense of political opportunity or risk for minor parties. For example, Bailey argued:

There is a greater responsiveness and sensitivity to public opinion where there is an opportunity for a party, a minor party in particular, to differentiate itself or brand itself – and that will influence the political dynamic (Bailey 2008).

Without overstating the effect, Conway also considered MMP had created opportunities for minor parties to achieve exposure via the media and this had, in turn, created opportunities for pressure groups, including the CTU. “There can be quite a large public constituency in respect to an issue, from which a third party can secure quite a platform. This acts as quite a

discipline on policy.” Conway cited the Free Trade Agreement with China as an example (Conway 2008). This agreement had the broad support of both the Labour and National parties, but consequently provided an opportunity for minor parties, notably the Green Party and New Zealand First, to secure a profile through their opposition and public criticisms (Young 2008[b]). There was also a suggestion that smaller parties can be more inclined to adopt pressure group issues on account of their tendency to focus on smaller, niche constituencies and their proximity to MMP’s five per cent threshold.⁵⁰

Although it is difficult to be definitive about the relative sensitivity of policy to public campaigns under FPP and MMP, there are some clear findings from the research relating to pressure group use of media and mobilisation techniques. First, they are most effective when they are connected to, and extensions of, lobbying campaigns that take account of the political balance of power. Several of the case studies are illustrative. The government’s decision to reverse its position and grant GPG an exemption in respect to the Taxation Bill has been credited to “well-funded grassroots lobbying including an intense letter-writing and advertising campaign” (McManus 2006). However, the campaign would not have been successful without the decision of New Zealand First to support GPG’s position and exercise its political leverage. It is evident the public campaign had taken account of the configuration of government and the balance of power. Most importantly, it targeted the electorate of the New Zealand First leader, Hon Winston Peters:

The Independent understands [Bruce] Sheppard [Shareholders Association founder] plans writing to GPG shareholders in the electorates of the two MPs holding the balance of power in the coalition government – New Zealand First leader and Foreign Affairs Minister Winston

⁵⁰ “The media and polling activity is now being watched a lot more closely by the smaller parties who know that if they are hanging around the five percent threshold they need to be wary of public opposition to a policy” (Swain 2008). “If you are after five per cent constituency you will take a different approach to a party after forty per cent, and so we are seeing that kind of politics playing out” (Conway 2008).

Peters and United Future Leader Peter Dunne – to explain the implications of the tax (McManus 2006).

In regard to the KFA's high profile campaign demanding the government devolve carbon credits to forest owners, Matthew Hooton noted "you couldn't separate the lobbying from the public dimension to the campaign because it was all about getting the numbers in Parliament." The KFA's campaign during 2006 and 2007 was multi-dimensional and involved extensive, aggressive media activity, public meetings and billboards. It is widely perceived as having "eventually succeeded in getting post-1990 carbon credits returned to forest owners," (NZEEBW 2008[b]) but fundamentally, success depended on the direct lobbying of those parties who held the legislative balance of power. The media and mobilisation activity provided the platform for that lobbying to prevail.

It is evident from the frequent references of politicians in Parliament that the mobilisation of the natural medicines community and the associated marches, letter writing and media coverage placed the Therapeutic Products and Medicines Bill squarely in the consciousness of politicians. It elevated awareness of the issue, the opposition as well as the sense of political risk and opportunity. However, it was this profile in conjunction with expert direct lobbying of Parliament that made the campaign to oppose the bill especially powerful (Kedgley 2008).

Second, MMP pressure groups have been willing to engage in highly confrontational campaigns in opposition to Executive policy - and have been successful in doing so. The KFA campaign was particularly hostile. It involved aggressive advertising and involved the KFA engaging in a public war of words with the Minister for Forestry, even describing the government and its officials as "carbon credit thieves" (NZPA 2007). GPG's campaign was

also bold and confrontational. It involved an aggressive media campaign, full page advertisements and direct communications to all GPG's 28,000 New Zealand shareholders urging them to write to the Prime Minister. GPG did not engage in the same degree of hostile accusation as the KFA, but it was prepared to deliver implicit political threats.⁵¹ These campaigns are arguably not surprising when it has already been established that MMP pressure groups have been willing to openly lobby Parliament in opposition to Executive policy. Neither should the success of the KFA and GPG campaigns be considered surprising when it has also been established that media and mobilisation campaigns are most effective when they are an extension of a lobbying campaign that is conscious of the political balance of power in respect to a particular policy issue.

The Fifth Hypothesis: On account of the greater contestability of policy and a longer, more consultative policy process under MMP than FPP, information would be an increasingly valuable resource for pressure groups – although the most effective use of that information will require a more sophisticated ability to tailor information and policy arguments according to a more complex political environment.

Despite the greater contestability of policy and the longer, more publicly visible policy process, there is no compelling evidence or prevalence of opinion that information has been a more influential tool for pressure groups under MMP. Information is important under MMP, but no more important than it was under FPP (Friedlander 2008). Pressure groups have, however, demonstrated a tendency under MMP to organise their information and articulate their arguments in a more nuanced manner, depending on the political audience.

⁵¹ For instance, during the campaign, GPG Chairman commented that "it's something New Zealand shareholders and investors have to cope with" and "no doubt this will reflect on how they vote in the next election" (McManus 2006).

Information does play an important role in policy influence and policy decision-making. This was the case under FPP and it remains the case under MMP. However, the nature of policy is such that the role of information is going to have limitations under either regime. Policy is subjective and often determined on the basis of preferences, values, and sometimes politics, as much as information. Consequently, it was perhaps optimistic to expect MMP to have a marked impact on the value of information to pressure groups.

The research and interviews did reveal some important issues relating to both the role of information and the manipulation of information by pressure groups under MMP. First, it was argued the nature of inter-party negotiations under MMP and the potential for policy to be determined on the basis of deals and compromises had resulted in some policy outcomes that lacked transparency and lacked a clear relationship to the evidence and associated policy debate. This had occurred despite MMP creating the opportunity for “more deliberative processes” and “more analytical decision-making” (Clarke 2008, Bailey 2008). The Climate Change Bill and the Therapeutic Products and Medicines Bill provide examples.

Despite a lengthy policy development process and months of select committee consideration, the fishing industry had been unable to secure any significant shelter from its emissions liabilities as had been granted to other primary export industries. Yet, under the deal struck between Labour and New Zealand First, they received emissions credits to the extent of 50 per cent of their liabilities – a percentage that had never been previously sought or touted and which bore no obvious relationship to the levels of relief granted to other sectors. It was an arbitrary figure arrived at on the basis of compromise. Similarly, the Therapeutic Products and Medicines Bill only proceeded to the select committee phase on account of a deal between the government and its support parties that would have involved granting affected businesses a 50 per cent subsidy to cover costs relating to the proposed

trans Tasman regulatory agency. This figure was similarly arbitrary in nature and had not featured in the preceding policy and consultation phases (although the issue of regulatory costs had done).

These deals are a reality under MMP and pressure groups need to understand the political context and configuration of votes that makes them possible. However, it does not create any lesser need to ensure pressure group arguments are well supported by information and evidence. “Even where politicians are acting politically, they want the fig leaf of the analytics” (Clarke 2008) and “maybe there was a time during which people had the relationships and just turned up and expected someone to support them just because they were all part of the same tribe, but that is certainly not my experience of how it works” (Norman 2008).

Second, it is very clear that MMP has influenced the way in which pressure groups need to organise and articulate their policy arguments. “All lobbying is about aligning your objectives with those of the people you are lobbying” (Hooton 2006). MMP has broadened the range of political parties with which pressure groups are required to engage. Consequently, it has created a need to tailor arguments according to different political philosophies and constituencies. To some extent, there was a requirement under FPP to shape arguments, for instance, according to the interests of party factions or based on regional interests, but MMP has sharpened this requirement.

The KFA’s campaign and the campaign in opposition to the Therapeutic Products and Medicines Bill were notable for their attempt and general success in bringing together political support by making the issues relevant to several political parties. For instance, the KFA emphasised environmental issues and consequences when engaged with the Green

Party, emphasised Treaty implications when engaged with the Maori Party and emphasised property rights when engaged with the ACT Party (Hooton 2008). Likewise, broad-based Parliamentary opposition to the trans Tasman regulatory agency was achieved through a combination of policy arguments that crossed political boundaries. Some of those arguments related to consumer choice, some related to compliance costs and some related to New Zealand's need for regulatory autonomy. The need for pressure groups to provide more sophisticated information may not have eventuated under MMP, but there has been an advantage for those groups that communicate their information with greater sophistication and political skill.

Chapter 6 - Conclusions

MMP has changed the structure and distribution of public policy decision-making power in New Zealand and resulted in changes to the behaviour, strategies and influence of pressure groups. However, it is important to recognise that in 13 years of MMP government New Zealand has experienced a number of different governing arrangements and a highly variable configuration and distribution of power.

The public policy case studies reviewed in this thesis predominantly took place during the 2005-2008 Labour-led term of government. The expert interviews were also undertaken during, or shortly after, the 2005-2008 government. That was a minority government dependent on support from multiple parties to pass legislation. Decision-making power was highly fragmented and policy was often the outcome of inter-party negotiation and compromise. It represented a sharp contrast to public policy decision-making under FPP. Other MMP governments have not been characterised by the same extent of fragmented power, notably the National-New Zealand First coalition majority government (1996-1998). Consequently, observations and conclusions in respect to the 2005-2008 government cannot be assumed to apply to MMP generally or, at least, not to the same degree.⁵²

The research revealed important shifts that are likely to hold, to a greater or lesser extent, under most variations of MMP government. In doing so, the research confirmed several of the hypotheses set out in Chapter 2. As expected, and as discussed in Chapter 4, MMP has led to pressure groups developing and accessing a wider set of political relationships. It has resulted in pressure groups being increasingly willing to challenge Executive policy by openly

⁵² Furthermore, in respect to public policy, the primary impact of MMP has been on the legislative process. Correspondingly, that was the focus of the case studies. Yet governments have other policy levers, which pressure groups can also seek to influence. These levers have not been affected by MMP to the same extent as legislation.

lobbying across Parliament, through select committees and via public campaigns. Further, they have often been successful in doing so, particularly where they have been able to understand and exploit the political balance of power. Although the bureaucracy remains a very important channel of influence for pressure groups, they have found themselves increasingly in competition with officials as a source of policy advice and information. Information also remains critical to pressure groups, although not noticeably more than it was under FPP. Rather, it is the organisation and communication of that information that has become more important under MMP.

However, the thesis findings extend beyond examination of the five hypotheses. There are also several underlying themes and trends that have arisen from the expert interviews and case studies. These provide important insights into pressure group behaviour and the requirements for influence under MMP.

Pragmatism, Flexibility, Independence

Pragmatism has become an acknowledged feature of political management under MMP. Political leaders have put aside history, personal and ideological differences because it was simply required – whether to form governments or hold them together.⁵³ In fact, pragmatism has become regarded less a feature of leadership style under MMP and more an aspect of leadership necessity. Similarly, pragmatism has been cited as important to pressure groups under MMP (Conway 2008, Swain 2008). As in respect to political management, the need for a pragmatic mentality is essentially about necessity, as emphasised by Norman:

⁵³ Helen Clark was often described as a political pragmatist, “interested in what would work, not what she thought about her coalition partners” (Hubbard 2008). Current Prime Minister John Key is also regarded as a pragmatic politician by many (Kissel 2009, Trans Tasman 2009).

The key thing is to recognise the fundamental reality of the numbers in Parliament. Since the beginning of MMP no party has had a simple majority so there are always multiple parties.

Talk to everyone. .. first rule of politics – learn to count (Norman 2008).

The distribution of power and the presence of multiple parties have simply required pressure groups to engage on a broad front, set philosophical differences aside and approach politics on an issue by issue basis. As a consequence, some pressure groups “have held their noses” and talked to parties they previously would have avoided (Swain 2008).

Yet it is important not to overstate the concept and value of pragmatism under MMP. It is not an MMP phenomenon. If pragmatism is about getting results, then it is true that pressure group results were best achieved under FPP through a relatively narrow engagement with selected politicians and through strong relationships with allied political parties. More accurately, it is flexibility and political independence that have become more important to pressure groups under MMP. The value of flexibility was illustrated by a number of the public policy case studies. Pressure groups needed the flexibility to work across Parliament, craft their policy arguments and propositions according to different political audiences and build cross-political blocs of support, as illustrated by both the KFA campaign and the campaign in opposition to the Therapeutic Products and Medicines Bill. The value of political independence is fundamentally related.

Some pressure groups will always retain a closer relationship with some political parties because of the broad nature of their values and priorities (for example, the Green Party and environmental NGOs), or because some political parties are, to some extent, extensions of pressure groups (for example, the Labour Party and its affiliated unions). MMP has not fully

eroded these relationships. However, pressure groups can no longer rely on a single political relationship to achieve policy outcomes, even when a government is politically favourable.⁵⁴

Furthermore, pressure groups are increasingly aware that their own members may have different political views and relationships, several of which may now be represented in Parliament. These issues are most evident and pronounced in relation to those pressure groups that have, historically, had the strongest links to particular parties, such as the unions and union movement.⁵⁵ But they apply across the spectrum of pressure groups.⁵⁶

Finally, it is apparent that pressure group independence and flexibility is not solely a function of necessity in a fragmented political and policy environment. There has also been a cultural shift. The need to work across philosophical boundaries and to put historical differences aside has reduced the “tribal barriers” (Friedlander 2008) and, in turn, made it increasingly natural for pressure groups to engage across the political spectrum. Structural change has led to cultural change.

⁵⁴ For instance, Conway noted that the CTU’s relationship with the Green Party has become increasingly important and that the Greens have supported almost every policy item of core interest to the CTU during recent years (Conway 2008). In fact, the CTU’s 2008 election campaign material even stated the importance of a Green Party presence in the next government.

⁵⁵ Unite Union leader Matt McCarten has asked “why ... under MMP would any other [political] party want to help you if all your funding and membership support was going to its competition?” and argued “those unions with “blatant” support for Labour are not necessarily furthering the interests – or reflecting the concerns – of members. Instead, unions should talk with all parties, even those on the right”. Former Labour Cabinet Minister Steve Maharey has observed that MMP has seen some unions approach their own politics differently. “They start to think about whether they want to be associated with a political party in the same way. Union leaders will look at a crowd and understand that it might include Green Party or Maori Party members rather than believing we are a Labour movement here. They are very aware of the fact that they may have a range of voters in their own ranks” (Fisher 2008).

⁵⁶ Saunders identified Business New Zealand as one pressure group that had worked particularly hard and had been successful in retaining its political independence under MMP (Saunders 2008). Friedlander noted that the RTF has members with a wide range of political allegiances and that this is in fact an advantage as an organisation (Friedlander 2008).

Blurring of Insiders and Outsiders

Some pressure groups have retained an institutional status under MMP and remain well connected to policy networks and structures. Pressure groups such as the CTU and Business New Zealand still resemble insider groups. However, MMP has blurred the boundaries and distinctions between insider and outsiders.

First, MMP has provided the opportunity for a different and wider range of pressure groups to access the policy process and be closely engaged in policy discussion. This opportunity has arisen through the presence in Parliament of more political parties representing different political philosophies and constituencies. For example, Zero Waste New Zealand is not a classic institutional pressure group. Yet through a close relationship with the Green Party it both drafted the original Waste Minimisation Bill and was closely involved in policy discussions during the bill's progress. On the other hand, even the most institutional pressure groups can now be left outside the policy process once a bill reaches the point at which its fate will be determined through inter-party negotiations (Conway 2008).

Second, MMP has created an environment in which all pressure groups are more likely to consider and utilise the full range of influence strategies, both direct and indirect.

Relationships with the Executive still matter and aggressive, indirect, high profile campaigning can still jeopardise those relationships. Furthermore, many policy outcomes are still achieved through direct engagement with officials and the Executive outside the public eye. Nevertheless, the fragmentation of decision-making power has created an incentive for pressure groups to campaign in order to create a political platform for government support parties or those parties holding political leverage in respect to a particular bill. In addition,

the more limited power of the Executive has reduced the risks to pressure groups that aggressively confront government policy.

Complexity and Sophistication

The public policy decision-making process is more complex under MMP (Clarke 2008, Saunders 2008), particularly in a minority government environment. It is more complex on account of legislation requiring support from multiple parties. It is more complex on account of the need for inter-party negotiations at different stages in the policy process and the interface between those negotiations and the select committee process. And it is more complex because the configuration and degree of Parliamentary support for a bill can be very fluid. It may change several times during the life of a bill and not be resolved until the final hour.

Complexity is a feature of all of the public policy case studies examined. The scrap metal industry's lobbying in respect to the Waste Minimisation Bill required engagement with several parties, required an awareness of the balance of votes and involved various supplementary order papers. GPG's campaign also required knowledge of the balance of power in respect to the Taxation Bill and how it could be exploited. Indeed, Green Party leader Jeannette Fitzsimons has made particular reference to GPG's "very skilled lobbyists" (Fitzsimons 2006). The KFA brought together a range of different propositions for different political parties (for example, environmental to the Greens, property rights to ACT, Maori forestry assets to the Maori Party). The fishing industry's success in regard to the ETS can be attributed to its awareness of the political dynamics of the ETS legislation, and how support for the legislation shifted, as well as awareness of the opportunity to access New Zealand First in the final stages of its ETS negotiations with the Labour Party. SMRANZ, GPG and the

KFA were all advised by public law or government relations consultancies and the fishing industry's lobbying was carried out by SEAFIC, an industry association very familiar with the policy decision-making process and regularly engaged with government and Parliament. It is unlikely the policy wins achieved by these pressure groups could have been accomplished without a significant political expertise and understanding of the MMP policy decision-making process.

It seems this complexity has created a different type of 'insider' pressure group, those groups with significant political expertise or the resources to procure that expertise.

Relationships may be less influential under MMP, but sophistication is more important and there is a general view that MMP has contributed to an increased demand for specialist lobbying and public law advice⁵⁷. The reasons given relate to MMP's greater complexity, plus the additional time and resources required in implementing an effective MMP influence strategy (Saunders 2008, Clarke 2008).⁵⁸ Interestingly, there has also been a tendency towards the appointment of former politicians as pressure group leaders.⁵⁹

Pragmatism, flexibility, political independence, political knowledge and sophistication – their influence and value are not limited to MMP. However, MMP has sharpened their influence on public policy and importance to pressure groups. A pressure group's ability to work across political parties, build ad hoc alliances with different interests, their understanding of the numbers in Parliament, the political dynamics of an issue and, in particular, the potential

⁵⁷ Saunders also noted that the trigger for establishing Saunders Unsworth (a specialist public policy and government relations consultancy) was the 1993 MMP referendum. Clarke commented that MMP cannot take credit for the emergence of the specialist field of public law (which had its origins overseas), but that MMP did increase the "scale and size" of the opportunity for public lawyers and tools available to them.

⁵⁸ Conway also noted the additional time and resource requirements of MMP as a challenge.

⁵⁹ For instance, the former Chief Executive of Federated Farmers was ex National MP and author of *The Good Lobbyist*, Annabel Young. The current Chief Executive of the New Zealand Food and Grocery Council is a former National Party MP, Katherine Rich. The current Chief Executive of the New Zealand Business Council for Sustainable Development is a former Labour Party Cabinet Minister, Peter Neilson. Former ACT MP Ken Shirley was once Chief Executive of the Forest Owners Association and is now Executive Director of Organics Aotearoa.

leverage points, will all have some influence on their ability to achieve results. And while the erosion of some “tribal” barriers in conjunction with the arrival of new parties in Parliament has levelled the playing field by opening doors and possibilities for different pressure groups, MMP’s complexity has also created advantages for the professional lobby groups, those with political expertise, those familiar with the policy process or those able to procure specialist advice.

On 20 October, Minister of Justice Simon Power confirmed a referendum on the future of MMP would be held in conjunction with the 2011 general election. "If a majority of voters opt for a change from MMP, there will be a second referendum at the 2014 general election. This will be a contest between MMP and the alternative voting system that receives the most votes in the first referendum. It will be binding" (Power 2009).

Power’s announcement was expected and satisfied one of the National Party’s 2008 election campaign commitments. The reaction was relatively muted. Even the response of those Parliamentary parties with most at stake, the smaller ones, was low key. They broadly, if in some cases cautiously, accepted Power’s proposed referendum process (NZPA 2009[a]). A dissenting view was provided by longstanding MMP critic and one of the key protagonists at the time of the 1993 MMP referendum, Peter Shirtcliffe. Shirtcliffe, who fronted the 1993 campaign to retain FPP, criticised the proposed referendum process as for being “far too prolonged” and claimed it is the "referendum you have when Parliament does not want you to have a referendum" (NZPA 2009[b]).

It can be expected that those who have benefited from MMP will put the case for its retention in the lead-up to the 2011 referendum and, if required, campaign vigorously in 2014. Some of the minor Parliamentary parties, notably the Green Party, are likely to be at

the forefront of any such campaign. They should be joined by those 'non-institutional' pressure groups - the former 'outsiders' - who have enjoyed more opportunities for influence under MMP. They might also be quietly supported by some of the government relations consultants and public law experts whose expertise has become more valuable under MMP. Of course, this will be one scenario in relation to which these experts will not be able to deploy their MMP savvy and awareness of MMP's Parliamentary dynamics. Referendums are the rare exception - legislation without the legislature.

Another who will evidently be hoping for the retention of MMP (or, at least, no return to FPP) is the *Christchurch Press*' Political Editor, Colin Espiner. "I think Parliament is a far richer place for the presence of the smaller parties", he declared in response to the referendum announcement (Espiner 2009). Based on the findings and conclusions of this thesis, Espiner might also have described Parliament as more influential, more competitive, more complex, less predictable and, in respect to pressure groups, more important.

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Appendix A – Interview Template

Indicative Questions

MMP Observations

- How has MMP changed public policy decision-making?
- How has it affected the distribution of power? How has it affected the decision process/system?
- Has it strengthened Parliament vis-à-vis the Executive?

Pressure Group Strategy – General

- How has MMP changed the ways that pressure groups deal with ‘government’?
- Have pressure groups effectively understood and adapted to MMP?
- Has there been more competition amongst pressure groups or do the traditional power blocs still dominate access and policy?

Pressure Group Strategy – Relationships and Access

- How much do relationships matter to policy influence?
- To what extent have pressure groups sought to foster a broad range of political relationships under MMP? Have they done so effectively?
- Has the nature of political relationships between pressure groups and political parties changed under MMP? To what extent, if any, are pressure groups politically tribal? To what extent does the politics of the individual guide the politics of the group?

Pressure Group Strategy – Information

- Has MMP made having good, robust policy information more important (as per argument about longer, more heavily scrutinised policy process)?
- Is there a strong demand for “intellectual, policy, economic” information within Parliament?
- Do pressure groups put an emphasis on quality information? Have they done more so under MMP?

Pressure Group Strategy – Politics, Public Policy, Public Opinion

- Is the politics of MMP more complex?
- Has MMP increased the extent to which pressure groups attempt to play politics and play parties off against each other?
- How important is it for pressure groups to understand the political priorities, philosophies and constituencies of the different parties? To what extent have they done so?
- To what extent have pressure groups under MMP attempted to present policy that has broader political appeal?
- Is policy more sensitive to public opinion under MMP? How?

- Do you think pressure groups have become more actively engaged in public relations under MMP? What success have they had?

Pressure Groups – Select Committees

- How has the role of select committees changed under MMP? Have they become more influential?
- To what extent have members of select committees become more “independent”? What role does the party play in shaping select committee outcomes?
- Have pressure groups utilised select committees effectively under MMP?

Pressure Groups – The Bureaucracy

- How has the role and influence of the bureaucracy changed under MMP? Is advice more contestable? Do they face competition for advice?
- Have pressure groups attempted to circumvent the bureaucracy by engaging directly with support parties? Has this weakened the influence of the bureaucracy?

Other

- What are the other issues/trends/developments of note in relation to pressure group strategy under MMP?

Appendix B – Brief Interviewee Biographies

Paul Swain

Paul Swain first entered Parliament as the Labour Party member for Eastern Hutt in 1990 and served 18 years as a Member of Parliament. He served as a Cabinet Minister between 1999 and 2005 in a range of roles, including Minister for Communications, Transport, State Owned Enterprises, Immigration and Labour. He stood down from Cabinet for family reasons after the 2005 election but remained an MP until 2008. He now works in a mixture of advisory and consulting roles.

Barrie Saunders

Barrie Saunders is Managing Director of public policy consultancy Saunders Unsworth. He has had an extensive career in the public policy, media and political arenas. Following working in journalism in New Zealand, Australia and the United Kingdom he became the first editor of the *National Business Review* in 1970. He was subsequently Press Secretary to the Labour Party Leader (1976-79), Public Relations Manager for the New Zealand Manufacturers Federation (1979-83), the Meat Producers Board Group Manager Public Relations (1983-86) and North American Director for the Board based in New York (1986-90). He started business in 1990 as a consultant and current clients include 15 port company CEOs in what is a virtual organisation, the six largest institutes of technology as well as industry organisations.

Tim Clarke

Tim Clarke leads national law firm Russell McVeagh's Public Law & Policy practice. He has 15 years experience in providing advice to private and public sector entities on public law and government relations issues. This advice has been across a wide range of sectors (such as electricity, banking, telecommunications, forestry, pastoral farming, shipping & ports, rail, kiwifruit) and issues (including tax, economic regulation, financial services regulation, competition law, sports law and many more). Tim has economics and law degrees from Otago University, and a Masters degree in law from the University of Cambridge.

Sue Kedgley

Sue Kedgley has been a Green Party MP since 1999 and is currently spokesperson on a range of issues, including local government, food and health. She spearheaded the Parliamentary side of the campaign to oppose the Therapeutic Products and Medicines Bill. Previously, she was a Wellington City Councillor for 7 years, a TV reporter/director/producer for 8 years, and worked for 8 years in the United Nations Secretariat.

Tony Friedlander

Tony Friedlander was elected as the National Party member for New Plymouth in 1975, an electorate he represented until 1987. He is also a former National Party Cabinet Minister. Since leaving Parliament, he has served as the longstanding Chief Executive of the Road Transport Forum, which represents the interests of the road freight transport sector.

Russel Norman

Russel Norman has been co-leader of the Green Party since June 2006 and entered Parliament in 2008. He is spokesperson on a number of policy portfolios, including economics and climate change. Previously, he had been involved with the Green Party in a range of roles, including Parliamentary advisor, Party Convenor and Treasurer and 2005 election Campaign Manager.

Charles Chauvel

Charles Chauvel is currently the Labour Party spokesperson on Energy and Climate Change. He was first elected to Parliament on the Labour Party list in 2005 and, in his first term, served as Chair of the important Finance and Expenditure Select Committee. It was this committee that considered the Emissions Trading Scheme legislation. Chauvel was previously a lawyer and prior to entering Parliament headed up the public law and employment law teams at Minter Ellison Rudd Watts. He is also a past Deputy Chair of Meridian Energy.

Matthew Hooton

Matthew Director is Managing Director of Exceltium Public Affairs Consultancy, which specialises in government relations and political strategy. Hooton is a former senior National Party advisor. He is also a regular political media pundit and commentator.

Peter Conway

Peter Conway was elected CTU Secretary in 2009. For the previous 9 years he had been CTU Economist, more recently, CTU Director of Policy. Conway has been active in unions since 1977. He has been assistant national secretary of the New Zealand Distribution Workers Federation, an advocate for retail workers in the National Distribution Union, as well as a director of Auckland's Yellow Bus Company. He is on the board of New Zealand Trade and Enterprise and is Chair of Oxfam NZ.

Doug Bailey

Doug Bailey is a consultant with national law firm Russell Mcveagh. He specialises in the fields of public law and public policy. Doug has an LLB from the University of Auckland, an MA from Canterbury University and LLM from the Northwestern University in Chicago.