

Decision of the Electoral Commission on the allocation of time and money to eligible political parties for the broadcasting of election programmes for the 2011 General Election

Allocation decision

The following table sets out the allocation of time and money to eligible political parties for the broadcasting of election programmes for the 2011 General Election.

Parties	Monetary allocation (inclusive of GST)	Time allocation of opening addresses (in minutes) ¹	Time allocation for closing addresses (in minutes)
New Zealand Labour Party (Labour Party)	\$1,150,000	20	16
The New Zealand National Party (National Party)	\$1,150,000	20	16
The Green Party of Aotearoa/New Zealand (Green Party)	\$300,000	8	7
ACT New Zealand (ACT Party)	\$160,000	5	4
Māori Party	\$160,000	5	4
New Zealand First (NZ First)	\$100,000	3	2.5
United Future New Zealand (United Future)	\$100,000	3	2.5
The Alliance (Alliance)	\$20,000	1	1
Aotearoa Legalise Cannabis Party (ALCP)	\$20,000	1	1
Coalition of New Zealanders	\$20,000	1	1
The Kiwi Party (Kiwi Party)	\$20,000	1	1
Libertarianz	\$20,000	1	1
New Zealand Sovereignty Party	\$20,000	1	1
Pirate Party of New Zealand	\$20,000	1	1
World Peace Party	\$20,000	1	1
Radio New Zealand (RNZ) ²	\$3,250		
Total allocated	\$3,283,250	72	60
Total available	\$3,283,250	72	60

¹ The order for opening and closing addresses appears in paragraphs 53 and 54 of this decision.

² Allocated to RNZ in accordance with section 77A(5).

Introduction

1. The Electoral Commission ('the Commission') is required under Part 6 of the Broadcasting Act ('the Act') to allocate time made available by TVNZ and RNZ and money made available by Parliament to enable political parties to broadcast election programmes during the election period for a general election ('the broadcasting allocation'). Unless otherwise stated section references in this decision are to sections of the Broadcasting Act.
2. On 1 October 2010 the Commission assumed responsibility for the broadcasting allocation. Pursuant to section 7 of the Electoral Act 1993 the Commission is an independent Crown entity, combining the functions of the former Electoral Commission and the Chief Electoral Office.
3. The Prime Minister announced on 2 February 2011 that the 2011 General Election will be held on 26 November 2011. The Commission commenced the allocation process for the 2011 General Election in mid February 2011 with the view to issuing the allocation decision in June 2011.
4. This written decision formally records the Commission's broadcasting allocation decision and its interpretation and application of the statutory criteria in the Act.
5. Some suggestions were made to the Commission by eligible parties about the broadcasting allocation, the statutory criteria and the New Zealand Bill of Rights Act 1990. The Commission does not see it as part of its function, in its administration of the broadcasting allocation, to comment on those issues.

Statutory provisions

6. Section 75(1) of the Act specifies a party is only eligible for the broadcasting allocation if:
 - (a) the party was registered on the Register of Political Parties at the time of the dissolution or expiry of Parliament for that election, and
 - (b) the party has given notice to the Electoral Commission that the party considers itself to be qualified for an allocation by the date required by the Electoral Commission.
7. The Commission is required to advertise in the *Gazette* in the year in which Parliament is due to expire the date by which parties must give notice of their eligibility for an allocation of broadcasting time and money. For the 2011 broadcasting allocation the deadline was 17 March 2011 and fifteen parties gave the required notice. One parliamentary party, Jim Anderton's Progressive, has not given notice to the Commission.
8. Though there may be further parties registered before the 2011 General Election, those parties that did not give notice to the Commission by 17 March 2011 cannot be considered for an allocation because of section 75(1)(b).
9. A party must also be registered on the Register of Political Parties, in accordance with Part 4 of the Electoral Act 1993, to qualify for the broadcasting allocation. Four of the political parties that have given notice for the broadcasting allocation are not registered. These parties will need to be registered by 20 October 2011, which is the date for the dissolution of Parliament, to be eligible for the broadcasting allocation.

10. The broadcasting allocation can only be used for production costs or the cost of broadcasting time for election programmes broadcast by a political party during the election period. For the 2011 General Election the election period starts on 26 October 2011 and ends on 25 November 2011 (writ day until midnight on the day before the election).
11. Parties cannot use their own money to buy broadcasting time but they can use their own money for production costs (section 70(2A)).

Amount of free time made available

12. In accordance with section 71, TVNZ and RNZ must each provide time, free of charge, for the broadcasting of opening and closing addresses during the election period.
13. Section 71A of the Act requires the Commission to ascertain the amount of time that TVNZ and RNZ will provide, together with any proposals for the allocation of the time and any conditions proposed in relation to the scheduling and duration of opening and closing addresses. On 25 February 2011 the Commission requested TVNZ and RNZ to provide statements, by 16 March 2011, of the free time that would be made available.
14. TVNZ and RNZ initially confirmed that the following amounts of time would be made available, free of charge, for the broadcasting of the opening addresses and closing addresses of political parties:
 - 24 minutes for opening addresses on the Friday night of the opening week of the election campaign,
 - 48 minutes for opening addresses on the following evening, and
 - 30 minutes for closing addresses on the evening of Friday 25 November 2011.
15. With its 25 February 2011 letter the Commission sent TVNZ and RNZ copies of the Court of Appeal judgement in *The Alliance Party v The Electoral Commission and Others [CA639/2008]* which found that Part 6 of the Act requires the Commission to allocate time for an opening address and time for a closing address to every political party that qualifies for an allocation of time under the Act.
16. After considering the parties submissions the Commission wrote to TVNZ and RNZ on 3 May 2011 to invite the broadcasters to reconsider the amount of time available for closing addresses as part of the Commission's consultation under section 75A(1). In response to the Commission's request TVNZ and RNZ revised the amount of time for closing addresses of eligible parties to:
 - 60 minutes for the evening of Friday 25 November 2011 between 7.30 and 8.30 pm.
17. Following further consultation with TVNZ and RNZ on the draft broadcasting allocation decision, in accordance with section 75A, TVNZ and RNZ have agreed to exchange the amounts of time available for opening addresses on the Friday and Saturday of the opening week of the election period. The Commission confirms in this decision that the time available for opening addresses by political parties is:
 - 48 minutes for opening addresses on Friday 28 October 2011, the night of the opening week of the election campaign,
 - 24 minutes for opening addresses on Saturday 29 October 2011.

Amount of public money made available

18. In accordance with section 74, the Minister of Justice confirmed on 9 March 2011 that the amount of money appropriated by Parliament to enable political parties to fund their broadcasting of election programmes for the 2011 election is \$2,855,000 (\$3,283,250 including GST).
19. The amount of money appropriated by Parliament is the same amount (excluding GST) as was appropriated for the 2005 and 2008 general elections.

Allocation criteria

20. Section 75(2) sets out the criteria that the Electoral Commission shall have regard to in determining the broadcasting allocations.
21. The criteria are:
 - (a) the number of persons who voted at the preceding general election for a party and its candidates;
 - (b) the number of persons who voted at any by-election held since the preceding general election for any candidate for the party;
 - (c) the number of members of Parliament who were members of a political party immediately before the expiration or dissolution of Parliament;
 - (d) any relationships that exist between one political party and another party;
 - (e) any other indications of public support for a political party such as the results of opinion polls and the number of persons who are members of the party;
 - (f) the need to provide a fair opportunity for each registered political party to convey its policies to the public by the broadcasting of election programmes on television.
22. The Commission's view is that its determination of the allocation is confined to the criteria under section 75(2). The Māori Party requested that the Commission make an allocation that would enable the party to broadcast in te reo Māori and have due regard to tikanga Māori. However, the Commission is confined to dealing with the allocation of time and money in accordance with section 75 and, is unable to address the request.

Consultation

23. Prior to the Commission determining the amount of time and money that will be made available to eligible parties the Commission has consulted with qualifying parties. Parties were invited to make submissions on the amount of time made available by TVNZ and RNZ for opening and closing addresses, including the minimum duration for each party for this purpose and the order of opening and closing addresses, and how the Commission should apply the criteria in section 75(2).
24. Twelve of the fifteen eligible parties made written submissions to the Commission which have been considered before making this decision.
25. Parties were also invited to meet the Commission to make oral representations in accordance with section 76. Eleven parties requested the opportunity to make oral representations. Hearings were held on 28 April 2011 and each party was given the opportunity of speaking to their written submission with time provided for questions, discussion and points of clarification.
26. The Commission has also consulted with TVNZ and RNZ, in accordance with section 75A, prior to issuing the decision.

27. RNZ has requested a payment of \$4,000 plus GST to cover the costs of script checking, tape audition, scheduling, attendance at meetings, follow-up with parties and administration.

The allocation decision for the 2011 General Election

28. In making the allocation decision, the Commission has had regard to the criteria under section 75(2) and provides the following explanation as a summary of its interpretation of the criteria for the 2011 broadcasting allocation. In exercising its discretion the Commission had regard to the section 75(2) criteria, recognising there is a difficulty balancing the more quantifiable criteria under section 75(2)(a) to (e) against the fair opportunity criterion under section 75(2)(f).

The number of persons who voted at the preceding general election for a party and its candidates

29. The Commission has taken into account the following percentages of total votes cast for eligible parties and candidates of that party at the 2008 General Election as recorded in the official election statistics published by the former Chief Electoral Office, noting that not all eligible parties contested the 2008 General Election.

2008 General Election results for eligible parties		
Parties	% of total party votes	% of total candidate votes
ACT Party	3.65%	2.99%
Alliance	0.08%	0.08%
ALCP	0.41%	0.17%
Green Party	6.72%	5.63%
Kiwi Party	0.54%	0.68%
Labour Party	33.99%	35.22%
Libertarianz	0.05%	0.08%
Māori Party	2.39%	3.34%
National Party	44.93%	46.60%
NZ First	4.07%	1.69%
United Future	0.87%	1.13%

The number of persons who voted at any by-election held since the preceding general election for any candidate for the party

30. At the time of issuing the decision, by-elections have been held in Mt Albert, Mana and Botany electorates since the 2008 General Election. The Commission has taken into consideration the following percentages of total votes cast for candidates of those eligible parties that contested the by-elections, noting that not all eligible parties stood candidates at the by-elections. The Commission’s view is that the variance between the figures is such that they are insufficiently indicative of parties’ overall support to enable the Commission to place much weight on them.

Eligible parties	Mt Albert By-election		Mana By-election		Botany By-election	
	Votes	% of Total	Votes	% of Total	Votes	% of Total
ACT Party	968	4.62%	136	0.58%	687	4.45%
Alliance	-		37	0.16%	-	
ALCP	92	0.44%	112	0.48%	61	0.40%
Green Party	2,567	12.26%	1,543	6.62%	-	
Kiwi Party	91	0.43%	-		-	
Labour Party	13,260	63.31%	10,980	47.10%	4,380	28.40%
Libertarianz	39	0.19%	46	0.20%		
National Party	3,542	16.91%	9,574	41.07%	8,352	54.16%
United Future	89	0.42%	-		-	
Pirate Party of NZ	-		-		32	0.21%

The number of members of Parliament who were members of a political party immediately before the expiration or dissolution of Parliament

31. The Commission has taken into account the following percentages representing the current number of members of Parliament for each eligible party at the time of issuing the decision:

Eligible parties	No of MPs	No of MPs as %
ACT Party	5	4.1%
Green Party	9	7.4%
Labour Party	42 ³	34.4%
Māori Party	4 ⁴	3.3%
National Party	58	47.5%
United Future	1	0.8%

Any relationships that exist between one political party and another party

32. The Māori Party and the ACT Party made the Commission aware of the confidence and supply agreements that exist between those parties and the National Party. The Commission does not consider those agreements to be a relevant consideration for this decision. No other eligible party has indicated that a relationship exists between their party and any other party at the time of issuing the decision.

Any other indications of public support for a political party such as the results of opinion polls and the number of persons who are members of the party

33. With regard to polls recording the party vote the Commission has taken account of the results of Roy Morgan Research, One News Colmar Brunton, 3 News Reid Research and Herald DigiPoll in the period from April 2010 to April 2011. The Commission regards those polls as the most reliable indicators of support for the political parties and notes

³ Chris Carter became Independent on 10/8/10

⁴ Hone Harawira became Independent on 23/2/11

they have been taken into consideration in previous broadcasting allocation decisions. The same polling data was relied upon in some submissions.

34. The Commission has sought information from eligible parties on membership which has been furnished, mostly on a confidential basis, and taken into account.

The need to provide a fair opportunity for each registered political party to convey its policies to the public by the broadcasting of election programmes on television

35. In the *The Alliance Party v The Electoral Commission and Others* [CA639/2008] the Court of Appeal expressed in an obiter statement:

"We appreciate the difficulty the Commission faced in this case, given that TVNZ allocated only 30 minutes for closing addresses when there were 18 qualifying political parties. The Commission's justification for the course it took in its Explanation was that "only parliamentary parties were allocated time for closing addresses as the shorter time made available precluded a wider allocation". There is a strong argument (not raised before us) that TVNZ's allocation under s 71A was in breach of the Broadcasting Act, in that they failed to provide sufficient time for closing addresses, given the number of qualifying political parties. Since no political party could realistically be given less than a minute for a closing address, the Commission clearly considered that the parliamentary parties would be unnecessarily "squeezed" unless it undertook the course it did. The Commission's response to this predicament, which was to effectively "squeeze" the small parties by excluding them, was erroneous. In other words, the fact that TVNZ had failed to supply sufficient time could not in itself justify the course the Commission took." [paragraph 34]

36. The Commission, in considering the fair opportunity for each registered party, recognises that the allocation of time and money is a difficult balancing exercise.
37. Having considered the amount of time made available by TVNZ and RNZ under section 71A, the money to be allocated to eligible parties under section 74, the written and oral submissions from the parties, and the criteria under section 75(2) the Commission has decided that all the parties that have given notice are eligible for an allocation of time and money for broadcasting election programmes in relation to the 2011 General Election.

Categories

38. The Commission considers it appropriate to continue the approach taken in previous broadcasting allocation decisions of classifying parties into categories of similar type for the determination of the allocation of broadcasting time and money.
39. National and Labour are so dominant in terms of polling, parliamentary representation and party membership that they clearly fall into a category of their own.
40. Though the Commission was urged to differentiate between National and Labour in the time and money allocation the Commission has decided they should be treated equally. Amongst the reasons for that decision are that one of these parties will be at the core of the next government and the Commission believes the New Zealand public would expect them to be treated equally in terms of the opportunity to put their policies before the public.
41. Over a significant period the Green Party, in terms of numbers of MPs and polling data, was clearly in a separate category in the time and money allocation compared with all other parties.

42. The Commission has decided to treat the ACT Party and the Māori Party equally because both their numbers of MPs and their poll support are sufficiently similar.
43. The same also holds for United Future and New Zealand First. Though United Future has the advantage of a member of Parliament its poll support has consistently been lower than that of New Zealand First. Therefore in terms of the time and money allocation they too should be regarded equally.
44. All other eligible parties should be treated equally as a group. None of them have MPs and their polling figures are all similar.
45. For the purposes of making this decision the Commission has, after considering the criteria under section 75(2), decided that the parties fall within the following five categories (parties are listed in alphabetical order in each category).

Category one	Labour Party National Party
Category two	Green Party
Category three	ACT Party Māori Party
Category four	NZ First United Future
Category five	Alliance ALCP Coalition of New Zealanders Kiwi Party Libertarianz New Zealand Sovereignty Party Pirate Party of New Zealand World Peace Party

Allocation of money

46. The Commission has decided that the requirements of section 75(2) will be met by making the following allocations of money to each of the parties in each category (amounts are inclusive of GST).

Category one	\$1,150,000
Category two	\$300,000
Category three	\$160,000
Category four	\$100,000
Category five	\$20,000

47. The Commission notes that in 2005 and 2008 the former Electoral Commission provided a production package organised with TVNZ. The package was provided to ensure the accessibility of TV to the smaller parties, in consideration of the 'fairness to access' criteria and a basic standard of professional production.
48. In order to meet TVNZ and RNZ's production standards the Commission has decided to increase the allocation to the category five parties but makes no separate allocation to parties for production costs. Production costs are to be negotiated between the parties and the broadcasters sufficiently far in advance of opening and closing addresses to ensure that their presentations meet all appropriate broadcasting standards. The production costs can be met from their allocation. Eligible parties should note the terms of the production packages offered by TVNZ.
49. The Commission has allocated \$3,250 inclusive of GST as a contribution towards the \$4,000 requested by RNZ for its production costs, in accordance with section 77A(5).

Allocation of time

50. The Commission has decided that the requirements of section 75(2) will be met by making the following allocations of time to each of the parties in each category:

	Opening	Closing
Category one	20 minutes	16 minutes
Category two	8 minutes	7 minutes
Category three	5 minutes	4 minutes
Category four	3 minutes	2.5 minutes
Category five	1 minute	1 minute

Order of opening and closing addresses

51. The Commission invited parties to make submissions on the order of opening and closing addresses.
52. In 2005 and 2008 the order was determined by the former Electoral Commission following the groups used for time allocation and using random selection within each group, except that in line with past practice the main government party had the first opening address and the second largest party had the first closing address. The order for closing addresses was the reverse for each group. There was agreement amongst the parties that this system was acceptable and the same approach has been taken in the order of parties for the 2011 broadcasting allocation.
53. The order for opening addresses is: National Party, Labour Party, Green Party on Friday 28 October 2011 and ACT Party, Māori Party, United Future, NZ First, Coalition of New

Zealanders, Alliance, Libertarianz, ALCP, Kiwi Party, New Zealand Sovereignty Party, World Peace Party, and Pirate Party of New Zealand on Saturday 29 October 2011.

54. The order for closing addresses on 25 November 2011 is: Labour Party, National Party, Green Party, Māori Party, ACT Party, NZ First, United Future, Pirate Party of New Zealand, World Peace Party, New Zealand Sovereignty Party, Kiwi Party, ALCP, Libertarianz, Alliance, and Coalition of New Zealanders.

Conditions

55. The Commission is empowered by section 74(2) to include in its decision conditions concerning the manner in which any political party or group of related political parties is to expend its allocation.

56. The Commission makes the following conditions, pursuant to section 74A(2):

- (a) Only registered parties may enter into contractual commitments to use money or time that has been allocated to them in this decision; and
- (b) Eligible parties must comply with the requirements set out in the letters, which have been supplied to eligible parties separately, from TVNZ and RNZ of 15 March, 16 March 2011 and 20 May 2011 respectively, relating to production standards for opening and closing addresses.

Costs of broadcasting election programmes

57. Parties should note that time and money allocated by the Commission does not count as party election expenses under section 206(1)(c)(i) and (ii) of the Electoral Act. However, if a party spends its own funds on production costs, that expenditure is counted as an election expense.

58. Electorate candidates may use their own funds for the purchase of broadcasting time, but the cost of those broadcasts is counted towards the candidate's election expenses.

59. Parties and broadcasters are reminded that the sums allocated by the Commission include GST.

Variation to the allocation

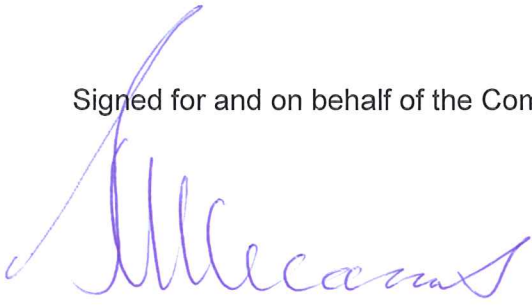
60. In specified circumstances the Commission can vary the allocations made without further consultation. Such circumstances include any of:

- a party not accepting an allocation
- a party ceasing to be registered
- a party failing to submit a list of candidates pursuant to section 127 of the Electoral Act
- the relationship of the party with any other political party changing significantly
- a party failing to comply with the conditions imposed in this decision.

Further information

61. Details of the allocation process, use of the allocation and the process for payment of invoices can be found on the Elections New Zealand website www.elections.org.nz under 'Electoral Rules'.

Signed for and on behalf of the Commission

A handwritten signature in blue ink, appearing to read 'H Williams', written in a cursive style.

Hon Sir Hugh Williams QC
Chair

Dated: 31st May 2011

A handwritten signature in blue ink, appearing to read 'R Peden', written in a cursive style.

Robert Peden
Chief Electoral Officer