

Variation of the decision of the Electoral Commission on the allocation of time and money to eligible political parties for the broadcasting of election programmes for the 2014 General Election

29 August 2014

Introduction

On 6 June 2014 the Commission issued its allocations of time and money for the broadcasting of election programmes by eligible parties for the 2014 General Election (the Election).

Acting under section 76A of the Broadcasting Act 1989 (the Act), on 20 August 2014 the Commission issued a variation of the 6 June allocations and noted it may issue a further variation(s).

In the circumstances set out below, the Commission has decided to issue a further variation of its 6 June allocations, again acting under section 76A.

Section 76A reads:

76A Power of Electoral Commission to vary allocations

(1) If, after any allocation is made under section 73 or section 74A,—

(a) a broadcaster in respect of which an allocation of time has been made ceases to be a broadcaster; or

(b) a political party does not accept any allocation of time under section 73 or any allocation of money under section 74A; or

(c) the party ceases to be registered; or

(d) the party fails to submit a list of candidates for election to the seats reserved for those members of Parliament elected from lists pursuant to section 127 of the Electoral Act 1993; or

(da) the party fails to comply with any conditions imposed by the Electoral Commission under section 74A(2)(b) requiring the political party or group of related political parties to advise the Electoral Commission of the value of election programme bookings made by the political party or group of related parties; or

(e) the relationship of the party with any other political party has changed to a significant extent; or

(f) [Repealed]

the Electoral Commission may, subject to subsection (4), vary the allocation under section 73 or section 74A, as the case may require.

(2) The varying of any allocation pursuant to this section shall not require the Electoral Commission to grant to any political party the opportunity to meet with and be heard by the Electoral Commission.

(3) The Electoral Commission shall, in varying any allocation pursuant to this section, have regard to—

(a) the views of political parties received by the Electoral Commission in the course of consultations undertaken in accordance with section 76; and

(b) such of the matters referred to in sections 73, 74A, and 75, as the case may require.

(4) Where effect has been given in whole or in part to an allocation made under section 73 or section 74A to a political party, the Electoral Commission shall not vary the allocation pursuant to this section unless—

(a) the registration of that political party is cancelled under section 70 of the Electoral Act 1993; or

(b) the secretary of a political party has failed to submit a list of candidates for election under section 127 of the Electoral Act 1993.

Before embarking on a discussion of the further variation itself, as noted in the 6 June allocation, Part 6 of the Act comprises a regime relating to the broadcasting of election programmes which is difficult to apply. The scheme requires applications from all parties who consider they may be eligible for allocations of time and money but experience shows not all will ultimately be eligible.

In relation to the Commission's power to vary allocations under section 76A, some of the difficulties include:

- The distinction between ceasing to be registered and failing to achieve registration.
- Eligibility to apply for allocations versus final eligibility for allocations.
- The scheme anticipates variation by way of reallocation yet prohibits variation in circumstances in which a party or parties have given effect to an allocation in whole or in part. The meaning to be ascribed to 'giving effect' is unclear.
- Distinctions between criteria for the allocations and the criteria that trigger a power to vary.
- What circumstances constitute a change in relationships between political parties 'to a significant extent'.
- Whether the power to vary includes a power to reduce allocations in circumstances not covered in section 76A(4).

The present circumstances

By 14 August 2014, the date of dissolution of Parliament, the Expatriate Party of New Zealand (The Expat Party) and Truth, Freedom, Justice, two parties which received allocations of time and money in the 6 June decision, had not been registered. They thereby became ineligible for the allocations they had received totalling \$67,270 and two lots of 2 minutes each for the broadcasting of their opening and closing addresses.

In the 20 August variation, the Commission decided not to reallocate the two minutes of time available for opening addresses due to the fact that the deadline for submitting opening addresses to the broadcasters expired on 18 August and the broadcasting of the opening addresses was scheduled for Friday 22 and Saturday 23 August.

The Commission at that time did not reallocate the time available for closing addresses, but noted it might consider a further variation of time and reallocation of money to the then eligible political parties after noon on 26 August 2014, the deadline for the submission of party lists for the Election.

By noon on 26 August 2014, the Alliance, a party which received allocations of time and money in the 6 June decision, had not submitted a party list for the General Election. As a result, the Alliance became ineligible for an allocation of time and money (section 76A(1)(d)). This resulted in the \$34,357 and 1 minute (closing addresses) previously allocated to the Alliance being available for reallocation.

The number of parties continuing to be eligible for broadcasting allocations has now dropped to 14.

The Commission's Decisions

As a second variation of its 6 June decision, the Commission has decided:

- (a) to allocate the \$34,357 previously allocated to the Alliance to all other eligible parties (except ACT New Zealand ((ACT)) for reasons explained below) using as a basis the proportions set out in the original allocation decision of 6 June 2014 and in the 20 August variation decision;
- (b) to allocate the time for closing addresses previously allocated to the Expat Party, Truth, Freedom, Justice and the Alliance to all the other eligible parties (except ACT for the reasons explained below) using as a basis the proportions set out in the original broadcasting allocation decision of 6 June 2014;
- (c) that the order for closing addresses of the 14 eligible parties set out in the 6 June decision be confirmed;
- (d) that the duration of all eligible parties' closing addresses (apart from ACT) be increased as shown in the attached table (for the reasons later discussed);
- (e) that ACT's allocations of time and money remain as shown in the 6 June and 20 August decisions and as shown in the attached table; and
- (f) that RNZ's allocation of money for production costs not be varied.

In coming to those decisions the Commission has:

- (a) reconsidered all the statutory criteria including those in sections 75 and 76A;
- (b) reconsidered all the submissions and additional material made available to it preceding the 6 June and 20 August decisions;
- (c) considered on-going updated poll data up to the date of this decision;
- (d) considered the material in the Conservative Party of New Zealand's pending High Court proceedings discussed below; and
- (e) considered the changes in the circumstances of the eligible parties discussed in this decision.

In relation to ACT, for the reasons set out, the Commission on 20 August decided not to vary ACT's allocation of money and time. In coming to that decision, the Commission considered reducing ACT's original allocations of time and money under s76A as a result of the resignation of its sole MP. That may have resulted in it being re-categorised. However,

information supplied by ACT clearly indicated that by that date, 20 August, it had wholly or in part given effect to its allocations of time and money. Accordingly, the Commission considered it was debarred from varying ACT's allocation under section 76A(4). However, as ACT had no MP when Parliament was dissolved, the Commission's view was, and continues to be, that it should not share in the redistribution of the additional \$34,357 and 3 minutes of time for closing addresses now available.

In pending High Court proceedings, the Conservative Party has claimed the Commission has no legal authority to decide the order of opening and closing addresses. The Conservative Party relies on section 77 as authority for the proposition that, in the absence of evidence of a dispute between those named in section 77(2), the Commission has no power to decide the order. The Commission takes the view that it has complied with section 77 (and other relevant sections of the Act) but has taken into account the matters pleaded in the Conservative Party's statement of claim and supporting affidavits.

The Commission has decided to increase the duration of all eligible parties' closing addresses (again except for ACT for the reasons discussed above). The reallocation appears in the table below.

Radio New Zealand's allocation of money for production costs will not be varied.

The Commission may consider a further variation of time and reallocation of money to the then eligible political parties if any parties fail to comply with the conditions in section 76A and its allocation decisions.

The following table sets out the revised allocations to those parties that are eligible for the broadcasting allocation for the 2014 General Election. A table setting out all of the allocation amounts from the decision of 6 June 2014 and the two variations of 20 August 2014 and 29 August 2014 is attached as Appendix A.

**29 August 2014 Variation of Broadcasting Allocation Decision for the 2014
General Election**

Parties	Monetary allocation (incl of GST)	Allocation of time for closing addresses (in minutes and seconds)
<i>The New Zealand National Party (National Party)</i>	\$1,087,902	16m15s
<i>The New Zealand Labour Party (Labour Party)</i>	\$949,756	14m10s
<i>The Green Party of Aotearoa/New Zealand (Green Party)</i>	\$414,439	7m55s
<i>New Zealand First (NZ First)</i>	\$207,220	4m45s
<i>Māori Party</i>	\$103,610	2m40s
<i>ACT New Zealand (ACT Party)</i>	\$76,930	2m
<i>Internet Party and MANA Movement (Internet MANA)</i>	\$79,433	2m5s
<i>United Future New Zealand (United Future)</i>	\$79,433	2m5s
<i>New Zealand Independent Coalition (NZIC)</i>	\$79,433	2m5s
<i>Conservative Party of New Zealand (Conservative Party)</i>	\$62,166	1m40s
<i>Aotearoa Legalise Cannabis Party (ALCP)</i>	\$34,729	1m5s
<i>The Civilian Party (Civilian)</i>	\$34,729	1m5s
<i>Focus New Zealand (Focus NZ)</i>	\$34,729	1m5s
<i>The New Zealand Democratic Party for Social Credit (Democrats for Social Credit)</i>	\$34,729	1m5s
<i>Radio New Zealand (RNZ)</i>	\$4,012	N/A
Total allocated	\$3,283,250	60 minutes
Total available	\$3,283,250	60 minutes

Dated: 29 August 2014

Signed for and on behalf of the Commission.



Hon Sir Hugh Williams QC
Chair



Jane Huria
Deputy Chair



Robert Peden
Chief Electoral Officer

Appendix A

Broadcasting Allocation Decisions for the 2014 General Election

Parties	6 June Monetary allocation (inclusive of GST)	6 June Time allocation of opening addresses (in minutes)	6 June Time allocation for closing addresses (in minutes)	20 August Variation Monetary allocation (inclusive of GST)	20 August Variation Time allocation of opening addresses (in minutes)	20 August Variation Time allocation for closing addresses (in minutes)	29 August Variation Monetary allocation (inclusive of GST)	29 August Variation Time allocation for closing addresses (in minutes and seconds)
<i>The New Zealand National Party (National Party)</i>	\$1,053,622	15m30s	15m30s	\$1,076,229	15m30s	15m30s	\$1,087,902	16m15s
<i>The New Zealand Labour Party (Labour Party)</i>	\$919,829	13m30s	13m30s	\$939,565	13m30s	13m30s	\$949,756	14m10s
<i>The Green Party of Aotearoa/New Zealand (Green Party)</i>	\$401,380	7m30s	7m30s	\$409,993	7m30s	7m30s	\$414,439	7m55s
<i>New Zealand First (NZ First)</i>	\$200,690	4m30s	4m30s	\$204,996	4m30s	4m30s	\$207,220	4m45s
<i>Māori Party</i>	\$100,345	2m30s	2m30s	\$102,498	2m30s	2m30s	\$103,610	2m40s
<i>ACT New Zealand (ACT Party)</i>	\$76,930	2m	2m	\$76,930	2m	2m	\$76,930	2m
<i>Internet Party and MANA Movement (Internet MANA)¹</i>	\$76,930	2m	2m	\$78,581	2m	2m	\$79,433	2m5s
<i>United Future New Zealand (United Future)</i>	\$76,930	2m	2m	\$78,581	2m	2m	\$79,433	2m5s
<i>New Zealand Independent Coalition (NZIC)</i>	\$76,930	2m	2m	\$78,581	2m	2m	\$79,433	2m5s

¹ Formerly the New Freedom Party.

Parties	6 June Monetary allocation (inclusive of GST)	6 June Time allocation of opening addresses (in minutes)	6 June Time allocation for closing addresses (in minutes)	20 August Variation Monetary allocation (inclusive of GST)	20 August Variation Time allocation of opening addresses (in minutes)	20 August Variation Time allocation for closing addresses (in minutes)	29 August Variation Monetary allocation (inclusive of GST)	29 August Variation Time allocation for closing addresses (in minutes and seconds)
<i>Conservative Party of New Zealand (Conservative Party)</i>	\$60,207	1m30s	1m30s	\$61,499	1m30s	1m30s	\$62,166	1m40s
<i>The Alliance (Alliance)</i>	\$33,635	1m	1m	\$34,357	1m	1m	-	-
<i>Aotearoa Legalise Cannabis Party (ALCP)</i>	\$33,635	1m	1m	\$34,357	1m	1m	\$34,729	1m5s
<i>The Civilian Party (Civilian)</i>	\$33,635	1m	1m	\$34,357	1m	1m	\$34,729	1m5s
<i>The Expatriate Party of New Zealand (Expat Party)</i>	\$33,635	1m	1m	-	-	-	-	-
<i>Focus New Zealand (Focus NZ)</i>	\$33,635	1m	1m	\$34,357	1m	1m	\$34,729	1m5s
<i>The New Zealand Democratic Party for Social Credit (Democrats for Social Credit)</i>	\$33,635	1m	1m	\$34,357	1m	1m	\$34,729	1m5s
<i>Truth, Freedom, Justice</i>	\$33,635	1m	1m	-	-	-	-	-
<i>Radio New Zealand (RNZ)²</i>	\$4,012	-	-	\$4,012	-	-	\$4,012	-
Total allocated	\$3,283,250	60	60	\$3,283,250	58	58	\$3,283,250	60
Total available	\$3,283,250	60	60	\$3,283,250	60	60	\$3,283,250	60

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