

Broadcast allocation to parties process report – Election '08

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The Electoral Commission is tasked with allocating to eligible parties the time made available by TVNZ and Radio New Zealand for opening addresses and closing addresses and also the money made available by parliament for party TV and radio advertising during the election campaign. Part 6 of the Broadcasting Act 1989 specifies the process of the broadcast allocation. The process starts eight months before the last possible election date and the final allocation is made after nomination day.

This report sets out the details of the 2008 allocation process. An explanation of the allocation process, the allocation decision and the uses that can be made of the allocated money can be found on the Elections New Zealand website www.elections.org.nz

Previously, when making the allocation the Commission had two additional members appointed. The requirement for these additional members was removed by the Electoral Amendment Act 2007. The Commission ascertains from the government the money that is to be allocated (\$3,211,875, GST inc.), and from TVNZ and RNZ, the time that they will make available for opening addresses (72 minutes) and closing addresses (24 minutes). The funds and time made available were the same as at the preceding election in 2005.

Initial allocation

The Commission invited political parties that consider themselves eligible for an allocation to give notice of this by 19th March 2008. Eligibility depends on giving this notice and on being registered when Parliament dissolves or expires. The invitation was published in the New Zealand Gazette (14 February) and in the main daily and Sunday newspapers (week ending 16 March). A letter was also sent on 19 March to every registered party and to all those who had requested information on registering a party in the previous six months.

Notice was received from 19 parties in total, of which 13 were registered at that time and 6 intended to be registered. Between March and the dissolution of parliament in August, three of these parties registered. The other parties that replied all failed to register by Writ Day (8 October), the last possible day for registration before the election. Three registered parties did not reply to the invitation, and one further party that registered to contest the party vote at the election did not give notice of intending eligibility. One registered party gave notice of eligibility but failed to submit a party list at the election. One registered party that gave notice of eligibility requested that it not be given any money.

Table 1 – Parties included in the initial allocation

Registered parties

ACT New Zealand
Alliance Party
Green Party of Aotearoa New Zealand
Libertarianz
Māori Party
New Zealand First
New Zealand Labour Party
New Zealand National Party
Progressive Party
United Future New Zealand

Unregistered Parties that subsequently registered

New World Order
Residents Action Movement
Workers Party of New Zealand

Unregistered Parties that **did not** subsequently register

Kotahitanga Te Manamotu Hake Tiriti o Waitangi
New Zealand Liberals
South Island Party

Table 2 - Parties that did not apply

Registered parties that did not apply

Kiwi Party
New Zealand Pacific Party
Republic of New Zealand Party

Unregistered parties that subsequently registered that did not apply

The Bill and Ben Party

Parties which had given the required notice were invited to make submissions on how the Commission should decide the allocations within the criteria outlined in the law. Public hearings were held for parties which wished to speak in support of their written submissions, on 28th and 29th April. Copies of the written submissions were made available to interested parties.

After reading the written submissions, and hearing oral submissions the Commission met on 29th April to consider the allocation. The Broadcasting Act specifies the criteria to be used in the allocation. In making the allocation the Electoral Commission must have regard to a series of criteria which cover results of the last election as well as consideration of more recent measures of parties' public support. It also requires that eligible parties be provided a fair opportunity to convey their policies to the public (Broadcasting Act 75(2)).

This fairness criterion was the basis upon which the Electoral Commission decided to allocate a minimum to all eligible parties and also to subsidise from the allocation to the two largest parties to the two smaller parties. Thus, the allocation was not an exact arithmetic reflection of share of votes, seats, membership or support in opinion polls. As in previous years, parties were grouped into groups, within which each party receives the same level of funding and time.

The three key criteria which measure current support for a party (number of votes at the last election, number of MPs at the dissolution of Parliament, and other indications of support) were used collectively when determining the groups for each allocation band. As opinion poll results are becoming less reliable as an indication of the views of the whole population, they were given a lesser weighting than has been the case in previous allocation decisions.

Labour Party and National Party were clearly ahead of all other parties in terms of votes in 2005, MPs, and polling results. The Commission saw no reason to treat the two parties differently and neither party sought a differential in its submission.

Green Party, Māori Party and NZ First were considered broadly similar in their number of MPs and votes in 2005. Green Party was polling ahead of the other two in terms of the party vote but not sufficiently to differentiate it from the other two parties.

The ACT Party, Progressive and UNITED FUTURE were broadly similar in their poll ratings, votes in 2005, and numbers of MPs. Differences were seen as insufficient to differentiate between the three parties in terms of allocation.

The non-parliamentary parties were clearly distinct from the parliamentary parties in terms of votes in 2005, number of MPs, and polling success. There was insufficient information to differentiate between the parties in relation to the criteria specified in the Broadcasting Act 1989. The Libertarianz stated in its written submission, and reiterated in its oral submission, that it would not spend any money that was allocated to them. Consequently the Libertarianz did not receive a monetary allocation but it was allocated a minute for an opening address and had access to the production package.

Table 3 – Initial allocation decision

Parties	Monetary allocation (incl. GST)	Opening address, minutes	Closing address, minutes
Total available	\$3,211,875	72	30
Labour Party, National Party	\$1,000,000	12	6
Green Party, Māori Party, NZ First	\$240,000	8	3
The ACT Party, Progressive, UNITED FUTURE	\$100,000	4	3
Aotearoa Legalise Cannabis Party, Democrats for social credit, <i>Kotahitanga Te Manamotu Hake Tiriti o Waitangi</i> , Libertarianz*, <i>New World Order</i> , <i>New Zealand Liberals</i> , <i>Residents Action Movement</i> , <i>South Island Party</i> , Alliance, Family Party, <i>Workers Party of New Zealand</i> (those in <i>italics</i> were not registered as at 29 th April 2008) * will not receive the monetary allocation	\$10,000, plus a production package for the opening address worth over \$7000	1	0

The minimum amount allocated reflected the cost of a basic radio advertising campaign for a month, although parties were free to spend the money on TV as well. Each party that was allocated one minute for an opening address also had access to a production package that was organised with TVNZ. The package provided production that would otherwise cost over \$7000 for each party. This package was first offered in 2005 to ensure both the accessibility

of TV to these smaller parties, in consideration of the 'fairness of access' criteria and a basic standard of professional production. All those involved in 2005 found the production package to be useful so the Commission chose to repeat it.

The two largest parties shared \$2,000,000. The remaining money, minus that allocated to the non-parliamentary parties (including the cost of the production package) was split between the second and third groups in a ratio close to 2:1 to reflect the difference in indications of support, votes and MPs for the two groups.

All eligible parties were allocated some time for their opening address, reflecting the fairness criteria. However only parliamentary parties were allocated time for closing addresses as the shorter time made available precluded a wider allocation.

The order of opening addresses was Labour Party, National Party, Green Party, NZ First, Māori Party, The ACT Party, UNITED FUTURE, Progressive, Libertarianz, Aotearoa Legalise Cannabis Party, New World Order, The Alliance, South Island Party, Family Party, Residents Action Movement, New Zealand Liberals, Workers Party of New Zealand, Democrats for social credit, Kotahitanga Te Manamotu Hake Tiriti o Waitangi.

This order was determined by following the groups used for time allocation and using double random selection within each group, except that in line with past practice the main government party had the first opening address and the main opposition party had the first closing address.

The order for closing addresses is the reverse within each group: National Party, Labour Party, Māori Party, NZ First, Green Party, Progressive, UNITED FUTURE, The ACT Party.

Opening addresses were aired on TVNZ and RNZ on 10th and 11th October: Labour and National on the 10th and all of the rest on the 11th. For the first time, the radio and television addresses were not broadcast simultaneously.

All of the eligible parties, except the Family Party, used the production package. For the parties that were offered the production package, acceptance or otherwise of the production package did not have any impact on the allocation of time and money to that party.

Judicial review of broadcasting allocation

The allocation decision of the Electoral Commission was challenged in judicial review proceedings commenced by The Alliance. Three aspects of the Commission's allocation were challenged: the failure to allocate time to non-parliamentary parties for a closing address, the amount of funding allocated, and the provision of the production package. The proceedings were heard on 15 September 2008, with the reserved decision delivered on 18 September (*The Alliance v Electoral Commission*, MacKenzie J, CIV 2008-409-001253). The application for judicial review was dismissed, and is now subject to an appeal.

Re-allocation

In specified circumstances the Electoral Commission can vary the allocations made without further consultation. Such circumstances include a party: not accepting an allocation, having its registration cancelled, making a significant change in its relationships with other parties, or failing to nominate a party list.

At the time of the dissolution of Parliament three parties which had received initial allocation had not registered and so were not eligible for allocation as they could not submit a party list. On 9 October, the money that had been allocated to them was re-allocated to the remaining parties. In making this re-allocation decision, the reasoning of the members of the Commission was that in the original allocation the decision was that \$2 million be allocated to the two largest parties. As this decision would have been the same regardless of the number of other parties, there was not an argument to re-allocate money to Labour or National. In

the initial allocation the remainder of the money had then been distributed between the other parties and thus all were affected by the number of parties receiving allocation. Therefore the money was distributed to all of these parties, pro-rata from the original decision.

Table 5 – Re-allocation decision (All values include GST)

Parties	Initial allocation (incl. GST)	Addition from re-allocation	Total allocation
Total available	\$3,211,875		
Labour Party, National Party	\$1,000,000	\$0	\$1,000,000
Green Party, Māori Party, NZ First	\$240,000	\$6,605	\$246,605
The ACT Party, Progressive, UNITED FUTURE	\$100,000	\$2,752	\$102,752
Aotearoa Legalise Cannabis Party, Democrats for social credit, Libertarianz*, <i>New World Order</i> , <i>Residents Action Movement</i> , Alliance, Family Party, <i>Workers Party of New Zealand</i>	\$10,000, plus a production package for the opening address worth over \$7000	\$275	\$10,275
* will not receive the monetary allocation			

The parties that were granted an initial allocation but did not register in time to contest the party vote were: Kotahitanga Te Manamotu Hake Tiriti o Waitangi, New Zealand Liberals and South Island Party

Revised re-allocation

On 15 October, the re-allocation decision was revised, following the failure of New World Order to submit a list to contest the party vote. In line with the re-allocation decision of 9 October the money was distributed among all the remaining eligible parties on a pro-rata basis.

Table 6 – Revised re-allocation decision (All values include GST)

Parties	Initial allocation (incl. GST)	Addition from re-allocation	Total allocation
Total available	\$3,211,875		
Labour Party, National Party	\$1,000,000	\$0	\$1,000,000
Green Party, Māori Party, NZ First	\$240,000	\$8889	\$248,889
The ACT Party, Progressive, UNITED FUTURE	\$100,000	\$3704	\$103,704
Aotearoa Legalise Cannabis Party, Democrats for social credit, Libertarianz*, <i>Residents Action Movement</i> , Alliance, Family Party, <i>Workers Party of New Zealand</i>	\$10,000, plus a production package for the opening address worth over \$7000	\$370	\$10,370
* will not receive the monetary allocation			

Table 7 – The final allocation

	\$ (inc GST)	Minutes	
		Open	Close
to allocate	\$3,211,875	72	30
ACT	\$103,704	7	3
Alliance	\$10,370	1	0
Aotearoa Legalise Cannabis Party	\$10,370	1	0
Democrats for Social Credit	\$10,370	1	0
Family Party	\$10,370	1	0
Green Party	\$248,889	7	3
Labour Party	\$1,000,000	12	6
Libertarianz	\$0	1	0
Māori Party	\$248,889	4	3
National Party	\$1,000,000	12	6
NZ First	\$248,889	7	3
Progressive	\$103,704	4	3
Residents Action Movement	\$10,370	1	0
UNITED FUTURE	\$103,704	7	3
Workers Party of New Zealand	\$10,370	1	0

The Electoral Commission can set conditions and the following were set. Only registered parties were permitted to enter into contractual commitments to use money, time and any production package that had been allocated to them in this decision. This restriction ensured that the parties which had applied before they were registered did not use any of the allocation until they were fully eligible.

RNZ also made conditions in relation to opening and closing addresses. Its conditions related to statutory broadcasting requirements and production standards and required that the radio addresses start and finish with a statement of the name of the party. Details of the conditions were supplied to the parties.

Payment of the allocation

Invoices are sent by the supplier or broadcaster to the party which then forwards them to the Electoral Commission with authorisation to pay them. The Electoral Commission pays the supplier or broadcaster directly. Invoices can only be paid if received by the Electoral Commission within 70 working days of the end of the month in which the election occurred (by 3 March 2009). Although the Electoral Commission gave clear advice to parties on the information they were required to provide to obtain payment on invoices a number of invoices were received that contained insufficient detail for the Commission to be satisfied that it should pay out on them. Waiting for the additional information delayed payment of a number of invoices.

During the months of October 2008 to February 2009, the Electoral Commission received, checked and paid 89 invoices received from parties. Nearly half of the allocation was paid out in September, a fifth on October and a third in November. Only four parties had invoices still to pay in December.

Table 8 – Party invoice payment of broadcast allocation by month

	November	December	January	February	Total
\$ (GST inc.)	\$1,937,451	\$645,667	\$519,259	\$10,143	\$3,112,520
% of total	62.2%	20.7%	16.7%	0%	
# of invoices	30	19	37	3	89

From the original allocation of \$3,211,875 (GST inc.) a total of \$50,152.56 (GST inc.) was not used and will be returned to the Treasury.

Table 9 - Use of broadcast allocation by party

	Spent \$ (GST inc.)	Allocated \$ (GST inc.)	Unspent \$ (GST inc.)
ACT	\$103,704.00	\$103,704.00	\$0
Alliance	\$8,623.88	\$10,370.00	\$1,746.12
Aotearoa Legalise Cannabis Party	\$10,283.64	\$10,370.00	\$86.36
Democrats for Social Credit	\$10,365.30	\$10,370.00	\$4.70
Family Party	\$9,999.88	\$10,370.00	\$370.12
Green Party	\$248,460.79	\$248,889.00	\$428.21
Labour Party	\$999,073.48	\$1,000,000.00	\$926.52
Libertarianz	\$0	\$0	\$0
Māori Party	\$247,021.46	\$248,889.00	\$1,867.54
National Party	\$998,254.34	\$1,000,000.00	\$1,745.66
NZ First	\$248,889.00	\$248,889.00	\$0
Progressive	\$103,683.24	\$103,704.00	\$20.76
Residents Action Movement	\$10,366.45	\$10,370.00	\$3.55
UNITED FUTURE	\$103,620.09	\$103,704.00	\$83.91
Workers Party of New Zealand	\$10,174.53	\$10,370.00	\$195.47
Party total	\$3,112,520.08	\$3,119,999.00	\$7,478.92
Production costs	\$49,202.36	\$80,000.00	\$30,797.64
Total	\$3,161,722.44	\$3,210,290.00	
Sum to be returned to the Crown			\$50,152.56

Commissioners

The Electoral Commission members for Broadcast Allocation process:

Hon Andrew McGechan, President
Belinda Clark, Secretary for Justice
Joe Williams, Chief Judge of the Māori Land Court
Helena Catt, Chief Executive

The initial and final allocation decisions were unanimous.

Helena Catt
Chief Executive
Electoral Commission

April 2009

Timeline

11 February 2008	E-mails/letters sent to parties, and all those who had sought information on creating a party, giving warning of the Gazette notice and 19 March 2008 deadline
14 February 2008	Gazette notice appears inviting parties who think they are eligible to reply by 9th February
22 February 2008	TVNZ and RNZ asked to specify the amount of time that they would make available for opening addresses and closing addresses
12 March 2008	reply received from TVNZ
14 March 2008	reply received from RNZ
19 March 2008	deadline for receipt of party responses to the Gazette notice
19 March 2008	letter to parties inviting submissions
18 April 2008	deadline for receipt of party submissions
28 April 2008	oral submissions from parties
29 April 2008	oral submissions from parties
29 April 2008	meeting of the Commission to consider allocation
12 May 2008	TVNZ and RNZ invited to comment on the initial allocation decision
19 May 2008	meeting of the Commission to determine initial allocation
30 May 2008	initial allocation decision released to parties
2 June 2008	initial allocation decision released to the media and the public
22 September 2008	memo to parties with details on how to submit accounts for payment against broadcast allocation
8 October 2008	Writ day
9 October 2008	Re-allocation decision made and released
10 & 11 October 2008	opening addresses broadcast
14 October 2008	Nomination day
15 October 2008	Revised Re-allocation decision made and released
25 August 2008	letter to eligible parties with details of final allocation decision
7 October 2008	closing addresses broadcast
3 March 2009	deadline for receipt of invoices