



Electoral Commission
Tē Kaitiaki Take Kōwhiri

1996 GENERAL ELECTION

PROVISIONAL DECISIONS OF THE ELECTORAL COMMISSION ON ALLOCATIONS OF TIME AND MONEY TO POLITICAL PARTIES FOR BROADCASTING OF ELECTION PROGRAMMES

1. Introduction and the need to review the current legislative provisions

The Electoral Commission is required by ss 70A to 79C of the Broadcasting Act 1989 as amended by the Broadcasting Amendment Act 1996 to allocate time made available by broadcasters and money appropriated by Parliament to enable political parties to meet all or part of the costs of broadcasting election programmes.

The Commission considers that the criteria in the Broadcasting Act which it is obliged to apply are deficient and that the election broadcasting regime should be re-examined as part of the usual post-election review of electoral law and practice conducted by Parliament.

A number of parties submitted that the Commission should in effect disregard the criteria and make such allocations as it considers equitable. It was variously suggested that this was justified by the provisions of the Electoral Act 1993, by ss 6 and 14 of the New Zealand Bill of Rights Act 1990 and by common law principles concerning freedom of speech. Those Acts and principles do not, however, enable the Commission to override the provisions of the

Broadcasting Act. The Commission is obliged to apply the criteria contained in s 75 of the Act and cannot simply make what it considers to be “fair” allocations.

Within the strict requirements of the Act the Commission has endeavoured to make sensible allocations. In that context the Commission records that the provisions of the Act do not allow the Commission to exclude a political party which, though meeting the criteria laid down in the Act, is nevertheless a party that some voters would consider not to be a “serious” party or to have little chance of success. The provisions of s 75(2)(f) of the Act also require the Commission when allocating time and money to have regard to the need to provide a fair opportunity for *each* registered party to convey its policies to the public by the broadcasting of election programmes on television. Moreover, the allocations of time and money have to be made from an appropriation which has not changed since the 1990 election but which now must be spread over 20 eligible parties, none of which is permitted to purchase broadcasting time with its own funds. If, therefore, the Commission makes no allocation to a minor party, that party cannot obtain *any* broadcasting time; and, if the allocations to minor parties absorb part of the funds which would otherwise go to other parties, the latter are disadvantaged because they, too, cannot purchase broadcasting time with their own funds. All these matters are relevant to a re-examination of the Act.

2. The statutory provisions

The time to be allocated by the Electoral Commission is that made available by broadcasters, either free of charge or at discounted rates, in response to an invitation issued by the Commission to broadcasters in terms of s 71 of the Act. In addition, Television New Zealand (TVNZ) and Radio New Zealand (RNZ) are required by s 77A(3) of the Act to make time available for opening and closing addresses on one free-to-air television channel with national coverage and on National Radio. TVNZ and RNZ each offered a total of 120 minutes for opening addresses, and 60 minutes for closing addresses. Their offers and those of other broadcasters in relation to time for opening and closing addresses are outlined in sections 6, 7 and 8 of this decision.

The money to be allocated is that appropriated or deemed to be appropriated by Parliament as notified by the Minister of Justice to the Commission in terms of s 74 of the Act. By letter dated 1 July 1996, the Minister notified the Commission that the amount so appropriated is \$1.85 million excluding GST (\$2,081,250 including GST). This is the same amount as was appropriated for the 1990 and 1993 general elections.

Section 75 of the Act, as amended by the Broadcasting Amendment Act 1996, specifies the criteria which political parties must meet in order to be eligible for an allocation of time and money for the general election to be held this year,¹ and the criteria which the Commission must apply when determining allocations of time and money to eligible parties:

75. Criteria in relation to allocation of time and money to political parties -

(1) The Electoral Commission shall not allocate any time to a political party under section 73 of the Act or make under section 74A of this Act an allocation of money to a political party unless, -

(a) In the case of a general election, -

(i) That party was registered on the Register of Political Parties on the 5th working day after the date of commencement of the Broadcasting Amendment Act 1996; or

(ii) Persons belonging to that party or group of related political parties were, on the 5th working day after the date of commencement of the Broadcasting Amendment Act 1996, deemed, by section 70D of this Act, to be constituency candidates at that general election for at least 5 seats in the House of Representatives; . . .

(2) The Electoral Commission shall, in allocating time to a political party under s 73 of this Act or in making under s 74A of this Act an allocation of money to a political party, have regard to -

(a) The number of persons who voted at the immediately preceding general election for that party and for candidates belonging to that political party; and

¹ Section 75(1)(a) is set out below as substituted by s 24(3)(a) of the Broadcasting Amendment Act 1996 in relation to the 1996 general election. The Broadcasting Amendment Act 1996 came into force on 1 July 1996.

(b) The number of persons who voted at any by-election held since the immediately preceding general election for any candidate belonging to that political party; and

(c) The number of members of Parliament who, -

(i) In the case of a general election, were members of that political party immediately before the expiration or dissolution of Parliament; and

(d) Any relationships that exist between a political party and any other political party; and

(e) Any other indications of public support for that political party such as the results of public opinion polls and the number of persons who are members of that political party; and

(f) The need to provide a fair opportunity for each political party to which subsection (1)(a)(i) of this section applies to convey its policies to the public by the broadcasting of election programmes on television

The Act provides in s 75(3) that decisions and allocations of time and money may be made before the “election period” begins. The Act defines the election period as beginning on writ day and ending with the close of the day preceding polling day.

The allocations made by the Commission are provisional and are subject to review after nomination day once each party’s eligibility is confirmed.

3. Parties entitled to an allocation of time and money in terms of s 75(1) of the Act

The Commission is required by section 70A of the Act to insert a notice in the *Gazette* specifying a date by which any political party that considers it will qualify for an allocation of time or money must give notice in writing to the Commission that it considers itself so qualified. A notice from the Commission in the *Gazette* on 4 July 1996 specified 22 July 1996 as the due date.

In response to the notice from the Commission, 16 registered parties or groups of related political parties and four unregistered parties gave notice that they considered they qualified. Two registered parties gave notice one day late. In the particular circumstances the Commission resolved to accept the two late notices. The Commission decided that one other registered party which did not give notice was not eligible for an allocation.

Two of the unregistered parties which gave notice subsequently accepted that they did not meet the eligibility requirements of s 75(1)(a)(ii) of the Act in relation to the 1996 general election. As required by s 76 of the Act, the Commission invited the other 18 parties or groups of parties which gave notice by the due date, and the two parties which gave late notice, to meet with the Commission and be heard. Hearings of parties were held on 8 and 9 August. Two registered parties did not take advantage of the opportunity to be heard by the Commission.

The Commission records that a number of political parties submitted that the total appropriation of \$1.85 million (excluding GST) was inadequate for the coming election. These parties requested the Commission to advise the Government of their view. After considering the request, the Commission wrote to the Minister of Justice to convey the request along with advice that, in terms of the Act, the Commission had concluded that 20 parties had qualified for a provisional allocation of money. The Commission pointed out that, with 20 parties sharing the funds, the allocations to individual parties would be diminished compared to those made for the 1993 election. The Commission also drew attention to the provisions of s 75(2)(f) of the Act which require the Commission to have regard to the need to provide a fair opportunity for each registered party to convey its policies to the public by the broadcasting of election programmes on television. The Minister of Justice subsequently advised the Commission that Cabinet had very carefully considered the request from the political parties in the light of the factors outlined in the Commission's letter, but had concluded that it did not favour any increase for the 1996 general election.

Several parties objected to the presence on the Commission of the representatives of the Government and Opposition parties who were appointed to the Commission in terms of ss 8(4) and 10 of the Electoral Act 1993 solely for the purposes of the Commission's jurisdiction under Part VI of the Broadcasting Act. One of those parties invited the two members to disqualify themselves.

The Commission must administer the Act as passed by Parliament and the two members did not consider there was any reason to disqualify themselves. Both provided statutory

declarations stating that, insofar as the law allows, they would not reveal to any other party or person any information provided in confidence to the Commission.

After considering the oral and written submissions from the parties, the Commission resolved that the following parties or groups of parties provisionally meet the eligibility criteria in s 75(1) in relation to the 1996 general election:

Registered parties eligible under s 75(1)(a)(i):

Accord Seniors and Youth
Act New Zealand
Advance New Zealand Party Inc.
Aotearoa Legalise Cannabis Party
Christian Coalition
Ethnic Minority Party of New Zealand
Green Society
Natural Law Party
New Zealand Conservative Party
New Zealand First
New Zealand Labour Party
Progressive Green Party
Te Tawharau
The Alliance
The McGillicuddy Serious Party
The New Zealand National Party
The Republican Party Incorporated
United New Zealand Party

Unregistered parties eligible under s 75(1)(a)(ii):

Mana Maori Movement
NZ Progressive Party

4. Criteria for allocations of time and money under s 75(2) of the Act

- 4.1 The Commission is required to have regard to the criteria specified in s 75(2)(a) to (f) in allocating time and money to eligible parties. Some of the criteria are difficult to apply and to weight appropriately, particularly in the context of the first election under the new proportional system. A number of issues of interpretation also arise. In general terms the problems are well evidenced by the many and varied submissions made by the political parties.

Bearing in mind all the circumstances, the Commission has decided that its decision ought to record the basis of the allocations it has made. Accordingly, although time does not permit the preparation of detailed reasons or a full response to the multitude of submissions made, this decision records the principal matters relevant to the Commission's conclusions about the way in which the criteria specified in s 75(2) should be applied.

The Commission also records that it has taken the various procedural and other steps required by the Act in relation to the allocations of time and money. These include meeting with and hearing political parties and consulting with broadcasters. The hearings with political parties were public. In reaching its decisions concerning allocations of broadcasting time and money the Commission has considered all the oral and written submissions made to it.

The Commission also sought advice from Crown Counsel concerning the interpretation of s 75(2) and made that advice available to the parties.

- 4.2 In relation to the interpretation of s 75(2), the Commission first notes that a question arises whether the Commission is precluded from considering any criteria other than those specified. That appears to have been the intention of the Finance and Expenditure Committee as indicated when reporting the Broadcasting Amendment Bill to Parliament; see page viii of the commentary to the Committee's report under the

head “Criteria for eligibility and allocation of time and money”. Though the wording of s 75(2) of the Act (“... shall ... have regard to”) may conceivably leave it open to argument that the Commission is able to consider other criteria, all other considerations point to the contrary, including the lack of any paragraph in s 75(2) permitting the Commission to take into account such other matters as it considers relevant. Accordingly the Commission has decided that it can only consider the criteria specified in s 75(2).

The Commission also notes that the allocation of broadcasting time and funds has to be made against the background of the time made available by broadcasters, together with any relevant matters which arise out of the required consultation with broadcasters and parties, and the amount of money made available by Parliament (though none of these matters is stated as a criterion in s 75(2)).

- 4.3 The Commission records its interpretation of the criteria in s 75(2) and related matters as follows.

(a) The number of persons who voted at the immediately preceding general election for that party and for candidates belonging to that political party.

Under this head the Commission has taken into account the percentage of total votes cast for *candidates* of a political party or group of parties at the 1993 general election as recorded in the official election statistics prepared by the Chief Electoral Office. The Commission has made no distinction between votes for the party and votes for candidates belonging to that party because it is not possible to make such a distinction in relation to votes cast under the former electoral system; technically, all votes were votes for candidates.

It was suggested to the Commission that, when a candidate at the immediately preceding election had subsequently transferred to a new party, the votes for that

candidate should be credited to the new party. The Commission considers that contention is contrary to the wording of s 75(2)(a).

(b) The number of persons who voted at any by-election held since the immediately preceding general election for any candidate belonging to that political party.

The Commission has taken account of this criterion, on the same basis as indicated in respect of paragraph (a), in relation to votes cast in the Selwyn by-election held on 13 August 1994 as provided to the Commission by the Chief Electoral Office.

(c) The number of members of Parliament who, in the case of a general election, were members of that political party immediately before the expiration or dissolution of Parliament.

The Commission has taken account of this criterion on the basis that the clear words of the paragraph require the member of Parliament to be a member of the party *immediately before* the expiration or dissolution of Parliament. The paragraph does not relate to the number of members of each party who were elected to Parliament at the previous general election. In making its provisional allocations, the Commission has taken the number of members of Parliament for each party as at 9 August 1996. The Clerk of the House of Representatives has been asked to advise the Commission of the numbers of members of each party once Parliament is dissolved for this year's general election.

(d) Any relationships that exist between a political party and any other political party.

Unlike paragraphs (a) (b) (c) and (e), this paragraph does not relate to the extent of voter or public support. It appears to be intended to allow the Commission to treat related parties as one entity so that there is no element of double counting when

allocations are made. This issue is also explicitly dealt with in ss 73(3) and 74A(5) of the Act. In light of the above considerations we have not, in determining allocations, given paragraph (d) any specific weight as a separate criterion.

We note that in terms of the coming election paragraph (d) would allow votes cast in the 1993 general election and the Selwyn by-election for component and related parties of eligible parties to be taken into account for the benefit of the eligible parties.

(e) Any other indications of public support for that political party such as the results of public opinion polls and the number of persons who are members of that political party.

(i) The results of public opinion polls

The Commission has taken account of the results of 7 One Network News/Colmar Brunton polls, 7 TV3/CM Research Gallup polls, and 7 *National Business Review-Insight* polls, all of which were published from 9 February 1996 to 9 August 1996. In order to ensure that the Commission considered published data from polling organisations that conducted polls over the whole period using recognised statistical methods, the Commission did not take other published polls into account or the results of parties' own polling.

The period over which the polls are taken into account clearly has a significant impact for parties whose poll support has increased only recently. After careful consideration, the Commission decided that the period specified above provides the fairest reflection of poll results in the light of an election still some weeks away. The poll results for each party were averaged over the period to reduce the impact of short-term fluctuations. The Commission took account of poll results for parties registered since February from the month following registration.

Because the polls the Commission decided to take into account record separate results for the party votes and the electorate votes, and because support for parties can vary between the two votes, the Commission also considered it appropriate to consider the results of polls relating to each vote.

In order to ensure a consistent comparison between the three polls, the Commission considered results for “decided voters” only and did not adjust published results to take account of “don’t know” or “would not vote” responses or of refusals to participate in the polls.

(ii) The number of persons who are members of that political party

For this purpose the Commission requested the parties to provide a statutory declaration stating the number of current financial members of the party. The Commission also advised that all parties which elected not to provide details of membership in that form should appreciate that, in their cases, the Commission would not be able to give any weight to the membership criterion. Due to the sensitive nature of the information, some parties were reluctant to disclose membership figures. The Commission therefore agreed to accept the figures in confidence, in so far as it is able to do so in the light of its obligations under the Official Information Act 1982 and the general law. In taking account of party memberships, the Commission reduced registered parties’ memberships by the minimum number of 500 current financial members required to achieve and maintain registration.

(iii) Other indications of public support

Various parties urged the Commission to have regard to other indications of public support such as media coverage and public profile, the numbers of people attending party and electoral gatherings, and the party’s organisation and structure. In view of the difficulties of obtaining reliable information about these matters for all parties, the

Commission decided it should not take any account of such matters as indications of public support.

The Commission also requested parties to advise whether they intended to nominate a party list, and the total number of electorate seats (General and Maori) which they intended to contest.

It is arguable that these matters can be regarded as an indication, albeit modest, of public support, on the basis that they reflect the parties' ability to recruit a wide range of candidates (akin to, but of less importance than, the number of members) and also reflect the parties' own assessment of possible public support. We were also initially inclined to think that the variation provisions of ss 76A(1)(d) and (f), which refer to failure to submit a list and changes in the number of candidates, inferentially support the above view. However, at least s 76A(1)(f) can be regarded as being relevant only to a change in the eligibility criteria contained in s 75(1)(a)(ii), in the same way as the reference in s 76A(1)(c) to a party ceasing to be registered can be regarded as relating to s 75(1)(a)(i); and the reference in s 76A(1)(d) to failing to submit a party list may relate to s 75(2)(f) which appears to incorporate the notion of a party list: see below under (f). Moreover, the Finance and Expenditure Committee rejected the Commission's submission that both a party's nomination of a list and the number of constituency candidates should be added to s 75(2); and it is also the case that a party's ability to nominate a large number of electorate candidates or to submit a long party list may be little indication of its public support.

On balance, therefore, we have concluded that, though the number of constituency candidates and the ability to submit a list might be of some assistance in distinguishing between smaller parties, the better course when faced with this complex piece of legislation is not to place any reliance on those factors.

(f) The need to provide a fair opportunity for each political party to which subsection (1)(a)(i) of this section [viz. s 75] applies to convey its policies to the public by the broadcasting of election programmes on television.

We first note that (with the exception of paragraph (d)) all the previous criteria relate to the likely extent of a political party's voter or public support. Paragraph (f) is, however, of a different quality. It was introduced by Supplementary Order Paper after the Finance and Expenditure Committee had reported. In the context of the 1996 general election, subsection (1)(a)(i) applies to each party eligible to be considered for an allocation because it was registered on 8 July 1996. The subsection appears by implication to be intended to incorporate the notion that the party has nominated a party list. It also refers to providing each such party with "a fair opportunity" to convey its policies to the public by the broadcasting of election programmes on *television*, which is acknowledged to be much the most expensive and effective broadcasting medium. The Commission's consideration of paragraph (f) is therefore confined to registered eligible parties and to television programmes.

Paragraph (f) appears to be intended to ensure that the relevant allocations made by the Commission provide each registered party with a fair opportunity to present its policies on television. It would seem that the fair opportunity must be an opportunity which is fair or equitable in all the circumstances, which include the extent to which the party satisfies the other criteria in paragraphs (a) to (e), and all other relevant matters. Of the other relevant matters the fact that a party is unable to purchase television time with its own funds would seem particularly important. The size of the fund available for appropriation is likewise important. We were also urged to consider, as a negative factor against parties with members of Parliament, that they receive considerable financial support on this basis. In our view that is taken into account by the relative weighting we have given to the number of members of Parliament and opinion polls; see section 4.4 below. Nor do we think that, in the context of paragraph (f), any real significance as a differentiating factor can be given to the fact that a party is nominating constituency candidates for all or most electorates. In the same way a party submitting

only a list of candidates will wish to campaign on a national basis. Likewise almost all parties have a comprehensive range of policies.

The Commission decided that the best way to meet the requirements of paragraph (f) is to determine what in all the circumstances is a fair allocation of money for each eligible registered party (or, if the parties seemed to fall into categories, for each category), taking into account the cost of television programmes and the television time allocated to the party for opening and closing addresses. It should be noted that the Commission has not imposed any requirement that money allocated to a party must be spent on buying television time. A party can, therefore, elect to spend its allocation of money on buying time for radio advertising. Submissions by parties indicated a strong preference for the ability to divide funds allocated by the Commission as they saw fit between buying television time, buying radio time and the costs of producing television and radio advertisements. Parties are permitted to spend their own funds on production costs (see section 9 of this decision).

Because paragraph (f) appears to be intended to give preferential treatment to parties eligible under s 75(1)(a)(i), the Commission also regards paragraph (f) as requiring it to establish a lesser allocation of time and money for parties eligible under s 75(1)(a)(ii). Nevertheless, we consider that eligible parties contesting only electorate seats should receive an allocation which is of some use to them.

Finally, in relation to paragraph (f), we mention that it does not, in the Commission's view, require the Commission to provide different minimum times for opening and closing addresses broadcast on television compared to those broadcast on radio.

- 4.4 The Commission has carefully considered the relative weighting which should be given to criteria (a), (b), (c), (e) and (f) in s 75(2). In view of the variety of criteria and the difference in quality between (f) and the other criteria, the weight to be given to each is difficult to determine. The position is further complicated because this is the first general election under the new electoral system, so that criteria relating to the previous

election may be unreliable as an indication of public support for parties proposing to contest this year's election.

The Commission concluded that weights should be attached to each of the criteria to reflect their varying significance as measures of public support, as follows.

s 75(2)(a), results of the 1993 general election: A weighting of 1.5 was attached to percentages of votes cast for the candidates of parties at the last general election because it provided the last comprehensive indicator of actual voter support for parties, even though the election was not conducted in an MMP environment.

s 75(2)(b), results of the Selwyn by-election: A weighting of 0.25 was attached to the results of the Selwyn by-election to reflect the varying and uncertain influences at work in by-elections and their consequent unreliability as indicators of more general public support for parties.

s 75(2)(c), number of members of Parliament: A weighting of 1 was attached to party representation by members of Parliament at the time of the dissolution of Parliament. While it is possible to measure parties consistently by this criterion, it was not given a higher weighting because, in some cases, current representation in Parliament has been the result of decisions by individual MPs rather than by voters.

s 75(2)(e), results of opinion polls: Results of public opinion polls required special consideration by the Commission. The Commission concluded that, in the circumstances of this election under a new system, greater weight should be given to public opinion polls, though we recognise that polls are, at best, only indications of respondents' voting intentions at the time of the poll and cannot be used to predict the outcome of an election. Indeed, voters may well change their views for a wide variety of reasons in the lead up to the election, including parties' uses of the allocations of broadcasting time and funds now made by the Commission. Nevertheless, public

opinion polls are one of the few indicators of public support in the new electoral context.

The Commission concluded that results of polls relating to party votes should be given a weighting of 2. Both because of the significance of the party vote in determining the number of members of Parliament each party will have, and because many parties had not announced constituency candidates in the period covered by the polls, the Commission decided to give a weighting of 1 to the results of polls relating to electorate votes.

s 75(2)(e), party membership: A weighting of 0.5 was attached to party membership, as definitions of membership vary significantly between parties. There are also considerable variations in the levels of membership fees required.

These weightings allowed the Commission to arrive at a total rating for each eligible party in respect of criteria (a)-(c) and (e). (Because some membership information was provided in public, whereas some was provided in confidence, the Commission has not published its calculations since they could be used to deduce individual party memberships.) These total ratings allowed the Commission to divide the 18 eligible registered parties into four categories which were significantly separated from each other by the total ratings which the parties had accumulated through the application of criteria (a)-(c) and (e) according to the weightings outlined above.² Unregistered parties eligible for an allocation under s 75(1)(a)(ii) constituted a fifth category.

The categories are as follows (parties are listed in alphabetical order in each category):

Category 1: registered parties whose total ratings show they satisfy all of criteria (a)-(c) and (e) to a significant extent:

New Zealand First

² The ranges of total ratings as percentages of all rating points for Categories 1-4 were as follows: Category 1, 13.4%-37.8%; Category 2, 1.4%-1.8%; Category 3, 0.1%-0.4%; Category 4, 0%-0.04%.

New Zealand Labour Party

The Alliance

The New Zealand National Party

Category 2: registered parties whose total ratings show they satisfy some or all of criteria (a)-(c) and (e) to some, albeit relatively modest, extent:

Act New Zealand

Christian Coalition

United New Zealand Party

Category 3: registered parties whose total ratings show they satisfy criteria (a)-(c) and (e) to a lesser extent than parties in Category 2:

Aotearoa Legalise Cannabis Party

New Zealand Conservative Party

Natural Law Party

Progressive Green Party

The McGillicuddy Serious Party

Category 4: other registered parties whose total ratings show they satisfy a limited number of criteria (a)-(c) and (e) to a very small extent and in one case not at all:

Accord Seniors and Youth

Advance New Zealand Party Inc.

Ethnic Minority Party of New Zealand

Green Society

Te Tawharau

The Republican Party Incorporated

Category 5: parties eligible under s 75(1)(a)(ii):

Mana Maori Movement

NZ Progressive Party

The Commission then considered what allocations of money and time should be made to parties in each category on the basis of all the criteria in s 75(2).

The Commission first considered making the monetary allocations solely on the basis of the parties' total ratings under criteria (a)-(c) and (e). It concluded that allocations based solely on these ratings would not satisfy the requirements of paragraph (f) in relation to parties in Categories 2-4 (which would have received only a very small share of the total funds) and could also result in parties in Category 5 receiving an unusable allocation.

The Commission accordingly decided that the requirements of s 75(2), including paragraph (f), would be met if (1) the Commission determined a sum of money for each of Categories 1-4 which, taking account of all the circumstances, should be allocated to each party in that category to provide a fair opportunity for it to convey its policies to the public by the broadcasting of election programmes on television; (2) parties in Category 5 received a minimum sum plus an additional allocation based on numbers of current financial members; and (3) parties in Category 1 only were then allocated the remaining funds according to their total ratings under criteria (a)-(c) and (e).

The effect of this method of allocation is to give each party in Categories 2-5 a considerably larger proportion of the appropriation than it would have received according to its total ratings under criteria (a)-(c) and (e). The allocations to each party in Category 1 are reduced accordingly. This is entirely due to the application of paragraph (f). In that situation the Commission did not consider parties in Categories 2-4 should have any further allocation of funds based on their total ratings under criteria (a)-(c) and (e).

We add that when all the criteria in the Act are considered, they do not allow the Commission to distinguish between parties in each category on the basis that some may, for example, be single issue parties or even be thought to be pursuing a largely

frivolous agenda. Nor do the criteria allow the Commission to distinguish between parties contesting the Maori seats and parties which are not.

For completeness, the Commission again notes that, although it has based the allocations on the cost of purchasing television time, the parties are able to spend some or all of their allocated funds on purchasing radio time.

The Commission considered it needed a consistent and workable basis for determining what monetary sum should be fixed in terms of (1) above. It decided to use the cost of purchasing a specified amount of television advertising per week in prime time over four weeks at a cost averaged between the average ratecard rates for October peak time (6.00pm-10.30pm) for TV1 and TV3. The ratecard rates were adjusted to take account of the volume incentive discounts applicable to television advertising paid for with public funds and the additional discount offered by TV3 in its reply to the Commission's invitation to offer time at discounted rates. The basic allocation for each category also includes a small sum for production costs.

In respect of time for opening and closing addresses, the Commission concluded that the requirements of s 75(2), including paragraph (f), would be met if parties in Categories 1-3, but not those in Category 4, were allocated time from that made available by TVNZ. In the Commission's view the criteria contained in s 75(2) do not require the allocation of free time for opening and closing addresses to the parties in Category 4.

The Commission decided to allocate television time for opening and closing addresses to each party in Categories 1-3 in a way that approximates each party's proportional allocation of funds, with appropriate adjustments to fit the schedules finally offered by TVNZ and National Radio. The Commission also decided to allocate time to each party in Categories 1-3 for opening and closing addresses on National Radio equivalent to the allocations of television time.

The basis on which allocations of money have been made to each category and the time the Commission has allocated for opening and closing addresses on TV1 and National Radio are given below. A table showing the full provisional allocations of money and time to each eligible party is in section 6 of this decision.

Category 1: Each party in this category has been allocated a sum of \$93,000 (including GST) which is sufficient to purchase two 60 second and one 30 second commercial television spots per week over four weeks in prime time. In addition, each party has been allocated a proportion of the sum remaining once the allocations for parties in Categories 2-5 and the Commission's provision for RNZ's administrative costs have been deducted from the total appropriation. The four parties in this category have been allocated free time for opening addresses on TV1 and National Radio of 30 minutes, 25 minutes, 20 minutes and 20 minutes respectively. The time allocated to each party for its closing address on TV1 and National Radio is half that allocated for its opening address.

Category 2: Each party in this category has been allocated a fixed sum of \$93,000 (including GST). In addition, the Commission has allocated each party in this category 5 minutes for an opening address on TV1 and National Radio and 2½ minutes for a closing address.

Category 3: Each party in this category has been allocated a fixed sum of \$35,000 (including GST), which is sufficient to purchase one 60 second commercial television spot per week over four weeks in prime time. The Commission has also allocated each party in this category 2 minutes for an opening address on TV1 and National Radio and 1 minute for a closing address.

Category 4: Each party in this category has been allocated a fixed sum of \$22,800 (including GST), which is sufficient to purchase one 30 second commercial television spot per week in prime time over 4 weeks. The Commission has not allocated parties in this category any time on TV1 or National Radio for opening or closing addresses,

on the basis that the allocation of this sum of money is sufficient to meet the requirements of s 75(2).

Category 5: Each party in this category has been allocated a fixed sum of \$5,000 (including GST). In addition, a further sum of \$10,000 (including GST) has been allocated to any party in this category with more than 1,000 current financial members. No party in this category has been allocated any time on TV1 or National Radio for opening and closing addresses.

5. Opening and closing addresses

Television New Zealand Limited is required by s 77A(3) of the Act to make time available for opening and closing addresses on one free-to-air channel with national coverage. TVNZ has offered free time of 120 minutes for opening addresses, and 60 minutes for closing addresses on Television One, for allocation by the Commission.

Radio New Zealand Limited is similarly required under s 77A(3) to make free time available for opening and closing addresses, on the service known as National Radio. RNZ has also offered free time of 120 minutes for opening addresses, and 60 minutes for closing addresses for allocation by the Commission.

Broadcasters are able under s 71A(2)(a)(iv) of the Act to propose conditions in relation to the scheduling and duration of election programmes within the time they are prepared to make available. Section 71A(2)(e) also provides that they may, in relation to the time they make available, include proposals for the allocation of time to parties. Any proposal under s 71A(2)(e) is to be made having regard to section 75 of the Act.

Opening and closing addresses must be broadcast between 7.00pm and 9.00pm. Closing addresses are to be broadcast in the last week of the election period (s 77A(1)).

Both TVNZ and RNZ made proposals in relation to the scheduling of these programmes, and RNZ made proposals for the allocation of time to parties and the order of broadcast. The Commission invited parties to comment on TVNZ's and RNZ's offers. Not unexpectedly, the views of the parties varied.

The Commission discussed with each broadcaster individually the hours of broadcast of opening and closing addresses, and records its appreciation of the willingness of both broadcasters to be flexible in accommodating these broadcasts within their schedules.

TVNZ will carry opening addresses on Television One for 30 minutes on each of the nights Monday, Tuesday, Wednesday and Thursday at 7.30pm in the opening week of the campaign. (The start date of the campaign is yet to be announced). The closing addresses will be broadcast on Television One on Friday 11 October, between 7.30pm and 8.30pm.

RNZ will broadcast opening addresses on National Radio in 30 minute periods following the 7.00pm news on the Monday, Tuesday, Wednesday and Thursday during the first week of the campaign. The closing addresses will be broadcast following the 7.00pm news for 60 minutes on Friday 11 October.

RNZ proposed that the maximum duration of any one opening address be 12 minutes. The broadcaster also recommended that short addresses should be run first, with longer addresses last. As indicated, some parties agreed with these proposals, others did not. RNZ accepts that the Commission has the final responsibility for determining durations and order of broadcasts.

Two parties proposed that the free time on television should be reduced, with the possibility of access to time in commercial schedules (possibly at a special advertising rate). The Commission raised this with TVNZ, which advised that it did not wish to depart from its statutory responsibility to make time available for opening and closing addresses, and that its offer was not subject to amendment. The Commission has no power to direct the broadcaster in this.

Section 77A(4) of the Act provides that the Commission shall determine the amounts to be paid on account of the broadcaster's production costs of every opening address and every closing address. A part of that cost is the pre-broadcast checking that must be done, and the associated administration. In conformity with previous practice, the Commission invited TVNZ and RNZ to indicate their costs. TVNZ has offered to bear such costs itself. RNZ sought a budget figure of \$3,000 (including GST) which, after discussion with the broadcaster, the Commission has accepted. It should be noted that this figure is deducted from the total appropriation available for allocation among eligible parties.

Having consulted both broadcasters before considering allocations and before making its provisional decisions (as required by s 75A(a) and (b) of the Act), the Commission has decided, pursuant to s 73 of the Act, to make the allocations of free time which follow for opening and closing addresses on TV1 and National Radio.

6. Provisional allocations made by the Commission of money and time offered by TVNZ and RNZ for opening and closing addresses

The following table sets out the provisional allocations by the Electoral Commission to eligible political parties of the money deemed to have been appropriated by Parliament, and the Commission's allocations of free time made available for opening and closing addresses by TVNZ and RNZ. All the decisions recorded in this and the following sections were reached on an unanimous basis.

Provisional allocations to political parties of money for all or part of the costs of election programmes and of free time for opening and closing addresses on Television One and National Radio

Party	Total allocation (\$, incl. GST)	Opening address (minutes)	Closing address (minutes)
<u>Category 1</u>			
New Zealand First	249,500	20	10

New Zealand Labour Party	431,540	25	12½
The Alliance	252,050	20	10
The New Zealand National Party	534,360	30	15

Category 2

Act New Zealand	93,000	5	2½
Christian Coalition	93,000	5	2½
United New Zealand Party	93,000	5	2½

Category 3

Aotearoa Legalise Cannabis Party	35,000	2	1
Natural Law Party	35,000	2	1
New Zealand Conservative Party	35,000	2	1
Progressive Green Party	35,000	2	1
The McGillicuddy Serious Party	35,000	2	1

Category 4

Accord Seniors and Youth	22,800	0	0
Advance New Zealand Party Inc.	22,800	0	0
Ethnic Minority Party of New Zealand	22,800	0	0
Green Society	22,800	0	0
Te Tawharau	22,800	0	0
The Republican Party Incorporated	22,800	0	0

Category 5

Mana Maori Movement	15,000	0	0
NZ Progressive Party	5,000	0	0

Broadcasters' production costs

RNZ	3,000		
-----	-------	--	--

Totals	2,081,250	120	60
---------------	------------------	------------	-----------

7. Order of opening and closing addresses

The Commission invited parties and TVNZ and RNZ to make submissions on the order of opening and closing addresses. Again there was a disparity of views. In the circumstances the Commission has decided it is appropriate to follow previous practice, which has been the order of debate in Parliament, followed by a ballot of parties not represented in the House. A modification has been necessary in order to fit the parties into the time periods made available. A ballot was held in the Commission's offices in the presence of a Justice of the Peace for the order of the opening and closing addresses broadcast on behalf of the Aotearoa Legalise

Cannabis Party, the Natural Law Party, the Progressive Green Party, and The McGillicuddy Serious Party.

The order of opening addresses will be:

Monday: The New Zealand National Party
Tuesday: New Zealand Labour Party, United New Zealand Party
Wednesday: New Zealand First, Christian Coalition, Act New Zealand
Thursday: The Alliance, New Zealand Conservative Party, Natural Law Party, Aotearoa Legalise Cannabis Party, Progressive Green Party, The McGillicuddy Serious Party.

The order of closing addresses will be:

The McGillicuddy Serious Party, Progressive Green Party, Aotearoa Legalise Cannabis Party, Natural Law Party, New Zealand Conservative Party, The Alliance, Act New Zealand, Christian Coalition, New Zealand First, United New Zealand Party, New Zealand Labour Party, The New Zealand National Party.

8. Offers made by other broadcasters

Paid opening and closing addresses

CFM (Palmerston North) has offered time for opening and closing addresses at a reduced rate. Raukawa FM (Tokoroa) has also offered time for opening and closing addresses at reduced rates.

The Commission is required to allocate these times to parties, and has discussed the allocations with each broadcaster.

The Commission has decided that proportions of time at reduced rates offered by these two broadcasters for opening and closing addresses should not exceed those prescribed in the table in section 6 of this decision. If either station offers total time different from that provided by TVNZ and RNZ, the amount of time for qualifying parties for opening and closing addresses should be in the same (rounded) proportions of the station's total time offered as those in the above table, as follows:

Act New Zealand	4%
Aotearoa Legalise Cannabis Party	1.4%
Christian Coalition	4%
Natural Law Party	1.4%
New Zealand Conservative Party	1.4%
New Zealand First	18%
New Zealand Labour Party	20%
Progressive Green Party	1.4%
The Alliance	18%
The McGillicuddy Serious Party	1.4%
The New Zealand National Party	25%
United New Zealand Party	4%

The orders of broadcasts of opening and closing addresses on these stations are to be those given in section 7 for opening and closing addresses broadcast by TVNZ and RNZ. The broadcasters should note that opening addresses cannot begin before writ day (which is 12 September), and closing addresses must be in the last week of the election period.

Other free time

Geyser Television (Rotorua), CFM (Palmerston North), FM Maniapoto (Te Kuiti) and Focal Point Communications (Auckland) have offered other free time for political programmes.

The Commission's decision is that the time offered by these broadcasters is to be allocated among all eligible parties listed below in the same proportions as their appropriations of money listed in the table in section 6 of this decision, as follows:

Accord Seniors and Youth	1%
Act New Zealand	4.5%
Advance New Zealand Party Inc.	1%
Aotearoa Legalise Cannabis Party	1.6%
Christian Coalition	4.5%
Ethnic Minority Party of New Zealand	1%
Green Society	1%
Mana Maori Movement	0.75%
Natural Law Party	1.6%
New Zealand Conservative Party	1.6%
New Zealand First	12%
New Zealand Labour Party	21%
NZ Progressive Party	0.25%
Progressive Green Party	1.6%
Te Tawharau	1%
The Alliance	12%
The McGillicuddy Serious Party	1.6%
The New Zealand National Party	26%
The Republican Party Incorporated	1%
United New Zealand Party	4.5%

The above percentages total 99.5% due to the rounding of individual allocations.

9. Conditions

The Commission is empowered by s 74A(2)(b) and s 74A(3) of the Act to include in its decisions conditions concerning the manner in which any political party or group of related

political parties is to expend its allocation. Political parties were invited to make submissions on conditions.

The predominant submission (almost to the exclusion of all others) was to the effect that parties should receive bulk allocations of money, not divided among radio, television and the costs of production of opening and closing addresses, as in the past. Parties submitted that they should have the discretion to use their allocations as they saw to best advantage. The Commission has accepted this view.

The following conditions are made by the Commission. They affect both political parties and broadcasters.

1. Political parties and groups of related political parties are to report to the Commission the values of election programme bookings as they are made.
2. Monies allocated to political parties are to be used only for the purpose of purchasing radio or television time for election programmes or meeting the cost of production of election programmes. They cannot be put to other uses, whether for advertising or not.
3. Political parties may not use their own funds to purchase television or radio advertising time, but may use their own funds for production costs.³
4. Time or money allocated to a political party or group of related political parties cannot be transferred to another party. Parties are also reminded that under s 74A(5) of the Act money cannot be allocated to an individual party if that party has received an allocation as part of a group of related political parties.

³ Parties should note that funds allocated by the Commission do not count as an election expense under paragraph (g) of the definition of “election expenses” in s 214B of the Electoral Act 1993. However, if a party spends its own funds on production costs, that expenditure is counted as an election expense. Electorate candidates may use their own funds for the purchase of broadcast advertising time, but the costs of those advertisements are counted among the candidates’ election expenses (s 213 of the Electoral Act).

5. Payments by a party for broadcasting of election programmes on a community access broadcasting station or other station which requires payment for such broadcasts are to be taken from the party's allocation.
6. Any koha in respect of an election programme must come out of a party's allocation. In each case the value must be reported to the Commission.

All figures for funds quoted by the Commission include GST. The Commission notes that broadcasters' ratecards often do not include GST.

Parties and broadcasters are reminded of the requirement in s 79B of the Act that -

No broadcaster shall offer or give to any political party, whether by way of a reply under section 71A of this Act [which refers to broadcasters' offers of time] or otherwise, terms for broadcasting time that are more favourable than those offered or given to any other political party that buys or expresses an interest in buying comparable time from that broadcaster.

A similar provision applies in respect of individual candidates.

10. Submission of Accounts

The Commission circulated to parties its proposed method of handling the payment of accounts submitted to it by parties for production and advertising costs. Comments were invited. There was general acceptance of the method of authorisation and control of expenditure by the parties which responded.

The system of authorising and submitting accounts is being issued separately.

Signed for and on behalf of the Electoral Commission

The Hon Justice Wallace

President

19 August 1996

Members: The Hon Justice Wallace (President)
 J Belgrave (Secretary for Justice)
 Chief Judge Durie (Chief Judge of the Maori Land Court)
 Dr P R Harris (Chief Executive)

Additional members for the purpose of Part VI of the Broadcasting Act 1989:

 D Beatson (representing the Government)
 L Falck JP (representing Opposition parties)
