



Broadcasting Amendment Act 2004

Public Act 2004 No 100
Date of assent 6 December 2004
Commencement see section 2

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The Parliament of New Zealand enacts as follows:**1 Title**

- (1) This Act is the Broadcasting Amendment Act 2004.
- (2) In this Act, the Broadcasting Act 1989 is called “the principal Act”.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Purpose

The purpose of this Act is to amend Part VI of the principal Act relating to the broadcasting of parliamentary election programmes.

4 Interpretation

- (1) Section 69(1) of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions:
 - “**by-election** means a by-election within the meaning of section 3(1) of the Electoral Act 1993
 - “**RNZ** means Radio New Zealand Limited
 - “**TVNZ** means Television New Zealand Limited”.
- (2) Section 69(1) of the principal Act is amended by repealing the definition of **election**, and substituting the following definition:
 - “**election**—
 - “(a) means a general election; and
 - “(b) includes, in sections 70, 79, 79A, 79C, and 80, a by-election”.

5 New section 69A inserted

The principal Act is amended by inserting, after section 69, the following section:

“69A Limited application of this Part to by-elections

- “(1) Sections 70A to 77A do not apply in respect of by-elections.
- “(2) If there is any inconsistency between subsection (1) and any other provision in this Part, subsection (1) prevails.”

6 Prohibition on paid election programmes

- (1) Section 70(2) of the principal Act is amended by repealing paragraph (a), and substituting the following paragraph:

“(a) an opening address or closing address that is broadcast—

 - “(i) for a political party or group of related political parties; and
 - “(ii) by TVNZ or RNZ during time allocated to that political party or group of related political parties under section 73(1); or”.
- (2) Section 70(2)(c) of the principal Act is amended by repealing subparagraph (ii), and substituting the following subparagraph:

“(ii) relating solely to 1 named constituency candidate at an election; and”.
- (3) Section 70 of the principal Act is amended by adding the following subsection:

“(4) For the purposes of subsection (2)(c)(ii), the term **constituency candidate** includes a person who has declared his or her intention of becoming a constituency candidate.”

7 New section 70B substituted

The principal Act is amended by repealing section 70B, and substituting the following section:

“70B Time by which notice must be given

Every notice given under section 70A(3) must be given not later than the date specified under section 70A(1).”

8 Contents of notice

- (1) Section 70C(d) of the principal Act is repealed.
- (2) Section 70C(f) of the principal Act is amended by repealing subparagraph (ii), and substituting the following subparagraph:

“(ii) that the party is intending to apply for registration on the Register of Political Parties in order to be registered at the date of dissolution or expiry of Parliament; and”.
- (3) Section 70C of the principal Act is amended by repealing paragraph (g), and substituting the following paragraph:

“(g) whether or not the political party intends to submit a list under section 127 of the Electoral Act 1993 for the general election to be held in that year.”

9 Persons deemed to be candidates

Section 70D of the principal Act is repealed.

10 New sections 71 to 73 substituted

The principal Act is amended by repealing sections 71 to 73, and substituting the following sections:

“71 Opening addresses and closing addresses to be broadcast free

“(1) TVNZ and RNZ must each provide time, free of charge, for the broadcasting, in an election period, of the opening addresses and closing addresses of political parties.

“(2) TVNZ must broadcast opening addresses and closing addresses on 1 free-to-air channel with national coverage.

“(3) RNZ must broadcast opening addresses and closing addresses on the service known as National Radio.

“(4) Opening addresses and closing addresses must be broadcast in accordance with section 77A, (which sets out when, and at what time, opening addresses and closing addresses are to be broadcast, and certain other provisions relating to the broadcasting of opening addresses and closing addresses).

“71A Electoral Commission to ascertain time available for opening addresses and closing addresses

“(1) During the term of each Parliament, or as soon as practicable after a Parliament is dissolved or expires, the Electoral Commission must require TVNZ and RNZ to supply a statement of the amount of time that each of them will provide, free of charge, for the broadcasting of the opening addresses and closing addresses of political parties at the next election.

“(2) The statement must be supplied to the Electoral Commission within such reasonable time as the Electoral Commission specifies. The Electoral Commission may at any time shorten or extend that deadline, whether before or after it has expired.

- “(3) A statement provided in accordance with this section—
- “(a) may include proposals for the allocation, to political parties, of the time that will be provided for the broadcasting of opening addresses and closing addresses; and
 - “(b) must state any conditions proposed in relation to the scheduling and duration of opening addresses and closing addresses within the time that the broadcaster will provide.
- “(4) In making proposals under subsection (3)(a), TVNZ or RNZ, as the case requires, must have regard to the provisions of section 75.

“72 **Electoral Commission to refer statements to political parties**

- “(1) As soon as practicable after receiving statements from TVNZ and RNZ in accordance with section 71A, the Electoral Commission must give a copy of those statements to—
- “(a) each political party that has given a notice to the Electoral Commission under section 70A(3); and
 - “(b) the Minister of Justice.
- “(2) The Electoral Commission must ensure, as far as practicable, that each of the intended recipients receives copies of the statements on the same day.

“73 **Allocation of time to political parties**

- “(1) In respect of each election period, the Electoral Commission must allocate to political parties, in such proportions as the Electoral Commission considers appropriate, the time that TVNZ and RNZ have made available for opening addresses and closing addresses in accordance with section 71A.
- “(2) In allocating time to political parties under subsection (1), the Electoral Commission—
- “(a) must consider whether any proposals made under section 71A(3)(a) for the allocation of broadcasting time can be adopted either in full or with modifications specified by the Electoral Commission; and
 - “(b) must modify proposals made under section 71A(3)(a) if, in the opinion of the Electoral Commission, the proposals are not consistent with the provisions of section 75.

- “(3) The Electoral Commission must not allocate any time to an individual political party under this section if that political party has received an allocation of time under this section as part of a group of related political parties.
- “(4) This section is subject to sections 75, 75A, and 76.”

11 Application and payment of allocation

- (1) Section 74B of the principal Act is amended by repealing subsection (2), and substituting the following subsections:

“(2) Every political party to which an amount of money is allocated under section 74A must ensure that the Electoral Commission receives, no later than 50 working days after the end of the month in which the election was held,—

- “(a) all accounts issued to the political party in respect of the expenditure by that political party of its allocation; and
- “(b) any information in relation to those accounts that the Electoral Commission requires.

“(2A) No account that is received by the Electoral Commission from a political party after the end of the period specified in subsection (2) may be paid by the Electoral Commission, either in part or in full, from the amount of money allocated to that party under section 74A.”

- (2) Section 74B of the principal Act is amended by adding the following subsection:

“(5) An amount of money that has been allocated to a political party under section 74A on or after the commencement of the Broadcasting Amendment Act 2004 and that is not paid out under subsection (4) must be repaid by the Electoral Commission to the Crown.”

12 Criteria in relation to allocation of time and money to political parties

- (1) Section 75 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

“(1) The Electoral Commission must not allocate any time to a political party under section 73, or make an allocation of money to a political party under section 74A, in respect of an election unless—

- “(a) that party was registered on the Register of Political Parties at the time of the dissolution of Parliament for

- the election or, as the case requires, at the time that Parliament expired; and
- “(b) that party has given to the Electoral Commission, in relation to that election, a notice that complies with the requirements of sections 70A(3), 70B, and 70C.”
- (2) Section 75(2) of the principal Act is amended by repealing paragraph (c), and substituting the following paragraph:
- “(c) the number of members of Parliament who were members of that political party immediately before the dissolution or expiration of Parliament; and”.
- (3) Section 75(2)(f) of the principal Act is amended by omitting the expression “subsection (1)(a)(i)”, and substituting the expression “subsection (1)”.
- (4) Section 75 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:
- “(3) Despite anything in subsection (1) or subsection (2), an allocation of time to a political party made under section 73 in respect of an election period, or a decision made under section 74A in respect of an election period, may be made before the beginning of the election period.”

13 New sections 75A and 76 substituted

The principal Act is amended by repealing sections 75A and 76, and substituting the following sections:

“75A Consultation with broadcasters

- “(1) The Electoral Commission must not allocate time under section 73 or make an allocation of money under section 74A, or make a determination under section 77A(5)(a), unless—
- “(a) the Electoral Commission has—
- “(i) consulted with those broadcasters that are likely to be affected by the allocation or determination; and
- “(ii) provided those broadcasters with the opportunity to give the Electoral Commission their comments on the proposed allocation or determination; and
- “(b) the Electoral Commission has considered those comments (if any).
- “(2) If the Electoral Commission adopts in full, under section 73, a proposal made by TVNZ or RNZ under section 71A(3)(a), the

Electoral Commission is not required by subsection (1) to consult with that broadcaster.

- “(3) If, after complying with subsection (1), the Electoral Commission later modifies an allocation or a determination, the Electoral Commission does not have to provide any broadcaster with a further opportunity to comment on the modified allocation or determination.
- “(4) The failure of any broadcaster to make use of the opportunity to consult with, or to give comments to, the Electoral Commission under subsection (1), or to comply with any other request of the Electoral Commission,—
- “(a) does not prevent the Commission making—
 - “(i) an allocation of time under section 73; or
 - “(ii) an allocation of money under section 74A; or
 - “(iii) a determination under section 77A(5)(a); and
 - “(b) does not affect the validity of any allocation or determination made under any of those sections.

“76 Consultation with political parties

- “(1) The Electoral Commission must comply with subsection (2)—
- “(a) before allocating time to a political party under section 73; and
 - “(b) before allocating any money under section 74A; and
 - “(c) before making any determination under section 77A(5)(a).
- “(2) Before doing any of the things referred to in subsection (1), the Electoral Commission must grant to every political party that has given a notice to the Electoral Commission under section 70A(3) the opportunity to meet with and be heard by the Electoral Commission.
- “(3) If, after complying with subsection (2), the Electoral Commission later modifies an allocation or a determination, the Electoral Commission does not have to provide any political party with any further opportunity to meet with and be heard by the Electoral Commission.
- “(4) The failure of any political party to make use of the opportunity to meet with and be heard by the Electoral Commission under subsection (2), or to comply with any other request of the Electoral Commission,—
- “(a) does not prevent the Commission making—

- “(i) an allocation of time under section 73; or
 - “(ii) an allocation of money under section 74A; or
 - “(iii) a determination under section 77A(5)(a); and
- “(b) does not affect the validity of any allocation or determination made under any of those sections.”

14 Power of Electoral Commission to vary allocations

- (1) Section 76A(1) of the principal Act is amended by inserting, after paragraph (d), the following paragraph:

“(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”.

- (2) Section 76A(1)(f) of the principal Act is repealed.

- (3) Section 76A(4) of the principal Act is amended by repealing paragraphs (b) and (c), and substituting the following paragraph:

“(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.”

15 New sections 76C to 77A substituted

The principal Act is amended by repealing sections 76C to 77A, and substituting the following sections:

“76C Procedure in relation to early elections

- “(1) This section applies if, at the time Parliament is dissolved or expires, either—

“(a) the Electoral Commission has not specified a date under section 70A(1) in respect of the election period that will apply in relation to the next general election; or

“(b) the Electoral Commission has specified such a date, but that date has not yet passed.

- “(2) If this section applies,—

“(a) this Part applies subject to the modifications specified in section 76D; and

“(b) any notice given by the Electoral Commission under section 70A(1) must be disregarded.

“76D Modifications to application of this Part if section 76C applies

- “(1) At the earliest available opportunity, the Electoral Commission must specify, by notice in the *Gazette*, a date by which any political party that considers it will qualify for an allocation of time under section 73 or of money under section 74A, in respect of the election period that will apply in relation to the general election, must notify the Electoral Commission that it considers itself to be so qualified.
- “(2) Each political party that considers it will qualify for an allocation of time under section 73 or of money under section 74A must notify the Electoral Commission, by any means that the party considers appropriate, that it considers itself to be so qualified.
- “(3) For the purposes of subsection (2) and despite section 75(1), a party is eligible for an allocation of time under section 73 or of money under section 74A if—
- “(a) that party was registered on the Register of Political Parties at the time of the dissolution of Parliament for the election or, as the case requires, at the time that Parliament expired; and
 - “(b) no later than the date specified under subsection (1), that party gives to the Electoral Commission, in relation to the election, a notice that complies with the requirements of subsection (4).
- “(4) The requirements referred to in subsection (3)(b) are—
- “(a) the notice must comply with the requirements of subsection (2):
 - “(b) the notice must comply with the requirements of paragraphs (a), (b), (c), (e), and (g) of section 70C.
- “(5) The Electoral Commission may set, for the consultation required under section 75A(1)(a), any time period that is reasonable in the circumstances.
- “(6) The Electoral Commission may require any political party that wishes to make use of the opportunity to meet with and be heard by the Electoral Commission under section 76(2) to make use of that opportunity within any reasonable period of time that the Electoral Commission specifies.

“77 Broadcasting of opening addresses and closing addresses

- “(1) TVNZ and RNZ must act in accordance with the allocations of time under section 73 applying to them.
- “(2) Subsection (3) applies if there is a dispute between any of the following concerning the time at which any election programme is to be broadcast free of charge:
 - “(a) any broadcaster and any political party; or
 - “(b) any broadcaster and any other broadcaster; or
 - “(c) any political party and any other political party.
- “(3) If there is a dispute,—
 - “(a) the Electoral Commission is to decide the matter in dispute; and
 - “(b) the Electoral Commission’s decision is final.

“77A Opening addresses and closing addresses

- “(1) Opening addresses and closing addresses for which time has been allocated to political parties under section 73 must be broadcast between 7 pm and 9 pm.
- “(2) All closing addresses must be broadcast on the same night in the last week of the election period.
- “(3) An advertising programme must not be broadcast—
 - “(a) during an opening address:
 - “(b) during a closing address:
 - “(c) between different closing addresses.
- “(4) An election programme that is not an opening address or a closing address must not be broadcast—
 - “(a) during an opening address:
 - “(b) between different opening addresses that are broadcast on the same night:
 - “(c) during a closing address:
 - “(d) between different closing addresses.
- “(5) The Electoral Commission must—
 - “(a) determine each amount to be paid to TVNZ or RNZ on account of the production costs of every opening address and every closing address broadcast under section 71; and
 - “(b) pay that amount to the person who issued the account for the production costs of the opening address or closing address.

“(6) Each amount paid under subsection (5)(b) must be paid out of public money appropriated by Parliament (or deemed by section 74(2) to have been appropriated by Parliament) for the purpose specified in section 74(1).”

16 Obligation to give identical terms to each political party or candidate

Section 79B(1) of the principal Act is amended by omitting the words “, whether by way of a reply under section 71A of this Act or otherwise,”.

17 New sections 79C and 79D substituted

The principal Act is amended by repealing section 79C, and substituting the following sections:

“79C Returns in relation to broadcasting time

“(1) After each election, every broadcaster must give the Electoral Commission a complete and accurate written statement of the election programmes broadcast by that broadcaster during the 3-month period immediately preceding polling day for the election.

“(2) The statement must be given to the Electoral Commission no later than 10 working days after the end of the month in which the election was held.

“(3) The statement must set out the following information in relation to each election programme:

“(a) the candidate or political party for whom the election programme was broadcast:

“(b) the length of the election programme and the time at which it was broadcast:

“(c) the date on which the election programme was broadcast:

“(d) the amount paid for the broadcasting of the election programme, and the rate or rates by which that amount was fixed.

“(4) The statement must be signed by or on behalf of the broadcaster.

“79D Returns to be available for public inspection

The Electoral Commission must, not later than 3 working days after it receives a statement under section 79C, make the

statement available for public inspection, without payment, at any time between 9 am and 4 pm, on any day on which the office of the Electoral Commission is open.”

18 Offences

Section 80(a) of the principal Act is amended by omitting the words “or section 77(2)”.

19 New section 80A inserted

The principal Act is amended by inserting, after section 80, the following section:

“80A Duty to report suspected offences

Where the Electoral Commission believes that any person has committed an offence against section 80, the Electoral Commission must report to the police the facts upon which that belief is based.”

Legislative history

30 November 2004	Divided from Electoral Matters Bill (Bill 157–2) as Bill 157–3B
1 December 2004	Third reading
6 December 2004	Royal assent

This Act is administered in the Ministry of Economic Development.
