

## 2017 BROADCASTING ALLOCATION

The following table sets out the allocation of money to eligible political parties for the broadcasting of election programmes and election advertising for the 2017 general election.

Political Party	Allocation (inclusive of GST)
The New Zealand National Party	\$1,285,825
New Zealand Labour Party	\$1,036,956
The Greens, The Green Party of Aotearoa/New Zealand	\$497,739
New Zealand First Party	\$394,043
Māori Party	\$124,435
ACT New Zealand	\$93,326
United Future New Zealand	\$93,326
Conservative Party of New Zealand	\$51,848
Internet Party	\$51,848
MANA Movement	\$51,848
Ban1080	\$41,478
Aotearoa Legalise Cannabis Party	\$41,478
New Zealand Democratic Party for Social Credit	\$41,478
The Opportunities Party (TOP)	\$41,478
Universal Party*	\$37,330
GODsownNZ*	\$37,330
1Law4All*	\$37,330
Coalition for Common Good*	\$37,330
New Zealand Outdoors Party*	\$37,330
Alliance Party*	\$37,330
The Expatriate Party of New Zealand*	\$37,330
New Zealand Independent Parliament*	\$37,330
<b>Total allocated</b>	<b>\$4,145,746</b>
<b>Total available</b>	<b>\$ 4,145,750 incl GST</b>

\* These parties are currently unregistered.

## Introduction

1. The Electoral Commission ('the Commission') is required under Part 6 of the Broadcasting Act 1989 ('the Act')<sup>1</sup> to allocate money appropriated by Parliament to enable all registered political parties to broadcast election programmes and election advertising during the election period for a general election ('the broadcasting allocation').
2. Following the enactment of the Broadcasting (Election Programmes and Election Advertising) Amendment Act 2017, the Commission is no longer required to allocate free time for party opening and closing addresses. Eligible parties are now able to use their broadcasting allocation on the internet.
3. The Commission commenced the allocation process for the 2017 general election in February 2017<sup>2</sup> with a view to issuing the allocation decision in May. On 1 February, the Prime Minister announced that the 2017 general election will be held on 23 September.
4. This written decision records the reasons for the Commission's broadcasting allocation decision.

## Amount of public money appropriated

5. On 21 February, in accordance with section 74, the Associate Minister of Justice notified the Commission that the amount of money appropriated by Parliament to enable political parties to fund their broadcasting of election programmes and election advertising for the 2017 general election is \$3,605,000 plus GST (\$4,145,750 incl GST). This is a \$750,000 increase on the amount allocated in 2005, 2008, 2011 and 2014. This increase addresses the effects of inflation, a matter that the Commission and parties had previously raised, and the loss of free time for opening and closing addresses.

## Eligibility

6. Section 78(1) specifies that a party is only eligible to receive an allocation if the party:
  - (a) has provided a notice by the date required by the Commission that the party considers it will be qualified for an allocation; and
  - (b) was registered on the Register of Political Parties at the time of the dissolution or expiry of Parliament.
7. In the year in which Parliament is due to expire, the Commission advertises in the *Gazette* the date by which parties must give notice that they consider themselves eligible for an allocation of broadcasting money. For the 2017 allocation, the *Gazette* notice was published on 2 February and the deadline for parties to give notice was 3 March. Twenty-two parties gave the required notice.

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<sup>1</sup> Unless otherwise stated, section references in this decision are to sections of the Broadcasting Act 1989.

<sup>2</sup> Unless otherwise stated, all dates in this decision are 2017 dates.

8. Any party can give the required notice on the basis that they believe they will be qualified for an allocation, but parties have to be registered by the date of dissolution (22 August) to continue to qualify for an allocation, and eight of the parties that have sought an allocation are not registered. To continue to qualify those parties will have to be registered by that date and submit a party list by noon on 28 August. Parties which do not fulfil both those requirements are no longer eligible for an allocation, and the amount allocated to them in this decision will be available for reallocation. Experience suggests some reallocation is likely.
9. Although other parties could be registered before the 2017 general election, because they did not give notice to the Commission by 3 March, they cannot be considered for an allocation in accordance with section 78(1)(a).

#### **How recipients can use the allocation**

10. Recipients may use the allocation to buy advertising time on television and radio, place advertising on the internet and pay for the production costs of television, radio and internet advertising. The Act prohibits parties from using their own money to buy time to broadcast television and radio advertisements. However, production costs for television and radio advertising can be paid for by using the allocation or a party's own funds. Television and radio advertisements can only be broadcast from writ day (23 August).
11. Parties may use the allocation to produce election advertisements and to place advertising on the internet before and after writ day. However, parties must use their own money to place election advertisements on the internet that only appear before writ day. Parties may use their allocation to produce internet advertisements, but parties must publish these advertisements both before and after writ day (23 August).

#### **Consultation**

12. Prior to making the allocation decision, the Commission consulted with the parties on how the Commission should apply the criteria in section 78(2).
13. Twenty parties made written submissions. Thirteen parties requested the opportunity to make oral submissions in accordance with section 77. Hearings were held at the Commission on 6 and 7 April with each party given the opportunity to speak to their written submission with time for questions, discussion and points of clarification. The Commission has considered all parties' written and oral submissions in making this decision.

#### **Allocation criteria**

14. Section 78(2) sets out the criteria to which the Commission must have regard when determining the allocation.
15. The criteria are:
  - (a) the number of persons who voted at the preceding general election for a party and its candidates; and

- (b) the number of persons who voted at any by-election held since the preceding general election for any candidate for the party; and
  - (c) the number of members of Parliament who were members of that party immediately before the dissolution or expiration of Parliament; and
  - (d) any relationships that exist between a party and any other party; and
  - (e) any other indications of public support for a party, such as the results of public opinion polls and the number of persons who are members of the party; and
  - (f) the need to provide a fair opportunity for each party to convey its policies to the public by the broadcasting of election programmes on television.<sup>3</sup>
16. As stated in previous allocation decisions, the allocation of money involves a difficult balancing exercise, requiring the Commission to take into account each and all of the criteria ranging from criteria for which there is quantifiable evidence, for example numbers of MPs, polling, and by-election/general election results, alongside the wider discretion to consider “fairness”.
17. In considering the requirement for fairness and in exercising its discretion, the Commission has taken into account the statutory context in which there is a prohibition on parties using their own money to buy broadcast advertising time. The Commission has given particular emphasis to the New Zealand Bill of Rights Act 1990 and freedom of expression. The Commission has also considered the *Alliance Party v The Electoral Commission and Others [CA639/2008]* decision where the Court of Appeal expressed in an obiter statement that the Act required every party to be given an allocation of time. Although time is not being allocated any longer, the criteria remain the same. Although the Court of Appeal’s observation related only to time, in previous allocations the Commission has treated it as also applying to allocations of money. Section 78(2)(f) requires the Commission to provide parties a fair opportunity to convey their policies, and requires that each party receives an allocation of money.

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

18. The Commission has taken into account the following percentages of total votes cast for eligible parties and candidates of that party at the 2014 general election as recorded in the official election results published by the Commission. The Commission notes that not all eligible parties contested the 2014 general election.

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<sup>3</sup> Although parties may use their allocation on television, radio and now the internet, the fairness criterion still only refers to television.

2014 General Election Results for Eligible Parties		
Political Party	% total party votes	% total candidate votes
ACT Party	0.69%	1.18%
Alliance Party	N/A	See note <sup>4</sup>
Ban1080	0.21%	0.19%
Conservative	3.97%	3.45%
Democrats for Social Credit	0.07%	0.20%
Green Party	10.70%	7.06%
Internet Party	See note <sup>5</sup>	0.21%
Labour Party	25.13%	34.13%
MANA	See note <sup>6</sup>	1.38%
Māori Party	1.32%	1.79%
National Party	47.04%	46.08%
NZ First	8.66%	3.13%
The Cannabis Party	0.46%	0.21%
The Expatriate Party of New Zealand	N/A	See note <sup>6</sup>
United Future	0.22%	0.63%

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

19. Since the 2014 general election, by-elections have been held in the Northland, Mt Roskill and Mt Albert electorates. The Commission has taken into account the following percentages of candidate votes by party that contested the by-elections while bearing in mind that by-elections are less indicative of a party's nationwide support. They are a candidate contest within a single electorate, there is no party vote, not all parties contest them, turnout can be low and electoral accommodations can feature.

<sup>4</sup> Alliance stood one electorate candidate that got 59 votes.

<sup>5</sup> The Internet Party and MANA Movement contested the party vote together as their umbrella party, InternetMANA, which achieved 1.42% of the party vote in the 2014 general election. The Commission has taken this into consideration when determining the allocation.

<sup>6</sup> The Expatriate Party of New Zealand stood one electorate candidate and got 70 votes.

### Candidate votes – Northland by-election, 28 March 2016

Northland by-election		
Candidate votes by party	Votes	% of Total
ACT Party	68	0.23
Labour Party	1380	4.67
MANA	60	0.20
National Party	11,648	39.42
NZ First	16,089	54.45
The Cannabis Party	94	0.32

### Candidate votes – Mt Roskill by-election, 3 December 2016

Mt Roskill by-election		
Candidate votes by party	Votes	% of Total
Labour Party	11623	66.70
National Party	4771	27.38
Democrats for Social Credit	126	0.72
The Cannabis Party	84	0.48

### Candidate votes – Mt Albert by-election, 25 February 2017

Mt Albert by-election		
Candidate votes by party	Votes	% of Total
Green Party	1564	11.53
Labour Party	10495	77.40
The Cannabis Party	97	0.72
The Opportunities Party (TOP)	623	4.59

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

20. The Commission has taken into account the following percentages representing the current number of members of Parliament ('MPs') for each eligible party who have MPs at the time of issuing the decision:

### Number of Members of Parliament<sup>7</sup>

Eligible Parties	# of MPs	# of MPs as %
ACT Party	1	0.84%
Green Party	14	11.76%
Labour Party	31	26.05%
Māori Party	2	1.68%
National Party	58	48.74%
NZ First	12	10.08%
United Future	1	0.84%

#### ***Any relationships that exist between a party and any other party***

21. Under section 78(2)(d) of the Act, the Commission is required to have regard to any relationships between political parties.
22. In its eligibility notice to the Commission, the Māori Party notified the Commission that it has a confidence and supply arrangement with the National Party in return for support of policy priorities.
23. The Māori Party also notified the Commission that it has an agreement (Kawenata) with MANA Movement whereby the Māori Party has agreed not to enter a candidate in the Te Tai Tokerau Māori electorate, and MANA Movement will not enter a candidate in any other Māori electorates, but that both will compete for the nationwide party vote. MANA Movement also noted the agreement and confirmed in its oral submission that both parties will be actively contesting the party vote.
24. The Commission has taken these arrangements into account, particularly noting that the Kawenata expires on the evening before election day.
25. In their eligibility notices to the Commission, the Labour Party and the Green Party both notified the Commission of a Memorandum of Understanding (MOU) between them. A number of other parties made submissions on the MOU arguing that it represents a significant relationship that should affect allocations to the parties involved.
26. The MOU was described by the Labour Party as “a low-level agreement to cooperate on issues of mutual concern, predominantly in Parliament”. The Labour Party and the Green Party noted in their written and oral submissions that the parties would not be formally campaigning together in the lead up to the election.

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<sup>7</sup> The number of MPs has been updated to take into account the recent resignations of the MPs for Helensville and New Lynn and notices of motion passed by Parliament under section 131(b) of the Electoral Act 1993 that the vacancies not be filled prior to the election.

27. The parties advised the Commission they had agreed that the MOU would end on election day. The MOU is only different from other electoral arrangements in that it identifies how Labour and the Green Party could work together if they formed a government. Most electoral arrangements, such as confidence and supply, Kawenata and other electoral arrangements entered into by political parties, do not.
28. In the run up to the general election, the Green Party and the Labour Party may enter into electoral accommodations designed to increase the chance of their election. If that eventuates, it is not something required under the MOU and will not, in substance, be significantly different from the Māori and MANA Kawenata and other accommodations that parties have made and may possibly repeat. Further, both the Labour Party and the Green Party made clear to the Commission that, in the contest for the all-important party vote, the MOU will not affect that contest and each will campaign for that vote as vigorously as in earlier elections.
29. For these reasons, although the Commission has, as required, taken the MOU into account, it does not see it as a factor justifying an increase, or significantly decreasing, the allocation to either party.

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

30. The Commission has taken account of the results of opinion polls conducted by Roy Morgan Research, One News Colmar Brunton and Newshub Reid Research since the 2014 general election. The Commission has also taken into account the polls and analysis of the polls submitted by the eligible parties. The Commission regards all polls as indicators of support for the political parties.

**Averages of Opinion Poll Results for Each Party<sup>8</sup>**

Opinion Poll (date range of polls)	National %	Labour %	Greens %	NZ First %	Māori %	ACT %	United Future %	Conservative %	MANA %	Internet Party %	The Opportunities Party %	Democrats %
<b>Roy Morgan (Oct 2014 – Apr 2017)</b>	47.0	27.6	13.1	7.6	1.5	0.8	0.1	1.0	0.2	0.1	n/a	n/a
<b>Reid Research (Jan 2015 – Mar 2017)</b>	47.1	31.3	10.7	7.8	1.0	0.5	0.1	0.9	0.1	n/a	0.8	n/a
<b>Colmar Brunton (July 2015 – March 2017)</b>	47.6	29.8	11.3	9.1	1.3	0.4	0.0	0.3	0.2	0.1	0.4	0.0

<sup>8</sup> Only the parties that had results in the opinion polls are listed.



31. The Commission sought information from eligible parties on membership. This has been provided, some on a confidential basis and has been taken into account.
32. While the Commission acknowledges that there is increasing use of social media by parties to communicate, it does not consider that the data provided via social media in the form of “likes” and “follows” can be used as reliable indicators of public support in the way polls, party membership and other criteria can. Despite that, the Commission has received and taken into account the number of likes on Facebook and followers on Twitter. The Commission however has given less weight to this data because people can “like” or “follow” for one or many reasons and are not required to make a comparative choice when doing so.
33. Parties submitted on a range of other indicators of public support including the public profile of its leader, media coverage, and indicators of support of policy such as attendance at public meetings. Because of difficulties of quantification and comparison, the Commission has not placed significant weight on these other indicators.

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

34. The Commission must provide a ‘fair opportunity’ to each party to convey their policies to the public, acknowledging that the allocation effectively acts as a cap on the broadcasting time that a party can access because under the Act a party is prevented from using its own funds to purchase broadcasting time.
35. The overall size of the fund available for allocation is also an important factor. The size of the monetary allocation has increased from \$3,283,250 to \$4,145,750 (both including GST). However, free time for opening and closing addresses is no longer available. All parties, especially the smaller parties, found it valuable to have the opportunity of making their policies known nationwide to the voting public through the broadcasting of their opening and closing addresses and the Commission has taken account of the fact that this opportunity is no longer available.
36. In previous allocation decisions the amounts allocated to the smaller parties may, arguably, have been larger than a strict reflection of what their election results and other indications of public support under the criteria s78(2)(a)-(e) might have suggested. Nonetheless, the Commission must ensure that all parties, including the smaller parties, are afforded a meaningful opportunity to publicise their policies to all voters in accordance with the fairness criteria and freedom of expression.
37. Parties have continued to highlight the importance of reaching electors in te reo Māori and other languages and in geographically large electorates. The Commission regards those matters as relevant to the allocation in considering how to ensure that all parties have a fair opportunity to communicate to all voters.
38. All of the parties that have given notice are eligible for an allocation of money for broadcasting election programmes in relation to the 2017 general election. The number of parties that gave

notice seeking an allocation has increased from 17 in 2014 to 22 in 2017. This means the funds available have to be allocated across more parties.

### **Categories**

39. In the exercise of its discretion, the Commission considers it appropriate to continue the approach taken in previous allocation decisions of classifying parties into categories for the determination of the allocation of broadcasting money.

#### *Category 1*

40. In the Commission's view, the application of the criteria result in the National Party being placed in its own category.

41. In the 2014 general election, the National Party obtained around 47.04% of the party vote and 46.08% of the candidate vote. The National Party currently has 58 MPs. Across all three opinion polls considered by the Commission, between October 2014 and March 2017, the National Party has polled on average around 47.0 to 47.8%.

#### *Category 2*

42. The Labour Party remains well ahead of any party other than the National Party under the criteria with, for example, 25.13% of the party vote and 34.13% of the candidate vote, 31 MPs, and average polling of 27.5% to 31.4% and is placed in category 2.

#### *Category 3*

43. The Green Party is ahead of the other remaining parties, particularly with party and candidate votes, number of MPs, and polling, and is placed in category 3.

#### *Category 4*

44. New Zealand First is placed in category 4. This is due to its party and candidate votes at the 2014 general election, its performance in the Northland by-election, its 12 MPs and polling data which has been trending higher than the other remaining eligible parliamentary parties.

#### *Category 5*

45. The Māori Party is placed in category 5 because of its two electorate MPs and its candidate and party votes in the 2014 general election.

#### *Category 6*

46. The ACT Party and United Future are placed in category 6. This is based on the statutory criteria including candidate votes and each party having an MP.

### Category 7

47. While the Conservative party, MANA and the Internet Party do not have any current MPs, they gained more party and/or candidate votes in the 2014 general election than the other remaining eligible registered parties.<sup>9</sup> Although the Conservative Party performed well in the 2014 general election and the opinion polls shortly afterwards, its support in the opinion polls has decreased significantly. Accordingly, the Commission sees no basis to now differentiate it from the other parties in category 7. The Commission has determined that these three parties be placed in category 7.

### Categories 8 and 9

48. The remaining parties have been placed in categories 8 and 9, differentiated by whether or not they are registered. None of the parties in these categories have any current MPs. However, they have been allocated amounts taking into account the statutory criteria, including party and candidate votes in the 2014 general election, opinion poll data, and membership support.

### Allocation of money

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

Category	Political Party	Allocation (\$)	Allocation (%)
<b>Category 1</b>	National Party	\$1,285,825	31%
<b>Category 2</b>	Labour Party	\$1,036,956	25%
<b>Category 3</b>	Green Party	\$497,739	12%
<b>Category 4</b>	NZ First	\$394,043	9.5%
<b>Category 5</b>	Māori Party	\$124,435	3%
<b>Category 6</b>	The ACT Party	\$93,326 each	2.25%
<b>(2 parties)</b>	United Future		each
<b>Category 7</b>	Conservative	\$51,848 each	1.25% each
<b>(3 parties)</b>	Internet Party		
	MANA Movement		

<sup>9</sup> The Internet Party and MANA Movement contested the party vote together as an umbrella party, Internet MANA, which achieved 1.42% of the party vote in the 2014 general election.

Category	Political Party	Allocation (\$)	Allocation (%)
<b>Category 8</b> <b>(4 parties)</b>	Ban1080	\$41,478 each	1% each
	The Cannabis Party		
	Democrats for Social Credit		
	The Opportunities Party (TOP)		
<b>Category 9</b> <b>(8 parties)</b>	Universal Party	\$37,330 each	0.9% each
	GOdsownNZ		
	1Law4All		
	Coalition for Common Good		
	New Zealand Outdoors Party		
	Alliance Party		
	The Expatriate Party of New Zealand		
	New Zealand Independent Parliament		

#### **Costs of broadcasting election programmes or internet advertising**

50. Parties should note that money allocated by the Commission does not count as party election expenses under section 206(1)(c)(i) and (ii) of the Electoral Act. However, if a party spends its own funds on production costs and/or internet advertising, that expenditure is counted as an election expense.
51. Parties will be required to file an audited return of broadcasting allocation expenses incurred by the party by 21 February 2018 in accordance with section 206IA of the Electoral Act 1993.
52. Parties may use the allocation to promote a constituency candidate, but the costs will count towards the candidate's election expenses if published during the regulated period and will be a donation from the party to the candidate.
53. The Commission notes that the Expatriate Party of New Zealand is based overseas. Any party may use its allocation outside New Zealand but the allocation will be in New Zealand dollars.
54. Parties are reminded that the amounts allocated by the Commission include GST.
55. The Commission pays suppliers' invoices that have been certified by an authorised party official as payable from the party's broadcasting allocation. Payments are made to suppliers and no money is paid directly to parties in accordance with the requirements of the Act.
56. With regard to purchasing internet advertising, however, if parties make their own arrangements direct with a service provider like Facebook (rather than through a broker), the Commission will provide payment direct to the party as long as the party can provide

confirmation of the booking and payment (for example, a copy of the screenshot of the transaction) and the confirmation of payment (for example, a copy or screenshot of credit card statement). Each document will need to be initialled by the authorised signatory.

### **Conditions**

57. The Commission is empowered by section 79(1)(b) to include in its decision conditions concerning the manner in which any political party is to spend its allocation.
58. The Commission makes the following condition - only registered parties may enter into contractual commitments to use money that has been allocated to them in this decision.

### **Other matters**

#### *Variation to the allocation*

59. Under section 80 in specified circumstances the Commission can vary the allocations made without further consultation. Such circumstances include any of:
  - a party not accepting an allocation;
  - a party ceasing to be registered. Parties currently registered must retain their registration to continue to be eligible. To be eligible for an allocation, all parties must be registered by 22 August;
  - a party failing to submit a list of candidates by 28 August;
  - there has been a significant change in the relationship between a party that has received an allocation and any other party; and
  - a party failing to comply with the conditions imposed in this decision.

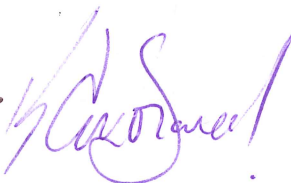
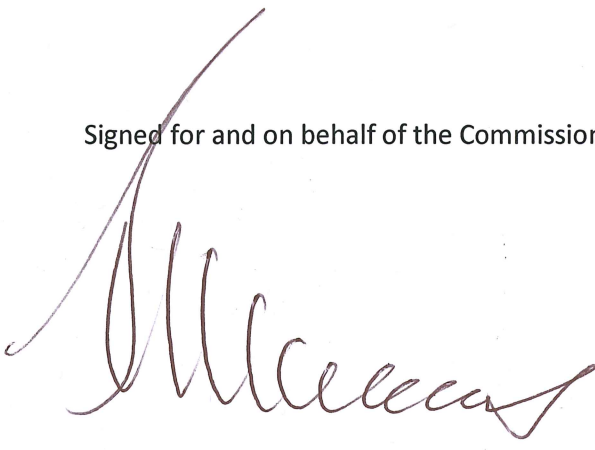
#### *Bars to variation of allocation*

60. Section 80(5) prohibits the Commission from varying an allocation if a party has wholly or partly spent its allocation, unless the registration of the party is cancelled or the party secretary has failed to submit a list.

### **Further information**

61. Further information regarding the use of the allocation is available in the *Party Secretary Handbook – General Election 2017* which is available at [www.elections.org.nz](http://www.elections.org.nz) and further details about the process for payment of invoices will be provided to eligible parties.

Signed for and on behalf of the Commission:



Hon Sir Hugh Williams QC  
Chair

Kristy McDonald QC  
Deputy Chair



Alicia Wright  
Chief Electoral Officer