



Inquiry into the 2011 general election

Report of the Justice and Electoral
Committee

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Summary of recommendations

Summary of recommendations

The Justice and Electoral Committee recommend to the Government that it consider the following:

Electronic enrolment and voting systems

Making provision, as fiscal conditions permit, for online enrolment using Electronic Identity Verification, and amending the Electoral Act 1993 accordingly (p. 14).

Providing funding, as fiscal conditions permit, to continue developing the Long Term Strategy for Voting Technology (p. 32).

Advance voting

Asking the Electoral Commission to report on the implications of the increasing trend towards advance voting (p. 27).

Amending Part 2 of the Electoral Regulations 1996 to allow scrutineers to be appointed to advance voting places (p. 27).

Amending sections 174C(5)(a) and 174F(4) of the Electoral Act 1993 to change the starting time of the early count of advance parliamentary and referendum votes from 3 pm to 2 pm (p. 34).

Accessibility

Exploring the suggestions contained in the submission of the Human Rights Commission for improving the voting rights of people with disabilities, especially regarding improved data collection (p. 24).

Requiring a minimum distance between voting booths and providing an alternative area with a mock voting paper for people who need to have the ballot paper explained in their primary language. This would mean that a voter could then go unaccompanied into the voting booth (p. 35).

Prioritising the development of alternative voting methods for voters disadvantaged by paper-based ballots (p. 32).

Education

Requesting the Electoral Commission to liaise with the Ministry of Education on the feasibility, including resourcing implications, of incorporating ongoing comprehensive civics education into the New Zealand school curriculum (p. 21).

Supporting the Electoral Commission to expand the public civics education programmes, resources permitting (p. 22).

Ensuring that future public information campaigns about electoral matters provide sufficient detail and are accessible to all voters (p. 47).

Overseas voting

Amending the Electoral Regulations 1996 to allow overseas voters to scan and upload their ballot papers to a secure elections server, and supporting the Electoral Commission in developing such a system (p. 31).

Seeking better ways of ensuring the integrity of votes cast overseas (p. 33).

Disruption to electoral events

Commissioning a review of legislation to determine whether it provides adequately for the disruption to electoral events by a significant emergency, and the wider constitutional and political issues of such an event, and amending the legislation accordingly (p. 35).

Referenda

Examining the merits of a standalone postal vote versus a referendum in conjunction with the general election when making decisions about future public referenda (p. 50).

Electioneering on election day

Prohibiting electioneering activity on election day, including the wearing of rosettes, lapel badges, ribbons, streamers, and party apparel, other than the wearing of a party rosette by a scrutineer inside a polling station (p. 37).

Commissioning a review of existing regulations applying to social media on election day, to determine whether they are workable (p. 37).

Reducing the fine for not removing an election advertising billboard by election day (p. 38).

Election advertising/programme

Establishing in time for the 2014 general election a mechanism for clarifying what work of a member of Parliament constitutes an election advertisement, ahead of the regulated period (p. 38).

Aligning the statutory tests of “election programme” in section 69 of the Broadcasting Act 1989 and “election advertisement” in section 3A of the Electoral Act 1993 (p. 39).

Aligning the liability for breaching Part 6 of the Broadcasting Act 1989 so that provisions would apply to the broadcaster and any person who arranged for the broadcast of an election programme in contravention of the Act, whether within or outside an election period (p. 40).

Filing return of election expenses

Retaining the existing timeframe for candidates and third party promoters filing election expenses within 70 working days of election day, but increasing the timeframe for filing party returns to within 90 working days of election day (p. 41).

Amending the Electoral Act 1993 to ensure that there is a significant penalty to act as a deterrent to failing to file a return in a deliberate attempt to defeat the operation of electoral law (p. 42).

Amending the Electoral Act 1993 to make loans to parties and to candidates subject to the same disclosure rules as donations (p. 43).

Technical recommendations

Continuing to regularly update and cull the dormant roll as appropriate (p. 17).

Amending Part 6 of the Electoral Act 1993 to authorise the Electoral Commission to use an EasyVote card as the record an ordinary vote has been issued and as evidence that a special voter is eligible to vote, and to compile manual or electronic records of who has cast an ordinary or special vote using the EasyVote card or other verification methods (p. 26).

Amending the Electoral Regulations 1996 to extend the period in which postal votes can be received, in line with the Electoral Commission's recommendations (p. 27).

Amending the Electoral Act 1993 to make it clear that the Electoral Commission has the power to recalculate and amend the allocation of list seats for an election as the result of a successful election petition regarding an electorate seat (p. 34).

Amending the Electoral Act 1993 to allow bulk nomination and party list deposits to be submitted by direct bank deposit, and bulk nomination and party list documents to be lodged by email. These changes could be made as technical amendments in a statutes amendment bill (p. 44).

Allowing only registered parties to maintain registered logos (p. 45).

Amending the Electoral Act 1993 and Citizens Initiated Referenda Act 1993 so the counter-signature to the writ would no longer be required (p. 45).

Examining the current electoral enforcement provisions to determine whether they are adequate (p. 46).

1 Introduction

On 8 March 2012, we resolved to conduct an inquiry into the 2011 general election. By convention, following a general election a select committee inquiry is conducted into the law and administration of the election. This ensures that a multi-party approach is taken for any subsequent electoral review or reform.

Terms of reference

The terms of reference were to examine the administration of parliamentary elections in light of the 2011 general election, with particular reference to

- voter turnout, the maintenance of accurate enrolment data, and the dormant roll
- the conduct of, and education campaign for, the MMP referendum
- the conduct and performance of the electoral institutions, including the Electoral Enrolment Centre and the new Electoral Commission (merging the functions of the Electoral Commission and Chief Electoral Office), compared with previous elections and in ensuring the integrity of the voting
- electoral matters arising from the Canterbury earthquakes
- the statutory and regulatory frameworks governing elections.

Themes in submissions

We appointed the Electoral Commission, Enrolment Services, and the Ministry of Justice as advisers to this inquiry. The Electoral Commission and Enrolment Services performed dual roles, also appearing as witnesses. We received 49 written submissions from various individuals and organisations, and heard oral submissions from 16 of them.

Several dominant themes emerged in submissions:

- Voter turnout, with various opinions on the reasons for the low turnout, and some related suggestions that civics education be introduced in schools.
- The MMP referendum, with most submissions expressing concern about the adequacy of the length and detail of the information campaign, and reliance on the internet as the main source of information to voters.
- Electronic voting, which some considered a good way to address low youth turnout; while others expressed caution about the technology, and the effect on turnout and the “occasion” of election day.
- Election advertising rules, including whether scrutineers at polling places should be allowed to continue to wear party rosettes and lapel badges (opinion was divided), broadcasting rules, election day rules, and advance voting.

2 Electoral institutions

Key terms of reference

To examine the conduct and performance of the electoral institutions, including the Electoral Enrolment Centre and the new Electoral Commission (merging the functions of the Electoral Commission and Chief Electoral Office), compared with previous elections and in ensuring the integrity of the voting

Electoral Commission

The new Electoral Commission was established on 1 October 2010 by the Electoral (Administration) Act 2010, to create a single electoral agency responsible for all aspects of the administration of parliamentary elections. Before this date, the former commission's functions were providing public education on the electoral system and related matters, and administering the electoral laws regarding political parties (registering parties and their logos, allocating broadcasting time and funding, and supervising election programme broadcasting).

From 1 October 2010, the new commission also took over the functions of the Chief Electoral Office, taking on responsibility for

- conducting parliamentary elections and referenda
- administering electoral laws relating to candidates
- providing advice on electoral matters to select committees, ministers, and members of Parliament
- providing administrative services to the Representation Commission (which determines electorate boundaries).

The commission is an independent Crown entity, accountable to the Minister of Justice. However, the commission must act independently and is not subject to ministerial direction when performing its electoral functions.

The commission's objective is set out in the Electoral Act 1993:

to administer the electoral system impartially, effectively, efficiently, and in a way that—

- (a) facilitates participation in parliamentary democracy; and
- (b) promotes understanding of the electoral system and associated matters; and
- (c) maintains confidence in the administration of the electoral system.”¹

¹ Section 4C of the Electoral Act 1993

For the 2011 election, the commission aimed to achieve this objective by providing the same levels of service in polling places, and setting the same timeframes for reporting and indicating results on election night, as it had done for the 2008 election. The commission found that feedback from “voters, parties, candidates and third parties” demonstrated that the objective was achieved.² The commission also examined its performance against agreed measures, which it found had been achieved for both the general election and the referendum.³ Nevertheless, submitters expressed significant concern about the adequacy of the public education campaign for the MMP referendum. Specific concerns were that it was too short, it did not provide enough information about the different electoral systems, and it relied too heavily on the internet to provide information. We discuss this in greater detail in the final chapter of this report.

We appreciate that the commission faced a daunting series of tasks in 2011. It had to merge two offices, taking on new, broader functions, and run a general election and a referendum simultaneously. There were also three by-elections to be conducted before the 2011 general election, which was made more difficult by the Rugby World Cup tournament competing for public interest with the election and referendum.

Enrolment Services (Electoral Enrolment Centre)

Enrolment Services (formerly the Electoral Enrolment Centre) is a self-contained business unit of New Zealand Post. Until July 2012, the Electoral Act 1993 provided that the chief executive of New Zealand Post was the Chief Registrar of Electors, and the minister had a purchase agreement for enrolment services with New Zealand Post. Enrolment Services maintains the electoral rolls, and conducts the Māori electoral option. A Registrar of Electors is appointed for each electorate in the country. Each registrar compiles and maintains the electoral rolls for their electorate, and conducts enrolment campaigns before major electoral events.

From 1 July 2012, the functions of the Chief Registrar of Electors were transferred to the Electoral Commission, and the Electoral Enrolment Centre became Enrolment Services. The commission has entered into an agreement with Enrolment Services to continue to provide enrolment services under contract to and statutory delegation from the commission.

We think that Enrolment Services appeared to do a professional job, given the framework in which they were operating.

² Report of the Electoral Commission on the 2011 General Election and Referendum, April 2012, p. 10.

³ Report of the Electoral Commission on the 2011 General Election and Referendum, April 2012, pp. 42–43.

3 Enrolment

Key terms of reference

To examine the maintenance of accurate enrolment data and the dormant roll

Enrolment rates

Before 2002, enrolment rates remained at around 91 percent. In 2002, “continuous enrolment” was introduced. This meant that people did not have to re-enrol to vote before each general election, a process that was expensive to administer and disenfranchised people who did not remember to re-enrol. Since 2002, enrolment rates have climbed to 93.5 percent and higher. In 1990, unrestricted enrolment was first allowed up to the day before election day. This extension of the enrolment period has enfranchised approximately 2 percent more voters. For the 2011 election, 93.7 percent of all eligible voters were enrolled, falling within Enrolment Services’ target range of 93.5 percent to 95.5 percent.

The data shows that most people respond to Enrolment Services’ enrolment campaign and enrol by writ day (generally 30 days before election day). In 2011, 3,013,651 people had enrolled by writ day, and 3,070,847 by election day. In other words, 57,196 people, or 1.9 percent of estimated eligible voters, enrolled between writ day and election day. Enrolment rates increase before an election, especially in the week before election day. In 2011, there were three times as many enrolments in the final week as the preceding week. The Electoral Commission concluded that closing enrolment one week before polling day would reduce the number of persons enrolled to vote by election day. The Electoral Commission also told us that, although some voters will always leave it until the last minute to enrol, there is no evidence of an increasing trend of doing so. Since 1996, the number of new enrolments between writ day and election day has remained between 50,000 and 60,000 (with an exception in 2005 when it fell to 35,353).

Some submitters suggested allowing people to enrol to vote on election day itself, to increase enrolment. Although research suggests that this would indeed increase enrolment rates and turnout, the Electoral Commission does not support this proposal. They argue that it might act as a disincentive to enrolling before election day, and would require more staff and resources on election day. It could also delay the official count, as voters enrolling on election day would need to cast special votes, which are much more time-consuming to process than routine votes, and registrars would need to complete such voters’ enrolment before their special votes could be validated. We accept the commission’s advice, but believe that we should continue to monitor this issue. In principle, any mechanism that allows these voters to be enfranchised should be encouraged.

Key dates for 2011 election

Date	Event
2 February	Announcement of election by the Prime Minister
15 July	Main roll, called preliminary roll in election year, closes for printing, and is then available for public inspection (voters enrolled after this date go onto the supplementary roll)
26 August	Start of regulated period for election and referendum expenses
20 October	Dissolution of Parliament
26 October	Writ day (main roll and supplementary roll are merged to create the composite roll, also called writ day roll; people who enrol between writ day and the day before election day are registered on a supplementary roll for their electorate and will be required to cast a special vote as their name cannot be marked off the composite roll)
1 November	Nomination day
9 November	Start of advance and overseas voting
26 November	Election day and preliminary results
10 December	Official results
15 December	Due date for return of writ (was delayed until 17 December due to judicial recounts)
17 December	Return of writ and declaration of election of list members

Number of enrolments as at writ day and election day 1987–2011

Year	Writ day roll		Election day roll		Net increase		Enrolment accuracy % ⁴
	Total	% ⁵	Total	% ⁶	Electors	% ⁷	
2011	3,013,651	92.0	3,070,847	93.7	57,196	1.9	96.4
2008	2,935,537	93.6	2,990,759	95.3	55,222	1.9	95.9
2005	2,812,033	94.0	2,847,396	95.2	35,363	1.3	98.4
2002	2,611,658	92.1	2,670,026	94.2	58,368	2.2	98.2
1999	2,452,222	89.0	2,509,365	91.1	57,143	2.3	No measure
1996	2,358,918	89.3	2,418,587	91.5	59,669	2.5	No measure
1993 ⁸	2,316,863	92.5	2,321,664	92.6	4,801	0.2	No measure
1990	2,158,966	89.9	2,202,157	91.7	43,191	2.0	No measure
1987 ⁹	2,114,868	92.4	2,114,656	92.4	(212)	(0.0)	No measure

⁴ Percentage enrolled at correct address on writ day.

⁵ Percentage enrolled against estimated eligible voting population as advised by Statistics New Zealand.

⁶ As above.

⁷ As above.

⁸ In 1987 and 1993, enrolment closed at writ day unless a person became eligible between writ day and election day (e.g. the person had their eighteenth birthday and needed to enrol, or the elector needed to change their address.)

⁹ As above.

In 1987 and 1993, enrolment closed at writ day unless a person became eligible between writ day and election day (for example, as a result of having their 18th birthday) or needed to change their enrolment details such as address.

Enrolment data

When Enrolment Services enters electors' details onto the rolls, it aims to ensure the data is 100 percent accurately captured. However, when electors do not update their details, for example when they subsequently change address, the accuracy of the rolls is reduced. People moving to a new electorate are not eligible to re-enrol at their new address until they have lived there for one month. In 2011, over 80,000 people changed address between writ day and election day (almost 3 percent of the eligible voting population). For the 2011 election, Enrolment Services reported that 96.4 percent of people enrolled to vote were enrolled at the correct address, exceeding their target of 93 to 96 percent. Only 0.6 percent (19,366) of EasyVote packs were returned as sent to an incorrect address. However, the accuracy of enrolment data (measured as the proportion of people correctly enrolled at the address where they have resided for the past month) has nevertheless decreased from 98.2 percent in 2002, to 96.4 percent in 2011. Enrolment accuracy has only been measured since continuous enrolment was introduced in 2002.

It is an offence under section 118 of the Electoral Act to knowingly and wilfully make a false statement concerning enrolment details. This summary offence is subject to a fine of up to \$2,000 or three months' imprisonment.

Some submitters were concerned that the current system of allowing enrolment up to the day before an election produces less accurate enrolment data. Several suggested closing enrolment earlier, for a period ranging from two weeks to three months.

We were interested in whether there was a correlation between the closing dates for enrolment and the accuracy of the roll. The Electoral Commission considers that closing enrolment earlier would reduce the accuracy of the roll because some people would be prevented from enrolling for the first time and others would be prevented from updating their enrolment records (such as a change of address). The same processes and checks are followed for enrolments received in this period as at any other time. The commission does not support any change to the current provision for enrolment up until the day before election day.

Improvements to the enrolment system

Online enrolment

The Electoral (Administration) Amendment Act 2011 allowed people to use the igovt online service to access and update their enrolment details, or re-enrol following a change of address. People still need to print, sign, and submit an enrolment form to register for the service. The Electoral Commission describes the process as follows:

Elector manually completes and signs an enrolment form indicating they want to update their details online in the future. Elector must provide an email address to use this service.

Registrar of Electors approves the form and sends the elector a confirmation letter with a web link and unique verification code.

Elector goes to the web link provided and enters their unique verification code.

Elector will receive an email that includes an embedded link they must follow to create or use an existing igovt logon.

The new or existing logon and their electoral details are then linked with a unique “federated logon tag”. The elector can use this tag from now on to log on and update their electoral records electronically.

After Parliament passed this legislation, the Government asked the Chief Registrar of Electors to investigate further the possibility of full online enrolment.

The Electronic Identity Verification Act 2012 regulates the administration and application of the Electronic Identity Verification Service, providing people with a single online identity recognised by multiple agencies. The Department of Internal Affairs, in partnership with NZ Post, is preparing to launch the verification service, branded “RealMe”, in mid-2013. To obtain a RealMe identity a person will have to provide their name, gender, date and place of birth, and a biometric photo, and have an email account and a mobile phone. Under the proposals for full online enrolment a person would need to have a RealMe account (logon and password) and RealMe ID. This would enable them to update their electoral records electronically and check the usage record of their RealMe account. The Ministry of Justice is working with the Electoral Commission and Department of Internal Affairs to investigate whether this service can be applied to allow people to enrol to vote online without needing to submit a signed enrolment form.

A business case has been prepared by Enrolment Services, and the commission recommends changes to Part 5 of the Electoral Act to allow wholly online enrolment via the Electronic Identity Verification Service for future elections. The commission is ready to begin the design and implementation phases of the project, subject to funding being available to do so.

Recommendation

We recommend to the Government that it consider making provision, as fiscal conditions permit, for online enrolment using Electronic Identity Verification, and amend the Electoral Act 1993 accordingly.

Māori electoral option

Sections 76 to 79 of the Electoral Act specify that people of Māori descent can register to vote either on the Māori roll or the general roll—but can change to the other roll only in the “Māori electoral option”, which follows the census every five years. Census data and the option results determine the number of general and Māori electorates. The Māori electoral option runs for four months specified by the Minister of Justice.

Aligning Māori roll with general enrolment processes

Voters of Māori descent regularly express concern to the Electoral Commission at election time that they may not change rolls at times other than the Māori electoral option. They believe that it would be fairer and more logical to have the option of changing their enrolment details before an election than after a census. The Electoral Commission recommends that consideration be given to amending Part 5 of the Act (including sections 35 and 76–79) to allow voters of Māori descent to change rolls once per electoral cycle. This would replace the Māori electoral option. Information on the new option would be included in general enrolment communications and the enrolment update campaigns run before elections, rather than a separate advertising and education campaign.

Under the Electoral Commission's proposal, the Representation Commission would continue to determine the number and size of electorates following a census. The commission noted that the Māori electoral option would still have to be conducted for the 2013 census, as there would not be time to change the policy and legislation during this electoral term.

Submitters expressed some opposition to the Electoral Commission's proposal on the grounds that it might create an unequal electoral system where some voters exerted more influence over the outcome of elections than others. For example, it was suggested that it might increase the likelihood of parties encouraging voters to change rolls tactically to attempt to win marginal seats; this was already possible under the Māori electoral option, but less likely. It was also pointed out that the Māori electoral option is run after each census to help determine electoral populations and boundaries. The ability to change rolls after electoral boundaries had been set could leave some seats with very low or very high electoral populations. One proposal to avoid such problems was recalculating the number of electorates and the electoral boundaries each electoral term, after the roll-changing option. The commission told us that the number of electors of Māori descent on the general and Māori rolls could be provided at the date of the census.

As consideration of the Māori electoral option was not part of this inquiry's terms of reference, we have no basis for adopting the Electoral Commission's recommendation. We understand that the Māori electoral option is included in the terms of reference for the consideration of constitutional issues review being carried out by the independent Constitutional Advisory Panel.

Dormant roll

The dormant roll was included in the terms of reference for this inquiry. Its mere inclusion seems to have had the effect of raising public awareness of the dormant roll; submitters asked what the dormant roll is, and how it works.

The dormant roll lists everyone who has been removed from the electoral roll for a particular district. It is maintained by that district's registrar under section 109 of the Electoral Act.

Updating the dormant roll

Under section 83C of the Act, people are removed from the electoral roll and added to the dormant roll when they cannot be found at the last address they provided and attempts to

locate them have proved unsuccessful. A person can also be moved from the electoral roll to the dormant roll if an objection is made about the inclusion of their name on the roll and the registrar is unable to serve the person with the notice of objection as required by sections 95A or 96 of the Act. Section 109(2) provides that the registrar must remove people from the dormant roll if they re-enrol to vote, if the registrar receives notification of their death or confirmation that they have been sentenced to imprisonment, or once they have been on the dormant roll for three years. The dormant roll is instantly updated as people on the dormant roll re-register, die, or reach the three-year deadline.

The Electoral Commission considers the three-year period to be appropriate as it allows a person on the dormant roll the opportunity to vote at one general election before disenrolment. If the period were less than three years, some voters on the dormant roll would not get this opportunity.

Voting while on the dormant roll

People on the dormant roll can still vote on election day by completing a special vote declaration, on which they record the last address where they resided for more than a month. This address determines the ballot paper they receive. The enrolment status of all special votes is checked by the returning officer and, if necessary, the Registrar of Electors. If a special voter is found to be on the dormant roll and their declaration is otherwise valid, their vote is admitted to the official count. If a person is on the dormant roll for a different electorate from that for which the vote was cast, only the party vote will be counted.

The returning officers review all of the special votes after the election and compare the electorate in which a person has voted with that in which they are recorded on the dormant roll. If the two match, the voter's electorate and party votes are allowed; if they do not match, only the party vote is allowed.

The Electoral Commission and Enrolment Services assured us that they were confident the processes were robust and not open to abuse. For example, if a person was on the dormant roll for one electorate and then tried to enrol to vote in another electorate, systems would immediately pick up this irregularity and an investigation would follow.

Reducing numbers on the dormant roll

Registrars work continually to reduce the number of people on the dormant roll, attempting to visit them at their last known addresses, matching data with other agencies to find their new addresses and sending enrolment packs there, and redirecting mail to new addresses. After each election, registrars also send enrolment forms to those special declaration voters whose votes were disallowed because they had not enrolled or updated their details. When someone re-enrols to vote, they are removed from the dormant roll.

In 2011, when the main roll closed on 15 July, 217,685 people were on the dormant roll. By election day, this number had fallen to 156,252. The number of people on the dormant roll has increased at each election, from 72,547 in 2002 to 156,252 in 2011. Some of us are concerned at the growth of the dormant roll over the last decade.

Numbers on the dormant roll in the four months preceding election day

Year	Number on dormant roll at closure of main roll	Number on dormant roll at election day	Total reduction over 4 months before election day	% reduction
2011	217,685	156,252	61,433	28.2
2008	209,478	142,315	67,163	32.1
2005	166,465	127,892	38,573	23.2

Recommendation

We recommend to the Government that the dormant roll continue to be regularly updated and culled as appropriate.

Unpublished roll

The unpublished electoral roll allows people to enrol confidentially to vote, providing they can satisfy the Chief Registrar of Electors that having their details recorded on the published roll could threaten their personal safety, or the safety of their family. Only the Registrar of Electors has access to the unpublished roll.

Updating the unpublished roll

Section 115 of the Electoral Act sets out how people can be included on the unpublished roll. It provides for the Electoral Commission to add someone to the unpublished roll if it “is satisfied, on the application of any person, that the publication of that person’s name would be prejudicial to the personal safety of that person or his or her family”. To satisfy the commission that there is a threat to safety, applicants may provide evidence such as active restraining or protection orders, or a statutory declaration from the Police. The number of people on the unpublished roll has increased steadily, from 7,622 in 2004 to 15,526 in 2012.

Before the “enrolment inquiry phase” of Enrolment Services’ enrolment campaign began on 30 May 2011, Enrolment Services asked everyone on the unpublished roll to review their need to remain there. Responding to the request was not compulsory, but 391 people informed Enrolment Services that they no longer needed to be on the unpublished roll. At this stage in the campaign, Enrolment Services also approached organisations that are in contact with people whose safety might be threatened by inclusion on the published roll. Enrolment Services asked these organisations to inform at-risk people about the unpublished roll and to help them apply for inclusion.

Simplifying admission to the unpublished roll

Some submitters argued for simplifying admission to the unpublished roll on the grounds it would increase voter turnout; some even recommended removing all restrictions. The Electoral Commission explained the policy rationale for setting conditions on change to the unpublished roll, which is the principle that enrolment information should be open to public scrutiny to ensure its accuracy and integrity. Credit agencies also use the published roll to find accurate information about debtors, who might take advantage if there were no restrictions for admission to the unpublished roll.

However, we were concerned that some people genuinely at risk, particularly of domestic or sexual violence, might not be able to produce sufficient evidence to be admitted to the unpublished roll. Enrolment Services told us that applications on the grounds of personal safety were very rarely turned down, and that information from a friend or family to support a case was often considered sufficient evidence (although each case is considered individually). Enrolment Services believes that the existing requirements for admission to the unpublished roll are not onerous and the bar is already reasonably low.

While we appreciate the value of a transparent and accurate published roll, we endorse the provision for people to be admitted to the unpublished roll on grounds of safety and security. We do not think that people should be admitted to evade creditors. We think a balance is possible between ensuring transparency and providing security to those who need it.

4 Voting and election day processes

Key terms of reference

To examine voter turnout

To examine electoral matters arising from the Canterbury earthquakes

Voter turnout

Overall turnout (as a percentage of those eligible to enrol) was 69.57 percent in 2011, down 6 percent from 75.73 percent in 2008. This is very low by New Zealand standards (the poorest turnout since the 1887 election). It is also low compared with trends in other countries with similar democratic histories and populations. Comparatively, New Zealand’s turnout in 2011 was still superior to that in the United States, United Kingdom, and Canada. However, New Zealand’s turnout was lower than those at recent elections in the Netherlands, Norway, Spain, Italy, Greece, Sweden, and Denmark. There is a clear trend of declining turnout in New Zealand elections since 1946, which is expected to continue.

Turnout as percentage of enrolled and estimated eligible to enrol 1946–2011



** Turnout as a percentage of enrolled in 1975 and 1978 is artificially low, because of problems with the maintenance of the rolls at that time.*

We were particularly concerned to note not only a continuing trend of declining turnout by 18–24-year-olds, but also research now indicating a marked drop in the number of 24–29-year-olds who are voting. This supports evidence we received that 18-year-olds who did not vote in their first election do not establish a habit of voting, and continue not to vote in subsequent elections.

New Zealand research confirms overseas findings that turnout is mainly determined by the characteristics of individual voters, combined with the particular character of each election. Particularly important among individual factors are age, education, social integration, interest in politics, and a habit of voting. The character of an election is determined by the extent of the ideological divide between the parties, the perceived closeness of the expected results (the closer the election is perceived to be, the higher the turnout), and the perceived importance of the election (the more an election is seen to matter, the higher the turnout).

The Electoral Commission surveyed voters and non-voters and found that the main unprompted reasons non-voters gave for not voting were “other commitments” (14 percent), “couldn’t be bothered” (14 percent), “could not work out who to vote for” (11 percent), and “work commitments” (9 percent).¹⁰ When asked to choose from a list of factors that might have influenced their decision not to vote, the most popular choices were “I don’t trust politicians” (33 percent), “it was obvious who would win so why bother?” (31 percent), and “I’m not interested in politics” (29 percent). The proportion of non-voters who said “it was obvious who would win so why bother?” increased significantly between 2008 (19 percent) and 2011 (31 percent), appearing to support the conclusions from the research described above.

Civics education in schools

Declining turnout, particularly among younger people, was a particular concern for submitters, many of whom proposed civics education in schools as a potential remedy for the trend. Submitters argued that to participate meaningfully in the voting process, people need to have a good understanding of their rights and responsibilities as citizens. Since 2010, section 5(c) of the Electoral Act has specified that one of the main functions of the Electoral Commission is “to promote public awareness of electoral matters by means of the conduct of education and information programmes or by other means”.

Several initiatives in the Electoral Commission’s public education campaign for the general election and referendum aimed to increase youth participation. Specifically, the commission

- established an interactive Facebook page hosted by “Orange Guy”, who answered questions about the election, which replaced the under-used youth focused website www.ivotenz.co.nz
- ran a motivational advertising campaign targeting young voters, using popular musicians as spokespeople, on youth-focused television and radio stations (motivational advertising has been found to be an effective way of engaging younger voters, and the commission intends to make more use of it for the 2014 election)
- ran a successful “Kids Voting” programme in 2011

¹⁰ Report of the Electoral Commission on the 2011 General Election and Referendum, April 2012, p. 24.

- established “Your Voice, Your Choice”—new curriculum-linked units, related to the civics education component of the level 5 social studies curriculum and supporting the Kids Voting programme; they can also be taught outside of election years.

The Kids Voting programme is a non-compulsory education programme designed to address declining voter turnout by building political engagement in school students.¹¹ Participating schools run the programme in the weeks leading up to an election. The students participate in a simulated election to build their knowledge of and engagement with electoral processes. The programme was developed in the United States in the late 1990s, where research has suggested it has a long-term influence on students, with a strong correlation with registration and voting for the first time, and contributes to adult turnout in communities where the programme is run. It has been run in New Zealand as part of the social studies curriculum for students aged 11–14 years for local body elections in 2001, 2004, 2007, and 2010; and for parliamentary elections in 2002, 2005, 2008, and 2011.

In 2011, the programme ran in 340 schools and reached 46,659 school students (up from 152 schools and 24,675 students in 2008). Participating school students “voted” for real candidates for the general election and on the referendum, on replica ballot papers, then compared their results with those of the official election. Schools could also choose whether to use the Māori roll and Māori electorates. Evaluation found that all the teachers who responded thought the programme increased their students’ knowledge and understanding of elections, and 81 percent thought it increased their own understanding. Ninety-four percent said they would participate again. The commission told us that civics education is one of its top priorities for improving voter participation, and it would like to expand its education programmes and capacity, including an authentic “voting” experience, resources permitting.

We agree with submitters and the commission, and would like to see ongoing comprehensive civics education incorporated into the New Zealand school curriculum, increasing in complexity as young people approach voting age. We think that the programme should have a long-term objective of making young people feel like active participants in democracy; but a particular focus during election years, such as that provided by the Kids Voting programme, might also help build young people’s interest in voting and their understanding of the electoral system. An indirect effect might be to encourage their parents and other family members to vote. Section 6(f) of the Act states that the commission has the power to “request advice, assistance, and information from any government department”. Given this power, and the commission’s statutory role in providing education programmes, we recommend that the commission liaise with the Ministry of Education on incorporating ongoing comprehensive civics education into the New Zealand curriculum.

Recommendation

We recommend to the Government that it consider requesting the Electoral Commission to liaise with the Ministry of Education on the feasibility, including resourcing implications, of incorporating ongoing comprehensive civics education into the New Zealand school curriculum.

¹¹ www.kidsvoting.org.nz

Recommendation

We recommend to the Government that it consider supporting the Electoral Commission to expand public civics education programmes, resources permitting.

A web application targeting youth voters

We heard from a group of third-year Massey University design students who created a web application to address declining political participation in New Zealand, particularly in the 18–25 year age group.¹² The application offers a fun, user-controlled experience. Users can choose from 17 policy areas within which to explore their own values, and how they align with aspects of the different political parties' policies. To ensure political accuracy and neutrality, the students consulted a panel of political academics and professionals. The web application is also integrated with social media sites, to encourage conversation and debate. We understand that the application has been very popular and still receives several thousand visitors each week.

We were impressed with the design of the application and the understanding displayed by the students of problems with declining turnout and youth participation. We look forward to seeing the development of this web application and other projects that take a novel approach to increasing voter participation.

Voter education

In addition to the information provided to all voters, the Electoral Commission produced versions of the main voting brochure in 18 additional languages, and print, television, radio, and online advertisements tailored to Māori, Chinese, Tongan, Korean, and Samoan communities. Enrolment Services also produces brochures for new migrants on enrolment matters. Registrars work with refugee and migrant centres and organisations to provide information and give presentations about the electoral system. Registrars also attend citizenship ceremonies at local council offices and ethnic community events to talk to new citizens and enrol them to vote. Three times a year, Enrolment Services conducts data-matching exercises with the Department of Internal Affairs, and writes to new citizens to provide them with enrolment guides and forms.

Improving voting for people with disabilities

The Human Rights Commission reminded us of the right of every eligible New Zealander over the age of 18 to vote by “equal suffrage and by secret ballot”, as provided for by the New Zealand Bill of Rights Act 1990; and by Article 25 of the International Covenant on Civil and Political Rights, which recognises the right of every eligible citizen “to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage”. New Zealand ratified the United Nations Convention on the Rights of Persons with Disabilities in 2008. Article 29 guarantees the right *and opportunity* to vote, which includes ensuring appropriate facilities, materials, and procedures are available; protecting the right to a secret ballot; and allowing voters the assistance of a person of their choice if requested.

The Electoral Act and Electoral Regulations contain provisions to assist voters with disabilities. They include a minimum of 12 polling places per electorate with suitable access

¹² www.onthefence.co.nz

for people with physical disabilities, election staff or a nominated person allowed to read out ballot paper information to voters and mark the voters' ballot papers according to their instructions, and voting facilities in hospitals and similar institutions. The EasyVote pack sent to all electors indicates the accessibility of each polling place and advance voting facility, with a toll-free number for further information. The commission told us that staff at all polling places must ensure there are no obstacles to car parks, doorways, paths, and ramps; reserve a clearly visible parking space for voters with disabilities; and provide seating for them.

For the 2011 election, the commission produced and distributed

- a DVD and guide to voting for people with intellectual disabilities
- a plain English booklet and how-to-vote poster for people with learning disabilities and limited literacy
- versions of key publications in various accessible formats (including Braille, audio tape, screen-reader, large print, and on the Royal New Zealand Foundation of the Blind's telephone information service) for people with impaired vision
- information about the location of accessible polling places
- a sign language DVD explaining enrolment and voting processes, and a captioned version of the referendum DVD.

The Human Rights Commission told us that initiatives introduced for the 2008 election have improved voting for people with disabilities. However, the Human Rights Commission considers that significant gaps still remain, including problems accessing information about candidates for people who have difficulty reading standard print, have literacy difficulties, or use New Zealand sign language; and problems getting to polling places on election day. These difficulties lead to a low turnout of people with disabilities.

The Human Rights Commission noted that there are no accurate statistics on the number of people with disabilities who encounter difficulties participating in elections, and recommends that the Government commit itself to better data collection.

Since 2002, the Electoral Commission has collected data after each general election on voters and non-voters with disabilities to ascertain voters' satisfaction with the services the Electoral Commission provides, and understand barriers to voting and how to address them for each specified population group.

In the Electoral Commission's 2011 disability survey, 11 percent of non-voters with disabilities cited "polling place too far away / no transport" as a reason for not voting. Difficulties with reading standard print, literacy difficulties, or use of New Zealand Sign Language were not cited as reasons for not voting.

The Human Rights Commission also expressed concern that section 80 of the Electoral Act disqualifies from registering to vote people who are detained in a hospital or a secure unit for more than three years under the Mental Health (Compulsory Assessment and Treatment) Act 1992 or the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003. The Human Rights Commission considers excluding anyone from voting on grounds of psychosocial or intellectual disability to be discrimination under the United

Nations Convention on the Rights of Persons with Disabilities. It recommends that section 80 of the Electoral Act be reconsidered in the light of New Zealand's international obligations. The Electoral Commission told us that section 80 does not disqualify people under mental health treatment or with a disability from voting unless they also fall into one of the narrow categories of people specified in section 80(1)(c), relating to a person's criminal justice classification rather than their disability. The Human Rights Commission is concerned that there is no accurate publicly available data on the number of people currently prevented from voting under this provision. We understand that Enrolment Services receives approximately one application for enrolment per year from people falling into these categories.

The Electoral Commission told us it had put a disability action plan for the 2014 general election out for consultation in late 2012, to attempt to meet the needs of voters with disabilities more consistently. It also intends to develop a long-term disability strategy to deliver better services over the next two or three elections. We are pleased that the commission is taking these initiatives and look forward to seeing the action plan and the long-term strategy.

The Electoral Act specifies a minimum of 12 polling places per electorate with suitable access for people with physical disabilities, but the Electoral Commission regularly exceeds this number. We think that this statutory minimum requirement is an outdated remnant of New Zealand's first-past-the-post electoral system. It does not take account of the vastly differing sizes of electorates, and does not reflect the commission's intention to move towards making all polling places accessible.

Recommendation

We recommend to the Government that it consider the suggestions contained in the submission of the Human Rights Commission for improving the voting rights of people with disabilities, especially regarding data collection.

Compulsory voting

In New Zealand, it is compulsory to enrol, but not to vote. We received a number of submissions suggesting that voting be made compulsory, as it is in Australia. Some suggested that it be made compulsory with the option of registering as a conscientious objector, to distinguish people who have considered views on the matter from those who cannot be bothered voting. We think that some people exercise their right not to vote legitimately, on the basis of careful consideration, and we would not want to restrict this right. Although we think that voting is a civic responsibility, we would not recommend that voting be made compulsory.

Lower voting age

Some submitters proposed that the voting age be lowered to attempt to reverse declining youth turnout. They suggested that combining civics education at school with a voting age of 15 or 16 would allow students to cast their first vote while they were learning about the electoral system. Some of us think that there is an argument for linking the voting age to the age at which young people are allowed to leave school and take on adult responsibilities such as full-time work.

Most countries have a voting age of 18, but a few have voting ages of 16 or 17. Canada, Australia, and the United Kingdom have recently debated lowering their voting ages, but have not done so. The Electoral Commission said that it is difficult to determine whether lowering the voting age would raise the turnout.

The Labour and Green members of the committee encourage the commission to consider seriously whether lowering the voting age to 16, in conjunction with civics education, might help young people establish the important habit of voting, and thus potentially increase turnout and engagement. The New Zealand First member of the committee thinks that people under the age of 18 are too vulnerable to undue influence from their parents and other people to be allowed to vote.

EasyVote cards

EasyVote cards were sent to all registered voters in EasyVote packs, the week before the election. The cards show a voter's name and electorate, and the line and page number of their record in the printed electoral roll. They are used to simplify voting procedures, allowing issuing officers to find voters' names quickly in the electoral roll and ensure that they are issued the correct ballot paper. EasyVote cards have been used since the 2002 general election. In the 2011 election, 86 percent of voters used EasyVote cards, although voters can vote without using them.

Some submitters were concerned that EasyVote cards increased opportunities for fraud, particularly dual voting, and recommended they be discontinued, or that voters be required also to provide photo identification. While we have noted these concerns and recognise the importance of avoiding fraud, we agree with the Electoral Commission that, in the absence of evidence of widespread misuse of EasyVote cards, neither of these measures is necessary. We were advised of the following points about EasyVote cards and voter fraud in general in New Zealand:

- The EasyVote card has considerably improved the efficiency of election day processes.
- Most voters leave their EasyVote cards with the issuing officer, but if they wish to keep them, the cards are stamped to prevent their being re-used.
- Any instances of dual voting are detected during the scrutiny process, which takes place between election day and the announcement of the official results. If the returning officer cannot be satisfied the voter received only one ballot paper, all votes cast in the voter's name must be disallowed.
- Dual voting is rare in New Zealand. In the 2011 election, 390 votes (0.017 percent of the 2.3 million received) were disallowed and 63 cases of voter personation were referred to the police.

- The Registrar of Electors' computer system, which processes enrolment applications, also detects multiple or fraudulent enrolments. For example, this system exposed enrolment irregularities in Papatoetoe before the 2010 local body elections, finding many enrolments at single addresses, multiple enrolments in the same handwriting in documents sent from the same email addresses, and enrolments with the same mailing address but different residential addresses. These enrolments were invalidated, and the people concerned have been charged by the police. The case has now been adjourned and is set down for trial.
- Voters could impersonate other people without an EasyVote card, and this would still be picked up by existing processes.

We were advised that imposing the additional burden on voters of providing photo identification in conjunction with EasyVote cards is not necessary, as it seeks to remedy a problem that, on the evidence, does not exist. The Electoral Commission and Enrolment Services consider it would result in honest voters who do not bring identification to the polling booth being prevented from voting, and impose an unfair cost to voting on people who do not have a driver's licence or other form of valid identification, requiring them to purchase photo identification. Ultimately, it would have the effect of further reducing turnout.

The commission recommends amending Part 6 of the Electoral Act to allow EasyVote cards to be used as the record that a vote (ordinary or special) has been cast, and to be scanned after election day to compile the master roll electronically. This proposal would speed up, simplify, and improve the accuracy of the currently manual processes of issuing ballot papers and recording votes on election day, and compiling the master roll during the scrutiny process. It has the potential to reduce the number of special votes needed (by up to 52,000 on 2011 statistics) by allowing voters who enrol after writ day and vote in their electorate to use an EasyVote card and cast an ordinary vote, instead of having to complete a declaration and cast a special vote. Using EasyVote cards to issue ballot papers would also help ensure that the correct ballot papers were issued to each voter.

Our electoral system is based on a high-trust model, which means we need to ensure the integrity of the system as our society grows and changes. This reinforces our earlier recommendation about the importance of civics education.

Recommendation

We recommend to the Government that it consider amending Part 6 of the Electoral Act 1993 to authorise the Electoral Commission to use an EasyVote card as the record an ordinary vote has been issued and as evidence that a special voter is eligible to vote, and to compile manual or electronic records of who has cast an ordinary or special vote using the EasyVote card or other verification methods.

Advance voting

If a voter is unable to get to a polling place on election day, they can cast an advance vote in the 17 days before the election. In recent elections, the number of advance votes cast has increased steadily. In 2011, 14.7 percent of voters cast 334,558 advance votes. This was a 23.7 percent increase on the 11.4 percent at the 2008 election. In the 2011 election, voters

choosing to cast advance votes at a polling place where their name could be marked off the roll were not required to complete a declaration, simplifying the procedure.

Trends in advance voting in recent elections

Election	Number of voters	% of electors	% increase since last election
1996	112,934	5.3%	N/A
1999	112,904	5.3%	0%
2002	132,609	6.5%	17.5%
2005	197,938	8.6%	49.3%
2008	270,427	11.4%	36.6%
2011	334,558	14.7%	23.7%

During the advance voting period, there are no restrictions on advertising and no scrutineers to monitor the integrity of the process. The Electoral Commission recommends prohibiting election advertising within 100 metres of an advance voting place, to align advance voting conditions more consistently with those on election day. We believe this recommendation is impractical. They also recommend appointing scrutineers to advance voting places to replicate the conditions of polling day, so candidates can appoint scrutineers to observe the issue of advance votes. Some submitters wanted to see the advance voting period extended, and to include two Saturdays if possible. We support the commission's recommendation to allow scrutineers to be appointed to advance voting places.

Recommendations

We recommend to the Government that it consider amending Part 2 of the Electoral Regulations 1996 to allow scrutineers to be appointed to advance voting places.

We recommend to the Government that it consider asking the Electoral Commission to report on the implications of the increasing trend towards advance voting.

Postal voting

Current regulations do not allow the commission to accept postal votes received after 7 pm on election day. Therefore, delays in the international postal system often result in postal votes being disallowed. In 2011, 379 overseas postal votes and 90 New Zealand postal votes were disallowed. The commission recommends allowing postal votes received after 7 pm on election day—provided they are postmarked in a country other than New Zealand before or on the day before election day, or in New Zealand before election day; and that they are received by the commission before 12 pm on the fourth day after election day and by the returning officer no later than 7 pm on the tenth day after the election.

Recommendation

We recommend to the Government that it consider amending the Electoral Regulations 1996 to extend the period in which postal votes can be received, in line with the Electoral Commission's recommendations.

Electronic voting

The Electoral Commission told us that surveys indicate that the New Zealand public is split roughly evenly on the idea of allowing e-voting, particularly online voting. This split was reflected in the divergent views we received on this matter in submissions. Some argued that it would be more efficient and effective, and could help address declining turnout, particularly among young people, and would improve voting for people with disabilities and those living overseas. Others felt that an e-voting system could be open to abuse and too expensive and difficult to maintain, that voters would be exposed to coercion, and that it would not improve turnout and might even reduce it by detracting from the sense of occasion and community spirit on election day.

The commission stressed that there are many different e-voting methods. The costs and benefits of e-voting depend on the method used and the scale on which it is deployed. Generally, e-voting introduces some risks, including threats to voters' privacy and the secrecy of the vote, exposing voters to coercion, raising questions of security and integrity of the e-voting system, and undermining voters' confidence that their votes have been received and counted. These risks are not insurmountable but they require careful consideration and management. The public has a high level of trust in the current paper-based system, and it is important to ensure that any changes do not undermine confidence in the electoral system. The commission told us that introducing any form of e-voting should be done alongside the current system for the foreseeable future, with e-voting as an optional alternative rather than a replacement.

E-voting for voters with disabilities

E-voting could improve access to voting for those who find it difficult to attend polling places, particularly people with disabilities, restricted mobility, or difficulty using a pen. The Human Rights Commission told us that, although the Government has been progressively removing barriers to people with disabilities exercising their right to vote, significant obstacles remain. For example, legislation provides for voters with disabilities to vote with assistance if needed. However, this requires them to forgo their right to a secret vote and disclose their voting preferences to others. The Human Rights Commission also told us about anecdotal evidence that assistance is often not provided sensitively, with the result that other voters overhear the voting preferences of voters with disabilities.

These difficulties could be overcome by introducing telephone or internet voting for less mobile people, and transparent overlays¹³ and voting templates such as those used in Australia, the United Kingdom, and Canada for visually impaired voters. Touch-screen voting kiosks are also available in Australia and the United States, where enlarged print or verbal instructions via headphones are provided. However, the Human Rights Commission pointed out that distance from a polling booth equipped with a touch-screen kiosk could be a disincentive to vote, and voters might also be confused or put off by unfamiliar equipment.

We understand that the Royal New Zealand Foundation of the Blind and other groups consider telephone voting to be the best method for blind and visually impaired voters.

¹³ These are clear sheets with slots that line up with spaces to be marked on ballot papers. Voters can count the spaces by touch to reach the place they want to mark on the paper. Each voter is supplied with a fresh overlay.

The Electoral Commission told us that, although it is certainly an option to consider, telephone voting is quite complex and time-consuming. Depending on the method of telephone voting proposed, both the Electoral Act and the Electoral Regulations may require amendment. Telephone or e-voting by voters with disabilities may require amendment to the method of voting specified in section 168 of the Act, which is an entrenched provision. The commission told us that it does not have the funding to consider trialling dictation or telephone voting for the 2014 general election, but intends to consider these initiatives in its long-term disability strategy.

We heard that uptake of Australian telephone-voting initiatives for people with visual impairment was not high. This may be because the initiatives required voters to use specially equipped telephone voting polling places, and the low turnout could have reflected difficulty getting to these polling places, rather than a lack of interest in the technology. A joint internet and telephone initiative in 2010 was more successful, although the telephone component was much less popular than the internet component. Internet voting is the only technology suitable for blind-deaf voters, who can use Braille computers to access the internet but cannot use a telephone.

The Electoral Commission recommends that e-voting be initially trialled with small-scale pilots aimed at overseas voters and those disadvantaged by paper-based ballots, over a number of elections. The commission asked for guidance from the Government on the feasibility of running a pilot of internet and telephone voting for voters with disabilities and overseas voters for the 2014 election. The commission estimated the cost at \$5–7 million. The Government has indicated that funding for e-voting cannot be given priority in the current financial environment.

E-voting for overseas voters

New Zealanders who are overseas at the time of an election can vote in person at an overseas voting post, download their ballot papers from the internet, or apply to receive them by post. Legislation provides that ballot papers can be returned only by post, fax, or courier to the Electoral Commission; or by post, courier, or hand delivery to the nearest overseas post.

The number of overseas votes fell by 35 percent to 21,496 in 2011 (from 33,278 in 2008). This has been attributed partly to the overall decline in turnout for the 2011 election, but also to difficulties locating fax machines, an obsolescent technology. Forty-two percent of overseas voters faxed their ballot papers to the commission in 2011, down from 53 percent in 2008.

The commission is researching the potential of a secure online system to allow overseas voters at the 2014 election to scan and upload their voting papers to an elections server hosted on the elections website. This would require an amendment to the Electoral Regulations 1996. The commission does not recommend allowing voters to return votes by email, because it is not sufficiently secure. We agree that the regulations should be brought up to date so that overseas voters do not have to continue to search for outdated and increasingly uncommon technology like fax machines, and can return their voting papers easily and conveniently online.

E-voting for general voting public

Voter turnout: Research suggests that e-voting is unlikely to have a significant effect on turnout beyond an initial “novelty-value” increase. The Electoral Commission is unaware of any New Zealand or overseas research suggesting that e-voting would increase turnout. Research suggests that turnout is determined mainly by the extent of the ideological gap between the main parties and the expected closeness of the election.

Cost: The additional costs of developing e-voting systems and pilots are relatively high. Introducing voting technology such as e-voting kiosks to polling places would be very expensive. Costs could be limited by reducing the number of polling places, but we would not recommend this option. The most cost-effective method of e-voting would be allowing voters to vote remotely (unsupervised) on the internet or by telephone. However, there are still significant costs associated with remote e-voting, mostly for independent testing and for auditing the security of the system; software and infrastructure costs account for approximately 10–20 percent of the total cost. In 2007, the Chief Electoral Officer released the Draft Long Term Strategy for Voting Technology, which estimated the cost of a remote e-voting pilot of up to 10,000 voters during an election at \$5.56 million over two years for either telephone or internet voting. Piloting telephone and internet voting together would be more expensive. The commission notes that the 2006 e-census pilot of 7 percent of census forms had a \$12.7 million budget. 2004 telephone and internet voting pilots of 5,351 voters in the Netherlands cost NZ\$6.08 million (at 2007 exchange rates).

Benefits to voters: The draft strategy noted some non-financial benefits of e-voting, such as potentially making voting more convenient and appealing for voters who would otherwise have cast special votes and for the growing number of people who relate to online communities; and improving access for non-native speakers of English. E-voting could also help reduce the number of errors that voters make on ballot papers and special declarations, thus reducing the number of votes that have to be disallowed.

Benefits to democracy and government: The draft strategy also outlines potential benefits to democracy and government from e-voting, such as

- including previously isolated groups in democratic processes
- supporting the New Zealand Disability Strategy and New Zealand Bill of Rights Act 1990, and fulfilling New Zealand’s international obligations under the United Nations Convention on the Rights of Persons with Disabilities and the International Covenant on Civil and Political Rights
- preventing voting methods from contributing to continued declining participation
- providing options to cater to shifting preferences in an increasingly technological society
- improving the certainty of election results by eliminating human error and allowing special votes to be counted quickly
- contributing to state-sector goals regarding accessibility, trust, and networked services.

Security of software: The draft strategy highlighted some key security issues with e-voting, suggesting that e-voting, particularly remote e-voting, “potentially opens the door for an individual to submit many thousands of fraudulent votes” and warning,

it should be assumed that any New Zealand e-voting solution will be a target (whether by “recreational” hackers or those with political, economic or criminal intentions)... and it therefore needs to incorporate, from the outset, relatively sophisticated security measures... As a result, security measures (along with other design requirements) could make an e-voting system relatively complex for users.¹⁴

Security of vote authorisation and identification: Compared with current remote voting methods (postal and fax), e-voting systems could improve security and voter authentication.

Overseas experiences: A number of countries have used various methods of e-voting, with mixed results. Estonia introduced e-voting as an option in 2005. By 2011, approximately 24 percent of votes were cast online. Brazil has also successfully introduced e-voting. The key factors in the success of e-voting in these countries appear to be building public trust in the systems and building capacity over multiple electoral cycles. Countries including Australia, the United Kingdom, Ireland, Venezuela, Bahrain, and the Netherlands abandoned efforts to use e-voting on grounds of cost, security, and lack of transparency and trust in the systems used. In 2009, Germany declared e-voting to be unconstitutional, as their constitution requires all stages of an election to be subject to public scrutiny that does not require specialist knowledge. In 2005, after a range of pilot projects, the United Kingdom concluded that e-voting systems were expensive, lacked proper audit trails, brought about no increase in turnout, and were less trusted than paper voting.

We note that the 2007 Draft Long Term Strategy for Voting Technology is still in draft form and the commission has not received funding to continue the project. We consider that it is important to have a strategic approach to voting technology.

We understand that some local authorities would like to trial e-voting for local body elections in 2013, but regulatory changes would be needed. Some of us think that trialling e-voting at local body elections would help generate important public debate, which could inform government policy on e-voting. The Ministry of Justice has advised us that trialling e-voting for the 2013 local authority elections is unlikely to be possible, given the policy and technical amendments that would be required to the Local Electoral Act 2001 and the Local Electoral Regulations 2001, and the development and implementation of a technically complex regulatory framework.

Recommendation

We recommend to the Government that it consider amending the Electoral Regulations 1996 to allow overseas voters to scan and upload their ballot papers to a secure elections server, and supporting the Electoral Commission in developing such a system.

¹⁴ Chief Electoral Officer, Draft Long-Term Strategy for Voting Technology, 2007

Recommendations

We recommend to the Government that it consider providing funding, as fiscal conditions permit, to continue developing the Long Term Strategy for Voting Technology.

We recommend to the Government that it consider prioritising the development of alternative voting methods for voters disadvantaged by paper-based ballots.

Special votes

Special voting makes New Zealand's electoral system more accessible than those of other jurisdictions, as it allows a person to vote at any polling place in the country, even if their name is not on the printed roll for that electorate. If a person cannot get to a polling booth, they can cast a postal vote or have their ballot papers delivered to them. In 2011, 263,469 special votes were cast. This was 11.6 percent of the total vote, up slightly from 11.4 percent in 2008. Of the special votes cast, 7.5 percent were subsequently disallowed, because the voters were found not to be on any roll.

Grounds for special voting

Section 61 of the Electoral Act prescribes the grounds for qualifying as a special voter. It states that a person who is qualified to vote at an election in any district may vote as a special voter if

- their name does not appear on, or has been wrongly deleted from, the roll for that district
- they intend to be or are absent from the district, or from New Zealand, on election day
- they are unable to vote at any polling place on election day due to illness, infirmity, pregnancy, or recent childbirth
- they are unable to vote on the day of the week on which election day falls, for reasons of religious belief
- they can satisfy the returning or issuing officer of some other ground meaning that it will not be practicable for the person to vote in their district without incurring hardship or serious inconvenience.

Voters must use one of three special vote declaration forms, as prescribed in the Electoral Regulations, depending on where they are casting their vote from. A voter must specify the ground on which they are casting their vote. In 2011, 133 votes were disallowed because the voters had not specified grounds. The Electoral Commission does not independently verify the grounds given. The grounds can be challenged only by an electoral petition.

Improving the special voting process

The Electoral Commission described the complexity of the special voting process, for both voters and officials. Each special voter has to complete a declaration explaining their grounds for casting a special vote, something some voters find difficult to do, which can result in errors that mean the vote must be disallowed. Special vote ballot papers also take much longer to issue and process than ordinary votes. The Electoral Commission's

recommendation to allow EasyVote cards to be used as evidence that a special voter is eligible to vote (replacing the declaration form) would address concern about the complex, time-consuming process; it also aims to reduce the number of special votes cast on election day. In 2011, the Act was amended to allow advance voters who vote in their own electorate to do so without completing a special declaration. The commission told us that this greatly simplified the advance-voting process for many voters.

The commission is currently reviewing the advantages and disadvantages of special voters having to specify the grounds for casting a special vote. It recommends a review of the grounds for special voting, and the position on the declaration forms of the sections setting out grounds for eligibility. It also recommends improving the processes for validating and qualifying special votes, for example by improving interfaces between the Electoral Commission's and Enrolment Services' computer systems. Changes to the Electoral Regulations may be required, depending on the outcome of any reviews conducted. We look forward to seeing the results of the commission's current review.

Overseas votes

Overseas voters are required to make a declaration that they are eligible to vote. The criterion for New Zealand citizens is that they must have returned to New Zealand within the last three years, while permanent residents must have returned in the past 12 months. At present, no checks are done to verify when overseas voters were last in New Zealand to determine their eligibility to register and vote. We were told by the Electoral Commission that such checks could be possible but would require information sharing by a number of agencies such as New Zealand Customs, Immigration New Zealand and Internal Affairs (for passport data). On the declaration form overseas voters are also required to nominate an electorate in which they believe they are qualified to vote.

All overseas votes are special votes. When special votes are returned to their home electorates, checks are undertaken on each person's eligibility to vote. Of the 21,496 overseas votes in the 2011 election, six individuals, or 0.02 percent of the overseas voters, were referred to the Police for dual voting.

Recommendation

We recommend that the Government consider seeking better ways of ensuring the integrity of votes cast overseas.

Timing and nature of election day

Some submitters proposed changes to the timing and choice of polling days for general elections. A public holiday on a fixed date was suggested, for example, to build a sense of occasion and celebration at elections, perhaps with a positive effect on turnout. A weekday was suggested to avoid conflict with religious observances. We understand that a fixed election date is being considered in the consideration of constitutional issues being carried out by the independent Constitutional Advisory Panel. We look forward to seeing the results of this review.

Preliminary count

The Electoral Act requires that the early counting of advance parliamentary and referendum votes on election day begin at 3 pm. The Electoral Referendum Act 2010 allowed the Electoral Commission to start the advance early count for both the referendum and general election at 2 pm on election day 2011, at the commission's request. The commission expects the number of advance votes to continue to increase, and recommends that the Act be amended to make 2 pm the starting time for the advance early count at future elections, so that it can meet the same target times for releasing preliminary results as it did in 2008. We think that it is desirable for the commission to continue to meet the 2008 targets, and we support their recommendation.

Recommendation

We recommend to the Government that it consider amending sections 174C(5)(a) and 174F(4) of the Electoral Act 1993 to change the starting time of the early count of advance parliamentary and referendum votes from 3 pm to 2 pm.

Judicial recounts

Part 8 of the Electoral Act specifies that a voter or candidate can challenge the election of a constituency candidate only by submitting an election petition to the High Court. The Electoral Commission submitted that it is unclear whether the High Court can direct the commission to recalculate and amend the allocation of list seats for the election as the result of a successful election petition regarding an electorate seat. The commission recommends amendments to the Act to make it clear that it has this power. The commission advised us that a by-election won by a candidate from the same party whose candidate won the electorate at the general election does not change the proportionality of Parliament. However, if the winning candidate represents a different party, the proportionality will change if the same result at the preceding election would have resulted in a different allocation of seats.

Recommendation

We recommend to the Government that it consider amending the Electoral Act 1993 to make it clear that the Electoral Commission has the power to recalculate and amend the allocation of list seats for an election as the result of a successful election petition regarding an electorate seat.

Emergency planning

The 2010 and 2011 Canterbury earthquakes demonstrated the disruption that a similar emergency could cause to an election, affecting its conduct, turnout, and even its perceived legitimacy. Following the Canterbury earthquakes, the Electoral Commission consulted agencies including the Ministry of Justice, the Department of the Prime Minister and Cabinet, and Crown Law, to determine the consultation and decision-making processes it would follow before invoking its powers under section 195 of the Electoral Act to adjourn polling in an emergency. Current legislation focuses on ensuring that polling can proceed so that Parliament can then be summoned. However, it could be difficult for polling to proceed, meaning that it might prove impossible to complete the election. The commission

recommends that the Act and other related legislation be reviewed and amended if necessary to address potential problems.

Recommendation

We recommend to the Government that it consider commissioning a review of legislation to determine whether it provides adequately for the disruption to electoral events by a significant emergency, and the wider constitutional and political issues of such an event, and amending the legislation accordingly.

Election day in Canterbury

We were particularly interested in the conduct of the election in Canterbury after the earthquakes. We heard that the Electoral Commission promoted advance voting in Christchurch and tailored an information campaign to Christchurch voters. Returning officers found suitable alternatives for advance voting places, including mobile voting facilities in certain areas. Rates of advance voting in badly affected parts of Christchurch were much higher than the national average. We were pleased to hear that turnout in Christchurch electorates was only 1 percent lower than that in 2008, adjusting for the lower turnout over the whole country.

Layout of polling booths

We are concerned by reports from scrutineers at two Mt Roskill polling places that the booths were so close together that voters were having conversations between booths while voting. There were reports of multiple people being inside polling booths simultaneously.

The commission said that there was less space available at all polling places in 2011 because of the additional supplies required to manage the referendum. The commission told us that introducing a legislative requirement would create practical difficulty fitting voting screens into differently sized and shaped polling places, and that it already trains staff on setting up polling places.

We suggest that when language is cited as a reason for the voter to be accompanied by another person to assist with voting, an alternative area could be set aside with a mock voting ballot paper. The voting process could then be explained in the voter's primary language, which would allow the voter to then go unaccompanied into the voting booth. We consider it is a vital principle that each voter has the right to a secret ballot that is freely cast.

Recommendation

We recommend to the Government that it consider requiring a minimum distance between voting booths and providing an alternative area with a mock voting paper for people who need to have the ballot paper explained in their primary language. This would mean that a voter could then go unaccompanied to the voting booth.

5 Statutory and regulatory frameworks

Key terms of reference

To examine the statutory and regulatory frameworks governing elections

Election advertising

Advertising on election day

The Electoral Act specifies that interfering with or influencing voters is an electoral offence. Section 197 sets out prohibited activities, including broadcasting polling statements or conducting polls; distributing or displaying election advertising; and political campaigning, demonstrations, or processions. However, an exception allows people other than electoral officials to wear or display “ribbons, streamers, rosettes, or items of a similar nature”, in party colours or party lapel badges.¹⁵ Ribbons, streamers, rosettes, or items of a similar nature displayed in party colours become unlawful if they include party names or logos or if they are displayed on anything other than a person or a vehicle. Party lapel badges can include a party name or logo but on election day can only be worn by people and not displayed by any other means.

Proposal to remove election day advertising exemptions

The Electoral Commission noted that New Zealanders appear to be “generally happy” with the status quo, although 76 percent of the 280 complaints they received on election day 2011 related to election campaigning, advertising, or rosettes. The commission recommends removing the exemption for party lapel badges, ribbons, streamers, rosettes, and similar items. Submitters were divided on this proposal. Some recommended examining whether any form of advertising restriction is appropriate and enforceable, particularly with the growing popularity of social media and internet campaigning, suggesting that there was no harm in election day advertising as long as measures to prevent intimidation and coercion were effective. Concern was raised about whether banning balloons and similar items was a reasonable and proportional restriction on free speech, and whether items needing to be banned were likely to proliferate.

Many submitters thought that scrutineers should have to wear badges identifying them clearly as such and stating which party they are working for so members of the public know whom they are dealing with. The Electoral Commission already provides badges for scrutineers to differentiate them from officials. However, the badges may not be visible enough if submitters did not notice them. Some submitters pointed out that people are unaware of the function of scrutineers, and that the meaning of party rosettes and lapel badges was clearer.

¹⁵ Electoral Act 1993, section 197(1)(g).

Most of us support the Electoral Commission's recommendation to remove current exemptions for lapel badges, ribbons, streamers, rosettes, balloons, and similar items on election day, with the exception of rosettes for scrutineers inside polling places.

The Labour members of the committee do not support this proposal on the basis that no such restrictions apply prior to polling day and in light of the increasing and significant numbers of voters who choose to exercise an early vote.

Recommendation

We recommend to the Government that it consider prohibiting electioneering activity on election day, including the wearing of rosettes, lapel badges, ribbons, streamers, and party apparel, other than the wearing of a party rosette by a scrutineer inside a polling station.

Advertising during advance voting period

There are currently no restrictions on election advertising during the advance voting period. The Electoral Commission recommends prohibiting election advertising within 100 metres of an advance voting place during the advance voting period. We consider this proposal impractical.

Electioneering on social media sites and the internet

The commission recommends further consideration of and debate on the extent to which electioneering on the internet and social media should be regulated, and how any regulation might be managed. We are concerned about the potential for mass social media campaigns, and note that this is a difficult medium to regulate. Rules prohibit paid advertising on social media on election day, and we think consideration should be given to the possibility of further regulation. We recommend a review of existing regulations to determine whether they are workable.

Recommendation

We recommend to the Government that it consider commissioning a review of existing regulations applying to social media on election day, to determine whether they are workable.

Advertising on billboards

Rules on erecting and removing election advertising billboards are prescribed by local authorities, so are inconsistent between regions. Submitters suggested that a single standard be adopted for all local authorities. Issues discussed included councils' resources for administering the rules, and whether the Electoral Commission should have this responsibility. The \$20,000 fine for failing to remove a billboard by election day was also criticised as excessive.

Some of us agree that it would be more efficient, and elicit more compliance, if a single national standard applied for billboards; but others of us would not want to interfere in local authorities' ability to determine the rules governing the appearance of their streets. While we agree that there should be some penalty for deliberate failure to comply with

electoral laws, we feel that the fine for not removing a billboard by election day is far too high.

Recommendation

We recommend to the Government that it consider reducing the fine for not removing an election advertising billboard by election day.

Advertising guidelines for candidates

We note that it is difficult for candidates to challenge advice provided by the Electoral Commission on whether a communication constitutes an election advertisement or not. The Parliamentary Service Act 2000 was amended in January 2011 so that during the regulated period (the three months before an election) the Parliamentary Service can fund only members' communications about contact information, and publicity that is not election advertising. Outside the regulated period, the Parliamentary Service can fund members' election advertising communications, but members still need to consider the Electoral Act's requirements for promoter statements and authorisation. These rules were introduced to prevent candidates from using parliamentary funds to pay for electioneering during the regulated period, which we all consider very important. However, when these rules were created it was not anticipated that the ordinary work of a member of Parliament might be re-classified as constituting an "election advertisement" during the regulated period.

If the commission believes that the election advertising rules have been breached, it has a statutory obligation to refer the matter to the Police, unless it appears the breach is so inconsequential that referral would not be in the public interest. Members of the public must lay complaints directly with the Police. The Police then determine whether or not any alleged breach should be prosecuted.

A member can seek an advisory opinion from the commission about whether a communication is likely to breach the election advertising regulations. However, advisory opinions are not legally binding, meaning there is no statutory decision upon which to base judicial review proceedings and no provision for a statutory right of appeal. The commission's advice can be brought before the court only if the member publishes the material in question without an authorisation statement and a prosecution ensues. We believe this cannot have been envisaged by those drafting the law. We recommend that the Government establish a mechanism for clarifying which work of a member of Parliament constitutes an election advertisement, ahead of the regulated period.

Recommendation

We recommend to the Government that it consider establishing in time for the 2014 general election a mechanism for clarifying which work of a member of Parliament constitutes an election advertisement, ahead of the regulated period.

Election broadcasting

Aligning statutory tests in Broadcasting Act and Electoral Act

The Electoral Commission noted that the statutory tests of what constitutes an “election programme” in section 69 in Part 6 of the Broadcasting Act 1989 and an “election advertisement” in section 3A of the Electoral Act are similar but have significant differences, which cause difficulties when the commission considers broadcasting complaints. Both tests require an assessment of whether the programme or advertisement appears to encourage voters to vote or not vote for a party or candidate, but they differ in the exemptions made. Section 70(3) of the Broadcasting Act states that nothing in the prohibition on paid election programmes “restricts the broadcasting, in relation to an election, of news or of comments or of current affairs programmes”, while the exemption in section 3A(2)(c)(ii) of the Electoral Act is not restricted to news or current affairs, but applies to “the editorial content of a periodical, a radio or television programme, and a publication on a news media Internet site”. Submissions suggested removing the separate electoral broadcasting provisions from the Broadcasting Act and confining provisions regarding election advertising to the Electoral Act.

The Electoral Commission recommends that Parliament consider further the desirability of having differing statutory tests in the two Acts. We understand that a review of electoral finance in 2009 involved consulting all political parties and the public. Although the review resulted in the Electoral (Finance Reform and Advance Voting) Amendment Act 2010, which modernised the definition of “election advertisement” in the Electoral Act, it could not find cross-party consensus on whether Part 6 of the Broadcasting Act should similarly be reformed. Given the lack of political consensus, it may be difficult to endorse the commission’s recommendation.

Recommendation

We recommend to the Government that it consider aligning the statutory tests of “election programme” in section 69 of the Broadcasting Act 1989 and “election advertisement” in section 3A of the Electoral Act 1993.

Broadcasting Act’s limitations on election programmes

The Broadcasting Act makes it an offence for a broadcaster to broadcast an election programme during or outside an election period (the time between writ day and election day), subject to some exemptions in sections 70(1) and 80(a). If such an offence is committed during an election period, the broadcaster and person who arranged the broadcast for a political party are held responsible under the Act. If the offence is committed outside of an election period, only the broadcaster is held responsible. This is because the Broadcasting Act does not make it an offence to arrange for party advertising to be broadcast outside the regulated period, though section 70(1) provides that “no broadcaster shall permit the broadcasting”. Under Part 6 of the Broadcasting Act there is an exemption for the “broadcasting, in relation to an election, of news or of comments or of current affairs programmes”. This covers politicians participating in panel discussions, leaders’ debates and so on. In view of this exemption, the commission does not think there would be any unintended consequences if the offence provisions were aligned to apply at any time to parties and candidates as well as broadcasters.

It was also argued in submissions that the Broadcasting Act's full prohibitions regarding election programmes should not be limited to the election period, and should apply consistently to both political parties and broadcasters. The commission acknowledged that the Broadcasting Act is a difficult piece of legislation that needs further work, and that it would be more consistent to apply the same rules within and outside of an election period.

Recommendation

We recommend to the Government that it consider aligning the liability for breaching Part 6 of the Broadcasting Act 1989 so that provisions would apply to the broadcaster and any person who arranged for the broadcast of an election programme in contravention of the Act, whether within or outside an election period.

Public service broadcasting obligations

Section 71(1) of the Broadcasting Act stipulates that Television New Zealand and Radio New Zealand "must each provide time, free of charge, for the broadcasting, in an election period, of the opening addresses and closing addresses of political parties". Section 77A of the Act further specifies that the addresses must be broadcast between 7 pm and 9 pm. The Act also requires the Electoral Commission to determine an amount to be paid to Television New Zealand and Radio New Zealand for the production costs of broadcasting opening and closing addresses. For the 2011 general election, Radio New Zealand received \$3,250 towards its production costs, while Television New Zealand did not request any amount to be paid for production costs.

When the Broadcasting Act 1989 came into effect, Television New Zealand and Radio New Zealand were state enterprises with public broadcasting charters. In 2003, the Government made them Crown entities, changing them from national broadcasters to government-owned but commercially operated media companies, still operating however under public broadcasting charters. The Television New Zealand Amendment Act 2011 removed the requirement for Television New Zealand to provide a public television charter and clarified its purpose as being a commercially successful national media company. Radio New Zealand remains a fully funded public broadcaster, operating under the Radio New Zealand Charter.

Television New Zealand Limited submitted that, as a commercially operating company without a public television charter, it should no longer be subject to the obligations in Part 6 of the Broadcasting Act, which are contrary to its statutory function, and impose upon it unreasonable costs to which other commercial broadcasters are not subject. It argued that, if the obligations remain, other commercial broadcasters should also be subject to them, and that the requirement for the opening and closing addresses to be screened during prime time should be removed. Concern has also been raised that smaller parties often miss out on television time; and it has been suggested that the television channels should have to provide a fair share of air time to all parties.

While we see the value in providing the opening and closing addresses to the New Zealand public free to air during prime time, we also appreciate Television New Zealand's concerns. The Labour, Green, and New Zealand First members of the committee recommend that the Government invest in public service broadcasting in New Zealand, so that all networks have some degree of responsibility.

Election expenses and donations

Part 6A of the Electoral Act sets out rules governing election expenses and donations.

Timeframes for filing election expense returns

The Act provides that candidates must file their returns of election expenses and donations, and registered third-party promoters must file their returns of election expenses, with the Electoral Commission within 70 working days of election day. It also requires party returns of election expenses to be made within 50 working days of the declaration of list members under section 193(5) of the Act.

The commission recommends amendments to Part 6A of the Act to reduce the timeframe for filing candidates' and third-party promoters' returns to within 50 working days of election day. It also recommends increasing the timeframe for filing party returns to within 70 working days of election day. The commission expects these changes to simplify the rules and allow parties to check candidates' expenditure before submitting their audited expense returns. We recommend retaining the existing timeframe for candidates and third party promoters filing election expenses, which is within 70 working days of election day. However, we support the commission's recommendation to change the second timeframe so that party returns must be filed within 90 working days of election day (not within 50 working days of the declaration of list members as specified in section 206I of the Act).

Recommendation

We recommend to the Government that it consider retaining the existing timeframe for candidates and third party promoters filing election expenses within 70 working days of election day, but increasing the timeframe for filing party returns to within 90 working days of election day.

Penalties for failing to file expense returns

Under the Act, it is a summary offence for a candidate, party secretary, or registered party promoter to fail to file a return. The commission considers that a summary offence is an insufficient disincentive to failing to file a return, as a summary conviction tends to result in a \$200–400 fine and does not affect a person's ability to stand as a candidate at a later election. It also acts as an incentive not to file a return, rather than to risk filing a false return, which is a corrupt practice offence. A person convicted of a corrupt practice offence is entered on their electorate's corrupt practices list and is liable to be imprisoned for up to two years and/or to pay a fine of up to \$100,000, and is ineligible to stand at an election for three years. A candidate can be convicted of a corrupt practice if they knowingly file a false election expense return or false candidate donations return, or if they exceed their candidate expense limit.

The commission told us that the current framework gives candidates a "perverse incentive" to refuse to file a return, rather than filing a return that is known to be false or shows they have overspent. These candidates may obtain an unfair advantage while campaigning and, if elected, would remain members of Parliament even if later convicted of a summary offence. Therefore, the commission recommends that the Act be amended so that failing to file a return becomes a corrupt practice offence instead of a summary offence. The commission told us that only a small number of candidates fail to file returns, after

receiving numerous reminders before and after the deadline. Two candidates were prosecuted in 2008, and six candidates are still to file returns for 2011. Most of these candidates are independent candidates or represent unregistered parties that did not receive 5 percent of the votes for the electorates they contested.

We agree with the commission that the law should not create a perverse incentive to fail to file a return because such failure will result in less severe legal consequences than filing a return that evidences unlawful behaviour. However, an innocent omission to file a return should not have the drastic consequences that would follow from conviction of a corrupt practice. Proof that the omission is innocent should be a defence against a finding of corrupt practice. In principle, findings of corrupt practice should follow only from proof of attempts through devious means to defeat the operation of electoral law. Other breaches of electoral law should lead only to findings of illegal practice.

Recommendation

We recommend to the Government that it consider amending the Electoral Act 1993 to ensure that there is a significant penalty to act as a deterrent to failing to file a return in a deliberate attempt to defeat the operation of electoral law.

Automatic consumers price index adjustments to expenditure limits

Election expenditure limits are currently adjusted annually according to the consumers price index. They fix the maximum amount in advertising expenses that may be incurred by an unregistered promoter, a candidate's election expenses, a party's election expenses, and a registered promoter's election expenses. These adjustments must be made by an Order in Council, and come into force on 1 July each year.

The Electoral Commission does not recommend continuing to automatically adjust election expenditure limits according to the consumers price index as this requires three adjustments per electoral cycle and could result in figures that were difficult to communicate and work with, leading to confusion. The commission also noted that it is unnecessary since the Justice and Electoral Committee reviews each general election and expenditure limits could simply be treated as a standard item in its review.

The Electoral Commission has recommended that we should revisit this matter, and we consider that there should be some discretion in deciding the appropriate amount, taking into account relevant factors including movement in the consumers price index.

Party donations

The Act requires party secretaries to disclose donations over \$30,000 to the Electoral Commission within 10 working days. If a candidate or party receives an anonymous donation of more than \$1,500, the Act also requires the candidate or party secretary to pay the amount of the donation to the Electoral Commission within 20 working days (the commission pays the money into a Crown bank account). However, the Act also allows anonymous donations over \$1,500 to be made via the Electoral Commission.

Aligning rules for loans and donations

When a candidate or party enters into a loan, current legislation requires them to disclose only the value of credit provided on terms and conditions that are more favourable than current commercial rates, if the value exceeds the disclosure thresholds; and any loan amount forgiven before a return is filed that exceeds the disclosure thresholds.

The Electoral Commission thinks that New Zealand's electoral finance regime does not provide sufficiently for disclosure of these types of transaction, or loans in general. Political donations are regulated to reduce perceptions of undue influence in elections and to recognise that voters have a legitimate interest in knowing who is funding election campaigns. The commission told us that it is inconsistent for the legislation to require donations to be disclosed, but not loans. For parties, there is limited disclosure under existing rules if a significant loan is entered into to fund a party's election campaign. If the loan is subsequently forgiven, the amount will need to be recorded as a donation, but this may be well after the election period. The commission told us that party donation returns filed in 2012 have revealed loans entered into that have subsequently been forgiven. For candidates, existing rules mean that a significant loan to a candidate's campaign that is forgiven after the candidate expense and donation return is due can remain undisclosed.

The commission recommends that consideration be given to amending Part 6A of the Act to require candidates and parties to declare loans entered into to fund campaign activities, with the same thresholds and timing that apply to disclosure of donations. If this recommendation is taken up, the commission notes that a definition of "loan" to a party or candidate would need to be included in Part 6A of the Act, and policy decisions would be needed on the types of loans to be disclosed.

Recommendation

We recommend to the Government that it consider amending the Electoral Act 1993 to make loans to parties and to candidates subject to the same disclosure rules as donations.

Modernising bulk nomination and party list submission process

At present, party secretaries can pay bulk nomination and party list deposits only by bank draft or by bank cheque. The Electoral Commission recommends amending section 127A and 146F of the Act to allow nominations to be submitted by direct bank deposit. This would accommodate modern payment methods, and speed up the process of submitting nominations. It would be useful because of the tight submission deadlines, and would particularly benefit parties based outside Wellington. The commission also recommends amending the Act to allow the lodging of bulk nominations and party list documents by email. The Act allows these documents to be submitted only "by hand, post or facsimile transmission".

We support both of the commission's recommendations for modernising and simplifying these procedures, and note some of them are already being progressed as technical amendments in the Statutes Amendment Bill 2012.

Recommendation

We recommend to the Government that it consider amending the Electoral Act 1993 to allow bulk nomination and party list deposits to be submitted by direct bank deposit, and bulk nomination and party list documents to be lodged by email. These changes could be made as technical amendments in a statutes amendment bill.

Party and logo registration

Part 4 of the Electoral Act prescribes the processes for registering political parties and party logos.

Party eligibility criteria

Among the eligibility criteria for party registration is the requirement that the party have “at least 500 current financial members who are eligible to enrol as electors”. The Electoral Commission recommends changing this requirement to “at least 500 current financial members who are enrolled as electors”, as it found no good rationale for *eligibility* to enrol rather than enrolment being the condition of registration. Since the Electoral Act makes enrolment compulsory, it would be reasonable to expect party members to keep their enrolment up to date. This change would align New Zealand’s eligibility criteria with those of other jurisdictions such as Canada.

Party secretaries must make an annual statutory declaration that the party remains eligible to be registered. A possible policy rationale for the current requirement is that it is reasonable to expect a party secretary to know whether party members are eligible to enrol to vote, but less reasonable to require them to know whether any member’s enrolment has lapsed.

We asked the Electoral Commission why the criterion is a current “financial” membership. The commission told us that this definition was introduced in 2002 and that financial members must pay a regular membership fee, at least once every three years, although there is no minimum fee. If the word “financial” were removed it might be easier for parties to provide evidence of membership, but there would no longer be an assured source of revenue for parties provided for in legislation. This might particularly affect smaller parties, which have little or no income from fundraising or donations but still have to comply with the statutory responsibilities as registered parties.

Party registration fee

There is currently no charge for party registration. In Australia there is a \$500 fee and in the United Kingdom a £150 fee to register a party. The Electoral Commission recommends introducing an application fee of \$500 to register a party in New Zealand, to reinforce to applicants the seriousness of the legal obligations of a registered party. We would support the introduction of such a fee on a cost-recovery basis.

Registering and cancelling logos

A registered or unregistered party can register a logo free of charge. Registration prevents other parties from using similar names or logos and allows the logo to appear on the ballot paper next to the name of a party or candidate. The Electoral Commission points out that logos are often not cancelled when a party is deregistered, as there are no obligations for

unregistered parties. Only a party secretary or a member of Parliament who is a current financial member of a party can cancel a logo, as provided by sections 63A(1) and 70A(1) of the Electoral Act. There are 35 unregistered parties with registered logos and the commission expects this number to continue to increase. We heard that it costs the commission approximately \$2,000 to advertise a party logo in the major newspapers to invite public comment on the application.

At present there are a small number of unregistered parties with registered logos on the ballot paper. The commission recommends amending Part 4 of the Electoral Act so that only registered political parties could register logos, meaning that candidates standing for unregistered parties could not display a logo next to their name on the ballot paper. In response to this recommendation, submitters suggested that instead of banning all logos of unregistered parties, the commission should be allowed to remove logos from the ballot paper if they are unused. It was also suggested that the commission introduce a fee for registering or changing a logo to help cover the cost of advertising party logos.

We support the commission's recommendation that only registered parties be allowed to maintain registered logos. We note that Parliament could legislate to impose a fee to register a logo as a deterrent. This should not be the role of the commission. We think that any fee to register a logo should be commensurate with any fee introduced to register a party. We would support the introduction of such a fee on a cost-recovery basis.

Recommendation

We recommend to the Government that it consider allowing only registered parties to maintain registered logos.

Issue of the writ

The Electoral Act specifies that the Governor-General must issue a "writ" for a general election—a document ordering the Electoral Commission "to make all necessary arrangements for the conduct of a general election". A similar writ is required for a by-election, and for an indicative referendum to be taken by electoral poll or by postal vote, and a warrant to supply a vacancy in a list seat. These writs and warrants must be countersigned by the Minister of Justice. Historically, the requirement for the counter-signature was to confirm that the Governor-General had acted on ministerial advice. The Electoral Commission considers that modern procedures, including the advice sheet, provide a sufficient record to establish this fact, and make the counter-signature unnecessary. The commission recommends that the Electoral Act and Citizens Initiated Referenda Act 1993 be amended so the counter-signature would no longer be required.

The commission assured us that this recommendation has no constitutional implications.

Recommendation

We recommend to the Government that it consider amending the Electoral Act 1993 and Citizens Initiated Referenda Act 1993 so the counter-signature to the writ would no longer be required.

Enforcing electoral offences

The Electoral Act requires the Electoral Commission to refer electoral offences to the Police, as the commission has no sanctioning powers. The Police decide whether to investigate any matter referred to them, and whether to prosecute. Some matters referred to the Police are straightforward, such as instances of dual voting, and are resolved quickly. Others are more complicated, and the commission has expressed concern at the “priority that the Police seem able to accord these referrals”.¹⁶ The commission recommends considering the adequacy of current enforcement provisions and how electoral offences might be enforced more effectively.

The Canadian Independent Commissioner of Elections has the power to take formal enforcement measures, such as compliance agreements, referrals for prosecutions, injunctions, and judicial deregistration of political parties. Other international electoral institutions can impose civil sanctions such as monetary penalties, compliance notices, and stop notices. In the United States, there is a distinction between deliberate or large financial violations, and mistakes made out of ignorance. In 2010, the United Kingdom Electoral Commission was granted new enforcement powers, mainly to impose civil sanctions for breaches of Acts that could previously be sanctioned only by criminal prosecution.

We support a review of the current enforcement provisions, to determine whether better enforcement is necessary in New Zealand.

Recommendation

We recommend to the Government that it consider examining the current electoral enforcement provisions to determine whether they are adequate.

¹⁶ Electoral Commission, Report of the Electoral Commission on the 2011 General Election and Referendum, p. 39.

6 2011 Referendum on the Voting System

Key terms of reference

To examine the conduct of, and education campaign for, the MMP referendum

To examine the conduct and performance of the electoral institutions

About the referendum

The 2011 Referendum on the Voting System was held at the same time as the 2011 general election. This referendum asked New Zealanders to vote on two matters: whether New Zealand should keep or change the mixed member proportional (MMP) voting system; and, if New Zealand were to change to another voting system, which system would voters prefer out of first past the post, preferential voting, single transferable vote, and supplementary member. Fifty-eight percent of voters voted to retain MMP, meaning that MMP would remain our electoral system but the Electoral Commission would conduct a review of it. This review has now been completed. The present inquiry does not consider the merits of MMP, but reviews the conduct of and education campaign for the referendum.

Public education campaign

The Electoral Commission ran a large public education campaign for the referendum. They spent around \$3.5 million advertising the referendum in the five weeks preceding the election. The commission acknowledged that the public education campaign was difficult to design, as it had to convey very complex, unfamiliar information about five different electoral systems and the referendum process. The timing of the referendum also posed problems as it had to compete with the general election and the Rugby World Cup for media coverage. The commission found that public interest in the referendum was low; of a total of 60,131 election-related inquiries, it received only 2,955 about the referendum.

Recommendation

We recommend that future public information campaigns about electoral matters provide sufficient detail and are accessible to all voters.

Mass media

The commission's mass media education campaign had two stages. The first ran from May to mid-October 2011, and consisted of television and radio advertisements and the launch of a website and free-phone information service. The website provided an interactive referendum toolkit to help voters decide which electoral system they preferred. The toolkit was accessed by 22,000 unique website visitors. All registered voters also received information about the referendum by post in early June, in an enrolment update pack. This first stage aimed to raise general awareness, and provide access to more detailed information through the website or phone service for those interested.

Stage two ran from mid-October until the election, and sought to convey the main referendum messages to all voters through television, newspaper, and radio advertising; more detailed information was still available through the website or phone service. Registered voters received a detailed brochure by post in mid-October, and again in their EasyVote pack the week before the election. The commission published detailed information about the voting systems in the major newspapers in the 10 days before the election, again directing people to the website or phone service for more comprehensive information.

Community outreach

The campaign included a community outreach programme, conducted by community liaison coordinators, including three Pasifika and five Māori specialists, around the country. There were 601 community presentations, public meetings attracted 28,151 people, and 18,500 DVDs about the referendum were distributed and received good feedback.

Effect of the campaign on public knowledge

Submitters raised a number of concerns about the commission's public education campaign for the MMP referendum. The principal objections were that the campaign was too short, that not enough information was provided about the different electoral systems, and that the campaign relied too heavily on the internet. However, Electoral Commission research indicates that public knowledge of electoral matters increased substantially from an initially low base as a result of the campaign.¹⁷ By the end of the campaign, 93 percent of voters (and 87 percent of voters *and* non-voters) were aware of the referendum; and 81 percent of these voters (and 67 percent of voters and non-voters) felt "very confident" or "fairly confident" to make an educated decision on election day.

Of voters and non-voters surveyed, 57 to 87 percent knew about the five different voting systems (compared with 17 to 78 percent in May). Sixty-five percent of voters and non-voters knew about both referendum questions (compared with 9 percent in May). Fifty-three percent of voters and non-voters knew that if there was a vote to keep MMP, then there would be an independent review of MMP (compared with 2 percent in May). Sixty-six percent of voters and non-voters knew that if there was a vote to change from MMP, then Parliament would decide whether there would be another referendum in 2014 (compared with 8 percent in May).

Nevertheless, the majority of submitters who responded to this aspect of our inquiry expressed considerable dissatisfaction with the public education campaign. National and New Zealand First members of the committee are concerned that the Electoral Commission relied too heavily on web-based information, leaving the public ill-informed about systems other than the two they were most familiar with, MMP and FPP.

In addition we were concerned that, as a consequence of running two parallel electoral education campaigns, awareness of the general election messages provided by the Electoral Commission fell significantly compared with the previous election—from 81 percent in 2008 to 64 percent in 2011.

¹⁷ Report of the Electoral Commission on the 2011 General Election and Referendum, April 2012, pp. 17–18.

Future referenda

There are two types of referenda: citizens-initiated and Government-initiated. The Referenda (Postal Voting) Act 2000 provides that both types of referenda can be conducted by postal vote. The administrative and regulatory framework for citizens-initiated referenda is provided for in the Citizens Initiated Referenda Act 1993. This Act provides that a non-binding referendum must be held if not less than 10 percent of eligible electors support it by signing an indicative referendum petition. Government-initiated referenda can be binding or non-binding, and special legislation must be passed before they can be held. If the method is not postal vote, the legislation will also need to prescribe the method of voting. The Electoral Referendum Act 2010 was passed to enable the 2011 Government-initiated MMP referendum.

An Electoral Referenda Act

Submissions argued that it is inefficient for the Government to have to pass a special Act every time it wants to hold a referendum. It was suggested that an Electoral Referenda Act be passed to provide for future Government-initiated referenda, broadly based on the Electoral Referendum Act 2010. The commission told us that any broad Act enabling future Government-initiated referenda would not provide the statutory framework for the questions to be asked on the ballot paper or the form of the ballot paper. Specific legislation might also be needed to regulate the steps that follow from the outcomes of referenda. For example, the Electoral Referendum Act 2010 provided for a review of MMP to be conducted if more than 50 percent of voters voted to retain MMP.

While we think that this proposal sounds good in theory and appreciate the reasoning behind it, we do not support introducing an Electoral Referenda Act, as it would remove the ability for Parliament to debate each referendum, which we think is a healthy democratic process. The only oversight would then be provided by the Regulations Review Committee, which we do not consider sufficient.

Stand-alone referenda by postal vote

The 2011 MMP referendum was held in conjunction with the general election, so the public education campaigns for the two polls had to compete. Some submitters thought that future referenda should be held separately from general elections, to improve public debate and engagement. The Electoral Commission told us that running the referendum alongside the general election was difficult administratively, made a complex process significantly more so, and cost \$10.3 million for extra staff, training, resources, and information—and that it may be at least as expensive as running a stand-alone postal referendum. An argument for holding referenda with parliamentary elections is that this secures a higher turnout. However, the commission notes that there will be a high turnout anyway for issues the public perceives to be important. For example, the 1997 postal referendum on compulsory superannuation attracted a turnout of 80.3 percent.

The Electoral Commission does not recommend that referenda be held by standalone voting in polling places. It recommends rather that serious consideration be given to holding future referenda by standalone postal vote, to avoid over-complicating general election processes, and to ensure proper attention is given to both the referendum and general election. A standalone postal referendum is also significantly cheaper than a standalone poll. We support this recommendation, although we appreciate that this is not a

clear-cut issue, as there will always be a trade-off between turnout and public debate. Submitters also expressed concern that holding referenda by postal ballot undermines the shared experience of voting, which they argued is fundamental to a democratic society and to ensuring that voting is a social norm.

New Zealand First is strongly of the view that future referenda should be held by standalone postal ballot.

Recommendation

We recommend to the Government that it consider examining the merits of a standalone postal vote versus a referendum in conjunction with the general election when making decisions about future public referenda.

Appendix A

Committee procedure

This inquiry was initiated on 8 March 2012. We met between 8 March 2012 and 18 April 2013 to consider the 2011 general election. We received 52 submissions and heard evidence from 20 submitters. We received advice from the Electoral Commission, Enrolment Services, and the Ministry of Justice.

Committee members

Scott Simpson (Chairperson)
Dr Jackie Blue
Hon Lianne Dalziel
Julie Anne Genter
Andrew Little
Alfred Ngaro
Denis O'Rourke
Katrina Shanks
Hon Kate Wilkinson

Holly Walker replaced Julie Anne Genter for this item of business.

Appendix B**List of submitters**

Alan Liefing
Alan McRobie
Andrew Sheldon
Andrew Thompson
Ben Dowdle
Brian Collins
Caroline Mabry
David Benson
David Farrar
David Maclure
Electoral Commission
Enrolment Services
Elspeth Ludemann
Felix Lee
Colin Truman, Gary Kircher, David McKenzie, David Hiatt, Dan Dolejs, Robyn Boughton, Jim Gerard, Grant McKenna, Charlotte Kerse, and Frank Brenmuhl
Fred Macdonald
Garth Brown and family
Graeme Edgeler
Henry Clayton
Hilary Gillings
Hugh Hughes
Human Rights Commission
Ineke Odinet
Professor Jeffrey Karp
John Stringer
John White
Jordan Williams
Keith and Jan Furniss
Karl Varley
Kate Hazlett
Margaret Ingram
Martyn Bradbury
Max Coyle
Mike Smith
New Zealand Labour Party
On the Fence
Paul Lunberg
Paul Tipping
Peter Buchanan
Professor Jack Vowles

Ralph Boardman
Roger Baldwin
Ronald David Collinson
Ryan Kennedy
Samantha Taylor
Samuel Clarke
Scott Anderson
Sharyn Black
Television New Zealand Limited
Toni Millar
United Future New Zealand Party
Vivienne Marie Cramond
Wayne and Gaye Russell