



Inquiry into the 2014 general election

Report of the Justice and Electoral
Committee

Fifty-first Parliament
(Jacqui Dean, Chairperson)
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Summary of recommendations

Summary of recommendations

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

The Electoral Commission

Updating the Electoral Act 1993 and Regulations to remove references in the Act to the historical separation of services between the Chief Electoral Office, the Electoral Enrolment Centre, and the Electoral Commission.

Participation and turnout

Exploring the further development and coordination of ongoing, independent, civics education.

Amending the Electoral Act 1993 and Regulations to only prescribe the data and purpose of the electoral forms (but with the exception of ballot papers which should remain prescribed), to provide the Electoral Commission with discretion and flexibility to better meet the needs and circumstances of electors.

Enabling the Electoral Commission, where appropriate, to use new methods of providing information to electors, in addition to post.

Enrolment

Enabling the Electoral Commission, where an elector has informed them of a change of residence to a different electorate, to allow enrolment which will take effect after one calendar month from the moving date.

Promoting voter enrolment as a whole-of-government priority with government agencies working together to facilitate enrolment.

Considering conducting a review of roll access in consultation with the Privacy Commissioner, given that the information included on the roll and the availability of the roll do present privacy concerns.

Enabling electoral officials to use an online enrolment checking function in voting places to enable real-time checking of voters' enrolment status in polling places.

Voting and election day processes

Improving accessibility to advance voting places by increasing their numbers and opening hours, and providing greater consistency, as far as is practical, between advance voting places and voting places on election day. Provided that improved accessibility is achieved, we recommend considering a 12-day advance voting period.

Allowing the Electoral Commission to investigate a new approach to advance vote counting, including bringing forward the start time for the counting of advance votes from 2.00 pm to 9.00 am on election day, the location of the count, and the use of technology, given the increasing number of advance votes.

Amending Regulation 36 of the Electoral Regulations to remove reference to “endorsement” in order to facilitate a fully electronic process for special vote declaration processing.

Enabling the Electoral Commission to make the minor improvements which it has identified that will clarify address details that overseas voters need to provide on the declaration form prescribed in the Electoral Regulations 1996.

Changing regulations relating to dictation voting for remote overseas voters to allow for applications until 4.00 pm on the Thursday before election day, and for dictation votes to be cast until the close of polling at 7.00 pm on election day.

Enabling voters on vessels and offshore installations, and on remote islands administered by the Department of Conservation, to receive and return voting papers electronically or by phone dictation.

Enabling electors of Māori descent to change roll type once each electoral cycle with the Māori Electoral Option (MEO) period taking place every three years.

Considering “decoupling” the electorate boundary review process from the census, in light of possible future changes to the census.

Reviewing whether the emergency provisions as specified in section 195 of the Electoral Act 1993 are adequate and fit for purpose.

Broadcasting and election advertising

Considering greater flexibility for opening and closing addresses and give parties choice around how they want to use their allocation to buy broadcasting time and money, on the condition that broadcasting time is able to be purchased in primetime slots to ensure maximum reach to electors.

Reviewing specific provisions in relation to the Electoral Commission’s power to vary broadcasting allocations to ensure greater clarity.

Considering providing clarification or exemptions to the restrictions on broadcasting election programmes to address satirical, humorous, and creative programmes.

Considering aligning the statutory tests of “election programme” in the Broadcasting Act 1989 with “election advertising” in the Electoral Act 1993, but suggest that this alignment take into account the current work by the Ministry of Culture and Heritage on broadcasting and digital media convergence.

Aligning liability for breaching Part 6 of the Broadcasting Act to apply to the broadcaster and any person who arranged for the broadcast of an election programme, whether within or outside an election period.

Prohibiting campaigning and the display of campaign material within, and in the immediate vicinity of, advance voting places.

Considering extending the current exemption from electioneering on election day for party headquarters signage to any members’ fixed parliamentary signage on electorate offices.

That the date from which hoardings can be erected should be “Saturday-ised” to provide clarity.

Regulatory framework

Considering making the deadlines for both the party list and bulk nominations noon on the day before nomination day.

Providing for, that when a party secretary ceases to hold office, the party appoint a default or acting secretary within five days, until a new party secretary is elected.

Enabling all submissions regarding objections to proposed electoral boundaries, to be made available online, instead of the current requirement to produce a summary of all submissions.

1 Introduction

On 30 October 2014, we resolved to conduct an inquiry into the 2014 general election. By convention, after a general election, a select committee inquiry is conducted into the legal and administrative aspects of that election. This process provides a multi-party approach to reviewing and any reform of the law and administration for any subsequent parliamentary elections.

Terms of reference

The terms of reference for the inquiry are “To examine the law and administrative procedures for the conduct of Parliamentary elections in light of the 2014 general election.”

Themes in submissions

We appointed the Ministry of Justice as advisers to this inquiry. We received 211 submissions from a variety of individuals and organisations, and heard oral submissions from 32 submitters.

The following areas attracted detailed comment in submissions:

- Advance voting, with electors being able to cast their vote during the advance voting period (17 days before election day) at 295 accessible and visible locations throughout the country. The number of advance voters has doubled from 14.7 percent in 2011 to 29.3 percent in 2014. Submitters are interested in how the increase in advance voting might affect other aspects of the election, such as enrolment or advertising.
- Turnout, which remains a concern for many submitters. Turnout in 2014 was 72.1 percent of those eligible to enrol, a small increase from the record low turnout in 2011 of 69.6 percent. Submitters suggest a range of measures to improve voter participation, especially youth participation. These include developing online voting, lowering the voting age, and introducing compulsory voting.
- Advertising rules, with submitters interested in the increasing use and variety of social media and the inconsistency between advertising rules during the advance voting period and on election day.
- The Broadcasting Act 1989, with submitters commenting on the effectiveness of opening and closing addresses; time and funding allocations; newer media, such as on-demand services; and issues with the definitions of election programmes and advertising.

2014 key election dates¹

10 March	Announcement by PM
20 June	Start of regulated period for election expenses
23 June	Launch of Enrolment Update Campaign
14 August	Dissolution of Parliament
20 August	Writ Day
26 August	Nomination Day
3 September	Advance and overseas voting commences
20 September	Election Day and preliminary results
4 October	Official Results
9 October	Due date for return of writ (was delayed until 10 October due to judicial recount)
10 October	Return of writ and declaration of election of list members

¹ *Report of the Electoral Commission on the 2014 general election*, p. 73.

2 The Electoral Commission

A programme of reforms to establish a single electoral agency responsible for all aspects of parliamentary electoral administration began after the 2008 general election and was completed in July 2012.

Before the reforms, electoral functions and responsibilities were spread between three electoral agencies: the Chief Electoral Office, the Electoral Enrolment Centre, and the Electoral Commission (the commission). The commission was responsible for providing public education on the electoral system, and administering the electoral laws for political parties (registering parties and their logos, allocating broadcasting time and funding, and supervising election programme broadcasting). Amalgamating the three agencies allows for a more effective and integrated approach to electoral administration.

The 2014 general election, held on 20 September, was the first election held after the three agencies had been completely amalgamated. Although amendments were made to the Electoral Act 1993 (the Act) to provide for a single agency, delivering an election has highlighted that many aspects of the legislation still reflect the historical separation of services. For example, voters expected that they would be able to enrol and vote at an advance voting place, but were instead directed to lodge an enrolment application elsewhere.

Recommendation

We recommend that the Government update the Electoral Act 1993 and Regulations to remove references in the Act to the historical separation of services between the Chief Electoral Office, the Electoral Enrolment Centre, and the Electoral Commission.

The new Electoral Commission is responsible for the entire administration of parliamentary elections and referendums. This includes

- enrolling electors
- allocating time and money for broadcasting election programmes
- servicing the work of the Representation Commission (which determines electorate boundaries)
- providing advice, reports, and public education on electoral matters
- administering electoral laws for candidates.

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

Section 4C of the Act sets out the commission's objective:

“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.”

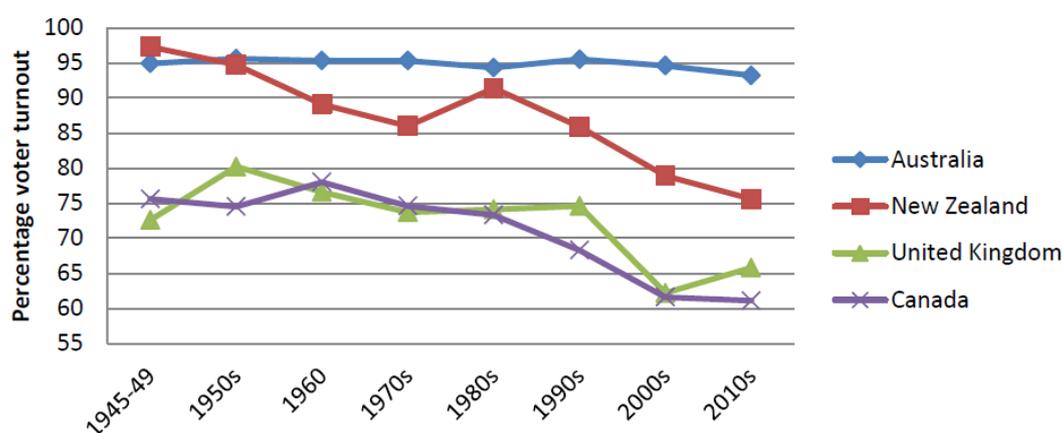
3 Participation and turnout

Declining voter participation

Voter turnout has been declining in most developed democracies during the last 30 years. However, New Zealand's decline has been particularly consistent.

Voter turnout, as a percentage of those eligible to enrol, dropped to 69.6 percent in the 2011 general election, the lowest recorded at a New Zealand parliamentary election since universal suffrage was adopted in 1893.² Although the 2014 general election saw a small increase in voter turnout, it remains the second-lowest recorded result at 72.1 percent.

Voter turnout (percent) in parliamentary elections on average by decade since 1945³



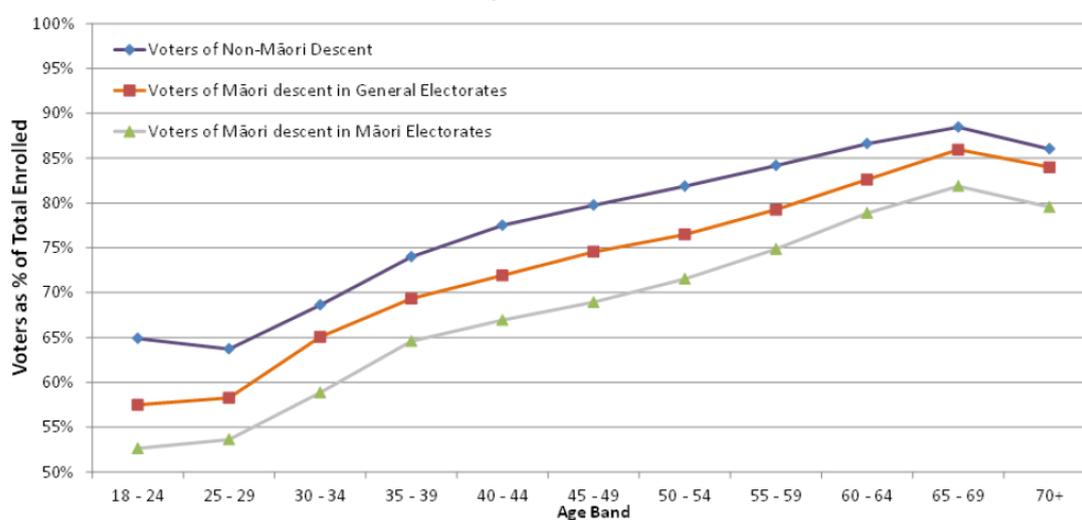
The turnout of enrolled electors in the Māori electorates also saw a slight increase from 58.2 percent in 2011 to 65.1 percent in 2014. However, the participation rates of electors who identify as Māori are lower than those who identify as non-Māori, and also lower for those enrolled in Māori electorates than for those enrolled in general electorates.

We are concerned to see that voter participation is falling for all age groups. The greatest drop is in the 25–29-year-old age group and the lowest rate of voter participation is for 18–24 year olds.⁴ Falling rates of voter participation appear to show that enrolment and voting is a habit that is formed early and persists as one ages.

² *Report of the Electoral Commission on the 2014 general election*, p. 46.

³ *Report of the Electoral Commission on the 2014 general election*, p. 2. Source: Data from International IDEA database.

⁴ *Report of the Electoral Commission on the 2014 general election*, p. 47.

Voter turnout of enrolled electors by age and descent⁵

Post-election surveys indicate that the main reasons non-voters gave for not voting were:

- lack of interest in voting (27 percent)
- other personal reasons, such as health and religious reasons or being away from home (22 percent)
- “didn’t know who to vote for” (11 percent)
- “other commitments” (10 percent).

Only three percent of people did not vote because they did not know how or where, and only two percent said it was because a voting place was too far away.

The reasons non-voters gave for not voting appear to demonstrate that declining voter participation is less about institutional barriers and more about a lack of interest and motivation.

Initiatives for improving voter participation in the 2014 general election

The commission described the turnout result for the 2011 general election as a turning point. Previously, the commission had focused on making voting as accessible as possible, but, after 2011, it determined that it needed to champion participation.

The commission’s strategy for promoting participation in the 2014 general election focused on three areas. The following are some of its main initiatives:

- 1 Starting a national discussion on the implications of declining voter participation.

In May 2014, the commission convened a Valuing our Vote conference and Rock the Vote workshops. The conference aimed to encourage discussion about declining voter participation and set the foundation for a long-term strategy that would involve the Government, academics, media, public sector agencies, and social leaders.

- 2 Providing public information and education resources that facilitate participation.

The commission has worked to increase voter participation through its public information resources. As well as producing the traditional enrolling and voting messages, the

⁵ *Report of the Electoral Commission on the 2014 general election*, p. 47.

commission targeted motivational messages at hard-to-reach voters and developed resources to reduce barriers to participation for those with disabilities or literacy challenges. Youth voters were targeted through Facebook advertising and radio messaging.

The commission piloted a community engagement programme to engage with under-represented groups, particularly Māori, Pasifika, and ethnic communities. The programme aimed to increase voter participation by connecting with community leaders and “influencers”.

The commission continues to support early engagement with the electoral process by developing resources and through its Kids Voting programme in schools. In 2014, the Kids Voting programme saw more than 78,000 Year 9 and 10 students take part in an authentic election experience, using real ballot papers, parties, and candidates from the election.

3 Research on what affects participation.

In August 2013, the commission hosted a one-day workshop, attended by leading academics, researchers, and interested government agencies, on voter participation and electoral research in New Zealand. In 2013, the commission also established scholarships for students completing post-graduate research in voter participation.

Improving voter participation for the future

We recognise the commission’s efforts to increase voter participation from 2011 to 2014. However, much more needs to be done to reverse the trend of declining voter participation. Although the commission could lead this work, it would require dedicated input from a wide range of stakeholders.

Civics education

Declining turnout, particularly among younger people, was of concern to submitters. Many propose that better civics education in schools could help remedy the trend.

We acknowledge the commission’s work in developing teaching units and in running the Kids Voting programme. However, the Constitutional Advisory Panel noted that, although schools have access to a wide range of educational resources, these units do not form a coherent and connected approach to civics education. We agree with submitters and the panel, and would like to see civics education strengthened in the New Zealand school curriculum, increasing in complexity as young people approach voting age.

Some of us suggested that members of Parliament are already involved in civic engagement by visiting schools. While acknowledging the risk that this might be perceived as “electioneering”, some of us felt that this could be mitigated by having the commission run a programme with a focus on information and civic participation.

Recommendation

We recommend that the Government explore the further development and coordination of ongoing, independent, civics education.

Third party voter participation campaigns

We note the work of voter engagement and participation campaigns, such as RockEnrol, Ask Away, and On the Fence, in engaging voters with the electoral process. Some of us considered that third-party voter participation campaigns were more effective in engaging

demographics that the commission was not reaching, such as youth voters. For this reason, some of us felt that these campaigns could be better funded and supported in their work.

However, some of us observe that third-party voter participation campaigners can have conscious or unconscious political bias that could influence the votes of people in their target demographics. There are also risks that third-party campaigners might misrepresent parties' policies, and unduly influence voters, hence it is inappropriate for public funding to go towards them. On balance, the majority of us consider that the focus of the commission should be on much earlier enrolment, and not on engagement through analysis of parties' policies.

Lowering the voting age

Many submitters support lowering the voting age to 16. They argue that 16 and 17 year olds would have a better understanding of their rights and responsibilities as citizens through civics education at school, from which political engagement and voting habits could be developed and sustained.

Submitters who oppose lowering the voting age believe that 16 and 17 year olds could be too easily influenced by their parents or mainstream media.

The commission said that it would support consideration and public consultation on lowering the voting age to 16, noting that overseas evidence indicates that it may be easier to engage 16 year olds in the democratic process than 18 year olds.

In 2007, Austria became the first member of the European Union to adopt a voting age of 16 (except at European Parliament elections, for which the voting age is 18). Electoral data shows that the turnout rates of 16 and 17 year olds were comparable to those of the wider electorate.

In September 2014, Scotland allowed 16 and 17 year olds to vote in the Scottish Independence Referendum. About 75 percent of 16 and 17 year olds are reported to have voted, higher than 18–24 year olds (54 percent) and 25–34 year olds (72 percent). After the referendum, the British and Scottish parliaments agreed to reduce the voting age to 16 for parliamentary elections and local government elections in Scotland.

We recognise that lowering the voting age would be a major change to the electoral system, requiring broad public consultation and a high level of political consensus. Provisions about the voting age in the Act are entrenched, and amending these would require a majority in a referendum or a 75 percent majority in Parliament. While the majority of the committee does not support lowering the voting age, some of the committee feel that this should be debated and considered further.

Compulsory voting

Of the 76 submitters who commented on compulsory voting, 68 provided unconditional or qualified support. Many submitters argue that compulsory voting would lift voter participation and encourage people to become more aware of political issues and policies. Some argue that voting should be compulsory because voting is part of a person's civic duty. Others noted that compulsory voting appears to work well in Australia.

The commission, with some other submitters, does not support the introduction of compulsory voting. It believes that concerns about voter turnout should be rectified through the active engagement of the public, rather than compelling the public to vote.

Making voting compulsory would be a major constitutional change. Therefore, we consider that, if such a move were contemplated, the public must be consulted and a high level of political consensus achieved before any such change is implemented.

De-prescribing forms

The commission submits that the complexity of many electoral forms is a barrier to participation. However, many forms are prescribed in either the Act or Electoral Regulations and can be changed only by legislative amendment or Order in Council. The commission argues that, generally, the Act and Regulations should prescribe what data is collected and the purpose for which it is used, but that how that data is collected and the forms to be used should be determined by the commission.

The commission is seeking to improve participation and electoral accessibility by making the forms more user-friendly—for example, by providing a form in various languages. This will enable the commission to target and encourage the participation of more diverse communities.

Recommendation

We recommend that the Government amend the Electoral Act 1993 and Regulations to only prescribe the data and purpose of the electoral forms (but with the exception of ballot papers which should remain prescribed), to provide the Electoral Commission with discretion and flexibility to better meet the needs and circumstances of electors.

Communicating with electors

The commission is required to communicate with electors at several specified points during the electoral process. For example, it conducts an enrolment update campaign about twice every three years, and it also provides information to voters about candidates and parties, voting places, and the voting process before the election takes place.

Currently, the Act requires the commission to post information to the elector's address. For the enrolment update campaign, the commission reports that many people no longer respond to this information because they see it as a passive exercise to which no response is required.

For information posted to voters before the election, concern was raised about the length of time it took for the information to get to voters, particularly for the beginning of the advance voting period. It is also expected that changes to New Zealand Post services will mean that postal delivery times will be longer at the next election.

We recognise that legislative changes should be made to allow for more effective alternative methods of communicating with voters, whether it be to prompt voters to update their enrolment details or to provide them with information about an upcoming election. The commission suggests that one alternative method could be digital channels, such as communicating by email.

Recommendation

We recommend that the Government enable the Electoral Commission, where appropriate, to use new methods of providing information to electors, in addition to post.

4 Enrolment

An enrolment inquiry began on 23 June 2014, when a personalised enrolment update pack was posted to all registered electors. Any packs that were returned as undeliverable because the elector did not reside at the specified address resulted in the elector being removed from the main roll to the dormant roll.

Registrars of Electors and their staff also carried out enrolment outreach work from the beginning of the enrolment campaign until the day before election day. Through door-knocking and face-to-face interactions, such as in shopping malls, they obtained an additional 65,827 valid enrolment applications.

The rolls used on election day closed for printing on 20 August 2014 and were put on display from 5 September 2014 to allow members of the public to check the status of their enrolment. The roll contained 3,060,957 electors. This was 90.3 percent of the estimated eligible voting-age population, a small drop from the previous three elections.

People were still able to enrol after the rolls closed for printing. Between writ day⁶ and election day, Registrars of Electors processed an extra 166,740 enrolment applications. We are aware that enrolment application data shows that more people are leaving enrolling to the last minute.

Enrolment comparisons as at writ day⁷

<i>Writ Day – Overall Enrolment</i>	2014	2011	2008	2005
Estimated eligible voting age population	3,391,100	3,276,000	3,138,000	2,990,300
Enrolled electors	3,060,957	3,013,651	2,935,537	2,812,033
% enrolled	90.3%	92.0%	93.6%	94.0%

About 3.013 million EasyVote information packs were posted to registered electors in New Zealand who had enrolled by writ day. The packs contained the voter's personalised EasyVote card, information on electorate candidates and voting places, party lists, and a flyer on the mixed member proportional (MMP) voting system. An additional 77,300 packs were posted to electors who enrolled after writ day.

The one-month rule

Currently, the Act specifies that, if an elector changes their place of residence to a different electorate, they must update their enrolment details after living at that new residence for a period of one month. So, in current practice, if an elector moves to a different electorate, and immediately applies to update their address details, the application has to be returned and a new application has to be completed once the elector has lived at the address for one

⁶ Writ day is the day on which the Governor-General issues a writ to the Chief Electoral Officer. The writ specifies the dates of nomination day, election day, and the latest day for the return of the writ.

⁷ *Report of the Electoral Commission on the 2014 general election*, p.75.

month. This is inefficient, confusing, and frustrating for electors who try to do the right thing by updating their enrolment details as soon as possible.

The commission submits that legislative changes should be made so that, should they receive an application to update an elector's details before the one-month threshold, the commission will update the elector's details on the basis of their declaration that they will continue to be at the address in one month. Confirmation can be sent to the elector at the point of enrolment to confirm that they are still at that address.

Recommendation

We recommend that the Government enable the Electoral Commission, where an elector has informed them of a change of residence to a different electorate, to allow enrolment which will take effect after one calendar month from the moving date.

Accuracy and completeness of the roll, and automatic enrolment

The accuracy and completeness of the electoral rolls are important components of electoral integrity. The commission reports that a recent independent survey of the accuracy of the rolls confirmed that they were 96.9 percent accurate as at writ day.

Some submitters suggest that electors should be automatically enrolled, using information supplied from other government data. They argue that automatic enrolment would increase the completeness of the rolls and would also be useful in reversing declining voter turnout because it would capture those missing from the rolls, a target population of concern.

In overseas jurisdictions where there is automatic enrolment, generally one of two different models are used. Many European countries, such as Denmark and Germany, have adopted a civil registry model. Under this model, the Government maintains a register of the population, including basic data such as age, residence, citizenship, and identification numbers. New Zealand does not have such a register.

Other countries, such as Canada and Australia, use a government data-sharing model in which the country's electoral authority collects electoral information from other government agencies. New Zealand does use data-sharing partnerships to identify and contact individuals who are not enrolled or have potentially out-of-date information. However, registration is not automatic and requires direct contact with the elector. The response rate is quite low, at about 20.5 percent.

Automatic enrolment presents several challenges, including the concern of citizens and privacy advocates about data-sharing between government institutions, preserving the accuracy of the rolls, and (specifically in the New Zealand context) how to reconcile automatic enrolment with the Māori Electoral Option (MEO). The commission also notes that it has higher standards of address verification than other government departments. The commission has information-matching agreements with the Ministry of Business, Innovation and Employment, the Ministry of Social Development, the Registrar of Motor Vehicles, the New Zealand Transport Agency, and the Department of Internal Affairs. The commission works with these agencies, as they interact with their service users, to identify individuals who are not enrolled and follow up with them. We consider that there is room for more government agencies to work with the commission to encourage enrolment by integrating prompts to enrol within the services they provide.

Recommendation

We recommend that the Government make promoting voter enrolment a whole-of-government priority with government agencies working together to facilitate enrolment.

Special vote declaration as an application to enrol

Special votes are cast in instances where the voter is casting a vote from overseas, outside their electorate, or away from the supervision of an electoral officer (such as a dictation vote). A voter must also cast a special vote if they are not on the printed roll. Special voters must complete a statutory declaration at the time they vote.

During the advance voting period, anyone who is not enrolled as an elector (or is unsure about the status of their enrolment) can enrol at any point during the period with the prescribed form, and can then immediately cast their vote in the form of a special vote, except on election day.

For various reasons, an elector may choose to complete a special vote, which involves submitting their details and signing a statutory declaration in front of a witness, unaware that they are not enrolled to vote. In this case, the elector will receive a letter from the commission advising them that their vote did not count and requesting that they now enrol by submitting the same details they provided when they cast their special vote. Not only has their vote been disallowed but an opportunity to engage the elector in the political process has been lost. The elector must also duplicate the paperwork for their enrolment.

There were 328,029 special votes cast in 2014. Of these, 38,031 had only their party votes allowed because they had voted in the wrong electorate and 27,447 disallowed special votes were disallowed because the voter was not enrolled at all.

An analysis of the Te Tai Tokerau judicial recount indicated that some voters whose votes had been disallowed because they were not enrolled had completed special vote declarations at previous elections. The commission surmises that these voters thought that completing a special vote declaration would enrol them.

With both enrolment and voting now being delivered by a single agency and because both forms require similar details from the elector, the commission suggests legislative change that would enable a special vote declaration form to be treated as an application to enrol or update details. This would also serve to streamline the enrolment and voting process during the advance voting period. A minority of us support the proposal that if the special vote is cast during the advanced voting period then the vote would count for that election, and if the special vote were cast on election day, the special vote declaration form would be treated as an application to enrol or update details for the next election.

Election day enrolment

To cast a valid ballot, voters must be enrolled before election day. This means that, although advance voters can enrol and vote at the same time, those voting on election day cannot. Some submitters suggest that voters should be able to enrol and vote on election day; this would reconcile the incongruity between voters being able to enrol and vote on the same day during the advance voting period but not on election day, and would enhance the convenience for voters.

We heard that the ability to enrol on election day may also go some way to minimising disallowed special votes. During the 2014 general election, 27,467 special votes were

rejected because those casting them were not properly enrolled to vote. The commission observes that a growing number of electors find the enrolment system complex and have failed to realise that they are not currently enrolled.

One submitter notes that disallowed votes are unevenly distributed between electorates, with the highest numbers found in the Māori electorates and those South Auckland seats with a large proportion of Māori or Pasifika voters. The number of disallowed special votes represent 0.98 percent of all votes cast in general electorates and 3.15 percent of all votes cast in Māori electorates.

The ability to enrol and vote on election day presents certain challenges. Some submitters argue that many voters would leave enrolment until election day, which could result in resourcing issues on the day. We note that the trend in advance voting uptake could mitigate these resourcing issues, as fewer people choose to vote on election day. We will monitor these trends in the 2017 general election with interest.

The commission advised us that because of the numbers potentially involved, it would not be confident it could validate election day special vote enrolment applications with integrity without delaying the official count. The commission instead recommended that the question of whether election day special vote enrolment applications could be included in the official count should be reconsidered for the 2020 election in light of lessons learnt in 2017.

A minority of us believe that the ability to enrol and vote should be available on election day to prevent the currently high rate of disallowed votes.

However, the majority of us consider that the focus of the commission should be to enrol electors earlier, rather than later, to protect the integrity of the roll by allowing time for it to be scrutinised. We are not pursuing the ability of electors to enrol and vote on election day for the 2017 general election.

Availability of the roll

The public availability of the roll is important to ensure its integrity. Political parties, candidates, and special interest groups also use the roll to promote and mobilise turnout. However, the public availability of the roll also raises some privacy concerns, because rolls are more commonly being purchased for commercial purposes, such as debt collection, marketing, and other non-electoral purposes.

Submitters have mixed reactions about how to balance maintaining the integrity of the roll, the scrutiny of the roll, encouraging enrolment, promoting turnout, and protecting electors' privacy. Some submitters argue that the roll should be provided only to parties and candidates. Others submit that voter participation and engagement groups should also have access to the roll to promote voter turnout, but only if they register to use the roll solely for civic purposes. The commission supports the public availability of the roll, but with certain restrictions to protect electors' privacy, such as removing the roll from general sale and removing specific information from the roll.

Recommendation

We recommend to the Government that it consider conducting a review of roll access in consultation with the Privacy Commissioner, given that the information included on the roll and the availability of the roll do present privacy concerns.

Electronic roll look-up and roll mark-off

The commission submits that legislative change would allow it to electronically look up and mark off the roll. The commission hopes that this technology would bring about greater efficiencies in the voting process, and would like to trial the use of this technology in some advance voting places. The commission notes that this technology has been used successfully in other international jurisdictions.

Recommendation

We recommend that the Government enable electoral officials to use an online enrolment checking function in voting places to enable real-time checking of voters' enrolment status in polling places.

Closing the roll

Some submitters argue that, although the roll has traditionally closed before voting, the advance voting period means that it is now possible to enrol at the same time as voting. They question whether this process is robust enough, and suggest an earlier closing of the roll, or a separate closing of the roll for advance voting, to ensure adequate scrutiny of the roll.

The commission observes that closing the rolls earlier would be impractical for advance voting places, because officials would be unable to tell whether a person who was not on the printed roll in the voting place was nonetheless still enrolled. We observe that more people than ever are choosing to enrol later and suggest that the commission put a strong focus on earlier enrolment. However, some of us agree with the commission that an earlier closing of the rolls could disenfranchise a significant number of people.

5 Voting and election day processes

Voter survey results showed that 92 percent of voters were satisfied or very satisfied with their voting experience, and we were pleased that satisfaction with the entire voting process improved from the 2011 general election.

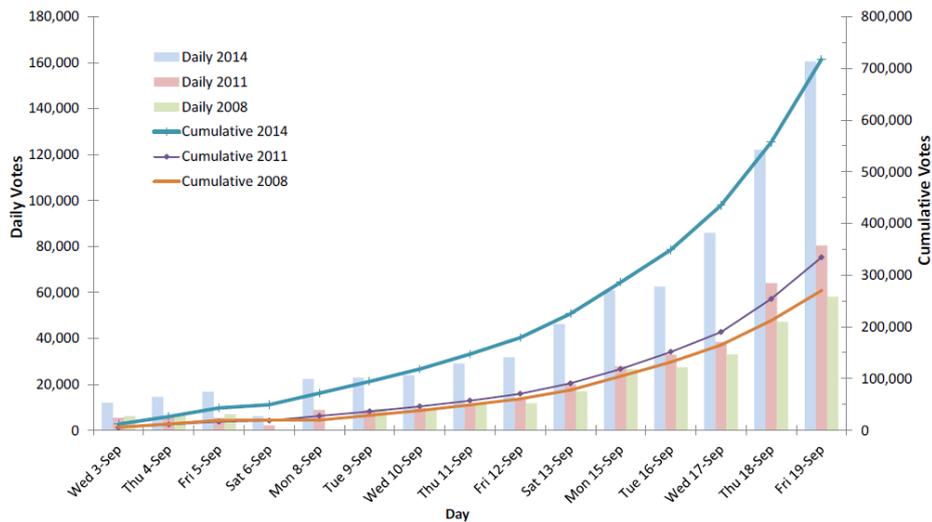
Advance voting

Advance voting began on 3 September 2014. This was 17 days before election day. The number of advance votes doubled from the 2011 election, with 717,549 (29.3 percent) advance votes in 2014 compared with 334,558 (14.7 percent) in 2011. More people voted in the last three days of advance voting than in the entire advance voting period in 2011.

Most submitters who commented on advance voting support it, describing the service as “really useful”, “convenient”, “welcome”, and “brilliant”.

The commission noted that many voters chose to vote in advance for reasons of convenience. Voters found it easy to vote in one of the 295 advance voting places (compared with 254 in 2011) in highly visible and high-traffic areas throughout the country. University students away from home could vote at advance voting stations on campus, and advance voting services at airports catered to voters who were travelling during the holiday period. The commission suggests that advance voting also increased in popularity because the service gained more media coverage in 2014 than in previous elections.

Advance voting statistics from the 2014 general election⁸



Resourcing advance voting services

With advance voting increasing in popularity, the commission is reviewing its staffing and resourcing requirements, including the number and location of advance voting places.

The commission is considering a shorter, more concentrated advance voting period to allow for a more cost-effective use of its staff and resources. The commission suggests that

⁸ *Report of the Electoral Commission on the 2014 general election*, p.83.

in order to provide a better, more consistent service the advance voting period be concentrated in the 12 days before election day, when most advance votes are cast.

By shortening the advanced voting period, the commission also hopes that it would be able to send out EasyVote packs before the beginning of the advanced voting period. During the election, 24 percent of advance votes had already been cast before the EasyVote pack had been delivered. Although some submitters suggested sending out the EasyVote packs earlier, the commission notes that the timely delivery of the packs depended on nomination day,⁹ which was close to election day.

We would like to see an increase in the number of advance voting places, with increased opening hours, and greater consistency of opening hours between advanced voting places for the 2017 general election. We would also like to see better promotion of the availability of advance voting places. Some of us do not believe that this should be at the cost of a shorter advanced voting period, but the majority agreed that to free up resourcing to effect our recommendation, the advance voting period could be shortened to two weeks before election day.

Recommendation

We recommend that the Government improve accessibility to advance voting places by increasing their numbers and opening hours, and providing greater consistency, as far as is practical, between advance voting places and voting places on election day. Provided that improved accessibility is achieved, we recommend considering a 12-day advance voting period.

Counting advance votes

The Act enables Returning Officers to do a preliminary count of ordinary advance votes at their electorate headquarters before the poll closes. In 2014, the preliminary count of advance votes began at 2.00 pm on election day. Because of the popularity of advance voting, the average electorate had to count about 10,000 voting papers, compared with an average of 4,000 voting papers in 2011.

The commission commends the work of Returning Officers, who were able to complete counting the unexpected volume of advance votes within their target times. Ninety-eight percent of all advance votes were reported by 8.30 pm.

For the 2017 general election, the commission aims to release the results of the advance ordinary votes by 8.30 pm. However, because advance voting is expected to rise again, counting the votes to meet this target will become increasingly difficult.

The commission submits for legislative change that would allow the preliminary count of advance votes to begin earlier on election day. However, given the logistical challenges of getting advance votes back to headquarters in large rural electorates, simply allowing the count to start earlier may not be an adequate solution and a new approach may be required.

⁹ Nomination day: the date specified in the writ for a general election or by-election on which all nominations for electorate candidates must be made to a Returning Officer, and in the case of a general election, by which all party lists must be submitted to the Chief Electoral Officer.

Recommendation

We recommend that the Government allow the Electoral Commission to investigate a new approach to advance vote counting, including bringing forward the start time for the counting of advance votes from 2.00 pm to 9.00 am on election day, the location of the count, and the use of technology, given the increasing number of advance votes.

Preliminary count

The growth in advance voting meant that a larger proportion of the votes were counted earlier than in previous elections. Ninety-eight percent of all advance votes were counted by 8.30 pm on election day, and 99.8 percent of all voting places reported by 11.30 pm. In total, electoral officials counted 2,112,522 votes as part of the preliminary count on election day.

Candidate scrutineers present at the official count or any judicial recount are required to sign a secrecy declaration. Scrutineers are there to observe the process and to update the candidate, who is not allowed to be present. The presence of scrutineers is an important way of ensuring the integrity of the electoral process. However, it undermines the public trust and confidence in the system if candidates or other persons were to leak the result before the official results are declared. This was an issue at the Waitakere recount in 2011 and at the official count in Hutt South in 2014.

We endorse the commission's intention to strengthen its messaging to scrutineers and candidates about the importance of observing the correct protocols during the official count and any recount, and maintaining the confidentiality of results until they are officially released.

Voter identification

Several submissions call for more robust identification requirements when voters present to cast their ballot, to prevent fraud and personation.¹⁰ Some submitters suggest that photographic identification be required, and others suggest that postal voting be strictly limited.

We observe that fraud and personation countermeasures are in place: dual votes are extracted through the scrutiny process and not included in the official count, and cases of personation are referred to the police. The number of dual votes is very low, between 0.002 and 0.004 percent of registered voters. The pattern of dual voting between electorates does not show any attempt by an individual or group to affect the outcome of the election.

There has been an increase in referrals for personation, from 63 in 2011 to 126 in 2014. The increase in referrals may reflect a number of significant changes in the 2014 general election voting processes. In previous years, the roll was scrutinised manually. However, in 2014, the rolls were scrutinised using optical scanning technology, which is a more accurate detection system. The increasing popularity of advance voting may have also contributed to the increase in referrals, with 70 percent of the referrals involving a person who had voted during the advance voting period and then again on election day.

We note that submitters regularly raise issues of voter identification and voter fraud. Because there is no evidence of widespread fraud or personation, we do not consider it

¹⁰ Personation: where an individual votes in an election pretending to be a different elector, or votes again after having already cast their vote.

necessary to introduce additional identification requirements when voting. We also note that requiring photographic identification from voters might result in some voters being turned away from voting, impose additional costs on voters, and ultimately further reduce turnout.

Requirement for voter to verbally confirm their name

For the 2014 general election, Parliament enacted a new requirement for voters to verbally confirm their name before being issued with a voting paper. This process provided for additional confirmation from the voter about their identity as well as ensuring the accuracy of the marking of the roll. We would like to see the commission ensure that this requirement is being consistently followed by issuing officers at future elections.

If it was not possible for a voter to verbally confirm their name because of disability or language difficulties, they could confirm their name by writing it or by affirming with gestures that their name as presented on the EasyVote card was correct.

Special vote processing

Regulation 36 of the Electoral Regulations requires Registrars of Electors to endorse the words (qualified, party vote qualified, or not qualified) on the special vote declaration. Currently, Registrars of Electors affix a label showing the voter's enrolment status to the declaration and then endorse it by placing their initial next to it.

The commission argues that this manual process is time consuming and should be done electronically.

Recommendation

We recommend that the Government amend Regulation 36 of the Electoral Regulations to remove reference to "endorsement" in order to facilitate a fully electronic process for special vote declaration processing.

Overseas voting

The commission sent a personalised letter to all electors with an overseas postal address, informing them how, when, and where to vote. About 40 percent of the 52,226 enrolled voters with an overseas address voted. Most overseas votes came from Australia, the United Kingdom, the United States of America, and Canada.

In the 2011 general election, overseas voting fell by 35 percent from the previous election. Many overseas voters struggled to return their voting papers because they did not have access to a fax machine. The commission determined to make voting more accessible for overseas voters in future elections.

For the 2014 election, overseas voters could download their voting papers from the commission's website, apply to the commission to have voting papers sent to them, or vote in person at an overseas post. Overseas voters could then return their votes by fax, post, an overseas post, or, for the first time, scanning and uploading them directly to the commission's website. Although some submitters are concerned about the security of the upload process, the commission reported that an independent security review did not identify any security breaches throughout the voting process.

In 2014, there were 40,132 overseas votes, an 86.7 percent increase from 2011's 21,496 votes. The commission suggests that the number of overseas votes increased because the

election was held during the peak travel period and because of the success of the upload system, which allowed overseas voters to return their papers more easily than through the postal system.

Overseas voting papers issued and received¹¹

STANDARD VOTING SERVICES	Votes Issued	Votes Received
Download voting papers system	34,055	-
Postal	1,229	2,008
Overseas Posts	11,389	13,170
Upload voting papers system	-	22,333
Fax	-	2,541

REMOTE VOTING SERVICES		
Electronic (email) <i>Excluding fishing vessels</i>	0	7
Electronic (email) <i>Fishing vessels only</i>	60	56
Fax	0	0
Dictation	-	17

TOTAL	46,733	40,132
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The commission has identified some minor improvements that it could make to clarify the address details that overseas voters need to provide on the declaration form.

Recommendation

We recommend that the Government enable the Electoral Commission to make the minor improvements which it has identified that will clarify address details that overseas voters need to provide on the declaration form prescribed in the Electoral Regulations 1996.

Dictation voting

Dictation voting for remote overseas voters

For remote overseas voters who choose to use the dictation voting service, regulations specify that dictation votes must be cast by 4.00 pm on the Thursday before election day. We agree with the commission that this deadline is unnecessarily restrictive and may present a barrier for some overseas voters. We consider that dictation votes from overseas voters should be able to be cast until the close of polling on election day.

Recommendation

We recommend to the Government that regulations relating to dictation voting for remote overseas voters be changed to allow for applications until 4.00 pm on the Thursday before election day, and for dictation votes to be cast until the close of polling at 7.00 pm on election day.

¹¹ *Report of the Electoral Commission on the 2014 general election*, p.86.

Dictation voting for voters with disabilities

The 2014 general election was the first time when voters with a disability who typically need assistance with marking their ballot paper could use a telephone dictation service to cast their vote. The Association of Blind Citizens awarded the commission with the Extra Touch Award in recognition of its successful implementation of dictation voting and its success for blind and vision-impaired people.

Electors could use the service by making an initial call to register for the service, from the day after writ day until two days before election day. As part of their registration, the elector was given a unique six-digit registration number and provided with a personal question to verify their identity for when they next used the service.

From the beginning of the advance voting period until the close of voting on election day, electors could make a second call to cast their vote. One operator would read and mark the ballot options, and another operator would confirm how the ballot had been marked.

Overall, 753 people registered to use the dictation service, and 714 used it to record their vote. Ninety-five percent of dictation voters cast their vote during the advance voting period.

We are pleased with the success of the commission's efforts to make voting more accessible to electors and that dictation voting will now be provided as a core voting service at future elections, by-elections, and referendums.

Online voting

Of the 211 submissions we received, 70 support the introduction of online voting. Submitters point out that, in this "digital age", many government services are delivered online and that online voting would align with people's expectations better than traditional voting. Many submitters feel that online voting would be an easier, more accessible method of voting, especially for young voters and voters with disabilities.

Some submitters oppose the introduction of online voting. Arguments against online voting include the cost to establish and maintain an online voting system, the risk of security breaches, doubt about whether a more accessible system of voting necessarily encourages voter engagement, and that New Zealand's voting system is already one of the most accessible and trusted systems in the world.

We note the proposed online voting trials for the 2016 local government elections and will monitor these with interest. However, we recognise that there are substantial differences in systems, context, and legislative frameworks between local and national elections. We consider that, in comparable international jurisdictions, online voting has not necessarily increased voter turnout. Although we watch the progress of online voting in these jurisdictions with interest, we do not consider online voting to be a priority for the 2017 general election in light of other, more pressing concerns outlined in this report.

Services to voters

Voters in remote locations in New Zealand

For 2014, provision was made for overseas voters and voters on fishing vessels to be able to receive and return their voting papers electronically. The commission submits that there are voters in other types of remote locations in New Zealand who would also benefit from accessing these alternative voting services.

Recommendation

We recommend that the Government enable voters on vessels and offshore installations, and on remote islands administered by the Department of Conservation, to receive and return voting papers electronically or by phone dictation.

Voters in prisons

Prisoners on remand are the only prisoners eligible to enrol and vote. Before the election, Registrars of Electors visited or contacted managers of all prisons holding remand prisoners, to make sure that electors were given information about the election and the opportunity to enrol.

Returning Officers liaised with prison managers to collect prisoner votes during the advance voting period. On election day, Returning Officers visited police stations to give remand prisoners held in police cells the opportunity to vote.

Some of us consider that voting rights should be reinstated for prisoners serving a custodial sentence of three years or less, as was the case previously. We also note the recent High Court declaration that current prisoner voting restrictions are inconsistent with the New Zealand Bill of Rights Act 1990.¹² Some of us also argue that the prohibition on prisoner voting hinders rehabilitation and disproportionately affects Māori. Having considered this issue, the majority of the committee recommends that the status quo should be maintained.

Services to voters with disabilities

We were pleased that 88 percent of voters with a disability reported that they were “happy” or “very happy” with the overall voting process and that satisfaction levels of voters with a disability had improved since 2011. Ninety-four percent of voters with a disability said that they had a good or excellent understanding of voting processes.

Some submitters appreciate the commission’s efforts to make the electoral process more accessible for voters with disabilities. Others suggest ways that the electoral experience could be improved—for example, by providing online voting or a fully automated telephone voting service so that voters with disabilities could cast their votes unassisted.

A strong theme in the submissions relating to voters with disabilities was about media coverage around the election. Submitters call for a greater use of captioning on political media coverage and more media content aimed at voters with disabilities. Some submitters argue that interpretation, captioning, and election advertising targeted at voters with disabilities should be publicly funded or not count towards electoral expenditure limits.

The cost of captioning an election advertisement or providing translation into New Zealand Sign Language is not exempt from the meaning of election expenses as specified by the Act. However, other services for voters with disabilities fall outside of what constitutes an electoral expense—for example, providing a New Zealand Sign Language interpreter at a campaign meeting cannot be deemed an electoral expense. We consider that it is important that parties be allowed to continue using their funding allocation for state-funded political broadcasts for captioning.

We are pleased at the commission’s efforts to improve the voting process for voters with disabilities, particularly by providing a telephone dictation service. We encourage the

¹² Justice Paul Heath, 24 July 2015.

commission to continue to develop and improve services for these voters and to provide them with the information and services that they need to fully participate. At this time, we do not recommend online voting as a method of voting, as we have discussed previously in our report.

Services to Māori voters

Electors on the Māori roll were able to vote at all voting places. Eighty-six percent of Māori voters reported a high level of satisfaction with voting processes, and Māori voters reported a higher level of understanding than other voters about how and where they could vote.

For the 2014 general election, the commission took greater steps in engaging Māori electors in Te Reo Māori than in previous elections. Some bilingual voting place signage was introduced, and the commission appointed 650 Te Reo Māori speakers as staff. We are pleased by the commission's plans to improve Māori engagement and participation by increasing the number of staff who can speak Te Reo Māori and continuing to use outreach activities targeted at Māori voters.

Māori Electoral Option

During the Māori Electoral Option (MEO) period, electors of Māori descent can choose whether they want to be enrolled in the general or Māori roll. The MEO period is a four month period that takes place about every five years, depending on the timings of the census and general elections.

In the run-up to an election, some Māori electors assume that they can change their roll type as part of the general enrolment or update process but are disappointed to learn that they must wait until the next MEO.

The Māori Party member of the committee recommended that those who identify as Māori in the census should be automatically enrolled on to the Māori roll, with the option to “opt off” in each election cycle.

We are concerned that such a large delay between each MEO period could confuse Māori voters and frustrate their ability to participate meaningfully in the electoral process. We agree with the commission that Māori voters should be allowed to change roll types once each electoral cycle and that this should be communicated in the commission's enrolment update campaigns. We recognise that this change would need to be carefully communicated, so that Māori electors would be fully aware of the consequences of this when voting in local government elections.

Recommendation

We recommend that the Government enable electors of Māori descent to change roll type once each electoral cycle with the Māori Electoral Option (MEO) period taking place every three years.

We also note that the census is the timing “trigger” for the MEO period and is also the data source for setting the number of electorates and electorate boundaries. Statistics New Zealand is currently reviewing the census model, and we consider that any consideration of changes to the MEO period and/or setting of electorate boundaries should take this work into account. At this stage, the most practical options in these areas would be to decouple the MEO period and any review of electorate boundaries from the timing of the census,

and use an alternative data source such as Statistic New Zealand's Estimated Resident Population.¹³

Recommendation

We recommend that the Government consider “decoupling” the electorate boundary review process from the census, in light of possible future changes to the census.

Services to diverse voters

Although Asian, Pasifika, and young voters reported a high level of overall satisfaction with voting processes (96 percent, 98 percent, and 90 percent respectively), these demographics were more likely than other voters to report having a poor or very poor understanding of the electoral process. We are pleased that the commission will look at ways to improve outreach and information for diverse voters, and will monitor this with interest.

Administrative and operational matters

Adjournment of polling in an emergency

Section 195 of the Act provides for the commission to adjourn voting at a polling place if voting cannot proceed because of an emergency. The commission observes that this provision has significant constitutional and political implications: under MMP, if voting has to be adjourned in a voting place, the election of all members of Parliament and the formation of the Government is delayed for the period of the adjournment.

After the 2011 general election, the commission recommended further consideration of whether the current emergency provisions are adequate. The current emergency provisions do not allow nationwide adjournment and do not deal with the effect of adjournment in one area on the release of results elsewhere.

Recommendation

We recommend that the Government review whether the emergency provisions as specified in section 195 of the Electoral Act 1993 are adequate and fit for purpose.

¹³ The Estimated Resident Population (ERP) is an official population measure. It is an estimate of all people who usually live in New Zealand at a given date. The ERP is produced annually and is therefore more frequently available than a 10-year census.

6 Broadcasting and election advertising

Parliament appropriated \$3,283,250 to enable political parties to fund their broadcasting of election programmes for the 2014 general election, the same amount as was available in the 2005, 2008, and 2011 general elections. The commission notes that, although the amount of funding has remained the same, its purchasing power has decreased significantly over time.

The broadcasting regime

Opening and closing addresses

The broadcasting allocation and the restrictions on broadcasting election programmes continue to be a regular topic of submissions for general election inquiries. Some submitters argue that public funding for political advertising is inappropriate. Others propose that parties should be given flexibility in determining how they spend their broadcasting allocation.

Other submissions suggest that the current provisions of Part 6 of the Broadcasting Act 1989 are outdated. For example, they argue that public funding for political advertising should be extended beyond broadcasting to include other forms of increasingly popular media, such as social media or on-demand services. Submitters argue that there are much more effective means of engaging with voters than broadcasted opening and closing addresses, noting that the opening addresses attracted 146,000 fewer viewers than Channel ONE usually averages in this time slot.

Television New Zealand (TVNZ) submits that it no longer sees itself as a public national broadcaster. It said that it has moved to being a commercial operator and should not be obliged to provide free time for broadcasting. It suggests that Parliament TV would be a more appropriate channel to host the opening and closing addresses. We disagree.

Part 6 of the Broadcasting Act 1989 obliges TVNZ and Radio New Zealand to provide some time, free of charge, for broadcasting opening and closing addresses for each general election. The commission decides the amount of time each party should be given and the order of the addresses.

The provisions of Part 6 of the Broadcasting Act 1989 encourage party participation by providing that all eligible parties have a means of election advertising. This limits the advantages of the better-resourced parties by restricting their ability to conduct extensive broadcast advertising, while allowing access to broadcast advertising for parties that ordinarily would not be able to afford it.

However, Part 6 places strict restrictions on the broadcast of election programmes because broadcasting media is viewed as more influential and powerful than other types of media. It also limits parties' abilities to choose how they will advertise or target specific demographics, and it restricts freedom of speech, particularly for parties who get small allocations. We consider that parties should be given greater flexibility about how they use their broadcasting allocation while ensuring maximum reach to electors.

Recommendation

We recommend that the Government consider greater flexibility for opening and closing addresses and give parties choice around how they want to use their allocation to buy broadcasting time and money, on the condition that broadcasting time is able to be purchased in primetime slots to ensure maximum reach to electors.

Section 75(2) of the Broadcasting Act 1989 requires the commission to, when allocating broadcasting time to parties, consider specific matters such as the number of MPs in the party and its polling results, as well as give broader consideration to “fairness”. Because parties have different perspectives about what is “fair”, the commission feels that allocating broadcasting time is difficult, and its allocation is almost always universally unpopular. The commission submits that the provisions that determine how it allocates broadcasting time be reviewed.

The commission also notes that a situation arose just before the 2014 general election that required the commission to vary its broadcasting allocations. The situation brought to light some deficiencies with the commission’s power to vary broadcasting allocations, and the commission submits that these powers be reviewed. In the commission’s view, the following matters require legislative review:

- the distinction between ceasing to be registered and failing to achieve registration
- eligibility to apply for allocations against final eligibility for allocations
- the scheme anticipates variation by way of reallocation yet prohibits variation in circumstances in which a party or parties have given effect to an allocation in whole or in part, but what “giving effect to” amounts to is unclear
- distinctions between criteria for the allocations and the criteria that trigger a power to vary
- what circumstances constitute a change in relationships between political parties “to a significant extent”
- whether the power to vary includes a power to reduce allocations in circumstances not covered in section 76A(4) of the Act.

Recommendation

We recommend that the Government review specific provisions in relation to the Electoral Commission’s power to vary broadcasting allocations to ensure greater clarity.

Entertainment

Important public interest exemptions for news, comment, and current affairs, protect media freedom from the restrictions in Part 6. However, there is no express exemption for satirical, humorous, and creative programmes broadcast by third parties. We agree that this is an area that either needs clarification or an exemption.

Recommendation

We recommend that the Government consider providing clarification or exemptions to the restrictions on broadcasting election programmes to address satirical, humorous, and creative programmes.

“Election programme” and “election advertisement”

Several submitters noted that the responsibilities of the commission overlap with those of the Broadcasting Standards Authority (BSA). The Broadcasting Act 1989 prescribes a statutory test of “election programme” and the Electoral Act prescribes a statutory test for “election advertisement”. The application of the contrasting statutory tests, or of either test by two different bodies to the same programme can produce different results.

In addition, some submitters feel that the rules that apply to election programmes are unnecessarily restrictive and curtail freedom of expression, and called for a review of the restrictions on the broadcasting of election programmes.

The commission suggests that a review of the broadcasting regime encompass the differences between the statutory tests of “election programme” in the Broadcasting Act and “election advertising” in the Electoral Act. We agree that a review would be timely, but consider that any review should consider the current work by the Ministry of Culture and Heritage on broadcasting and digital media convergence.

Recommendation

We recommend that the Government consider aligning the statutory tests of “election programme” in the Broadcasting Act 1989 with “election advertising” in the Electoral Act 1993, but suggest that this alignment take into account the current work by the Ministry of Culture and Heritage on broadcasting and digital media convergence.

At the moment, outside the election period, only the broadcaster is liable for breaching Part 6 of the Broadcasting Act. We also recommend aligning the liability for breaching Part 6 of the Broadcasting Act so that provisions would apply to the broadcaster and any person who arranged for the broadcast of an election programme in contravention of the Electoral Act, whether within or outside an election period.

Recommendation

We recommend that the Government align liability for breaching Part 6 of the Broadcasting Act to apply to the broadcaster and any person who arranged for the broadcast of an election programme, whether within or outside an election period.

Restrictions on campaigning: advance voting and election day

The advance voting period, the 17 days before election day, is a critical time for the election campaign. The prohibitions on campaigning that apply on election day do not apply during this time. However, with more people voting in advance, some submitters question the inconsistency between the lack of restrictions on campaigning in and around advance voting places and the prohibition on campaigning on election day.

Submitters who observe this inconsistency generally fall into one of the following three groups:

- Those who feel that the status quo should remain, arguing that voters could choose whether they wanted to vote during the advance voting period or vote on election day as a “special day”, without the interference of campaigning.

- Those who feel that election day campaigning restrictions should be relaxed, especially given the increase in voting before election day. Some submitters argue that there should be consistent freedom to campaign and advertise throughout the voting period. A submitter also argues that the advance voting period has demonstrated that people can vote without being unduly influenced by political campaigning and advertising.
- Those who feel that some or all election day campaigning restrictions should be extended to cover the advance voting period. Many submitters call for a “zone” around advanced voting places where campaigning and advertising would be banned.

The commission recorded complaints from the public or candidates and parties about campaign activity near advance voting places, or election advertising worn by scrutineers inside advance voting places. Although Returning Officers and their staff urged campaigners to exercise restraint, some members of the public still felt intimidated when they went to cast their vote.

We agree that the immediate confines of voting places need to be free of campaign material throughout the voting period.

Recommendation

We recommend that the Government prohibit campaigning and the display of campaign material within, and in the immediate vicinity of, advance voting places.

Parliamentary signage

We observed that the current rules exempt the signage around a political party’s headquarters from the definition of “electioneering” on election day. We consider that this exemption should be extended to include members’ parliamentary office signage and other fixed signage not intended to be an election advertisement.

Recommendation

We recommend that the Government consider extending the current exemption from electioneering on election day for party headquarters signage to any members’ fixed parliamentary signage on electorate offices.

Hoardings

We observed that the current rules about when political hoardings can be erected are sometimes in conflict with local by-laws causing confusion and complaints.

Apart from the two months before an election only local council rules and bylaws apply to electoral billboards. However, in the lead up to an election the relevant provisions of the Act and the Electoral (Advertisements of a Specified Kind) Regulations 2005 (which provide election signs up to 3m² to be erected) apply. These generally override any council rules; however, some local rules (such as where signs can be erected) still apply.

The start of this period is two months before election day, which means that it can fall on days other than a Saturday. One submitter suggested to us that the date from which hoardings can be erected should be “Saturday-ised”. We agree with this.

Recommendation

We recommend to the Government that the date from which hoardings can be erected should be “Saturday-ised” to provide clarity.

Social media and election day

Social media continues to present several challenges to regulating the election day advertising rules.

Currently, the election day rules prohibit any statement published or distributed that may influence how voters may vote. Although these prohibitions were enacted before the use of social media, they include statements published or shared on social media. Some submitters feel that these rules do not reflect the expectation of voters about what they can post online and unduly criminalise behaviour that should not be restricted.

Social media presents other challenges. Social media users might post election material before election day, in line with current rules. However, if that material is shared or re-posted on election day, either intentionally or not, the user who shared that content would be in breach of the rules. Also, if social media users publish election material before election day, but then leave the content up on election day, they would not be in breach of the regulations, but would be contravening the spirit of the Act’s prohibition on election day electioneering.

During the advance voting period, some candidates and voters took pictures of themselves in voting places and posted them online. Not only did this raise concerns about congestion and disturbance in voting places but the commission also observes that any person who shared or posted these images on election day would breach the election day rules. The rules that protect the secrecy of the ballot are not only there to protect the voters’ privacy but are also there to protect the integrity of the vote by ensuring that the voter can never prove how they voted, to prevent intimidation.

Submitters have mixed reactions as to how to address the challenges presented by social media. Some submitters argue that there should be an exemption for personal expression of political views on social media. However, some submitters point out that high-profile personalities using this exemption might still influence voters. Additionally, it would be difficult to regulate this exemption as it applied to parties and candidates.

There is no simple solution to these issues, and, on balance, we consider that lifting the restrictions on statements on election day could be exploited. We consider that the status quo restrictions should remain but encourage a proportionate approach to infractions and the provision of further information and guidance on complying with the law.

7 Regulatory framework

MMP

After the 2011 general election, the commission conducted an extensive public consultation and review of the MMP electoral system. The commission's recommendations are yet to be considered by Parliament.

Nominations

In the 2014 general election, 15 parties contested the party vote, and 483 electorate candidates and 440 list candidates were nominated.

General nomination statistics¹⁴

Category	2014	2011
Parties contesting party vote	15	13
Male candidates	390 (70%)	397 (73%)
Female candidates	164 (30%)	147 (27%)
Total number of candidates	554	544
List only candidates	71	91
Electorate only candidates	114	73
Dual candidates	369	380
Average number of electorate candidates per electorate	6.8	6.5

A party's secretary is required to provide the nominations of their electorate and list candidates to the commission. The commission provided training on how to use its secure online nominations system, and 15 parties opted to bulk nominate their electorate candidates and pay their nomination deposits using the commission's online facility.

The deadline for the bulk nominations was at noon on 25 August 2014, while individual nominations and party list candidates closed at noon on 26 August 2014. The commission observes that the different deadlines are confusing, especially because most parties have dual candidates contesting both the party vote and an electorate. The commission submits that the process would be much simpler if parties were required to submit their party list and bulk nomination together.

¹⁴ *Report of the Electoral Commission on the 2014 general election*, p.81.

Recommendation

We recommend that the Government consider making the deadlines for both the party list and bulk nominations noon on the day before nomination day.

Electoral finance**Expenditure limits and donation caps**

Most submissions about electoral finance comment on campaign expenditure limits and donation caps or bans.

Some submitters suggest that the expenditure limit be the same for all parties, to provide a level playing field. Some submitters also argue that caps should be placed on the size of donations. We recognise that the current rules that govern expenditure limits and donations seek to balance various competing factors, such as

- the need to allow equitable opportunity for different political perspectives to be expressed and the need to manage perceptions of the influence of expenditure on the elections, weighed against the need for restrictions on freedom of expression to be well justified
- the need for rules to be efficient and practical for candidates, parties, promoters, and the commission.

Party secretaries

Any party applying to be registered as a political party must have a party secretary. The party secretary is responsible for discharging the party's legal obligations under the Act.

One submitter observes that, in some cases, it would be more appropriate for political parties to be charged with offences, rather than the party secretary. The submitter argues that some party secretaries are volunteers and that it would be unfair to attribute all responsibility to them.

We note, with the commission, that enforcing compliance with a party's legal obligations is difficult if the party does not have a party secretary for an extended period. The commission suggests that provision be made in the Act so that, if a party secretary resigns, a new party secretary must be appointed and the commission advised within 20 working days.

We note that securing a new party secretary within 20 working days would be difficult for many parties but recognise the need for someone to assume responsibility for the party's legal obligations.

Recommendation

We recommend that the Government make provision for, that when a party secretary ceases to hold office, the party appoint a default or acting secretary within five days, until a new party secretary is elected.

Electorate boundaries

In October 2013, the Representation Commission reviewed and declared new boundaries for the 2014 and 2017 general elections. Population growth prompted the creation of new

boundaries in Auckland, and boundaries in Christchurch were altered because of population movement after the earthquakes.

Before the new boundaries proposed by the review can be fixed, the Act prescribes that they be made available for public inspection and submission by way of objection and counter-objection. There is also a requirement for the objections to be summarised and made available for public inspection.

We consider that it would provide greater transparency and be timelier if the submissions regarding electoral boundaries could be published online, without the need to complete a summary for each.

Recommendation

We recommend that the Government enable all submissions regarding objections to proposed electoral boundaries, to be made available online, instead of the current requirement to produce a summary of all submissions.

There are now 64 general electorates and seven Māori electorates. About 387,000 people changed electorates as a result of the boundary review, and these were sent a notification from the commission in their enrolment update and EasyVote packs.

Most of the submissions about electoral boundaries focused on electoral tolerance levels,¹⁵ which are currently set at five percent. One submitter notes that raising the threshold to 10 percent would better incorporate “communities of interest” and therefore promote better representation. For example, the submitter observes that topographical features divide Gisborne into two distinct communities and that it was not possible to form electorates within the current tolerance threshold without either dividing Gisborne city or by crossing the mountain ranges to form an electorate composed of communities with negligible shared interest.

We think that consideration of the tolerance level is warranted. We note that the 1986 Royal Commission on the Electoral System recommended moving to a 10 percent threshold if MMP was adopted, and that a 10 percent threshold is currently used in the Local Electoral Act 2002.

As previously noted, we are aware that Statistics New Zealand is currently reviewing the census model, and that any changes to the boundary-setting process should take into account possible future changes to the census. Regardless of the outcome of this work we consider that the current five percent tolerance level for electorate boundaries should be reviewed.

¹⁵ As a principle, every electorate should have nearly the same total population. Where this cannot be achieved, electorates can differ in size from each other by plus or minus 5 percent. This is called ‘tolerance’ and means an electorate can have a population total that is up to 5 percent more or 5 percent less than the average electorate size.

8 Minority view

New Zealand Labour Party minority view

While there have been areas where members of the Justice and Electoral Committee have held differing views on the recommendations put forward by this report, the majority have been well canvassed and sufficiently captured. There are however two areas where we are concerned that the recommendations, as they stand, will continue to leave thousands of voters disenfranchised unnecessarily.

In the last election, almost 10 percent of the population who were eligible to be on the electoral roll did not sign up before election day. Numbers suggest that the failure to enrol does not always mean a voter does not want to participate. For the 2014 election, more than 27,000 voters made the effort to vote but had their vote disallowed because they were not on the electoral roll.

We do not make the process of enrolling and voting as easy as we could, especially for those who change address and therefore fail to re-enrol or those enrolling for the first time before the official roll is printed.

This report presented an opportunity to make changes that would reduce the number of disenfranchised voters. For instance, a person who arrives at an advance voting place to cast their vote and finds that they are not on the electoral roll will have to fill in an enrolment form and complete a special vote form, before they can receive a ballot paper. If there are any errors between these two forms, they risk having their vote disallowed. Equally, someone who believes they are on the roll and simply fills in a special declaration form, will have their vote disallowed if it is found that they were incorrect and had not enrolled.

These risks could both easily be removed by treating a special vote declaration, completed in the period of advanced voting pre-election day, as an enrolment form. It is our view that this suggestion, which was made by the commission, was not only sensible but has the potential to dramatically reduce the number of invalid votes. We are extremely disappointed this is not the view of the government members of the committee, and that as a result, this recommendation has been voted down.

A second opportunity to reduce the number of invalid votes cast, would be to allow people to both enrol and vote on election day. With 17 days of advance voting prior to the election, where it is possible to enrol and vote at the same time, it has become arbitrary to decide that this cannot occur all the way through to the close of the polls. We do not believe allowing election day enrolment diminishes the importance of early enrolment, but if the point of enrolment is to allow a person to vote, surely all of the hurdles for that vote to be counted need to be removed.

The integrity of the voting system has been well maintained with the significant increase in early voting, and we do not accept that the risk outweighs the benefit of ensuring that next time, possibly 27,000 votes will be counted.

Appendix A

Committee procedure

This inquiry was initiated on 30 October 2014. We met between 30 October 2014 and 14 April 2016 to consider the 2014 general election. We received 211 submissions and heard evidence from 33 submitters. We received advice from the Ministry of Justice.

Committee members

Jacqui Dean (Chairperson)

Jacinda Ardern

Chris Bishop

Marama Fox

Jono Naylor

Denis O'Rourke

Maureen Pugh

Metiria Turei

Hon Louise Upston

Louisa Wall

Appendix B

List of submitters

Aaron Paap
Abigael Alexander
Adele Cann
Adeliade Roza-Marie
Alan Page
Alex Johnston
Alastair Thompson
Amanda Tunstall
Andrea Dempsey
Andrea Howland
Andrew Allen
Andrew McCormack
Angela Hart
Angus Rooney
Anisha Sanker
Annette Bergner
Anthony Cabraal
Annette Carr
Annette Taylor
Anthony Gray
Arnia Tamihana-Simich
Avigail Allan
Barry Coates
Benjamin Ogilvie
Blind Citizens of New Zealand
Blind Foundation
Bonnie Howland
Brendon Finlay
Brent Barrett
Brent Jackson
Brittany Peck
Brooke Stanley
Bruce King
Caitlyn Bayley
Cameron Currie
Cameron Jacob-Sauer
Carol Blair
Caroline Evans
Charlotte Billing
Cherilyn Walthew
Cheryl Johnston
Christopher Barlow

Clare Kitt
Clifford Paul Mason
Colin Cross
Conservative Party of New Zealand
Curdin Krummenacher
Curtis Guy
Dale Smith
Damian Sligo-Green
Daniel Haines
Daniel Kelly
Daniel Stride
Darryl Leslie Smith
David Farrar
David Gandar
David Green
David Maclure
David Read
Deaf Aotearoa
Dean Harliwich
Debbie Miller
Deborah Priest
Dennis Frank
Dina Jezdic
Disabled Liberation Aotearoa New Zealand
Donald Munro
Dr Hugh Barr
Ellie Craft
Erin Hodgson
Fred MacDonald
Frederic Kennedy
Gemma Plank
Gen Topp
Geraint Scott
Gina Lockyer
Glenn McConnell
Graeme Edgeler
Grant Livingston-Pooley
Green Party of Aotearoa New Zealand
Greg Rzesniowiecki
Hannah Duder
Heather Robertson
Hollie Russell
Ian McLean
Jacob Myhre
Jalanda Smith
James Butler
Jan King
Jane Langley

Jane Little
Jeanette Saxby
Jill Cody
Joann Palmer
John Anderson
John Hetherington
John Hipkins
Jordan Keyzer
Jordon Pearce
Jordan Rikys
Joshua Dean
Judy Gregor
JustSpeak
Kamera Raharaha
Karen Dobric
Karina Herbert
Kat Jenkins
Kathryn Horne
Katie Johnston
Kerry Haraki
Kieran Corlett
Kim Robinson
Kyle Bluck
Lana Fran Doyle
Laura O'Connell-Rapira
Lee Nicolson
Leisa Briggs
Les Jones
Lesleigh Romond
Leyton Glen
Liam Kiely
Lilli Cornwell-Young
Lizzie Sullivan
Louis Mayo
Louise Dudson
Luana Bosanquet-Heays
Lynsey Talagi
Margie Thomson
Mark McNicholl
Mark Moir
Mary R G McDonald
Mathew Blincoe
Matthew McKenzie
Mechelle Gregory
Meg Howie, Ask Away
Mel C
Melissa Bray
Michael Low

Michele Griffiths
Michelle Raill
Miriam Peirard
Monica Munro
Monica Whattam
Morgan Watkins
National Council of Women of New Zealand
National Youth Advisory Group
Neale McMillan
New Zealand Council of Trade Unions
New Zealand First – Maungakiekie Tamaki
Branch
New Zealand Labour Party
New Zealand National Party
New Zealand Nurses Organisation
New Zealand People’s Mandate Party
Niamh Wingate
Nigel McNie
Olwyn Stewart
Oscar Dowling
Pat McCarthy
Patricia W Tiatia
Paul O’Reilly
Paul Pikaahu
Peter Aimer
Peter Eian Davies
Philip Hurdle
Philip Lyth
Phill Coxon
Priscilla Northe
Professor Andrew Geddis
Professor Jack Vowles
Ray Calver
Raymond Hopkins
Reuben Telfer
Rob Salmond
Robert Lloyd
Robin Benson
Roger Fowler
Rowena Hay
Ruby Powell
Sam Dyson
Sam Smith
Sarah Spence
Scarlett Parkes
Scott Hindman
Sean Kearney
Sebastien Rouse

Shane Gallagher
Shay Bryant
Simon Walker
Steph James
Stephen Dudding
Steve Withers
Tanya Wheeler
Tara Hikuroa
Tat Loo
Tayla Rapira
Ted Higgins
Television New Zealand
Terry McCann
Tim Kibblewhite
Tim Matthews
Tim Merkens
Tracey Livingston
Urs Bauer
Vincent Rowe
Wayne Crump
William Rea
Win Moore
Zela Charlton
Zoe Joblin
Zoe Lenzie-Smith