

New Zealand: General Elections

November 2011



The Law Library of Congress, Global Legal Research Center
(202) 707-6462 (phone) • (866) 550-0442 (fax) • law@loc.gov • <http://www.law.gov>

LAW LIBRARY OF CONGRESS

NEW ZEALAND: GENERAL ELECTIONS

Executive Summary

This report provides information on the conduct of general elections in New Zealand. It includes discussion of the “mixed member proportional” electoral system, which is the subject of a referendum that will coincide with the 2011 election. Other matters covered include voter registration and eligibility rules, voting processes, the existence of separate electoral districts and an electoral roll for Māori voters, campaign finance and advertising laws, and responsibilities for electoral administration and oversight.

I. Introduction

New Zealand will hold a General Election on November 26, 2011. These elections, which take place every three years, result in the election of parliamentary representatives and the formation of the national executive government. The rules relating to elections are primarily found in the Electoral Act 1993 and associated regulations.¹ This statute forms part of New Zealand’s constitutional arrangements. Rather than being found in a single document, New Zealand’s constitution is made up of several key statutes, legal documents (particularly the Treaty of Waitangi), common law derived from court decisions, and uncodified “constitutional conventions” (established practices or norms).²

New Zealand has had a unicameral parliament, the House of Representatives, since 1951. It is usually made up of 120 representatives (sometimes more due to the ability for overhangs resulting from vote calculations) who are elected to the House of Representatives through a “mixed member proportional” (MMP) representation system.³ New Zealand moved to this system from the “first past the post” (FPP) system in the 1990s following a referendum held in 1992.⁴ A referendum on maintaining or changing the electoral system will again be held in conjunction with the 2011 general election.

¹ Electoral Act 1993, <http://www.legislation.govt.nz/act/public/1993/0087/latest/DLM307519.html>; Electoral Regulations 1996, <http://www.legislation.govt.nz/regulation/public/1996/0093/latest/DLM209678.html>.

² See Rt. Hon. Sir Kenneth Keith, *On the Constitution of New Zealand: An Introduction to the Foundations of the Current Form of Government*, <http://gg.govt.nz/role/constofnz/intro> (last visited Nov. 9, 2011).

³ See *Parliamentary Practice in New Zealand: Chapter 1 – The Parliament of New Zealand*, NEW ZEALAND PARLIAMENT, http://www.parliament.nz/en-NZ/AboutParl/HowPWorks/PPNZ/7/4/5/00HOOOCPPNZ_11-Chapter-1-The-Parliament-of-New-Zealand.htm.

⁴ *From FPP to MMP*, ELECTIONS NEW ZEALAND, <http://www.elections.org.nz/voting/mmp/history-mmp.html> (last visited Nov. 9, 2011).

Members of Parliament (MPs) are elected from seventy electorates (i.e., districts), made up of sixty-three general electorates and seven Māori electorates. Additional representatives are elected as a result of the percentage of votes gained by each party.

Under the Westminster style of government upon which the New Zealand system is based, the Prime Minister is appointed by the head of state; the Governor General, acting on behalf of the British monarch.⁵ There is a constitutional convention that provides that the person appointed as prime minister must have the support of a majority of the members of Parliament.⁶ The political party that is able to form a majority in the Parliament, either alone or in coalition with other parties, establishes a Cabinet of ministers (who must be MPs⁷) who have executive authority.

In addition to discussions about the continued use of MMP as the electoral system, there has also been ongoing debate about maintaining the Māori electorates (or “seats”) and about how campaign financing and advertising should be regulated.

II. Electoral System

A. History

From 1853 until 1993, New Zealand’s MPs were elected under the FPP system – “each voter had one vote and the candidate who received the most votes in each electorate was the winner.”⁸ The party that won the most electorate seats in Parliament formed the government. Minor parties were present in elections, but generally won very few, if any, seats.

During the 1950s and 1960s, the public began to question the voting system, with more vocal criticism arising following the 1978 and 1981 elections.⁹ Following its election victory in 1984, the Labour Party established a Royal Commission on the Electoral System. In its 1986 report, the Royal Commission recommended a complete change in the system through the adoption of the MMP system.¹⁰ This system was operating in Germany and the Royal Commission considered that it would address the concerns about election results not being

⁵ The role and powers of the Governor-General and the three branches of government are set out in the Constitution Act 1986, <http://www.legislation.govt.nz/act/public/1986/0114/latest/DLM94204.html>.

⁶ *The Reserve Powers*, THE GOVERNOR-GENERAL, <http://gg.govt.nz/role/powers.htm> (last visited Nov. 9, 2011).

⁷ Constitution Act 1986, s 6.

⁸ *From FPP to MMP*, *supra* note 4.

⁹ In these two elections, the Labour Party received more votes in total across all the electorates in the country, but the National Party won more seats and could therefore form a government. In addition, a third party, Social Credit, won 16% of the total vote in 1978 and 21% in 1981, but only won one and two seats in the two elections out of the ninety-two seats available at that time. *Id.*

¹⁰ REPORT OF THE ROYAL COMMISSION ON THE ELECTORAL SYSTEM 1986, *available at* <http://www.elections.org.nz/voting/mmp/royal-commission-report-1986.html>.

representative of the wishes of voters. Both of the main political parties promised as part of their 1990 election campaign to hold referenda on election reforms.¹¹

An “indicative” referendum was held in September 1992. The ballot included two questions: whether voters wanted to change the existing electoral system and, if so, which of four alternative systems they preferred. If there was majority support for a change, a subsequent binding referendum would be held the following year that asked voters to choose between FPP and the most preferred option in the first referendum.

The 1992 referendum saw a turnout of 55% of registered voters, with 85% voting in favor of changing the system. In response to the second ballot question, 70% favored MMP. The binding referendum, which was held in conjunction with the 1993 election, was surrounded by considerable public debate and lobbying. The outcome was that 54% of voters chose MMP over FPP. The first election under MMP was held in 1996.¹²

B. Mixed Member Proportional System

The MMP system that was implemented following the two referenda was largely the same as that recommended by the Royal Commission. Each voter has two votes in an election: one for a candidate in their electorate, and one for a party. The number of seats in Parliament was increased to 120, with sixty-five to be electorate seats (later increased to seventy as a result of changes in electorate boundaries and an increase in the number of Māori electorates¹³) and the remaining seats filled from party lists so that each party’s share of the total number of seats reflected its share of the total number of party votes.¹⁴ Parties must obtain at least 5% of the party vote or win at least one electorate seat to be represented in Parliament. A formula, known as the Sainte-Laguë formula, is used to allocate seats to those parties that pass either threshold.¹⁵

C. 2011 Referendum

Following its formation of a government after the 2008 general election, the National Party (which entered into support agreements with the Māori Party, ACT Party, and United Future¹⁶) announced that another referendum on the electoral system would be held to coincide

¹¹ *From FPP to MMP*, *supra* note 4.

¹² *Id.*

¹³ See *Final Electorate Boundaries*, ELECTIONS NEW ZEALAND, <http://www.elections.org.nz/elections/electorates/topic-final-electorate-boundaries.html> (last visited Nov. 9, 2011).

¹⁴ *MMP Seat Allocation Calculator*, ELECTIONS NEW ZEALAND, <http://www.elections.org.nz/voting/mmp/mmp-calculator.html> (last visited Nov. 9, 2011).

¹⁵ *Sainte-Laguë Allocation Formula*, ELECTIONS NEW ZEALAND, <http://www.elections.org.nz/voting/mmp/sainte-lague.html> (last visited Nov. 9, 2011).

¹⁶ Relationship and Confidence and Supply Agreement Between the National Party and the Maori Party (Nov. 16, 2008), available at http://www.national.org.nz/files/agreements/National-Maori_Party_agreement.pdf; National-Act Confidence and Supply Agreement (Nov. 16, 2008), available at <http://www.act.org.nz/files/agreement.pdf>; Confidence and Supply Agreement with United Future (Nov. 14, 2008), available at http://www.national.org.nz/files/agreements/National-UF_agreement.pdf.

with the 2011 general election. Legislation authorizing the referendum was passed unanimously in 2010.¹⁷

Voters will again have the opportunity to choose whether to maintain or change the current voting system and to indicate a preference for one of a list of alternatives in the indicative referendum. If more than half of the voters opt to keep MMP, the Electoral Commission will conduct a review of MMP in 2012.¹⁸ The review will consider a range of matters and recommend possible improvements.¹⁹

If more than half of voters vote for the electoral system to be changed, Parliament will decide whether there will be another referendum in 2014 that would allow voters to choose between MMP and the alternative that was most favored in the 2011 referendum.²⁰

The Electoral Commission has conducted a public information campaign in the run-up to the 2011 election to explain the referendum, the referendum voting paper, and the voting systems that can be selected.²¹

III. Electoral Districts

A. Boundary Determination by the Representation Commission

All areas of New Zealand are part of both a general electorate and a Māori electorate.²² New Zealand's electorate boundaries are determined every five years by the Representation Commission. The last boundary determination occurred in 2007, with the new boundaries to apply in both the 2008 and 2011 elections. The Commission is an independent body convened by the Surveyor-General following the receipt of a report from the Government Statistician. This report includes information about the electoral population as derived from the population census and the Māori Electoral Option process (both conducted approximately every five years).²³

¹⁷ Electoral Referendum Act 2010, <http://www.legislation.govt.nz/act/public/2010/0139/latest/DLM2833513.html>; *Electoral Referendum Bill*, NEW ZEALAND PARLIAMENT, http://www.parliament.nz/en-NZ/PB/Legislation/Bills/a/b/f/00DBHOH_BILL9807_1-Electoral-Referendum-Bill.htm. See generally, *MMP Referendum*, MINISTRY OF JUSTICE, <http://www.justice.govt.nz/electoral/mmp-referendum/mmp-referendum/> (last visited Nov. 9, 2011).

¹⁸ *Referendum on the Voting System*, ELECTIONS NEW ZEALAND, <http://www.elections.org.nz/elections/2011-general-election-and-referendum/2011-referendum-on-the-voting-system.html> (last visited Nov. 9, 2011).

¹⁹ *About the Referendum*, REFERENDUM.ORG.NZ, <http://www.referendum.org.nz/about> (last visited Nov. 9, 2011).

²⁰ *Referendum on the Voting System*, *supra* note 18.

²¹ See, e.g., *About the Five Voting Systems*, REFERENDUM.ORG.NZ, <http://www.referendum.org.nz/votingsystems> (last visited Nov. 9, 2011).

²² Electoral Act 1993, s 25 (see generally ss 28-46, 269).

²³ Electoral Act 1993, ss 76-79. See *What is the Representation Commission*, ELECTIONS NEW ZEALAND, <http://www.elections.org.nz/elections/electorates/rep-comm-overview.html>.

The Māori Electoral Option provides the opportunity for voters of Māori descent to choose whether to be on the general electoral roll or on the Māori electoral roll.²⁴ Those on the Māori roll are able to elect representatives for the Māori seats. The last Māori Electoral Option was conducted over four months in 2006.²⁵

B. Māori Electorates

The Māori seats in Parliament have been a feature of New Zealand's electoral system since 1867. Prior to this, although Māori men were not restricted under law from registering due to their race, in practice very few could enroll to vote because the rules stated that only landowners could vote. It was determined that because most Māori owned their land communally and not under individual freehold or leasehold, they did not qualify to vote.²⁶

The early 1860s saw land wars occur between Māori tribes and colonial forces. During this period, some European politicians argued that “it was vital to assimilate Māori into the political mainstream to ensure lasting peace between the two races.”²⁷ The four special seats that were established were intended to be temporary, and all Māori men over the age of twenty-one could vote for representatives for these seats. However, the “individualisation” of Māori property ownership did not occur as quickly as expected and in 1876 it was determined that the Māori seats should be made permanent.²⁸ In the years that followed there were a range of issues and concerns about how these elections were conducted and debate about how many seats there should be. Māori electorate votes were made verbally until 1938, and a separate roll was not introduced until 1948. The Māori Electoral Option process was established in 1975 but there was no increase in the number of seats until 1996 following a change in approach that allows for the number to increase or decrease as a result of the Māori Electoral Option process.²⁹

There is ongoing debate about the need for the separate Māori seats, which now number seven following the 2007 Māori Electoral Option. The Royal Commission on the Electoral System recommended in 1986 that if MMP were adopted, the seats should be abolished because better representation should result under the different system, and expressed the opinion that Māori views were marginalized under the Māori seat approach.³⁰ However, strong lobbying from many Māori saw the retention of the Māori seats and even the possibility for expansion.

²⁴ See generally *Enrolling & Electoral Rolls*, ELECTIONS NEW ZEALAND, <http://mono.wlg.election.govt.nz/maori/enrolment/> (last visited Nov. 9, 2011).

²⁵ *2006 Māori Electoral Option: Results*, ELECTIONS NEW ZEALAND, <http://www.elections.org.nz/enrolment/maori-option-now/maori-option-results.html> (last visited Nov. 9, 2011).

²⁶ *Māori and the Vote*, ELECTIONS NEW ZEALAND, <http://www.elections.org.nz/maori/ntkm-democracy/maori-vote.html> (last visited Nov. 9, 2011). See also Parliamentary Library, *The Origins of the Maori Seats* (Nov. 2003, updated May 2009), <http://www.parliament.nz/en-NZ/ParlSupport/ResearchPapers/5/b/e/00PLLawRP03141-Origins-of-the-M-ori-seats.htm>.

²⁷ *Māori and the Vote*, *supra* note 26.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Royal Commission on the Electoral Commission, *supra* note 10, ch. 3.

The agreement signed between the National Party and the Māori Party after the 2008 election included the stipulation that the Māori electorates would not be abolished without the agreement of Māori voters.³¹

IV. Voter Enrollment and Eligibility

Although voting is voluntary, voter registration is compulsory for all citizens and permanent residents over the age of eighteen years who have at any time lived in New Zealand for one year or more.³² However, a person is prevented from enrolling to vote if he or she is:

- Currently in prison serving a term that exceeds three years;
- Currently in a hospital under a criminal justice order relating to mental health for three years or more;
- Found guilty of a corrupt electoral practice in the last three years;
- A New Zealand citizen who has not been in New Zealand in the past three years;
- A New Zealand permanent resident who has not been in New Zealand within the past twelve months.³³

Electoral rolls are published in paper form only and made available for viewing at various locations.³⁴ Electors may view their own data online, but the law currently prevents the full rolls from being made available electronically. People who “have grounds to fear for their safety or that of their family through appearing on a published roll may apply to enroll on an unpublished roll.”³⁵ The Electoral Enrolment Centre, which is currently part of New Zealand Post,³⁶ is responsible for maintaining and publishing the rolls, managing the enrollment process, and conducting the Māori Electoral Option.³⁷

³¹ Relationship and Confidence and Supply Agreement Between the National Party and the Maori Party, *supra* note 16, at 2.

³² Electoral Act 1993, s 82 (*see generally* ss 72-75, 60-61, 83-100).

³³ Electoral Act 1993, s 80. *See also* *Enrolling to Vote*, Elections New Zealand, <http://mono.wlg.election.govt.nz/study/education-centre/nz-electoral-facts-stats/enrolling-to-vote-facts08.html> (last visited Nov. 9, 2011).

³⁴ Electoral Act 1993, s 110 (*see generally* ss 110-124). *See* Press Release, Electoral Enrolment Centre, New Electoral Rolls Now Open for Viewing (Aug. 1, 2011), <http://mono.wlg.election.govt.nz/study/news/new-electoral-rolls-now-open-for-public-viewing.html>.

³⁵ *Enrolling to Vote*, *supra* note 33. This rule is set out in the Electoral Act 1993, s 115. For information on privacy and the Electoral Act 1993, *see Electoral Act 1993 (Report by the Privacy Commissioner to the Minister of Justice on the Electoral Act 1993, 29 April 1997)*, <http://privacy.org.nz/electoral-act-1993/> (last visited Nov. 9, 2011).

³⁶ Electoral Act 1993, ss 21-22.

³⁷ *Electoral Enrolment Centre*, ELECTIONS NEW ZEALAND, <http://www.elections.org.nz/administration/eec-corp-info/electoral-enrolment-centre.html> (last visited Nov. 9, 2011).

V. Voting Process

The majority of ballot papers will be completed and submitted at polling stations throughout electorates on election day.³⁸ However, there is provision for advance voting and for special declaration votes to be cast by people who cannot get to a polling station or are outside of their electorate on polling day, including people who are overseas.³⁹ The Electoral Act 1993 requires that employers give employees time off to vote on election day.⁴⁰

The ballot paper clearly states that the voter has two votes: a party vote and an electorate vote.⁴¹ A voter enters a voting booth and marks the ballot paper in two places; electronic voting machines are not used and online voting is not available.⁴²

For the 2011 election, voters will be given a second voting paper relating to the referendum on the electoral system.⁴³

VI. Campaign Finance and Advertising Law

A. Electoral Finance Act 2007 – Repealed

During and after the 2005 election, which saw the incumbent Labour Party able to form a government with support from one coalition partner and agreements with three other small parties, there was debate surrounding the rules relating to campaign finance. Among the issues was an anonymous attack advertising campaign by a group (subsequently discovered to be members of the Exclusive Brethren Church) against Labour and the Green Party, along with allegations relating to the National Party having prior knowledge of the advertising campaign.⁴⁴ There was also debate about whether parties (particularly the Labour Party) had breached the

³⁸ See Electoral Act 1993, s 149 (*see generally* ss 155-171).

³⁹ Electoral Act 1993, ss 61 & 172.

⁴⁰ Electoral Act 1993, s 162.

⁴¹ Electoral Act 1993, s 150. See *Sample Ballot Paper – General Election*, ELECTIONS NEW ZEALAND, <http://www.elections.org.nz/voting/votingsub/sample-ballot-paper.html> (last visited Nov. 9, 2011).

⁴² See Electoral Act 1993, s 168. See *generally* *Draft Long Term Strategy for Voting Technology*, ELECTIONS NEW ZEALAND, <http://www.elections.org.nz/administration/ceo-corp-info/draft-long-term-strategy-for-voting-technology.html> (last visited Nov. 9, 2011); *Research Report Released – MMP, e-Voting, Electoral Finance*, ELECTIONS NEW ZEALAND, <http://www.elections.org.nz/maori/media-publications/ec-media-research-170308.html> (last visited Nov. 9, 2011).

⁴³ See *Referendum on the Voting System*, *supra* note 18.

⁴⁴ See Press Release, Green Party, Brethren Group Face Police Probe Over Election (Oct. 25, 2011), <http://www.scoop.co.nz/stories/PA0510/S00148.htm>; *Brethren 'Budget \$1.2m' to Help National Party Campaign*, NZ HERALD (May 24, 2006), http://www.nzherald.co.nz/election-2005/news/article.cfm?c_id=1500891&objectid=10383243; Audrey Young, *Clark Plans New Law to Block Brethren*, NZ HERALD (Sept. 12, 2006), http://www.nzherald.co.nz/government-spending/news/article.cfm?c_id=221&objectid=10400873; Press Release, New Zealand Labour Party, *Brash Lies Continue* (Sept. 5, 2006), <http://www.scoop.co.nz/stories/PA0609/S00090.htm>. A book containing a number of allegations against the National Party was subsequently published (Nicky Hager, *The Hollow Men* (2006)), see *Hager Book: Brash Assisted to Power by Business Lobby*, NZ HERALD (Nov. 24, 2006), http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10412115.

rules relating to the use of public funding that is provided to sitting MPs for the purposes of their parliamentary work.⁴⁵ The rules specify that this funding must not be spent on electioneering.⁴⁶ A report by the Auditor-General in 2006 found that seven of the eight political parties represented in Parliament prior to the election had misused the funding.⁴⁷

The Labour government sought to address what it saw as gaps in the existing rules relating to “third party” advertising as well as other campaign finance issues through the Electoral Finance Act 2007.⁴⁸ The legislation was the subject of a considerable amount of debate and public attention.⁴⁹ Particularly controversial provisions included extending the campaign period, previously set as three months, to start from January 1 of an election year (parties must account for advertising expenditures that they incur during the campaign period, with an expenditure cap applying to each party) and introducing a registration process, spending limits, and a requirement to disclose donations for third parties who wished to “publish” “election advertisements” during the campaign period (the definition and potential scope of these two terms proved to be particularly contentious).

The incoming National Party government repealed the 2007 legislation soon after taking office following the 2008 election.⁵⁰ Following a review and public consultation new

⁴⁵ See Joanna Hunkin, *Timeline: Election Spending Row*, NZ HERALD (Oct. 12, 2006), http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10405611; Ainsley Thomson, *Labour Escapes Charges on Pledge Card but Case Found*, NZ HERALD (Mar. 18, 2006) http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10373214; Audrey Young, *Labour Gives Opponents More Ammo with Pledge Card Explanation*, NZ HERALD (Aug. 26, 2006), http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10398153; Press Release, National Party, National Asks Cops to Explain on Pledge Card Probe (Oct. 4, 2006), <http://www.scoop.co.nz/stories/PA0610/S00049.htm>.

⁴⁶ See Parliamentary Service Act 2000, ss 3A-3E (inserted by Parliamentary Service Amendment Act 2010), <http://www.legislation.govt.nz/act/public/2000/0017/latest/DLM55840.html>. These provisions were inserted to clarify the rules relating to the use of parliamentary funding as a result of the earlier debate about what constituted electioneering for the purposes of the legislation.

⁴⁷ CONTROLLER AND AUDITOR-GENERAL, ADVERTISING EXPENDITURE INCURRED BY THE PARLIAMENTARY SERVICE IN THE THREE MONTHS BEFORE THE 2005 GENERAL ELECTION (Oct. 2006), http://www.parliament.nz/NR/rdonlyres/E984B1D8-AEF3-49F0-A45B-B526CF2B7101/41876/DBHOH_PAP_14263_3664.pdf. Legislation was subsequently passed that validated the spending and parties promised to pay back the money that the Auditor General had found to be spent inappropriately. See Appropriation (Parliamentary Expenditure Validation) Bill, http://www.parliament.nz/NR/rdonlyres/C56F067E-FF68-4822-B1F4-E4277B00953D/42434/DBHOH_BILL_7688_3698.pdf.

⁴⁸ See *Electoral Finance Bill – First Reading*, NEW ZEALAND PARLIAMENT (July 26, 2007), http://202.68.89.83/en-NZ/PB/Debates/Debates/b/d/2/48HansD_20070726_00000789-Electoral-Finance-Bill-First-Reading.htm. See also *Election Funding Laws to be Overhauled, Clark Says*, NZ HERALD (Oct. 3, 2006), http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10404114.

⁴⁹ See *Electoral Finance Bill, Broadcasting Amendment Bill (No 3), Electoral Amendment Bill – Third Readings*, NEW ZEALAND PARLIAMENT (Dec. 18, 2007), http://www.parliament.nz/en-NZ/PB/Debates/Debates/d/7/9/48HansD_20071218_00000825-Electoral-Finance-Bill-Broadcasting-Amendment.htm. See also *Controversial Electoral Law Passed in Heated Debate*, NZ HERALD (Dec. 18, 2007), http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10483032.

⁵⁰ Electoral Amendment Bill, <http://www.legislation.govt.nz/bill/government/2009/0015/latest/whole.html#d1m1833601>.

legislation, the Electoral (Finance Reform and Advance Voting) Amendment Act 2010, came into force on January 1, 2011.⁵¹

B. Current Rules

The current campaign finance rules do build on some aspects of the Electoral Finance Act 2007. For example, the 2010 legislation also included a modernized definition of “election advertisement” intended to be media neutral, with various exceptions applying.⁵² In addition, there are registration requirements for “promoters” who wish to spend more than NZ\$12,000 on advertising that encourages a vote for a particular party.⁵³ Registered promoters are “subject to stricter disclosure requirements to ensure greater transparency of those spending large amounts on election advertising.”⁵⁴ Such promoters are able to spend up to NZ\$300,000 during the regulated campaign period,⁵⁵ which will generally be around three months prior to the election.⁵⁶ All election advertising must include a promoter statement that includes the name and address of the promoter.⁵⁷

The new legislation maintained the approach of limiting how much each candidate and political party can spend on election advertising, although the limits were increased (to NZ\$25,000⁵⁸ and NZ\$1,065,000,⁵⁹ respectively, with each party also able to spend \$25,000 for each electoral district contested by a candidate for the party). These limits continue to be adjusted each year to reflect changes in the Consumer Price Index.

The rules relating to donations include disclosure thresholds (the amount above which donations must be disclosed in returns to the Electoral Commission, currently NZ\$1,500 for candidates and NZ\$15,000 for parties under the 2010 legislation⁶⁰) and restrictions on anonymous and overseas donations. Candidates and political parties cannot keep donations over

⁵¹ Electoral (Finance Reform and Advance Voting) Amendment Act 2010, <http://www.legislation.govt.nz/act/public/2010/0137/latest/DLM2926307.html>. See also Bills Digest No. 1770 – Electoral (Finance Reform and Advance Voting) Amendment Bill 2010 (May 4, 2010), <http://www.parliament.nz/en-NZ/PB/Legislation/Bills/BillsDigests/9/b/d/49PLLawBD17701-Electoral-Finance-Reform-and-Advance-Voting-Amendment.htm>. See generally *Electoral Finance Reform*, Ministry of Justice, <http://www.justice.govt.nz/electoral/electoral-finance-reform> (last visited Nov. 9, 2011).

⁵² Electoral Act 1993, s 3A.

⁵³ Electoral Act 1993, s 204B. See generally Electoral Commission, *Third Party Handbook – 2011 General Election and Referendum*, <http://www.elections.org.nz/rules/thirdparties/third-party-handbook-2011/> (last visited Nov. 15, 2011).

⁵⁴ *Frequently Asked Questions – Electoral Finance Reform*, MINISTRY OF JUSTICE, <http://www.justice.govt.nz/electoral/electoral-finance-reform/frequently-asked-questions> (last visited Nov. 9, 2011).

⁵⁵ Electoral Act 1993, s 206V.

⁵⁶ Electoral Act 1993, s 3B.

⁵⁷ Electoral Act 1993, ss 204F & 204K-204X.

⁵⁸ Electoral Act 1993, s 205C.

⁵⁹ Electoral Act 1993, s 206C.

⁶⁰ Electoral Act 1993, ss 209 (candidate returns) & 210 (party returns).

\$1,500 from anonymous or overseas donors. If such a donation cannot be returned, it must be paid to the Electoral Commission.⁶¹

C. Broadcasting Act

In addition to the rules in the Electoral Act 1993 relating to campaign advertising, the Broadcasting Act 1989 governs election programming and advertising on television and radio.⁶² The Broadcasting Act provides a system for the allocation of public funding to political parties for use in purchasing broadcast advertising that promotes either the party or individual candidates. Political parties may not use any additional funds to purchase broadcast advertising for the party vote. Free time is allocated to each party for opening and closing addresses that are broadcast by public broadcasters.⁶³ Under the two statutes, individual candidates may purchase broadcast advertising within the candidate spending limits set out in the Electoral Act 1993, and these advertisements may only promote the electorate vote.⁶⁴

Broadcast election advertising by third parties is restricted; such groups are only able to advertise on radio and television if they do not advocate for or against identifiable parties.⁶⁵ In addition, while there is an exemption under the legislation for broadcasters' news, current affairs, or opinion programs, "broadcasters must ensure that such programmes do not appear to encourage voters to vote for or against particular parties or candidates" and "[p]arties, candidates and broadcasters must ensure that neither the ready identification of advertising nor the character of news, comment or current affairs programmes are compromised by blurring distinctions between these formats."⁶⁶

VII. Election Administration and Oversight

A. Electoral Commission

The Electoral Commission is tasked with administering the electoral system "impartially, efficiently, effectively," 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.⁶⁷

⁶¹ Electoral Act 1993, ss 207E, 207I, & 207K.

⁶² Broadcasting Act 1989, Part 6, <http://www.legislation.govt.nz/act/public/1989/0025/latest/DLM155365.html>. See also *Election Broadcast Advertising – Overview*, ELECTIONS NEW ZEALAND, <http://www.elections.org.nz/rules/advertising/broadcaster/broadcasting-overview.html>.

⁶³ Broadcasting Act 1989, ss 73-75. See also *Broadcasting Allocation Process 2011*, ELECTIONS NEW ZEALAND, <http://www.elections.org.nz/rules/advertising/broadcaster/broadcasting-allocation.html> (last visited Nov. 9, 2011).

⁶⁴ Broadcasting Act 1989, s 70. See also *Election Broadcast Advertising – Overview*, *supra* note 62.

⁶⁵ *Election Broadcast Advertising – Overview*, *supra* note 62.

⁶⁶ *Id.*

⁶⁷ Electoral Act 1993, s 4C.

The Commission's functions include registering parties and third parties, receiving and reviewing complaints about election advertisements (and referring these to the police if necessary), receiving returns of donations and campaign expenditures, establishing and staffing polling booths on election day, and counting votes and announcing election results.⁶⁸ It also promotes "public awareness of electoral matters by means of the conduct of education and information programmes or by other means."⁶⁹

The functions of the former Chief Electoral Office were transferred to a new Electoral Commission in 2010 following a restructuring and merging of the two agencies.⁷⁰ A second stage of reforms will see the functions of the Chief Registrar of Electors also transferred to the new entity from July 1, 2012.⁷¹

B. Parliamentary Review

The Electoral Commission must report to the government on the administration of a general election within six months.⁷² This report must be presented to Parliament. Following each election, by convention, a parliamentary select committee conducts an inquiry into "the laws pertaining to and the administrative conduct of the election" and issues a report with recommendations.⁷³

Prepared by Kelly Buchanan
November 2011

⁶⁸ Electoral Act 1993, s 5.

⁶⁹ Electoral Act 1993, s 5(c).

⁷⁰ Electoral (Administration) Amendment Act 2010, <http://www.legislation.govt.nz/act/public/2010/0026/latest/DLM2469709.html>. See generally *New Electoral Commission*, MINISTRY OF JUSTICE, <http://www.justice.govt.nz/electoral/proposed-new-electoral-commission-1> (last visited Nov. 9, 2011).

⁷¹ Electoral (Administration) Amendment Act 2011, <http://www.legislation.govt.nz/act/public/2011/0057/latest/DLM3367610.html>. See generally *Electoral Administration Reform: State Two*, MINISTRY OF JUSTICE, <http://www.justice.govt.nz/electoral/electoral-administration-amendment-bill-no.-2> (last visited Nov. 9, 2011).

⁷² Electoral Act 1993, s 8.

⁷³ See JUSTICE AND ELECTORAL COMMITTEE, INQUIRY INTO THE 2008 GENERAL ELECTION, at 5 (Oct. 2009), http://www.parliament.nz/NR/rdonlyres/536853F3-35B6-4ABE-B791-6460F52F8F2D/116046/DBSCH_SCR_4509_Inquiryintothe2008generalelectionI7.pdf.