

Electoral management body (pillar 6)

Summary

New Zealand's electoral management body, the Electoral Commission, plays a strong role in the country's national integrity system, and any concerns that exist about its performance are relatively minor. It has a reputation as an impartial and trustworthy institution, with particular credibility in administering general elections. As one expert interviewee told this study, "The Electoral Commission is about as independent as you can get".⁶⁶²

General elections in New Zealand have full integrity, which reflects well on the country's electoral management body. As an indication of this, one independent interviewee said, the commission "handles the task of running elections perfectly. I don't think that anyone has got any real concerns that the vote tally that you get at the end is a genuine representation of the people who showed up to vote".

The Electoral Commission was recently significantly reconfigured as the result of a merger of three separate electoral agencies, and this appears to have made electoral management even stronger. The new commission is generally a well-resourced and robust independent body. It is a highly respected agency that functions well within its competences. The main concern that does exist is in terms of the agency's role in distributing election broadcast advertising resources to political parties.

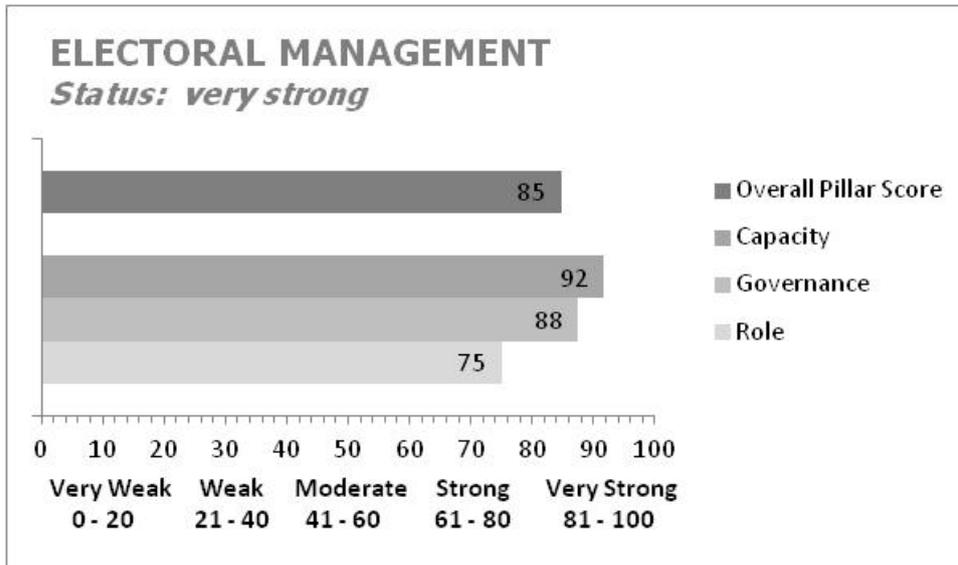
In some areas – particularly that of political finance regulation – the commission has limited scope and tools at its disposal but nonetheless carries out its functions adequately. There are also still some problematic issues with elections – especially with declining faith in the efficacy of general elections and with the distrust of the propriety of politicians in the area of political finance. In particular, in the last general election, voter turnout fell to the historic low of less than 70 per cent. But none of these factors necessarily reflects poorly on the role of the Electoral Commission itself.

General elections have full integrity, reflecting in part the independence and integrity of the Electoral Commission, which has a strong reputation as a trustworthy institution and credibility in administering general elections. The commission has little effective ability to respond to concerns about political party finances, and there are concerns over its allocation of state funding to political parties for broadcast election advertising.

Recommendations in Chapter 6 that relate to the role of the Electoral Commission also emerge from the pillar report on political parties. They call for a review of the arrangements for the allocation of election broadcasting funds and time and for greater disclosure of political party finances to the commission.

⁶⁶² This pillar report is based on publicly available material, supplemented by interview with three experts: Professor Andrew Geddis (author of *Electoral Law in New Zealand: Practice and policy* 2nd ed. (Wellington: Lexis Nexis, 2013)), Graeme Edgeler (an expert in electoral law and administration and an employee of the former Electoral Commission), and Robert Peden (the current Chief Electoral Officer).

Figure 8: Electoral management scores



Source: Transparency International New Zealand, 25 October 2013.

Structure and organisation

The Electoral Commission is an independent Crown entity that describes itself as “responsible for the administration of parliamentary elections and referenda, the delivery of enrolment services, the allocation of time and money for the broadcast of election programmes, conduct of the Māori Electoral Option, servicing the work of the Representation Commission, the provision of advice, reports and public education on electoral matters, and electoral enrolment services for both parliamentary and local elections”.⁶⁶³

The current Electoral Commission is a new agency created in 2010 and 2012 as a result of the merger of three previously existing agencies concerned with elections. The Electoral (Administration) Amendment Act 2010 (which amended the Electoral Act 1993) brought together the functions of the Chief Electoral Office and the former Electoral Commission, and the Electoral (Administration) Amendment Act 2011 (which also amended the Electoral Act 1993) transferred the functions of the Chief Registrar of Electors to the new body.

This pillar report, therefore, focuses on the role of the new body, but also draws on the historic performance and role carried out by the former Electoral Commission and the other electoral agencies.

The Electoral Commission operates under the mandate of two pieces of legislation: the Electoral Act 1993 and Crown Entities Act 2004. The Broadcasting Act 1989 confers some additional duties and powers on it with respect to the issue of election programmes. It is worth noting that the Electoral Act defines the objective of the Electoral Commission as being “to administer the electoral system impartially, efficiently, effectively, and in a way that ... facilitates participation in parliamentary

⁶⁶³ See Electoral Commission, “About the Electoral Commission”. www.elections.org.nz/about-electoral-commission

democracy; ... promotes understanding of the electoral system and associated matters; and ... maintains confidence in the administration of the electoral system".⁶⁶⁴

The structure of the Electoral Commission is like many other electoral management bodies in comparable countries – it has a policy-oriented board of commissioners and a National Office secretariat that carries out the administration function of the commission. In addition, the Enrolment Services division administers the electoral roll. However, this division is not a part of the commission, but is a business unit of New Zealand Post. The commission contracts with (as well as delegates some of its statutory powers to) New Zealand Post to maintain the elector database that serves as the basis for the electoral roll in each electorate.

6.1.1 Resources (practice)

To what extent does the electoral management body have adequate resources to achieve its goals in practice?

Score: 5

The Electoral Commission appears to be adequately resourced for most of its functions and there is no evidence to suggest its budget is insufficient for carrying out its duties.

The Electoral Commission is a highly professional body without obvious shortcomings in its resources. Both independent interviewees believed the commission is adequately funded. Also, according to Chief Electoral Officer Robert Peden, the commission has no complaints about its level of funding, especially given the current economic settings in which all government agencies are under funding pressures.

For the financial year ending 30 June 2012 – a period involving a general election – the commission spent NZ\$40.3 million. Half of this figure was spent on personnel costs.⁶⁶⁵ In the five weeks before election day, the commission also spent "[NZ]\$3.5 million in mass media advertising on the referendum" and a further "[NZ]\$900,000 promoting its general election messages".⁶⁶⁶ The commission also allocated – not from its own operational funds, but from a dedicated line item in the government Budget – about NZ\$3.3 million to political parties for election broadcast advertising.⁶⁶⁷

The commission's National Office operates year round with a small core administration team, averaging 24 full-time equivalent staff. In addition, in general election years, significant numbers of temporary staff are also employed – in 2011 this amounted to a staff of 23,225 (required to help run about 2,600 polling places on polling day). Further, the Enrolment Services division employs considerably more staff, but this is part of New Zealand Post.⁶⁶⁸

⁶⁶⁴ Electoral Act 1993, section 4C.

⁶⁶⁵ Electoral Commission, *Annual Report of the Electoral Commission for the year ended 30 June 2012*, 2012. www.elections.org.nz/sites/default/files/plain-page/attachments/Electoral_Commission_Annual_Report_2012.pdf

⁶⁶⁶ Electoral Commission, *Annual Report*, 2012: 9.

⁶⁶⁷ Electoral Commission, *Annual Report*, 2012: 15.

⁶⁶⁸ Electoral Commission, *Annual Report*, 2012: 6.

Some activities the commission is responsible for, have been seen in the past as being inadequately resourced such as voter education.⁶⁶⁹ In some recent elections, the former Electoral Commission complained of an inadequate budget for advertising the election. However, for the 2011 election there is strong evidence of public satisfaction with the information they received before the election: in a survey of voters in 2011, 88 per cent were satisfied with information the commission provided before the election.⁶⁷⁰

6.1.2 Independence (law)

To what extent is the electoral management body independent by law?

Score: 5

The Electoral Commission is a statutory body, independent from government. There are no apparent concerns about its legal independence or impartiality.

The legal framework that the Electoral Commission operates under requires and enables it to operate in a transparent and impartial manner – see the discussion of the different types of Crown entities in the pillar public sector report.

The commission is not subject to ministerial direction in discharging its electoral functions, and the Electoral Act 1993 specifies that it must act independently.

The agency has three commissioners, who are appointed by Parliament. The appointment is seen as taking place with proper discussion between the parliamentary parties, and the expectation is that appointments are made on a cross-party, consensus basis. It is notable, however, that for the 2010 amendment legislation, the government of the day decided against the requirement of a supermajority (that is, 75 per cent of agreement among members of Parliament) in the appointments. Nonetheless, voting on the issue takes place in a non-partisan manner. In theory, a majority in the House of Representatives could attempt to “stack” the commission, but as one interviewee said, “There would be a political price to be paid if it was stacked ... it’s highly unlikely that it would happen”. Appointments to the commission may be made for terms of up to five years, and terms can be renewed.

The new commission has greater legal independence than the former agency, as it has a separate structure from the Ministry of Justice. Previously, the commission’s members were appointed by the Minister of Justice, the Chief Electoral Office was part of the Ministry of Justice, and the Chief Electoral Officer was a public servant who (in theory) was under the direction of their minister. As Andrew Geddis says, now, “It looks a lot more independent. So you don’t have that worry that the old Chief Electoral Officer used to be a civil servant answerable to the minister – which I always thought

⁶⁶⁹ Justice and Electoral Committee, *Inquiry into the 2011 General Election*, report of the Justice and Electoral Committee, 50th Parliament, April 2013, p. 48. www.parliament.nz/resource/0000261500

⁶⁷⁰ Electoral Commission, *Report of the Electoral Commission on the 2011 General Election and Referendum*, 2012, p. 21.

looked bad. Now that you've got one agency that has guaranteed independence and which operates separately from other government agencies".⁶⁷¹

There is a separation in the Electoral Commission between policy and administration with the commissioners being broadly responsible for policy, and the National Office and Enrolment Services division being responsible for administration. However, these branches are fused by virtue of the Chief Electoral Officer being both a commissioner and the head of the National Office. Geddis says in this regard, that for operational matters, "In practice the [Chief Electoral Officer] would wield the most influence on that board. For instance, if he says to them 'We can or can't do something' then the others will have to agree. It's just a reality".⁶⁷²

In theory, the independence of the commission might be constrained by its resourcing arrangements, as its funding is dependent on year-to-year negotiations with government during the Budget process. The commission's Statement of Intent and its Estimates of Appropriations set out what is required to be delivered. Geddis says, "The minister can't just tell them that they need to 'do X'. But when you're negotiating over budgets, then the minister might say, 'wait before you get this money, I want to see improvements in these areas'." Geddis says, "even with the statutory independent Crown-owned model that [the Electoral Commission] is set up under, the government still holds the purse strings. And this is a potential point of influence. Even the threat of it could be something to worry about".

However, it's worth noting that Geddis does not support ring-fencing the commission's budget – as occurs in comparable countries such as Canada. He says such a mechanism risks creating a "fiefdom". Geddis does not believe that, even under the previous less-independent arrangement, there have been any signs that the commission has antagonised the government of the day, leading to funding cuts.

Alternatively, however, if the current funding model were deemed sufficiently problematic, the Electoral Commission could be given the status of a parliamentary office with funding being provided directly by Parliament. This is the arrangement in the United Kingdom. The government did, however, consider and reject this model when establishing the current commission.⁶⁷³

Some theories of integrity and corruption suggest that public servants in electoral agencies need to be more than adequately remunerated for them to be resistant to the attraction of external resources. It is notable, therefore, that among the National Office staff, eight (out of 24) are paid over NZ\$100,000 per year. Also, in the 2011/12 financial year, electoral commissioners were collectively paid NZ\$346,000: NZ\$87,000 for the chair, NZ\$33,000 for the deputy, and NZ\$226,000 for the chief executive.⁶⁷⁴

The independence of the commission is also reflected in the fact that in practice the Chief Electoral Officer is in charge of appointing and dismissing the personnel of the

⁶⁷¹ Interview of Andrew Geddis with author, Dunedin, 8 February 2013.

⁶⁷² Interview of Andrew Geddis with author, Dunedin, 8 February 2013.

⁶⁷³ Interview of Andrew Geddis with author, Dunedin, 8 February 2013.

⁶⁷⁴ Electoral Commission, *Annual Report*, 2012.

agency. All staff enjoy adequate dismissal protection. Individual staff members of the administration are appointed by the Chief Electoral Officer of the commission in the usual manner set out under the Crown Entities Act 2004. For more information on the terms of employment in independent Crown entities, see the public sector pillar report.

6.1.3 Independence (practice)

To what extent does the electoral management body function independently in practice?

Score: 4

In general, the independence and impartiality of the Electoral Commission is assured, albeit with some concerns about the distribution model used when allocating election advertising funding to political parties.

As one expert interviewee has said, “The Electoral Commission is about as independent as you can get”.⁶⁷⁵ In terms of impartiality, it is notable that in previous years the commission pursued, investigated, and referred most political parties to the New Zealand Police – often including the parties in government. This gives some, albeit limited, evidence that the commission gives no favour in its application of the law. For further detail of these referrals to the Police, see the political parties pillar report.

There is little reason to believe that the commission does not have the confidence of government and citizens in terms of its independence, impartiality, or accountability. It is widely perceived as non-partisan and professional.⁶⁷⁶

Overall, the commission does not get much attention in academic articles or public debate. There are no known incidents in which the impartiality or independence of the commission or any commissioners or staff has been challenged.

In one notable area is the commission perceived as being less than fair. Every election year, the Electoral Commission has the statutory function of allocating broadcast advertising money to political parties, as well as free minutes for opening and closing addresses on television and radio. It is always a fraught process and inevitably results in dissatisfaction, particularly among smaller parties, because the money is not allocated equally among the parties competing in the election. Notably, the commission has repeatedly expressed its dissatisfaction with the model with which it has to work.

The governing legislation, the Broadcasting Act 1989, details that the commission must take into account the following criteria when allocating the money: the parties’ most recent election and by-election performances, their numbers in Parliament, their number of members, recent opinion poll results, and the need to give all nationwide parties a fair chance to promote their policies.⁶⁷⁷ Arguably, the commission gives little

⁶⁷⁵ Interview of Andrew Geddis with author, Dunedin, 8 February 2013.

⁶⁷⁶ Interview of Andrew Geddis with author, Dunedin, 8 February 2013; interview of Graeme Edgeler with author, Wellington, 12 January 2013.

⁶⁷⁷ Broadcasting Act 1989, section 75(2).

weight to the final criterion of “fairness”, because the commission invariably divides up the money in an unequal fashion. The lion’s share of the funding goes to the Labour and National parties, with much smaller amounts to minor parliamentary parties, and then with only minuscule amounts to those parties outside Parliament. This has been the case under both the first-past-the-post and mixed-member proportional representation electoral systems. In the last first-past-the-post election, of 1993, when the Broadcasting Standards Authority last made the allocations, 66.7 per cent of the total funds were allocated to Labour and National; in 2011, the commission allocated 71.9 per cent of funds to the two major parties.⁶⁷⁸

A strong argument can be made that all parties contesting the list vote in New Zealand should receive exactly the same allocation of funding. Any other allocation is contrary to natural justice and notions of democracy and “level playing fields”. Electoral expert Alan McRobie supports this view, saying, “the differential allocations of state funding and broadcasting time appear to run counter to the long-standing objective of providing all who seek elective office with equality of opportunity”.⁶⁷⁹

It appears that the commission’s allocation method is still based on the previous first-past-the-post electoral system, when a cartel effectively operated in dividing up the broadcast allocation mostly between only Labour and National. Historically, the overall effect of this system may have helped consolidate the present players in the party system, prevent the entry of new competitors, and make it more difficult for small parties to grow.

Many countries allocate direct access broadcasting time on the basis of equality between the different political parties or candidates. Of course, it is not clear that the Electoral Commission can move to significantly more equality under the existing Broadcasting Act provisions. The commission does, however, have substantial discretion as to how much weight it gives for the criterion of “fairness” in its allocation model. At the moment, the fairness criterion appears to be afforded the least weight of all the criteria the commission considers.

6.2.1 Transparency (law)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the electoral management body?

Score: 4

Comprehensive provisions allow the public to obtain most information on the organisation and functioning of the Electoral Commission.

The Electoral Commission has a statutory obligation to produce publically available annual reports, Statements of Intent to the government, post-election reports, and

⁶⁷⁸ Bryce Edwards, “The inequitable allocation of TV advertising”, *liberation* blogsite, 12 October 2008. liberation.typepad.com/liberation/2008/10/political-finan.html

⁶⁷⁹ Alan McRobie, “Elections and the electoral system”, in Raymond Miller, ed., *New Zealand Government and Politics* (Auckland: Oxford University Press, 2001).

advice on election advertising. Furthermore, as a public authority, the commission is subject to the Official Information Act 1982, so must comply with requests for information (unless a defined exemption applies).

Despite provisions for making much of its information freely available, most meetings of the commission are closed to the public. Whereas in many countries observers are permitted at the sittings of the commissioners, this does not occur in New Zealand as there are no requirements for meetings to be open or for minutes to be regularly released; instead, all significant decisions are simply publicised through media releases.⁶⁸⁰

Of course there is not necessarily any public, political, or media demand for such open meetings. Nonetheless, this lack of transparency naturally raises questions about the integrity of the commission. The public might have less faith in this institution as a result of its secrecy – regardless of whether it is deliberate or not.

The commission has a role in making available information that it collects about political finance. Therefore, the public can expect to find information on the commission's website about the campaigning expenditure of political parties, candidates, and parallel campaigners. It can also expect to find information about donations received over a certain threshold by parties and candidates. The details of these requirements are complex – for more information, see the political parties pillar report.

When it comes to decisions the commission makes about the electoral behaviour and political finance that it regulates, there is less onus on the commission to publicise these. For example, nothing in the law requires the commission to release information about referrals to the police for breaches of the electoral law.

6.2.2 Transparency (practice)

To what extent are reports and decisions of the electoral management body made public in practice?

Score: 4

The public can readily obtain information about the activities of the Electoral Commission. However, not all information about referrals to the police is being put on the website.

The commission produces annual reports, corporate plans and annual accounts, all of which are available on its comprehensive website.⁶⁸¹ It also produces news releases, statements, and responses. In addition, the National Office publicises its 0800 free-phone number and has a contact and enquiry form on its website. The Enrolment Services division also has user-friendly contact details.

⁶⁸⁰ Interview of Graeme Edgeler with author, Wellington, 12 January 2013.

⁶⁸¹ Electoral Commission website, www.elections.org.nz [accessed 22 October 2013].

In general, the public can readily obtain relevant information on the organisation and functioning of the commission on decisions that concern them. In addition, the commission is transparent about the advice it gives to government and Parliament.

The public might not always be able to easily access electoral information through the commission. For example, much less information appears obtainable about how the commission has made decisions. And, as mentioned above, commission board meetings are not open to the public or media, and public records of the meetings are limited; instead the public is served by the media seeking out this information.⁶⁸² Electoral law specialist Graeme Edgeler commented, “This is one area where the [commission] is less transparent under the new regime. The old small [commission] was very open with police referrals, including giving issuing reasons for its doing so. The old [Chief Electoral Officer] didn’t do that. When they combined, they basically went with the old [Chief Electoral Officer] practice”.⁶⁸³

According to one expert interviewee, “There seems to be a lot less made public under the new [commission] model. As a general rule, the referrals to the Police are not being put online. They still put out their guidance documents, but they don’t put out their decisions (which they did during the [Electoral Finance Act 2007] period)”.⁶⁸⁴

6.2.3 Accountability (law)

To what extent are there provisions in place to ensure that the electoral management body has to report and be answerable for its actions?

Score: 5

Extensive provisions ensure the Electoral Commission has to report and be answerable for its actions.

As an independent Crown entity under the Crown Entities Act 2004, the Electoral Commission is subject to the standard accountability requirements. For example, it is subject to the Official Information Act 1982, its decisions are subject to Ombudsman review, and its accounts must be independently audited by Audit New Zealand.

The most public accountability provision is the requirement for the commission to publish its annual report, which is comprehensive, to the Minister of Justice. The commission is also accountable to Parliament and must appear before the Justice and Electoral Law Committee when required. This committee of members of Parliament reviews each general election, which includes evaluating the performance of the commission. Similarly, the Electoral Act 1993 specifies that the commission must publish a review of its performance in running each general election. Both Parliament’s and the commission’s reviews result in significant reports that provide in-depth information.

⁶⁸² For example, at least one of the *New Zealand Herald’s* parliamentary press gallery journalists makes a monthly request for this information under the Official Information Act 1982.

⁶⁸³ Interview of Graeme Edgeler with author, Wellington, 12 January 2013.

⁶⁸⁴ Interview of Graeme Edgeler with author, Wellington, 12 January 2013.

In theory, Parliament could also vote to “remove or suspend members” of the commission, if such board members were found to have grossly underperformed. The Electoral Act 1993 refers to the “Power to remove or suspend members”, which can be necessitated by “just cause by the Governor-General acting upon an address from the House of Representatives”.⁶⁸⁵

The commission is answerable in law through the courts. In particular, it is subject to judicial review. Such reviews can establish whether the commission has acted reasonably, without bias, and in line with legislation.

6.2.4 Accountability (practice)

To what extent does the electoral management body have to report and be answerable for its actions in practice?

Score: 4

The Electoral Commission makes itself accountable through its public reports – especially through a comprehensive annual report.

The annual report of the Electoral Commission is ostensibly for the purposes of the executive and Parliament, but is easily available for the public and contains a wealth of information about the agency. However, it is not so apparent that the commission makes an effort to hold regular meetings with parties, the media, and observers to answer queries.⁶⁸⁶

Generally, the commission is not a well-known public agency, and its outreach seems limited. It does, however, engage in public consultation and holds public meetings when a particular project demands it. For example, in 2012, the commission held public hearings for its review of mixed-member proportional representation. And for the 2011 electoral system referendum, according to the commission, it held “601 community presentations and public meetings reached 28,151 people”.⁶⁸⁷

One case study of accountability relates to a notable case of poor performance by the electoral agencies in counting the vote in a timely fashion on polling day in 1999. As a result, staff were removed from their positions for “failure to perform”.⁶⁸⁸

The Electoral Commission has been subject to two recent judicial reviews that are of note. First, the 2008 case taken against the commission by the National party about the commission’s decision to register a union as a third party for the purposes of the Electoral Finance Act’s parallel campaigning rules.⁶⁸⁹ Second, the Alliance sought a judicial review of the commission’s allocation of time and money for the 2008 general election.⁶⁹⁰ It should be noted, however, that judicial reviews are slow and expensive.

⁶⁸⁵ Electoral Act 1993, section 4G.

⁶⁸⁶ Interview of Graeme Edgeler with author, Wellington, 12 January 2013.

⁶⁸⁷ Electoral Commission, *Report on the 2011 General Election*, 2012, p. 17.

⁶⁸⁸ Interview of Andrew Geddis with author, Dunedin, 8 February 2013.

⁶⁸⁹ *Kirk v Electoral Commission* 21 May 2008, High Court Wellington CIV 2008-485-756.

⁶⁹⁰ *Alliance Party v Electoral Commission* [2010] NZAR 222.

In the case of the Alliance, the party received its decision a year and a half after the election, which meant it was good only for setting a new standard for the next election.⁶⁹¹

6.2.5 Integrity (law)

To what extent are there mechanisms in place to ensure the integrity of the electoral management body?

Score: 5

Mechanisms to ensure the integrity of the Electoral Commission appear to be few, but appropriate.

As with any state sector board members, commissioners must declare potential interests or connections they may have. And the commissioners and staff also fall under the scope of the legal requirements of the Crown Entities Act 2004. In addition, a convention is emerging that a judge or retired judge chairs the commission while other members have no partisan affiliations.

The Electoral Act 1993 does not restrict political affiliation by members of the Electoral Commission or its staff. However, it is incompatible to be in office on behalf of a political party. The laws and regulations applicable to public servants apply to commission staff. (For more information on the rules applicable to public servants, see the public sector pillar report (p 123).)

The only staff who appear to be restricted in their political affiliations are the returning officers in each electorate who are prevented from holding official positions in political parties.

6.2.6 Integrity (practice)

To what extent is the integrity of the electoral management body ensured in practice?

Score: 5

An overall aim of the Electoral Commission is to preserve integrity and public confidence in the democratic process, and there is no suggestion of any impropriety or bias in the dealings of the commission.

Public surveys shows a high level of satisfaction with the way elections are run, which suggests little concern about the integrity of the Electoral Commission. Of those surveyed in 2011, 88 per cent expressed satisfaction with the electoral process – up from 85 per cent in 2008. Political parties were also surveyed, with 98.8 per cent of

⁶⁹¹ The Alliance judicial review established that the Electoral Commission was obliged to make allocations of both opening and closing broadcast addresses to all parties. It also resulted in Television New Zealand providing additional free time so all parties could make such addresses.

secretaries of political parties expressing satisfaction with the services the commission provided.⁶⁹²

In 2008, voters were also surveyed about the administration of parliamentary elections and referenda, with 85 per cent expressing that they were “confident or very confident”.⁶⁹³

To run general elections, the commission must hire large numbers of additional staff, increasing the risks for integrity, because of the significant numbers of temporary new staff operating with authority. The commission’s 2011/12 annual report makes the following declaration: “There were close family members of key management personnel among the 24,000 New Zealanders engaged to assist with the conduct of the November 2011 General Election and referendum on the voting system. The terms and conditions of those arrangements were no more favourable than the Electoral Commission would have adopted if there were no relationship to key management personnel”.⁶⁹⁴

6.3.1 Campaign regulation

Does the electoral management body effectively regulate candidate and political party finance?

Score: 3

The Electoral Commission generally enforces the laws governing political party finance.

The Electoral Commission regulates the financing of political parties, candidates, organisations, and individuals engaged in campaigning. The commission maintains and makes available several public registers of political parties and details of their donations and campaign expenditures.⁶⁹⁵ Limited information is also kept on registered parallel campaigners (known as “registered promoters”). But the law provides the commission with a limited number of campaign-regulation mechanisms. Therefore, as Graeme Edgeler (electoral law specialist and former lawyer for the commission) says, “In terms of the rules as they exist, the commission does everything that is asked of it. But the role of the commission is deliberately kept minimal. So really what the commission is there to do is to accept the reports that are given to it by the participants. They receive donation reports; they receive expenditure reports, and if a complaint is made they make a decision on whether to give this to the police. They have minimal powers to investigate”.⁶⁹⁶ The role can, therefore, be characterised as passive and limited.

Edgeler says, “They do have good internal processes for investigating allegations. They are very good at investigating the basics (dual-voting, etc.). They don’t go out and

⁶⁹² Electoral Commission, *Annual Report*, 2012: 16.

⁶⁹³ Electoral Commission, *Annual Report*, 2012: 16.

⁶⁹⁴ Electoral Commission, *Annual Report*, 2012: 35.

⁶⁹⁵ The Electoral Commission publishes these details on its website, www.elections.org.nz/parties-candidates

⁶⁹⁶ Interview of Graeme Edgeler with author, Wellington, 12 January 2013.

interview people under caution like the police – it’s certainly not at that level. But in actually finding out what did happen they go and interview people, speak to electors”. Edgeler stresses that the commission has few auditing powers: “they don’t have auditors to investigate financial affairs. They receive expense reports and donation disclosures and as long as it all adds up and is on time – unless there’s something that they know is missing then they won’t do anything further unless someone complains”.⁶⁹⁷ Therefore, although the commission does seek to regulate candidate and political finance, its approach is largely reactive, and its success could be seen as limited.

Whether the commission should take a more thorough, interventionist, and proactive role in regulating campaign finance is entirely a question for the law makers rather than the commission. This issue is addressed further in the political parties pillar report.

Since 2011, the commission has had a statutory role in providing advisory opinions about whether something is legally an election advertisement. In the 2011 election year it “received 718 advisory opinion requests dealing with 1099 separate advertisements for the 2011 election of which 90 per cent were requested by members of Parliament”.⁶⁹⁸

6.3.2 Election administration

Does the electoral management body ensure the integrity of the electoral process?

Score: 5

The Electoral Commission is active and successful in ensuring free and fair elections.

Elections run smoothly in New Zealand with strong confidence in the integrity of the electoral process. The Electoral Commission is seen as performing strongly in this regard. According to Geddis, “It handles the task of running elections perfectly. I don’t think that anyone has got any real concerns that the vote tally that you get at the end is a genuine representation of the people who showed up to vote”.⁶⁹⁹

Serious voting irregularities and allegations of impropriety are rare. According to Geddis, “There’s never been – in recent New Zealand political history – an allegation that an election result has been obtained by fraud or wrong behaviour. It just hasn’t arisen”.⁷⁰⁰ Geddis’s opinion is backed up by the lack of obvious complaints about the commission or the electoral process and by the survey evidence that the vast majority of voters are happy with the process.⁷⁰¹

There is some evidence of a reduction in confidence in the integrity of the democratic process and in political party funding and campaign expenditure. But it is far from clear

⁶⁹⁷ Interview of Graeme Edgeler with author, Wellington, 12 January 2013.

⁶⁹⁸ Electoral Commission, *Report on the 2011 General Election*, 2012: 5.

⁶⁹⁹ Interview of Andrew Geddis with author, Dunedin, 8 February 2013.

⁷⁰⁰ Interview of Andrew Geddis with author, Dunedin, 8 February 2013.

⁷⁰¹ Electoral Commission, *Report on the 2011 General Election*, 2012: 4.

that the commission's work is related to this. In particular, there are serious problems with declining faith and participation in the electoral process. Voter turnout has generally been in decline over a long period, and, at the most recent election, sunk to the lowest turnout in over a century with only 70 per cent of eligible voters turning out on polling day, which was a decline of 6 per cent from the previous election. There is also a trend for fewer participants standing for office. The commission reported that "453 electorate candidates and 471 list candidates were nominated with 13 parties contesting the party vote. This was a significant reduction compared to 2008 when there were 522 electorate candidates, 593 list candidates and 19 parties contesting the party vote".⁷⁰²

Such trends are generally beyond the powers of the commission. In particular, the trend of declining voter turnout is one experienced in most Western liberal democracies and, obviously, relates to more-significant issues in modern politics. Nonetheless, the commission needs to be measured on this criterion, and its response should be examined. The commission has sought to make this issue a priority in future work, saying in its post-election review that, "An immediate area of focus for the Commission will be civics education"⁷⁰³ and in its 2012 annual report, "Promoting participation to reverse the downward trend is therefore a key objective for the Commission to be achieved over the next 9–12 years".⁷⁰⁴ It is questionable whether the level of electoral participation relates to such public education, but the commission could certainly play a stronger role in providing electoral information and encouragement.

Also, the commission claims that "Administrative barriers to participation in New Zealand elections are low by international standards".⁷⁰⁵ It is also the case that the electoral agencies have achieved enrolment rates that "compare favourably with enrolment rates achieved overseas".⁷⁰⁶

The commission surveys the public following each election, and the following details for the 2011 election suggest strong voter confidence and satisfaction in the administration of general elections: "Voter survey results showed 88% of voters were satisfied or very satisfied with the information they received before the election, the voting process, and their voting experience. The vast majority of voters considered the time spent in the polling place reasonable (98%), found the parliamentary (94%) and referendum papers (83%) straightforward, and were satisfied with the timeliness of the results (87%). Voters were very positive (93%+) about the location and layout of polling places and the politeness, efficiency and knowledge of electoral staff. These results are on a par with those for 2008".⁷⁰⁷

⁷⁰² Electoral Commission, *Report on the 2011 General Election*, 2012: 30.

⁷⁰³ Electoral Commission, *Report on the 2011 General Election*, 2012: 4.

⁷⁰⁴ Electoral Commission, *Annual Report*, 2012: 4.

⁷⁰⁵ Electoral Commission, *Statement of Intent 2011–2014*, 2011, p. 6.

www.elections.org.nz/sites/default/files/plain-page/attachments/Electoral_Commission_Statement_of_Intent_2011-14.pdf.

⁷⁰⁶ David McGee, *Parliamentary Practice in New Zealand*, 3rd ed. (Wellington: Dunmore Press, 2005).

⁷⁰⁷ Electoral Commission, *Report on the 2011 General Election*, 2012: 4.

The commission is relatively accessible to the public. There is a free-phone number for the answers to questions on electoral rights and elections. According to the commission, in the three months leading up to the last election, it received 54,193 enquiries.⁷⁰⁸ The Commission website is also a key communication device, and can be used, not just for contacting the agency, but also providing a facility to register to vote, and individuals can also check if they are already registered. The website received about 1.7 million visits during the 2011 election year. A separate “election results” website received 3.3 million visits during election day.⁷⁰⁹

The commission handles most complaints about electoral matters. During the 2011 election year it “investigated in excess of 600 complaints before election day”.⁷¹⁰ It should be noted that the judiciary, not the commission, deals with electoral recounts and electoral petitions. Requests for electoral recounts are dealt with and organised by a District Court judge. For electoral petitions, jurisdiction is split with the High Court having the power to hear electoral petitions about a particular electorate seat and the Court of Appeal hearing electoral petitions about the allocation of list seats.

The Electoral Commission administers only general elections not local body or district health board elections, although the commission provides the electoral rolls for those elections.⁷¹¹

Other areas relating to the integrity of elections are also outside of the commission’s role. The most critical one relates to the investigation and prosecution of electoral offences, which police carry out after the commission (or any member of the public) passes on serious allegations. Reflecting on the 2011 election year, the Commission stated that it was “concerned about the priority the Police seem able to accord these referrals”, noting that “Effective and timely investigation and prosecution of electoral offences is critical to ensuring public confidence in the integrity of the democratic process”.⁷¹² For more on this, see the law enforcement pillar report.

6.4.1 Treaty of Waitangi

The Treaty of Waitangi can be understood to create obligations of partnership, respect and participation. What does the Electoral Commission do to partner with Māori, to respect and affirm Māori rights to make decisions, and to enhance Māori participation in its field of activity? In particular, where the Electoral Commission has legal rights and obligations in this respect given to it by the Crown, how well does it honour them, including any Treaty obligations passed on by the Crown?

The Electoral Commission has a special role in administering the Māori vote and has expressed its intention to reduce barriers to the participation of Māori in elections. Māori are generally satisfied with the electoral process.

⁷⁰⁸ Electoral Commission, *Report on the 2011 General Election*, 2012: 37.

⁷⁰⁹ Electoral Commission, *Report on the 2011 General Election*, 2012: 16.

⁷¹⁰ Electoral Commission, *Report on the 2011 General Election*, 2012: 37.

⁷¹¹ The local body elections are subject to the Local Electoral Act 2001, and district health board elections are subject to the New Zealand Public Health and Disability Act 2000.

⁷¹² Electoral Commission, *Report on the 2011 General Election*, 2012: 39.

The Electoral Commission has a special role in dealing with Māori voters because of the seven Māori seats. Māori can choose to register on the Māori roll and vote in a Māori electorate. For this reason, the commission administers the Māori Electoral Option every five years following the national census.

In its Statement of Intent for 2011–2014, the Commission expressed its intention to reduce barriers to the participation of Māori in elections. Most significantly, it committed to “provide information in te reo Māori [Māori language] in our key communications”, to participate in “face to face outreach programmes that encourage Māori to enrol and vote”, to “ensure that those voting on the Māori roll get the same services as those voting on the general roll”, and to “integrate counting of votes for Māori electorates with the counting of votes for general electorates, so that there are no undue delays with reporting results for Māori electorates”.⁷¹³ In its role of voter education, the commission endeavours to “provide targeted information to suit the needs of Māori, ethnic minorities, migrants and youth”.

The commission can indirectly claim some successes in this regard. The 2011 post-election survey of voters found that 94 per cent of Māori voters had a very high level of overall satisfaction with the electoral process, which was higher than the level among non-Māori.⁷¹⁴

Also, as a public sector organisation, the commission strives to make itself an agency that is a good employer for Māori.

New Zealand’s declining voter turnout is particularly accentuated for those on the Māori roll. In 2011, the turnout of those on the Māori roll declined to 58.2 per cent – down from 62.4 per cent in 2008.⁷¹⁵

The Treaty of Waitangi has been invoked in issues relating to the Electoral Commission’s allocation of time and money for election broadcasting. For example, the Māori Party complained in 2011 that the commission had failed to give effect to the Treaty in deciding how much to distribute to the party. Member of Parliament Te Ururoa Flavell stated in Parliament that “we believe that decisions were made that in effect devalue the role of the Treaty and of te reo Māori as the official language of Aotearoa [New Zealand]”. But Flavell expressed optimism that the appointment of a Māori commissioner, Jane Huria (“tangata whenua”) might lead the commission to better reflect the Treaty.

The commission also makes a strong effort to translate much of its publicity material into te reo Māori. For example, the commission’s post-election review stated that “Core information brochures and media releases about key milestones were translated into te reo Māori”, “The Commission’s bilingual advertising was broadcast on Māori Television and iwi radio”, and “The Commission’s ‘Candidate Handbook – 2011 General Election and Referendum’ was also made available in te reo Māori”.⁷¹⁶ Also

⁷¹³ Electoral Commission, *Statement of Intent*, 2011: 7.

⁷¹⁴ Electoral Commission, *Report on the 2011 General Election*, 2012: 23.

⁷¹⁵ Electoral Commission, *Report on the 2011 General Election*, 2012: 24.

⁷¹⁶ Electoral Commission, *Report on the 2011 General Election*, 2012: 18–19.

during the election campaign, the commission's "Community Liaison Coordinators worked directly with communities nationwide, including three Pasifika and five Māori specialists".⁷¹⁷

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⁷¹⁷ Electoral Commission, *Report on the 2011 General Election*, 2012: 17.