



Electoral Referendum Act 2010

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Commencement see section 2

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Electoral Referendum Act 2010.
- 2 Commencement**
This Act comes into force on 1 January 2011.
- 3 Application of Act to conduct outside New Zealand**
This Act applies in respect of the publication of a referendum advertisement—
 - (a) in New Zealand, in any case where the promoter of the advertisement is outside New Zealand; and
 - (b) outside New Zealand, in any case where the promoter of the advertisement is in New Zealand.

Part 1
Preliminary provisions

- 4 Purpose of Act**
The purpose of this Act is to make provision for an indicative referendum to be held in conjunction with the first general election after the commencement of this Act, in order to provide electors with the opportunity to express an opinion on the preferred system of voting for election to the House of Representatives in New Zealand.

5 Expiry

- (1) This Act expires and is repealed on the close of the day that is 6 months after the date on which the result of the referendum is declared.
- (2) Despite subsection (1),—
 - (a) if section 26 (which provides for a fresh referendum in the case of a successful petition) applies, this Act expires and is repealed 6 months after the date on which the result of the fresh referendum is declared:
 - (b) if section 74 (which provides for the circumstance when there must be a review of MMP) applies, subpart 1 of Part 4 expires and is repealed—
 - (i) on 1 November 2012; or
 - (ii) 6 months after the date on which the result of the fresh referendum is declared, in the event that section 74 applies as a consequence of a fresh referendum being held.

6 Interpretation

- (1) In this Act, unless the context otherwise requires,—

1993 Act means the Electoral Act 1993

general election means the first general election that takes place under the 1993 Act after the commencement of this Act

mixed member proportional representation voting system and **MMP** mean the voting system for the House of Representatives provided for by the 1993 Act

option means—

 - (a) the 2 options for the question in Part A of the referendum voting paper; and
 - (b) the 4 options for the question in Part B of that paper

question means the question specified in each of Parts A and B of the referendum voting paper

referendum means the indicative referendum of electors provided for by section 8

referendum voting paper means the voting paper the form of which is set out in Schedule 1.

- (2) Unless the context otherwise requires, a term defined in the 1993 Act and not otherwise defined in this Act has the meaning given in that Act.
- (3) The terms **ballot box**, **ballot paper**, **poll**, and **polling**, in relation to the general election, mean the same in this Act as they do in the 1993 Act.

7 Act binds the Crown
This Act binds the Crown.

Part 2
Provisions relating to referendum
Subpart 1—Referendum on options for
voting system

8 Referendum on day of general election

- (1) On the day appointed for the polling to take place for the general election, a referendum of electors must be held on each of the questions about the voting system set out in Parts A and B of the referendum voting paper in Schedule 1.
- (2) Schedule 2 sets out the key characteristics of—
 - (a) the mixed member proportional representation voting system; and
 - (b) each of the options for the question in Part B of the referendum voting paper.

9 Application of Electoral Act 1993

- (1) The provisions of the 1993 Act and of any regulations made under that Act apply, as far as they are applicable and with any necessary modifications, to the referendum as if it were the poll held for the general election, unless the provision is excluded or modified, expressly or impliedly, by a provision in, or made under, this Act.
- (2) Subsection (1) is subject to the provisions of this Act and of any regulations made under it.

Subpart 2—Conduct of referendum

Officers and polling places

10 Manager, returning officer, polling place officials, and polling places

- (1) The returning officer for a district, the manager of a polling place, and other officials appointed under the 1993 Act for the general election are the returning officer, the manager, and officials for the purposes of the referendum.
- (2) The polling places appointed under section 155 of the 1993 Act for each district for the purposes of the general election are the polling places for the referendum.

Eligibility to vote at referendum

11 Who may vote

- (1) The persons who are qualified to vote at the referendum are those qualified under section 60 of the 1993 Act to vote at the general election.
- (2) The electoral rolls for the purpose of the referendum are the electoral rolls that are in force under the 1993 Act.

Referendum voting paper

12 Issue of referendum voting paper

- (1) When a ballot paper is issued to a person qualified to vote at the general election, the issuing officer must also issue a referendum voting paper to that person.
- (2) Section 167(3)(b) and (c) of the 1993 Act does not apply in respect of a referendum voting paper.

13 Method of voting

A person voting in the referendum must mark the referendum voting paper with a tick in the circle immediately beside—

- (a) the option in Part A that the person wishes to vote for:
- (b) the option in Part B that the person wishes to vote for.

Subpart 3—Counting of votes and declaration of results

Certain provisions of 1993 Act not to apply

14 Provisions of 1993 Act not to apply to count of referendum votes

The following provisions of the 1993 Act do not apply to the counting of referendum votes:

- (a) sections 160, 172(4) to (7), and 174F (which relate to the appointment and functions of scrutineers); and
- (b) sections 174 and 174B (which provide for a preliminary count of votes cast in polling places); and
- (c) section 176 (which provides for marked copies of the rolls to be compared).

Counting of early votes

15 Time at which preliminary count of early votes must begin

Despite section 174C(5)(a) of the 1993 Act, if the conditions stated in section 174D(2) of that Act apply, each returning officer must, as soon as practicable after 2 pm on polling day, commence the preliminary count of early votes,—

- (a) in the case of the general election, in accordance with the requirements of section 174C(1) to (4) and (6) of the 1993 Act; and
- (b) in the case of the referendum, in accordance with the requirements of section 17, with any necessary modifications.

Procedure after close of poll

16 Referendum voting papers sent to returning officer before being counted

As soon as practicable after the close of the poll, the manager of a polling place must—

- (a) unseal the ballot boxes; and
- (b) separate the referendum voting papers from the ballot papers for the general election; and
- (c) enclose the used referendum voting papers and counter-foils, unused referendum voting papers, and spoilt ref-

erendum voting papers in parcels endorsed as required for ballot papers under section 174A(1)(b) of the 1993 Act; and

- (d) send those parcels to the returning officer.

17 Returning officer to count referendum votes for district

As soon as practicable after the parcels of referendum voting papers are received by a returning officer, the returning officer must, in the presence of a Justice of the Peace, ascertain the number of—

- (a) valid votes cast for each of the options for the question in Part A of the referendum voting paper; and
- (b) valid votes cast for each of the options for the question in Part B of that paper; and
- (c) informal votes for each Part of that paper.

18 Return of results of count to Electoral Commission

Each returning officer must, as soon as practicable after completing the count of the referendum votes, return the results of the count to the Electoral Commission.

Determination and declaration of result of referendum

19 Determination of results by Electoral Commission

As soon as practicable after receiving the results of the count from each returning officer, the Electoral Commission must ascertain, from the results of the count returned by each returning officer under section 18,—

- (a) the total number of valid votes for all districts combined for each option for the question in Part A of the referendum voting paper; and
- (b) the total number of valid votes for all districts combined for each option for the question in Part B of that paper; and
- (c) the total number of informal votes for each Part of that paper.

20 Declaration of official result of referendum

- (1) The Electoral Commission must declare the result of the referendum by notice in the *Gazette*, giving—
 - (a) the total number of valid votes cast for each option in relation to the question in each Part of the referendum voting paper—
 - (i) for all districts combined; and
 - (ii) for each district separately; and
 - (b) the total number of informal votes cast in each Part of the referendum voting paper.
- (2) The notice required by subsection (1) must be published on or before the latest day appointed under section 139(1) of the 1993 Act for the return of the writ for the general election.

Subpart 4—Petitions**21 Method of questioning referendum**

- (1) The referendum may not be questioned except by petition to the High Court in accordance with this subpart.
- (2) Except as provided in this subpart, the provisions of this subpart apply instead of the provisions of Part 8 of the 1993 Act.

22 Petition for inquiry

- (1) If a group of 6 or more electors are dissatisfied with the result of the referendum, as declared by notice in the *Gazette* under section 20(1)(a), they may petition the High Court for an inquiry into the conduct of—
 - (a) the referendum; or
 - (b) any person connected with it.
- (2) A petition must specify the grounds of the complaint, which may only be that—
 - (a) the result declared under section 20(1)(a) was wrong; or
 - (b) irregularities in the conduct of the referendum or of any person connected with it materially affected the result.
- (3) A petition must be filed—
 - (a) not later than 28 days after publication of the *Gazette* notice under section 20(1); and
 - (b) in the form set out in Schedule 3 or to similar effect; and

- (c) in the registry of the High Court nearest to the place where 1 or more of the petitioners live.
- (4) The Registrar of the High Court where the petition is filed must send a copy of the petition to the Electoral Commission.

23 Respondents

- (1) A group of 6 or more electors may, not later than 3 working days before the commencement of the inquiry, file a notice of intention to oppose a petition, and those persons are respondents to the petition.
- (2) If a petition relates to the conduct of the Electoral Commission or a returning officer, that person is a respondent to the petition.

24 Procedural matters

- (1) The provisions listed in subsection (2) apply to a referendum petition as if it were an election petition, to the extent that they are relevant and with any necessary modifications.
- (2) The provisions that apply under subsection (1) are—
 - (a) the following sections of Part 8 of the 1993 Act (which relates to election petitions):
 - (i) sections 232 to 234 (which provide for security for costs, the hearing of more than 1 petition, and the making of rules of court for the purposes of petitions); and
 - (ii) sections 235, 236(2), (4), (5), and (6), 240, 241, 242, and 247 to 249 (which relate to the conduct of a trial of a petition); and
 - (iii) sections 250 to 255, and 256(1)(a) and (b) (which relate to costs, the withdrawal or abatement of a petition, and matters relevant to respondents); and
 - (iv) section 257 (which requires submission of the High Court's report to the Attorney-General); and
 - (b) the Constituency Election Petition Rules 2008.

25 Jurisdiction of High Court

- (1) A referendum petition under this subpart must be tried in open court without a jury.
- (2) The High Court may give leave for grounds other than those stated in the petition to be inquired into, on whatever terms and conditions that the court considers just.
- (3) Despite section 22(2), the court may, in its discretion, inquire into and adjudicate on any matter relevant to the petition including, in particular,—
 - (a) receiving evidence that the number of valid votes cast for an option, whether across all districts or in a particular district, was higher or lower than the number declared under section 20(1)(a) and (b);
 - (b) directing that there be a recount of some or all of the referendum votes.
- (4) At the conclusion of the trial of a petition, the court must either—
 - (a) determine and declare—
 - (i) the total number of valid votes recorded for each option in each of Parts A and B of the referendum voting paper; and
 - (ii) the total number of informal votes cast; or
 - (b) declare that the referendum is void because of an irregularity that, in the opinion of the court, materially affected the result of the referendum.

26 Fresh referendum

If the High Court declares the referendum to be void,—

- (a) the Registrar of the court must notify the Electoral Commission that the referendum is void; and
- (b) a fresh referendum must be held; and
- (c) not later than 30 working days after a declaration is made under section 25(4)(b), the Governor-General, by Order in Council, must appoint the day for the fresh referendum to be held, which must not be later than 6 months after the date of the declaration; and
- (d) the same roll of electors must be used at the fresh referendum as was used at the referendum declared to be void; and

- (e) a fresh referendum must be conducted in accordance with the provisions of this Act, with any necessary modifications, and to the extent that they are relevant.

Subpart 5—Offences and penalties

27 Application of provisions of Electoral Act 1993 in respect of referendum

The offences and penalties provided for in the 1993 Act in relation to the conduct of the poll for a general election apply in respect of the referendum, to the extent that they are relevant, with the following modifications:

- (a) references to the poll taken for an election are to be read as references to the poll taken for the referendum; and
- (b) references to a ballot paper are to be read as references to a referendum voting paper; and
- (c) references to a candidate or a political party are to be read as references to an option for the question in Part A or in Part B of the referendum voting paper, or to a proponent of an option, as the case may require; and
- (d) references to party colours and party lapel badges are to be read as references to colours or badges identified with an option to which the referendum relates; and
- (e) references to an election campaign are to be read as including references to a campaign in respect of 1 or more options for the question in Part A or in Part B of the referendum voting paper; and
- (f) references to the 1993 Act are to be read as references to this Act.

28 Time limit for prosecutions

A prosecution under this Part must be commenced—

- (a) within 6 months of the date on which the prosecutor is satisfied that there is sufficient evidence to warrant the commencement of proceedings; but
- (b) no later than 3 years after the alleged offence was committed.

Part 3

Advertising

Application of Part

29 Application of this Part

This Part applies, instead of Parts 6AA and 6A of the 1993 Act, to referendum advertisements unless otherwise expressly provided in this Part.

Interpretation provisions

30 Interpretation

In this Part, unless the context otherwise requires,—

address means—

- (a) in relation to an individual—
 - (i) the full street address of the place where that individual usually lives; or
 - (ii) the full street address of any other place where that individual can usually be contacted between the hours of 9 am and 5 pm on any working day;
- (b) in relation to a body corporate or unincorporated,—
 - (i) the full street address of the body's principal place of business; or
 - (ii) the full street address of the body's head office

contact details for a person means that person's—

- (a) address; and
- (b) telephone numbers; and
- (c) email address (if any)

promoter means a person who initiates or instigates a referendum advertisement that—

- (a) is published; or
- (b) is to be published

publish has the meaning given in section 33

referendum advertisement has the meaning given in section 31

referendum expenses has the meaning given in section 32

register means the register of registered promoters established and maintained under section 50

registered promoter—

- (a) means a promoter who is registered under section 46; and
- (b) includes a promoter who at any time in the regulated period has been registered under section 46

regulated period has the meaning given in section 34.

31 Meaning of referendum advertisement

- (1) In this Part, **referendum advertisement** means an advertisement in any medium that—
 - (a) may reasonably be regarded as encouraging or persuading voters—
 - (i) to vote in a particular way in the referendum; or
 - (ii) not to vote in a particular way in the referendum; and
 - (b) is published at any time from the date of the commencement of this Act until the close of the day before polling day.
- (2) However, none of the following is a referendum advertisement:
 - (a) an advertisement that—
 - (i) is published, or caused or permitted to be published, by the Electoral Commission, the Chief Registrar of Electors, or any other agency charged with responsibilities in relation to the conduct of any official publicity or information campaign to be conducted on behalf of the Government of New Zealand; and
 - (ii) relates to electoral matters or the conduct of the general election or the referendum; and
 - (iii) contains either—
 - (A) a statement indicating that the advertisement has been authorised by that officer or agency; or
 - (B) a symbol indicating that the advertisement has been authorised by that officer or agency:
 - (b) the editorial content of—
 - (i) a periodical:

- (ii) a radio or television programme;
 - (iii) a publication on a news media Internet site;
 - (c) statements that do not promote, or could not reasonably be regarded as promoting, a particular option for the question in Part A or the question in Part B of the referendum voting paper;
 - (d) any transmission (whether live or not) of proceedings in the House of Representatives;
 - (e) any publication on the Internet, or other electronic medium, of personal political views by an individual who does not make or receive a payment in respect of the publication.
- (3) In this section, **periodical** means a newspaper, magazine, or trade or professional journal that—
- (a) was established for purposes unrelated to the conduct of the referendum; and
 - (b) since its establishment has been—
 - (i) published at regular intervals; and
 - (ii) generally available to members of the public.

32 Meaning of referendum expenses

- (1) In this Part, **referendum expenses**—
- (a) includes—
 - (i) the cost incurred in the preparation, design, composition, printing, distribution, postage, and publication of a referendum advertisement; and
 - (ii) the reasonable market value of any material used for or applied towards the advertisement, including any such material that is provided free of charge or below reasonable market value; but
 - (b) excludes the cost of—
 - (i) the conduct of any survey or public opinion poll; and
 - (ii) any framework (other than a commercial framework) that supports a hoarding on which the advertisement is displayed; and
 - (iii) the labour of any person that is provided free of charge by that person; and

- (iv) the replacement of any material used in respect of a referendum advertisement if that advertisement has been destroyed or rendered unusable by—
 - (A) 1 or more persons (other than the promoter or a person acting on his or her behalf):
 - (B) the occurrence of an event beyond the control of the promoter or a person acting on his or her or its behalf.
- (2) To avoid doubt, **referendum expenses** does not include the cost (including running costs) of any vehicle used to display a referendum advertisement if the use of the vehicle for that purpose is not the subject of a contract, arrangement, or understanding, for the payment of money or money's worth.
- (3) In this section, **vehicle** has the meaning given to it by section 2(1) of the Land Transport Act 1998.

33 Meaning of publish

In this Act, unless the context otherwise requires, **publish**, in relation to a referendum advertisement, means to bring to the notice of a person in any manner,—

- (a) including—
 - (i) displaying on any medium:
 - (ii) distributing by any means:
 - (iii) delivering to an address:
 - (iv) leaving at a place:
 - (v) sending by post or otherwise:
 - (vi) printing in a newspaper or other periodical:
 - (vii) broadcasting by any means:
 - (viii) disseminating by means of the Internet or any other electronic medium:
 - (ix) storing electronically in a way that is accessible to the public:
 - (x) incorporating in a device for use with a computer:
 - (xi) inserting in a film or video; but
- (b) excluding addressing 1 or more persons face to face.

34 Meaning of regulated period

- (1) In this Act, **regulated period**, in relation to the referendum, has the meaning given to it by subsections (2) and (3).

- (2) If before the close of the default day the Prime Minister gives public notice of the day that is to be polling day for the election, the regulated period—
- (a) commences on the later of the following days:
 - (i) the day after the date on which the Prime Minister gives that public notice;
 - (ii) the day that is 3 months before polling day; and
 - (b) ends with the close of the day before polling day.
- (3) If at the close of the default day the Prime Minister has not given public notice of the day that is to be polling day for the election, the regulated period—
- (a) commences on the close of the default day; and
 - (b) ends with the close of the day before polling day.
- (4) In this section,—
- default day** means the day that is 2 years and 9 months after polling day for the preceding general election
- give public notice** means issue a media statement.

35 Electoral Commission to publish details of regulated period

The notice published under section 3C of the 1993 Act in relation to the general election must state that the regulated period for the referendum commenced and will end on the same dates as the regulated period for the general election.

General rules for referendum advertisements

36 Persons who may promote referendum advertisements

A person is entitled to promote a referendum advertisement if the person—

- (a) is a registered promoter; or
- (b) is an unregistered promoter who does not incur referendum expenses exceeding \$12,000 (inclusive of goods and services tax) in relation to referendum advertisements published during the regulated period.

37 Maximum amount of registered promoter's total referendum expenses

- (1) The total referendum expenses of a registered promoter in respect of the regulated period must not exceed \$300,000.
- (2) The amount in subsection (1) is inclusive of goods and services tax.

38 Persons who may incur referendum expenses in relation to referendum advertisement

A person may incur referendum expenses in relation to a referendum advertisement only if the person is—

- (a) the promoter of the referendum advertisement; or
- (b) a person authorised to incur referendum expenses in relation to the referendum advertisement by the promoter.

39 Apportionment of promoter's referendum expenses for publication of referendum advertisement both before and during the regulated period

- (1) This section applies if a referendum advertisement—
 - (a) is published both before the commencement of the regulated period and during the regulated period; or
 - (b) is published before the commencement of the regulated period and continues to be published during the regulated period.
- (2) If this section applies,—
 - (a) the referendum advertisement is deemed to have been published during the regulated period; and
 - (b) the referendum expenses for the publication of the referendum advertisement must be apportioned so that only a fair proportion of those expenses is attributed to the referendum advertising carried on during the regulated period.
- (3) Only the referendum expenses attributed to the regulated period in accordance with subsection (2) are expenses for the purposes of sections 36(b) and 37.

40 Joint election and referendum advertisements

- (1) This section applies if an advertisement comprises both—

- (a) an election advertisement; and
 - (b) a referendum advertisement.
- (2) The promoter of the advertisement must count the sum of the referendum expenses and advertising expenses incurred in relation to the advertisement as both advertising expenses in relation to the election advertisement and referendum expenses.

41 Obligation not to circumvent limitations imposed by this Part

- (1) An unregistered promoter may not enter into an agreement, or enter into an arrangement or understanding, with another person for the purpose of circumventing the maximum amount prescribed in section 36(b).
- (2) A body corporate or unincorporated may not encourage its members to take any action for the purpose of circumventing the maximum amount prescribed in section 36(b).
- (3) No person may incorporate or form 2 or more bodies corporate or unincorporated for the purpose of circumventing the maximum amount prescribed in section 36(b).

42 Referendum advertisement to include promoter statement

- (1) A person may publish or cause or permit to be published a referendum advertisement only if the advertisement includes a promoter statement.
- (2) A promoter statement must state the name and address of the promoter of the referendum advertisement.
- (3) If the promoter is a registered promoter, the name and address of the promoter stated in the promoter statement must be the same name and address of the promoter that appear in the register.
- (4) If the promoter is an unregistered promoter and is a body corporate or unincorporated, the promoter statement must also include the name of a member of the body who is the duly authorised representative of the promoter.
- (5) If the referendum advertisement is published in a visual form, the promoter statement must be clearly displayed in the advertisement.

- (6) If the referendum advertisement is published only in an audible form, the promoter statement when published must be no less audible than the other content of the advertisement.

Registered promoters

43 Promoters eligible to be registered

- (1) A promoter (including a corporation sole, a body corporate, and an unincorporated body) is eligible to be a registered promoter if the promoter is not an overseas person.
- (2) In this section, **overseas person** means—
- (a) an individual who—
 - (i) resides outside New Zealand; and
 - (ii) is not a New Zealand citizen or registered as an elector; or
 - (b) a body corporate incorporated outside New Zealand; or
 - (c) an unincorporated body that has its head office or principal base of business outside New Zealand.

44 Application for registration

- (1) An application to be a registered promoter must be made to the Electoral Commission and made,—
- (a) if the promoter is an individual, by that individual; or
 - (b) if the promoter is a company, by a person who is duly authorised by the board of directors to make the application; or
 - (c) if the promoter is not an individual or a company, by the promoter's representative who is duly authorised by the promoter to make the application.
- (2) An application to be a registered promoter must be made in the form required by the Electoral Commission and set out—
- (a) the name and contact details of—
 - (i) the promoter; and
 - (ii) the person described in subsection (1)(b) or (c), as the case may be, who made the application, if the promoter is not an individual; and
 - (b) the names of the persons occupying a position in the body that is comparable with that of a director of a com-

- pany, if the promoter is not an individual or a company;
and
 - (c) the names of the trustees, if the promoter is a trust.
- (3) An application to be a registered promoter must be accompanied by evidence of the authority to make the application, if the application is made by a person described in subsection (1)(b) or (c).

45 Grounds on which registration must be refused

The Electoral Commission must refuse an application by a promoter to be registered if—

- (a) the application does not comply with section 44; or
- (b) the Electoral Commission is not satisfied that the promoter is eligible under section 43 to be registered; or
- (c) the name of the promoter is—
 - (i) indecent or offensive; or
 - (ii) likely to cause confusion or mislead electors.

46 Electoral Commission's decision on application

- (1) If there are no grounds under section 45 to refuse an application, the Electoral Commission must, as soon as is reasonably practicable after receiving the application,—
 - (a) register the promoter; and
 - (b) notify the person who made the application of the date of registration of the promoter.
- (2) If there are grounds under section 45 to refuse an application, the Electoral Commission must, as soon as is reasonably practicable after receiving the application,—
 - (a) refuse the application; and
 - (b) notify the person who made the application of the refusal and the reasons.

47 Obligation to notify Electoral Commission of change in contact details

A registered promoter must give written notice to the Electoral Commission of any change in the information provided under section 44(2) within 10 working days after the change.

48 Cancellation of registration

- (1) The Electoral Commission must cancel the registration of a promoter if—
- (a) the Electoral Commission is satisfied that the promoter is not eligible to be registered; or
 - (b) the promoter—
 - (i) requests that it do so; and
 - (ii) has not incurred expenses in relation to referendum advertisements that exceed the amount specified in section 36(b).
- (2) If the Electoral Commission cancels the registration of a promoter under subsection (1), the Electoral Commission must, as soon as is reasonably practicable, and in any case not later than 10 working days after the date of the cancellation, give the promoter written notice of—
- (a) the cancellation; and
 - (b) the reason for the cancellation.

49 Expiry of registration

Unless earlier cancelled under section 48, a promoter's registration expires on the day provided for the expiry of this Act in section 5.

50 Establishment of register

- (1) The Electoral Commission must establish and maintain a register of registered promoters.
- (2) The Electoral Commission must enter in the register, in relation to every registered promoter,—
- (a) the name of the registered promoter; and
 - (b) the address of the registered promoter; and
 - (c) the names of persons set out in the promoter's application, if any, provided under section 44(2)(a)(ii), (b), and (c).
- (3) The Electoral Commission may enter in the register any other information that the Electoral Commission considers necessary or desirable for the purposes of the register.

51 Purposes of register

The purposes of the register are—

- (a) to enable members of the public to ascertain—
 - (i) whether a person is a registered promoter and, if so, the address of that person; and
 - (ii) whether a referendum advertisement is promoted by a registered promoter; and
- (b) to assist with the enforcement of the provisions of this Part.

52 Form of register

The register may be kept—

- (a) as an electronic register (for example, on the Electoral Commission's Internet site); or
- (b) in any other manner that the Electoral Commission thinks fit.

53 Alterations to register

The Electoral Commission may at any time make any amendments to the register that are necessary to—

- (a) reflect any changes in the information referred to in section 47; or
- (b) correct any error or omission on the part of the Electoral Commission or any person to whom the Electoral Commission has delegated its functions, duties, or powers.

54 Register to be public

The Electoral Commission must—

- (a) make the register available for public inspection at its office during ordinary office hours, without fee; and
- (b) supply to a person copies of all or part of the register on request, subject to payment of any charges that may be made under the Official Information Act 1982.

55 Search of register

A person may search the register for a purpose set out in section 51.

56 When search constitutes interference with privacy of individual

A search of the register for personal information that has not been carried out for a purpose specified in section 51 constitutes an action that is an interference with the privacy of an individual under section 66 of the Privacy Act 1993.

Obligation of unregistered promoters to keep records

57 Obligation to keep records necessary to verify unregistered promoter's referendum expenses

- (1) This section applies to a person who—
 - (a) is an unregistered promoter;
 - (b) has been an unregistered promoter at any time during the regulated period.
- (2) A promoter to whom this section applies must take all reasonable steps to keep the records, documents, and accounts that are necessary to enable verification of the referendum expenses incurred in relation to a referendum advertisement promoted while the promoter is not registered.
- (3) Despite section 5, subsection (2) of this section applies until whichever is the earlier of—
 - (a) the close of the day that is 3 years after polling day for the general election; or
 - (b) if a fresh referendum is held under section 26, the close of the day that is 3 years after the date on which the result of the fresh referendum is declared.

Claims for referendum expenses of registered promoters

58 Periods for claiming and paying registered promoter's referendum expenses

- (1) A claim against a registered promoter for payment of referendum expenses is recoverable only if it is sent to the registered promoter within 20 working days after the day on which the declaration required by section 179(2) of the 1993 Act is made in relation to the general election.

- (2) A claim that is sent to a registered promoter in accordance with subsection (1) must be paid within 40 working days after the day on which that declaration is made, and not otherwise.
- (3) This section is subject to sections 59 and 60.

59 Procedure if claim disputed

- (1) If a registered promoter, in the case of a claim for referendum expenses sent to the registered promoter within the period specified in section 58(1), disputes the claim, or fails to pay the claim within the period of 40 working days specified in section 58(2), then—
 - (a) the claim is to be treated as a disputed claim; and
 - (b) the claimant may, if he or she thinks fit, within 20 working days after the expiry of that period of 40 working days, bring an action for the disputed claim in any court of competent jurisdiction.
- (2) Any sum paid by the registered promoter in accordance with a judgment or order of the court in any such action is to be treated as paid within the period specified in section 58(2).

60 Leave to pay claim after time limitation

- (1) On the application of a claimant or a registered promoter, a District Court may make an order granting leave to the registered promoter to pay—
 - (a) a claim for referendum expenses sent after the period specified in section 58(1); or
 - (b) a claim not paid in the period specified in section 58(2); or
 - (c) a disputed claim in respect of which an action was not brought within the period specified in section 59(1)(b).
- (2) Any sum paid by the registered promoter in accordance with an order made under subsection (1) is to be treated as having been paid within the period specified in section 58(2).

61 Invoice and receipt required for referendum expenses of \$50 or more

- (1) Every payment made in respect of any referendum expenses of a registered promoter must be evidenced by an invoice stating the particulars, and by a receipt.
- (2) Subsection (1) does not apply to a payment of less than \$50.

*Returns of referendum expenses***62 Return of registered promoter's referendum expenses**

- (1) This section applies to a registered promoter whose total referendum expenses in respect of any regulated period exceed \$100,000 (inclusive of goods and services tax).
- (2) Within 70 working days after polling day for the general election, the registered promoter must file a return of referendum expenses with the Electoral Commission.
- (3) If the registered promoter is not an individual or a company, the return must be filed by the registered promoter's representative who is duly authorised to file the return.
- (4) A return filed under subsection (2) must be in the form required by the Electoral Commission.

63 Obligation to keep records necessary to verify return of registered promoter's referendum expenses

- (1) A registered promoter must take all reasonable steps to keep all records, documents, and accounts that are reasonably necessary to enable a return filed under section 62(2) to be verified.
- (2) Despite section 5, subsection (1) of this section applies until whichever is the earlier of—
 - (a) the close of the day that is 3 years after polling day for the general election; or
 - (b) if a fresh referendum is held under section 26, the close of the day that is 3 years after the date on which the result of the fresh referendum is declared.

64 Electoral Commission may require auditor's report on return of registered promoter's referendum expenses

- (1) If the Electoral Commission has reasonable grounds to believe that a return filed under section 62 may contain any false or misleading information, the Electoral Commission may require the registered promoter (at the registered promoter's expense) to obtain a report on the return from an auditor.
- (2) The auditor must state in the report—
 - (a) the position shown by the return in respect of the requirement that the registered promoter's total referendum expenses must not exceed the maximum amount specified in section 37; and
 - (b) either—
 - (i) whether, in the auditor's opinion, the position stated under paragraph (a) is correct; or
 - (ii) that the auditor has been unable to form an opinion as to whether the position stated under paragraph (a) is correct.
- (3) The auditor must make any examinations that the auditor considers necessary.
- (4) The auditor must specify in the report any case in which—
 - (a) the auditor has not received from the registered promoter all the information that the auditor requires to carry out his or her duties; or
 - (b) proper records of the registered promoter's referendum expenses have not, in the auditor's opinion, been kept by the registered promoter.
- (5) The auditor—
 - (a) must have access at all reasonable times to all records, documents, and accounts that relate to the registered promoter's referendum expenses and that are held by the registered promoter; and
 - (b) may require the registered promoter to provide any information and explanation that, in the auditor's opinion, may be necessary to enable the auditor to prepare the report.

65 Return of registered promoter's referendum expenses to be publicly available

- (1) The Electoral Commission may publish, in any manner that the Electoral Commission considers appropriate, every return filed under section 62.
- (2) During the public inspection period, the Electoral Commission must make available for public inspection a copy of every return filed under section 62.
- (3) The Electoral Commission may make inspection under subsection (2) subject to the payment of any charges that may be made under the Official Information Act 1982.
- (4) In this section, **public inspection period**, in relation to a return, means the period—
 - (a) beginning on the day that is 3 working days after the date on which the Electoral Commission receives the return; and
 - (b) ending with the close of polling day for the second general election that takes place after that date.

Offences and penalties in relation to referendum advertising

66 Illegal practices

Every person is guilty of an illegal practice who wilfully—

- (a) promotes a referendum advertisement without being entitled to do so under section 36;
- (b) contravenes section 41;
- (c) contravenes section 42;
- (d) makes a payment in breach of section 58.

67 Offences relating to obligation to keep records

Every person who fails, without reasonable excuse, to comply with section 57(2) or 63 commits an offence and is liable on summary conviction to a fine not exceeding \$40,000.

68 Offences relating to return of registered promoter's referendum expenses

- (1) A registered promoter who fails, without reasonable excuse, to comply with section 62(2) is liable on summary conviction to a fine not exceeding \$40,000.
- (2) A registered promoter who files a return under section 62(2) that is false in any material particular is guilty of—
 - (a) a corrupt practice if the registered promoter filed the return knowing it to be false in any material particular;
 - (b) an illegal practice in any other case, unless the registered promoter proves that—
 - (i) he or she had no intention to misstate or conceal the facts; and
 - (ii) he or she took all reasonable steps in the circumstances to ensure that the information was accurate.
- (3) If the registered promoter is not an individual or a company, the registered promoter's representative who files the return in accordance with section 62(3) is liable under subsections (1) and (2).
- (4) Subsection (3) does not limit the liability of a registered promoter under subsection (1) or (2).

69 Offence to pay referendum expenses in excess of maximum

- (1) This section applies to a registered promoter or any other person who directly or indirectly pays or knowingly aids or abets any person in paying for or on account of any referendum expenses any sum in excess of the maximum amount specified in section 37.
- (2) The registered promoter or other person is guilty of—
 - (a) a corrupt practice if he or she knew the payment was in excess of the specified maximum amount; or
 - (b) an illegal practice in any other case, unless he or she proves that he or she took all reasonable steps to ensure that the referendum expenses did not exceed the specified maximum amount.

- (3) Every person who enters into an agreement or enters into an arrangement or understanding with any other person for the purpose of circumventing the maximum amount specified in section 37 is guilty of a corrupt practice.

70 Offence to incur unauthorised referendum expense

Every person is guilty of—

- (a) a corrupt practice who wilfully contravenes section 38; and
- (b) an illegal practice who contravenes section 38 in any other case.

71 Punishment for corrupt or illegal practice

- (1) Every person who is guilty of a corrupt practice is liable on conviction on indictment to either or both of the following:
 - (a) a term of imprisonment not exceeding 2 years;
 - (b) a fine not exceeding \$100,000.
- (2) Every person who is guilty of an illegal practice is liable on conviction on indictment to a fine not exceeding \$40,000.
- (3) Section 100 of the 1993 Act applies to a person who is guilty of a corrupt practice under this Act as if the person were guilty of a corrupt practice under the 1993 Act and the reference to an election petition were a reference to a referendum petition tried by the High Court under section 25 of this Act.

Enforcement

72 Time limit for prosecutions

- (1) A prosecution under this Part must be commenced—
 - (a) within 6 months of the date that the prosecutor is satisfied that there is sufficient evidence to warrant the commencement of proceedings; but
 - (b) no later than 3 years after the alleged offence was committed.
- (2) Subsection (1) applies whether or not registration has been cancelled under section 48 or has expired under section 49.

73 Duty of Electoral Commission

- (1) If the Electoral Commission believes that any person has committed an offence under this Part, it must report the facts on which that belief is based to the New Zealand Police.
- (2) Subsection (1) does not apply if the Electoral Commission considers that the offence is so inconsequential that there is no public interest in reporting those facts to the New Zealand Police.

Part 4**Review and miscellaneous provisions****Subpart 1—Review of mixed member
proportional representation voting system****74 Application of this subpart**

This subpart applies if the Electoral Commission makes a declaration in accordance with section 20 that the option in Part A of the referendum voting paper favouring retention of the mixed member proportional representation voting system is supported by 50% or more of the valid votes cast in relation to Part A.

75 Review

- (1) The Electoral Commission must commence a review of the mixed member proportional representation voting system for the House of Representatives as soon as practicable after the result of the referendum is declared under section 20.
- (2) The purpose of the review is to—
 - (a) determine through a public consultative process whether changes to MMP are necessary or desirable; and
 - (b) make any recommendations for changes to the system to the Minister of Justice.

76 Scope of review

- (1) The matters that the Electoral Commission must review are—

Thresholds

- (a) the requirement that a party must achieve at least 5% of the total number of party votes before it may be eligible to be allocated the number of list seats (if any) needed to ensure that the party's total number of seats reflects its proportion of the total party vote; and
- (b) the alternative requirement that a candidate of a party must win an electorate seat before the party may be eligible to be allocated the number of list seats (if any) needed to ensure that the party's total number of seats reflects its proportion of the total party vote; and

Proportionality

- (c) the ratio of electorate seats to list seats that results—
 - (i) from the effects of population change on the number of general electorate seats; or
 - (ii) if a party's constituency candidates have won more seats than the party would be entitled to as a result of the party vote; and

Dual candidacy

- (d) the capacity of a person at a general election to be both a candidate for an electoral district and a candidate whose name is included in a party list in a general election, and the capacity of a member of Parliament who holds a list seat to be a candidate in a by-election; and

Order of candidates on party lists

- (e) a party's ability to determine the order of candidates on its party list and the inability of voters to rank list candidates in order of preference; and

Other matters

- (f) any other feature of the voting system referred to the Commission under section 5(d) of the 1993 Act.
- (2) In addition to the matters specified in subsection (1), the Electoral Commission may, in undertaking the review, consider other aspects of the mixed member proportional representation voting system.
 - (3) Despite subsections (1)(f) and (2), the Electoral Commission must not review—
 - (a) Māori representation:

- (b) the number of members of Parliament.

77 Process for review

- (1) The Electoral Commission must establish a process for the review that the Commission considers gives the public adequate time and opportunity to comment on the subject matter of the review.
- (2) In carrying out the review, the Electoral Commission may seek advice from any person who has expertise in the subject matter of the review.

78 Report and recommendations

- (1) The Electoral Commission must—
 - (a) prepare a report of the review that includes recommendations on whether any change to the mixed member proportional representation voting system is necessary or desirable; and
 - (b) provide the report to the Minister of Justice by 31 October 2012.
- (2) As soon as practicable after receiving the report, the Minister must present a copy to the House of Representatives.

Subpart 2—Miscellaneous provisions

79 Validation of irregularities

- (1) This section applies if anything required to be done in relation to the conduct of the referendum by or under sections 8 to 20 or any regulations under this Act—
 - (a) is not done at the time required; or
 - (b) cannot be done at the time required; or
 - (c) is done before or after the time required; or
 - (d) is done in any other irregular manner or form.
- (2) The Governor-General may, by Order in Council, at any time before or after the time within which anything is required to be done,—
 - (a) extend the time; or
 - (b) validate anything done before or after the time required; or
 - (c) validate anything irregularly done in manner or form.

- (3) However, this section does not apply to any matter described in subsection (1) if the High Court finds that the irregularity has materially affected the result of the referendum.

80 Regulations

The Governor-General may, by Order in Council, make regulations—

- (a) prescribing forms required for any matter in relation to the referendum:
- (b) prescribing fees for the purposes of this Act:
- (c) providing for matters that are contemplated by, necessary for the administration of, or necessary for giving full effect to this Act.

Amendment to Privacy Act 1993

81 Amendment to Privacy Act 1993

- (1) This section amends the Privacy Act 1993.
- (2) Part 1 of Schedule 2 is amended by inserting the following item in its appropriate alphabetical order:
Electoral Referendum Act Sections 50 and 65
2010

Amendment to Summary Proceedings Act 1957

82 Amendment to Summary Proceedings Act 1957

Part 2 of Schedule 1 of the Summary Proceedings Act 1957 is amended by inserting the following item after the item relating to the Electoral Act 1993:

Electoral Referendum Act 2010	66(c)	Contravening requirement for referendum advertisement to include promoter statement
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Schedule 1

Form for referendum voting paper

ss 6(1), 8(1)

<i>[INSERT ELECTORATE NAME AND NUMBER]</i>	<i>[Consecutive Number]</i>										
Referendum on New Zealand's Voting System											
<i>[INSERT ELECTORATE NAME AND NUMBER]</i>	Official Mark										
Explanation 1. You may vote in both Part A and Part B or you may vote in only Part A or only Part B . 2. Vote by putting a tick in the circle next to the option you choose.											
Part A Should New Zealand keep the Mixed Member Proportional (MMP) voting system? <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="background-color: #333; color: white; padding: 2px 5px;">Vote for only one option</td> <td style="text-align: right; padding: 2px 5px;">Vote Here</td> </tr> <tr> <td style="border: 1px solid black; padding: 2px;">I vote to keep the MMP voting system</td> <td style="text-align: center; vertical-align: middle;"> ☐ </td> </tr> <tr> <td style="border: 1px solid black; padding: 2px;">I vote to change to another voting system</td> <td style="text-align: center; vertical-align: middle;"> ☐ </td> </tr> </table>		Vote for only one option	Vote Here	I vote to keep the MMP voting system	☐	I vote to change to another voting system	☐				
Vote for only one option	Vote Here										
I vote to keep the MMP voting system	☐										
I vote to change to another voting system	☐										
Part B If New Zealand were to change to another voting system, which voting system would you choose? <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="background-color: #333; color: white; padding: 2px 5px;">Vote for only one option</td> <td style="text-align: right; padding: 2px 5px;">Vote Here</td> </tr> <tr> <td style="border: 1px solid black; padding: 2px;">I would choose the First Past the Post system (FPP)</td> <td style="text-align: center; vertical-align: middle;"> ☐ </td> </tr> <tr> <td style="border: 1px solid black; padding: 2px;">I would choose the Preferential Voting system (PV)</td> <td style="text-align: center; vertical-align: middle;"> ☐ </td> </tr> <tr> <td style="border: 1px solid black; padding: 2px;">I would choose the Single Transferable Vote system (STV)</td> <td style="text-align: center; vertical-align: middle;"> ☐ </td> </tr> <tr> <td style="border: 1px solid black; padding: 2px;">I would choose the Supplementary Member system (SM)</td> <td style="text-align: center; vertical-align: middle;"> ☐ </td> </tr> </table>		Vote for only one option	Vote Here	I would choose the First Past the Post system (FPP)	☐	I would choose the Preferential Voting system (PV)	☐	I would choose the Single Transferable Vote system (STV)	☐	I would choose the Supplementary Member system (SM)	☐
Vote for only one option	Vote Here										
I would choose the First Past the Post system (FPP)	☐										
I would choose the Preferential Voting system (PV)	☐										
I would choose the Single Transferable Vote system (STV)	☐										
I would choose the Supplementary Member system (SM)	☐										
Final Directions - If you spoil this voting paper, return it to the officer who issued it and apply for a new paper. - After voting, fold this voting paper so that its contents cannot be seen and place it in the referendum ballot box. - You must not take this voting paper out of the polling place.											

Schedule 2

s 8(2)

Description of voting systems**1 Purpose of schedule**

The purpose of this schedule is to provide an outline of the key features of the voting systems that are options in the referendum. If the majority of votes in relation to Part A of the referendum voting paper supports change to another voting system, further work will be needed to develop the detail of the preferred voting system indicated by votes in relation to Part B of the referendum voting paper.

2 Assumptions common to alternative voting systems

- (1) Parliament has 120 members.
- (2) The principles for determining the number of members of Parliament who represent Māori electorates will not change.
- (3) The principle of a fixed number of general electorate seats for the South Island will not change.

3 Mixed member proportional representation voting system (MMP)

- (1) Parliament is made up of members who are elected by their respective electorates and members elected from party lists.
- (2) Each voter has 2 votes,—
 - (a) a vote for a party; and
 - (b) a vote for his or her preferred candidate in his or her electorate.
- (3) Each electorate elects 1 member of Parliament on a first-past-the-post basis.
- (4) The party vote is counted on a nationwide basis.
- (5) A party may be eligible for a share of the list seats if the party gains 5% or more of the party vote or wins 1 or more electorate seats.
- (6) The list seats in Parliament are allocated so that the total number of seats a party holds is in proportion to the number of party votes the party received, taking into account the number of electorate seats the party holds.

- (7) A party's list seats are allocated to its candidates in the order in which they appear on the party's list (excluding those who win an electorate seat).
- (8) A party may win a greater number of electorate seats than the number of seats to which it would be entitled by reason of the party vote result. In that case, the party keeps the electorate seats. In order to maintain proportionality, the number of list seats in Parliament increases by the difference for that term of Parliament. The extra seats are commonly known as the overhang.

4 First-past-the-post voting system (FPP)

- (1) Parliament is made up of members who are elected by their respective electorates. There are no list members.
- (2) Each voter has 1 vote.
- (3) Each electorate elects 1 member of Parliament.
- (4) The winning candidate in each electorate is the one who gains the most votes.

5 Preferential voting system (PV)

- (1) Parliament is made up of members who are elected by their respective electorates, and has no list members.
- (2) Each electorate elects 1 member of Parliament.
- (3) Voters rank the candidates in their electorate in order of preference by, for example, marking candidates 1, 2, 3, and so on.
- (4) To win, a candidate must have 50% of the total votes cast plus 1 vote.
- (5) The candidate with the most first-preference votes might not have more than 50% of the total votes cast. In that case, the votes for the candidate with the lowest number of first-preference votes are redistributed according to the second preferences of the voters for that candidate. Redistribution of preferences continues until a candidate attains more than 50% of the total votes cast.

6 Single transferable vote system (STV)

- (1) Parliament is made up of members who are elected by their respective electorates, and has no list members.

- (2) Each electorate elects several members of Parliament.
- (3) Voters rank the candidates in their electorates in order of preference, for example 1, 2, 3, and so on. Alternatively, voters may vote for the order of preference decided in advance by a political party.
- (4) To win, a candidate must receive a minimum number of votes. The minimum number of votes is determined by a formula based on the number of seats allocated to the electorate.
- (5) Any candidate who receives more than the minimum number of first-preference votes is elected. If vacancies remain, the first-preference votes received by the elected candidates that are above the minimum required for their election are redistributed according to the second preferences. The redistribution starts with the largest surplus of votes.
- (6) If there are still vacancies after the distribution of surplus first-preference votes, the lowest-polling candidate is eliminated and all that candidate's votes are redistributed in line with the voters' second preferences, and so on. Any surplus votes from an elected candidate that were transferred to the lowest-polling candidate are redistributed in line with voters' third preferences.
- (7) If no candidate receives the minimum number of first-preference votes, the lowest-polling candidate is eliminated and all that candidate's votes are redistributed in line with the second preferences of the voters, and so on.

7 Supplementary member voting system (SM)

- (1) Parliament is made up of members who are elected by their respective electorates (they win **electorate seats**) and members returned from party lists (they win **supplementary seats**).
- (2) Of the 120 seats in Parliament, 90 would be electorate seats and 30 would be supplementary seats.
- (3) Each electorate elects 1 member of Parliament on a first-past-the-post basis.
- (4) Each voter has 2 votes,—
 - (a) a vote for a party; and
 - (b) a vote for his or her preferred candidate in his or her electorate.

- (5) The supplementary seats are allocated to parties in proportion to the number of party votes received by that party.
 - (6) A party's supplementary seats are allocated to its candidates in the order in which they appear on the party's list, excluding those who win an electorate seat.
 - (7) Only the supplementary seats are allocated in proportion to the number of votes received by a party's candidates or to the party vote. A party's share of supplementary seats is not affected by the number of electorate seats.
-

Schedule 3
Form for petition

s 22(3)(b)

Form
Application for inquiry into conduct of
referendum

Section 22(3)(b), Electoral Referendum Act 2010

No:

In the High Court of New Zealand

Registry:

In the matter of the referendum held on [date] on New Zealand's
voting system.

Applicant

- 1 The applicant is a group of [number] electors who are dissatisfied with the result of the referendum.
- 2 The names, addresses, electoral districts, and signatures of the members of the group are set out in the appendix to this application.
- 3 The spokesperson for the group is [name, address].
- 4 The applicant acts—
 - *(a) through a solicitor, who is [name, address]; or
 - *(b) through its spokesperson.

*Select one.

Application

- 5 The applicant asks for an inquiry into—
 - *(a) the conduct of the referendum:
 - *(b) the conduct of [name of person complained of, office described in section 23(2), if relevant, address], who was connected with the referendum.
- *Select those that apply.
- 6 The specific grounds on which the applicant is dissatisfied with the result of the referendum are as follows: [state specific grounds].
 - 7 The applicant asks the court to—

Form—*continued*

- *(a) determine the total number of valid votes recorded for the options in—
 - (i) both Part A and Part B; or
 - (ii) either Part A or Part B; or
- *(b) declare the referendum void.

*Select one.

Address for service

8 The applicant's address for service is [*address*].

Signature:

(Spokesperson for applicant/Person on behalf of spokesperson for applicant*)

*Select one.

Appendix**Members of applicant group**

Name	Address	Electoral district	Signature
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Legislative history

25 March 2010	Introduction (Bill 128–1)
22 April 2010	First reading and referral to Electoral Legislation Committee
22 November 2010	Reported from Electoral Legislation Committee (Bill 128–2)
7 December 2010	Second reading
14 December 2010	Committee of the whole House
15 December 2010	Third reading
20 December 2010	Royal assent

This Act is administered by the Ministry of Justice.
