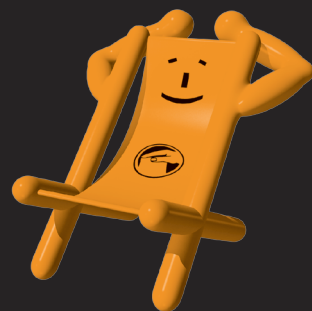


Information for Parliamentary Candidates

By-elections



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Introduction

This booklet is part of a series produced by the Electoral Commission.

The booklets are a general guide and reflect the Electoral Commission's interpretation of the law and how it intends to apply the law. The Electoral Commission welcomes the opportunity to discuss any areas that require clarification.

The booklets do not cover every aspect of electoral law and procedure. For further information, you should consult the Electoral Act 1993 and the Electoral Regulations 1996, or your party organisations, or seek legal advice.

Other information is available

Other booklets available from the Electoral Commission in relation to by-elections are:

Information for Scrutineers

Going to be Overseas during a By-election?

Unable to Get to a Polling Place on Election Day?

Forms

Contact the Returning Officer or Electoral Commission for copies of the forms required by candidates at a by-election (as explained in this booklet):

M40-Nom-By – Nomination form

M40-Wd – Notice of withdrawal of a nomination form

E20-S Dec – Scrutineer declaration form

Scrutineer App-Cand – Appointment of scrutineers form (optional)

M30-Cand Exp-By - Return of candidate election expenses and donations.

You can deliver any form, notice or consent to the Returning Officer or the Electoral Commission by hand, post or fax (but not by e-mail).

Contact details for the Electoral Commission:

Electoral Commission, P O Box 3220, Wellington

Level 9, 17-21 Whitmore Street, Wellington

Tel: 04 495 0030

Fax: 04 495 0031

Email: enquiries@elections.govt.nz

Websites: www.elections.org.nz

www.electionresults.govt.nz

PART 1: Nomination

Candidates at a by-election

A by-election is held when there is a vacancy in a seat of the member of Parliament representing an electoral district.

There is only one vote allowed on the ballot paper; that is, for the preferred electorate candidate. There is no party vote in a by-election.

The timetable for a by-election is similar to that for a general election: see Appendix A.

Who can be a candidate?

To be a candidate you must:

- be enrolled as a voter, and
- be a New Zealand citizen, and
- not be disqualified from enrolling (for the grounds of disqualification see Appendix B).

If you were born overseas, you will be asked to provide evidence that you are a New Zealand citizen (such as a certificate of citizenship or a copy of your New Zealand passport).

Where can candidates stand?

You may stand:

- in a different electorate from the one for which you are enrolled, or
- in either a Maori or a general electorate seat irrespective of your race or ethnicity.

If more than one by-election is to be held on the same polling day, you may only contest one of those by-elections.

State servants, board members of Crown entities and directors of Crown companies – implications of nominations

The Electoral Commission does not treat the nominations of state servants, board members of Crown entities and directors of Crown companies any differently from the nominations of other candidates.

However, section 52 of the Electoral Act contains special rules for any candidates who are state servants. The term 'state servant' is widely defined as: public servants; other persons employed under the State Sector Act (although members of staff of a tertiary education institution teaching students preparing for examinations may continue to work and be paid); members of the Police; and members of the NZ Defence Forces (other than non regular-forces). To avoid the possibility of a real or perceived conflict of interest, the Electoral Act requires state servants who stand as candidates to take annual

Part 1: Nomination

or unpaid leave from nomination day until the first working day after election day. An employer may require a state servant to take leave before nomination day if they believe the candidate's responsibilities as a state servant make this necessary. If elected, a state servant is deemed to have resigned from their position.

Prospective candidates who are state servants are recommended to discuss their nomination with their employer and consult the guidelines issued by the State Services Commission (SSC) (refer www.ssc.govt.nz).

Similarly, we suggest that board members of Crown entities should consult with SSC and directors of Crown companies should consult the Crown Ownership Monitoring Unit (COMU).

The nomination process

Candidates must be nominated by two people enrolled in the electorate in which the by-election is to be held. You cannot nominate yourself.

The Returning Officer will advertise the deadline for nominations in local newspapers. The information will also be available on www.elections.org.nz.

The nomination must be:

- on Form M40-Nom-By (follow the checklist on the back of the form),
- lodged with a deposit of \$300 (money, bank draft or bank cheque). Personal cheques are not acceptable. The bank draft or bank cheque must be made out to "Electoral Commission Trust Account" (see Part 4 for information on the return of deposits), and
- lodged with the Returning Officer by noon on nomination day.

We recommend you submit your nomination as early as possible and do not leave it until nomination day. This will allow time for the Returning Officer to check your nomination to make sure it is in order. There is no power for the Returning Officer to extend the legal deadline of noon on nomination day. Discuss any difficulties you might have in physically getting your nomination and the deposit to the Returning Officer to see what arrangements, if any, might be made. But do not leave making such arrangements to the last minute or you might miss out.

Candidates are required to indicate on the nomination form whether they are representing a party or are an Independent. Candidates claiming to represent a party should be prepared to provide the Returning Officer, if required, with evidence (such as a party constitution) that the party he or she claims to represent exists and evidence of eligibility to represent that party (such as a letter from the party secretary).

If the candidate is representing a party and the party has a logo registered with the Electoral Commission the candidate may request that the party logo appears by the candidate's name on the ballot paper. Please confirm this with the Returning Officer.

Part 1: Nomination

Candidates should note that the completed nomination forms are available for public inspection.

Withdrawal of nomination

To withdraw the nomination, candidates must:

- complete Form M40-Wd (obtainable from the Returning Officer),
- sign the form in the presence of a Justice of the Peace or solicitor, and
- return the signed form to the Returning Officer no later than noon on nomination day.

A nomination cannot be withdrawn after noon on nomination day.

Death or incapacity of candidates

There are procedures in the Electoral Act that must be followed if a candidate dies or is incapacitated before nomination day, or between nomination day and the declaration of the result. The electors who nominated the candidate should urgently contact the Returning Officer in these circumstances.

Order of candidates on ballot paper

Candidates are arranged alphabetically by surname with any registered party logo to the right of the name.

Media and public queries on nominations

Completed nomination forms are available for public inspection at the Returning Officer's Headquarters. When all nominations have been processed after nomination day we will publish the information on www.elections.org.nz. We do not publish biographical information on candidates or on their policies. Nor do we publish candidates' telephone numbers or email addresses. However it is common for the media and members of the public to ask for the telephone numbers of candidates. We will release them unless the candidate tells us they do not wish us to do so.

EasyVote pack for voters

About a week before polling day each voter enrolled in the electorate in which the by-election is to be held will receive a personal information pack containing:

- an EasyVote card (or letter if enrolled late) to take to the Polling Place
- details of the Polling Places and Advance Voting Facilities
- names of candidates
- contact details of the Returning Officer.

It will be helpful if you encourage your supporters to use the EasyVote card. The card will save them time.

PART 2: Appointing scrutineers and special voting witnesses

2.1 Role of scrutineers

Candidates may appoint scrutineers to observe the conduct of the election in the following situations:

Polling places

Scrutineers may observe the issue of votes during polling day and the preliminary count in polling places after 7pm. The number of scrutineers for a candidate in a polling place at any one time must not exceed the number of issuing officers designated for the polling place. Scrutineers may:

- require an issuing officer to question a voter who the scrutineer suspects of impersonation or double voting
- communicate to party officials the names of persons who have voted in the polling place
- observe the preliminary count.

Scrutineers must not talk to voters or help with the count.

Early count of advance votes

One scrutineer per candidate can attend the early count of advance votes at the Returning Officer's headquarters which commences at 3.00pm on polling day. Scrutineers may not leave the secured counting area in the Returning Officer's headquarters before the poll closes at 7pm without the Returning Officer's permission.

Special vote declarations

Scrutineers may attend the office of the Registrar of Electors to observe the checking of special vote declarations against the electoral rolls. Only one scrutineer per candidate may attend at any given time.

Scrutiny of the rolls and the official count

One scrutineer per candidate may attend the scrutiny of the rolls and the official count at the Returning Officer's headquarters unless the Returning Officer allows more.

Judicial recount

Candidates may appoint a scrutineer to attend a judicial recount of electorate votes. The provision is for one scrutineer per candidate unless the Judge allows more.

Part 2: Appointing scrutineers and special voting witnesses

Hospitals and rest homes

Local party organisations may, with the approval of the person in charge of a hospital or rest home, appoint scrutineers to accompany an electoral official issuing “hospital votes” on or before polling day.

2.2 Appointing scrutineers

Before being allowed to serve as a scrutineer, all scrutineers must make a declaration that they will not compromise the secrecy of the poll. The declaration must be on Form E20-S Dec (obtainable from the Returning Officer) and must be made before the Returning Officer, Justice of the Peace, a solicitor, a polling place manager, or an issuing officer. Only the Returning Officer, Justices of the Peace and solicitors can witness the declaration by scrutineers for the count of the early vote.

Scrutineer appointments must be in writing and signed by the candidate. Scrutineers should be provided with a copy of their written appointment to produce to electoral officials. The appointment form can be an original, fax or photocopy. It must specify the polling place that the scrutineer has been appointed to. It must also specify if a person is being appointed for the early count, special vote declarations scrutiny and/or the official count. The Electoral Commission has an optional form that you can use for appointing scrutineers (Scrutineer App-Cand).

A candidate cannot be a scrutineer.

Scrutineers need to be well briefed on their rights and obligations – in particular that they must not communicate with voters.

See our booklet *Information for Scrutineers* for more details.

2.3 Special voting witnesses

Candidates may nominate people to be authorised by the Returning Officer as witnesses of special voting declarations. These people may then witness the declarations of voters who cannot get to a polling place on polling day.

The Returning Officer may:

- reject a candidate’s nomination but must give reasons for doing so, or
- revoke an approval if the person nominated does not comply with the rules for witnessing special vote declarations.

The Returning Officer will not approve special voting witnesses unless they have been trained to the Returning Officer’s satisfaction. This is to avoid voters being disenfranchised by incorrect procedures.

PART 3: Campaigning by candidates

3.1 Introduction

There are detailed rules in the electoral legislation on what you can and cannot do when campaigning in the election. One of the key points you need to know is that campaigning on polling day is a criminal offence.

This part of the booklet explains the rules in some detail. Appendix C contains a 'Quick Guide' to what you can and cannot do.

Part 4 explains your obligations concerning election expenses and donations.

3.2 Election advertising

Expenditure limits

A candidate's election expenses during the regulated period for a by-election must not exceed \$50,000 (including GST). It is a serious offence to spend more than this.

The regulated period for a by-election runs from the day after the notice of the vacancy for the by-election is published in the *Gazette* until the close of the day before polling day.

Not all campaign expenses are counted as election expenses. Election expenses are the costs associated with election advertisements. (See Part 4 for more information on what are election expenses).

Election advertisements

An election advertisement is an advertisement in any medium that may reasonably be regarded as encouraging or persuading voters to:

- vote or not to vote for a constituency candidate (whether or not the name of the candidate is stated)
- vote or not to vote for a party (whether or not the name of the party is stated)
- vote or not to vote for a type of candidate or party described by reference to views or positions that are, or are not, held or taken (whether or not the name of the candidate or party are stated).

Election advertisements that may reasonably be regarded as encouraging or persuading voters to vote, or not to vote, for a constituency candidate (whether or not the name of the candidate is stated) are called candidate advertisements. Advertisements that promote your candidacy at a by-election will be candidate advertisements.

What is not an election advertisement

The legislation makes it clear that the following are not election advertisements:

- editorial content

Part 3: Campaigning by candidates

- personal political views online
- a Member of Parliament's contact details.

Editorial content

There is an exemption for the editorial content of a periodical, a radio or television programme, or news media Internet site. Editorial content includes any part of the publication except advertising or advertorials. A periodical is a newspaper, magazine, or journal established for purposes unrelated to the election, that has been published at regular intervals and that is available to the public.

Personal political views online

There is an exemption for the publication of personal political views by an individual on the Internet or other electronic medium, provided the individual does not make or receive payment for publishing those views. So for example, if a candidate posts a blog or responds to another person's blog site, as long as he or she is expressing personal political views, this will be exempt.

Member of Parliament's contact details

There is also an exemption for the publication by members of Parliament of contact information. For the exemption to apply to contact information published within the regulated period it must:

- be published by the member in the course of performing his or her duties as a member of Parliament,
- have been funded by the Parliamentary Service,
- have been routinely published in the same medium, no more often, and to no greater extent than, and in the same form and style as it was published before the regulated period, and
- not be combined or associated with an election advertisement.

The contact information must include all of the following:

- the member's name,
- the member's contact details which can be a telephone number, physical or postal address, and/or e-mail address, and
- the name of the electoral district that they represent or the fact that they are a list member.

The contact information may also include one or more of the following:

- a photo of the member,
- a party name,
- a party logo,
- the member's constituency clinic times,
- the website address for the member or the member's party.

Part 3: Campaigning by candidates

A member of Parliament standing as a candidate in a by-election may need to seek advice from the Electoral Commission on whether other publications or signage funded by Vote Parliamentary Service are election advertisements.

Requesting an advisory opinion from the Electoral Commission

You can ask the Electoral Commission for advice on whether, in its opinion, an advertisement constitutes an 'election advertisement' under the law. The advisory opinion will be provided as soon as is reasonably practicable. An advisory opinion is the Electoral Commission's interpretation of the law and how it intends to apply the law in respect of the proposed advertisement. It is not a ruling that provides a defence from prosecution. The Commission's view is that relying in good faith on an advisory opinion is likely to be relevant to determining whether a person had acted wilfully or taken all reasonable steps to ensure an offence was not committed but that, of course, would be a matter for the Courts to determine.

To request an opinion, you will need to provide the Commission with a copy of the advertisement and any relevant background information such as the details of when and how it is to be published.

The Commission will treat the proposed advertisement, any supporting material, and the advice given to the requestor as confidential until the day after the day for the return of the writ for the election. Advisory opinions will then be made available on request, subject to the Official Information Act 1982. This does not prohibit the requestor from releasing the advice at any time.

All election advertising must contain a promoter statement

All election advertisements irrespective of when they are published must state the name and address of the person that has initiated or instigated it ('the promoter').

The requirement for a promoter statement applies to all forms of election advertising in any medium. If the election advertisement is published in visual form, the promoter statement must be clearly displayed in the advertisement. If the election advertisement is published only in an audible form, the promoter statement must be no less audible than the other content of the advertisement.

The promoter statement requirement applies to election advertisements published in New Zealand even if the promoter is outside of New Zealand or election advertisements published outside of New Zealand where the promoter is in New Zealand.

Election advertisements promoted by candidates (and parties)

Candidate advertisements promoted by you need to include your name and address. The address can be the full street address of either the place where you usually live or any other place where you can usually be contacted between the hours of 9am and 5pm on any working day. A Post Office box or website address is insufficient.

Part 3: Campaigning by candidates

To avoid complaints, the following format for promoter statements is recommended:

“Promoted by/Authorised by [candidate name], [candidate’s relevant full street address]”.

Advertising undertaken by your party in relation to a by-election that may reasonably be regarded as promoting your candidacy will require your written authorisation and disclosure in your election expense return. Election advertisements promoted by your party must include the party secretary’s name and address in the promoter statement.

Election advertisements promoted by third parties

Third parties (persons or groups other than candidates and parties or persons involved in the administration of the affairs of a candidate or party) can promote candidate advertisements in a by-election but certain rules apply, including:

- A promoter statement must be included on all third party election advertising so that the public can see who is responsible for the advertisement.
- Where an election advertisement is promoted by a third party they will need to register as a promoter with the Electoral Commission if they spend more than \$12,000 on election advertisements during the regulated period for the by-election.
- Advertisements promoting your candidacy published by third parties must have your written authorisation.
- The costs of any third party advertisements published during the regulated period that you have authorised will count towards your candidate election expenses and will need to be disclosed in your return of by-election expenses and donations (see Part 4) as well as counting towards the third party’s advertising expenses. You will need to obtain information from the third party about costs incurred.

For further information about the rules concerning advertising by third parties see the Electoral Commission’s publication ‘*Third Party Handbook- 2011 General Election and Referendum*’.

Radio or television advertising

There are separate rules applying to radio or television advertising as distinct from other forms of advertising. Electorate candidates may advertise on radio or television to promote their election as an electorate candidate. The cost of a broadcast advertisement is an election expense of the candidate. Candidates cannot share television or radio advertising with another candidate or candidates. Candidates may include information about the party they represent and its policies, for the purpose of promoting their own election. But they cannot attack the policies of other parties or candidates.

Part 3: Campaigning by candidates

For example, a radio or television advertisement could say:

“Tick Joe Bloggs, your Y Party candidate for Wellington Central.”

Candidate advertisements may only be broadcast on television or radio within the period beginning with writ day and ending with the close of the day before polling day.

Press advertising

Advertising in forms other than radio or television can promote a candidate; other party policies or attack another candidate and their party's policies.

Expenditure on press advertising and other forms of promotion such as hoardings are election expenses.

Electoral signs

Local authorities are responsible for regulating when, where and how signs, including election signs can be displayed. Candidates and parties should consult with their local authority about the rules in their area before putting up any election signs.

The Electoral Act 1993 allows for election signs up to three square metres in size to be put up in the two months **before** election day. This provision overrides any local authority rules about size and timing of the display of signs.

Any local authority rules about things like application procedures and the location and density of signs still apply. Larger signs may be put up if local authority rules allow. Signs may be put up earlier if local authority rules allow.

You must not pay an elector of a district for providing a place to exhibit a sign or hoarding in that district unless it is in the course of the elector's business.

It is an offence under the Electoral Act to display election signs on election day. There is no other restriction in the Act on when electoral signs may be displayed.

Using schoolrooms for election meetings

Candidates are entitled to hold election meetings in public schoolrooms free of charge (apart from the cost of lighting, cleaning and repairing any damage). Three days notice must be given to the governing body of the school. Applications must be granted on a “first come first served” basis.

3.3 Polling day activities

Campaigning on polling day is a criminal offence

Any activities (including advertising) promoting the election of a candidate are prohibited on polling day and are a criminal offence. The full list of prohibited activities is set out in

Part 3: Campaigning by candidates

section 197 of the Electoral Act 1993, which effectively prohibits anything that can be said to interfere with or influence voters, including processions, speeches or public statements. You should be particularly careful to avoid any grounds for complaints against you. Apparent breaches of the law are reviewed by the Electoral Commission and where appropriate referred to the New Zealand Police. Electoral Commission staff or the Returning Officer are happy to discuss any interpretation difficulties you face in respect of this prohibition.

Before polling day you must remove or cover all your election advertising that can be seen from a public place. Returning Officers are authorised to remove or cover advertising and charge the costs to the persons responsible.

Signs on vehicles, including bumper stickers, must be covered or removed. T-shirts and flags featuring party or candidate names, emblems, slogans or logos cannot be displayed on election day. For this reason, the distribution of candidate bumper stickers, t-shirts or flags is not recommended. Once distributed, you cannot be sure that they will not continue to be displayed on polling day. You could expose your supporters to the risk of inadvertently committing an offence.

Delivery of election material prohibited

You must not deliver election material through the post or directly to mailboxes on polling day. To avoid breaches, NZ Post will not accept mail for delivery after the Thursday in the week before polling day. To reduce the risk of postal delivery on election day candidates should also ensure that any mail is clearly identifiable as being by-election related. If you hand-deliver election material directly to mailboxes on the Friday before polling day, you can expect complaints by voters who think the material arrived on polling day. Those complaints will be reviewed by the Electoral Commission and where appropriate referred to the New Zealand Police.

Contacting voters

You may wish to offer voters assistance to get to the polling place. You are entitled to contact potential voters on polling day for that purpose. But you are not allowed to say or do anything that encourages them to vote for you.

Websites

Election material does not have to be removed from a website on polling day, so long as the material on the site is only made available to people who voluntarily access it. New material must not be posted on the website on polling day. Advertisements promoting the website must not be published on polling day.

Party lapel badges

You and your supporters may wear party lapel badges in public on polling day. A party lapel badge is a badge or rosette designed to be worn on the lapel and bearing the

Part 3: Campaigning by candidates

party's name, emblem, slogan or logo. Do not display the lapel badge on vehicles or in other places on polling day. Do not show your name on the lapel badge.

Clothing promoting the candidate

Clothing (such as t-shirts) promoting the candidate must not be displayed on polling day.

Streamers, rosettes, ribbons etc

Streamers, rosettes, ribbons and similar items in party colours may be displayed on polling day but only on people or vehicles and must not contain party names, emblems, slogans, logos or your name.

Presence in polling places

Candidates may only enter a polling place to vote. After voting, they must leave. Candidates should not enter a polling place to interact with scrutineers. If a candidate wishes to be filmed or photographed voting, they must have the approval of the Returning Officer. Approval will be given on condition that:

- the filming or photographing does not disrupt the polling place, and
- no interviews are given in the polling place or in the area around it.

Parties and candidates are asked to exercise restraint in the vicinity of polling places to avoid complaints.

3.4 Advance voting

Advance voting for those who are unable to get to a polling place on polling day will be available from 17 days before polling day up to the day before polling day. The prohibitions applying to electioneering on polling day do not apply during the advance voting period. However, candidates are asked to exercise restraint in the vicinity of advance voting facilities to avoid complaints. (Locations will be published on www.elections.org.nz.)

3.5 Contacts with public servants

Public servants serve the government of the day. In order to maintain the confidence of successive governments, they must act and be seen to act apolitically. Therefore, public servants, whether in national, regional or local offices, must not comment on:

- party political matters, or
- the merits of government policy, or
- alternatives to government policy.

If you have questions on these matters you should address them to Ministers.

Part 3: Campaigning by candidates

You, like any other member of the public, may get information from public servants under the Official Information Act.

You can get more detailed information on contact with public servants from the State Services Commission's website: www.ssc.govt.nz.

3.6 Treating

Treating is the provision of food, drink, and entertainment to persons with the intention of corruptly influencing their vote and is a criminal offence. (Refer to section 217 of the Electoral Act for a full description.)

The consequences of being found guilty of treating are:

- you lose your seat if you have been elected,
- you are not eligible to register as an elector for 3 years, and
- you may be sentenced to two years in prison and a \$40,000 fine.

The Electoral Act states that the provision of a light supper after an election meeting does not constitute the offence of treating. The provision of a cup of tea or coffee and a light snack after a campaign meeting, therefore, is not an offence.

You should be cautious about providing refreshments that do not clearly fall within the above exception to avoid complaints being made during the election campaign that you have breached the treating provisions.

3.7 Imitation ballot papers

Do not print or distribute, on polling day or after midnight on the Tuesday before polling day, anything which imitates a ballot paper (or part of a ballot paper) to be used at the election and which contains any direction or matter likely to influence a voter. Do not print or distribute on polling day any card or paper showing the candidates even if it is not an imitation of a ballot paper.

In the past the issue has arisen as to whether election advertising in newspapers offends the legislative provision against imitation ballot papers. Whilst each case depends on its facts the use in an advertisement of a tick against a candidate name does not, of itself, offend the provision.

PART 4: Election expenses and donations

4.1 Election expenses

Candidates no longer need to appoint a financial agent for the purposes of candidate expenses and donations.

A candidate's election expenses in a by-election must not exceed \$50,000 (including GST).

Election expenses for a by-election include any advertising expenses incurred in relation to a candidate advertisement that:

- is published, or continues to be published, during the regulated period, and
- is promoted by the candidate or any person (including a registered promoter) authorised by the candidate.

Candidates therefore need to account for the cost of advertisements that they have authorised to be published in the period from the day after the publication of the *Gazette* notice for the by-election and until the close of the day before polling day.

Advertising expenses include:

- the cost incurred in the preparation, design, composition, printing, postage and publication of the advertisement, and
- the reasonable market value of any materials used for the advertisement, including materials provided to the candidate for free or below reasonable market value.

A candidate's deposit or the costs of food, hall hire, surveys or opinion polls, volunteer labour, or replacing materials destroyed through no fault of the candidate are not election expenses. The cost of any framework that supports a hoarding (other than a commercial framework) is no longer an advertising expense.

The costs of candidate advertisement signage on campaign cars and other forms of mobile candidate advertising are election expenses. However, advertising expenses do not include the running costs of any vehicle used to display an election advertisement if the use of the vehicle for that purpose is not the subject of a contract, arrangement or understanding for payment.

Expenses cannot be apportioned between elections. If materials such as banners are purchased and then re-used in subsequent elections, at each subsequent election you must account for the reasonable market value of the materials as an election expense. We advise candidates to err on the side of caution when determining 'reasonable market value'. We suggest that candidates either use the price that was originally paid for the item, or if this is not known, what the item would cost to purchase now based on two quotes.

PART 4: Election expenses and donations

Expenses cannot be apportioned between a candidate and a third party promoter. If you authorise someone else to publish advertising encouraging people to vote for you, the cost of the advertising will form part of your candidate election expenses. The same costs will also be an election expense of the third party.

4.2 Paying expenses

Invoices for election expenses must be sent to a candidate within 20 working days of the official result being declared.

The candidate must pay any bill within 40 working days of the declaration. It is an offence not to do this. Sections 205H and 205I of the Electoral Act set out a procedure to follow if a bill is disputed.

4.3 Election expenses paid for outside the regulated period

Expenses paid for before the commencement of the regulated period must be included in the return to the extent to which they relate to election advertisements published during the regulated period.

Where a candidate advertisement is published before and during the regulated period, the candidate is responsible for apportioning the advertising expenses so that only a fair proportion of the expense is attributed to the regulated period.

4.4 Candidate donations

A candidate donation is a donation of money, goods or services that is made for use in the candidate's campaign.

Candidate donations and contributions to donations of more than \$1,500 (inc GST) are required to be declared in the candidate return of expenses and donations. A series of donations or contributions made by one person that adds up to more than \$1,500 must also be declared.

A candidate donation includes:

- Where a candidate is provided with goods or services that have a reasonable market value greater than \$300.
- Where a candidate is provided with discounted goods or services and the reasonable market value of the goods or services is greater than \$300 the difference between the contract or agreed price and the reasonable market value of those goods and services is a donation.
- Where a candidate sells over-valued goods or services the difference between the price paid and the reasonable market value is a donation.
- Where credit is provided to a candidate on more favourable terms than those prevailing at the same time for similar credit, the value of the favourable terms is a donation.

PART 4: Election expenses and donations

The following are **not** a candidate donation:

- volunteer labour,
- goods or services provided free of charge to a candidate, or to any person on the candidate's behalf that have a reasonable market value of \$300 or less, or
- money provided by the candidate for his or her own campaign.

If a person or organisation gives or pays for goods or services that would otherwise be candidate election expenses, or a candidate's party gives or pays for expense items, the reasonable market value of those items, whatever their value, should be recorded as an election expense. If the reasonable market value of the items exceeds \$300 it should also be recorded as a donation.

4.4.1 Donations made up of contributions

A donation can be made up in part by funds contributed by more than one person (contributors), for example where there is a collection or whip-round for a candidate's campaign.

The total proceeds of a collection or whip-round are treated as a donation under the Electoral Act. The person who collects the money will normally be the donor. The individuals who contribute to the collection are contributors for the purposes of the Act.

If a donation, other than an anonymous donation, is made up of contributions, the transmitter or donor must tell the candidate:

- the name and address of the donor, and
- whether the donation is made up of contributions, and
- the total amount of contributions of \$1,500 or less, and
- in the case of contributions greater than \$1,500, the name, address, and contribution of each contributor and whether any of them are 'overseas persons'.

If the candidate knows, or has reasonable grounds to believe, that the donor has failed to supply information about contributions, the whole donation must be returned to the donor.

4.4.2 Transmitted donations

A donation can be made either directly by the donor to the candidate or indirectly by a transmitter who transmits a donation to the candidate on someone else's behalf, for example via a lawyer's trust fund. Any person who receives a candidate donation on the candidate's behalf must transmit it to the candidate within 10 working days.

When transmitting a donation, the transmitter must tell the candidate:

- whether the donation is being transmitted on behalf of a donor,
- the name and address of the donor,

PART 4: Election expenses and donations

- whether the donation is made up of contributions,
- the total amount of contributions of \$1,500 or less, and
- in the case of contributions greater than \$1,500: the name, address, and contribution of each contributor and whether any of the contributors are 'overseas persons' (see paragraph 4.6 below).

Where a transmitter does not disclose the name and address of the donor, the donation must be treated as an anonymous donation (see paragraph 4.5 below).

4.5 Anonymous donations

Candidates are not allowed to retain anonymous donations exceeding \$1,500. An anonymous donation is a donation made in such a way that the candidate who receives the donation does not know the identity of the donor and could not, in the circumstances, reasonably be expected to know the identity of the donor.

If a candidate receives an anonymous donation greater than \$1,500, he or she may retain \$1,500 of that donation. The balance of the donation must, within 20 working days of receipt, be paid to the Electoral Commission for payment into a Crown bank account.

4.6 Overseas donations

Candidates are not allowed to retain donations or contributions of more than \$1,500 made by an overseas person.

An overseas person is:

- an individual who resides outside New Zealand and is not a New Zealand Citizen or registered elector
- a body corporate incorporated outside New Zealand
- an unincorporated body that has its head office or principal place of business outside New Zealand.

If a candidate receives a donation from an overseas person exceeding \$1,500, he or she can retain \$1,500 of that donation. The balance of the donation must, within 20 working days of receipt, either be returned to the overseas person who made the donation, or if this is not possible, be paid to the Electoral Commission into a Crown bank account.

If a candidate receives any donation from a donor who is not an overseas person that includes a contribution from an overseas person greater than \$1,500, the candidate must return the whole donation to the donor. If that is not possible, the candidate must forward the whole donation to the Electoral Commission for payment into a Crown bank account.

PART 4: Election expenses and donations

4.7 Keeping records of expenses and donations

Candidates must take all reasonable steps to keep records of all candidate donations received (even donations of less than \$1,500) and all candidate election expenses. Candidates must keep invoices and receipts for all election expenses of \$50 or more. Records have to be retained for 3 years after polling day.

4.8 Return of election expenses and donations

All candidates are required to file a return of candidate expenses and donations with the Electoral Commission.

If there are no election expenses or donations to report on, the candidate must file a nil return.

The return must be:

- made on Form M30-Cand Exp-By, and
- filed within 70 working days of polling day (this date will appear on the return).

The return form (M30-Cand Exp-By) is available through the Electoral Commission or at www.elections.org.nz.

Part 1 of the return form concerns candidate donations. To complete the requirements of this part of the return, the candidate will need to be able to provide details about all donations or contributions of more than \$1,500. This includes more than one donation or contribution made by or on behalf of the same person for use in the same campaign that when aggregated adds up to more than \$1,500.

For donations of more than \$1,500, other than anonymous donations or overseas donations, the candidate will need to provide the following details:

- the name and address of the donor, and
- the amount of the donation or, in the case of aggregated donations, the total amount of the donations, and
- the date that the donation was received or, in the case of aggregated donations, the date each donation was received, and
- whether the donation is made up of contributions of more than \$1,500, and if so:
 - the name and address of each contributor, and
 - the amount of each contribution made by the contributor, and
 - the date on which the donation to which the contribution forms part was made.

PART 4: Election expenses and donations

For anonymous donations exceeding \$1,500, the candidate will need to provide:

- the date the donation was received, and
- the amount received, and
- the amount paid to the Electoral Commission and the date payment was made.

For donations by overseas persons exceeding \$1,500, the details required are:

- the name and address of the overseas person, and
- the amount of the donation or, in the case of aggregated donations, the total amount of the donations, and
- the date that the donation was received or, in the case of aggregated donations, the date each donation was received, and
- the amount paid back to the overseas person or paid to the Electoral Commission, and the date that such payment was made.

For contributions exceeding \$1,500 by overseas persons to any candidate donation, the candidate will need to provide:

- the name and address of the overseas person, and
- the amount of the contribution, and
- the date on which the related donation funded from the contribution was made, and
- the amount paid back to the donor or paid to the Electoral Commission, and the date that such payment was made.

Part 2 of the form requires the candidate to provide details of all candidate election expenses incurred, including expenses incurred by any person authorised by the candidate.

The advertising expenses of unregistered promoters and registered promoters that the candidate has authorised need to be included in Part 2 of the form.

Candidates who fail to meet these requirements are committing offences and may be referred to the Police.

The returns are open to public inspection and will be available on the Electoral Commission's website.

4.9 Return of nomination deposits

If you receive 5% or more of the votes cast for all candidates in the electorate you are entitled to a refund of the \$300 deposit paid when you were nominated. A deposit cannot be refunded until you have filed your Return of Election Expenses and Donations.

PART 5: Results

5.1 Preliminary results – election night

After the polling place closes at 7pm on polling day and all voters have left, the manager of every polling place carries out the preliminary count of votes in the presence of scrutineers and polling place officials.

The ballot boxes are opened and the votes are counted. Special votes are not opened and must wait for the Official Count. The result is phoned in to the Returning Officer and it is then input into the Electoral Commission's National Election Results System. Results are displayed in real time on www.electionresults.govt.nz. The Electoral Commission's target is to have 50% of polling place results available by 9pm on election night and 100% of polling place results available by 10pm.

5.2 Advance votes

Advance votes are cast in the 17 days before polling day. Advance votes (other than advance special votes) may be counted from 3pm onwards on polling day at the Returning Officer's headquarters if the Returning Officer can provide appropriate security. Officials and scrutineers in the secure area must stay there until 7pm. The Electoral Commission's target is to have advance vote results available by 7.30pm.

5.3 Official results

The official results are compiled in the Returning Officer's headquarters by following a logical and meticulous process which starts the day after polling day. Electoral rolls are scrutinised to identify voters who have voted more than once, and to compile a list of all people who have voted (the Master Roll). All votes counted on election night are recounted and checked to ensure accuracy. The Returning Officer checks the validity of all special vote declaration forms and the names of special voters against the electoral rolls and the list of late enrolments for the district. If the special voter is eligible to make a special vote and the voter's name is found the vote will be counted.

If a name cannot be found, the declaration form is forwarded to the Registrar of Electors to check the voting qualification of the special voter. If the Registrar can confirm that the voter is enrolled in the electorate, the vote will be counted.

The official results process starts on the Sunday after polling day but cannot be completed until after the last legal day for receiving special votes including votes from Returning Officers overseas (10 days after polling day).

5.4 Declaration of official result

The Electoral Commission's target is to declare the official results of the by-election 11 days after polling day, subject to any recount applications. The Electoral Commission will then publish a notice in the *Gazette*.

PART 5: Results

The results will also be available at www.electionresults.govt.nz.

5.5 Judicial recounts

After the declaration of the official results, candidates can apply to a District Court Judge for a recount of the electorate vote.

The application to the Court must be:

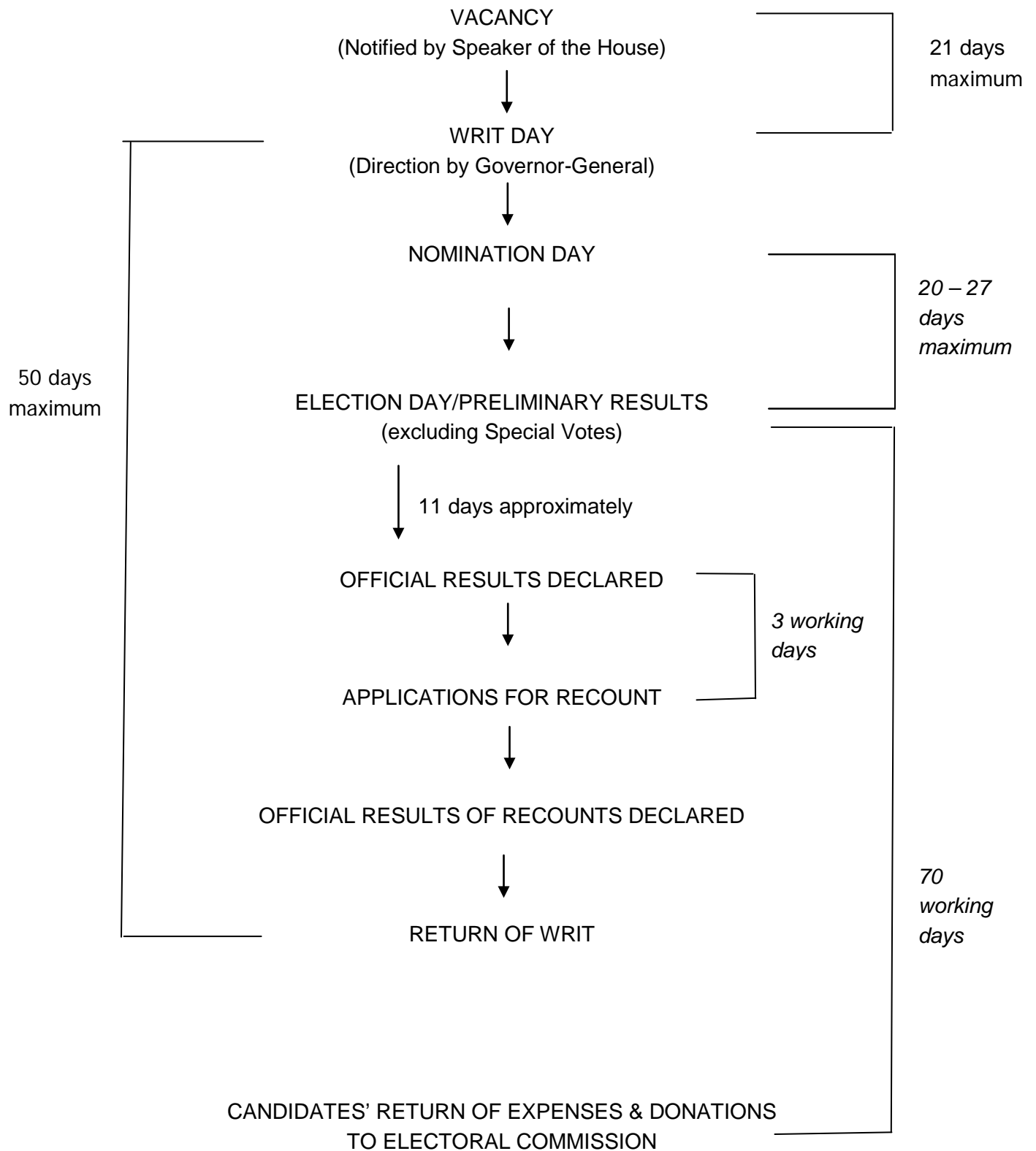
- made within three working days of the declaration of the result, and
- accompanied by a deposit of \$1,000 (inclusive of GST).

If you wish to seek a recount the Electoral Commission will advise you of the process to be followed.

5.6 Election petitions

The only way to challenge the election of an electorate candidate is through an election petition. A petition may be brought by a voter or a candidate and is heard by three High Court Judges. It must be brought within 28 days of the Electoral Commission declaring the official result.

APPENDIX A - By-election timetable



Appendix B - Grounds of disqualification for enrolment

The main grounds of disqualification for enrolment are:

- a New Zealand citizen who is outside New Zealand and has not been in New Zealand within the last three years, or
- a permanent resident of New Zealand who is outside New Zealand and has not been in New Zealand within the last 12 months.

There are exceptions to the above two rules. For example, public servants or members of the Defence Force who are on duty outside New Zealand, as well as members of their families.

There are other grounds of disqualification that affect a very small number of people. For more details see section 80 of the Electoral Act 1993.

Note that bankruptcy is not a ground for disqualification.

Appendix C - Quick guide for candidates in a by-election

Quick guide for candidates – common questions

The Quick Guide helps to answer the commonly asked questions during an election campaign and on polling day. It is not a comprehensive explanation of electoral law on campaigning. Readers should consult this booklet, the electoral legislation and regulations and take their own legal advice when in doubt. The Electoral Commission is also willing to discuss any problems.

<i>Topic</i>	<i>Candidates can</i>	<i>Candidates can't</i>
Radio and television election advertising	<p>Promote their own election in the period from writ day to the day before polling day</p> <p>Identify the party they represent and its policies in order to promote their own election</p>	<p>Broadcast outside the period from writ day to the day before polling day</p> <p>Broadcast on polling day</p> <p>Attack other candidates or parties</p> <p>Broadcast without including their name and street address</p>
Election advertising (other than television and radio)	<p>Promote their own election</p> <p>Attack the policies of other candidates or parties</p> <p>Operate a website on polling day</p>	<p>Publish without including their name and street address</p> <p>Publish on polling day</p> <p>Display in view of a public place on polling day</p> <p>Display on vehicles (including bumper stickers) in view of a public place on polling day</p> <p>Put new material on a website on polling day</p> <p>Advertise a website on polling day</p> <p>Use systems on polling day that make website advertising available to persons who haven't voluntarily accessed the website</p>
Election expenses (promoting the candidate)	<p>Spend without limit on advertising to promote their election published prior to the regulated period before polling day</p> <p>Spend up to \$50,000 (incl GST) on election advertising published in the regulated period</p>	<p>Spend more than \$50,000 (incl GST) on election expenses published in the regulated period</p> <p>File their return of election expenses and donations later than 70 working days after polling day</p>

Appendix C - Quick guide for candidates in a by-election

<i>Topic</i>	<i>Candidates can</i>	<i>Candidates can't</i>
Party lapel badges (a badge or rosette designed to be worn on the lapel) on polling day	<p>Feature the party name, emblem, slogan or logo on a party lapel badge</p> <p>Wear the lapel badge themselves</p> <p>Have scrutineers, party officials, or supporters wear them</p>	<p>Display party lapel badges on vehicles or in other places</p> <p>Feature their name on a badge</p> <p>Permit clothing to be worn on polling day promoting the candidate or party</p>
Streamers, rosettes, ribbons and similar items on polling day	<p>Display these in party colours</p> <p>Have candidates, scrutineers, party officials or supporters wear them</p> <p>Display them on vehicles</p>	<p>Feature the party name, emblem, slogan or logo on the streamers etc</p> <p>Display them on anything other than people or vehicles</p>