

Electoral (Administration) Amendment Bill

Government Bill

As reported from the Justice and Electoral
Committee

Commentary

Recommendation

The Justice and Electoral Committee has examined the Electoral (Administration) Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

This bill would amend the Electoral Act 1993 to establish a new Electoral Commission as an independent Crown entity. From 1 October 2010 the functions of the current Chief Electoral Officer and Electoral Commission would be transferred to the new Electoral Commission.

This bill is the first stage in reforms to electoral administration. The second stage of the reforms would involve transferring the Chief Registrar of Electors' responsibility for the electoral roll to the new Electoral Commission on 1 October 2012. We were advised that the staged approach is necessary to minimise the disruption to electoral activity, particularly the 2011 general election.

This bill, together with the other proposed reforms of electoral administration, is intended to provide improved access to electoral services and to introduce a more integrated, efficient, strategic approach to electoral administration.

This commentary covers the major amendments that we recommend and issues that were brought to our attention by submitters. In particular, we discuss the proposed structure of the Electoral Commission and concerns raised about it in submissions.

Entity type

We consider that the independent Crown entity model proposed for the new Electoral Commission is appropriate. We received a number of very substantial submissions from individuals, including the previous Chief Executive of the Electoral Commission, the former Clerk of the House of Representatives (David McGee QC), Associate Professor Andrew Geddis, and the New Zealand Law Society, amongst others, who have considerable interest and experience in electoral matters.

The majority of submitters proposed that the new commission be an Officer of Parliament. In recognition of the significance of these submissions, we considered very carefully whether this model would be more appropriate than the independent Crown entity model. On balance, with the additional protections as to the appointments of members of the commission through Parliament rather than the Minister, we are satisfied that the model proposed in the bill is appropriate in this case. We reached this conclusion for the following reasons.

The Finance and Expenditure Committee of the 42nd Parliament determined criteria for the establishment of an Officer of Parliament.¹ Two of them are problematic when applied to the new electoral agency: the requirement that an Officer of Parliament provide a check on the arbitrary use of power by the Executive, and that it discharge functions that the House of Representatives itself, if it so wished, might carry out.

The Electoral Commission would be responsible for delivering a wider range of electoral services, as well as advising the Minister

¹ Finance and Expenditure Committee, *Report on the Inquiry into Officers of Parliament*, 1987–1990, AJHR, I.4B, pp. 5–6.

of Justice or the House of Representatives on electoral matters. Unlike the current Officers of Parliament—the Ombudsmen, the Controller and Auditor-General, and the Parliamentary Commissioner for the Environment—the proposed Electoral Commission would not be scrutinising the Executive. The Electoral Commission’s main responsibility would be to deliver impartial and transparent elections in accordance with the law, so as to maintain public confidence in the electoral process.

We also note that if the Electoral Commission were established as an Officer of Parliament, the Speaker would be accountable to Parliament for its operations. We are concerned about the practical difficulty of the Speaker having to answer questions while at the same time being responsible for presiding over the House. We are also concerned that conferring the responsibility for electoral administration on the Speaker could impose too much accountability on the Office of the Speaker in addition to its existing responsibility for the Parliamentary Service, the Office of the Clerk of the House of Representatives, the Office of the Ombudsmen, the Office of the Controller and Auditor-General, and the Parliamentary Commissioner for the Environment. We consider that to impose additional accountability for electoral administration would risk conferring on the Office of the Speaker too many potentially political responsibilities, which we would prefer to avoid.

We recognise that the board structure would be a departure from the current practice where all other Officers of Parliament are individuals.

Lastly we note that as an Officer of Parliament the new electoral agency would be inhibited from having an involvement in the development of policies related to electoral administration or in advising the Minister of Justice regarding the administration of the Electoral Act and related legislation. We consider that the structure should facilitate involvement in the day-to-day policy and administrative processes.

While we appreciate that the Officer of Parliament model would provide desirable independence, on balance we consider the independent Crown entity model the best structure for the new electoral agency. We note that the functions of any independent Crown entity would be statutorily independent, and the responsible Minister would not be able to direct it to give effect to Government policy. Although we

do not recommend changing the proposed structure of the new Electoral Commission, we recommend amending the bill to emphasise its independence, which we discuss in the following section.

Membership of Electoral Commission

As introduced, new section 4D (clause 4) provides that the three members of the board of the Electoral Commission are appointed by the Governor-General on the recommendation of the Minister of Justice. To emphasise the new Electoral Commission's independence, we recommend replacing new section 4D, to provide for the appointment of the Electoral Commission by the Governor-General on the recommendation of the House of Representatives.

To assist with this appointment process we would encourage the Standing Orders Committee to develop a procedure that could be applied for the appointment of members of the board of the new Electoral Commission and of comparable bodies that are not Officers of Parliament, such as the Independent Police Conduct Authority and the Abortion Supervisory Committee. We suggest that the procedure currently used for an appointment of an Officer of Parliament could be adapted for this purpose.²

For consistency with our recommended amendment to the appointment process for members of the board, we recommend inserting new section 4EA to set out the process by which a member could resign from the board. We further recommend inserting new section 4EC to set out how a vacancy on the board should be filled. This new section outlines the process that would be followed when a vacancy had occurred when the House was and was not in session.

Board structure

We heard concern about the adoption of the board structure for the new Electoral Commission, illustrated by the problems that occurred with the board of the existing Electoral Commission before the 2008 general election. Before the election, the existing Electoral Commission required its board to meet to consider its response to complaints regarding the Electoral Finance Act 2007. This requirement caused

² Officers of Parliament Committee, *Procedures for the Appointment of an Officer of Parliament, 2002–2005*, AJHR, I.15A, pp. 3–4.

delays between the lodging of the complaints and the issuing of the decision by the Electoral Commission.

Given the challenges identified with the board structure of the existing Electoral Commission, we sought advice on the choice of a three-member board to head the new Electoral Commission, rather than a single statutory officer.

We were advised that a three-member board would bring a wider range of skills, experience, and perspectives to the governance level of the new Electoral Commission. While we understand that the board would be responsible for clarifying its precise role under the direction of the Crown Entities Act 2004, it is expected that it would delegate operational functions, such as the tasks of issuing advice and dealing with complaints, extensively to the Chief Electoral Officer, while it maintained an oversight and support function. It is not envisaged that the past difficulties would recur with the new Electoral Commission.

Deputy chairperson

We consider our recommended new section 4D provides greater clarity about the distinct roles of the three members of the Electoral Commission. As introduced, new section 4D provides that of the three members of the board, one would be appointed Chief Electoral Officer and another would be the chairperson. Our recommended new section 4D(1)(c) clarifies that the third member of the Electoral Commission would be appointed as the deputy chairperson.

Power to remove or suspend members

In the light of our recommended amendment to the appointment process for Electoral Commissioners, we recommend inserting new section 4EB (clause 4) to amend the removal process for Electoral Commissioners. The current removal process for members of an independent Crown entity are set out in the Crown Entities Act; section 39 the Act sets out the removal process for members of an independent Crown entity and section 42 sets out the removal process for members of an independent Crown entity who are Judges. These sections would allow the Governor-General to remove Electoral Commissioners from the board for just cause on the advice of the Minister of Justice, following consultation with

the Attorney-General. New section 4EB specifies that the current removal process where a Judge is an Electoral Commissioner would continue to apply, but for any other member, the Governor-General, on the advice of the House of Representatives, may remove Electoral Commissioners.

Disqualifications of members of the board

We recommend amending clauses 12 and 13 to remove the references to Electoral Commissioners and Deputy Electoral Commissioners. Under section 30(2)(f) of the Crown Entities Act Members of Parliament are disqualified from being a member of a statutory entity, so extending section 48 and 55(1) of the principal Act to cover Electoral Commissioners is unnecessary. The reference to Deputy Electoral Commissioners is also unnecessary because under our proposed new section 4F(2) Members of Parliament would be disqualified from appointment as Deputy Electoral Commissioners.

As introduced, clause 12 would amend section 48 of the principal Act to provide that it is an offence for a sitting Member of Parliament to continue to sit as a Member of Parliament after having been appointed an Electoral Commissioner, Deputy Electoral Commissioner, or Returning Officer. Clause 13 would amend section 55(1) of the principal Act to specify that the seat of a Member of Parliament would become vacant if he or she became an Electoral Commissioner, Deputy Electoral Commissioner, or Returning Officer.

Functions and powers of Electoral Commission

New sections 5 and 6 (clause 7) set out the functions and powers of the new Electoral Commission. It was suggested that the new Electoral Commission should be responsible for providing advice and guidance on electoral financial rules. We do not recommend amending the bill to give the Electoral Commission these specific powers, as we understand that it is the Government's intention that new rules regarding electoral finance will be introduced in April 2010 to be implemented before the 2011 general election. Instead we recommend inserting new section 5(da) to give the Electoral Commission the function of providing guidance information to candidates, political parties, and other interested people to help them meet their

obligations in respect of electoral matters to be administered by the new Electoral Commission.

We recommend inserting new section 6(1)(da) to allow the Electoral Commission to provide information and advice to the Minister of Justice and the House of Representatives at any time and of its own volition. New section 6(3) clarifies that where it was the intention of the Electoral Commission for this information and advice to be referred to the House, the Electoral Commission would have to provide this advice to the Minister of Justice to be tabled in the House within five working days, or, where the House was not sitting, as soon as possible after the commencement of the next sitting period.

Appendix

Committee process

The Electoral (Administration) Amendment Bill was referred to us on 27 October 2009. The closing date for submissions was 10 December 2009. We received and considered nine submissions from interested groups and individuals. We heard five submissions.

We received advice from the Ministry of Justice, the Chief Executive of the Electoral Commission, and the Chief Electoral Officer. The Officers of Parliament Committee advised us on the structure of the new Electoral Commission.

Committee membership

Chester Borrows (Chairperson)

Jacinda Ardern

Kanwaljit Singh Bakshi

Simon Bridges

Dr Kennedy Graham

Hon Nathan Guy (until 10 February 2010)

Hekia Parata (from 10 February 2010)

Hon David Parker

Lynne Pillay

Paul Quinn

Electoral (Administration) Amendment Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Simon Power

Electoral (Administration) Amendment Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Electoral (Administration) Amendment Act **2009**.

2 Commencement

- (1) The following provisions come into force on 1 October 2010: 5
- (a) the provisions in **subpart 2 of Part 1**;
- (b) the provisions in **subpart 2 of Part 2**.
- (2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act amended

This Act amends the Electoral Act 1993.

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Part 1

Amendments to principal Act

Subpart 1—Amendments coming into force on day after Royal assent

- 4 New sections 4B to 4G inserted** 5
The following sections are inserted after section 4A:
- “4B Electoral Commission**
- “(1) This section establishes the Electoral Commission.
- “(2) The Electoral Commission is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004. 10
- “(3) The Crown Entities Act 2004 applies to the Electoral Commission except to the extent that this Act expressly provides otherwise.
- “(4) The Electoral Commission established by **subsection (1)** is not the same body as the Electoral Commission established by section 4. 15
- “4C Objective**
- The objective of the Electoral Commission established by **section 4B** is to administer the electoral system impartially, efficiently, effectively, and in a way that— 20
- “(a) facilitates participation in parliamentary democracy; and
- “(b) promotes understanding of the electoral system and associated matters; and
- “(c) maintains confidence in the administration of the electoral system. 25
- “4D Membership of board**
- “(1) The board of the Electoral Commission established by **section 4B** consists of 3 members appointed, as Electoral Commissioners, by the Governor-General on the recommendation of the Minister in accordance with section 28(1)(b) of the Crown Entities Act 2004. 30
- “(2) In appointing members of the board the Governor-General, on the recommendation of the Minister,=

- “(a) must appoint a member as the Chief Electoral Officer and another member as the chairperson; and
- “(b) may appoint a member (other than the member appointed as chairperson) as the deputy chairperson.
- “(3) The member appointed as the Chief Electoral Officer under **subsection (2)(a)** is the chief executive of the Electoral Commission. 5
- “(4) Before recommending the appointment of an Electoral Commissioner, the Minister must consult with the parliamentary leaders of all political parties represented in Parliament. 10
- “4D Membership of Electoral Commission**
- “(1) The Governor-General, on the recommendation of the House of Representatives, must appoint 3 members of the Electoral Commission established by **section 4B** as follows:
- “(a) 1 member as the Chief Electoral Officer; and 15
- “(b) 1 member as the chairperson; and
- “(c) 1 member as the deputy chairperson.
- “(2) The member appointed as the Chief Electoral Officer under **subsection (1)(a)** is the chief executive of the Electoral Commission. 20
- “(3) The members of the Electoral Commission are the board for the purposes of the Crown Entities Act 2004.
- “(4) **Subsection (1)** applies despite—
- “(a) section 28(1)(b) of the Crown Entities Act 2004; and
- “(b) clause 1(2) of Schedule 5 of the Crown Entities Act 2004. 25
- “4E Appointment of Judge as member not to affect tenure, etc**
- The appointment of a Judge as a member of the board of the Electoral Commission established by **section 4B** does not affect the Judge’s tenure of his or her judicial office or the Judge’s rank, title, status, precedence, salary, annual or other allowances, or other rights or privileges as a Judge (including those in relation to superannuation) and, for all purposes, the Judge’s services as a member must be taken to be service as a Judge. 30
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“4EA Resignation of member

“(1) A member of the Electoral Commission established by **section 4B** may resign from office by written notice to the Governor-General (with a copy to the Electoral Commission) signed by the member.

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“(2) The resignation is effective when the Governor-General receives the notice or at any later time specified in the notice.

“(3) This section applies despite section 44 of the Crown Entities Act 2004.

“Compare: 1988 No 2 s 5C

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“4EB Power to remove or suspend members

“(1) Section 42 of the Crown Entities Act 2004 applies to any member of the Electoral Commission established by **section 4B** who is a Judge.

“(2) Section 39(1) of the Crown Entities Act 2004 does not apply to any member.

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“(3) Instead, any member who is not a Judge may be removed for just cause by the Governor-General acting upon an address from the House of Representatives.

“(4) **Just cause** has the same meaning as in section 40 of the Crown Entities Act 2004.

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“Compare: 1988 No 2 s 6

“4EC Filling of vacancy

“(1) If a vacancy occurs in the membership of the Electoral Commission established by **section 4B**, the Governor-General, on the recommendation of the House of Representatives, may appoint a successor.

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“(2) Despite **subsection (1)**, if the vacancy exists at the close of a session, or the vacancy occurs while Parliament is not in session, and the House of Representatives has not recommended an appointment to fill the vacancy, the Governor-General in Council may appoint a successor at any time before the commencement of the next session of Parliament.

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“(3) An appointment made under **subsection (2)** lapses, and the office again becomes vacant, unless the appointment is con-

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firmed by the House of Representatives before the end of the 24th sitting day following the date of the appointment.

“Compare: 1988 No 2 s 7

“4F Deputy Electoral Commissioners

- “(1) The Electoral Commission established by **section 4B** may, 5
by written notice, appoint an electoral official to be the deputy
for an Electoral Commissioner.
- ~~“(2) The Electoral Commission must not appoint as a Deputy Elect-
oral Commissioner a person described in section 30(2) of the
Crown Entities Act 2004.~~ 10
- “(2) The persons described in section 30(2) of the Crown Entities
Act 2004 are disqualified from being appointed as Deputy
Electoral Commissioners.
- “(3) The notice of appointment must—
“(a) state the date on which the appointment takes effect, 15
which must not be earlier than the date on which the
notice is received; and
“(b) state the term of the appointment; and
“(c) be published by the Electoral Commission in the
Gazette as soon as practicable after the appointment is 20
made.
- “(4) If an Electoral Commissioner becomes incapable of perform-
ing his or her functions; ~~duties, or powers or duties or exercis-
ing his or her powers~~ by reason of illness, absence, or other suf- 25
ficient cause, the functions, duties, and powers of that Elect-
oral Commissioner may be performed and exercised by his or
her deputy.
- “(5) Despite **subsection (4)**, a Deputy Electoral Commissioner—
“(a) must not act as chairperson or deputy chairperson of the 30
board of the Electoral Commission; and
“(b) is not eligible to be appointed by the board of the Elect-
oral Commission as a temporary deputy chairperson
under clause 5 of Schedule 5 of the Crown Entities Act
2004.
- “(6) The Electoral Commission may, at any time, revoke the ap- 35
pointment of any deputy.

“(7) A Deputy Electoral Commissioner is a public servant for the purposes of sections 28(2)(f) and 80(3)(a)(i).

“(8) In **subsection (1)**, **electoral official** means any person that the Electoral Commission established by **section 4B** employs or engages for the purpose of assisting with the performance of its functions. 5

“4G **Proceedings of Electoral Commission**

The provisions of Schedule 1 apply to the Electoral Commission established by **section 4B** and to its proceedings.”

Subpart 2—Amendments coming into force 10
on 1 October 2010

5 Interpretation

(1) Section 3(1) is amended by repealing the definition of **Electoral Commission** and substituting the following definition:

“**Electoral Commission** means the Electoral Commission established by **section 4B**”. 15

(2) Section 3(1) is amended by repealing the definition of **Electoral Commissioner** or **Commissioner** and substituting the following definition:

“**Electoral Commissioner** or **Commissioner** means a member of the Electoral Commission”. 20

(3) Section 3(1) is amended by repealing the definition of **electoral official** and substituting the following definition:

“**electoral official** means any person that the Electoral Commission employs or engages for the purpose of assisting with the performance of its functions”. 25

(4) Paragraph (b)(iii) of the definition of **public servant** in section 3(1) is amended by omitting “; but” and substituting “; and”.

(5) The definition of **public servant** in section 3(1) is amended by inserting the following paragraphs after paragraph (b): 30

“(ba) includes an electoral official; but

“(bb) does not include an electoral official who has been appointed as a Deputy Electoral Commissioner or Returning Officer; and”.

- 6 Sections 4 and 4A repealed**
Sections 4 and 4A are repealed.
- 7 New sections 5 to 9 substituted**
Sections 5 to 9 are repealed and the following sections substituted: 5
- “5 Functions**
The functions of the Electoral Commission are to—
- “(a) carry the provisions of this Act (except those of Part 5) into effect:
 - “(b) carry out duties in relation to parliamentary election programmes that are prescribed by Part 6 of the Broadcasting Act 1989: 10
 - “(c) promote public awareness of electoral matters by means of the conduct of education and information programmes or by other means: 15
 - “(d) consider and report to the Minister or to the House of Representatives on electoral matters referred to the Electoral Commission by the Minister or the House of Representatives:
 - “(da) make available information to assist parties, candidates, and others to meet their statutory obligations in respect of electoral matters administered by the Electoral Commission: 20
 - “(e) carry out any other functions or duties conferred on the Electoral Commission by or under any other enactment. 25
- “6 Powers of Electoral Commission**
- “(1) The Electoral Commission may, if it considers that it is necessary for the proper discharge of its functions,—
- “(a) initiate, sponsor, and carry out any studies or research:
 - “(b) make any inquiries: 30
 - “(c) consult with any persons or classes of persons:
 - “(d) publicise, in any manner that it thinks fit, any parts of its work:
 - “(da) provide information and advice on any matter—
 - “(i) to the Minister for the Minister’s consideration: 35
 - “(ii) to the Minister for tabling in the House of Representatives:

- “(e) request advice, assistance, and information from any government department or any State enterprise as defined in section 2 of the State-Owned Enterprises Act 1986.
- “(2) **Subsection (1)** does not limit sections 16 and 17 of the Crown Entities Act 2004. 5
- “(3) If the Electoral Commission provides any information or advice to the Minister under **subsection (1)(da)(ii)**, the Minister must present the information or advice to the House of Representatives within 5 working days after receiving it or, if Parliament is not in session, as soon as possible after the commencement of the next session of Parliament. 10
- “7 **Independence**
The Electoral Commission must act independently in performing its statutory functions and duties, and exercising its statutory powers, under— 15
- “(a) this Act; and
- “(b) any other enactment that expressly provides for the functions, duties, or powers of the Electoral Commission (other than the Crown Entities Act 2004). 20
- “8 **Electoral Commission must report on general election**
- “(1) The Electoral Commission must, within 6 months of the return of the writ after a general election, report in writing to the Minister on the administration of that election, including— 25
- “(a) the services provided to electors to facilitate voting; and
- “(b) enrolment and voting statistics; and
- “(c) any substantive issue arising during the course of the election; and
- “(d) any changes that are necessary or desirable in respect of— 30
- “(i) administration processes or practices; or
- “(ii) this Act or any other law; and
- “(e) any matter that the Minister of Justice asks the Electoral Commission to address; and
- “(f) any other matter that the Electoral Commission considers relevant. 35

- “(2) The Minister must present any report received under **subsection (1)** to the House of Representatives within 5 working days after receiving it or, if Parliament is not in session, as soon as possible after the commencement of the next session of Parliament. 5
- “(3) The Electoral Commission must publish any report made under **subsection (1)** as soon as practicable after it has been presented to the House of Representatives, but in any case not later than 10 working days after the report is received by the Minister. 10
- “**9 Electoral Commission may delegate functions, duties, or powers to non-employees**
In addition to the persons listed in section 73(1) of the Crown Entities Act 2004, the Electoral Commission may delegate any of its functions, duties, or powers, either generally or specifically, to any electoral official who is engaged by (rather than employed by) the Electoral Commission.” 15
- 8 Sections 11A, 11B, 14, and 18 to 20 repealed**
Sections 11A, 11B, 14, and 18 to 20 are repealed.
- 9 New sections 20C to 20CC substituted** 20
Section 20C is repealed and the following sections are substituted:
- “**20C Returning Officers may delegate functions, duties, or powers**
A Returning Officer may delegate any of his or her functions, duties, or powers, except this power of delegation, to another electoral official. 25
- “**20CA Powers of delegate**
“(1) An electoral official to whom any functions, duties, or powers of a Returning Officer are delegated may, unless the delegation provides otherwise, perform the function or duty or exercise the power in the same manner, subject to the same restrictions, and with the same effect as if the electoral official were the Returning Officer. 30

“(2) An electoral official who purports to perform a function or duty or exercise a power under a delegation from a Returning Officer is, in the absence of proof to the contrary, presumed to do so in accordance with the terms of that delegation.

“Compare: 2004 No 115 s 74

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“**20CB Effect of delegation on Returning Officer**

No delegation under **section 20C**—

“(a) affects or prevents the performance of any function or duty or the exercise of any power by the Returning Officer; or

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“(b) affects the responsibility of the Returning Officer for the actions of any electoral official acting under the delegation; or

“(c) is affected by any change in the person appointed as Returning Officer.

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“Compare: 2004 No 115 s 75

“**20CC Revocation of delegations**

A delegation under **section 20C** may be revoked at will by—

“(a) the Returning Officer by written notice to the electoral official; or

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“(b) any other method provided for in the delegation.

“Compare: 2004 No 115 s 76”.

10 Section 24 repealed

Section 24 is repealed.

11 New section 47A inserted

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The following section is inserted after section 47:

“**47A Certain persons disqualified from candidacy**

The following persons are not qualified to be a candidate or to be elected as a member of Parliament:

“(a) an Electoral Commissioner:

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“(b) a Deputy Electoral Commissioner:

“(c) a Returning Officer.”

- 12 Offence for public servant to sit**
- (1) The heading to section 48 is amended by inserting “; ~~Electoral Commissioner, Deputy Electoral Commissioner, or Returning Officer~~” after “public servant”.
- (2) Section 48 is amended by inserting “or having been appointed as an ~~Electoral Commissioner, a Deputy Electoral Commissioner, or a Returning Officer~~” after “having become a public servant”.
- 13 How vacancies created**
- Section 55(1) is amended by inserting the following paragraph after paragraph (e):
- “(ea) if he or she is appointed as an ~~Electoral Commissioner, a Deputy Electoral Commissioner, or a Returning Officer~~;
- 14 Other amendments to principal Act**
- The principal Act is amended in the manner set out in **Schedule 1**.
- Part 2**
- Consequential amendments and transitional provisions**
- 15 Interpretation**
- In this Part, unless the context requires otherwise,—
- existing Chief Electoral Officer** means the Chief Electoral Officer appointed under section 18 of the principal Act
- existing Electoral Commission** means the Electoral Commission established by section 4 of the principal Act
- new Electoral Commission** means the Electoral Commission established by **section 4B** of the principal Act as inserted by **section 4** of this Act
- previous employer**, in relation to a transferred employee, means the employer of that employee immediately before 1 October 2010

transferred employee means a person who,—

- (a) immediately before 1 October 2010, was employed by the Ministry of Justice or the existing Electoral Commission; and
- (b) is transferred to the new Electoral Commission under **section 20 or 23**.

Subpart 1—Provisions coming into force on day after Royal assent

- 16 New Electoral Commission may perform certain functions before 1 October 2010** 10
- Until the close of 30 September 2010, the new Electoral Commission may perform only those functions that are necessary or desirable to bring, or in connection with bringing, the principal Act as amended by this Act into operation.
- 17 Statement of intent** 15
- The existing Electoral Commission is not required to produce a statement of intent for the financial year commencing 1 July 2010.
- 18 References to Electoral Commission**
- (1) Until the close of 30 September 2010, any reference to the Electoral Commission— 20
- (a) in **sections 4B to 4G** of the principal Act must be read as a reference to the Electoral Commission established by **section 4B** of the principal Act; and
 - (b) in the following enactments must be read as a reference 25 to both the Electoral Commission established by section 4 of the principal Act and the Electoral Commission established by **section 4B** of the principal Act:
 - (i) Schedule 1 of the Crown Entities Act 2004;
 - (ii) Part 2 of Schedule 1 of the Ombudsmen Act 30 1975;
 - (iii) Schedule 4 of the Remuneration Authority Act 1977; and

- (c) in any other enactment must be read as a reference to the Electoral Commission established by section 4 of the principal Act.
- (2) On and from 1 October 2010, any reference to the Electoral Commission in any enactment must be read as a reference to the Electoral Commission established by **section 4B** of the principal Act. 5
- 19 Assets and liabilities of existing Electoral Commission**
On 1 October 2010, all assets, records, liabilities, and debts of the existing Electoral Commission vest in the new Electoral Commission. 10
- 20 Employees of existing Electoral Commission**
- (1) On 1 October 2010, all employees of the existing Electoral Commission are transferred to the new Electoral Commission.
- (2) **Subsection (1)** does not apply to any employee who does not consent to being transferred. 15
- 21 References to Chief Electoral Officer**
- (1) Until the close of 30 September 2010, any reference to the Chief Electoral Officer, other than a reference in **section 4D** of the principal Act, must be read as a reference to the Chief Electoral Officer appointed under section 18 of the principal Act. 20
- (2) On and from 1 October 2010,—
- (a) the references to the Chief Electoral Officer in sections 28(2)(c) and 33(4) of the principal Act must be read as references to the Chief Electoral Officer appointed under ~~**section 4D(2)**~~ **section 4D(1)** of the principal Act; and 25
- (b) any other reference to the Chief Electoral Officer in any enactment must be read as a reference to the Electoral Commission established by **section 4B** of the principal Act. 30

22 Assets and liabilities of Chief Electoral Office

- (1) The Secretary for Justice must identify all assets, records, liabilities, and debts of the Ministry of Justice that, immediately before 1 October 2010, are assets, records, liabilities, and debts used or incurred by the Chief Electoral Office of the Ministry of Justice. 5
- (2) On 1 October 2010, the assets, records, liabilities, and debts identified by the Secretary for Justice under **subsection (1)** vest in the new Electoral Commission.

23 Employees of Ministry of Justice

10

- (1) The Secretary for Justice must identify all permanent employees of the Ministry of Justice who, immediately before 1 October 2010, are appointed to positions within the Chief Electoral Office of the Ministry of Justice.
- (2) On 1 October 2010, the employees identified by the Secretary for Justice under **subsection (1)** are transferred to the new Electoral Commission. 15
- (3) **Subsection (2)** does not apply to—
- (a) the existing Chief Electoral Officer; or
 - (b) any person appointed as Deputy Chief Electoral Officer under section 19 of the principal Act; or 20
 - (c) any employee who does not consent to being transferred.

24 Terms and conditions of transferred employees

- (1) The employment of a transferred employee must be on terms and conditions no less favourable to the transferred employee than those applying to the employee immediately before 1 October 2010. 25
- (2) **Subsection (1)**—
- (a) continues to apply to the terms and conditions of employment of a transferred employee until those terms and conditions are varied by agreement between the transferred employee and the new Electoral Commission; but 30

- (b) does not apply to a transferred employee who receives any subsequent appointment with the new Electoral Commission.

25 Continuity of employment

- (1) Every transferred employee becomes an employee of the new Electoral Commission on 1 October 2010. 5
- (2) However, for the purposes of this Act and every enactment, law, determination, contract, and agreement relating to the employment of the transferred employee,—
 - (a) the contract of employment of that employee is deemed to have been unbroken; and 10
 - (b) that employee's period of service with his or her previous employer, and every other period of service of that employee that is recognised as continuous service by his or her previous employer, is deemed to have been a period of service with the new Electoral Commission. 15

26 Restriction of compensation for technical redundancy

- (1) An employee of the existing Electoral Commission or the Ministry of Justice is not entitled to receive any payment or other benefit from the existing Electoral Commission or the Ministry of Justice on the ground that his or her position with that employer has ceased to exist if—
 - (a) the position ceases to exist as a result of amendments made by this Act; and 20
 - (b) in connection with the transfer of employees under this Act,—
 - (i) the transfer of the employee would result in substantially equivalent employment in the new Electoral Commission (whether or not the employee consents to the transfer); or 30
 - (ii) the employee consents to a transfer that will result in other employment in the new Electoral Commission.
- (2) **Substantially equivalent employment** to the employee's employment with his or her previous employer is employment in the new Electoral Commission that is—
 - (a) in substantially the same position; and 35

- (b) on terms and conditions of employment that are no less favourable than those that apply to the employee immediately before the offer of equivalent employment (including any service-related, redundancy, and superannuation conditions); and 5
- (c) on terms that treat the period of service with the previous employer (and any other service recognised by the previous employer as continuous service) as if it were continuous service with the new Electoral Commission.
- 27 Consequential amendments** 10
The principal Act is amended in the manner set out in **Part 1 of Schedule 2**.
- Subpart 2—Provisions coming into force on
1 October 2010
- 28 Existing Electoral Commission disestablished** 15
- (1) The existing Electoral Commission is disestablished.
- (2) Any member of the existing Electoral Commission holding office under section 8(1)(a) or (b) of the principal Act (as in force immediately before its repeal by **section 7** of this Act) ceases to hold office. 20
- (3) Any appointment of a member of the existing Electoral Commission made under section 8(1)(c) or (d) of the principal Act (as in force immediately before its repeal by **section 7** of this Act) is revoked.
- (4) Any appointment of a deputy of a member of the existing Electoral Commission made under section 11A(2) of the principal Act (as in force immediately before its repeal by **section 8** of this Act) is revoked. 25
- 29 Appointment of existing Chief Electoral Officer revoked** 30
The appointment of the existing Chief Electoral Officer is revoked.
- 30 Enforcement of existing rights**
- (1) This section applies to—

- (a) any matter or thing commenced under any enactment by the existing Electoral Commission or the existing Chief Electoral Officer and not completed by 1 October 2010; and
- (b) any proceedings commenced by or against the existing Electoral Commission, or by or against the Crown in respect of any act or omission of the existing Chief Electoral Officer, relating to an existing right, interest, title, immunity, or duty and not completed by 1 October 2010. 5 10
- (2) Any matter, thing, or proceedings to which this section applies may be continued, completed, or enforced by or against the new Electoral Commission.
- 31 Responsibility for reports and accounts of existing Electoral Commission from 1 July 2010** 15
- (1) The new Electoral Commission must include in its annual report for the year ending 30 June 2011 the information in respect of the existing Electoral Commission for the period commencing 1 July 2010 and ending on 30 September 2010 that the existing Electoral Commission would have had to include in its annual report under section 151 of the Crown Entities Act 2004 had it continued in existence. 20
- (2) To avoid doubt, the new Electoral Commission may, if it so decides, present the information referred to in **subsection (1)** in a combined form for the whole of the financial year ended 30 June 2011. 25
- (3) For the purposes of **subsection (1)**, section 45J(1) of the Public Finance Act 1989 does not apply to the existing Electoral Commission in respect of the period commencing 1 July 2010 and ending on 30 September 2010. 30
- 32 Consequential amendments**
- (1) The provisions specified in the following Parts of the schedules of this Act are amended by omitting “Chief Electoral Officer” in each place where it appears and substituting in each case “Electoral Commission”: 35
- (a) in respect of the principal Act, **Part 2 of Schedule 2**;
- (b) in respect of other Acts, **Part 1 of Schedule 3**;

- (c) in respect of regulations, **Part 1 of Schedule 4.**
 - (2) The provisions specified in the following Parts of the schedules of this Act are amended in the manner set out in those Parts:
 - (a) in respect of the principal Act, **Part 3 of Schedule 2:** 5
 - (b) in respect of other Acts, **Part 2 of Schedule 3:**
 - (c) in respect of regulations, **Part 2 of Schedule 4.**
-

Schedule 1**s 14****Other amendments to principal Act****Section 39**

Subsection (1): omit “shall communicate the details of that determination to such public servants” and substitute “must communicate the details of that determination to the Electoral Commission, the Chief Registrar of Electors, and such other entities or persons”. 5

Subsection (1): omit “by the Commission” and substitute “by the Representation Commission”.

Subsection (2): omit “public servant” and substitute “entity or person”. 10

Section 49

Repeal and substitute:

“49 Candidate not disqualified if name removed from roll without cause” 15

“(1) This section applies to a person—

“(a) who is qualified to be registered as an elector of an electoral district; and

“(b) whose name was entered on the electoral roll for that district; but 20

“(c) whose name has been subsequently removed from that electoral roll through no fault or failure of that person.

“(2) A person is not, by reason only of his or her name having been removed from an electoral roll, disqualified from becoming a candidate and being elected as a member of Parliament.” 25

“(3) However, a person who consents to his or her nomination as a candidate must make a statutory declaration declaring that—

“(a) he or she is qualified to be registered as an elector of the electoral district in respect of which he or she was previously registered; and 30

“(b) his or her name was removed from the electoral roll for that district through no fault or failure of his or her own.

“(4) A person nominated as a candidate must, when giving his or her consent to the nomination, send the statutory declaration to— 35

Section 49—*continued*

- “(a) the Returning Officer, if the person was nominated as a constituency candidate by registered electors under section 143; or
- “(b) the party secretary, if the person is to be nominated as—
 - “(i) a constituency candidate by the party secretary 5
under section 146D; or
 - “(ii) a list candidate.”

Section 68

Omit “4 pm” and substitute “5 pm”.

Section 68A(2)

10

Omit “4 pm” and substitute “5 pm”.

Section 71B(4)

Omit “4 pm” and substitute “5 pm”.

Section 127

Subsection (4): repeal and substitute:

15

“(4) The secretary of the political party must lodge with the list submitted under this section, in relation to each candidate nominated in the list,—

- “(a) a statement in a form provided by the Electoral Commission, signed by the candidate, and confirming the candidate’s consent to the nomination; and 20
- “(b) any statutory declaration made by the candidate received under **section 49(4)(b)**.”

Subsection (5): repeal.

Section 146E(3)

25

Repeal and substitute:

“(3) The secretary of the political party must lodge with the bulk nomination schedule, in relation to each constituency candidate nominated in the schedule,—

Section 146E(3)—*continued*

- “(a) a statement in a form provided by the Electoral Commission, signed by the constituency candidate, and confirming the candidate’s consent to the nomination; and
- “(b) any statutory declaration made by the constituency candidate received under **section 49(4)(b)**.”

5

Section 150

Subsection (2): omit “Returning Officer shall” and substitute “Electoral Commission must”.

Subsection (16): omit “Returning Officer shall” and substitute “Electoral Commission must”.

10

Subsection (19): omit “Returning Officer” and substitute “Electoral Commission”.

Section 205C

Heading: insert “**election**” after “**expenses for**”.

Section 206C

15

Heading: insert “**election**” after “**expenses for**”.

Section 206J

Compare note: omit “s 214D” and substitute “ss 67(3)(f), 214D(1), (2A), (3)”.

Section 206Q

20

Compare note: omit “214J” and substitute “214J(1), (2)(a)”.

Section 219

Compare note: add “(pre-20 December 2007)”.

Section 224

Compare note: omit “141, 142” and substitute “142, 143”.

25

Schedule 2**ss 27, 32****Consequential amendments to principal Act****Part 1**

Consequential amendments coming into force on day after Royal assent 5

Section 4A(1)

Insert “established by section 4” after “the Electoral Commission”.

Section 5

Omit “shall be” and substitute “established by section 4 are”. 10

Section 6(2)

Omit “Commission shall have” and substitute “Electoral Commission established by section 4 has”.

Section 7

Omit “Electoral Commission must” and substitute “Electoral Commission established by section 4 must”. 15

Section 8(1)

Omit “Electoral Commission shall consist” and substitute “Electoral Commission established by section 4 consists”.

Section 9

Insert “established by section 4” after “the Electoral Commission”. 20

Section 14

Insert “established by section 4” after “the Electoral Commission”.

Part 2

Change of “Chief Electoral Officer” to “Electoral Commission” 25

Definition of **list candidate** in section 3:

Heading to section 20A:

Part 2—*continued*

Section 20A(1) and (2):	
Section 20B:	
Section 20D(1) and (2):	
Section 42(4):	
Section 54(2) and (2)(a):	5
Section 92(2):	
Section 123(2):	
Section 125:	
Section 127(1), (3)(a), (6), and (8)(a):	
Section 127A(1) and (5)(b):	10
Heading to section 128:	
Section 128(1), (1)(b), (2), and (2)(b):	
Section 128A(1):	
Section 128C(2):	
Section 129(2):	15
Section 134(2):	
Section 136:	
Section 137(7):	
Section 138:	
Section 141:	20
Section 142(2):	
Section 143(1) and (3):	
Section 144(4):	
Section 145(2) and (5):	
Section 146B(1), (2)(b), (3), and (4)(a):	25
Section 146C(1):	
Section 146D(2), (3)(b), and (4):	
Section 146E(4) and (5)(b):	
Section 146F(1) and (4):	
Section 146G(1), (1)(c), (2), (3), (3)(b), and (4):	30
Section 146H(1), (2), (3), (3)(a), (3)(b), and (4)(b):	
Section 146I(2) and (3):	
Section 146J(1) and (2):	

Part 2—*continued*

Section 146K(1)(a) and (c):	
Section 146L:	
Section 146L(c):	
Section 147(1), (4), and (5):	
Section 148(1):	5
Section 150(12)(b) and (13)(b):	
Section 151A:	
Section 152(4):	
Section 152A(3) and (4)(b):	
Section 152B(1)(b)(ii), (2), and (4)(a):	10
Section 152C(1), (2), (3), (4), and (5):	
Section 153A(2)(c):	
Section 153B(2)(c):	
Section 153C(2):	
Section 153E(1):	15
Section 153G(2)(b)(ii), (3), and (5)(a):	
Section 153H(1), (2), (3), (4), and (5):	
Section 155(1) and (5):	
Heading to section 158A:	
Section 158A(1) and (2):	20
Section 174D(2)(a):	
Section 174E(3):	
Section 179(1), (2), (3), (4), (5), and (6):	
Section 180(10):	
Section 183(3) and (5):	25
Section 185(4) and (5):	
Section 187(1):	
Section 191(1), (4)(b)(ii), (4A), (8)(b), and (10):	
Section 192(2)(b), and (5):	
Section 193(6) and (7):	30
Heading to section 193A:	
Section 193A(1), (1)(a), and (2):	
Section 197(1)(c)(i):	

Part 2—*continued*

Section 205K(1) and (2):	
Section 205M(2):	
The heading to section 205P:	
Section 205P:	
Section 207I(1):	5
Section 209(1), (4)(c), (5)(c), and (6):	
Section 209E(1), (3), and (4):	
Section 229(4):	
Section 231(1):	
Section 258(3) and (5):	10
Section 259:	
Section 262(c)(iii):	
Form 3 of Schedule 2:	
Form 4 of Schedule 2:	
Form 4A of Schedule 2:	15
Form 6 of Schedule 2:	
Form 7 of Schedule 2:	

Part 3

Further consequential amendments

Section 3	20
Definition of public inspection period : omit “Chief Electoral Officer or the Electoral Commission, as the case may be,” in each place where it appears and substitute in each case “Electoral Commission”.	
Section 4C	
Omit “established by section 4B ”.	25
Section 4D	
Subsection (1): omit “established by section 4B ”.	
Section 4E	
Omit “established by section 4B ”.	

Part 3—*continued***Section 4EA**

Subsection (1): omit “established by **section 4B**”.

Section 4EB

Subsection (1): omit “established by **section 4B**”.

Section 4EC

5

Subsection (1): omit “established by **section 4B**”.

Section 4F

Subsection (1): omit “established by **section 4B**”.

Subsection (8): repeal.

Section 4G

10

Omit “established by **section 4B**”.

Section 20B

Add as subsection (2):

“(2) A Returning Officer is a public servant for the purposes of sections 28(2)(f) and 80(3)(a)(i).”

15

Section 33(4)

Omit “The Deputy Chief Electoral Officer appointed pursuant to section 19 of this Act shall have” and substitute “The Deputy Electoral Commissioner appointed under **section 4F** as the deputy for the Chief Electoral Officer has”.

20

Section 67

Subsection (1)(c): omit “; and”.

Subsection (1)(d): repeal.

Subsection (4): repeal.

Section 67A(1)

25

Paragraph (c): omit “; and”.

Part 3—*continued***Section 67A(1)**—*continued*

Paragraph (d): repeal.

Paragraph (e): repeal.

Section 70A(3)(iii)

Repeal.

Section 128B

5

Repeal and substitute:

**“128B Electoral Commission must record and notify change
in component parties**

If the component parties of a political party listed in the copy of
any declaration received by the Electoral Commission under
section 127(3A) differ from those recorded in the Register
of Political Parties established by section 62(2), the Electoral
Commission—

10

“(a) must amend the Register so that the component parties
recorded in the Register are the same as those recorded
in the declaration made to the Electoral Commission;
and

15

“(b) must, immediately after amending the Register under
paragraph (a), publish in the *Gazette* a notice of the
amendment made under that paragraph.”

20

Section 137

Omit “Chief Electoral Officer shall” in each place where it occurs
and substitute in each case “Electoral Commission must”.

Section 140

Repeal and substitute:

25

“140 Chief Registrar to be notified of writ

Immediately after receiving a writ for an election to be held in
any district, the Electoral Commission must notify the Chief
Registrar of the issue of the writ.”

Part 3—*continued***Section 146D(4)**

Omit “he or she” and substitute “the Electoral Commission”.

Section 146L

Omit “Chief Electoral Officer’s” and substitute “Electoral Commission’s”.

5

Section 147(2)

Omit “Chief Electoral Officer shall forthwith” and substitute “Electoral Commission must immediately”.

Section 148(2)

Omit “the Chief Electoral Officer” and substitute “an Electoral Commissioner on behalf of the Electoral Commission”.

10

Section 152C(2)

Omit “he or she” and substitute “the Returning Officer or Electoral Commission”.

Section 153A(3)

15

Omit “after receiving” and substitute “after the Electoral Commission receives”.

Omit “the Chief Electoral Officer must” and substitute “an Electoral Commissioner must, on behalf of the Electoral Commission,”.

Section 153B(3)

20

Omit “after receiving” and substitute “after the Electoral Commission receives”.

Omit “the Chief Electoral Officer must” and substitute “an Electoral Commissioner must, on behalf of the Electoral Commission,”.

Section 153C(3)

25

Omit “The Chief Electoral Officer must, immediately on” and substitute “Immediately on the Electoral Commission”.

Part 3—*continued***Section 153C(3)**—*continued*

Insert “an Electoral Commissioner must, on behalf of the Electoral Commission,” after “subsection (2)”.

Section 153E(1)

Omit “endorsing” and substitute “an Electoral Commissioner has endorsed”.

5

Section 153H(2)

Omit “he or she” and substitute “the Returning Officer or Electoral Commission”.

Section 175

Subsection (3): omit “the Chief Electoral Officer” and substitute “an Electoral Commissioner”. 10

Subsection (5)(a): repeal and substitute:

“(a) an Electoral Commissioner:”.

Subsection (5)(c): omit “Chief Electoral Officer” and substitute “Electoral Commissioner”. 15

Subsection (5)(d): omit “Chief Electoral Officer” and substitute “Electoral Commissioner”.

Section 176(1)

Omit “Chief Electoral Officer” and substitute “Electoral Commissioner”. 20

Section 183(4)

Omit “the Chief Electoral Officer” and substitute “an Electoral Commissioner”.

Section 184(2)

Omit “Chief Electoral Officer shall” and substitute “Electoral Commission must”. 25

Part 3—*continued***Section 185**

Subsection (1): omit “Chief Electoral Officer has” and substitute “Electoral Commission has”.

Subsection (1): omit “the Chief Electoral Officer must” and substitute “an Electoral Commissioner must, on behalf of the Electoral Commission,”. 5

Section 186

Repeal and substitute:

“186 Electoral Commission may correct writ

“(1) If the Electoral Commission is satisfied that the name of a member elected to represent an electoral district is not correctly recorded on the writ, an Electoral Commissioner may, on behalf of the Electoral Commission, before or after complying with the requirements of section 185(1), make any alterations to the writ necessary to ensure that the member’s name is correctly recorded. 10 15

“(2) Before making a correction under **subsection (1)**, the Electoral Commissioner must consult with the member concerned and with the Returning Officer.”

“(3) If the Electoral Commissioner makes a correction under **subsection (1)** after complying with the requirements of section 185(1),— 20

“(a) the Electoral Commission must forward to the Clerk of the House of Representatives a copy of the writ as corrected; and 25

“(b) that copy is to be treated for all purposes as the copy forwarded to the Clerk of the House of Representatives under section 185(1).”

Section 189(2)

Omit “the Chief Electoral Officer” and substitute “an Electoral Commissioner”. 30

Part 3—*continued***Section 191**

Omit “Chief Electoral Officer shall” in each place where it appears and substitute in each case “Electoral Commission must”.

Subsection (1): omit “he or she shall” and substitute “the Electoral Commission must”. 5

Subsection (10): omit “shall draw a circle” and substitute “must cause a circle to be drawn”.

Section 192

Omit “Chief Electoral Officer shall” in each place where it appears and substitute in each case “Electoral Commission must”. 10

Section 193

Omit “Chief Electoral Officer shall” in each place where it appears and substitute in each case “Electoral Commission must”.

Subsection (6): omit “he or she” in each place where it appears and substitute in each case “the Electoral Commission”. 15

Subsection (7): omit “he or she” and substitute “the Electoral Commission”.

Section 205Q

Repeal.

Section 205R

20

Repeal and substitute:

“205R Return of candidate’s election 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 205K. 25

“(2) During the public inspection period, the Electoral Commission must make available for public inspection a copy of every return filed under section 205K.

Part 3—*continued***Section 205R**—*continued*

“(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.”

Section 207I(3)

Omit “the Chief Electoral Officer and”.

5

Section 207K

Subsection (2)(b): repeal and substitute:

“(b) if this is not possible, pay the amount of the donation, or its value, less \$1,000 to the Electoral Commission.”

Subsection 3(b): repeal and substitute:

10

“(b) if this is not possible, pay the amount of the donation, or its value, to the Electoral Commission.”

Subsection (4): omit “the Chief Electoral Officer and”.

Section 207O

Repeal and substitute:

15

“207O Duty of Electoral Commission in relation to donations

If the Electoral Commission believes that any person has committed an offence against this subpart or against subparts 4 to 6 of this Part, the Electoral Commission must report the facts on which that belief is based to the New Zealand Police.”

20

Section 207P

Repeal.

Section 209D

Repeal.

Section 209E(2)

Repeal.

25

Part 3—*continued***Section 221A(2)**

Omit “the Chief Electoral Officer,”.

Schedule 2

Form 1: omit “*Chief Electoral Officer” and substitute “*Electoral Commissioner”.

5

Note 4 of form 1: omit “The Chief Electoral Officer” and substitute “An Electoral Commissioner”.

Form 3: omit “you to” and substitute “the Electoral Commission to”.

Form 3: omit “You are” and substitute “An Electoral Commissioner, on behalf of the Electoral Commission, is”.

10

Form 6: omit “you to” and substitute “the Electoral Commission to”.

Form 6: omit “You are” and substitute “An Electoral Commissioner, on behalf of the Electoral Commission, is”.

Form 7: omit “you” and substitute “the Electoral Commission”.

Form 14: omit “Chief Electoral Officer” and substitute “Electoral Commissioner”.

15

Schedule 3	s 32
Consequential amendments to other Acts	
Part 1	
Change of “Chief Electoral Officer” to “Electoral Commission”	5
Citizens Initiated Referenda Act 1993 (1993 No 101)	
Section 26(2):	
Section 26A(2):	
Section 26B(1) and (2):	
Section 38:	10
Section 39(4) and (5):	
Section 40(2):	
Section 43(1A):	
Heading to section 44:	
Section 44(1):	15
Section 51B:	
Section 51G(2) and (3):	
Section 52(1)(c)(i):	
Form 2 of the Schedule:	
Form 2A of the Schedule.	20
Parliamentary Service Act 2000 (2000 No 17)	
Section 9A(1)(b), (3)(a), (4)(a), (4)(b), and (5)(a).	

Part 2

Further consequential amendments

Broadcasting Act 1989 (1989 No 25)

Section 70(2)(d): omit “the Chief Electoral Officer.”

Section 79D: omit “4 pm” and substitute “5 pm”. 5

Citizens Initiated Referenda Act 1993 (1993 No 101)

Definition of **Chief Electoral Officer** in section 2: repeal.

Section 2: insert in its appropriate alphabetical order:

“**Electoral Commission** has the same meaning as in section 3(1) of the Electoral Act 1993”. 10

Section 24(5): omit “sections 4 to 15” and substitute “**sections 4B to 9**”.

Section 24A(3): omit “sections 4 to 15” and substitute “**sections 4B to 9**”.

Section 39(1): omit “The Chief Electoral Officer must” and substitute “An Electoral Commissioner must, on behalf of the Electoral Commission.” 15

Section 44(2): omit “Chief Electoral Officer believes” and substitute “Electoral Commission believes”.

Section 44(2): omit “Chief Electoral Officer shall” and substitute “Electoral Commission must”. 20

Section 45(1)(a): ~~omit “Chief Electoral Officer in his or her office” and substitute “Electoral Commission in the office of the Electoral Commission.”~~ repeal and substitute:

“(a) must be kept by the Electoral Commission in the office of the Electoral Commission, or some other convenient place to be appointed by the Electoral Commission, for a period of 5 years after it has been received by the Electoral Commission; and”. 25

Section 45(2): omit “Chief Electoral Officer shall” and substitute “Electoral Commission must”. 30

Form 2 of the Schedule: omit “you to” and substitute “the Electoral Commission to”.

Form 2 of the Schedule: omit “You are” and substitute “An Electoral Commissioner, on behalf of the Electoral Commission, is”. 35

Part 2—*continued***Citizens Initiated Referenda Act 1993 (1993 No 101)**—*continued*

Form 2A of the Schedule: omit “you to” and substitute “the Electoral Commission to”.

Form 2A of the Schedule: omit “You are” and substitute “An Electoral Commissioner, on behalf of the Electoral Commission, is”.

Local Restoration Polls Act 1990 (1990 No 4) 5

Section 5(1): omit “Chief Electoral Officer shall” and substitute “Electoral Commission must”.

Section 7(a): omit “Chief Electoral Officer shall” and substitute “Electoral Commission must”.

Referenda (Postal Voting) Act 2000 (2000 No 48) 10

Section 8(1) and (2): repeal and substitute:

“(1) The Electoral Commission must designate an Electoral Commissioner to be the Returning Officer for a referendum.

“(2) The Returning Officer is, under the direction of the Electoral Commission, charged with the duty of implementing this Act, 15
except Part 4.”

Schedule 4 **s 32**
Consequential amendments to regulations

Part 1

Change of “Chief Electoral Officer” to
“Electoral Commission” 5

Citizens Initiated Referenda Regulations 1995 (SR 1995/227)
Regulation 7(3).

Court of Appeal (List Election Petitions) Rules 1998 (SR 1998/326)

Definition of **petition** in rule 2: 10

Rule 5(2):

Heading to Schedule 2 of form 1 of the Schedule.

Electoral Regulations 1996 (SR 1996/93)

Regulation 16:

Regulation 17(1): 15

Regulation 21(2)(b):

Regulation 22(6):

Regulation 34(2)(c):

Regulation 43(1), (2), and (3):

Regulation 44: 20

Regulation 45A(1) and (5):

Regulation 47(1)(a) and (2)(a):

Regulation 47A(1)(b):

Regulation 49(2)(d), (3)(d), and (5):

Regulation 50(1)(a) and (c): 25

Heading to regulation 54:

Regulation 54:

Heading to regulation 55:

Regulation 55:

Regulation 56(1), (2), (2)(a), and (2)(b)(ii): 30

Regulation 57(h):

Regulation 61(1)(b), (3)(a), and (3)(c):

Part 1—*continued***Electoral Regulations 1996 (SR 1996/93)**—*continued*

Regulation 62(1), (2), (2)(b)(ii), and (3):

Regulation 63(c):

Regulation 64A(1)(c), (2)(d), (3)(a), and (4):

Form 22 in Schedule 1.

Part 2

5

Further consequential amendments

Citizen Initiated Referenda Regulations 1995 (SR 1995/227)

Regulation 7(1): omit “Chief Electoral Officer shall” and substitute “Electoral Commission must”.

Regulation 7(1): omit “Chief Electoral Officer considers” and substitute “Electoral Commission considers”. 10

Constituency Election Petition Rules 2008 (SR 2008/383)

Form 1 of the Schedule: omit “*If the petition complains of the conduct of the Chief Electoral Officer, specify the Chief Electoral Officer’s name.*” and substitute “*Insert ‘the Electoral Commission’ if the petition complains of the conduct of the Electoral Commission.*” 15

Form 1 of the Schedule: omit “Chief Electoral Officer” in each place where it appears (except the place specified in the paragraph above) and substitute in each case “Electoral Commission”.

Court of Appeal (List Election Petitions) Rules 1998 (SR 1998/326) 20

Rule 6(2)(b): repeal and substitute:

“(b) in relation to the Electoral Commission, delivery to—

“(i) an Electoral Commissioner in person; or

“(ii) the address of the Electoral Commission.” 25

Form 1 of the Schedule: omit “, *if the petition complains of the conduct of the Chief Electoral Officer, the name of the Chief Electoral Officer*” and substitute “*insert ‘the Electoral Commission’ if the petition complains of the conduct of the Electoral Commission*”.

Part 2—*continued***Court of Appeal (List Election Petitions) Rules 1998 (SR 1998/326)**—*continued*

Form 1 of the Schedule: omit “Chief Electoral Officer” in each place where it appears (except the place specified in the paragraph above) and substitute in each case “Electoral Commission”.

Electoral Regulations 1996 (SR 1996/93)

Regulation 18(1): omit “Chief Electoral Officer under section 127 of the Act, the Chief Electoral Officer shall” and substitute “Electoral Commission under section 127 of the Act, the Electoral Commission must”. 5

Regulation 19: omit “the Chief Electoral Officer of his or her” in each place where it appears and substitute in each case “the Electoral Commission of its”. 10

Regulation 29(1): omit “Chief Electoral Officer shall be marked with his or her official mark” and substitute “Electoral Commission must be marked with the official mark of that Officer or of the Electoral Commission, as the case may be”. 15

Regulation 29(2): omit “Chief Electoral Officer” and substitute “an Electoral Commissioner (on behalf of the Electoral Commission)”.

Regulation 29(2): omit “his or her official mark” and substitute “the official mark of that Officer or of the Electoral Commission; ~~as the case may be~~”. 20

Regulation 47(2): omit “posted to the Chief Electoral Officer” and substitute “posted to the Electoral Commission”.

Regulation 47(2): omit “the Chief Electoral Officer or other authorised person” and substitute “an Electoral Commissioner, on behalf of the Electoral Commission, or other authorised person”. 25

Regulation 49(4): repeal and substitute:

“(4) An Electoral Commissioner, on behalf of the Electoral Commission, must—

“(a) enclose in 1 or more parcels the packets received by the Electoral Commission in accordance with this regulation; and 30

“(b) properly secure the parcels; and

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“(c) endorse each parcel with a description of its contents;
and

“(d) sign the endorsement and immediately forward the
parcels to the Clerk of the House of Representatives.”

Regulation 63: omit “Chief Electoral Officer or other authorised person” and substitute “Electoral Commission or an authorised person” 5

Regulation 63: omit “the Chief Electoral Officer or authorised person” and substitute “an Electoral Commissioner, on behalf of the Electoral Commission, or the authorised person”.

Regulation 63(a): omit “Chief Electoral Office” and substitute 10
“Electoral Commission”.

Regulation 64A(3): omit “The Chief Electoral Officer must” and
substitute “An Electoral Commissioner, on behalf of the Electoral
Commission, must”.

Legislative history

22 October 2009
27 October 2009

Introduction (Bill 93–1)
First reading and referral to Justice and Electoral
Committee
