

Electoral Referendum Bill

Government Bill

Explanatory note

General policy statement

The Electoral Referendum Bill (the **Bill**) provides for an indicative referendum to be held with the next general election. The referendum will give voters the opportunity to express an opinion on the preferred voting system for New Zealand. Legislation is required to hold a referendum at the same time as a general election.

The provisions of the Electoral Act 1993 (the **1993 Act**) that determine the conduct of the general election will generally apply to the conduct of the referendum, with necessary modifications, unless there is an express exclusion.

Voters may petition the High Court to review the result or conduct of the referendum in certain circumstances.

The Bill sets out the 2 questions that will be put to voters in the referendum. In the first question, voters will be asked if they wish to retain the current mixed member proportional representation voting system (**MMP**) or if they wish to change to another voting system. In the second question, voters will be asked which system they would choose if there were a change to another voting system, regardless of their answer to the first question. Voters will choose from 4 alternative voting systems in the second question: the first-past-the-post voting system, the preferential voting system, the supplementary member voting system, and the single transferable vote system. The Bill

summarises the key features of MMP and the 4 alternative voting systems.

Anyone advertising for or against any of the referendum options will need to include their name and address with the advertisement. Advertisers who spend, or intend to spend, over \$12,000 during the regulated period will need to register with the Electoral Commission. The Electoral Commission will publish a list of registered advertisers and their contact details. It will be an offence to fail to comply with these requirements.

The Bill provides that if 50% or more of the votes cast in the first question are in favour of retaining MMP, the Electoral Commission will be required to review MMP. In that case, the Electoral Commission will seek public opinion on MMP and will report to the Minister of Justice on whether any changes to MMP are necessary or desirable. The Bill lists the matters the Electoral Commission must review, and provides that other matters may be added to the list.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 states that the Act comes into force on the day after the date on which it receives the Royal assent.

Part 1

Preliminary provisions

Clause 3 states the purpose of the Act.

Clause 4 provides that the Act expires and is repealed on the day that is 6 months after the date on which the result of the referendum is declared. However, if *clause 55* (which provides for the circumstances when there must be a review of MMP) applies, *subpart 1 of Part 4* expires on 1 November 2012 or at a later date if specified by Order in Council.

Clause 5 sets out a number of defined terms.

Clause 6 states that the Act binds the Crown.

Part 2

Provisions relating to referendum

Subpart 1—Referendum on options for voting system

Clause 7 provides that a referendum must be held on the polling day appointed for the first general election that takes place after the commencement of the Bill. The clause also provides for the form of the referendum voting paper, as set out in *Schedule 1*, subject to the order of the 4 options in Part B of that paper being determined by the Chief Electoral Officer by lot.

Clause 8 provides that except as expressly provided otherwise, the provisions of the 1993 Act apply to the referendum, as far as they are relevant and with the necessary modifications, as if the referendum were the poll held for the general election.

Subpart 2—Conduct of referendum

Officers and polling places

Clause 9 provides that certain officials designated for the general election are also officials for the referendum, and similarly that the same polling places for the general election are the polling places for the referendum.

Eligibility to vote at referendum

Clause 10 provides that those qualified to vote at the general election are also eligible to vote at the referendum, and that the same electoral rolls apply to both the general election and the referendum.

Referendum voting paper

Clauses 11 and 12 relate to the issue of the voting paper and the method of voting.

Subpart 3—Counting of votes and declaration of results

Certain provisions of 1993 Act not to apply

Clause 13 excludes from the Bill the application of a number of sections of Part 6 of the 1993 Act.

Counting of early votes

Clause 14 requires the counting of early votes in both the general election and the referendum to begin as soon as practicable after 2 pm rather than 3 pm on polling day, if the specified circumstances apply.

Procedure after close of poll

Clauses 15 to 17 require the referendum voting papers to be provided to the returning officer for counting as soon as practicable after the close of the poll. Each returning officer must count the valid votes cast in the referendum and those rejected as informal and return the count of those votes to the Chief Electoral Officer.

Determination and declaration of results of referendum

Clauses 18 and 19 require the Chief Electoral Officer to ascertain the total number of valid votes for all districts in terms of the options for Part A and those for Part B of the referendum voting paper, and the total number of informal votes. The Chief Electoral Officer must declare the results for all districts combined and for each district separately by notice in the *Gazette*.

Subpart 4—Petitions

Clause 20 provides that the only way to question the referendum is to lodge a petition in the High Court.

Clauses 21 and 22 set out how and by whom a petition may be lodged, and who are required to be respondents, as well as those who may be respondents.

Clauses 23 and 24 provide for the procedures that apply to a petition and the scope of the High Court's jurisdiction.

Clause 25 provides that a fresh referendum is required if the court declares that the referendum is void.

Subpart 5—Offences and penalties

Clause 26 provides that the offences and penalties applying under the 1993 Act apply in respect of the referendum as far as they are relevant and with the specified modifications.

Clause 27 sets out the time limit for commencing prosecutions under this Part of the Bill.

Part 3 **Advertising**

Application of Part

Clause 28 provides that Part 3 applies to referendum advertisements instead of Part 6A of the 1993 Act, unless otherwise stated.

Interpretation provisions

Clause 29 defines a number of terms used in Part 3. Important terms are: promoter, registered promoter, and regulated period. A promoter is a person who publishes a referendum advertisement or has a referendum advertisement published, and a registered promoter is a promoter who is registered with the Electoral Commission or has been registered with the Commission at any time in the regulated period. Regulated period means the period starting 3 months before polling day and ending the day before polling day.

Clause 30 defines referendum advertisement. A referendum advertisement is an advertisement in any medium that is published in the period from the date that the Act comes into force until the day before polling day and that encourages or persuades voters to vote or not to vote in a particular way in the referendum. There are a number of exceptions relating to the official publicity campaign, news and comments, and expression of personal views.

Clause 31 defines referendum expenses. Referendum expenses include the cost of all the stages of publication of an advertisement and the reasonable market cost of materials used for the advertisement if the materials are provided free of charge or at below market value. Referendum expenses do not include the cost of travel, surveys and opinion polls, labour provided free of charge, or the replacement of any material destroyed or rendered unusable by anyone other than the promoter or a person acting on the promoter's behalf.

General rules for referendum advertisements

Clause 32 provides that a promoter is entitled to promote a referendum advertisement, if the promoter is either a registered promoter or

does not incur referendum expenses exceeding \$12,000 (inclusive of goods and services tax).

Clause 33 provides for referendum expenses in relation to an advertisement published before and during the regulated period to be apportioned over the period of publication so that a fair proportion of the expenses is attributed to the regulated period.

Clause 34 addresses the situation that arises if an advertisement is both a referendum advertisement and an election activity (essentially an advertisement) described in the 1993 Act. If the referendum receives less than 10% of the coverage of the advertisement, none of the expenses are to be attributed to the referendum advertisement. In that case, 100% of the expenses will be attributed to the election activity.

Clause 35 prohibits a promoter from entering into an agreement or an arrangement for the purpose of defeating the requirement to register if the promoter's referendum expenses exceed \$12,000.

Clause 36 requires the promoter of a referendum advertisement to ensure that the advertisement includes a statement of the promoter's name and address. If the advertisement is in a print medium, the statement must be clearly visible.

Registered promoters

Clauses 37 to 42 address the requirement for an application to be a registered promoter to be made to the Electoral Commission, the grounds on which registration may be refused, the Commission's decision on an application for registration, notification of a change of details on the register, and cancellation and lapse of registration.

Clauses 43 to 49 relate to the establishment, purposes, and operation of the register.

Obligations of promoters

Clause 50 requires a promoter to keep records to enable verification of referendum expenses.

Offences and penalties in relation to referendum advertising

Clause 51 provides for offences in relation to advertising.

Enforcement

Clause 52 provides for timing in relation to the commencement of prosecutions.

Clause 53 requires the Electoral Commission to inform the New Zealand Police if the Commission believes an offence has been committed. The Commission need not inform the Police if the offence is inconsequential in nature.

Part 4

Review and miscellaneous provisions

Subpart 1—Review of mixed member proportional representation voting system

Clause 54 provides that this subpart applies if 50% or more of the votes cast in relation to Part A of the voting paper support retention of MMP.

Clause 55 requires the Electoral Commission to commence the review as soon as practicable after the result of the referendum is declared. The purpose of the review is to—

- determine through consultation with the public whether changes to MMP are necessary or desirable;
- make recommendations for changes to the system to the Minister of Justice.

Clause 56 specifies the matters that the Electoral Commission must review. Those matters are—

- the 5% threshold for a party to obtain list seats;
- the overhang, namely the increase in the number of seats in Parliament that occurs if a party's constituency candidates win more seats than the party would be entitled to as a result of the party vote;
- dual candidacy, namely the capacity of a person to be both a constituency candidate and a list candidate, and for a list member of Parliament to seek election in a by-election;
- a party's ability to determine the order of candidates on its party list and the inability of voters to rank list candidates in order of preference:

- the effect of population change on the ratio of electorate seats to list seats and the maintenance of proportionality:
- other features of MMP referred to the Commission under section 5(e) of the 1993 Act or that the Commission wishes to consider.

The Electoral Commission must not review—

- Māori representation in Parliament:
- the total number of members of Parliament.

Clause 57 empowers the Electoral Commission to establish a process for the review.

Clause 58 requires the Electoral Commission to report on the outcome of the review with recommendations for any changes. The report must be presented to the Minister of Justice by 31 October 2012 or a later date specified by Order in Council.

Subpart 2—Miscellaneous provisions

Clause 59 empowers the Governor-General, by Order in Council, to validate irregularities.

Clause 60 empowers the Governor-General, by Order in Council, to make regulations.

Amendment to Privacy Act 1993

Clause 61 makes an amendment to the Privacy Act 1993, with the effect that the register of promoters is a public register.

Schedules

There are 3 schedules as follows:

- *Schedule 1* sets out the form for the referendum voting paper:
- *Schedule 2* describes the optional voting systems on the voting paper:
- *Schedule 3* sets out the form for a petition to the High Court.

Regulatory impact statement

In accordance with Cabinet Office Circular CO (09) 08, this explanatory note does not contain a regulatory impact statement for the Bill.

A copy of the regulatory impact statement is available at the following Internet sites:

- <http://www.treasury.govt.nz/publications/informationreleases/ris>:
 - <http://www.justice.govt.nz/policy-and-consultation/regulatoryimpactstatements/referendum-on-mmp>.
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Hon Simon Power

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Review and miscellaneous provisions

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Electoral Referendum Act **2010**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

5

Part 1

Preliminary provisions

3 Purpose of Act

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

10

4 Expiry

- (1) This Act expires and is repealed on the close of the day that is 6 months after the date on which the result of the referendum is declared.
- (2) Despite **subsection (1)**, if **section 55** (which provides for the circumstance when there must be a review of MMP) applies, **subpart 1 of Part 4** expires and is repealed on 1 November 2012 or at a later date as may be specified by Order in Council made under **section 60(b)**.

5 Interpretation

- (1) In this Act, unless the context otherwise requires,—
- 1993 Act** means the Electoral Act 1993
- general election** means the first general election that takes place under the 1993 Act after the commencement of this Act
- mixed member proportional representation voting system** and **MMP** mean the voting system for the House of Representatives provided for by the 1993 Act
- option** means—
- (a) the 2 options for the question in Part A of the referendum voting paper; and
- (b) the 4 options for the question in Part B of that paper
- question** means the question specified in each of Parts A and B of the referendum voting paper
- referendum** means the indicative referendum of electors provided for by **section 7**
- referendum voting paper** means the voting paper the form of which is determined under **section 7**.
- (2) Unless the context otherwise requires, a term defined in the 1993 Act and not otherwise defined in this Act has the meaning given in that Act.
- (3) The terms **ballot box**, **ballot paper**, **poll**, and **polling**, in relation to the general election, mean the same in this Act as they do in the 1993 Act.

6 Act binds the Crown

This Act binds the Crown.

Part 2

Provisions relating to referendum

Subpart 1—Referendum on options for voting system

- 7 Referendum on day of general election** 5
- (1) On the day appointed for the polling to take place for the general election, a referendum of electors must be held on each of the questions about the voting system set out in Parts A and B of the referendum voting paper in **Schedule 1**.
- (2) Despite the form of the referendum voting paper in **Schedule 1**, the order of the options for the question in Part B of the referendum voting paper—
- (a) must be determined by the Chief Electoral Officer by lot; and
- (b) must not be listed in the order set out in the form in **Schedule 1**, unless that order is the result of the determination made under **paragraph (a)**. 15
- (3) **Schedule 2** sets out the key characteristics of—
- (a) the mixed member proportional representation voting system; and 20
- (b) each of the options for the question in Part B of the referendum voting paper.
- 8 Application of Electoral Act 1993**
- (1) The provisions of the 1993 Act and of any regulations made under that Act apply, as far as they are applicable and with any necessary modifications, to the referendum as if it were the poll held for the general election, unless the provision is excluded or modified, expressly or impliedly, by a provision in, or made under, this Act. 25
- (2) **Subsection (1)** is subject to the provisions of this Act and of any regulations made under it. 30

Subpart 2—Conduct of referendum

Officers and polling places

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

- (1) The returning officer for a district, the manager of a polling place, and other officials appointed under the 1993 Act for the general election are the returning officer, the manager, and officials for the purposes of the referendum. 5
- (2) The polling places appointed under section 155 of the 1993 Act for each district for the purposes of the general election are the polling places for the referendum. 10

Eligibility to vote at referendum

10 Who may vote

- (1) The persons who are qualified to vote at the referendum are those qualified under section 60 of the 1993 Act to vote at the general election. 15
- (2) The electoral rolls for the purpose of the referendum are the electoral rolls that are in force under the 1993 Act.

Referendum voting paper

11 Issue of referendum voting paper 20

- (1) When a ballot paper is issued to a person qualified to vote at the general election, the issuing officer must also issue a referendum voting paper to that person.
- (2) Section 167(3)(b) and (c) of the 1993 Act do not apply in respect of a referendum voting paper. 25

12 Method of voting

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

- (a) the option in Part A that the person wishes to vote for:
- (b) the option in Part B that the person wishes to vote for. 30

Subpart 3—Counting of votes and declaration of results

Certain provisions of 1993 Act not to apply

- 13 Provisions of 1993 Act not to apply to count of referendum votes** 5
- The following provisions of the 1993 Act do not apply to the counting of referendum votes:
- (a) sections 160, 172(4) to (7), and 174F (which relate to the appointment and functions of scrutineers); and
 - (b) sections 174 and 174B (which provide for a preliminary count of votes cast in polling places); and 10
 - (c) section 176 (which provides for marked copies of the rolls to be compared).

Counting of early votes

- 14 Time at which preliminary count of early votes must begin** 15
- Despite section 174C(5)(a) of the 1993 Act, if the conditions stated in section 174D(2) of that Act apply, each returning officer must, as soon as practicable after 2 pm on polling day, commence the preliminary count of early votes,—
- (a) in the case of the general election, in accordance with the requirements of section 174C(1) to (4) and (6) of the 1993 Act; and 20
 - (b) in the case of the referendum, in accordance with the requirements of **section 16**, with any necessary modifications. 25

Procedure after close of poll

- 15 Referendum voting papers sent to returning officer before being counted**
- As soon as practicable after the close of the poll, the manager of a polling place must— 30
- (a) unseal the ballot boxes; and
 - (b) separate the referendum voting papers from the ballot papers for the general election; and
 - (c) enclose the used referendum voting papers and counter-foils, unused referendum voting papers, and spoilt ref- 35

- erendum voting papers in parcels endorsed as required
for ballot papers under section 174A(1)(b) of the 1993
Act; and
- (d) send those parcels to the returning officer.
- 16 Returning officer to count referendum votes for district** 5
As soon as practicable after the parcels of referendum voting
papers are received by a returning officer, the returning officer
must, in the presence of a Justice of the Peace, ascertain the
number of—
- (a) valid votes cast for each of the options for the question 10
in Part A of the referendum voting paper; and
- (b) valid votes cast for each of the options for the question
in Part B of that paper; and
- (c) informal votes for each Part of that paper.
- 17 Return of results of count to Chief Electoral Officer** 15
Each returning officer must, as soon as practicable after com-
pleting the count of the referendum votes, return the results of
the count to the Chief Electoral Officer.
- Determination and declaration of result of
referendum* 20
- 18 Determination of results by Chief Electoral Officer**
As soon as practicable after receiving the results of the count
from each returning officer, the Chief Electoral Officer must
ascertain, from the results of the count returned by each re-
turning officer under **section 17**,— 25
- (a) the total number of valid votes for all districts combined
for each option for the question in Part A of the refer-
endum voting paper; and
- (b) the total number of valid votes for all districts combined
for each option for the question in Part B of that paper; 30
and
- (c) the total number of informal votes for each Part of that
paper.

19 Declaration of official result of referendum

- (1) The Chief Electoral Officer must declare the result of the referendum by notice in the *Gazette*, giving the total number of valid votes cast for each option in relation to the question in each Part of the referendum voting paper— 5
- (a) for all districts combined; and
- (b) for each district separately.
- (2) The notice required by **subsection (1)** must be published on or before the latest day appointed under section 139(1) of the 1993 Act for the return of the writ for the general election. 10

Subpart 4—Petitions

20 Method of questioning referendum

- (1) The referendum may not be questioned except by petition to the High Court in accordance with this subpart.
- (2) Except as provided in this subpart, the provisions of this subpart apply instead of the provisions of Part 8 of the 1993 Act. 15

21 Petition for inquiry

- (1) If a group of 6 or more electors are dissatisfied with the result of the referendum, as declared by notice in the *Gazette* under **section 19(1)(a)**, they may petition the High Court for an inquiry into the conduct of— 20
- (a) the referendum; or
- (b) any person connected with it.
- (2) A petition must specify the grounds of the complaint, which may only be that— 25
- (a) the result declared under **section 19(1)(a)** was wrong; or
- (b) irregularities in the conduct of the referendum or of any person connected with it materially affected the result.
- (3) A petition must be filed— 30
- (a) not later than 28 days after publication of the *Gazette* notice under **section 19(1)**; and
- (b) in the form set out in **Schedule 3** or to similar effect; and
- (c) in the registry of the High Court nearest to the place 35 where 1 or more of the petitioners live.

- (4) The Registrar of the High Court where the petition is filed must send a copy of the petition to the Chief Electoral Officer.

22 Respondents

- (1) A group of 6 or more electors may, not later than 3 working days before the commencement of the inquiry, file a notice of intention to oppose a petition, and those persons are respondents to the petition. 5
- (2) If a petition relates to the conduct of the Chief Electoral Officer or a returning officer, that person is a respondent to the petition.

23 Procedural matters 10

The following provisions of Part 8 of the 1993 Act apply to the referendum, to the extent that they are relevant and with any necessary modifications:

- (a) sections 232 to 234 (which provide for security for costs, the hearing of more than 1 petition, and the making of rules of court for the purposes of petitions); and 15
- (b) sections 235, 236(2), (4), (5), and (6), 240, 241, 242, and 247 to 249 (which relate to the conduct of a trial); and 20
- (c) sections 250 to 255, and 256(1)(a) and (b) (which relate to costs, the withdrawal or abatement of a petition, and matters relevant to respondents); and
- (d) section 257 (which requires submission of the High Court's report to the Attorney-General). 25

24 Jurisdiction of High Court

- (1) An election petition under this subpart must be tried in open court without a jury.
- (2) The High Court may give leave for grounds other than those stated in the petition to be inquired into, on whatever terms and conditions that the court considers just. 30
- (3) Despite **section 21(2)**, the court may, in its discretion, inquire into and adjudicate on any matter relevant to the petition including, in particular,—

- (a) receiving evidence that the number of valid votes cast for an option, whether across all districts or in a particular district, was higher or lower than the number declared under **section 19(1)(a) or (b)**, as the case may be: 5
- (b) directing that there be a recount of some or all of the referendum votes.
- (4) At the conclusion of the trial of a petition, the court must determine and declare either—
- (a) the total number of valid votes recorded for each option in each of Parts A and B of the referendum voting paper; or 10
- (b) that the referendum is void because of an irregularity that, in the opinion of the court, materially affected the result of the referendum. 15
- 25 Fresh referendum**
- (1) If the Court declares the referendum to be void,—
- (a) the Registrar of the court must notify the Chief Electoral Officer that the referendum is void; and
- (b) a fresh referendum must be held. 20
- (2) Not later than 30 working days after a declaration is made under **section 24(4)(b)**, the Governor-General must, by Order in Council, appoint the day for the fresh referendum to be held, which must not be later than 6 months after the date of the declaration. 25
- (3) The same roll of electors must be used at the fresh referendum as was used at the referendum declared to be void.
- (4) The provisions of this Part apply to the conduct of any fresh referendum, with all necessary modifications and to the extent that they are relevant. 30

Subpart 5—Offences and penalties

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

The offences and penalties provided for in the 1993 Act in relation to the conduct of the poll for a general election apply in 35

respect of the referendum, to the extent that they are relevant, with the following modifications:

- (a) references to the poll taken for an election are to be read as references to the poll taken for the referendum; and
- (b) references to a ballot paper are to be read as references to a referendum voting paper; and 5
- (c) references to a candidate or a political party are to be read as references to an option for the question in Part A or in Part B of the referendum voting paper, or to a proponent of an option, as the case may require; and 10
- (d) references to party colours and party lapel badges are to be read as references to colours or badges identified with an option to which the referendum relates; and
- (e) references to an election campaign are to be read as including references to a campaign in respect of 1 or more options for the question in Part A or in Part B of the referendum voting paper; and 15
- (f) references to the 1993 Act are to be read as references to this Act.

27 Time limit for prosecutions 20

A prosecution under this Part must be commenced—

- (a) within 6 months of the date on which the prosecutor is satisfied that there is sufficient evidence to warrant the commencement of proceedings; but
- (b) no later than 3 years after the alleged offence was committed. 25

Part 3

Advertising

Application of Part

28 Application of this Part 30

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

*Interpretation provisions***29 Interpretation**

In this Part, unless the context otherwise requires,—

address means—

- (a) in relation to an individual— 5
 - (i) the full street address of the place where that individual usually lives; or
 - (ii) if that individual has a place of business, the full street address of that place; or
- (b) in relation to a body corporate or unincorporated,— 10
 - (i) the full street address of the body's principal place of business; or
 - (ii) the full street address of the body's head office

contact address, in relation to a registered promoter, means the address included in the contact details for that promoter given in the notice required under **section 37** 15

contact details means—

- (a) an address; and
- (b) an email address; and
- (c) phone numbers 20

election activity has the meaning given in section 205 of the 1993 Act

periodical means a newspaper, magazine, or trade or professional journal that—

- (a) was established for purposes unrelated to the conduct of the referendum; and 25
- (b) since its establishment has been—
 - (i) published at regular intervals; and
 - (ii) generally available to members of the public

promoter— 30

- (a) means a person on whose initiative a referendum advertisement— 30
 - (i) is published; or
 - (ii) is to be published; and
- (b) includes, without limitation, a person— 35
 - (i) who enters into a contract, arrangement, or understanding with another person to the effect

	that the other person publish a referendum advertisement; or	
	(ii) who publishes a referendum advertisement in the absence of such a contract, arrangement, or understanding	5
	publish , in relation to an advertisement, means to—	
	(a) print or insert in a periodical published or distributed in New Zealand; or	
	(b) issue, hand out, or display to the public; or	
	(c) send to any member of the public by any means; or	10
	(d) deliver to any member of the public, or leave at a place owned or occupied by a member of the public; or	
	(e) broadcast (for example, in the form of a radio or television broadcast); or	
	(f) include in a film or video displayed to the public; or	15
	(g) disseminate to the public by means of the Internet or any other electronic medium; or	
	(h) store electronically in a way that is accessible to the public	
	referendum advertisement has the meaning given in section 30	20
	referendum expenses has the meaning given in section 31	
	register means the register of registered promoters established and maintained under section 32F	
	registered promoter —	25
	(a) means a promoter who is registered under section 39 ; and	
	(b) includes a promoter who at any time in the regulated period has been registered under section 39	
	regulated period means the period that—	30
	(a) commences 3 months before the day appointed as the polling day under the 1993 Act; and	
	(b) ends with the close of the day before the polling day.	
30	Meaning of referendum advertisement	
(1)	In this Part, referendum advertisement means an advertisement in any medium that—	35

-
- (a) may reasonably be regarded as encouraging or persuading voters—
- (i) to vote in a particular way in the referendum; or
 - (ii) not to vote in a particular way in the referendum;
- and
- (b) is published at any time from the date of the commencement of this Act until the close of the day before polling day. 5
- (2) However, none of the following is a referendum advertisement: 10
- (a) an advertisement that is published, or caused or permitted to be published, by the Electoral Commission, the Chief Registrar of Electors, or any other agency charged with responsibilities in relation to the conduct of any official publicity or information campaign to be conducted on behalf of the Government of New Zealand and relating to electoral matters or the conduct of the general election or the referendum and that either contains a statement indicating that the advertisement has been authorised by that officer or agency, or contains a symbol indicating that the advertisement has been authorised by that officer or agency: 15 20
 - (b) any news or comments, other than advertising material, relating to the referendum in a periodical that is written by, or is selected by, or with the authority of, the editor solely for the purpose of informing, enlightening, or entertaining readers: 25
 - (c) statements that do not promote, or could not reasonably be regarded as promoting, a particular option for the question in Part A or the question in Part B of the referendum voting paper: 30
 - (d) any content of a radio or television programme, other than advertising material, that has been selected by, or with the authority of, a broadcaster (within the meaning of the Broadcasting Act 1989) solely for the purpose of informing, enlightening, or entertaining the programme's audience: 35
 - (e) any news or comments, other than advertising material, published on a news media Internet site that is writ-

ten by, or selected by or with the authority of, the editor or person responsible for the Internet site solely for the purpose of informing, enlightening, or entertaining readers:

- (f) the publication by an individual, on a non-commercial basis, of his or her personal political views on or through the Internet or any other electronic medium. 5

31 Meaning of referendum expenses

In this Part, **referendum expenses**—

- (a) includes the cost of— 10
- (i) the preparation, design, composition, printing, distribution, postage, and publication of the advertisement; and
 - (ii) the reasonable market value of any material used for or applied towards the advertisement that is provided free of charge or below reasonable market value; but 15
- (b) excludes the cost of—
- (i) travel; and
 - (ii) the conduct of any survey or public opinion poll; and 20
 - (iii) the labour of any person that is provided free of charge by that person; and
 - (iv) the replacement of any material used in respect of a referendum advertisement that has been destroyed or rendered unusable by 1 or more persons (other than the promoter or a person acting on his or her behalf) or by the occurrence of an event beyond the control of the promoter and a person acting on his or her or its behalf. 25 30

General rules for referendum advertisements

32 Persons who may promote referendum advertisements

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

- (a) is a registered promoter; or 35
- (b) does not incur referendum expenses exceeding \$12,000 (inclusive of goods and services tax) in relation to ref-

erendum advertisements published during the regulated period.

33 Apportionment of advertising expenses in relation to regulated period

- (1) This section applies if a promoter described in **section 32** 5
incurs referendum expenses in relation to a referendum advertisement that is published both before and within the regulated period.
- (2) If this section applies,—
- (a) the advertisement is deemed to have been published 10
within the regulated period; and
- (b) the expenses must be apportioned so that a fair proportion of those expenses is attributed to the referendum advertising carried on during the regulated period.
- (3) Only the fair proportion of the expenses determined in accordance with **subsection (1)** is expenses for the purposes of **section 32**. 15

34 Joint election and referendum advertisements

- (1) This section applies if an advertisement comprises both—
- (a) an election activity; and 20
- (b) a referendum advertisement.
- (2) The referendum expenses incurred in respect of the advertisement must be apportioned between the election activity and the referendum advertisement in proportion to the coverage the advertisement gives to the election activity and referendum advertisement. 25
- (3) However, if the referendum receives less than 10% of the coverage provided by the advertisement, the expenses relating to the advertisement—
- (a) must not be included in the referendum expenses of the 30
promoter for the purpose of this subpart; and
- (b) must be included as election expenses for the purposes of the 1993 Act.
- (4) Only the proportion of the expenses determined in accordance with **subsection (2) or (3)** as relating to the referendum advertisement is referendum expenses. 35

- 35 Obligation not to circumvent limitations imposed by this Part**
- (1) A promoter may not enter into an agreement, or enter into an arrangement or understanding, with another person for the purpose of circumventing the maximum amount prescribed in **section 32** for referendum expenses in relation to referendum advertisements published in the regulated period. 5
- (2) A body corporate or unincorporated may not split itself into 2 or more bodies for the purpose of circumventing the maximum amount prescribed in **section 32**. 10
- 36 Referendum advertisement to state name and address of promoter**
- (1) A promoter of a referendum advertisement must ensure that the publication of the advertisement includes a statement of the promoter's name and address. 15
- (2) If the referendum advertisement is published in a printed form, the statement of the promoter's name and address must be clearly visible in the advertisement.
- (3) If the promoter of a referendum advertisement is a registered promoter, the promoter's name and address referred to in **sub-section (1)** must be the name and address of the promoter that appears in the register. 20
- (4) This section applies from the date of the commencement of this Act until the close of the day before polling day.
- Registered promoters* 25
- 37 Application for registration**
- (1) An application to be a registered promoter must be—
- (a) made to the Electoral Commission; and
- (b) made—
- (i) if the promoter is an individual, by that individual; or 30
- (ii) if the promoter is a body corporate, by a person who is duly authorised by the board or other governing body of the body corporate to make the application; or 35

- (iii) if the promoter is an unincorporated body, by the representative of the body who is, or appears to be, authorised by the body for the purpose; and
- (c) made in the form required by the Electoral Commission; and 5
- (d) accompanied by a notice setting out the contact details of—
- (i) the promoter; and
- (ii) the person described in **paragraph (b)(ii) or (iii)**, as the case may be, who made the application if the promoter is a body corporate or unincorporated. 10
- (2) An application must be signed by the person who made the application.
- 38 Grounds on which registration must be refused** 15
- The Electoral Commission must refuse an application by a promoter to be registered if—
- (a) the application does not comply with **section 37**; or
- (b) the name of the promoter is—
- (i) offensive; or 20
- (ii) likely to cause confusion to or mislead members of the public.
- 39 Electoral Commission’s decision on application**
- (1) If there are no grounds under **section 38** to refuse an application, the Electoral Commission must within 10 working days after the day on which the Commission receives the application— 25
- (a) register the promoter; and
- (b) notify the person who made the application of the date of registration of the promoter. 30
- (2) If there are grounds under **section 38** to refuse an application, the Electoral Commission must within 10 working days—
- (a) refuse the application; and
- (b) notify the person who made the application of the refusal and the reasons. 35

- 40 Obligation to notify Electoral Commission of change in contact details**
 A registered promoter must give written notice to the Electoral Commission of any change in the promoter’s contact details within 10 working days after the change. 5
- 41 Cancellation of registration**
- (1) The Electoral Commission must cancel the registration of a promoter if the promoter—
- (a) requests that it do so; and
 - (b) has not incurred expenses in relation to referendum advertisements that exceed the amount specified in **section 32**. 10
- (2) If the Electoral Commission cancels the registration of a promoter under **subsection (1)**, the Electoral Commission must, as soon as is reasonably practicable, and in any case not later than 10 working days after the date of the cancellation, give the promoter written notice that it has cancelled the registration. 15
- 42 Lapse of registration**
 Unless earlier cancelled under **section 41**, a promoter’s registration lapses on the day provided for the expiry of this Act in **section 4(1)**. 20
- 43 Establishment of register**
- (1) The Electoral Commission must establish and maintain a register of registered promoters. 25
- (2) The Electoral Commission must enter in the register—
- (a) the name of every registered promoter; and
 - (b) the contact address for every registered promoter.
- (3) The Electoral Commission may enter in the register any other information that the Electoral Commission considers necessary or desirable for the purposes of the register. 30
- 44 Purposes of register**
 The purposes of the register are—
- (a) to enable members of the public to—

- (i) identify registered promoters; and
 (ii) find out the name and contact address of a registered promoter; and
 (b) to assist with the enforcement of the provisions of this Part. 5
- 45 Form of register**
 The register may be kept—
 (a) as an electronic register (for example, on the Electoral Commission’s Internet site); or
 (b) in any other manner that the Electoral Commission thinks fit. 10
- 46 Alterations to register**
 The Electoral Commission may at any time make any amendments to the register that are necessary to—
 (a) reflect any changes in the information referred to in **section 40**; or 15
 (b) correct any error or omission on the part of the Electoral Commission or any person to whom the Electoral Commission has delegated its functions, duties, or powers.
- 47 Register to be public** 20
 The Electoral Commission must—
 (a) make the register available for public inspection at its office during ordinary office hours, without fee; and
 (b) supply to a person copies of all or part of the register on request, subject to payment of any charges that may be made under the Official Information Act 1982. 25
- 48 Search of register**
 A person may search the register for a purpose set out in **section 44**.
- 49 When search constitutes interference with privacy of individual** 30
 A search of the register for personal information that has not been carried out for a purpose specified in **section 44** con-

stitutes an action that is an interference with the privacy of an individual under section 66 of the Privacy Act 1993.

Obligations of promoters

50 Obligation to retain records

- (1) Every promoter must take all reasonable steps to ensure the retention of the records, documents, and accounts necessary to enable verification of the referendum expenses they incurred in relation to a referendum advertisement. 5
- (2) **Subsection (1)** applies until the close of the day that is 3 years after polling day. 10

Offences and penalties in relation to referendum advertising

51 Offences and penalties

- (1) Every person commits an offence against this Part who wilfully— 15
- (a) during the regulated period incurs expenses in relation to referendum advertisements exceeding \$12,000 if the person is not a registered promoter;
- (b) contravenes the prohibitions in **section 35**;
- (c) contravenes the requirement under **section 36** to include a statement of the promoter's name and address in a referendum advertisement: 20
- (d) breaches the requirement under **section 50** to retain records, documents, and accounts.
- (2) Every person who commits an offence against— 25
- (a) **subsection (1)(a), (b), or (c)** is liable on conviction on indictment to a fine not exceeding \$40,000; and
- (b) **subsection (1)(d)** is liable on summary conviction to a fine not exceeding \$40,000.

Enforcement

30

52 Time limit for prosecutions

- (1) A prosecution under **section 51** must be commenced—

- (a) within 6 months of the date that the prosecutor is satisfied that there is sufficient evidence to warrant the commencement of proceedings; but
- (b) no later than 3 years after the alleged offence was committed. 5
- (2) **Subsection (1)** applies whether or not registration has been cancelled under **section 41** or has lapsed under **section 42**.
- 53 Duty of Electoral Commission**
- (1) If the Electoral Commission believes that any person has committed an offence under **section 51(1)(a), (b), or (d)**, it must report the facts on which that belief is based to the New Zealand Police. 10
- (2) Despite **subsection (1)**, the Electoral Commission need not report the facts on which the belief that an offence has been committed is based if the Commission considers that the offence is so inconsequential that there is no public interest in reporting those facts to the New Zealand Police. 15

Part 4

Review and miscellaneous provisions

Subpart 1—Review of mixed member proportional representation voting system 20

- 54 Application of this subpart**
- This subpart applies if the Chief Electoral Officer makes a declaration in accordance with **section 19** that the option in Part A of the referendum voting paper favouring retention of the mixed member proportional representation system of voting is supported by 50% or more of the votes cast in relation to Part A. 25
- 55 Review**
- (1) The Electoral Commission must commence a review of the mixed member proportional representation system of voting for the House of Representatives as soon as practicable after the result of the referendum is declared under **section 19**. 30
- (2) The purpose of the review is to—

- (a) determine through a public consultative process whether changes to MMP are necessary or desirable; and
- (b) make any recommendations for changes to the system to the Minister of Justice. 5

56 Scope of review

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

- Threshold for list seats*
- (a) the requirement that in order for a party to be eligible for any list seats— 10
 - (i) it must achieve 5 percent of the total number of party votes; or
 - (ii) a candidate of the party must be elected to an electorate seat; and
- Overhang* 15
- (b) the increase in the size of Parliament that occurs if a party's constituency candidates have won more seats than the party is entitled to as a result of the party vote; and
- Dual candidacy* 20
- (c) the capacity of a person at a general election to be both a candidate for an electoral district and a candidate whose name is included in a party list in a general election, and the capacity of a member of Parliament who holds a list seat to be a candidate in a by-election; and 25
- Order of candidates on party lists*
- (d) a party's ability to determine the order of candidates on its party list and the inability of voters to rank list candidates in order of preference; and
- Effect of population change on proportionality* 30
- (e) the ratio of electorate seats to list seats that results from the calculation of the number of general electorate seats and the effect of that calculation on proportionality; and
- Other matters*
- (f) any other feature of the voting system referred to the Commission under section 5(e) of the 1993 Act. 35

- (2) In addition to the matters specified in **subsection (1)**, the Electoral Commission may, in undertaking the review, consider other aspects of the mixed member proportional representation voting system.
- (3) Despite **subsections (1)(f) and (2)**, the Electoral Commission must not review— 5
- (a) Māori representation:
 - (b) the number of members of Parliament.

57 Process for review

- (1) The Electoral Commission must establish a process for the review that the Commission considers gives the public adequate time and opportunity to comment on the subject matter of the review. 10
- (2) In carrying out the review, the Electoral Commission may seek advice from any person who has expertise in the subject matter of the review. 15

58 Report and recommendations

- (1) The Electoral Commission must—
- (a) prepare a report of the review that includes recommendations on whether any change to the voting system is necessary or desirable; and 20
 - (b) provide the report to the Minister of Justice by 31 October 2012 or a later date specified by Order in Council.
- (2) As soon as practicable after receiving the report, the Minister must present a copy to the House of Representatives. 25

Subpart 2—Miscellaneous provisions

59 Validation of irregularities

- (1) This section applies if—
- (a) anything required to be done by or under this Act or any regulations under this Act— 30
 - (i) is not done at the time required; or
 - (ii) cannot be done at the time required; or
 - (iii) is done before or after the time required; or
 - (iv) is done in any other irregular manner or form; or

- (b) sufficient provision is not made by or under this Act or any regulations under this Act.
- (2) The Governor-General may, by Order in Council, at any time before or after the time within which anything is required to be done,— 5
- (a) extend the time; or
- (b) validate anything done before or after the time required; or
- (c) validate anything irregularly done in manner or form; or 10
- (d) make such other provision for the situation as he or she thinks fit.
- (3) However, this section does not apply to any matter described in **subsection (1)(a)** if the High Court finds that the irregularity has materially affected the result of the referendum. 15

60 Regulations

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

- (a) prescribing forms required for any matter in relation to the referendum: 20
- (b) amending the date specified in **section 58** by which the Electoral Commission must present a copy of its report of the review of the mixed member proportional representation system of voting to the Minister of Justice:
- (c) prescribing fees for the purposes of this Act: 25
- (d) providing for matters that are contemplated by, necessary for the administration of, or necessary for giving full effect to this Act.

Amendment to Privacy Act 1993

- ## 61 Amendment to Privacy Act 1993 30
- (1) This section amends the Privacy Act 1993.
- (2) Part 1 of Schedule 2 is amended by inserting the following item in its appropriate alphabetical order:

Electoral Referendum Act **Section 43**
2010

Schedule 1

Form for referendum voting paper

s 7(1), (2)

*[[INSERT ELECTORATE NAME
AND NUMBER]]*

[Consecutive Number]

INDICATIVE REFERENDUM ON NEW ZEALAND'S VOTING SYSTEM

*[[INSERT ELECTORATE NAME
AND NUMBER]]*

Official Mark

EXPLANATION

1. This voting paper has two parts.
2. Vote by putting a tick in the circle immediately after the option you choose.
3. You may vote in Part A **and** Part B **or** in Part A **only** if you wish.

Part A

Should the current MMP voting system be retained?



Vote for only one option

Vote Here

I vote to **retain** the MMP voting system

I vote to **change** to another voting system



Part B

Regardless of how you voted under Part A, if there was a change to another voting system, which voting system would you choose?



Vote for only one option

Vote Here

I would choose the **First Past The Post** system (FPP)

I would choose the **Preferential Voting** system (PV)

I would choose the **Single Transferable Vote** system (STV)

I would choose the **Supplementary Member** system (SM)



FINAL DIRECTIONS

- If you spoil this voting paper, return it to the officer who issued it and apply for a new paper.
- After voting, fold this voting paper so that its contents cannot be seen and **place it in the referendum ballot box**.
- You must not take this voting paper out of the polling place.

Schedule 2**s 7(3)****Description of voting systems****1 Purpose of schedule**

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

2 Interpretation

In this schedule,—

FPP means the first-past-the-post voting system

MMP means the mixed member proportional representation voting system

PV means the preferential voting system

SM means the supplementary member voting system

STV means the single transferable vote system.

3 Assumptions common to alternative voting systems

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

4 Mixed member proportional representation voting system

- (1) Parliament is made up of members who are elected by their respective electorates and members elected from party lists.
- (2) Each voter has 2 votes,—
 - (a) a vote for a party; and
 - (b) a vote for his or her preferred candidate in his or her electorate.
- (3) Each electorate elects 1 member of Parliament on a first-past-the-post basis.
- (4) The party vote is counted on a nationwide basis.

-
- (5) A party is eligible for a share of the list seats if the party gains 5% or more of the party vote or wins 1 or more electorate seats.
- (6) The list seats in Parliament are allocated so that the total number of seats a party holds is in proportion to the number of party votes the party received, taking into account the number of electorate seats the party holds. 5
- (7) A party's list seats are allocated to its candidates in the order in which they appear on the party's list (excluding those who win an electorate seat).
- (8) A party may win a greater number of electorate seats than the number of seats to which it would be entitled by reason of the party vote result. In that case, the party keeps the electorate seats. In order to maintain proportionality, the number of list seats in Parliament increases by the difference for that term of Parliament. The extra seats are commonly known as the overhang. 10 15
- 5 First-past-the-post voting system**
- (1) Parliament is made up of members who are elected by their respective electorates. There are no list members.
- (2) Each voter has 1 vote. 20
- (3) Each electorate elects 1 member of Parliament.
- (4) The winning candidate in each electorate is the one who gains the most votes, that is, a simple majority.
- 6 Preferential voting system**
- (1) Parliament is made up of members who are elected by their respective electorates, and has no list members. 25
- (2) Each electorate elects 1 member of Parliament.
- (3) Voters rank the candidates in their electorate in order of preference by, for example, marking candidates 1, 2, 3, and so on.
- (4) To win, a candidate must have 50% of the total votes cast plus 1 vote, that is, an absolute majority. 30
- (5) The candidate with the most first-preference votes might not have an absolute majority. In that case, the votes for the candidate with the lowest number of first-preference votes are redistributed according to the second preferences of the voters for 35

that candidate. Redistribution of preferences continues until a candidate attains an absolute majority.

7 Single transferable vote system

- (1) Parliament is made up of members who are elected by their respective electorates, and has no list members. 5
- (2) Each electorate elects several members of Parliament.
- (3) Voters rank the candidates in their electorates in order of preference, for example 1, 2, 3, and so on. Alternatively, voters may vote for the order of preference decided in advance by a political party. 10
- (4) To win, a candidate must receive a minimum number of votes. The minimum number of votes is determined by a formula based on the number of seats allocated to the electorate.
- (5) Any candidate who receives more than the minimum number of first-preference votes is elected. If vacancies remain, the first-preference votes received by the elected candidates that are above the minimum required for their election are redistributed according to the second preferences. The redistribution starts with the largest surplus of votes. 15
- (6) If there are still vacancies after the distribution of surplus first-preference votes, the lowest-polling candidate is eliminated and all that candidate's votes are redistributed in line with the voters' second preferences, and so on. Any surplus votes from an elected candidate that were transferred to the lowest-polling candidate are redistributed according to voters' third preferences. 20
25

8 Supplementary member voting system

- (1) Parliament is made up of members who are elected by their respective electorates (**electorate seats**) and members returned from party lists (**supplementary seats**). 30
- (2) Each electorate elects 1 member of Parliament.
- (3) Voters would have either—
 - (a) 1 vote, for their preferred candidate in their electorate; or
 - (b) 2 votes: a vote for a party and a vote for an electorate candidate. 35

-
- (4) If voters have 1 vote, the supplementary seats are allocated to parties in proportion to the total number of votes received nationwide by that party's electorate candidates.
- (5) If voters have 2 votes, the supplementary seats are allocated to parties in proportion to the number of party votes received by that party. 5
- (6) In either case, a party's supplementary seats are allocated to its candidates in the order in which they appear on the party's list, excluding those who win an electorate seat.
- (7) Only the supplementary seats are allocated in proportion to the number of votes received by a party's candidates or to the party vote. A party's share of supplementary seats is not affected by the number of electorate seats. 10
-

Schedule 3**s 21(3)(b)****Form for petition**

Form

Application for inquiry into conduct of referendum

5

section 21(3)(b), Electoral Referendum Act 2010

No:

In the High Court of New Zealand

Registry:

In the matter of the referendum held on [date] on New Zealand's voting system. 10

Applicant

- 1 The applicant is a group of [number] electors who are dissatisfied with the result of the referendum.
- 2 The names, addresses, electoral districts, and signatures of the members of the group are set out in the appendix to this application. 15
- 3 The spokesperson for the group is [name, address].
- 4 The applicant acts—
 *(a) through a solicitor, who is [name, address]; or
 *(b) through its spokesperson. 20
- *Select one.

Application

- 5 The applicant asks for an inquiry into—
 *(a) the conduct of the referendum:
 *(b) the conduct of [name of person complained of, office described in section 22(2), if relevant, address], who was connected with the referendum. 25
- *Select those which apply.
- 6 The specific grounds on which the applicant is dissatisfied with the result of the referendum are as follows: [state specific grounds]. 30
- 7 The applicant asks the court to—

Form—*continued*

- ***(a)** determine the total number of valid votes recorded for the options in—
 - (i)** both Part A and Part B; or
 - (ii)** either Part A or Part B; or
 - ***(b)** declare the referendum void. 5
- *Select one.

Address for service

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

Signature:

(Spokesperson for applicant/Person on behalf of spokesperson for applicant*) 10

*Select one.

Appendix

Members of applicant group

Name	Address	Electoral district	Signature
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