

Electoral Referendum Bill

Government Bill

As reported from the Electoral Legislation
Committee

Commentary

Recommendation

The Electoral Legislation Committee has examined the Electoral Referendum Bill and recommends that it be passed with the amendments shown.

Introduction

This bill provides for an indicative referendum on the preferred voting system for New Zealand to be held in conjunction with the next general election. Holding the referendum on the same day as the general election is expected to ensure a higher voter turnout than if the referendum were held as a standalone ballot or by postal voting. The bill as introduced sets out two questions which would form the referendum voting paper. The first question (Part A) asks voters if they wish to keep the current MMP voting system, or change to another voting system.

The second question (Part B) asks voters, regardless of their answer in Part A, which voting system they would prefer if there were a

change to another system. Part B sets out four alternative voting systems:

- first-past-the-post (FPP)
- preferential voting (PV)
- single transferable vote (STV)
- supplementary member (SM).

The questions in Parts A and B of the proposed referendum voting paper are similar to those posed in the 1992 referendum; and the proposed alternative voting systems in Part B are consistent with those in the 1992 referendum.

This commentary covers the significant amendments that we recommend to the bill; it does not cover minor or technical amendments. It is intended to align the regulated period and the referendum advertising rules in the bill with the equivalent provisions in the Electoral (Finance Reform and Advance Voting) Amendment Bill where practicable, and we make a number of recommendations with this in mind. At the end of this report we discuss other matters that we considered which have not resulted in recommended amendments to this bill.

Commencement

We recommend amending clause 2 to allow the Electoral Referendum Act 2010 to come into force on 1 January 2011 instead of the day after the date on which it receives the Royal assent. This would align the commencement date with that proposed in the Electoral (Finance Reform and Advance Voting) Amendment Bill.

Extra-territorial application

We recommend inserting new clause 2A to provide that the bill would also apply if

- the promoter of a referendum advertisement published within New Zealand were outside New Zealand or
- the promoter of a referendum advertisement published outside New Zealand were in New Zealand.

We do not recommend applying the bill to persons outside New Zealand who publish an advertisement outside New Zealand. It is

not usual practice to apply New Zealand law in such a situation and it would be impractical to enforce.

Conduct of referendum

We recommend deleting subclause (2) of clause 7. This would allow the alternative voting systems in Part B of the voting paper to be arranged alphabetically according to their formal names, as they are arranged in the bill.¹ Alphabetical order is inherently random, can be easily explained, and is the most common form of ordering.

Our attention was drawn to an apparent inconsistency between the instructions in clause 12 and the instructions in Schedule 1 (Form for referendum voting paper). The provisions in clause 12 are consistent with those in section 168(1)(b) of the Electoral Act. While we do not recommend amendments to clause 12, elsewhere we recommend amendments to Schedule 1 to ensure consistency in the voting paper. We recommend amending clause 17 by replacing “Chief Electoral Officer” with “Electoral Commission”. We were advised that this would be consistent with changes made to the Electoral Act by the Electoral (Administration) Amendment Act 2010.

For the sake of consistency, we further recommend that the phrase “Chief Electoral Officer” be replaced with “Electoral Commission” wherever it occurs.

We recommend amending clause 19 to require the Electoral Commission to include in the declared result the total number of informal votes for each part of the voting paper. This would make clause 19 consistent with clause 18.

We recommend amending clause 23 to specify that, in the case of a petition challenging the results of a referendum, the Constituency Election Petition Rules 2008 would apply.

Advertising

This bill proposes to define any person on whose initiative a referendum advertisement is, or is due to be, published as a “promoter”. The bill defines what would be regarded as a referendum advertisement. It also sets out clear exceptions to the proposed definition such as advertisements published by the Electoral Commission, the Chief

¹ As opposed to alphabetically by acronym.

Registrar of Electors, or any other agency charged with responsibilities in relation to the conduct of any official publicity or information campaign relating to electoral matters or the conduct of the general election or the referendum. Also exempt from the definition of referendum advertisements are the personal political views of individuals published through the Internet or other electronic medium, and news media items written for the purpose of informing, enlightening, or entertaining.

We discussed advertising expenditure limits and broadcasting and they are dealt with later in this commentary.

Definitions

We recommend amending clause 29 to make it clear that an “address” should be a physical address where an individual could usually be contacted in person during working hours, and that “contact details” should consist of an address and telephone number, plus an email address if one exists.

We also recommend amending clause 29 to make it clear that a “promoter” is a person who initiates or instigates a referendum advertisement. There was potential for the original phrase, “a person on whose initiative” an advertisement was published, to be interpreted too widely to include any person who played a motivating role in making public an advertisement, or too narrowly and incorrectly to cover only the person who published an advertisement.

Meaning of referendum advertisement

We recommend amending clause 30 to exclude broadcasts of parliamentary proceedings from the definition of “referendum advertisement”. The exclusion would apply to all media including the Internet and other electronic media, and would apply to unedited replays of parliamentary broadcasts. While it was never intended for parliamentary proceedings to fall within the definition of “referendum advertisement”, the definition as introduced was potentially broad enough that statements made in debate, visual aids used to support debate, and objects that members brought into the chamber could have been captured.

We also recommend amending clause 30(2) to exclude from the definition of “referendum advertisement” the editorial content of any

periodical, radio or television programme, and news media Internet site. This would more closely align the bill with section 221(6) of the Electoral Act for news or comments in a newspaper or other periodical, and extend the same provisions to other forms of media. Such an approach is comparable to those in overseas jurisdictions, and would address concerns that “solely for the purposes of informing, enlightening, or entertaining” could be interpreted too narrowly or capture unintended items.

For the sake of consistency with the electoral finance regime, we further recommend amending clause 30(2) by inserting new paragraph (g) to make it clear that the publication of personal political views by an individual is excluded from the definition of “referendum advertisement”, unless the person has been paid to express that view for publication or has paid to have his or her view published.

Meaning of referendum expenses

We recommend amending clause 31(b) by inserting new subparagraph (iia). As in the amendment we recommend to the Electoral (Finance Reform and Advance Voting) Amendment Bill, this would exclude the cost of non-commercial frameworks (such as residential property fences, and steel or wooden frames) that supported a hoarding from the definition of “referendum expenses”. We think this area needs clear guidance.

For the avoidance of doubt, proposed section 31(2) and (3) would clarify that referendum expenses would not include the cost of any vehicle used to display a referendum advertisement if the use of the vehicle for that purpose was not the subject of a contract, arrangement, or understanding for the payment of money or money’s worth.

Meaning of “publish” and regulated period

We recommend inserting new clause 31AA to remove the definition of “publish” from clause 29 and place it in a separate clause. The proposed definition has been aligned with the definition in the Electoral (Finance Reform and Advance Voting) Amendment Bill.

For the sake of consistency with the Electoral (Finance Reform and Advance Voting) Amendment Bill, we also recommend inserting new clauses 31A (Meaning of regulated period) and 31B (Electoral Commission to publish details of regulated period).

Expenditure limits of registered promoters

A majority of us recommends inserting new clause 32A to provide that a registered promoter may not spend more than \$300,000 (GST inclusive) on referendum advertising expenses during the regulated period. The bill as introduced does not propose an upper limit on referendum advertising expenditure. A majority of us considers that an upper limit, or spending cap, on advertising expenditure is desirable to “level the playing field”, to prevent undue influence by wealthy groups or individuals, and to protect the integrity of any public information campaign. Some of us were concerned to ensure that the level was set high enough to ensure interested parties are able to express their views in a meaningful way on a national basis. A referendum on the voting system is constitutionally significant, and the regulation of referendum advertising is a matter of balancing public confidence in the referendum system with upholding the right to freedom of expression.

We also recommend clarifying that referendum expenses in relation to a referendum advertisement may be incurred only by the promoter of the advertisement or an authorised person (new clause 32B).

The ACT New Zealand member strongly opposes a limit of \$300,000 being placed on registered promoters wishing to participate in the referendum. The referendum addresses a major constitutional issue of importance to all New Zealanders—and to limit a campaign to cost no more than \$300,000 when this is less than one-fifteenth of the amount that each of the major political parties and their candidates are entitled to spend on the general election campaign conducted at the same time would significantly reduce the ability of groups to participate in the referendum and for New Zealanders to be fully informed on the issues.

Joint election and referendum advertisements

We recommend amending clause 34 to require 100 percent of the costs of a joint advertisement to be treated as both election and referendum expenses.

Collusion offences

We recommend amending clause 35 to prevent an unregistered promoter from entering into an arrangement or understanding in order to

circumvent the \$12,000 registration threshold; and to prevent a body corporate or unincorporated body from encouraging its members to circumvent the registration threshold, or a person from incorporating or forming two or more organisations with the express purpose of circumventing the registration threshold.

Promoters

Promoter statements

We recommend amending clause 36 to refer to advertisements published in “visual form” rather than “printed form”, and to require the promoter statements on advertisements that are solely audible to be clearly audible. This would increase transparency and enable people to contact the promoter if necessary.

We also recommend amending clause 36 so that unregistered promoters who were a body corporate or an unincorporated body would be required to include in promoter statements the name and address of the body and the name of the individual authorised by the body to be its representative.

Registration of promoters

We recommend inserting new clause 36A to exclude an “overseas person” from registering as a promoter with the Electoral Commission. Overseas persons are defined in the same terms as they are in section 207K of the Electoral Act: that is, individuals based abroad who are not New Zealand citizens or registered electors, companies incorporated outside New Zealand, or unincorporated bodies whose head offices or principal places of business are outside New Zealand. We think this would guard against the possibility of undue influence from external sources with no ties to New Zealand but not unnecessarily restrict participation in the referendum.

We recommend amendments, for consistency with the Electoral (Finance Reform and Advance Voting) Amendment Bill, to clause 37 so that an application from a body corporate (other than a company) or unincorporated body must set out the names of those occupying positions comparable to a company director, and that an application from a trust must set out the names of the trustees; and a minor amendment to clause 40.

We recommend amendments to clauses 41 and 43 to allow the commission to cancel a promoter's registration if the person is not eligible for registration; and to clarify what information the commission would be required to enter in the promoters' register.

We also recommend amending clause 44 to identify more precisely the purpose of the register, to address a concern raised by the Legislation Advisory Committee.

For the sake of consistency with proposed amendments to the Electoral (Finance Reform and Advanced Voting) Amendment Bill, we recommend amending clause 50 and inserting new clause 50F to require all promoters to keep all records, documents, and accounts to verify their referendum advertisement expenses. They would be required to keep their records for three years; or, in the event of the High Court voiding the results of the referendum, until three years after the results of the fresh referendum were declared.

Filing expense returns

To ensure consistency with the Electoral (Finance Reform and Advanced Voting) Amendment Bill, we recommend inserting new clause 50E to require registered promoters who spend more than \$100,000 (GST inclusive) during the regulated period to file expense returns with the Electoral Commission. We also recommend that these returns be publicly available in the same way as the electoral expense returns of candidates and political parties.

We recommend that registered promoters spending more than \$100,000 (GST inclusive) be required to file their returns within 70 working days after polling day for the general election, and the inclusion of provisions (new clauses 50A to 50D) dealing with the submission and payment of invoices to uphold the requirement for promoters to file returns within 70 working days after polling day.

We recommend inserting new clause 50G so that the Electoral Commission could require an audit of a promoter's expense return if the Electoral Commission believed on reasonable grounds that a return might contain false or misleading information. The cost of the audit would be borne by the promoter.

Offences and penalties

We recommend amending clause 51 and inserting new clause 51A to make it clear that actions contravening the obligations in clauses 32, 35, and 36 would be illegal practices and would be liable upon conviction on indictment to a fine not exceeding \$40,000.

We recommend amending clause 51 and inserting new clauses 51B and 51C to make it an offence for promoters to exceed the expenditure limit or enter into an agreement to circumvent the expenditure limit, and to fail to file an expense return or file a false expense return. We also recommend that it be an offence for a person to incur expenses on behalf of a promoter that have not been authorised by the promoter (new clause 51D).

Review of MMP

The bill provides for a review of MMP by the Electoral Commission if 50 percent or more of the votes cast in Part A (responding to the first question) are in favour of retaining the current voting system, MMP.

In the event of a review, the bill directs the commission to seek public opinion on whether changes to the MMP voting system are necessary or desirable, and to present a report to the Minister of Justice including any recommendations for changes to the system. The Minister would be required to present the report to the House as soon as practicable. The bill would require the commission to review matters including

- thresholds²
- proportionality
- dual candidacy
- the order of candidates on party lists.

This list covers the matters that have been commonly raised as issues regarding the MMP voting system. The bill also provides for any other feature of the voting system to be added to the scope of the commission's review—except Māori representation and the number of members of Parliament, which the bill explicitly excludes. The bill would also require the Electoral Commission to review any mat-

² Five percent of the total number of party votes, or winning an electorate seat.

ter referred to it by the Minister of Justice or the House of Representatives under the Electoral Act 1993.

We recommend amending clause 54 to make it clear that the Electoral Commission's declaration that 50 percent or more of the votes cast in Part A were in favour of keeping MMP must include only valid votes.

We recommend amending clause 56(1) to describe more accurately the nature of the matters that would be reviewed by the Electoral Commission. We consider that the bill as introduced oversimplifies the two separate threshold requirements for the allocation of list seats and casts "the overhang", which is a result of New Zealand's system of MMP, as an issue in its own right. We feel that the paragraphs on overhang and the effect of population change naturally sit together as they both have implications for proportionality.

Timing of a review of MMP

A number of submitters expressed the view that MMP should be reviewed even in the event that 50 percent or more voted to change to another system, in effect allowing a modified version of MMP to compete with the preferred alternative voting system in a second referendum. It could also be argued that MMP should be judged on the current system, rather than presenting voters with a second, untried, version of the current voting system.

A majority of us were also concerned that people could vote to change to another system, not because they wished to change to another system, but because they knew that MMP would be reviewed regardless and saw an opportunity to explore a less preferred voting system in the interim before changing their vote back to MMP in the second referendum.

We considered this proposal very carefully, and while we have some sympathy for it, a majority of us were not persuaded that a review of MMP should be mandatory regardless of the outcome of the referendum. This would in no way prevent the Government of the day from initiating a review of MMP.

The New Zealand Labour and Green Party members of the committee oppose the inclusion of clause 54 of the bill which means that the review of the mixed member proportional representation voting system occurs only if a majority of voters favour the retention of

MMP. This means that if the majority of voters favoured one of the other voting systems, the form of MMP that would be voted on in the run-off referendum in 2014 would still contain the features that have been subject to criticism. Those members believe that any flaws in MMP should have been resolved before the first referendum; however the Government has not allowed sufficient time for that to occur. Those members support the review of MMP being held, however it is imperative that this occur if MMP has to face a run-off against another system, which will have all the detailed policy work concluded before the run-off occurs. For a second referendum to have any integrity, the same must be done for MMP. Those members will introduce an amendment in the committee stages in the House to remove clause 54 from the bill.

Regulation-making powers

The Regulations Review Committee reported to us on the powers contained in clauses 59 and 60. The committee expressed concern that the bill's wide regulation-making powers might not be adequately controlled and said that clause 59 of the bill might amount to a Henry VIII clause while clause 60 contained a Henry VIII clause, in that it would pass the authority to amend primary legislation from Parliament to the Executive; this is potentially constitutionally inappropriate and discouraged by, amongst others, the Cabinet Manual, the Legislation Advisory Committee, and the Regulations Review Committee.

We therefore recommend amending clause 59 to limit the scope of the bill's validation powers to the conduct of the referendum. This would prevent its application to the proposed advertising regime and referendum petition process and the possible review of MMP. Limiting the scope of clause 59 would focus the exercise of the power on irregularities that could otherwise jeopardise the conduct of the referendum.

We further recommend deleting clause 59(1)(b) and clause 59(2)(d). This would remove a potential Henry VIII clause as, in combination, clause 59(1)(b) and (2)(d) could otherwise permit regulations to be made amending the empowering Act.

We also recommend deleting clause 60(b) as it contains a Henry VIII clause. Clause 60(b) would allow the Governor-General, by Order in

Council, to make regulations extending the time by which the Electoral Commission must present a copy of its report should a review of MMP take place. Deleting clause 60(b) would require consequential amendments to clauses 4(2) and 58(1)(b).

Summary Proceedings Act 1957

For the sake of consistency with offence and penalty provisions in the electoral finance regime, we recommend inserting new clause 62 to allow consequential amendments to Part 2 of Schedule 1 of the Summary Proceedings Act 1957 to include reference to clause 51(1)(c) of the bill. This would allow this indictable offence to be tried summarily.

Schedule 1—Form for referendum voting paper

We recommend amending the proposed referendum voting paper by changing the explanation to make it clear that voters would have the option of voting in both Parts A and B, or in either Part A or Part B only. This would align the instructions in Schedule 1 with the provisions in clause 12.

The objective of the voting paper is to present clear, neutral, unambiguous, intelligible questions. We therefore sought advice as to whether the voting paper met “plain English” standards. On the basis of this assessment, we make the following recommendations:

- removing “indicative” from the title
- changing the title from all capital letters to initial capital letters
- simplifying the explanation
- removing the words “the current MMP voting system” from the question in Part A
- spelling out “Mixed Member Proportional” in full in the question in Part A
- changing the question in Part A from the passive to the active voice
- amending the first answer in Part A of the voting paper by replacing “retain” with “keep”
- simplifying the question in Part B of the voting paper.

Schedule 2—Description of voting systems

We considered suggestions that the description of some of the voting systems in Schedule 2 was inadequate and potentially confusing.

The purpose of Schedule 2 is to outline the key features of the voting systems in Part B of the referendum voting paper for use in the official public information campaign. Clause 1 of Schedule 2 notes that further work would be needed on the detail of the preferred voting system if the majority of voters supported a change to another system.

Some useful editorial amendments to the descriptions have been proposed and we make the following recommendations:

- amending clause 3(3) by replacing “general election seats” with “general electorate seats”
- amending clause 4(5) to make it clear that achieving a threshold alone would not mean the party would be eligible for list seats
- amending clause 5(4) by deleting “that is, a simple majority”
- amending clause 6(4) and 6(5) by deleting references to “an absolute majority”
- amending clause 7 to provide for the situation where no candidate reaches the required vote threshold on first preference votes
- amending clause 8 to make it explicit that electorate candidates in the supplementary member system are elected on a “first-past-the-post” basis
- amending clause 8 to reflect the version of the supplementary member system in this bill recommended by the Royal Commission on the Electoral System in 1986. The commission recommended that if a supplementary member system were introduced in New Zealand, voters should have two votes; and that of the 120 seats in Parliament, 90 should be electorate seats and 30 supplementary seats.

Other matters

Second referendum

When the Government announced its intention of holding a referendum on MMP it said that if a majority of people voted to change the

voting system it would hold a second, legally binding, referendum in conjunction with the 2014 general election. The bill does not refer to the possibility of a second binding referendum, however, because of the principle of parliamentary sovereignty, which dictates that no Parliament may pass legislation that can not be changed or repealed by a future Parliament. It would be inappropriate for this 49th Parliament to pass legislation requiring the 50th Parliament to pass legislation authorising a second referendum. In the event that a referendum on MMP is held, a majority of people vote for change, and the Government of the day elects to hold a second binding referendum, separate legislation would be introduced into Parliament.

While we may not bind the actions of a future Parliament, we consider it would not be out of order for the possibility of a second referendum to be included in any educational material published by the Electoral Commission.

Determining the order of the voting systems in Part B

The bill as introduced includes provision for the order of the four alternative voting systems in Part B of the voting paper to be determined by the Chief Electoral Officer. We considered the possibility of a fully randomised system of listing the options in Part B, to vary the order of the options randomly across the country, but understand this would complicate the counting process, and would probably be unworkable. Randomising the options by electorate would be possible, but as any education campaign is likely to use images of the voting paper, inconsistency between the voting paper and education campaign material could confuse voters.

We also considered the possibility of listing the alternative voting systems by degree of proportionality. Proportionality is, however, only one aspect of a voting system, and such ordering would emphasise it unduly. While we do not favour using a fully randomised system for listing the options in Part B or arranging them by degree of proportionality, we have recommended amendments to the order of the voting system in Part B in this report.

Issuing and counting of voting papers

Clause 11 seeks to exclude the application of sections 167(3)(b) and (c) of the Electoral Act to the issuing of the referendum voting paper.

This means that referendum voting papers would not be marked with a consecutive number, and issuing officers would not be required to note on the counterfoil the page and line number at which an elector's name appeared on the roll.

Clause 13 seeks to exclude the application of certain sections of Part 6 of the Electoral Act. These provisions provide for the appointment and functions of scrutineers, a preliminary count of votes cast in polling places, and a requirement to compare marked copies of the rolls.

We considered whether these provisions could affect the integrity of the referendum. We understand that party scrutineers appointed by candidates would, in effect, carry out the role of monitoring the issuing of the referendum voting paper. We note that incidents of dual voting in New Zealand are relatively rare, and are unlikely to be motivated by political sabotage. The bill includes provision for the preliminary count of early votes and the official count. On the basis of trends in previous elections, 10 percent of the voters are expected to cast their votes before polling day as advance votes. The advance votes would be counted and announced on election night (ideally by 8.30 pm) and are expected to provide a strongly indicative outcome of the full count.

Electoral Commission

The Electoral (Administration) Amendment Act 2010 established a new Electoral Commission, which came into effect on 1 October 2010. The outgoing commission put considerable effort into education campaigns on MMP, like other electoral agencies, providing information in other languages, and using new media such as social networking sites. We expect that the new commission will continue this work. We encourage the commission to continue to investigate other forms of interaction to engage better with groups, such as youth and Māori, who have low participation rates; and to explore ways in which the blind and deaf communities and those with literacy or learning difficulties might be included more effectively in the democratic process.

We considered whether the bill should be amended to authorise, and fund, the Electoral Commission to undertake a comprehensive education campaign on the proposed referendum. We are satisfied that

the Electoral Commission already has adequate powers under section 5(c) of the Electoral Act, and the Government has made it clear that the commission will be funded to undertake the education campaign. No further legislative provisions are required for the Electoral Commission to undertake a public information campaign. The Chief Electoral Office has undertaken early planning for this purpose, which would be made available to the commission.

We note that the 2010/11 appropriations for Vote Justice include specific provision to support preparations for the conduct of the referendum proposed in this bill.³

³ *The Estimates of Appropriations for the Government of New Zealand for the year ending 30 June 2011*, Parliamentary Papers, B.5A, Vol 7, p. 91.

Appendix

Committee process

The Electoral Referendum Bill was referred to us on 22 April 2010. The closing date for submissions was 10 June 2010. We received and considered 1,157 submissions from interested groups and individuals. We heard 53 submissions, which included holding hearings in Auckland and Christchurch.

We received advice from the Ministry of Justice, including the Chief Electoral Office before its amalgamation with the Electoral Commission, and the Electoral Commission. The Regulations Review Committee reported to us on the powers contained in clauses 59 and 60.

Committee membership

Amy Adams (Chairperson)

Hon Jim Anderton

Hon John Boscawen

Hon Lianne Dalziel

Hon Peter Dunne

Hon Pete Hodgson

Hon Darren Hughes

Rahui Katene

Hekia Parata

Paul Quinn

Chris Tremain

Metiria Turei

Electoral Referendum Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

text inserted unanimously

~~text deleted unanimously~~

Hon Simon Power

Electoral Referendum Bill

Government Bill

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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 1 January 2011. 5
- 2A Application of Act to conduct outside New Zealand**
This Act applies in respect of the publication of a referendum advertisement—
- (a) in New Zealand, in any case where the promoter of the advertisement is outside New Zealand; and 10
- (b) outside New Zealand, in any case where the promoter of the advertisement is in New Zealand.

Part 1
Preliminary provisions

- 3 Purpose of Act** 15
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. 20

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)**.
- (2) Despite **subsection (1)**,—
- (a) if **section 25** (which provides for a fresh referendum in the case of a successful petition) applies, this Act expires and is repealed 6 months after the date on which the result of the fresh referendum is declared:
- (b) if **section 54** (which provides for the circumstance when there must be a review of MMP) applies, **subpart 1 of Part 4** expires and is repealed—
- (i) on 1 November 2012; or
- (ii) 6 months after the date on which the result of the fresh referendum is declared, in the event that **section 54** applies as a consequence of a fresh referendum being held.

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** set out in **Schedule 1**.

- (2) Unless the context otherwise requires, a term defined in the 1993 Act and not otherwise defined in this Act has the meaning given in that Act. 5
- (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. 10
- 6 Act binds the Crown**
This Act binds the Crown.

Part 2

Provisions relating to referendum

Subpart 1—Referendum on options for voting system 15

- 7 Referendum on day of general election**
- (1) On the day appointed for the polling to take place for the general election, a referendum of electors must be held on each of the questions about the voting system set out in Parts A and B of the referendum voting paper in **Schedule 1**. 20
- (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~~ 25
- (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)**.~~
- (2) **Schedule 2** sets out the key characteristics of— 30
- (a) the mixed member proportional representation voting system; and
- (b) each of the options for the question in Part B of the referendum voting paper.

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. 5
- (2) **Subsection (1)** is subject to the provisions of this Act and of any regulations made under it.

Subpart 2—Conduct of referendum 10

*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. 15
- (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. 20

*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. 25
- (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**

- (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. 30
- (2) Section 167(3)(b) and (c) of the 1993 Act ~~do~~does not apply in respect of a referendum voting paper.

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. 5

**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 10

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 15
- (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 20

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 25
- (b) in the case of the referendum, in accordance with the requirements of **section 16**, with any necessary modifications. 30

*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— 5

- (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 spoiled referendum voting papers in parcels endorsed as required for ballot papers under section 174A(1)(b) of the 1993 Act; and 10
- (d) send those parcels to the returning officer.

16 Returning officer to count referendum votes for district 15

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

- (a) valid votes cast for each of the options for the question in Part A of the referendum voting paper; and 20
- (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~~ Electoral Commission 25

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

Determination and declaration of result of referendum 30**18 Determination of results by ~~Chief Electoral Officer~~ Electoral Commission**

As soon as practicable after receiving the results of the count from each returning officer, the ~~Chief Electoral Officer~~ Elect- 35

oral Commission must ascertain, from the results of the count returned by each returning officer under **section 17**,—

- (a) the total number of valid votes for all districts combined for each option for the question in Part A of the referendum voting paper; and 5
- (b) the total number of valid votes for all districts combined for each option for the question in Part B of that paper; and
- (c) the total number of informal votes for each Part of that paper. 10

19 Declaration of official result of referendum

- (+) 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— 15
 - (a) for all districts combined; and
 - (b) for each district separately.
- (1) The Electoral Commission must declare the result of the referendum by notice in the *Gazette*, giving—
 - (a) the total number of valid votes cast for each option in relation to the question in each Part of the referendum voting paper— 20
 - (i) for all districts combined; and
 - (ii) for each district separately; and
 - (b) the total number of informal votes cast in each Part of the referendum voting paper. 25
- (2) The notice required by **subsection (1)** must be published on or before the latest day appointed under section 139(1) of the 1993 Act for the return of the writ for the general election.

Subpart 4—Petitions 30

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. 35

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— 5
- (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— 10
- (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— 15
- (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 where 1 or more of the petitioners live. 20
- (4) The Registrar of the High Court where the petition is filed must send a copy of the petition to the ~~Chief Electoral Officer~~ Electoral Commission.

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. 25
- (2) If a petition relates to the conduct of the ~~Chief Electoral Officer~~ Electoral Commission or a returning officer, that person is a respondent to the petition. 30

23 Procedural matters

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: 35

- (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~~
- (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~~ 5
- (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~~ 10
- (d) ~~section 257 (which requires submission of the High Court's report to the Attorney-General).~~
- (1) The provisions listed in **subsection (2)** apply to a referendum petition as if it were an election petition, to the extent that they are relevant and with any necessary modifications. 15
- (2) The provisions that apply under **subsection (1)** are—
- (a) the following sections of Part 8 of the 1993 Act (which relates to election petitions):
- (i) sections 232 to 234 (which provide for security for costs, the hearing of more than 1 petition, and the making of rules of court for the purposes of petitions); and 20
- (ii) sections 235, 236(2), (4), (5), and (6), 240, 241, 242, and 247 to 249 (which relate to the conduct of a trial of a petition); and 25
- (iii) sections 250 to 255, and 256(1)(a) and (b) (which relate to costs, the withdrawal or abatement of a petition, and matters relevant to respondents); and
- (iv) section 257 (which requires submission of the High Court's report to the Attorney-General); and 30
- (b) the Constituency Election Petition Rules 2008.
- 24 Jurisdiction of High Court**
- (1) ~~An election~~A referendum petition under this subpart must be tried in open court without a jury. 35

- (2) The High Court may give leave for grounds other than those stated in the petition to be inquired into, on whatever terms and conditions that the court considers just.
- (3) Despite **section 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 and (b)**; as the case may be: 10
 - (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—~~ 15
- (a) ~~the total number of valid votes recorded for each option in each of Parts A and B of the referendum voting paper; or~~
 - (b) ~~that the referendum is void because of an irregularity that, in the opinion of the court, materially affected the result of the referendum.~~ 20
- (4) At the conclusion of the trial of a petition, the court must either—
- (a) determine and declare—
 - (i) the total number of valid votes recorded for each option in each of Parts A and B of the referendum voting paper; and 25
 - (ii) the total number of informal votes cast; or
 - (b) declare that the referendum is void because of an irregularity that, in the opinion of the court, materially affected the result of the referendum. 30

25 Fresh referendum

- (1) If the High Court declares the referendum to be void,—
- (a) the Registrar of the court must notify the ~~Chief Electoral Officer~~ Electoral Commission that the referendum is void; and 35
 - (b) a fresh referendum must be held; and

- (c) not later than 30 working days after a declaration is made under **section 24(4)(b)**, the Governor-General, by Order in Council, must appoint the day for the fresh referendum to be held, which must not be later than 6 months after the date of the declaration; and 5
- (d) the same roll of electors must be used at the fresh referendum as was used at the referendum declared to be void; and
- (e) a fresh referendum must be conducted in accordance with the provisions of this Act, with any necessary modifications, and to the extent that they are relevant. 10
- (2) ~~Not later than 30 working days after a declaration is made under **section 24(4)(b)**, the Governor-General, by Order in Council, must appoint the day for the fresh referendum to be held, which must not be later than 6 months after the date of the declaration.~~ 15
- (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.~~ 20

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 respect of the referendum, to the extent that they are relevant, with the following modifications: 25

- (a) references to the poll taken for an election are to be read as references to the poll taken for the referendum; and 30
- (b) references to a ballot paper are to be read as references to a referendum voting paper; and
- (c) references to a candidate or a political party are to be read as references to an option for the question in Part A or in Part B of the referendum voting paper, or to a proponent of an option, as the case may require; and 35

- (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 5
- (f) references to the 1993 Act are to be read as references to this Act.
- 27 Time limit for prosecutions** 10
- 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. 15

Part 3 Advertising

Application of Part

- 28 Application of this Part** 20
- This Part applies, instead of ~~Part 6A~~ Parts 6AA and 6A of the 1993 Act, to referendum advertisements unless otherwise expressly provided in this Part.

Interpretation provisions

- 29 Interpretation** 25
- In this Part, unless the context otherwise requires,—
- address** means—
- (a) in relation to an individual—
- (i) the full street address of the place where that individual usually lives; or 30
- (ii) if that individual has a place of business, the full street address of that place; or

- (ii) the full street address of any other place where that individual can usually be contacted between the hours of 9 am and 5 pm on any working day.
- (b) in relation to a body corporate or unincorporated,—
- (i) the full street address of the body's principal place of business; or
- (ii) the full street address of the body's head office
- contact 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** 10
- contact details** means —
- (a) an address; and
- (b) an email address; and
- (c) phone numbers
- contact details** for a person means that person's— 15
- (a) address; and
- (b) telephone numbers; and
- (c) email address (if any)
- election activity** has the meaning given in section 205 of the 1993 Act 20
- periodical** means a newspaper, magazine, or trade or professional journal that—
- (a) was established for purposes unrelated to the conduct of the referendum; and
- (b) since its establishment has been— 25
- (i) published at regular intervals; and
- (ii) generally available to members of the public
- promoter**—
- (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—
- (i) who enters into a contract, arrangement, or understanding with another person to the effect that the other person publish a referendum advertisement; or 35

- (ii) who publishes a referendum advertisement in the absence of such a contract, arrangement, or understanding

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

5

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

publish, in relation to an advertisement, means to—

- (a) print or insert in a periodical published or distributed in New Zealand; or

10

- (b) issue, hand out, or display to the public; or

- (c) send to any member of the public by any means; or

- (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

15

- (f) include in a film or video displayed to the public; or

- (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

20

publish has the meaning given in **section 31AA**

referendum advertisement has the meaning given in **section 30**

referendum expenses has the meaning given in **section 31** 25

register means the register of registered promoters established and maintained under **section 4332F**

registered promoter—

- (a) means a promoter who is registered under **section 39**; and

30

- (b) includes a promoter who at any time in the regulated period has been registered under **section 39**

regulated period means the period that—

- (a) commences 3 months before the day appointed as the polling day under the 1993 Act; and

35

- (b) ends with the close of the day before the polling day.

regulated period has the meaning given in **section 31A.**

30 Meaning of referendum advertisement

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

- (ii) relates to electoral matters or the conduct of the general election or the referendum; and
- (iii) contains either—
- (A) a statement indicating that the advertisement has been authorised by that officer or agency; or 5
- (B) a symbol indicating that the advertisement has been authorised by that officer or agency:
- (b) the editorial content of— 10
- (i) a periodical:
- (ii) a radio or television programme:
- (iii) a publication on a news media Internet site:
- (c) statements that do not promote, or could not reasonably be regarded as promoting, a particular option for the question in Part A or the question in Part B of the referendum voting paper: 15
- (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: 20
- (d) any transmission (whether live or not) of proceedings in the House of Representatives: 25
- (e) any news or comments, other than advertising material, published on a news media Internet site that is written 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: 30
- (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.
- (g) any publication on the Internet, or other electronic medium, of personal political views by an individual who does not make or receive a payment in respect of the publication. 35

- (3) In this section, **periodical** means a newspaper, magazine, or trade or professional journal that—
- (a) was established for purposes unrelated to the conduct of the referendum; and
 - (b) since its establishment has been— 5
 - (i) published at regular intervals; and
 - (ii) generally available to members of the public.
- 31 Meaning of referendum expenses**
- (1) In this Part, **referendum expenses**—
- (a) includes the cost of— 10
 - (i) the cost incurred in the preparation, design, composition, printing, distribution, postage, and publication of ~~the~~ a referendum advertisement; and
 - (ii) the reasonable market value of any material used for or applied towards the advertisement, including any such material that is provided free of charge or below reasonable market value; but 15
 - (b) excludes the cost of—
 - (i) ~~travel; and~~
 - (ii) the conduct of any survey or public opinion poll; and 20
 - (iia) any framework (other than a commercial framework) that supports a hoarding on which the advertisement is displayed; and
 - (iii) the labour of any person that is provided free of charge by that person; and 25
 - (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.~~ 30
 - (iv) the replacement of any material used in respect of a referendum advertisement if that advertisement has been destroyed or rendered unusable by— 35
 - (A) 1 or more persons (other than the promoter or a person acting on his or her behalf);

- (B) the occurrence of an event beyond the control of the promoter or a person acting on his or her or its behalf.
- (2) To avoid doubt, **referendum expenses** does not include the cost (including running costs) of any vehicle used to display a referendum advertisement if the use of the vehicle for that purpose is not the subject of a contract, arrangement, or understanding, for the payment of money or money's worth. 5
- (3) In this section, **vehicle** has the meaning given to it by section 2(1) of the Land Transport Act 1998. 10

31AA Meaning of publish

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

- (a) including— 15
- (i) displaying on any medium:
 - (ii) distributing by any means:
 - (iii) delivering to an address:
 - (iv) leaving at a place:
 - (v) sending by post or otherwise: 20
 - (vi) printing in a newspaper or other periodical:
 - (vii) broadcasting by any means:
 - (viii) disseminating by means of the Internet or any other electronic medium:
 - (ix) storing electronically in a way that is accessible to the public: 25
 - (x) incorporating in a device for use with a computer:
 - (xi) inserting in a film or video; but
- (b) excluding addressing 1 or more persons face to face.

31A Meaning of regulated period 30

- (1) In this Act, **regulated period**, in relation to the referendum, has the meaning given to it by **subsections (2) and (3).**
- (2) If before the close of the default day the Prime Minister gives public notice of the day that is to be polling day for the election, the regulated period— 35
- (a) commences on the later of the following days:

- (i) the day after the date on which the Prime Minister gives that public notice:
- (ii) the day that is 3 months before polling day; and
- (b) ends with the close of the day before polling day.
- (3) If at the close of the default day the Prime Minister has not given public notice of the day that is to be polling day for the election, the regulated period— 5
- (a) commences on the close of the default day; and
- (b) ends with the close of the day before polling day.
- (4) In this section,— 10
- default day** means the day that is 2 years and 9 months after polling day for the preceding 3 months before the last possible polling day for the general election
- give public notice** means issue a media statement.
- 31B Electoral Commission to publish details of regulated period** 15
- The notice published under section 3C of the 1993 Act in relation to the general election must state that the regulated period for the referendum commenced and will end commences and ends on the same dates as the regulated period for the general election. 20
- General rules for referendum advertisements*
- 32 Persons who may promote referendum advertisements**
- A promoter person is entitled to promote a referendum advertisement if the promoter person— 25
- (a) is a registered promoter; or
- (b) is an unregistered promoter who does not incur referendum expenses exceeding \$12,000 (inclusive of goods and services tax) in relation to referendum advertisements published during the regulated period. 30
- 32A Maximum amount of registered promoter's total referendum expenses**
- (1) The total referendum expenses of a registered promoter in respect of the regulated period must not exceed \$300,000.

- (2) The amount in **subsection (1)** is inclusive of goods and services tax.

32B Persons who may incur referendum expenses in relation to referendum advertisement

A person may incur referendum expenses in relation to a referendum advertisement only if the person is— 5

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

33 Apportionment of advertising expenses in relation to regulated period 10
promoter's referendum expenses for publication of referendum advertisement both before and during the regulated period

- (1) This section applies if a person described in **section 32** incurs referendum expenses in relation to a referendum advertisement that is published both before and within the regulated period and during the regulated period. 15

- (1) This section applies if a referendum advertisement—
 (a) is published both before the commencement of the regulated period and during the regulated period; or 20
 (b) is published before the commencement of the regulated period and continues to be published during the regulated period.

- (2) If this section applies,—
 (a) the referendum advertisement is deemed to have been published ~~within~~ during the regulated period; and 25
 (b) the referendum expenses for the publication of the referendum advertisement must be apportioned so that only a fair proportion of those expenses is attributed to the referendum advertising carried on during the regulated period. 30

- (3) Only the fair proportion of the referendum expenses determined attributed to the regulated period in accordance with **subsection (1) (2)** is are expenses for the purposes of ~~**section 32**~~ **sections 32(b) and 32A.** 35

34 Joint election and referendum advertisements

- (1) This section applies if an advertisement comprises both—
- (a) an election ~~activity~~ advertisement; and
 - (b) a referendum advertisement.
- (2) The promoter of the advertisement must count the sum of the referendum expenses and advertising expenses incurred in relation to the advertisement as both advertising expenses in relation to the election advertisement and referendum expenses. 5
- (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.~~ 10
- (3) ~~However, if the referendum receives less than 10% of the coverage provided by the advertisement, the expenses relating to the advertisement—~~ 15
- (a) ~~must not be included in the referendum expenses of the promoter for the purpose of this subpart; and~~
 - (b) ~~must be included as election expenses for the purposes of the 1993 Act.~~ 20
- (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 Obligation not to circumvent limitations imposed by this Part

- (1) ~~A promoter~~ An unregistered promoter may not enter into an agreement, or enter into an arrangement or understanding, with another person for the purpose of circumventing the maximum amount prescribed in ~~section 32~~ section 32(b) for referendum expenses in relation to referendum advertisements published in the regulated period. 30
- (2) A body corporate or unincorporated may not ~~split itself into 2 or more bodies~~ encourage its members to take any action for the purpose of circumventing the maximum amount prescribed in ~~section 32~~ section 32(b). 35

- (3) No person may incorporate or form 2 or more bodies corporate or unincorporated for the purpose of circumventing the maximum amount prescribed in **section 32(b)**.

36 Referendum advertisement to state name and address of promoter

5

- (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.

- (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.

10

- (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.

15

- (4) This section applies from the date of the commencement of this Act until the close of the day before polling day.

36 Referendum advertisement to include promoter statement

- (1) A person may publish or cause or permit to be published a referendum advertisement only if the advertisement includes a promoter statement.

20

- (2) A promoter statement must state the name and address of the promoter of the referendum advertisement.

- (3) If the promoter is a registered promoter, the name and address of the promoter stated in the promoter statement must be the same name and address of the promoter that appear in the register.

25

- (4) If the promoter is an unregistered promoter and is a body corporate or unincorporated, the promoter statement must also include the name of a member of the body who is the duly authorised representative of the promoter.

30

- (5) If the referendum advertisement is published in a visual form, the promoter statement must be clearly displayed in the advertisement.

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

Registered promoters

- 36A Promoters eligible to be registered** 5
- (1) A promoter (including a corporation sole, a body corporate, and an unincorporated body) is eligible to be a registered promoter if the promoter is not an overseas person.
- (2) In this section, overseas person means—
- (a) an individual who— 10
- (i) resides outside New Zealand; and
- (ii) is not a New Zealand citizen or registered as an elector; or
- (b) a body corporate incorporated outside New Zealand; or
- (c) an unincorporated body that has its head office or principal base of business outside New Zealand. 15
- 37 Application for registration**
- (1) An application to be a registered promoter must be—
- (a) made to the Electoral Commission; and
- (b) made— 20
- (i) if the promoter is an individual, by that individual; or
- (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 25
- (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 30
- (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 35

~~the promoter is a body corporate or unincorporated.~~

- (2) ~~An application must be signed by the person who made the application.~~

37 Application for registration 5

- (1) An application to be a registered promoter must be made to the Electoral Commission and made,—

(a) if the promoter is an individual, by that individual; or

(b) if the promoter is a company, by a person who is duly authorised by the board of directors to make the application; or 10

(c) if the promoter is not an individual or a company, by the promoter's representative who is duly authorised by the promoter to make the application.

- (2) An application to be a registered promoter must be made in the form required by the Electoral Commission and set out— 15

(a) the name and contact details of—

(i) the promoter; and

(ii) the person described in **subsection (1)(b) or (c)**, as the case may be, who made the application, if the promoter is not an individual; and 20

(b) the names of the persons occupying a position in the body that is comparable with that of a director of a company, if the promoter is not an individual or a company; and 25

(c) the names of the trustees, if the promoter is a trust.

- (3) An application to be a registered promoter must be accompanied by evidence of the authority to make the application, if the application is made by a person described in **subsection (1)(b) or (c)**. 30

38 Grounds on which registration must be refused

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

(a) the application does not comply with **section 37**; or

(ab) the Electoral Commission is not satisfied that the promoter is eligible under **section 36A** to be registered; or 35

- (b) the name of the promoter is—
 - (i) indecent or offensive; or
 - (ii) likely to cause confusion to or mislead members of the public or mislead electors.

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,~~ as soon as is reasonably practicable after receiving the application,—
 - (a) register the promoter; and
 - (b) notify the person who made the application of the date of registration of the promoter.
- (2) If there are grounds under **section 38** to refuse an application, the Electoral Commission must ~~within 10 working days,~~ as soon as is reasonably practicable after receiving the application,—
 - (a) refuse the application; and
 - (b) notify the person who made the application of the refusal and the reasons.

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~~ information provided under **section 37(2)** within 10 working days after the change.

41 Cancellation of registration

- (1) The Electoral Commission must cancel the registration of a promoter if ~~the promoter~~—
 - (a) the Electoral Commission is satisfied that the promoter is not eligible to be registered; or
 - (b) the promoter—
 - (i) requests that it do so; and
 - (ii) has not incurred expenses in relation to referendum advertisements that exceed the amount specified in **section 32(b)**.

- (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**.
- (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 of—
- (a) the cancellation; and
- (b) the reason for the cancellation.
- 42 LapseExpiry of registration**
 Unless earlier cancelled under **section 41**, a promoter's registration lapsesexpires on the day provided for the expiry of this Act in **section 4(1)**.
- 43 Establishment of register**
- (1) The Electoral Commission must establish and maintain a register of registered promoters.
- (2) The Electoral Commission must enter in the register—
- (a) the name of every registered promoter; and
- (b) the contact address for every registered promoter.
- (2) The Electoral Commission must enter in the register, in relation to every registered promoter,—
- (a) the name of the registered promoter; and
- (b) the address of the registered promoter; and
- (c) the names of persons set out in the promoter's application, if any, provided under **section 37(2)(a)(ii), (b), and (c)**.
- (3) The Electoral Commission may enter in the register any other information that the Electoral Commission considers necessary or desirable for the purposes of the register.
- 44 Purposes of register**
 The purposes of the register are—
- (a) to enable members of the public to—

-
- (i) ~~identify registered promoters; and~~ 35
 (ii) ~~find out the name and contact address of a registered promoter; and~~
- (a) to enable members of the public to ascertain—
 (i) whether a person is a registered promoter and, if so, the address of that person; and 5
 (ii) whether a referendum advertisement is promoted by a registered promoter; and
- (b) to assist with the enforcement of the provisions of this Part.
- 45 Form of register** 10
 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. 15
- 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 20
 (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** 25
 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. 30
- 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

A search of the register for personal information that has not been carried out for a purpose specified in **section 44** constitutes an action that is an interference with the privacy of an individual under section 66 of the Privacy Act 1993. 5

Obligations of unregistered promoters to keep records

50 Obligation to retainkeep records necessary to verify unregistered promoter's referendum expenses 10

(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.

(1) This section applies to a person who— 15
 (a) is an unregistered promoter;
 (b) has been an unregistered promoter at any time during the regulated period.

(1A) A promoter to whom this section applies must take all reasonable steps to keep the records, documents, and accounts that are necessary to enable verification of the referendum expenses incurred in relation to a referendum advertisement promoted while the promoter is not registered. 20

(2) **Subsection (1)** ~~applies until the close of the day that is 3 years after polling day.~~ Despite **section 4, subsection (1A) of this section** applies until whichever is the earlier of— 25
 (a) the close of the day that is 3 years after polling day for the general election; or
 (b) if a fresh referendum is held under **section 25**, the close of the day that is 3 years after the date on which the result of the fresh referendum is declared. 30

Claims for referendum expenses of registered promoters

50A Periods for claiming and paying registered promoter's referendum expenses

- (1) A claim against a registered promoter for payment of referendum expenses is recoverable only if it is sent to the registered promoter within 20 working days after the day on which the declaration required by section 179(2) of the 1993 Act is made in relation to the general election. 5
- (2) A claim that is sent to a registered promoter in accordance with **subsection (1)** must be paid within 40 working days after the day on which that declaration is made, and not otherwise. 10
- (3) This section is subject to **sections 50B and 50C.**

50B Procedure if claim disputed

- (1) If a registered promoter, in the case of a claim for referendum expenses sent to the registered promoter within the period specified in **section 50A(1)**, disputes the claim, or fails to pay the claim within the period of 40 working days specified in **section 50A(2)**, then— 15
- (a) the claim is to be treated as a disputed claim; and 20
- (b) the claimant may, if he or she thinks fit, within 20 working days after the expiry of that period of 40 working days, bring an action for the disputed claim in any court of competent jurisdiction.
- (2) Any sum paid by the registered promoter in accordance with a judgment or order of the court in any such action is to be treated as paid within the period specified in **section 50A(2).** 25

50C Leave to pay claim after time limitation

- (1) On the application of a claimant or a registered promoter, a District Court may make an order granting leave to the registered promoter to pay— 30
- (a) a claim for referendum expenses sent after the period specified in **section 50A(1)**; or
- (b) a claim not paid in the period specified in **section 50A(2)**; or 35

- (c) a disputed claim in respect of which an action was not brought within the period specified in **section 50B(1)(b)**.
- (2) Any sum paid by the registered promoter in accordance with an order made under **subsection (1)** is to be treated as having been paid within the period specified in **section 50A(2)**. 5

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

- (1) Every payment made in respect of any referendum expenses of a registered promoter must be evidenced by an invoice stating the particulars, and by a receipt. 10
- (2) **Subsection (1)** does not apply to a payment of less than \$50.

Returns of referendum expenses

50E Return of registered promoter's referendum expenses

- (1) This section applies to a registered promoter whose total referendum expenses in respect of any regulated period exceed \$100,000 (inclusive of goods and services tax). 15
- (2) Within 70 working days after polling day for the general election, the registered promoter must file a return of referendum expenses with the Electoral Commission. 20
- (3) If the registered promoter is not an individual or a company, the return must be filed by the registered promoter's representative who is duly authorised to file the return.
- (4) A return filed under **subsection (2)** must be in the form required by the Electoral Commission. 25

50F Obligation to keep records necessary to verify return of registered promoter's referendum expenses

- (1) A registered promoter must take all reasonable steps to keep all records, documents, and accounts that are reasonably necessary to enable a return filed under **section 50E(2)** to be verified. 30
- (2) Despite **section 4, subsection (1) of this section** applies until whichever is the earlier of—
- (a) the close of the day that is 3 years after polling day for the general election; or 35

- (b) if a fresh referendum is held under **section 25**, the close of the day that is 3 years after the date on which the result of the fresh referendum is declared.

- 50G** **Electoral Commission may require auditor’s report on return of registered promoter’s referendum expenses** 5
- (1) If the Electoral Commission has reasonable grounds to believe that a return filed under **section 50E** may contain any false or misleading information, the Electoral Commission may require the registered promoter (at the registered promoter’s expense) to obtain a report on the return from an auditor. 10
- (2) The auditor must state in the report—
- (a) the position shown by the return in respect of the requirement that the registered promoter’s total referendum expenses must not exceed the maximum amount specified in **section 32A**; and 15
- (b) either—
- (i) whether, in the auditor’s opinion, the position stated under **paragraph (a)** is correct; or
- (ii) that the auditor has been unable to form an opinion as to whether the position stated under **paragraph (a)** is correct. 20
- (3) The auditor must make any examinations that the auditor considers necessary.
- (4) The auditor must specify in the report any case in which—
- (a) the auditor has not received from the registered promoter all the information that the auditor requires to carry out his or her duties; or 25
- (b) proper records of the registered promoter’s referendum expenses have not, in the auditor’s opinion, been kept by the registered promoter. 30
- (5) The auditor—
- (a) must have access at all reasonable times to all records, documents, and accounts that relate to the registered promoter’s referendum expenses and that are held by the registered promoter; and 35
- (b) may require the registered promoter to provide any information and explanation that, in the auditor’s opinion,

may be necessary to enable the auditor to prepare the report.

50H Return of registered promoter's referendum expenses to be publicly available

- (1) The Electoral Commission may publish, in any manner that the Electoral Commission considers appropriate, every return filed under **section 50E**. 5
- (2) During the public inspection period, the Electoral Commission must make available for public inspection a copy of every return filed under **section 50E**. 10
- (3) The Electoral Commission may make inspection under **subsection (2)** subject to the payment of any charges that may be made under the Official Information Act 1982.
- (4) In this section, **public inspection period**, in relation to a return, means the period— 15
- (a) beginning on the day that is 3 working days after the date on which the Electoral Commission receives the return; and
- (b) ending with the close of polling day for the second general election that takes place after that date. 20

Offences and penalties in relation to referendum advertising

51 Illegal practicesOffences and penalties

- (1) Every person commits an offence against this Part who wilfully— 25
- (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; 30
- (d) breaches the requirement under **section 50** to retain records, documents, and accounts;
- (2) Every person who commits an offence against— 35

- (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.
- (1) Every person is guilty of an illegal practice who wilfully— 5
- (a) promotes a referendum advertisement without being entitled to do so under **section 32**;
- (b) contravenes **section 35**;
- (c) contravenes **section 36**;
- (d) makes a payment in breach of **section 50A**. 10
- 51A** Offences relating to obligation to keep records
- Every person who fails, without reasonable excuse, to comply with **section 50(1A) or 50F** commits an offence and is liable on summary conviction to a fine not exceeding \$40,000.
- 51B** Offences relating to return of registered promoter's referendum expenses 15
- (1) A registered promoter who fails, without reasonable excuse, to comply with **section 50E(2)** is liable on summary conviction to a fine not exceeding \$40,000.
- (2) A registered promoter who files a return under **section 50E(2)** that is false in any material particular is guilty of— 20
- (a) a corrupt practice if the registered promoter filed the return knowing it to be false in any material particular;
- (b) an illegal practice in any other case, unless the registered promoter proves that— 25
- (i) he or she had no intention to misstate or conceal the facts; and
- (ii) he or she took all reasonable steps in the circumstances to ensure that the information was accurate. 30
- (3) If the registered promoter is not an individual or a company, the registered promoter's representative who files the return in accordance with **section 50E(3)** is liable under **subsections (1) and (2)**.
- (4) **Subsection (3)** does not limit the liability of a registered promoter under **subsection (1) or (2)**. 35

51C Offence to pay referendum expenses in excess of maximum

- (1) This section applies to a registered promoter or any other person who directly or indirectly pays or knowingly aids or abets any person in paying for or on account of any referendum expenses any sum in excess of the maximum amount specified in **section 32A**. 5
- (2) The registered promoter or other person is guilty of—
- (a) a corrupt practice if he or she knew the payment was in excess of the specified maximum amount; or 10
- (b) an illegal practice in any other case, unless he or she proves that he or she took all reasonable steps to ensure that the referendum expenses did not exceed the specified maximum amount.
- (3) Every person who enters into an agreement or enters into an arrangement or understanding with any other person for the purpose of circumventing the maximum amount specified in **section 32A** is guilty of a corrupt practice. 15

51D Offence to incur unauthorised referendum expense

- Every person is guilty of— 20
- (a) a corrupt practice who wilfully contravenes **section 32B**; and
- (b) an illegal practice who contravenes **section 32B** in any other case.

51E Punishment for corrupt or illegal practice 25

- (1) Every person who is guilty of a corrupt practice is liable on conviction on indictment to either or both of the following:
- (a) a term of imprisonment not exceeding 2 years;
- (b) a fine not exceeding \$100,000.
- (2) Every person who is guilty of an illegal practice is liable on conviction on indictment to a fine not exceeding \$40,000. 30
- (3) Section 100 of the 1993 Act applies to a person who is guilty of a corrupt practice under this Act as if the person were guilty of a corrupt practice under the 1993 Act and the reference to an election petition were a reference to a referendum petition tried by the High Court under **section 24** of this Act. 35

*Enforcement***52 Time limit for prosecutions**

- (1) A prosecution under this Part ~~section 51 or 51A~~ must be commenced—
- (a) within 6 months of the date that the prosecutor is satisfied that there is sufficient evidence to warrant the commencement of proceedings; but
- (b) no later than 3 years after the alleged offence was committed.
- (2) **Subsection (1)** applies whether or not registration has been cancelled under **section 41** or has ~~lapsed~~ expired 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)~~ this Part, it must report the facts on which that belief is based to the New Zealand Police.
- (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~~ Subsection (1) does not apply if the Electoral Commission considers that the offence is so inconsequential that there is no public interest in reporting those facts to the New Zealand Police.

Part 4**Review and miscellaneous provisions** 25

Subpart 1—Review of mixed member proportional representation voting system

54 Application of this subpart

This subpart applies if the ~~Chief Electoral Officer~~ Electoral Commission 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 voting system ~~of voting~~ is supported by 50% or more of the valid votes cast in relation to Part A.

55 Review

- (1) The Electoral Commission must commence a review of the mixed member proportional representation voting system ~~of voting~~ for the House of Representatives as soon as practicable after the result of the referendum is declared under **section 19**. 5
- (2) The purpose of the review is to—
- (a) determine through a public consultative process whether changes to MMP are necessary or desirable; and 10
 - (b) make any recommendations for changes to the system to the Minister of Justice.

56 Scope of review

- (1) The matters that the Electoral Commission must review are—
- Threshold for list seats* 15
 - (a) ~~the requirement that in order for a party to be eligible for any list seats—~~
 - (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~~ 20
 - Thresholds*
 - (a) the requirement that a party must achieve at least 5% of the total number of party votes before it may be eligible to be allocated the number of list seats (if any) needed to ensure that the party's total number of seats reflects its proportion of the total party vote; and 25
 - (ab) the alternative requirement that a candidate of a party must win an electorate seat before the party may be eligible to be allocated the number of list seats (if any) needed to ensure that the party's total number of seats reflects its proportion of the total party vote; and 30
 - Overhang*
 - (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~~ 35

- Proportionality*
- (ba) the ratio of electorate seats to list seats that results—
- (i) from the effects of population change on the number of general electorate seats; or
- (ii) if a party's constituency candidates have won more seats than the party would be entitled to as a result of the party vote; and 5
- Dual candidacy*
- (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 10
- 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 15
- Effect of population change on proportionality*
- (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~~ 20
- Other matters*
- (f) any other feature of the voting system referred to the Commission under section ~~5(e)~~ 5(d) of the 1993 Act.
- (2) In addition to the matters specified in **subsection (1)**, the Electoral Commission may, in undertaking the review, consider other aspects of the mixed member proportional representation voting system. 25
- (3) Despite **subsections (1)(f) and (2)**, the Electoral Commission must not review— 30
- (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. 35

- (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.

58 Report and recommendations

- (1) The Electoral Commission must— 5
- (a) prepare a report of the review that includes recommendations on whether any change to the mixed member proportional representation voting system is necessary or desirable; and
- (b) provide the report to the Minister of Justice by 31 October 2012 ~~or a later date specified by Order in Council.~~ 10
- (2) As soon as practicable after receiving the report, the Minister must present a copy to the House of Representatives.

Subpart 2—Miscellaneous provisions

59 Validation of irregularities

- (1) ~~This section applies if—~~ 15
- (a) ~~anything required to be done by or under this Act or any regulations under this Act—~~
- (i) ~~is not done at the time required; or~~
- (ii) ~~cannot be done at the time required; or~~ 20
- (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.~~
- (1) This section applies if anything required to be done in relation to the conduct of the referendum by or under **sections 7 to 19** or any regulations under this Act— 25
- (a) is not done at the time required; or
- (b) cannot be done at the time required; or
- (c) is done before or after the time required; or 30
- (d) is done in any other irregular manner or form.
- (2) The Governor-General may, by Order in Council, at any time before or after the time within which anything is required to be done,—
- (a) extend the time; or 35

- (b) validate anything done before or after the time required;
or
- (c) validate anything irregularly done in manner or form.
- ~~(d) make such other provision for the situation as he or she thinks fit.~~ 5
- (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.

60 Regulations

The Governor-General may, by Order in Council, make regulations— 10

- (a) prescribing forms required for any matter in relation to the referendum:
- ~~(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;~~ 15
- (c) prescribing fees for the purposes of this Act:
- (d) providing for matters that are contemplated by, necessary for the administration of, or necessary for giving full effect to this Act. 20

Amendment to Privacy Act 1993

61 Amendment to Privacy Act 1993

- (1) This section amends the Privacy Act 1993.
- (2) Part 1 of Schedule 2 is amended by inserting the following item in its appropriate alphabetical order: 25

Electoral Referendum Act **Sections 43 and 50H**
2010

Amendment to Summary Proceedings Act 1957

62 Amendment to Summary Proceedings Act 1957

Part 2 of Schedule 1 of the Summary Proceedings Act 1957 is amended by inserting the following item after the item relating to the Electoral Act 1993: 30

Electoral
Referendum Act
2010

51(1)(c)

Contravening requirement for
referendum advertisement to
include promoter statement

Schedule 1 **ss 5(1), 7(1)**
Form for referendum voting paper

[INSERT ELECTORATE NAME AND NUMBER]

[Consecutive Number]

**Indicative Referendum on
New Zealand's Voting System**

[INSERT ELECTORATE NAME AND NUMBER]



Explanation

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

Part A

Should the ~~current MMP voting system be retained~~ New Zealand keep the Mixed Member Proportional (MMP) voting system?



Vote for only one option

Vote Here

- I vote to ~~retain~~ **keep** 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~~ If New Zealand were to 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(2)****Description of voting systems****1 Purpose of schedule**

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

2 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~~ electorate seats for the South Island will not change.

4 Mixed member proportional representation voting system (MMP)

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

- (4) The party vote is counted on a nationwide basis.
- (5) A party ~~is~~may be eligible for a share of the list seats if the party gains 5% or more of the party vote or wins 1 or more electorate seats.
- (6) The list seats in Parliament are allocated so that the total number of seats a party holds is in proportion to the number of party votes the party received, taking into account the number of electorate seats the party holds. 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). 10
- (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. 15
- 5 First-past-the-post voting system (FPP)**
- (1) Parliament is made up of members who are elected by their respective electorates. There are no list members. 20
- (2) Each voter has 1 vote.
- (3) Each electorate elects 1 member of Parliament.
- (4) The winning candidate in each electorate is the one who gains the most votes; ~~that is, a simple majority.~~ 25
- 6 Preferential voting system (PV)**
- (1) Parliament is made up of members who are elected by their respective electorates, and has no list members.
- (2) Each electorate elects 1 member of Parliament.
- (3) Voters rank the candidates in their electorate in order of preference by, for example, marking candidates 1, 2, 3, and so on. 30
- (4) To win, a candidate must have 50% of the total votes cast plus 1 vote; ~~that is, an absolute majority.~~
- (5) The candidate with the most first-preference votes might not have ~~an absolute majority~~ more than 50% of the total votes 35

cast. In that case, the votes for the candidate with the lowest number of first-preference votes are redistributed according to the second preferences of the voters for that candidate. Redistribution of preferences continues until a candidate attains ~~an~~ absolute majority more than 50% of the total votes cast. 5

7 Single transferable vote system (STV)

- (1) Parliament is made up of members who are elected by their respective electorates, and has no list members.
- (2) Each electorate elects several members of Parliament.
- (3) Voters rank the candidates in their electorates in order of preference, for example 1, 2, 3, and so on. Alternatively, voters may vote for the order of preference decided in advance by a political party. 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. 15
- (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. 20
- (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~~ in line with voters' third preferences. 25
- (7) If no candidate receives the minimum number of first-preference votes, the lowest-polling candidate is eliminated and all that candidate's votes are redistributed in line with the second preferences of the voters, and so on. 30

8 Supplementary member voting system (SM)

- (1) Parliament is made up of members who are elected by their respective electorates (they win **electorate seats**) and members returned from party lists (they win **supplementary seats**).
- (1A) Of the 120 seats in Parliament, 90 would be electorate seats and 30 would be supplementary seats. 5
- (2) Each electorate elects 1 member of Parliament on a first-past-the-post basis.
- (3) ~~Voters would have either —~~
- (a) ~~1 vote, for their preferred candidate in their electorate;~~ 10
or
- (b) ~~2 votes: a vote for a party and a vote for an electorate candidate.~~
- (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.~~ 15
- (3) 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. 20
- (5) ~~If voters have 2 votes, the~~ The supplementary seats are allocated to parties in proportion to the number of party votes received by that party.
- (6) ~~In either case, a~~ 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. 25
- (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. 30
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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 20
- * (b) through its spokesperson.

*Select one.

Application

- 5 The applicant asks for an inquiry into—
- * (a) the conduct of the referendum:
- * (b) the conduct of [name of person complained of, office described in section 22(2), if relevant, address], who was connected with the referendum. 25

*Select those that apply.

- 6 The specific grounds on which the applicant is dissatisfied with the result of the referendum are as follows: [state specific grounds]. 30
- 7 The applicant asks the court to—

Electoral Referendum Bill

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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Legislative history

25 March 2010	Introduction (Bill 128–1)
22 April 2010	First reading and referral to Electoral Legislation Committee
