

# **New Zealand Flag Referendums Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

For some time there has been public debate about whether New Zealand should consider changing its flag. To provide New Zealanders with a forum in which to progress this discussion in a formal and respectful way, the Government decided to initiate a broad public engagement process, followed by the opportunity for the public to vote on the New Zealand Flag. The Government has appointed a Flag Consideration Panel to lead public engagement and to recommend alternative flag designs for New Zealanders to consider through referendum.

This Bill establishes a process for the holding of 2 postal referendums. The first will determine which alternative flag design is preferred by voters, and the second will determine whether that alternative flag or the current flag is to be the New Zealand Flag.

The Bill provides for the administration of the referendums, and specifies the voting process and how the activities of promoters will be regulated. This is to ensure that the referendum process is transparent and has integrity and public confidence, so that the outcome can be enduring.

The Bill provides that, if voters decide in the second referendum that the New Zealand flag is to change, this will automatically lead to the

necessary legislative changes and the status of the current flag (the **1902 Flag**) will be recognised.

### **Departmental disclosure statement**

The Ministry of Justice is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2015&no=8>

### **Regulatory impact statement**

The Ministry of Justice produced regulatory impact statements on 29 October 2014 and 12 December 2014 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

Copies of these regulatory impact statements can be found at—

- <http://www.justice.govt.nz/publications/global-publications/r/regulatory-impact-statement-considering-changing-the-new-zealand-flag/index>
- <http://www.justice.govt.nz/publications/global-publications/r/regulatory-impact-statement-regulation-of-new-zealand-flag-referendum-advertising/index>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

### **Clause by clause analysis**

*Clause 1* is the Title clause.

*Clause 2* is the commencement clause. It provides for the Bill (except *clauses 69, 70, and 71*) to come into force on the day after the date on which it receives the Royal assent. *Clauses 69, 70, and 71*, which concern legislative changes that would need to be effected in order to change the New Zealand flag and transitional arrangements for the move to a new flag, will only come into force if the second flag referendum results in a decision to change the flag.

## Part 1

### Preliminary provisions

*Clause 3* states the Bill's purpose, which is to provide for 2 postal referendums to be held to enable electors to decide whether New Zealand should have a new flag, and, if so, to provide for the change.

*Clause 4* provides that the Act expires and is repealed on the day that is 2 years after the date on which the result of the second flag referendum is declared. However, if the second flag referendum is declared void by the High Court and a fresh referendum is required to be held, the Act will expire and be repealed 2 years after the declaration of the result of the fresh referendum.

*Clause 5* defines the terms used in the Bill.

*Clause 6* provides a general description of the Preferential Voting electoral system, which is to be used for the first flag referendum.

*Clause 7* provides a general description of the First Past the Post electoral system, which is to be used for the second flag referendum.

*Clause 8* provides for extraterritorial application of the Bill in circumstances where the promoter of a referendum advertisement published in New Zealand is outside New Zealand, and where the promoter of a referendum advertisement published outside New Zealand is in New Zealand.

*Clause 9* states that the Act binds the Crown.

## Part 2

### Provisions relating to referendums

#### Subpart 1—Referendum on New Zealand flag

*Clause 10* requires 2 referendums to be held: one on the question set out in the voting paper in *Schedule 1*, and the other on the question set out in the voting paper in *Schedule 2*. The 2 referendums are referred to throughout the Bill as the first flag referendum and the second flag referendum.

*Clause 11* requires the Governor-General, on the recommendation of the Minister, to appoint dates for the conduct of the referendums.

*Clause 12* provides that the voting period for each referendum is 3 weeks, and enables the Governor-General to change the dates for the conduct of a referendum.

*Clause 13* requires the Governor-General, on the recommendation of the Minister, to prescribe 4 alternative flag designs to appear on the voting paper in the first flag referendum. The relevant Order in Council must include for each design an official description, an image, and technical specifications. When preparing the voting papers for the first flag referendum, the Electoral Commission must arrange the 4 designs in random order.

*Clause 14* provides for the flag design that is successful in the first flag referendum to appear on the voting paper in the second flag referendum, alongside the current New Zealand Flag. The Electoral Commission must arrange those 2 options on the voting paper in random order.

### Subpart 2—Officials

*Clause 15* requires the Electoral Commission to designate an Electoral Commissioner to be the Returning Officer for the referendums. The Returning Officer will be responsible for implementing the Bill.

*Clause 16* enables the Returning Officer to employ or engage persons for the purposes of a referendum.

*Clause 17* enables the Returning Officer to delegate any of his or her functions, powers, rights, and duties to certain persons or classes of persons employed or engaged for the purposes of a referendum.

### Subpart 3—Rolls of electors

*Clause 18* applies certain provisions of the Referenda (Postal Voting) Act 2000, concerning rolls of electors for referendums, to the referendums to be held under this Bill.

### Subpart 4—Conduct of referendums

*Clause 19* provides that every elector is qualified to vote at a referendum.

*Clause 20* provides that the first flag referendum is to be held in accordance with the Preferential Voting electoral system (as described in *clause 6*) and that the second flag referendum is to be conducted in

accordance with the First Past the Post electoral system (as described in *clause 7*).

#### *Dispatching voting papers*

*Clause 21* deals with the period for dispatching voting papers, and provides that the Returning Officer may dispatch voting papers at any time during the voting period except the last day. However, in the case of electors who, because of blindness or another disability, are voting by dictation, the Returning Officer may dispatch voting papers at any time during the voting period, including the last day. This clause also explains the point at which a voting paper is considered to have been dispatched.

*Clause 22* provides for the dispatch of voting papers by post.

*Clause 23* provides for dispatch of replacement voting papers by post.

*Clause 24* provides for the dispatch to electors in specified places and circumstances of voting papers by fax, email, or dictation.

*Clause 25* requires the Returning Officer to post certain types of envelope together with voting papers, and to send any referendum material.

*Clause 26* enables the Returning Officer to extend the voting period in certain circumstances.

#### *Marking and returning voting papers*

*Clause 27* sets out the method of voting, including the manner in which the voting paper must be marked, the manner in which an elector requiring assistance may vote, and the marking of the voting paper in certain circumstances by the Returning Officer or an authorised person in accordance with the elector's instructions.

*Clause 28* sets out the means by which voting papers may be returned to the Returning Officer.

*Clause 29* sets out the deadlines for the return of voting papers.

*Clause 30* provides that voting papers received late must be enclosed in a sealed envelope and marked accordingly.

#### *Progressive processing of voting papers*

*Clause 31* sets out the manner in which votes must be processed by the Returning Officer.

*Clause 32* provides that a voting paper is informal if it does not clearly indicate the voter's first preference (in the first flag referendum) or the option for which the elector wished to vote (in the second flag referendum).

*Clause 33* sets out the circumstances in which a voting paper is invalid.

*Clause 34* requires the Returning Officer to ensure that the processing of voting papers is conducted in a secure manner that preserves the secrecy of the votes, and charges the Returning Officer with responsibility for ensuring the safe custody of all returned voting papers until the processing is complete and they have been sent to the Clerk of the House.

*Clause 35* requires the Returning Officer to ensure that the result of voting in a referendum is not calculated before 7 pm on the last day of the voting period, but permits the Returning Officer to issue a press statement at any time during the voting period giving the total number of votes received at a specified date, but not the number of votes received for each option.

*Clause 36* provides for District Court Judges and Justices of the Peace to be appointed by the Minister to observe the processing of voting papers, and empowers an appointed Judge to finally determine whether a voting paper is valid or informal if asked to do so by the Returning Officer. A Judge must also, if asked to do so, finally determine whether any voting paper is exhausted in the sense that no further vote from that voting paper can be redistributed.

#### *Announcing results*

*Clause 37* sets out the procedure to be followed by the Returning Officer after the close of the voting period for a referendum.

*Clause 38* requires the Returning Officer to calculate the total number of votes received for each option in a referendum, and to declare the result of a referendum by giving public notice of it.

*Clause 39* provides the mechanisms for determining the result of a referendum in the event of a tie between 2 or more options.

*Clause 40* requires the Returning Officer to send, securely sealed in 1 or more parcels, to the Clerk of the House all returned voting papers, the record of informal and invalid voting papers, and the Returning Officer's copy of the roll. The Clerk of the House is required to keep

the parcels safely for 6 months, and ensure that at the end of 6 months the parcels are destroyed, unopened, in the presence of the Clerk of the House.

### Subpart 5—Application for inquiry into conduct of referendum

#### *Parties to inquiry*

*Clause 41* enables a group of 200 or more electors to apply to the High Court for an inquiry into the conduct of a referendum or of any person connected with the conduct of the referendum on the grounds that the group is dissatisfied with the conduct of the referendum or of any person connected with the conduct of the referendum and that the conduct could have altered the outcome of the referendum.

*Clause 42* sets out who may be respondents to an application made under *clause 41*.

*Clause 43* enables a group of at least 24 electors to oppose an application made under *clause 41*, and provides that such group becomes a respondent to the application.

#### *Making of application*

*Clause 44* sets out the manner in which an application under *clause 41* must be made, and requires the Registrar of the court to send a copy of the application to the Returning Officer as soon as practicable after it is filed. This clause also provides that an application must be made within 20 working days after the Returning Officer has declared the result of the referendum.

*Clause 45* requires an application to be served on a group that becomes a respondent under *clause 43*, and to be served on any person complained of in the application.

#### *Hearing of application*

*Clause 46* provides for multiple applications to be dealt with as 1 application so they can be heard together.

*Clause 47* gives the court jurisdiction to inquire into and adjudicate on any matter relating to an application under *clause 41* in any manner the court thinks fit, and provides that certain provisions of the

Electoral Act 1993 apply to the hearing of an application under this subpart.

#### *Court's decision*

*Clause 48* requires the court at the end of a hearing to either determine the number of valid votes received for each option in the referendum, or determine whether the referendum is void because of some irregularity that in the court's opinion materially affected the outcome of the referendum.

*Clause 49* provides for the conduct of a fresh referendum if the court declares a referendum void. The voting period for the fresh referendum is 3 weeks beginning no later than 30 working days after the Returning Officer is notified by the Registrar of the court that the referendum has been declared void, and the same roll of electors must be used as was used at the voided referendum.

#### Subpart 6—Offences

*Clauses 50 to 60* provide that certain conduct in connection with a referendum constitutes offences. The conduct covers actions with respect to unauthorised use or disclosure of referendum information, forgery of or interference with voting papers, failure to maintain secrecy or safe custody during processing of voting papers, and influencing electors generally; bribing, treating, or exercising undue influence over electors; interfering with voting, compromising the secrecy of voting, and personating electors. The offences relating to unauthorised disclosure of referendum information, forgery of or interference with voting papers, bribery, treating, undue influence, personation, and processing are corrupt practices for the purposes of the Electoral Act 1993.

*Clause 61* deals with a technical matter relating to prosecutions. If it is necessary for the purposes of the prosecution to state that the property in voting papers or envelopes containing voting papers vests in anyone, the charging document can state that it vests in the Returning Officer.



### Subpart 7—Advertising

*Clause 62* defines a number of terms used in this subpart. An important term is promoter, which means a person who initiates or instigates a referendum advertisement.

*Clause 63* defines referendum advertisement as an advertisement that is published in a specified way at any time between the commencement of the Act and the close of the voting period for the second flag referendum and that may reasonably be regarded as encouraging or persuading voters to vote or not to vote in a particular way at a referendum. The specified means of publication are broadcasting on radio or television, displaying on a billboard, printing in a newspaper, magazine, or journal, and printing in a professionally printed brochure, pamphlet, flyer, handbill, or poster for the purpose of distribution. There are a number of exceptions, including advertisements published by a government-appointed panel, a government agency, or the Electoral Commission, news and comments, and any publication on the Internet. Referendum advertisement also does not include any display or representation of the current New Zealand Flag or any alternative flag design that is published on its own without promotional words or images relating to voting in a referendum.

*Clause 64* requires a person who publishes, or causes or permits to be published, a referendum advertisement to include a promoter statement in the advertisement. A promoter statement must include the name and address of the promoter and, if the promoter is a body, the name of a member of the body who is a duly authorised representative of the promoter.

*Clause 65* makes it an offence to contravene *clause 64* and provides for a penalty of a fine not exceeding \$40,000.

*Clause 66* requires the Electoral Commission to inform the New Zealand Police if it believes that any person has committed an offence under *clause 65*, unless the Electoral Commission considers that the effect of the offence is so inconsequential that there is no public interest in reporting those facts to the New Zealand Police.

### **Part 3**

#### **Miscellaneous provisions**

##### *Orders in Council*

*Clause 67* empowers the Governor-General, by Order in Council, to make regulations.

*Clause 68* empowers the Governor-General, by Order in Council, to validate irregularities as to matters such as timing.

##### *Provisions relating to change of New Zealand Flag*

*Clause 69* makes amendments to the Flags, Emblems, and Names Protection Act 1981 (the **principal Act**) to give effect to the change of the New Zealand Flag. These amendments only come into effect if the outcome of the second flag referendum is a decision to change the flag. The amendments would insert a *new Schedule 1* in the principal Act containing a description of the technical specifications of the new flag, and an image of the new flag. The new flag would be the one that gained the greatest number of votes in both the first and second flag referendums. The 1902 Flag would be depicted in *new Schedule 1A*, and its historical significance would be recognised in *new section 5A* as a flag of historical significance to the Realm, Government and people of New Zealand. Amendments would also be made to section 10 of the principal Act, concerning the Minister's power to prescribe rules in relation to the detailed specifications of the New Zealand Flag, and the days and times at which, and manner in which, the 1902 Flag may be flown.

*Clause 70* amends the Land Transport (Driver Licensing) Rule 1999 by inserting a new clause to provide that, for the purposes of the requirement under that rule for a driver licence to display an image of the New Zealand Flag, New Zealand Flag means the flag that was the New Zealand Flag at the time the licence was issued. The new clause would also provide that the validity of a driver licence is not affected by any change of the New Zealand Flag that occurs during the validity of the licence. This provision will only come into effect if the outcome of the second flag referendum is a decision to change the New Zealand Flag.

*Clause 71* would also come into effect only if the outcome of the second flag referendum is a decision to change the Flag. This clause

gives ships that are required by section 58(2) of the Ship Registration Act 1992 to fly the New Zealand Flag a 6-month period from the time of the change to the new flag in which to make the transition from the 1902 Flag to the new flag.

*Schedule 1* sets out the form for the voting paper for the first flag referendum.

*Schedule 2* sets out the form for the voting paper for the second flag referendum.

*Schedule 3* sets out the forms to be used for declarations by the Returning Officer, and by persons employed or engaged for the purposes of a referendum, for declaring the result of the second flag referendum, and for making an application to the High Court in Wellington for an inquiry into the conduct of a referendum.

*Schedule 4* sets out the method of counting preferential votes (for the purposes of the first flag referendum).

*Schedule 5* contains the *new Schedules 1 and 1A* that are to be inserted into the Flags, Emblems, and Names Protection Act 1981 by *clause 69(10)* if the result of the second flag referendum is a decision to change the New Zealand Flag.

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*Hon Bill English*

# **New Zealand Flag Referendums Bill**

Government Bill

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the New Zealand Flag Referendums Act **2015**.

**2 Commencement**

- (1) This Act (except **sections 69, 70, and 71**) comes into force 5  
on the day after the date on which it receives the Royal assent.
- (2) If, in the second flag referendum, the alternative flag design 10  
gains a greater number of votes than the current New Zealand  
Flag, then **sections 69, 70, and 71** commence on whichever  
of the following dates is earlier:
- (a) a date set by the Governor-General by Order in Council:
- (b) the day that is 6 months after the date on which the result  
of the second flag referendum is declared.
- (3) If, in the second flag referendum, the current New Zealand 15  
Flag gains a greater number of votes than the alternative flag  
design, then **sections 69, 70, and 71** do not commence.



- (4) In this section, **alternative flag design** means the alternative flag design referred to in **section 14(1)(a)**.

## Part 1 Preliminary provisions

- 3 Purpose** 5  
 The purpose of this Act is to make provision for 2 postal referendums to be held to enable electors to decide whether New Zealand should have a new flag, and to provide for a change of the New Zealand flag if electors decide New Zealand should have a new flag. 10
- 4 Expiry**
- (1) This Act expires and is repealed on the close of the day that is 2 years after the date on which the result of the second flag referendum is declared.
- (2) Despite **subsection (1)**, if **section 49(1)** (which provides for a fresh referendum to be held in the case of the court declaring a referendum void) applies in the case of the second referendum, this Act expires and is repealed 2 years after the date on which the result of the fresh referendum is declared. 15  
 Compare: 2010 No 139 s 5 20
- 5 Interpretation**
- In this Act, unless the context otherwise requires,—
- 2000 Act** means the Referenda (Postal Voting) Act 2000
- agency** means any department or instrument of the Executive Government of New Zealand, or any branch or division of any of those departments or instruments 25
- alternative flag design** means an alternative flag design prescribed under **section 13(1)**
- Clerk of the House** means the Clerk of the House of Representatives 30
- current New Zealand Flag** means the flag declared by section 5(1) of the Flags, Emblems, and Names Protection Act 1981 to be the New Zealand Flag

**district** means a General electoral district or a Maori electoral district constituted under the Electoral Act 1993

**elector** means a person whose name lawfully appears on the referendum roll or any supplementary referendum roll

**Electoral Commission** means the Electoral Commission established by section 4B of the Electoral Act 1993 5

**first flag referendum** means the referendum held under **section 10(1)**

**First Past the Post** means the electoral system described generally in **section 7** 10

**Internet site** means the page on the Electoral Commission Internet site maintained by the Returning Officer for the purpose of receiving voting papers returned in electronic form

**Minister** means the Minister of the Crown who is, with the authority of the Prime Minister, for the time being responsible for the administration of this Act 15

**official description**, in relation to a flag or flag design, means the description of that flag or flag design prescribed under **section 13(2)(a)** or **14(3)**

**option** means,— 20

(a) in relation to the first flag referendum, any of the 4 alternative flag designs for which a vote may be cast:

(a) in relation to the second flag referendum, either of the 2 options (the current New Zealand Flag and the alternative flag design referred to in **section 14(1)(a)**) for which a vote may be cast 25

**panel** means any panel appointed by the Minister to conduct, on behalf of the New Zealand Government, a publicity campaign or other activity in relation to a referendum or referendums 30

**Preferential Voting** means the electoral system described generally in **section 6**

**promoter** has the meaning given in **section 62**

**random order**, in relation to the arrangement of options on a voting paper, means an arrangement where the order of the options is determined by the Electoral Commission randomly by lot and all voting papers use that order 35

**referendum** means the first flag referendum or the second flag referendum

**referendum advertisement** has the meaning given in **section 63**

**referendum material** means material that is prepared by a panel and presented to electors for the purpose of informing them about each of the options

**referendum roll** has the meaning given in section 3(1) of the 2000 Act

**referendums** means the first flag referendum and the second flag referendum

**returned**, in relation to a voting paper, means—

- (a) returned to the office of the Returning Officer; or
- (b) uploaded to the Internet site

**Returning Officer**—

- (a) means the Returning Officer referred to in **section 15(1)**; and
- (b) includes any person acting under a delegation under **section 17(1)**

**Returning Officer's copy of the roll** has the meaning given in section 3(1) of the 2000 Act

**second flag referendum** means the referendum held under **section 10(2)**

**supplementary referendum roll** has the meaning given in section 3(1) of the 2000 Act and includes a partial supplementary referendum roll compiled under **section 18(2)(a)**

**voting paper** means,—

- (a) in relation to the first flag referendum, a voting paper in the form prescribed in **Schedule 1**; and
- (b) in relation to the second flag referendum, a voting paper in the form prescribed in **Schedule 2**

**voting period**, in relation to a referendum, means the period specified in **section 12(1)**

**working day** means a day of the week other than—

- (a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, and Labour Day; and

- (b) a day in the period commencing with 25 December in a year and ending with 2 January in the following year; and
- (c) if 1 January falls on a Friday, the following Monday; and 5
- (d) if 1 January falls on a Saturday or a Sunday, the following Monday and Tuesday; and
- (e) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday. 10
- Compare: 2000 No 48 s 3; 1997 No 13 s 3
- 6 General description of Preferential Voting electoral system**  
For the purposes of the first flag referendum, the Preferential Voting electoral system has the following features:
- (a) voters express a first preference for 1 option and may express second and further preferences for other options: 15
- (b) the first preferences are counted and, if an option's first preference votes equal or exceed the absolute majority of votes, that option is the successful option:
- (c) if no option succeeds under **paragraph (b)**, the option with the fewest votes is excluded and that option's votes are redistributed according to voters' further preferences: 20
- (d) if no option succeeds under **paragraph (c)**, the steps described in **paragraph (c)** are repeated until 1 option achieves an absolute majority of votes. 25
- Compare: 2001 No 35 s 5B(b)(i), (iii), (iv), (v)
- 7 General description of First Past the Post electoral system**  
For the purposes of the second flag referendum, the First Past the Post electoral system has the following features: 30
- (a) voters may cast 1 vote for 1 option:
- (b) the option that receives the highest number of votes is the successful option.
- 8 Application of Act to conduct outside New Zealand**  
This Act applies in respect of the publication of a referendum advertisement— 35

- (a) in New Zealand, in any case where the promoter of the advertisement is outside New Zealand; and
- (b) outside New Zealand, in any case where the promoter of the advertisement is in New Zealand.

Compare: 2010 No 139 s 3

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## 9 Act binds the Crown

This Act binds the Crown.

## Part 2

### Provisions relating to referendums

#### Subpart 1—Referendums on New Zealand flag 10

## 10 Subject of referendums

- (1) During the voting period for the first flag referendum, a referendum of electors must be held on the question set out in the voting paper in **Schedule 1**. 15
- (2) During the voting period for the second flag referendum, a referendum of electors must be held on the question set out in the voting paper in **Schedule 2**.

## 11 Appointment of dates for referendums

The Governor-General must, by Orders in Council made on the recommendation of the Minister, as soon as practicable after the commencement of this Act,—

- (a) appoint a date for the close of the first flag referendum that is at least 90 days after the day on which this Act commences; and 25
- (b) appoint a date for the close of the second flag referendum that is at least 90 days after the day appointed under **paragraph (a)**.

## 12 Voting period

- (1) For each referendum,— 30
  - (a) the voting period commences at the start of the 21st day before the day appointed under **section 11** for the close of that referendum; and

- (b) the voting period closes at 7 pm on the day appointed under **section 11** for the close of that referendum.
- (2) The Governor-General may, from time to time, before the commencement of the voting period for a referendum, by Order in Council,— 5
  - (a) revoke an Order in Council made under **section 11** and appoint a later date for the close of the referendum:
  - (b) revoke any Order in Council made under section 21(2) of the 2000 Act as that provision applies to this Act, and appoint a later date for the closing of the referendum 10 roll.

Compare: 2000 No 48 s 30; 1997 No 13 s 28

### 13 Alternative flag designs

- (1) The Governor-General must, by Order in Council made on the recommendation of the Minister, at least 60 days before the commencement of the voting period for the first flag referendum, prescribe 4 alternative flag designs to appear on the voting paper. 15
- (2) For each of the alternative flag designs prescribed, the Order in Council must include— 20
  - (a) an official description of the design, to be used for the purposes of dictating the relevant parts of the voting paper under **section 24(4)(c)**; and
  - (b) an image of the design, to be used for the purposes of **subsection (3)** and **section 14(1)**; and 25
  - (c) the technical specifications of the design, including the colours, dimensions, and proportions of the design and of any shapes or images in it.
- (3) When producing voting papers for the first flag referendum, the Electoral Commission must ensure that the 4 alternative flag designs prescribed under **subsection (1)** are inserted in the spaces indicated on the form in **Schedule 1**. 30
- (4) For the purposes of **subsection (3)**, the Electoral Commission must arrange the alternative flag designs on the voting paper in random order. 35

Compare: SR 2001/145 r 31(5)

**14 Voting paper in second flag referendum**

- (1) When producing voting papers for the second flag referendum, the Electoral Commission must ensure that the following 2 flag designs are inserted in the spaces indicated on the form in **Schedule 2**: 5
- (a) the alternative flag design that was successful in the first flag referendum; and
- (b) the current New Zealand Flag.
- (2) For the purposes of **subsection (1)**, the Electoral Commission must arrange the 2 options on the voting paper in random order. 10
- (3) The Governor-General must, by Order in Council made on the recommendation of the Minister, at least 28 days before the commencement of the voting period for the second flag referendum, prescribe an official description of the current New Zealand Flag, to be used for the purposes of dictating the relevant parts of the voting paper under **section 24(4)(c)**. 15
- (4) For the purposes of dictating the relevant parts of the voting paper under **section 24(4)(c)**,—
- (a) the alternative flag design is to be described in accordance with the official description of that design; and 20
- (b) the current New Zealand Flag is to be described in accordance with the official description of that flag.

Compare: SR 2001/145 r 31(5)

Subpart 2—Officials 25

**15 Returning Officer**

- (1) For each referendum, the Electoral Commission must designate an Electoral Commissioner to be the Returning Officer.
- (2) The Returning Officer is, under the direction of the Electoral Commission, charged with the duty of implementing this Act, except **subpart 3 of this Part**. 30
- (3) The Returning Officer must, as his or her first duty, make a declaration in **form 1 of Schedule 3** before a Justice of the Peace or a lawyer.

Compare: 2000 No 48 s 8; 1997 No 13 s 7

35

**16 Returning Officer may employ or engage persons**

- (1) The Returning Officer for a referendum may employ or engage such persons as the Returning Officer considers are required for the purposes of that referendum.
- (2) A person engaged under **subsection (1)** in respect of a referendum may employ or engage such other persons as the person considers are required for the purposes of that referendum. 5
- (3) Every person employed or engaged under **subsection (1) or (2)**—
- (a) is under the direction of the Returning Officer; and 10
- (b) must, as the person's first duty, make a declaration in **form 1 of Schedule 3** before the Returning Officer, a Justice of the Peace, or a lawyer.

Compare: 2000 No 48 s 9; 1997 No 13 s 8

**17 Delegation by Returning Officer** 15

- (1) The Returning Officer may, either generally or particularly, delegate any of the Returning Officer's functions, powers, rights, and duties, except this power of delegation, to—
- (a) any specified person employed or engaged under **section 16**; or 20
- (b) persons of a specified class employed or engaged under **section 16**.
- (2) A delegation under this section must be made in writing, and the document must be signed by the Returning Officer.
- (3) Section 12 of the 2000 Act applies to a delegation under this section. 25

Compare: 2000 No 48 s 11; 1997 No 13 s 10

## Subpart 3—Rolls of electors

**18 Rolls of electors**

- (1) The following provisions of the 2000 Act apply, except to the extent specified in **subsection (2)**, with the modifications described in this section and any other necessary modifications, to referendums conducted under this Act: 30
- (a) section 10(1):
- (b) Part 4: 35
- (c) sections 64 and 65.



- (2) Section 21(3) of the 2000 Act does not apply, and, for the purposes of a referendum under this Act, the Electoral Commission—
- (a) may, after the closing of the referendum rolls and before the commencement of the voting period, compile 1 or more partial supplementary referendum rolls; and 5
  - (b) must compile the final supplementary referendum roll as soon as practicable after the commencement of the voting period.
- (3) For the purposes of this section, all references in Part 4 of the 2000 Act to the following terms, used within the meaning of that Act, must be read as references to those terms within the meaning of this Act: 10
- (a) referendum:
  - (b) Returning Officer: 15
  - (c) supplementary referendum roll:
  - (d) voting period.
- (4) The reference in section 19 of the 2000 Act to “this Act” must be read as a reference to this Act.
- (5) The reference in section 27 of the 2000 Act to other provisions of that Act must be read as references to the corresponding provisions of this Act. 20
- (6) The references in section 64(3)(a) and (b) of the 2000 Act to sections 34(3)(b), 35(5), and 42(2)(b) of that Act must be read as references to **sections 23(3)(b), 24(5), and 31(2)(b)** of this Act respectively. 25

#### Subpart 4—Conduct of referendums

##### 19 Who may vote

Every elector is qualified to vote at a referendum.

Compare: 2000 No 48 s 29; 1997 No 13 s 27

30

##### 20 Electoral systems for referendums

- (1) The first flag referendum is to be conducted in accordance with the Preferential Voting electoral system.
- (2) The second flag referendum is to be conducted in accordance with the First Past the Post electoral system. 35

*Dispatching voting papers***21 Period for dispatching voting papers**

- (1) The Returning Officer may dispatch voting papers—
- (a) before the start of the voting period only in accordance with **section 22(2)**; and 5
  - (b) at any time during the voting period except the last day of the voting period.
- (2) However, in the case of electors to whom **section 24(2)** applies, the Returning Officer may dispatch voting papers at any time during the voting period, including the last day of the voting period. 10
- (3) A voting paper is dispatched by the Returning Officer to an elector when,—
- (a) if the voting paper is posted under **section 22** or **23**, the Returning Officer authorises New Zealand Post Limited to deliver the voting paper to the elector: 15
  - (b) if the voting paper is faxed under **section 24(4)(a)**, the Returning Officer's fax machine generates a record of the transmission of the voting paper to the elector's fax number: 20
  - (c) if the voting paper is emailed under **section 24(4)(b)**, the Returning Officer receives an electronic receipt of delivery of the email to the elector's email address:
  - (d) if the relevant parts of the voting paper are dictated under **section 24(4)(c)**, the Returning Officer is satisfied that the elector has heard every word dictated. 25

Compare: 2000 No 48 ss 31, 32; 1997 No 13 s 29

**22 Dispatching voting papers by post**

- (1) As soon as practicable after the commencement of the voting period for a referendum, the Returning Officer must post to each elector 1 voting paper addressed to the elector at the address shown against the elector's name on the Returning Officer's copy of the roll. 30
- (2) In order to carry out his or her duty under **subsection (1)**, the Returning Officer may,— 35
- (a) for voting papers addressed to electors residing in New Zealand, provide delivery authorisation to New Zealand

Post Limited on the day before the first day of the voting period:

- (b) for voting papers addressed to electors residing overseas, provide delivery authorisation to New Zealand Post Limited up to 3 working days before the first day of the voting period. 5

Compare: 2000 No 48 s 33; 1997 No 13 s 31

### **23 Dispatching replacement voting papers by post**

- (1) An elector may apply to the Returning Officer for a replacement voting paper, on the grounds that he or she has— 10
- (a) spoiled, destroyed, or lost his or her voting paper; or
- (b) not received his or her voting paper.
- (2) An application must—
- (a) be made before noon on the day that is 3 days before the last day of the voting period; and 15
- (b) be made in the manner described in regulation 4 of the Referenda (Postal Voting) Regulations 2009.
- (3) If the Returning Officer is satisfied that the person is an elector, the Returning Officer must—
- (a) post the elector 1 voting paper addressed to the elector at his or her current postal address; and 20
- (b) make a mark on the Returning Officer's copy of the roll, next to the elector's name, to indicate that the Returning Officer posted a replacement voting paper to the elector; and 25
- (c) provide the Electoral Commission with the name, date of birth, and current postal address of the elector, if the current postal address is different from the postal address shown on the Returning Officer's copy of the roll. 30

Compare: 2000 No 48 s 34; 1997 No 13 s 32

### **24 Dispatching voting papers by fax, email, or dictation**

- (1) An elector may apply to the Returning Officer to have the voting paper faxed or emailed to him or her, or to have the relevant parts of the voting paper dictated to him or her, on the grounds that he or she— 35
- (a) will be, or is, during the voting period,—
- (i) on Tokelau, Campbell Island, or Raoul Island; or

- (ii) in the Ross Dependency; or  
 (iii) on a fishing vessel or naval vessel; or  
 (iv) in some remote location overseas; and
- (b) will not receive, or has not received, a voting paper posted to him or her at the address shown against his or her name on the Returning Officer's copy of the roll; and
- (c) cannot reasonably be expected, in all the circumstances, to make, or to have made, his or her own arrangements for the voting paper to be forwarded to him or her; and
- (d) has the facility for receiving the voting paper by the method applied for.
- (2) An elector may apply to the Returning Officer to have the relevant parts of the voting paper dictated to him or her on the grounds that he or she—
- (a) is blind; or  
 (b) is partially blind and is unable to mark the ballot paper without assistance; or  
 (c) has another physical disability and is unable to mark the ballot paper without assistance.
- (3) An application under this section must,—
- (a) if made under **subsection (1)**, be made before noon on the day before the last day of the voting period; and  
 (b) be made in the manner described in regulation 5 of the Referenda (Postal Voting) Regulations 2009, read with any necessary modifications.
- (4) If the Returning Officer is satisfied that **subsection (1)** or **subsection (2)** applies to an elector, the Returning Officer may—
- (a) fax the voting paper to the elector; or  
 (b) email the voting paper to the elector; or  
 (c) dictate the relevant parts of the voting paper to the elector.
- (5) The Returning Officer must make a mark on the Returning Officer's copy of the roll, next to the elector's name, to indicate that the voting paper has been faxed or emailed, or that its relevant parts have been dictated, to the elector under **subsection (4)**.

Compare: 2000 No 48 s 35; 1997 No 13 s 33; SR 1996/93 r 23A(1)

**25 Envelopes and information accompanying voting papers**

- (1) When the Returning Officer posts a voting paper under **section 22** or **23**, the Returning Officer must post it with an envelope of one of the following kinds:
- (a) a postage-paid envelope addressed to the Returning Officer, if the address shown against the elector's name on the Returning Officer's copy of the roll is an address in New Zealand; or 5
  - (b) an envelope addressed to the Returning Officer, if the address shown against the elector's name on the Returning Officer's copy of the roll is an address outside New Zealand. 10
- (2) When the Returning Officer posts under **section 22** or **23**, or faxes or emails under **section 24**, a voting paper, the Returning Officer— 15
- (a) must post or fax or email with it a copy of the referendum material, if any; and
  - (b) may post or fax or email with it information, in any language or languages, on how to vote and how to return the voting paper. 20

Compare: 2000 No 48 s 36; 1997 No 13 s 34

**26 Extension of voting period**

- (1) The Returning Officer may extend the voting period if he or she is of the opinion that industrial action, natural disaster, adverse weather conditions, or any other thing has had, or will have, the effect of— 25
- (a) delaying the dispatch of voting papers so much that electors have not had, or will not have, a reasonable opportunity to vote and return their voting papers before the close of the voting period; or 30
  - (b) delaying the return of voting papers so much that voting papers that would otherwise have been returned before the close of the voting period will not be returned by that time.
- (2) An extension may apply to— 35
- (a) the whole of New Zealand; or
  - (b) an area or areas of New Zealand; or

- (c) any or all of Tokelau, Campbell Island, Raoul Island, or the Ross Dependency.
  - (3) The Returning Officer may extend the voting period as many times as he or she thinks necessary. 5
  - (4) Each extension is to be for the period the Returning Officer thinks necessary, up to a maximum of 14 days. 5
  - (5) As soon as practicable, the Returning Officer must give—
    - (a) public notice of every extension of the voting period; and
    - (b) such other notice of the extension as he or she thinks fit. 10
- Compare: 2000 No 48 s 37; 1997 No 13 s 35

*Marking and returning voting papers*

**27 Method of voting**

- (1) An elector voting in the first flag referendum—
  - (a) must mark the voting paper by expressing a first preference for 1 option; and 15
  - (b) may express second and further preferences for other options.
- (2) An elector voting in the second flag referendum must mark the voting paper with a tick in the circle corresponding to the option that the elector wishes to vote for. 20
- (3) The voting paper may be marked in the manner described in **subsection (4)** if an elector—
  - (a) is visually impaired; or
  - (b) is unable to read or write for any reason; or 25
  - (c) is not sufficiently familiar with any language or languages used on the voting paper to vote without assistance.
- (4) The manner is—
  - (a) by the elector, with the assistance of a person authorised by the elector; or 30
  - (b) by a person authorised by the elector, in accordance with the elector's instructions.
- (5) An elector to whom the Returning Officer has dictated the relevant parts of the voting paper under **section 24(4)(c)** may dictate his or her vote to the Returning Officer, and the Return- 35

ing Officer must mark the voting paper in accordance with the elector's instructions.

Compare: 2000 No 48 s 38; 1997 No 13 s 36

## **28 Return of voting papers to Returning Officer**

- (1) An elector to whom a voting paper was faxed under **section 24(4)(a)** or emailed under **section 24(4)(b)** must, if returning the voting paper, return it to the office of the Returning Officer—
- (a) by fax; or
  - (b) by uploading the voting paper to the Internet site; or
  - (c) by post.
- (2) An elector residing overseas who has received a voting paper by post may return it by any of the methods specified in **subsection (1)**.
- (3) Any other elector may return the voting paper by—
- (a) delivering it by hand to the office of the Returning Officer during normal business hours; or
  - (b) posting it to the office of the Returning Officer.
- (4) An elector to whom **section 27(3)** applies may ask the authorised person to—
- (a) assist the elector to return the voting paper in compliance with **subsection (1), (2), or (3)**; or
  - (b) return the voting paper in compliance with **subsection (1), (2), or (3)** on behalf of the elector.
- (5) When an elector votes in accordance with **section 27(5)**, the voting paper is returned when the Returning Officer marks the voting paper.

Compare: 2000 No 48 s 39; 1997 No 13 s 37

## **29 Times for return of voting papers**

- (1) A voting paper returned by post, or by hand, or by fax, or by upload to the Internet site must be returned before 7 pm on the last day of the voting period.
- (2) However, a voting paper may be returned by post after the last day of the voting period as long as—

- (a) it is returned before noon on the fourth day (not including statutory holidays) after the last day of the voting period; and
  - (b) it bears a postmark or date stamp, either on its envelope (if any) or on the voting paper itself, that was impressed—
    - (i) on a day during the voting period by a postal operator registered under section 29 of the Postal Services Act 1998; or
    - (ii) before or on the day before the last day of the voting period, in any country other than New Zealand.
- (3) A vote cast by dictation under **section 24(4)(c)** must be returned before 7 pm on the last day of the voting period (the **deadline**).
- (4) However, if an elector is voting by dictation at the deadline,—
- (a) the elector is entitled to complete his or her vote; and
  - (b) the voting paper must be returned under **section 28(5)**.
- Compare: 2000 No 48 s 40; 1997 No 13 s 38

### 30 Voting papers returned late 20

If any voting papers or envelopes containing voting papers are returned, but not in accordance with **section 29**, the Returning Officer must—

- (a) enclose them in 1 or more parcels; and
- (b) seal each parcel and mark it “Disallowed, received late”.

Compare: 2000 No 48 s 41; 1997 No 13 s 39

#### *Progressive processing of voting papers*

### 31 Processing of voting papers

- (1) As soon as practicable after any voting paper is returned in accordance with **section 29**, the Returning Officer must process it under **subsection (2)**. 30
- (2) The Returning Officer must, in a manner that preserves the secrecy of the vote,—
  - (a) if the voting paper is in an envelope, extract the voting paper; and 35



- (b) make a mark on the Returning Officer's copy of the roll, next to the elector's name, to indicate that the voting paper dispatched to that elector has been returned; and
  - (c) if the voting paper is valid and—
    - (i) the vote is formal, record the elector's vote as marked; or
    - (ii) the vote is informal, record the elector's vote as informal; and
  - (d) if the voting paper is invalid, record the voting paper as invalid and the reasons for its invalidity; and
  - (e) place the voting paper in secure storage under the control of the Returning Officer.
- (3) The Returning Officer may carry out the duties in **subsection (2)** by any method and procedure he or she thinks fit, including the use of computer technology.
- Compare: 2000 No 48 s 42; 1997 No 13 s 40

### 32 Informal voting papers

A voting paper is informal if the Returning Officer is satisfied,—

- (a) in the case of the first flag referendum, that the voting paper does not clearly indicate the voter's first preference; or
- (b) in the case of the second flag referendum, that the voting paper does not clearly indicate the option for which the elector wished to vote.

Compare: 2000 No 48 s 43; 1997 No 13 s 41

### 33 Invalid voting papers

A voting paper is invalid if the Returning Officer is satisfied that the voting paper—

- (a) is a forgery or a copy; or
- (b) was dispatched by the Returning Officer to a person whose roll identifier number was supplied to the Returning Officer under section 26 of the 2000 Act as it applies to this Act; or
- (c) was posted to an elector under **section 22**, if—

- (i) a voting paper was also posted under **section 23** or faxed under **section 24(4)(a)** or emailed under **section 24(4)(b)** to the elector; or
- (ii) the relevant parts of the voting paper were also dictated to the elector under **section 24(4)(c)**; or 5
- (d) was marked by a person other than—
  - (i) the elector intended to receive the voting paper; or
  - (ii) if **section 27(3)** applies, a person authorised by the elector to mark the voting paper; or 10
  - (iii) if **section 27(5)** applies, the Returning Officer; or
- (e) was marked in breach of **section 58(2)** or **59(1)**; or
- (f) was not returned in accordance with **section 29**; or
- (g) if returned by fax, is not a true copy of the original 15  
voting paper marked by the elector; or
- (h) is damaged in such a way as to prevent it from being processed.

Compare: 2000 No 48 s 44; 1997 No 13 s 42

- 34 Protection of secrecy during processing** 20
- (1) The Returning Officer must ensure that—
    - (a) the processing of voting papers is conducted at the office of the Returning Officer or in premises authorised by the Returning Officer; and
    - (b) when the office of the Returning Officer or any other 25  
premises are being used for the processing of voting papers, a sign is placed outside the office or premises stating that this is the case and that entry is prohibited without the express authorisation of the Returning Officer; and 30
    - (c) no person, without the express authorisation of the Returning Officer, enters the office of the Returning Officer or any other premises when the sign is in place.
  - (2) The Returning Officer must take all reasonable steps to ensure the safe custody of all returned voting papers until they have 35  
been sent to the Clerk of the House under **section 40**.
  - (3) Despite **section 35(1)**, the Returning Officer may from time to time during the voting period assess the feasibility of any

method chosen to calculate the result of the referendum if the assessment does not compromise the secrecy of voting or the result of the referendum.

Compare: 2000 No 48 s 45; 1997 No 13 s 43(1)(a)–(c), (2)

- 35 Publicity during processing** 5
- (1) The Returning Officer must ensure that the result of voting is not calculated, whether partially or finally, before 7 pm on the last day of the voting period.
- (2) Despite **subsection (1)**, the Returning Officer may from time to time during the voting period issue a press statement giving the total number of votes received at a date specified in the statement, but not the number of votes received for each option. 10
- Compare: 2000 No 48 s 46; 1997 No 13 s 43 (1)(d)
- 36 Supervision of processing** 15
- (1) In this section,—
- duty** means the duty to observe the processing of voting papers
- Judge** means a person appointed under **subsection (2)**
- Justice** means a person appointed under **subsection (3)**
- place** means the place at which voting papers are processed. 20
- (2) After consultation with the Chief District Court Judge, the Minister must appoint as many District Court Judges or retired District Court Judges to observe the processing of voting papers as the Minister considers necessary.
- (3) The Minister may also appoint as many Justices of the Peace to observe the processing of voting papers as the Minister considers necessary. 25
- (4) A Justice—
- (a) is subject, in the exercise of his or her duty, to the direction of any Judge who is present at the place; but 30
- (b) may exercise his or her duty whether or not any Judge is present at the place.
- (5) A Judge must finally determine whether any voting paper is valid or informal, if asked to do so by the Returning Officer.
- (6) A Justice must not finally determine whether any voting paper is valid or informal. 35

- (7) In the case of the first flag referendum, if asked to do so by the Returning Officer, a Judge must finally determine whether any voting paper is exhausted within the meaning of **clause 1 of Schedule 4** for either of the following reasons:
- (a) all of the options for which a preference was validly expressed on the voting paper have been excluded; or 5
  - (b) the voting paper does not clearly indicate any preference consecutive to the preference indicated for the option that was last excluded. 10
- Compare: 2000 No 48 s 47; 1997 No 13 s 44

*Announcing results*

- 37 Procedure after close of voting period**
- As soon as practicable after 7 pm on the last day of the voting period, the Returning Officer must,—
- (a) in the case of the first flag referendum, count, in the manner described in **Schedule 4**, the votes received for each option from the voting papers processed as at 7 pm on the last day of the voting period; and 15
  - (b) in the case of the second flag referendum, calculate the number of votes received for each option from the voting papers processed as at 7 pm on the last day of the voting period; and 20
  - (c) issue a press statement giving the numbers; and
  - (d) complete the processing of voting papers in accordance with **section 31**. 25
- Compare: 2000 No 48 s 48; 1997 No 13 s 45

- 38 Declaration of result of referendum**
- (1) When all the voting papers returned in accordance with **section 29** have been processed, the Returning Officer must,—
- (a) in the case of the first flag referendum,— 30
    - (i) calculate the number of first preference votes received for each option; and
    - (ii) count the votes in the manner described in **Schedule 4**; and
    - (iii) declare the result of the referendum by giving public notice of the following: 35

- (A) the absolute majority of votes determined at the first iteration; and
- (B) the number of first preference votes received for each option; and
- (C) the absolute majority of votes determined at each iteration at which an option was successful or excluded; and 5
- (D) the number of votes recorded for each option and the number of transferable votes at each iteration at which an option was excluded; and 10
- (E) the iteration number at which each option was excluded, where applicable; and
- (F) the number of informal voting papers; and
- (G) the outcome of the referendum; and 15
- (b) in the case of the second flag referendum,—
- (i) calculate the total number of votes received for each option; and
- (ii) declare the result of the referendum by giving public notice of it in **form 2 of Schedule 3**; and 20
- (iii) give public notice of the following for each district:
- (A) the number of votes received for each option; and
- (B) the number of informal votes. 25
- (2) However, if there is a tie within the meaning of **section 39(3)**, the Returning Officer must not declare the result of the referendum until the tie has been resolved under **section 39(1) or (2)**.
- (3) In this section, **absolute majority of votes** means the number arrived at using the formula specified in **clause 3 of Schedule 4**. 30
- 39 Determination of result in event of tie**
- (1) If there is a tie in the first flag referendum, the Electoral Commission must resolve the tie in the manner described in **clause 10 of Schedule 4**. 35

- (2) If there is a tie in the second flag referendum, the current New Zealand Flag is to be taken to have received the greatest number of votes.
- (3) In this section, **tie** means,—
- (a) in relation to the first flag referendum, any of the circumstances described in **clause 10 of Schedule 4**: 5
  - (b) in relation to the second flag referendum, that there is an equality of votes between the 2 options.

Compare: 1993 No 87 s 179(6); SR 2001/145 cl 58(5), Schedule 1A Part 5

#### **40 Disposal of voting papers and rolls** 10

- (1) As soon as practicable after declaring the result of the referendum, the Returning Officer must—
- (a) enclose and securely seal in 1 or more separate parcels—
    - (i) all returned voting papers, used or unused; and 15
    - (ii) the record of informal and invalid voting papers; and
    - (iii) the Returning Officer’s copy of the roll; and
  - (b) send the parcels to the Clerk of the House.
- (2) The Clerk of the House must,— 20
- (a) as soon as practicable, sign a receipt for the parcels and send it to the Returning Officer; and
  - (b) keep the parcels safely for 6 months unopened, unless a court of competent jurisdiction or the House of Representatives orders them, or any of them, to be opened; 25
  - and
  - (c) ensure that at the end of 6 months the parcels are destroyed unopened in the presence of the Clerk of the House.
- (3) Section 190 of the Electoral Act 1993 applies, as far as is applicable and with any necessary modifications, to everything kept by the Clerk of the House under **subsection (2)**. 30

Compare: 2000 No 48 s 50; 1997 No 13 s 47

## Subpart 5—Application for inquiry into conduct of referendum

### *Parties to inquiry*

#### **41 Who may make application**

- (1) Any group of electors may apply to the High Court for an inquiry into the conduct of the referendum or of any person connected with it on the grounds that the group is dissatisfied with the conduct of the referendum or of any person connected with the conduct of the referendum, and that that conduct could have altered the outcome of the referendum. 5 10
- (2) A group may make an application only if it has at least 200 members. 10
- Compare: 2000 No 48 s 52; 1993 No 101 s 48(1)

#### **42 Who may be respondents**

- The person complained of is a respondent to the application if the person is— 15
- (a) the Returning Officer; or
- (b) a person employed or engaged under **section 16**; or
- (c) the Electoral Commission; or
- (d) an employee of New Zealand Post Limited; or 20
- (e) a person acting under a delegation under **section 17**.
- Compare: 2000 No 48 s 54; 1993 No 101 s 48(2)

#### **43 Group of electors may oppose application**

- (1) Any group of electors may file notice of its intention to oppose an application, if there is only 1, or to oppose specified applications, if there are more than 1. 25
- (2) A group may file such a notice only if it has at least 24 members.
- (3) The notice must— 30
- (a) be in **form 3 of Schedule 3**; and
- (b) be filed at least 3 working days before the day fixed for the start of the hearing.
- (4) A group filing a notice in accordance with this section becomes a respondent to the application or applications. 35
- Compare: 2000 No 48 s 53; 1993 No 101 s 49

*Making of application***44 Making of application**

- (1) An applicant makes its application by filing the application in the High Court in Wellington.
- (2) The application must— 5
- (a) be in **form 4 of Schedule 3**, or in a similar form; and
  - (b) state the specific grounds on which the applicant is dissatisfied with the conduct of the referendum or of any person connected with it; and
  - (c) be made within 20 working days after the Returning Officer has declared the result of the referendum under **section 38(1)(a)(iii) or (b)(ii)**. 10
- (3) The Registrar of the court must send a copy of the application to the Returning Officer as soon as practicable after it is filed. 15  
Compare: 2000 No 48 ss 55–58

**45 Application to be served on respondents**

- (1) An application must be served on a group that becomes a respondent under **section 43(4)** as soon as practicable after that group files its notice.
- (2) An application that asks for an inquiry into the conduct of a person connected with the referendum must be served on the person complained of as soon as practicable after it is made. 20
- (3) An application must be served in a manner as close as possible to that in which a statement of claim is served. 25  
Compare: 2000 No 48 s 59; 1993 No 101 s 48(5)

*Hearing of application***46 More than 1 application relating to same referendum**

Where 2 or more applications are filed that relate to the same referendum, all those applications must be dealt with as 1 application. 30

**47 Matters to be inquired into at hearing**

- (1) At the hearing, the court has jurisdiction to inquire into and adjudicate on any matter relating to the application in any manner that the court thinks fit.



- (2) The court may, on any terms and conditions it considers just, give leave for grounds other than those stated in the application to be inquired into.
- (3) Evidence may be given to prove that the total number of valid votes recorded for each of the options on the voting paper was other than that declared, without any applicant having to state that as a ground of dissatisfaction or the court having to give leave for the ground to be inquired into. 5
- (4) The provisions of the Electoral Act 1993 specified in **subsection (5)**, as far as they are applicable and with the necessary modifications, apply to a hearing of an application for an inquiry under this subpart or an incidental matter. 10
- (5) The provisions of the Electoral Act 1993 referred to in **subsection (4)** are sections 232, 235, 236(1), (2), and (4) to (7), 240, 241, 242, 247 to 255, 256(1)(a) and (b), and 257. 15  
Compare: 2000 No 48 s 60; 1993 No 101 s 48(3)

### *Court's decision*

#### **48 Decision of court as to result of referendum**

At the end of a hearing, the court must—

- (a) determine the total number of valid votes recorded for each option; or 20
- (b) determine whether the referendum is void because of some irregularity that in the court's opinion materially affected the outcome of the referendum.

Compare: 2000 No 48 s 61; 1993 No 101 s 50 25

#### **49 Fresh referendum**

- (1) If the court declares a referendum void under **section 48(b)**, a fresh referendum must be held in the manner specified by this Act.
- (2) The Registrar of the court must notify the Returning Officer that the referendum has been declared void. 30
- (3) Despite **section 12**, the voting period for the fresh referendum must commence at the start of the 21st day before the day appointed for the close of the voting period under **subsection (4)** and no later than 30 working days after the date on which the Returning Officer is notified under **subsection (2)**. 35

- (4) The voting period for a fresh referendum closes at 7 pm on a day to be appointed by the Returning Officer by notice in the *Gazette*.
- (5) At the fresh referendum, the same roll of electors must be used as was used at the voided referendum. 5  
Compare: 2000 No 48 s 62; 1993 No 101 s 51

### Subpart 6—Offences

#### 50 Unauthorised use or disclosure of referendum information

- (1) An official who uses or discloses information, acquired in connection with a referendum in his or her capacity as an official, knowing that the use or disclosure is not required or permitted for the performance of his or her official duty commits an offence against this section and is guilty of a corrupt practice for the purposes of the Electoral Act 1993 (and liable on conviction to the penalties specified in section 224 of that Act). 10 15
- (2) In this section, **official** means any of the following persons:
- (a) the Returning Officer:
  - (b) any person employed or engaged under **section 16**:
  - (c) the Electoral Commission:
  - (d) any employee of New Zealand Post Limited: 20
  - (e) any person acting under a delegation under **section 17**. 20
- Compare: 2000 No 48 s 63; 1997 No 13 s 49

#### 51 Influencing electors generally

- (1) This section applies to any person who, at any time during the 3 days immediately before the commencement of a voting period or during a voting period, prints or distributes or delivers to any person anything— 25
- (a) that is or purports to be an imitation of the voting paper, together with any direction or indication as to the option for which any person should or should not vote; or 30
  - (b) that is or purports to be an imitation of the voting paper and that has on it any matter likely to influence any vote.
- (2) Every such person commits an offence and is liable on conviction to a fine not exceeding \$5,000.
- (3) Nothing in this section applies to anything said or done, for the purposes of a referendum, by— 35

- (a) the Returning Officer; or
- (b) a panel; or
- (c) a person employed or engaged under **section 16**; or
- (d) a person acting under a delegation under **section 17**.

Compare: 2000 No 48 s 66; 1997 No 13 s 52

5

## **52 Offences in relation to voting papers**

- (1) Every person commits an offence who—
  - (a) forges, or counterfeits, or fraudulently defaces, or fraudulently destroys a voting paper or an envelope containing a voting paper; or 10
  - (b) supplies a voting paper to any person knowing that the person is not the person intended to receive the voting paper; or
  - (c) dictates the relevant parts of the voting paper to a person, knowing that the person is not the person to whom the parts were intended to be dictated; or 15
  - (d) without due authority, destroys, takes, or interferes with a voting paper or an envelope containing a voting paper that—
    - (i) is in use for the purposes of the referendum; or 20
    - (ii) is kept after the declaration of the result as a record of the referendum.
- (2) Every person who commits an offence against this section is liable on conviction,—
  - (a) if the Returning Officer, or any person employed or engaged under **section 16**, or any person acting under a delegation under **section 17**, to imprisonment for a term not exceeding 2 years: 25
  - (b) if any other person, to imprisonment for a term not exceeding 6 months. 30
- (3) Every person who commits an offence against this section is guilty of a corrupt practice for the purposes of the Electoral Act 1993.

Compare: 2000 No 48 s 68; 1997 No 13 s 54

## **53 Bribery by any person at any time**

35

- (1) In this section,—

- (a) **elector** includes a person who claims to have a right to vote at a referendum:
- (b) references to giving money include the following actions in relation to any money or valuable consideration:
- (i) giving it; or 5
  - (ii) lending it; or
  - (iii) agreeing to give or lend it; or
  - (iv) offering it; or
  - (v) promising it; or
  - (vi) promising to get, or to try to get, it: 10
- (c) references to getting any office include the following actions in relation to any office, place, or employment:
- (i) giving it; or
  - (ii) getting it; or
  - (iii) agreeing to give or get it; or 15
  - (iv) offering it; or
  - (v) promising it; or
  - (vi) promising to get, or to try to get, it.
- (2) This section does not apply to money paid, or agreed to be paid, for or on account of any legal expenses incurred in good faith at or in relation to a referendum. 20
- (3) Every person commits the offence of bribery who—
- (a) gives any money to, or gets any office for, an elector in order to induce the elector to vote or refrain from voting at the referendum; or 25
  - (b) gives any money to, or gets any office for, a person, on behalf of an elector, in order to induce the elector to vote or refrain from voting at the referendum; or
  - (c) gives any money to, or gets any office for, a person in order to induce an elector to vote or refrain from voting at the referendum; or 30
  - (d) corruptly does an act described in any of **paragraphs (a) to (c)** on account of an elector having voted or refrained from voting at the referendum; or
  - (e) makes a gift to, or gets an office for, a person in order to induce that person to get, or try to get, the vote of any elector at the referendum. 35
- (4) A person commits the offence described in **subsection (3)** whether he or she does an act described there—

- (a) directly or indirectly:
- (b) on his or her own or through another person.
- (5) Every person commits the offence of bribery who—
  - (a) offers or pays or causes to be paid any money to, or for the use of, any other person intending that the money or part of it will be expended in bribery at a referendum; or
  - (b) knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or partly expended in bribery at a referendum.
- (6) Every person who commits the offence of bribery is guilty of a corrupt practice for the purposes of the Electoral Act 1993.  
Compare: 2000 No 48 s 69; 1997 No 13 ss 55(1), (4), (5), 56

#### **54 Bribery by any person after voting period**

- (1) Every person commits the offence of bribery if, after the voting period, he or she receives any money or valuable consideration on account of—
  - (a) any person having voted or refrained from voting at the referendum; or
  - (b) any person having induced any other person to vote or refrain from voting at the referendum.
- (2) A person commits the offence described in **subsection (1)** whether he or she does an act described there—
  - (a) directly or indirectly:
  - (b) on his or her own or through another person.
- (3) Every person who commits the offence of bribery is guilty of a corrupt practice for the purposes of the Electoral Act 1993.  
Compare: 2000 No 48 s 70; 1997 No 13 s 55(4), (5)

#### **55 Bribery by elector before or during voting period**

- (1) In this section, **elector** includes a person who claims to have a right to vote at a referendum.
- (2) An elector commits the offence of bribery if he or she receives, or agrees to receive, or contracts for, any money, gift, loan, valuable consideration, office, place, or employment for himself or herself, or for any other person, for—
  - (a) voting or agreeing to vote at the referendum; or

- (b) refraining or agreeing to refrain from voting at the referendum.
- (3) An elector commits the offence described in **subsection (2)** whether he or she does an act described there—
- (a) before or during the voting period: 5
- (b) directly or indirectly:
- (c) on his or her own or through another person.
- (4) Every person who commits the offence of bribery is guilty of a corrupt practice for the purposes of the Electoral Act 1993. 10  
Compare: 2000 No 48 s 71; 1997 No 13 ss 55(3), (5), 56
- 56 Treating**
- (1) Every person commits the offence of treating who corruptly gives or provides, or pays wholly or partly the cost of giving or providing, any food, drink, entertainment, or provision to or for any person— 15
- (a) for the purpose of corruptly influencing that person or any other person to vote or refrain from voting at a referendum; or
- (b) on account of that person or any other person having voted or refrained from voting, or being about to vote or refrain from voting, at a referendum. 20
- (2) A person commits the offence described in **subsection (1)** whether he or she does an act described there—
- (a) before, during, or after the voting period:
- (b) directly or indirectly: 25
- (c) on his or her own or through another person.
- (3) Every person who is the holder of a licence for the retail sale of alcohol (within the meaning of the Sale and Supply of Alcohol Act 2012) commits the offence of treating who, before or during the voting period, knowingly supplies any food, drink, entertainment, or provision— 30
- (a) to any person when the supply is demanded for the purpose of treating; or
- (b) to any persons, whether electors or not, for the purpose of getting votes for any response, and without receiving payment for it at the time when it is supplied. 35

- (4) Every elector who corruptly accepts or takes any such food, drink, entertainment, or provision also commits the offence of treating.
- (5) Every person who commits the offence of treating is guilty of a corrupt practice for the purposes of the Electoral Act 1993. 5  
Compare: 2000 No 48 s 72; 1997 No 13 s 57

### 57 Undue influence

- (1) Every person commits the offence of undue influence who makes use of, or threatens to make use of, any force, violence, or restraint upon or against any person— 10
- (a) in order to induce or compel that person to vote for any response; or
- (b) on account of that person having voted for any response; or
- (c) on account of that person having voted or refrained from voting at a referendum. 15
- (2) A person commits the offence described in **subsection (1)** whether he or she does an act described there—
- (a) directly or indirectly;
- (b) on his or her own or through another person. 20
- (3) Every person commits the offence of undue influence who, by abduction, duress, or any fraudulent device or means,—
- (a) impedes or prevents the free exercise of the vote of any elector at a referendum; or
- (b) compels, induces, or prevails upon any elector either to vote or to refrain from voting at a referendum. 25
- (4) Every person who commits the offence of undue influence is guilty of a corrupt practice for the purposes of the Electoral Act 1993. 30  
Compare: 2000 No 48 s 73; 1997 No 13 s 58

### 58 Interference with voting or compromising secrecy of voting

- (1) Every person commits an offence and is liable on conviction to a fine not exceeding \$1,000 who—
- (a) is present in accordance with **section 27(4)** when a voter votes; and 35

- (b) communicates at any time to any person any information obtained about the response for which the voter is about to vote or has voted.
- (2) Every person commits an offence and is liable on conviction to a fine not exceeding \$5,000— 5
- (a) who—
- (i) is authorised by a voter to mark the voting paper under **section 27(4)(b)**; or
- (ii) is the Returning Officer or a person acting under a delegation under **section 17(1)** and marks a voting paper under **section 27(5)**; and 10
- (b) who does not mark the voting paper in accordance with the voter's instructions.
- (3) Every person who, except for a lawful purpose, interferes with or attempts to interfere with a voter marking his or her voting paper at the referendum commits an offence and is liable on conviction to a fine not exceeding \$5,000. 15

Compare: 2000 No 48 s 74; 1997 No 13 s 59

## 59 Personation

- (1) Every person commits the offence of personation who— 20
- (a) marks any voting paper knowing that he or she is not the person intended to receive the voting paper; or
- (b) dictates a vote knowing that he or she is not the person to whom the relevant parts of the voting paper were intended to be dictated; or 25
- (c) having returned a voting paper, returns another voting paper with the intention of returning an additional valid voting paper, whether or not any voting paper he or she returns is valid.
- (2) If the Returning Officer believes that any person has committed an offence against this section, the Returning Officer must report the facts on which that belief is based to the New Zealand Police. 30
- (3) Every person who commits, or aids, abets, counsels, or procures the commission of, the offence of personation is guilty of a corrupt practice for the purposes of the Electoral Act 1993. 35

Compare: 2000 No 48 s 75; 1997 No 13 s 60



**60 Offences in relation to processing**

- (1) Every person who, without the express authorisation of the Returning Officer, enters the office of the Returning Officer or any other premises when the sign referred to in **section 34(1)(b)** is in place commits an offence and is liable on conviction to a fine not exceeding \$2,000. 5
- (2) If the Returning Officer, or a person acting under a delegation under **section 17(1)**, fails to take all reasonable steps as required by **section 34(2)**, with the result that any returned voting paper is removed from his or her custody, he or she commits an offence and is liable on conviction to a fine not exceeding \$2,000. 10
- (3) Every person commits an offence who is present at the processing of voting papers and— 15
- (a) fails to maintain and aid in maintaining the secrecy of the voting; or
  - (b) communicates any information obtained at the processing of voting papers about the response for which any vote is given in any particular voting paper.
- (4) Every person who commits an offence against **subsection (3)** is guilty of a corrupt practice for the purposes of the Electoral Act 1993. 20

Compare: 2000 No 48 s 76; 1997 No 13 s 61

**61 Property may be stated as vesting in Returning Officer**

In any prosecution for an offence in relation to any voting paper or any envelope containing any voting paper, the property in the voting paper or envelope may be stated as vesting in the Returning Officer. 25

Compare: 2000 No 48 s 77; 1997 No 13 s 62

### Subpart 7—Advertising 30

**62 Interpretation**

In this subpart, unless the context otherwise requires,—

**address** means,—

- (a) in relation to an individual,— 35
  - (i) the full street address of the place where that individual usually lives; or

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

**promoter** means a person who initiates or instigates a referendum advertisement

**referendum advertisement** has the meaning given in **section 63**.

Compare: 2010 No 139 s 30

### **63 Meaning of referendum advertisement**

- (1) In this subpart, **referendum advertisement** means an advertisement that—
- (a) may reasonably be regarded as encouraging or persuading electors—
    - (i) to vote in a particular way in a referendum; or
    - (ii) not to vote in a particular way in a referendum; and
  - (b) is published, at any time from the date of the commencement of this Act until the close of the voting period for the second flag referendum, by—
    - (i) broadcasting on the radio or television; or
    - (ii) displaying on a billboard (including an electronic billboard); or
    - (iii) printing in a newspaper, magazine, or journal; or
    - (iv) printing in a professionally printed brochure, pamphlet, flyer, handbill, or poster for the purpose of distribution.
- (2) However, none of the following is a referendum advertisement:
- (a) an advertisement that—
    - (i) is published, or caused or permitted to be published, by a panel, an agency, or the Electoral Commission; and
    - (ii) relates to electoral matters or the conduct or subject matter of 1 or both of the referendums; and

- (iii) contains—
  - (A) a statement indicating that the advertisement has been authorised by the panel, agency, or Electoral Commission, as the case may be; or 5
  - (B) a symbol indicating that the advertisement has been authorised by the panel, agency, or Electoral Commission, as the case may be:
- (b) the editorial content of— 10
  - (i) a periodical:
  - (ii) a radio or television programme:
- (c) any display of, or visual representation or description of, the current New Zealand Flag or any alternative flag design, or any associated symbol, that is published without further promotional words or images relating to voting in a referendum: 15
- (d) any transmission (whether live or not) of proceedings in the House of Representatives:
- (e) any publication on the Internet. 20
- (3) **Subsection (2)(e)** is for the avoidance of doubt.
- (4) In this section,—
  - distribution** includes—
    - (a) displaying in or leaving at a public place:
    - (b) delivering to an address: 25
    - (c) sending by post or otherwise:
    - (d) circulating
  - periodical** means a newspaper, magazine, or journal that—
    - (a) was established for purposes unrelated to the conduct of either or both of the referendums; and 30
    - (b) since its establishment—
      - (i) has been published at regular intervals; and
      - (ii) has been generally available to members of the public
  - professionally printed** means— 35
    - (a) printed by a person or group whose core business is or includes printing; or
    - (b) printed under a contract or arrangement for money or other consideration; or

- (c) printed in a volume clearly designed to encourage or persuade a significant proportion of electors to vote or not to vote in a particular way at a referendum.

Compare: 2010 No 139 s 31

**64 Referendum advertisement to include promoter statement** 5

- (1) A person may publish or cause or permit to be published a referendum advertisement only if the advertisement includes a promoter statement.
- (2) A promoter statement must state the name and address of the promoter of the referendum advertisement. 10
- (3) If the promoter is a body corporate or unincorporated, the promoter statement must, in addition to the name and address of the body provided under **subsection (2)**, include the name of a member of the body who is the duly authorised representative of the promoter. 15
- (4) If the referendum advertisement is in a visual form, the promoter statement must clearly appear in the advertisement.
- (5) If the referendum advertisement is broadcast on the radio, the promoter statement when stated must be no less audible than the other content of the advertisement. 20

Compare: 2010 No 139 s 42(1), (2), (4), (5), (6)

**65 Failure to include promoter statement in referendum advertisement**

Every person who, in contravention of **section 64**, fails to include a promoter statement in a referendum advertisement is guilty of an offence and is liable on conviction to a fine not exceeding \$40,000. 25

Compare: 2010 No 139 ss 66(c), 71(2)

**66 Duty of Electoral Commission**

- (1) If the Electoral Commission believes that any person has committed an offence under **section 65**, it must report the facts on which that belief is based to the New Zealand Police. 30
- (2) **Subsection (1)** does not apply if the Electoral Commission considers that the effect of the offence is so inconsequential

that there is no public interest in reporting those facts to the New Zealand Police.

Compare: 2010 No 139 s 73

### Part 3 Miscellaneous provisions 5

#### *Orders in Council*

#### 67 Regulations

The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) prescribing forms for the purposes of this Act: 10
- (b) applying, with or without modifications, for the purposes of this Act, any other provisions of the Electoral Act 1993 and any regulations made under that Act:
- (c) applying, with or without modifications, for the purposes of this Act, any other provisions of the 2000 Act and any regulations made under that Act: 15
- (d) providing for such other matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration. 20

Compare: 2000 No 48 s 80

#### 68 Validation of irregularities

- (1) In the circumstances described in **subsection (2)**, the Governor-General may, by Order in Council, do any of the things described in **subsection (3)**. 25
- (2) The circumstances are—
  - (a) if anything is omitted to be done at the time required by or under this Act; or
  - (b) if anything cannot be done at the time required by or under this Act; or 30
  - (c) if anything is done before or after the time required by or under this Act; or
  - (d) if anything is otherwise irregularly done in matter of form; or
  - (e) if sufficient provision for something that needs to be done is not made by or under this Act. 35

- (3) The things are—
- (a) at any time before or after the time within which the thing is required to be done, to extend that time; or
  - (b) to validate anything done before or after the time required; or 5
  - (c) to validate anything irregularly done in matter of form; or
  - (d) to make such other provision for the case as the Governor-General thinks fit. 10
- Compare: 2000 No 48 s 78; 1997 No 13 s 63

*Provisions relating to change of New Zealand flag*

**69 Amendments to Flags, Emblems, and Names Protection Act 1981**

- (1) This section amends the Flags, Emblems, and Names Protection Act 1981. 15
- (2) In the Long Title, replace “**to declare the New Zealand Ensign to be the New Zealand Flag**” with “**to prescribe the New Zealand Flag**”.
- (3) In section 2, insert in its appropriate alphabetical order: 20  
“**1902 Flag** means the flag depicted in **Schedule 1A**”.
- (4) Replace section 5 with:  
“**5 The New Zealand Flag**  
“(1) The flag described in **Part 1 of Schedule 1**, being the flag depicted in **Part 2 of Schedule 1**, is declared to be the New Zealand Flag. 25  
“(2) The New Zealand Flag is the symbol of the Realm, Government, and people of New Zealand.  
“(3) The New Zealand Flag—  
“(a) is the national flag of New Zealand for general use on land within New Zealand and, where appropriate for international purposes, overseas; and 30  
“(b) is the proper national colours to be worn by all New Zealand Government ships, and by such other New Zealand ships as may for the time being be authorised 35

to wear the New Zealand Flag by or under the Ship Registration Act 1992.

“Compare: 1952 No 49 s 5(1), (2); Flags Act 1953 s 3(1) (Aust)

**“5A 1902 Flag**

- “(1) The 1902 Flag is recognised as a flag of historical significance to the Realm, Government, and people of New Zealand. 5
- “(2) Any person or body (other than a government department) may use the 1902 Flag, except where required by law to use the New Zealand Flag or another specified flag for a particular purpose.” 10
- (5) In the heading to section 9, replace “**alternative flags**” with “**New Zealand White Ensign and New Zealand Red Ensign**”. 10
- (6) In the heading to section 10, replace “**flying of New Zealand Flag**” with “**flying of flags**”. 15
- (7) Replace section 10(1)(c) with:
- “(c) without derogating from the general design depicted in **Part 2 of Schedule 1**, the sizes, dimensions, proportions, and colours of the New Zealand Flag—
- “(i) in a degree of detail greater than that provided in Part 1 of Schedule 1; or 20
- “(ii) to be used for specific purposes, circumstances, or events:
- “(d) the days or occasions on which and the times during which the 1902 Flag, or any other flag of historical or national significance, may be flown: 25
- “(e) the manner in which the 1902 Flag, or any other flag of historical or national significance, is to be flown, including the precedence that such flag is to be accorded in relation to other specified flags or classes of flags.” 30
- (8) Replace section 10(2) and (3) with:
- “(2) The Minister may, either in any notice issued under subsection (1) or otherwise, set out for general information and guidance rules of conduct and the etiquette to be followed in the flying or other use of any of the following: 35
- “(a) the New Zealand Flag:
- “(b) the 1902 Flag:

- “(c) any other flag of historical or national significance.
- “(3) Any rules set out under **subsection (2)** do not have the force of law.
- “(4) A notice or other prescription made under subsection (1) or rules set out under **subsection (2)** do not alter or affect the unique status of the New Zealand Flag as the symbol of the Realm, Government, and people of New Zealand.”
- (9) In section 11(2), replace “Schedule 1” with “**Part 2 of Schedule 1**”.
- (10) Replace Schedule 1 with the new **Schedules 1 and 1A** set out in **Schedule 5** of this Act.
- (11) In **Schedule 1** (as substituted by this Act),—
- (a) in **Part 1**, in the space indicated by the words “[*Insert description*]”, insert in place of those words the technical specifications of the flag design that gained the greatest number of votes in the second flag referendum, as those specifications were first prescribed under **section 13(2)(c)**; and
- (b) in Part 2, in the space indicated by the words “[*Insert image*]”, insert in place of those words the image of the flag design that gained the greatest number of votes in the second flag referendum, as that image was first prescribed under **section 13(2)(b)**.
- (12) In Schedule 2, repeal Part A.
- 70 Amendments to Land Transport (Driver Licensing) Rule 1999**
- (1) This section amends the Land Transport (Driver Licensing) Rule 1999.
- (2) After clause 63, insert:
- “63A Validity not affected by change of New Zealand flag**
- “(1) For the purposes of clauses 62(g) and 63(2)(b), **New Zealand Flag** means the flag that, at the time the licence was issued or at any time within the 6 months immediately before the licence was issued, was declared under the Flags, Emblems, and Names Protection Act 1981 to be the New Zealand Flag.



“(2) The validity of a driver licence is not affected by a change of the New Zealand Flag that occurs at any time during the period of validity of the licence.”

**71 Transitional provision**

For the purposes of section 58(2) of the Ship Registration Act 1992, until the day that is 6 months after the date on which this provision commences, the 1902 Flag may be flown as the New Zealand Flag.

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**Schedule 1** **s 10(1)**  
**Voting paper for first flag referendum**

**Voting Paper for the 1st Referendum on the New Zealand Flag**

**QUESTION:**  
**If the New Zealand flag changes, which flag would you prefer?**  
*Rank flags using the instructions above.*


INSERT  
QR CODE  
and NO.

	Option A	Option B	Option C	Option D
<b>WRITE NUMBER(S) HERE</b>	<input style="width: 40px; height: 20px;" type="text"/>	<input style="width: 40px; height: 20px;" type="text"/>	<input style="width: 40px; height: 20px;" type="text"/>	<input style="width: 40px; height: 20px;" type="text"/>

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**Schedule 2** **s 10(2)**  
**Voting paper for second flag referendum**

Voting Paper for the 2nd Referendum on the New Zealand Flag

INSERT QR CODE and NO.	<b>QUESTION:</b> <b>What is your choice for the New Zealand flag?</b>	Option A	 ↓   	TICK ONLY ONE BOX
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### Schedule 3

ss 15(3), 16(3)(b),  
38(1)(b)(ii), 43(3)(a),  
44(2)(a)

#### Forms

##### Form 1

ss 15(3), 16(3)(b)

Declaration by Returning Officer or by  
person employed or engaged for purposes of  
referendum 5

\*I, [*name, place of residence, and occupation*], solemnly and sincerely declare that I will faithfully serve in the office of the Returning Officer and will not do anything prohibited by **section 50, 52, 58, or 60(2) and (3)** of the New Zealand Flag Referendums Act **2015** or section 64 of the Referenda (Postal Voting) Act 2000. 10

*or*

\*I, [*name, place of residence, and occupation*], solemnly and sincerely declare that I will faithfully serve in the position for which I am employed/engaged† under **section 16** of the New Zealand Flag Referendums Act **2015**, and will not do anything prohibited by **section 50, 52, 58, or 60(2) and (3)** of the New Zealand Flag Referendums Act **2015** or section 64 of the Referenda (Postal Voting) Act 2000. 15

\*Select the paragraph that applies.

†Select one.

[*Name, signature*] 20

Declared at [*place, date*]

Before me: [*name, signature*]

(Justice of the Peace/lawyer/Returning Officer\*)

\*Select one.

#### Notes

1 **Sections 50, 52, 58, and 60(2) and (3)** of the New Zealand Flag Referendums Act **2015** and section 64 of the Referenda (Postal Voting) Act 2000 are printed on the back of this form and must be read by or to the declarants to whom they apply. 25

Form 1—*continued*

- 2 A declaration by the Returning Officer must be made before a Justice of the Peace or a lawyer.

Form 2

**s 38(1)(b)(ii)**

Declaration of result of referendum

I declare the result of the referendum taken over the period commencing on *[date]* and ending on *[date]* on the question “What is your choice for the New Zealand flag?” is as follows:

5

\*Votes received for *[identify option]*: *[number]*

Dated at *[place, date]*

*[Name, signature]*

(Returning Officer)

\*Repeat for each option.

Form 3 **s 43(3)(a)**  
 Notice of opposition to inquiry into conduct of  
 referendum

In the High Court of New Zealand

Wellington Registry 5

No: [*number of proceeding*]

In the matter of a referendum held from [*dates of voting period*] on  
 [*describe question*]

**Respondent**

1 The respondent is a group of [*number in group*] electors who intend to oppose the application or applications [*describe application or applications*] for an inquiry into the conduct of the referendum. 10

2 The name, address, electoral district, and signature of each member of the group are set out in the appendix to this notice. 15

3 The spokesperson for the respondent is [*name, address of spokesperson*].

4 The respondent acts—  
 \*(a) through a lawyer, who is [*name, address of lawyer*]:  
 \*(b) through its spokesperson. 20

\*Select the paragraph that applies.

**Address for service**

The respondent's address for service is [*address*].

**Signature**

[*Signature, date*]

(spokesperson for respondent/person on behalf of spokesperson for respondent\*) 25

\*Select one.

Appendix

Members of respondent group

Name	Address	Electoral district	Signature
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	Form 4	<b>s 44(2)(a)</b>
	Application for inquiry into conduct of referendum	
	In the High Court of New Zealand	
	Wellington Registry	5
	No: [ <i>number of proceeding</i> ]	
	In the matter of a referendum held from [ <i>dates of voting period</i> ] on [ <i>describe question</i> ]	
	<b>Applicant's details</b>	
1	The applicant is a group of [ <i>number in group</i> ] electors who are dissatisfied with the conduct of the referendum.	10
2	The name, address, electoral district, and signature of each member of the group are set out in the appendix to this appli- cation.	
3	The spokesperson for the applicant is [ <i>name, address of</i> 15 <i>spokesperson</i> ].	
4	The applicant acts—	
	* <i>(a)</i> through a lawyer, who is [ <i>name, address of lawyer</i> ]:	
	* <i>(b)</i> through its spokesperson.	
	*Select the paragraph that applies.	
	<b>Application</b>	20
5	*The applicant asks for an inquiry into the conduct of the ref- erendum.	
	<b><i>or</i></b>	
	*The applicant asks for an inquiry into the conduct of [ <i>name</i> <i>of person complained of</i> ], [ <i>office described in <b>section 42</b> of</i> 25 <i>the New Zealand Flag Referendums Act 2015, if relevant</i> ], of [ <i>address of person complained of</i> ], who was connected with the referendum.	
	*Select the paragraph that applies.	
6	The specific grounds on which the applicant is dissatisfied with the conduct of the referendum are as follows: [ <i>state specific</i> 30 <i>grounds</i> ].	
7	*The applicant asks the court to determine the total number of valid votes recorded for each option.	



Form 4—*continued****or***

\*The applicant asks the court to declare the referendum void.

\*Select the paragraph that applies.

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

5

[*Signature, date*]

\*Spokesperson for applicant

\*Person on behalf of spokesperson for applicant.

\*Select one.

## Appendix

## Members of applicant group

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Name	Address	Electoral district	Signature
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**Schedule 4****ss 37(a), 38(1)(a)(ii)****Method of counting preferential votes***Interpretation*

- 1 In this schedule, unless the context otherwise requires,—
- AAFD method** means the Ahead At First Difference Method set out in **Part 3** of this schedule 5
- exhausted**, in relation to a voting paper, means the point at which no further votes from that voting paper can be redistributed by the operation in **clause 6**
- non-transferable votes** means the votes that remain untransferred when a voting paper becomes exhausted 10
- preference** means a preference expressed for an option on a voting paper as a rank, for example, 1, 2, or 3
- PRN** means the pseudo-random number generated by the PRNG method 15
- PRNG method** means the Pseudo Random Number Generation Method set out in **Part 3** of this schedule
- votes** means whole number values.

**Part 1****Method of counting votes**

20

- 2 Votes are counted by recognising preferences as provided for in **Part 2** of this schedule, and by performing the steps in **clauses 3 to 9** until an option is successful.

*Step 1*

- 3 Determine the absolute majority of votes using the following formula: 25

$$m = (v - vnt) \div 2$$

where—

- m** is the absolute majority of votes and if **m** is not a whole number, it is rounded up to the next whole number 30
- v** is the number of voting papers
- vnt** is the total number of non-transferable votes.

Part 1—*continued*

- 4 An option is successful if the number of first preference votes equals or exceeds the absolute majority of votes.

*Step 2*

- 5 If no option is successful, the option with the fewest first preference votes is excluded. 5
- 6 For each voting paper on which the option excluded under **clause 5** is the first preference, redistribute that vote to the option that is the next preference on that voting paper.
- 7 An option is successful if its votes equal or exceed the absolute majority of votes. 10
- 8 If no option is successful, repeat the operations in **clauses 3 and 5 to 7** (those clauses being read with any modifications that the context requires).

*Exceptional cases*

- 9 If **clause 10** applies, the steps in **clauses 3 and 5 to 7** must be modified by carrying out the operations set out in the relevant parts of **clause 10**. 15

*Ties*

- 10 This clause applies if— 20
- (a) an option with the lowest number of votes is to be excluded but 2 or more options share the lowest number of votes; or
- (b) an option that has votes that equal or exceed the absolute majority of votes is to succeed but 2 options' votes equal the absolute majority of votes. 25

If this clause applies, exclude the option identified by the AAFD method as the option to exclude. In the case of **paragraph (a)**, if the AAFD method does not identify an option to exclude, exclude the option with the lowest PRN.

Part 1—*continued*

In the case of **paragraph (b)**, the option that is not excluded is successful.

## Part 2

## Recognising preferences

- 11 In carrying out the operations in **Part 1** of this schedule, do not recognise— 5
- (a) a preference that is not unique; or
  - (b) a preference (other than a first preference) that is not consecutive; or
  - (c) any preference on the same voting paper that is lower in rank than a preference to which **paragraph (a) or (b)** applies. 10

*Example 1: not unique*

- 12 A voting paper that expresses these preferences—
- |          |   |            |
|----------|---|------------|
| Option A | 1 |            |
| Option B | 2 |            |
| Option C | 3 |            |
| Option D | 2 | Not unique |
- generates the following preferences for the purposes of counting votes: 15
- |                   |          |
|-------------------|----------|
| First preference  | Option A |
| Second preference | None     |
| Third preference  | None     |
| Fourth preference | None     |

*Example 2: not consecutive*

- 13 A voting paper that expresses these preferences—
- |          |   |                 |
|----------|---|-----------------|
| Option A | 1 |                 |
| Option B | 4 | Not consecutive |
| Option C | 5 |                 |
| Option D | 2 |                 |

Part 2—*continued*

generates the following preferences for the purposes of counting votes:

First preference	Option A
Second preference	Option D
Third preference	None
Fourth preference	None

## Part 3

## Methods relevant to tie breaking

*AAFD method*

5

- 14 To use the AAFD method, determine which tied option, or options, does not have more votes than the other tied option or options at the earliest point at which the options had different numbers of votes. If one option is identified, exclude that option.

10

*PRNG method*

- 15 Allocate a unique pseudo-random whole number (a **PRN**) for each option at each stage of the counting.
- 16 To generate PRNs, calculate  $x$ ,  $y$ , and  $z$  using the following formulas:

15

$$x = 9$$

$$y = 1$$

$$z = [v + 1\,000 (v \text{ rem } 10)] \text{ rem } 30\,323$$

where—

- $v$  is the total number of valid voting papers
- $\text{rem}$  is the remainder operator such that  $a \text{ rem } b$  gives the remainder of dividing whole number  $a$  by whole number  $b$ .

20

- 17 Generate a random whole number  $rc$  using the following formulae:

25

$$x = (171x) \text{ rem } 30\,269$$

Part 3—*continued*

$$y = (172y) \text{ rem } 30\,307$$

$$z = (170z) \text{ rem } 30\,323$$

$$rc = [(10\,000x) \text{ div } 30\,269] + [(10\,000y) \text{ div } 30\,307] + [(10\,000z) \text{ div } 30\,323]$$

where—

5

rc is a pseudo-random number

rem is the remainder operator such that a rem b gives the remainder of dividing whole number a by whole number b

div is the integer division operation such that a div b gives the whole number quotient of dividing whole number a by whole number b.

10

18 Repeat the step in **clause 17** 4 times, discarding the first 4 values of rc.

19 Assign the current value of rc to the first option.

20 Repeat the step in **clause 17** until a pseudo-random number rc results that is distinct from all previous pseudo-random numbers assigned to options. Assign rc to the next option.

15

21 Repeat the step in **clause 20** until all options have been assigned a pseudo-random number.

22 For the second and subsequent stages in the counting, repeat the step in **clause 20** so that all options have been assigned a unique pseudo-random whole number at each stage of the counting.

20

**Schedule 5**  
**New Schedules 1 and 1A inserted**

**s 69(10)**

**Schedule 1**  
**New Zealand Flag**

**s 5**

Part 1

5

*[Insert description]*

Part 2

*[Insert image]*

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**Schedule 1A**  
**1902 Flag**

**s 2**

10

