

Regulatory Standards Bill

Member's Bill

Explanatory note

General policy statement

The purpose of the Regulatory Standards Bill is to improve the quality of regulation (meaning Acts of Parliament and secondary legislation) in New Zealand. The Bill has its origins in a previous member's Bill, then known as the Regulatory Responsibility Bill, that Parliament's Commerce Committee examined in 2008. The Committee recommended that the member's Bill not be passed, but that the Government establish a high-level expert taskforce to consider options for improving regulatory review and decision-making processes, including legislative and Standing Orders options.

Following the recommendation of the Commerce Committee, the Government established the Regulatory Responsibility Taskforce in March 2009. The Government introduced the Regulatory Standards Bill as the result of the work of that Taskforce. That Bill did not proceed; this Bill seeks to introduce that Bill.

The Regulatory Standards Bill aims to improve the quality of regulation in New Zealand by increasing the transparency of regulation-making and the accountability of regulation makers. In essence, the Bill has 3 key components. It—

- provides a benchmark for good regulation through a set of regulatory principles that all regulation should comply with; and
- provides transparency by requiring those proposing and creating regulation to certify whether the regulation is compatible with the principles; and
- provides monitoring of the certification process through a new declaratory role for the courts.

The Bill's principles apply to Acts of Parliament and secondary legislation (excluding legislation made by local government). The principles are distilled from sources such as the Legislation Design Advisory Committee (LDAC) Guidelines, the common law, and Parliament's Regulations Review Committee.

The principles cover 7 key areas, including the rule of law, protection of individual liberties, protection of property rights, the imposition of taxes and charges, the role of the courts, review of administrative decisions, and good law-making processes. Any incompatibility with the principles is justified to the extent that it is reasonable and can be demonstrably justified in a free and democratic society.

The Bill provides transparency by requiring those proposing and creating regulation to certify whether the regulation is compatible with the principles, and the justification for any incompatibility. Depending on the kind of regulation, the Bill will require Ministers, chief executives, or both chief executives and Ministers, to certify compliance with the principles. This certification process ensures transparency about whether regulation is consistent with legal principle.

The Bill provides monitoring of the certification process, and accordingly incentives for accurate certification, by allowing the courts to provide declarations of incompatibility where they believe that the principles have been breached. This power is declaratory only; the courts will not have the power to strike down legislation, to issue injunctions against Parliament or the Crown, or to award damages to those adversely affected by regulation that is incompatible with the principles.

Initially, the courts will be able to make declarations only in relation to regulation made after the commencement of the Bill. After 10 years, the declaratory power extends to all regulation.

In addition to the key benchmarking, transparency, and monitoring components, the Regulatory Standards Bill directs the courts to prefer legislative interpretations that are consistent with the Bill's principles. This direction applies initially only to new regulation, but after 10 years to the existing stock of regulation as well. The Bill also requires every public entity to use its best endeavours to review all regulation that it administers regularly for compatibility with the principles. The steps entities have undertaken to review their regulation and the outcomes from this process are required to be included in the entities' annual reports.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The Bill will only come into force if the majority of electors voting in a referendum, held in accordance with the **Schedule**, support the Bill coming into force.

Clause 3 sets out the purpose of the Bill.

Clause 4 relates to interpretation. The legislation to which the Bill applies is defined broadly to include primary and secondary legislation, but does not include instruments made by local government.

Clause 5 provides that the Act binds the Crown.

Clause 6 sets out the principles of responsible regulation. In summary, the principles are that legislation should—

- be consistent with certain specified aspects of the rule of law:
- not diminish a person's liberty, personal security, freedom of choice or action, or rights to own, use, and dispose of property, except as is necessary to provide for, or protect, any such liberty, freedom, or right of another person:
- not take or impair property without the consent of the owner unless certain criteria are satisfied (including payment of full compensation):
- not impose a tax except by or under an Act:
- not impose a charge for goods or services unless the amount of the charge is reasonable (in relation to both the likely benefits of the goods or services to the payer and the costs of efficiently providing the goods or services):
- preserve the courts' role of authoritatively determining the meaning of legislation:
- provide a right of appeal on the merits against certain decisions affecting any liberty, freedom, or right referred to above, and should state appropriate criteria for making those decisions:
- not be made unless, to the extent practicable, the persons likely to be affected by the legislation have been consulted:
- not be made unless there has been a careful evaluation of certain matters (for example, the issues concerned, the effectiveness of the existing law, the options, the benefits, and any reasonably foreseeable adverse consequences):
- produce benefits that outweigh the costs of the legislation:
- be the most effective, efficient, and proportionate response to the issue concerned that is available.

Subclause (2) provides that an incompatibility is justified to the extent that it is reasonable and can be demonstrably justified in a free and democratic society. This is similar to the qualification that exists in section 5 of the New Zealand Bill of Rights Act 1990.

Subclause (3) confirms that the clause does not limit the New Zealand Bill of Rights Act 1990.

Clauses 7 and 8 provide that the following persons must each sign, at each of the following times, a written certificate as to compatibility of new legislation with the principles of responsible regulation:

<i>Type of legislation</i>	<i>Persons who must each sign</i>	<i>Times at which certificate must be given</i>
Government Bill	The Minister responsible for the Bill. The chief executive of the public entity that will be responsible for	Before the Bill is introduced to the House of Representatives. Before its third reading.

	administering the Bill when it has been enacted.	
Any Bill other than a Government Bill	The member of Parliament responsible for the Bill.	Before the Bill is introduced to the House of Representatives. Before its third reading.
Any other legislation	The Minister responsible for the legislation (if a Minister is responsible). The chief executive of the public entity that will be responsible for administering the legislation when it has been made.	Before the legislation is made.

A certificate given by a chief executive is not required to state whether any incompatibility with the principles is justified if a Minister has also given a certificate.

Clause 9 requires the certificate in respect of a Bill to be presented to the House of Representatives.

Clause 10 provides that wherever an enactment can be given a meaning that is compatible with the principles (after taking account of the qualification in *clause 6(2)* relating to what is reasonable and can be demonstrably justified in a free and democratic society), that meaning is to be preferred to any other meaning. This clause will apply to legislation made before the date on which the Bill comes into force only after the tenth anniversary of that date.

Clause 11 provides that certain courts may declare legislation incompatible with the principles. This applies to legislation made before the date on which the Bill comes into force only after the tenth anniversary of that date.

Clause 12 provides that a court declaration has only a declaratory effect, and does not give rise to any substantive rights.

Clause 13 provides that the principles do not have the force of law.

Clause 14 gives the relevant Minister power to issue certain guidelines.

Clause 15 requires every public entity to regularly review all legislation that it administers for compatibility with the principles.

Clause 16 requires public entities to publish certain information on the Internet.

The *Schedule* sets out the process for conducting the referendum necessary to determine if the Bill will come into force.

David Seymour

Regulatory Standards Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Regulatory Standards Act **2021**.

2 Commencement

- (1) This section and the **Schedule** come into force on the day after the date on which this Act receives the Royal assent. 5
- (2) If a majority of electors voting in a referendum respond to the question in **subsection (3)** supporting this Act coming into force, the rest of this Act comes into force 6 months after the date on which the official result of that referendum is declared. 10
- (3) The wording of the question to be put to electors in a referendum for the purposes of **subsection (2)** is—
 “Do you support the Regulatory Standards Act **2021** coming into force?”
- (4) The wording of the 2 options for which electors may vote in response to the question is— 15
 “Yes, I support the Regulatory Standards Act **2021** coming into force.”
 “No, I do not support the Regulatory Standards Act **2021** coming into force.”
- (5) If this Act does not come into force under **subsection (2)** within 5 years after the date on which it receives the Royal assent, this Act is repealed.
- (6) In this section, **referendum**— 20
 (a) means a referendum conducted in accordance with the **Schedule**; and
 (b) includes any fresh referendum required to be held if the High Court, on a petition, declares the referendum under **paragraph (a)** to be void.

Part 1

Preliminary provisions 25

3 Purpose

The purpose of this Act is to improve the quality of Acts of Parliament and other kinds of legislation by—

- (a) specifying principles of responsible regulation that apply to new legislation and, over time, to all legislation; and 30

- (b) requiring those proposing new legislation to state whether the legislation is compatible with those principles and, if not, the reasons for the incompatibility; and
- (c) granting courts the power to declare legislation to be incompatible with those principles.

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4 Interpretation

In this Act, unless the context otherwise requires,—

legislation has the meaning in section 5(1) of the Legislation Act 2019

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is responsible for the administration of this Act

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principles means the principles of responsible regulation stated in **section 6(1)**

public entity means—

- (a) a department within the meaning of section 5 of the Public Service Act 2020; and
- (b) an entity or office named in Schedule 1 of the Crown Entities Act 2004; and
- (c) the Reserve Bank of New Zealand; and
- (d) any person or body that is established by or under an Act (other than the Local Government Act 2002) if that person or body, or an officer or employee of that person or body, has functions that include the making of secondary legislation

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public official means an officer or employee of a public entity

secondary legislation has the meaning in section 5(1) of the Legislation Act 2019.

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5 Act binds the Crown

This Act binds the Crown.

Part 2

Principles of responsible regulation and their effect

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Principles of responsible regulation

6 Principles

- (1) The principles of responsible regulation are that, except as provided in **subsection (2)**, legislation should—

- Rule of law*
- (a) be consistent with the following aspects of the rule of law:
 - (i) the law should be clear and accessible:
 - (ii) the law should not adversely affect rights and liberties, or impose obligations, retrospectively: 5
 - (iii) every person is equal before the law:
 - (iv) issues of legal right and liability should be resolved by the application of law, rather than the exercise of administrative discretion:
- Liberties*
- (b) not diminish a person’s liberty, personal security, freedom of choice or action, or rights to own, use, and dispose of property, except as is necessary to provide for, or protect, any such liberty, freedom, or right of another person: 10
- Taking of property*
- (c) not take or impair, or authorise the taking or impairment of, property without the consent of the owner unless— 15
 - (i) the taking or impairment is necessary in the public interest; and
 - (ii) full compensation for the taking or impairment is provided to the owner; and
 - (iii) that compensation is provided, to the extent practicable, by or on behalf of the persons who obtain the benefit of the taking or impairment: 20
- Taxes and charges*
- (d) not impose, or authorise the imposition of, a tax except by or under an Act: 25
 - (e) not impose, or authorise the imposition of, a charge for goods or services (including the exercise of a function or power) unless the amount of the charge is reasonable in relation to both—
 - (i) the benefits that payers are likely to obtain from the goods or services; and 30
 - (ii) the costs of efficiently providing the goods or services:
- Role of courts*
- (f) preserve the courts’ role of authoritatively determining the meaning of legislation:
 - (g) if the legislation authorises a Minister, public entity, or public official to make decisions that may adversely affect any liberty, freedom, or right of a kind referred to in **paragraph (b)**,— 35

- (i) provide a right of appeal on the merits against those decisions to a court or other independent body; and
 - (ii) state appropriate criteria for making those decisions:
- Good law-making*
- (h) not be made unless, to the extent practicable, the persons likely to be affected by the legislation have been consulted: 5
 - (i) not be made (or, in the case of an Act, not be introduced to the House of Representatives) unless there has been a careful evaluation of—
 - (i) the issue concerned; and
 - (ii) the effectiveness of any relevant existing legislation and common law; and 10
 - (iii) whether the public interest requires that the issue be addressed; and
 - (iv) any options (including non-legislative options) that are reasonably available for addressing the issue; and 15
 - (v) who is likely to benefit, and who is likely to suffer a detriment, from the legislation; and
 - (vi) all potential adverse consequences of the legislation (including any potential legal liability of the Crown or any other person) that are reasonably foreseeable: 20
 - (j) produce benefits that outweigh the costs of the legislation to the public or persons:
 - (k) be the most effective, efficient, and proportionate response to the issue concerned that is available.
- (2) Any incompatibility with the principles is justified to the extent that it is reasonable and can be demonstrably justified in a free and democratic society. 25
 - (3) Nothing in this section limits the New Zealand Bill of Rights Act 1990.

Certification

7 Certificate as to compatibility of legislation with principles

- (1) The Minister responsible for a Government Bill, and the chief executive of the public entity that will be responsible for administering the resulting Act immediately after it has been enacted, must each sign a written certificate containing the information specified in **section 8**—
 - (a) before the Bill is introduced to the House of Representatives; and
 - (b) before the commencement of the Bill's third reading in the House of Representatives. 35

- (2) The member of Parliament who is in charge of a Bill (other than a Government Bill) must sign a written certificate containing the information specified in **section 8**—
- (a) before the Bill is introduced to the House of Representatives; and
 - (b) before the commencement of the Bill’s third reading in the House of Representatives. 5
- (3) The Minister responsible for secondary legislation (if a Minister is responsible), and the chief executive of the public entity that will be responsible for administering that legislation immediately after it is made, must each sign a written certificate containing the information specified in **section 8** before that legislation is made. 10
- (4) Despite any other enactment, a Minister may not delegate his or her duties under this section to anyone other than a member of the Executive Council, and a chief executive may not delegate his or her duties under this section to anyone other than a person who is acting as chief executive in his or her place. 15

8 Content of certificate

- (1) A certificate signed by a person for the purpose of **section 7** must state, in the person’s opinion,—
- (a) whether the legislation is compatible with each of the principles; and
 - (b) if not, the respects in which it is incompatible; and 20
 - (c) if **paragraph (b)** applies,—
 - (i) whether the incompatibility is justified under **section 6(2)**; and
 - (ii) if so, the reasons for that justification and, if not, the reasons why the legislation is proceeding despite the lack of justification.
- (2) **Subsection (1)(c)** does not apply to a certificate given by a chief executive of a public entity if a Minister has also given a certificate under **section 7**. 25

9 Certificate must be presented to House of Representatives

A certificate in respect of a Bill for the purposes of **section 7** must be presented to the House of Representatives as soon as practicable after the certificate is signed. 30

Application of principles

10 Interpretation compatible with principles to be preferred

- (1) Wherever an enactment can be given a meaning that is compatible with the principles (after taking account of **section 6(2)**), that meaning is to be preferred to any other meaning. 35

- (2) The court may, on application or its own motion, grant leave for the Solicitor-General to be joined as a party to proceedings in which **subsection (1)** may be applied.
- (3) **Subsection (1)** applies to an enactment made before the date on which this Act comes into force only after the tenth anniversary of that date. 5
Compare: 1990 No 109 s 6
- 11 Court may declare legislation incompatible with principles**
- (1) A court may, in any proceedings, declare that a provision of any legislation is incompatible with 1 or more of the principles specified in **section 6(1)(a) to (h)** (unless the incompatibility is justified under **section 6(2)**). 10
- (2) However, a court must not make a declaration unless, before the declaration is made,—
- (a) the public entity responsible for administering the legislation concerned (if any) has been given the opportunity to provide to both the person seeking the declaration and the court a statement as to whether the legislation is incompatible with the principles; and 15
- (b) the Solicitor-General has been given notice of, and the opportunity to be joined as a party to, the proceedings.
- (3) In this section and **section 12**,—
- court** means the High Court, the Court of Appeal, or the Supreme Court 20
- proceedings** means—
- (a) proceedings that relate only to an application for a declaration under **subsection (1)** or the Declaratory Judgments Act 1908; or
- (b) judicial review proceedings.
- (4) **Subsection (1)** applies to legislation made before the date on which this Act comes into force only after the tenth anniversary of that date. 25
Compare: Human Rights Act 1998 ss 4, 5 (UK)
- 12 Effect of court declaration**
- (1) A declaration under **section 11**—
- (a) does not affect the validity, continuing operation, or enforcement of the enactment in respect of which it is given; and 30
- (b) is not binding on the parties to the proceedings in which it is made.
- (2) A court may award costs against or in favour of any party to proceedings under **section 11**, but may not make an order for an injunction or compensation or anything else in conjunction with or in respect of— 35
- (a) a declaration under **section 11**; or
- (b) a certificate given, or a failure to give a certificate, under **section 7**.

13 Legal effect of principles

- (1) The principles do not have the force of law (except as provided in **sections 10 to 12**).
- (2) No court may, in relation to any legislation (whether made before or after the commencement of this Act), by reason only that it is incompatible with any of the principles, or that any provision of this Act has not been complied with,—
- (a) hold any provision of the legislation to be impliedly repealed or revoked, or to be in any way invalid or ineffective; or
 - (b) decline to apply any provision of the legislation.

Compare: 1990 No 109 s 4

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Part 3 Miscellaneous provisions

14 Guidelines

- (1) The Minister may, by notice in the *Gazette*, issue guidelines in respect of this Act that may include any or all of the following:
- (a) examples of the application of the principles:
 - (b) the information that should be included in explanatory notes for legislation as to the compatibility of the legislation with the principles:
 - (c) the steps that public entities should take in order to comply with **section 15(1)**:
 - (d) the steps that persons and public entities should take in order to comply with **section 16**.
- (2) The guidelines do not have the force of law.
- (3) The Minister must ensure that the guidelines are published on an Internet site maintained by or on behalf of the Department that is responsible for the administration of this Act.

15 Review of legislation for compatibility with principles

- (1) Every public entity must regularly review all legislation that it administers for compatibility with the principles.
- (2) Every public entity must include in each of its annual reports under the Public Finance Act 1989, the Crown Entities Act 2004, or any other Act, a statement of—
- (a) the steps it has taken to comply with **subsection (1)** during the year to which the report relates; and
 - (b) the outcomes of any reviews under that subsection that it has completed during that year.

16 Publication of information on Internet

- (1) Every public entity that is responsible for administering any legislation must publish a list of that legislation on the Internet.
- (2) Every public entity that publishes, or provides to a court, information about the compatibility of legislation with the principles (whether for the purpose of **section 11**, or in accordance with guidelines under **section 14**, or otherwise) must ensure that the information is published on the Internet throughout the period during which the legislation is in force. 5
- (3) However,—
 - (a) information that is provided to a court is required to be published on the Internet under **subsection (2)** only after the relevant court proceedings have been finally completed; and 10
 - (b) **subsection (2)** does not require a public entity to publish information on the Internet if there would, under the Official Information Act 1982, be good reason for withholding the information if a request for that information to be made available were made under that Act. 15
- (4) Every person who signs a certificate under **section 7** must ensure that a copy of the certificate is published on the Internet throughout the period during which the legislation is in force.
- (5) Material required by this section to be published on the Internet by a public entity must be published on an Internet site maintained by or on behalf of the public entity so that it is available at all reasonable times. 20

Schedule Conduct of referendum

s 2

Part 1 General provisions

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1 Interpretation

- (1) In this Schedule, unless the context otherwise requires,—

1993 Act means the Electoral Act 1993

general election means the first general election after this Act receives the Royal assent

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referendum means a referendum on the question set out in **section 2(3)** of this Act.

- (2) The terms **ballot box**, **ballot paper**, **poll**, and **polling** mean the same in this Schedule as they do in the 1993 Act.

- (3) Unless the context otherwise requires, a term that is defined in the 1993 Act and not otherwise defined in this Schedule has the meaning given in that Act.

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2 When referendum to take place

A referendum of electors must be held on polling day for the general election.

3 Application of Electoral Act 1993

- (1) The provisions of the 1993 Act and of any regulations made under that Act apply, as far as they are relevant and with any necessary modifications, to a referendum as if it were the poll held for the general election, unless the provision is excluded or modified, expressly or impliedly, by a provision in, or made under, this Act.

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

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4 Voting system

- (1) The referendum must be conducted in accordance with the first-past-the-post electoral system.

- (2) For the purposes of a referendum, that system has the following features:

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(a) electors may cast 1 vote for 1 option:

(b) the option that receives the higher number of votes is the successful option.

Part 2 Conduct of referendum

Officers and polling places

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

Eligibility to vote at referendum

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|----------|---|----|
| 6 | Who may vote at referendum | |
| | The persons who are qualified to vote at the referendum are the persons who are qualified under section 60 of the 1993 Act to vote at the general election. | 15 |

Referendum voting paper

- | | | |
|----------|---|----|
| 7 | Form of referendum voting paper | |
| | The referendum voting paper must be in the form approved by the Electoral Commission. | |
| 8 | Issue of referendum voting paper | 20 |
| (1) | When a ballot paper is issued to a person qualified to vote at the general election, the issuing officer must also issue a referendum voting paper to that person. | |
| (2) | An elector is not required to comply with the requirements in section 167(2) of the 1993 Act more than once in order to receive a referendum voting paper at the same time as a ballot paper under subclause (1) . | 25 |
| (3) | Section 167(3)(b) and (c) of the 1993 Act does not apply in respect of a referendum voting paper. | |
| 9 | Method of voting | |
| | A person voting in the referendum must mark the referendum voting paper by placing a tick in the circle immediately beside the option the person wishes to vote for. | 30 |

Counting of votes and declaration of votes

10 Provisions of 1993 Act not to apply to count of referendum votes

The following provisions of the 1993 Act do not apply to the counting of referendum votes:

- (a) sections 160, 172(4) to (7), and 174F (which relate to the appointment and functions of scrutineers); and 5
- (b) sections 174 and 174B (which provide for a preliminary count of votes cast in polling places); and
- (c) sections 174C to 174G (which provide for a preliminary count of early votes); and 10
- (d) section 176 (which provides for marked copies of the rolls to be compared).

11 Procedures before manager of polling place starts preliminary count of votes in general election

- (1) Before the manager of a polling place starts the preliminary count of votes cast in the general election under section 174 of the 1993 Act, the manager may unseal the referendum ballot boxes and remove any ballot papers for the general election from those boxes. 15
- (2) The ballot papers removed must be included in the preliminary count of votes in the general election. 20

12 Referendum voting papers sent to returning officer before being counted

The manager of the polling place must,—

- (a) when the manager unseals the general election ballot boxes for the purposes of the preliminary count of votes cast in the general election, remove any referendum voting papers from those boxes; and 25
- (b) as soon as practicable,—
 - (i) enclose all used referendum voting papers removed from the general election and the referendum ballot boxes, unused referendum voting papers, and spoilt referendum voting papers in parcels endorsed as required for ballot papers under section 174A(1)(b) of the 1993 Act; and 30
 - (ii) send those parcels to the returning officer.

13 Procedure before returning officer starts preliminary count of early votes in general election

- (1) Before the returning officer starts the preliminary count of early votes cast in the general election under section 174C of the 1993 Act, they must separate the early votes in the referendum from the early votes in the general election. 35

- (2) The early votes in the referendum must be included in the counting of referendum votes under **clause 14**.
- 14 Counting of referendum votes** 5
- As soon as practicable after a returning officer receives the parcels of referendum voting papers, the returning officer must, in the presence of a Justice of the Peace, count the number of—
- (a) valid votes cast for each of the options for the question in the referendum; and
 - (b) informal votes for each of the options for the question in the referendum.
- 15 Return of results of count to Electoral Commission** 10
- Each returning officer must return the results of the count to the Electoral Commission as soon as practicable after completing the count of the referendum votes.
- 16 Determination of results by Electoral Commission**
- (1) The Electoral Commission must determine the following from the combined results of the count returned by each returning officer: 15
- (a) the total number of valid votes for each of the options for the question in the referendum; and
 - (b) the total number of informal votes for each of the options for the question in the referendum. 20
- (2) The Electoral Commission must complete the determination as soon as practicable after it receives the results of the count returned by all returning officers.
- 17 Declaration of official result of referendum**
- (1) The Electoral Commission must declare the result of the referendum by notice in the *Gazette*. 25
- (2) The notice must give the following information in relation to the referendum:
- (a) the total number of valid votes cast for each option in relation to the question in the referendum voting paper; and
 - (b) the total number of informal votes cast.
- (3) The notice must be published on or before the latest day for the return of the writ for the general election under the 1993 Act. 30

Part 3 Petitions

18 Method of questioning referendum

- (1) The referendum must not be questioned except by petition to the High Court in accordance with this Part. 5
- (2) Except as provided in this Schedule, the provisions in this Schedule apply instead of the provisions in Part 8 of the 1993 Act.

19 Petition for inquiry

- (1) If a group of 200 or more electors is dissatisfied with the result of the referendum, as declared by notice in the *Gazette* under **clause 17(1)**, they may petition the High Court for an inquiry into the conduct of— 10
 - (a) the referendum; or
 - (b) any person connected with it.
- (2) A petition must specify the grounds of the complaint, which may only be that— 15
 - (a) the result declared under **clause 17(1)** was wrong; or
 - (b) irregularities in the conduct of the referendum or of any person connected with it materially affected the result.
- (3) A petition must be in the prescribed form (or in a similar form) and include the information specified in that form. 20
- (4) A petition must be filed—
 - (a) not later than 28 days after publication of the *Gazette* notice under **clause 17(1)**; and
 - (b) in the registry of the High Court nearest to the place where 1 or more of the petitioners live. 25
- (5) The Registrar of the High Court where the petition is filed must send a copy of the petition to the Electoral Commission.

20 Respondents

- (1) A group of 200 or more electors may, not later than 3 working days before the commencement of the inquiry, file a notice of intention to oppose a petition, and those persons are respondents to the petition. 30
- (2) The Electoral Commission must also be a respondent.

21 Procedural matters

- (1) The provisions listed in **subclause (2)** apply to a referendum petition as if it were an election petition, to the extent that they are relevant and with any necessary modifications. 35

- (2) The provisions that apply are—
- (a) the following sections of Part 8 of the 1993 Act (which relates to election petitions):
- (i) sections 232 to 234 (which provide for security for costs, the hearing of more than 1 petition, and the making of rules of court for the purposes of petitions); and 5
- (ii) sections 235, 236(2) and (4) to (6), 240, 241, 242, and 247 to 249 (which relate to the conduct of a trial of a petition); and
- (iii) sections 250 to 255 and 256(1) (except paragraph (c)) (which relate to costs, the withdrawal or abatement of a petition, and matters relevant to respondents); and 10
- (iv) section 257 (which requires the report of the High Court to be submitted to the Attorney-General); and
- (b) the Constituency Election Petition Rules 2008, except that—
- (i) rules 6, 8, and 23 do not apply; and 15
- (ii) in rule 16(4)(b), the words “in a newspaper circulating in the district to which the petition relates” must be read as “in the manner that the court directs”.

22 Jurisdiction of High Court

- (1) A referendum petition under this Part must be tried in open court without a jury. 20
- (2) The High Court may give leave for grounds other than those stated in the petition to be inquired into, on whatever terms and conditions that the court considers just.
- (3) Despite **clause 19(2)**, the court may, in its discretion, inquire into and adjudicate on any matter relevant to the petition including, in particular,— 25
- (a) receiving evidence that the number of valid votes cast for an option was higher or lower than the number declared under **clause 17(2)**;
- (b) directing that there be a recount of some or all of the referendum votes.
- (4) At the conclusion of the trial of a petition, the court must— 30
- (a) determine and declare—
- (i) the total number of valid votes recorded for each option for each question in the referendum voting paper; and
- (ii) the total number of informal votes cast; or
- (b) declare that the referendum is void because of an irregularity that, in the opinion of the court, materially affected the result of the referendum. 35

23 Fresh referendum

If the High Court declares the referendum to be void,—

- (a) the Registrar of the court must notify the Electoral Commission that the referendum is void; and
- (b) a fresh referendum must be held; and
- (c) not later than 30 working days after a declaration is made under **clause 22(4)(b)**, the Governor-General, by Order in Council, must appoint the day for the fresh referendum to be held, which must not be later than 6 months after the date of the declaration; and 5
- (d) the same roll of electors must be used at the fresh referendum as was used at the referendum declared to be void; and
- (e) a fresh referendum must be conducted in accordance with the provisions of this Act, with any necessary modifications, and to the extent that they are relevant. 10

Part 4

Offences, penalties, and validation of irregularities

Offences and penalties 15

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

The offences and penalties provided for in sections 196, 196A, 197 to 204, 215 to 220, 221A, 221B, 222, and 223 to 225 of the 1993 Act in relation to the conduct of the poll for the general election apply in respect of a referendum with the following modifications, and a person may be charged under those provisions of the 1993 Act accordingly: 20

- (a) references to the poll taken for an election are to be read as references to the poll taken for the referendum; and
- (b) references to a ballot paper are to be read as references to a referendum voting paper; and 25
- (c) references to a candidate or a political party are to be read as references to an option for a question in the referendum voting paper, or to a proponent of an option, as the case may require; and
- (d) references to an election campaign are to be read as including references to a campaign in respect of 1 or more options for a question in the referendum voting paper; and 30
- (e) references to the 1993 Act are to be read as references to this Act.

25 Time limits for commencing prosecutions

A prosecution under this Schedule must be commenced—

- (a) before the close of the day that is 6 months after the date on which the prosecutor is satisfied that there is sufficient evidence to warrant the commencement of proceedings; but 35

- (b) no later than 3 years after the alleged offence was committed.

Validation of irregularities

26 Validation of irregularities

- (1) This section applies if anything required to be done in relation to the conduct of the referendum by or under **clauses 3 to 17** or any regulations under this Act— 5
- (a) is not done at the time required; or
- (b) is done before or after the time required; or
- (c) is done in any other irregular manner or form.
- (2) The Governor-General may, by Order in Council, at any time before or after the time within which anything is required to be done,— 10
- (a) extend the time; or
- (b) validate anything done before or after the time required; or
- (c) validate anything irregularly done in manner or form.
- (3) However, this section does not apply to any matter described in **subsection (1)** if the High Court finds that the irregularity has materially affected the result of the referendum. 15

Part 5

Referendum advertising

Preliminary provisions 20

27 Application of this Part to conduct inside or outside New Zealand

This Part applies in respect of the publication of a referendum advertisement—

- (a) in New Zealand, in any case where the promoter of the advertisement is in New Zealand:
- (b) in New Zealand, in any case where the promoter of the advertisement is outside New Zealand: 25
- (c) outside New Zealand, in any case where the promoter of the advertisement is in New Zealand.

28 Application of section 3C of Parliamentary Service Act 2000

Section 3C of the Parliamentary Service Act 2000 applies to the referendum as if every reference to a referendum in that section were a reference to the referendum within the meaning of this Act. 30

29 Interpretation

In this Part, unless the context otherwise requires,—

address means,—	
(a) in relation to an individual,—	
(i) the full street address of the place where that individual usually lives; or	
(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:	5
(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	10
contact details , for a person, means that person's—	
(a) address; and	
(b) telephone numbers; and	
(c) email address (if any)	
election advertisement has the meaning given in section 3A of the 1993 Act	15
joint advertisement has the meaning given in clause 40	
promoter means a person who initiates or instigates a referendum advertisement that—	
(a) is published; or	
(b) is to be published	20
publish has the meaning given in clause 32	
referendum advertisement has the meaning given in clause 30	
referendum expenses has the meaning given in clause 31	
register means any register of registered promoters established and maintained under clause 52	25
registered promoter —	
(a) means a promoter who is registered under clause 48 ; and	
(b) includes a promoter who at any time in the regulated period has been registered under clause 48	
regulated period has the meaning given in clause 33 .	30
30 Meaning of referendum advertisement	
(1) In this Part, unless the context otherwise requires, referendum advertisement means an advertisement in any medium that—	
(a) may reasonably be regarded as encouraging or persuading electors—	
(i) to vote in a particular way in the referendum; or	35
(ii) not to vote in a particular way in the referendum; and	

- (b) is published at any time from the date on which this Part comes into force until the close of the day before polling day at the general election.
- (2) However, the following are not referendum advertisements:
- (a) an advertisement that is published, or caused or permitted to be published, by the Electoral Commission or any other agency charged with responsibilities in relation to the conduct of any official publicity or information campaign to be conducted on behalf of the Government of New Zealand: 5
- (b) the editorial content of—
- (i) a periodical: 10
- (ii) a radio or television programme:
- (iii) a publication on a news media Internet site:
- (c) a statement that does not promote, or could not reasonably be regarded as promoting, a particular option for a question in the referendum voting paper: 15
- (d) any transmission (whether live or not) of proceedings in the House of Representatives:
- (e) any publication on the Internet, or any other electronic medium, of personal political views by an individual who does not make or receive a payment in respect of the publication: 20
- (f) an advertisement or a class of advertisements, or an advertising activity or a class of activities, declared by regulations made under **clause 76** not to be a referendum advertisement for the purposes of this Act.
- (3) In this clause, **periodical** means a newspaper, magazine, or trade or professional journal that— 25
- (a) was established for purposes unrelated to the conduct of the referendum; and
- (b) since its establishment has been—
- (i) published at regular intervals; and
- (ii) generally available to members of the public. 30

31 Meaning of referendum expenses

- (1) In this Part, **referendum expenses**—
- (a) includes—
- (i) the costs incurred in the preparation, design, composition, printing, postage, and publication of a referendum advertisement; and 35
- (ii) the reasonable market value of any material used for or applied towards the advertisement, including any such material that is provided free of charge or below reasonable market value; but

- (b) excludes the cost of—
- (i) the conduct of any survey or public opinion poll; and
 - (ii) any framework (other than a commercial framework) that supports a hoarding on which the advertisement is displayed; and
 - (iii) the labour of any person that is provided free of charge by that person; and
 - (iv) the replacement of any material used in respect of a referendum advertisement if that advertisement has been destroyed or rendered unusable by—
 - (A) 1 or more persons (other than the promoter or a person acting on his or her behalf):
 - (B) the occurrence of an event beyond the control of the promoter or a person acting the promoter’s behalf.
- (2) To avoid doubt, **referendum expenses** does not include the costs (including running costs) of any vehicle used to display a referendum advertisement if the use of the vehicle for that purpose is not the subject of a contract, arrangement, or understanding, for the payment of money or money’s worth.
- (3) In this section, **vehicle** has the meaning given to it by section 2(1) of the Land Transport Act 1998.
- 32 Meaning of publish**
- In this Part, unless the context otherwise requires, **publish**, in relation to a referendum advertisement, means to bring to the notice of a person in any manner,—
- (a) including by—
 - (i) displaying on any medium:
 - (ii) distributing by any means:
 - (iii) delivering to an address:
 - (iv) leaving at a place:
 - (v) sending by post or otherwise:
 - (vi) printing in a newspaper or other periodical:
 - (vii) broadcasting by any means:
 - (viii) disseminating by means of the Internet or any other electronic medium:
 - (ix) storing electronically in a way that is accessible to the public:
 - (x) incorporating in a device for use with a computer:
 - (xi) inserting in a film or video; but
 - (b) excluding by addressing 1 or more persons face to face.

- 33 Meaning of regulated period**
 In this Part, the **regulated period** in relation to a referendum is the same as the regulated period for the general election (as determined in accordance with section 3B of the 1993 Act).
- 34 Electoral Commission to publish details of regulated period** 5
 The notice of the regulated period for the general election published under section 3C of the 1993 Act must state that the regulated period for the referendum commences and ends on the same dates as the regulated period for the general election.
- General rules for referendum advertisements* 10
- 35 Persons who may promote referendum advertisements**
 A person is entitled to promote a referendum advertisement if the person—
- (a) is a registered promoter; or
 - (b) is an unregistered promoter who, in relation to referendum advertisements published during the regulated period, does not incur referendum expenses exceeding the same amount as the amount specified in section 204B(1)(b) of the 1993 Act (which relates to the maximum election expenses that an unregistered promoter may incur under the 1993 Act in relation to election advertisements published during the regulated period). 15 20
- 36 Maximum amount of registered promoter’s total referendum expenses**
 The total referendum expenses of a registered promoter in relation to referendum advertisements published during the regulated period must not exceed the same amount as the amount specified in section 206V of the 1993 Act (which relates to the maximum election expenses that a registered promoter may incur under the 1993 Act in relation to election advertisements published during the regulated period). 25
- 37 Persons who may incur referendum expenses in relation to referendum advertisement**
 A person may incur referendum expenses in relation to a referendum advertisement only if the person is— 30
- (a) the promoter of the referendum advertisement; or
 - (b) a person authorised by the promoter to incur referendum expenses in relation to the referendum advertisement.
- 38 Apportionment of referendum expenses for publication of referendum advertisement both before and during regulated period** 35
- (1) This clause applies if a referendum advertisement—

- (a) is published both before the commencement of the regulated period and during the regulated period; or
- (b) is published before the commencement of the regulated period and continues to be published during the regulated period.
- (2) If this clause applies,— 5
- (a) the referendum advertisement is deemed to have been published during the regulated period; but
- (b) the referendum expenses for the publication of the referendum advertisement must be apportioned so that only a fair proportion of the expenses is attributed to being incurred during the regulated period. 10
- (3) Only the referendum expenses attributed to being incurred during the regulated period determined in accordance with **subclause (2)** are referendum expenses for the purposes of **clauses 35(b), 36, and 63.**
- 39 Counting of expenses in relation to separate advertisements**
- If a person promotes an advertisement that is unique to the referendum (regardless of the number of referendums held in conjunction with the election), the promoter must count the referendum expenses relating to the advertisement as referendum expenses incurred in relation to the referendum for the purposes of **clauses 35(b), 36, and 63.** 15
- 40 Counting of expenses in relation to joint advertisements** 20
- (1) In this clause, **joint advertisement** means an advertisement that is—
- (a) both an election advertisement and a referendum advertisement (in relation to 1 or more referendums); or
- (b) a referendum advertisement in relation to more than 1 referendum.
- (2) The promoter of a joint advertisement under **subclause (1)(a)** must count the sum of all referendum expenses and election expenses incurred in relation to publication of the advertisement during the regulated period as— 25
- (a) referendum expenses, for purposes of applying **clauses 35(b), 36, and 63** of this Act in relation to each referendum; and
- (b) election expenses, for the purposes applying the following provisions of the 1993 Act: 30
- (i) section 204B(1)(d):
- (ii) section 205C(1)(a):
- (iii) section 206C:
- (iv) section 206V. 35
- (3) The promoter of a joint advertisement under **subclause (1)(b)** must count the sum of all referendum expenses incurred in relation to publication of the adver-

tisement during the regulated period as referendum expenses for the purposes of applying **clauses 35(b), 36, and 63** in relation to each referendum.

- 41 Counting of expenses in relation to jointly promoted referendum advertisements**
- (1) In this clause, a **jointly promoted referendum advertisement** is a referendum advertisement that— 5
- (a) is promoted by more than 1 promoter; and
- (b) has the promoter statement of each promoter on it.
- (2) Each promoter of a jointly promoted referendum advertisement must count the sum of all referendum expenses incurred in relation to the advertisement as referendum expenses of the promoter for the purposes of applying **clauses 35(b), 36, and 63** in relation to the referendum. 10
- 42 Promoters to keep records to verify referendum expenses**
- (1) A person who is an unregistered promoter or who has been an unregistered promoter at any time during the regulated period must take all reasonable steps to keep the records, documents, and accounts that are necessary to enable verification of the referendum expenses incurred in relation a referendum advertisement promoted while the promoter is not registered. 15
- (2) A person who is a registered promoter must take all reasonable steps to keep all records, documents, and accounts that are reasonably necessary to enable the promoter’s return of referendum expenses filed under **clause 63** to be verified. 20
- (3) **Subclauses (1) and (2)** apply until whichever is the earlier of the following: 25
- (a) the close of the day that is 3 years after polling day for the general election; or
- (b) if a fresh referendum is held under **clause 23**, the close of the day that is 3 years after the date on which the result of the fresh referendum is declared.
- 43 Referendum advertisement to include promoter statement**
- (1) This clause applies to a referendum advertisement published at any time from the date on which this Schedule comes into force until the close of the day before polling day at the general election. 30
- (2) A person may publish a referendum advertisement or cause or permit a referendum advertisement to be published only if the advertisement includes a promoter statement in accordance with this section. 35
- (3) A promoter statement must state the name and address of the promoter of the referendum advertisement.

- (4) If the promoter is a registered promoter, the name and address of the promoter stated in the promoter statement must be the same name and address of the promoter that appear in the register.
- (5) If the promoter is an unregistered promoter and is a body corporate or unincorporated, the promoter statement must also include the name of a member of the body who is the duly authorised representative of the promoter. 5
- (6) If the referendum advertisement is published in a visual form, the promoter statement must be clearly displayed in the advertisement.
- (7) If the referendum advertisement is published only in an audible form, the promoter statement when published must be no less audible than the other content of the advertisement. 10

44 Promoter statement in joint election and referendum advertisement to comply with all content requirements

If a referendum advertisement is also an election advertisement described in section 204G or 204H of the 1993 Act, the advertisement must comply with the requirements in those provisions in addition to the requirements in **clause 43**. 15

Registered promoters

45 Promoters eligible for registration

- (1) A promoter (including a corporation sole, a body corporate, and an unincorporated body) is eligible to be a registered promoter if the promoter is not an overseas person. 20
- (2) In this clause, **overseas person** means—
- (a) an individual who—
 - (i) resides outside New Zealand; and
 - (ii) is not a New Zealand citizen or registered as an elector; or 25
 - (b) a body corporate incorporated outside New Zealand; or
 - (c) an unincorporated body that has its head office or principal base of business outside New Zealand.

46 Application for registration

- (1) An application to be a registered promoter must be made to the Electoral Commission and made,— 30
- (a) if the promoter is an individual, by that individual; or
 - (b) if the promoter is a company, by a person who is duly authorised by the board of directors to make the application; or
 - (c) if the promoter is not an individual or a company, by the promoter's representative who is authorised by the promoter to make the application. 35

- (2) An application to be a registered promoter must be made in the form required by the Electoral Commission and set out—
- (a) the name and contact details of—
 - (i) the promoter; and
 - (ii) if the promoter is not an individual, the person described in **subclause (1)(b) or (c)**, as the case may be, who made the application; and 5
 - (b) the names of the persons occupying a position in the body that is comparable with that of a director of a company, if the promoter is not an individual or a company; and 10
 - (c) the names of the trustees, if the promoter is a trust; and
 - (d) the referendum that the application relates to.
- (3) An application to be a registered promoter must be accompanied by evidence of the authority to make the application, if the application is made by a person described in **subclause (1)(b) or (c)**. 15
- 47 Grounds on which registration must be refused**
- The Electoral Commission must refuse an application by a promoter to be registered if—
- (a) the application does not comply with **clause 46**; or
 - (b) the Electoral Commission is not satisfied that the promoter is eligible under **clause 45** to be registered; or 20
 - (c) the name of the promoter is—
 - (i) indecent or offensive; or
 - (ii) likely to cause confusion or mislead electors.
- 48 Electoral Commission’s decision on application** 25
- (1) If there are no grounds under **clause 47** to refuse an application, the Electoral Commission must, as soon as is reasonably practicable after receiving the application,—
- (a) register the promoter; and
 - (b) notify the person who made the application of the date of registration of the promoter. 30
- (2) If there are grounds under **clause 47** to refuse an application, the Electoral Commission must, as soon as is reasonably practicable after receiving the application,—
- (a) refuse the application; and 35
 - (b) notify the person who made the application of the refusal and the reasons.

- 49 Obligation to notify Electoral Commission of change in contact details**
- A registered promoter must notify the Electoral Commission of any change in the information provided under **clause 46(2)** within 10 working days after the change.
- 50 Cancellation of registration** 5
- (1) The Electoral Commission must cancel the registration of a promoter if—
- (a) the Electoral Commission is satisfied that the promoter is not eligible to be registered; or
- (b) the promoter—
- (i) requests that it do so; and 10
- (ii) has not incurred expenses in relation to referendum advertisements that exceed the amount specified in **clause 35(b)**.
- (2) If the Electoral Commission cancels the registration of a promoter under **sub-clause (1)**, the Electoral Commission must, as soon as is reasonably practicable, and in any case not later than 10 working days after the date of the cancellation, notify the promoter in writing of— 15
- (a) the cancellation; and
- (b) the reason for the cancellation.
- 51 Expiry of registration**
- Unless earlier cancelled under **clause 50**, a promoter’s registration expires on the close of the day that is 6 months after the declaration of the results of the referendum under **clause 17(1)**. 20
- 52 Register to be established**
- (1) The Electoral Commission must establish and maintain a register of registered promoters in relation to each referendum. 25
- (2) The Electoral Commission must enter in the register, in relation to every registered promoter,—
- (a) the name of the registered promoter; and
- (b) the address of the registered promoter; and
- (c) the names of persons set out in the promoter’s application, if any, provided under **clause 46(2)(a)(ii), (b), and (c)**. 30
- (3) The Electoral Commission may enter in the register any other information that the Electoral Commission considers necessary or desirable for the purposes of the register.
- 53 Purposes of register** 35
- The purposes of the register are—

-
- (a) to enable members of the public to ascertain—
- (i) whether a person is a registered promoter and, if so, the address of that person; and
- (ii) whether a referendum advertisement is promoted by a registered promoter; and 5
- (b) to assist with the enforcement of the provisions of this Part.
- 54 Form of register**
- The register may be kept—
- (a) as an electronic register (for example, on the Electoral Commission’s Internet site); or 10
- (b) in any other manner that the Electoral Commission thinks fit.
- 55 Alterations to register**
- The Electoral Commission may at any time make any amendments to the register that are necessary to—
- (a) reflect any changes in the information referred to in **clause 52**; or 15
- (b) correct any error or omission on the part of the Electoral Commission or any person to whom the Electoral Commission has delegated its functions, duties, or powers.
- 56 Register to be public**
- The Electoral Commission must— 20
- (a) make the register available for public inspection at its office during ordinary office hours, without fee; and
- (b) supply to a person copies of all or part of the register on request, subject to payment of any charges that may be made under the Official Information Act 1982. 25
- 57 Search of register**
- A person may search the register for a purpose set out in **clause 53**.
- 58 When search constitutes interference with privacy of individual**
- A search of the register for personal information that has not been carried out for a purpose specified in **clause 53** constitutes an action that is an interference with the privacy of an individual under section 69 of the Privacy Act 2020. 30

Claims against registered promoters for payment of referendum expenses

59 Periods for claiming and paying registered promoter's referendum expenses

- (1) A claim against a registered promoter for payment of referendum expenses is recoverable only if it is sent to the registered promoter within 20 working days after the day on which the Electoral Commission declares the official result of the referendum under **clause 17**. 5
- (2) A claim that is sent to a registered promoter in accordance with **subclause (1)** must be paid within 40 working days after the day on which that declaration is made, and not otherwise. 10
- (3) This section is subject to **clauses 60 and 61**.

60 Procedure if claim disputed

- (1) If a registered promoter, in the case of a claim for referendum expenses sent to the registered promoter within the period of 20 working days specified in **clause 59(1)**, disputes the claim, or fails to pay the claim within the period of 40 working days specified in **clause 59(2)**, then— 15
- (a) the claim is to be treated as a disputed claim; and
- (b) the claimant may, within 20 working days after the expiry of that period of 40 working days, bring an action for the disputed claim in any court of competent jurisdiction. 20
- (2) Any sum paid by the registered promoter in accordance with a judgment or order of the court in any such action is to be treated as paid within the period specified in **clause 59(2)**.
- (3) To avoid doubt, **subclause (2)** has no effect for the purposes of applying the Interest on Money Claims Act 2016 in respect of the claim. 25

61 Leave to pay claim after time limitation

- (1) On the application of a claimant or a registered promoter, the District Court may make an order granting leave to the registered promoter to pay— 30
- (a) a claim for referendum expenses sent after the period specified in **clause 59(1)**; or
- (b) a claim not paid in the period specified in **clause 59(2)**; or
- (c) a disputed claim in respect of which an action was not brought within the period specified in **clause 60(1)(b)**.
- (2) Any sum paid by the registered promoter in accordance with an order made under **subclause (1)** is to be treated as having been paid within the period specified in **clause 59(2)**. 35
- (3) To avoid doubt, **subclause (2)** has no effect for the purposes of applying the Interest on Money Claims Act 2016 in respect of the claim.

- 62 Invoice and receipt required for referendum expenses of \$50 or more**
- (1) Every payment made in respect of any referendum expenses of a registered promoter must be evidenced by an invoice stating the particulars, and by a receipt.
- (2) **Subclause (1)** does not apply to a payment of less than \$50. 5
- Returns of referendum expenses*
- 63 Return of registered promoter's referendum expenses**
- (1) This clause applies to a registered promoter whose total referendum expenses in respect of any regulated period exceed \$100,000.
- (2) Within 70 working days after polling day for the general election, the registered promoter must file a return of referendum expenses with the Electoral Commission. 10
- (3) If the registered promoter is not an individual or a company, the return must be filed by the registered promoter's representative who is duly authorised to file the return. 15
- (4) A return filed under **subclause (2)** must be in the form required by the Electoral Commission.
- 64 Electoral Commission may require auditor's report on return of registered promoter's referendum expenses**
- (1) If the Electoral Commission has reasonable grounds to believe that a return filed under **clause 63** may contain any false or misleading information, the Electoral Commission may require the registered promoter (at the registered promoter's expense) to obtain a report on the return from an auditor. 20
- (2) The auditor must state in the report—
- (a) the position shown by the return in respect of the requirement that the registered promoter's total referendum expenses must not exceed the maximum amount specified in **clause 36**; and 25
- (b) either—
- (i) whether, in the auditor's opinion, the position stated under **paragraph (a)** is correct; or 30
- (ii) that the auditor has been unable to form an opinion as to whether the position stated under **paragraph (a)** is correct.
- (3) The auditor must make any examinations that the auditor considers necessary.
- (4) The auditor must specify in the report any case in which—
- (a) the auditor has not received from the registered promoter all the information that the auditor requires to carry out their duties; or 35
- (b) proper records of the registered promoter's referendum expenses have not, in the auditor's opinion, been kept by the registered promoter.

- (5) The auditor—
- (a) must have access, at all reasonable times, to all records, documents, and accounts that relate to the registered promoter’s referendum expenses and that are held by the registered promoter; and
 - (b) may require the registered promoter to provide any information and explanation that, in the auditor’s opinion, may be necessary to enable the auditor to prepare the report. 5

65 Return of registered promoter’s referendum expenses to be publicly available

- (1) The Electoral Commission may publish, in any manner that the Electoral Commission considers appropriate, every return filed under **clause 63**. 10
- (2) During the public inspection period, the Electoral Commission must make a copy of every return filed under **clause 63** available for public inspection.
- (3) The Electoral Commission may make inspection under **subsection (2)** subject to the payment of any charges that may be made under the Official Information Act 1982. 15
- (4) In this clause, **public inspection period**, in relation to a return, means the period—
 - (a) beginning on the day that is 3 working days after the date on which the Electoral Commission receives the return; and 20
 - (b) ending with the close of polling day for the second general election that takes place after that date.

Offences and penalties in relation to referendum advertising

66 Illegal practices

- A person is guilty of an illegal practice if the person wilfully— 25
- (a) promotes a referendum advertisement without being entitled to do so under **clause 35**;
 - (b) contravenes any of **subclauses (1) to (7)** of **clause 43**;
 - (c) makes a payment in breach of **clause 59(2)**;
 - (d) contravenes any of **subclauses (1) to (3)** of **clause 67**. 30

67 Illegal practice to avoid limit set out in clause 35(b)

- (1) An unregistered promoter may not enter into an agreement, or enter into an arrangement or understanding, with any other person for the purpose of circumventing the maximum amount specified in **clause 35(b)**.
- (2) A body corporate or unincorporated may not encourage its members to take any action for the purpose of circumventing the maximum amount referred to in **clause 35(b)**. 35

- (3) No person may incorporate or form 2 or more bodies corporate or unincorporated for the purpose of circumventing the maximum amount referred to in **clause 35(b)**.
- (4) A person who wilfully contravenes any of **subclauses (1) to (3)** of this section is guilty of an illegal practice. 5
- 68 Offence to incur unauthorised referendum expense**
- (1) A person who wilfully contravenes **clause 37** is guilty of a corrupt practice.
- (2) A person who contravenes **clause 37** in any other case is guilty of an illegal practice.
- 69 Offence to pay referendum expenses in excess of maximum** 10
- (1) This section applies to a registered promoter or any other person who directly or indirectly pays or knowingly aids or abets any person in paying for or on account of any referendum expenses any sum in excess of the maximum amount referred to in **clause 36**.
- (2) The registered promoter or other person is guilty of— 15
- (a) a corrupt practice if that person knew the payment was in excess of the maximum amount; or
- (b) an illegal practice in any other case, unless the person proves that they took all reasonable steps to ensure that the referendum expenses did not exceed the maximum amount. 20
- (3) A person who enters into an agreement, or enters into an arrangement or understanding, with any other person for the purpose of circumventing the maximum amount referred to in **clause 36** is guilty of a corrupt practice.
- 70 Offence relating to unregistered promoter’s obligation to keep records**
- An unregistered promoter who fails, without reasonable excuse, to comply with **clause 42(1)** is guilty of an offence and is liable on conviction to a fine not exceeding \$40,000. 25
- 71 Offence relating to registered promoter’s obligation to keep records**
- A registered promoter who fails, without reasonable excuse, to comply with **clause 42(2)**, is guilty of an offence and is liable on conviction to a fine not exceeding \$40,000. 30
- 72 Offences relating to return of registered promoter’s referendum expenses**
- (1) A registered promoter who fails, without reasonable excuse, to comply with **clause 63(2)** is guilty of an offence and is liable on conviction to a fine not exceeding \$40,000. 35
- (2) A registered promoter who files a return under **clause 63(2)** that is false in any material particular is guilty of—

- (a) a corrupt practice if the registered promoter filed the return knowing it to be false in any material particular:
- (b) an illegal practice in any other case, unless the registered promoter proves that—
- (i) they had no intention to misstate or conceal the facts; and 5
- (ii) they took all reasonable steps in the circumstances to ensure that the information was accurate.
- (3) If the registered promoter is not an individual or a company, the registered promoter’s representative who files the return in accordance with **clause 63(3)** is liable under **subsections (1) and (2)**. 10
- (4) **Subclause (3)** does not limit the liability of a registered promoter under **subclause (1) or (2)**.
- 73 Punishment for corrupt or illegal practice**
- (1) A person who is guilty of a corrupt practice is liable on conviction to either or both of the following: 15
- (a) a term of imprisonment not exceeding 2 years:
- (b) a fine not exceeding \$100,000.
- (2) A person who is guilty of an illegal practice is liable on conviction to a fine not exceeding \$40,000.
- (3) Section 100 of the 1993 Act applies to a person who is guilty of a corrupt practice under this Act as if the person were guilty of a corrupt practice under the 1993 Act and the reference to an election petition were a reference to a referendum petition tried by the High Court under **clause 19** of this Schedule. 20
- 74 Time limit for commencing prosecutions under Part**
- The time limits for commencing prosecutions specified in **clause 25** apply for the purposes of this Schedule. 25

Part 6

Miscellaneous provisions relating to the referendum

- 75 Duty of Electoral Commission**
- (1) If the Electoral Commission believes that a person has committed an offence under this Schedule, the Electoral Commission must report the facts on which that belief is based to the New Zealand Police. 30
- (2) However, **subclause (1)** does not apply to an offence under this Schedule if the Electoral Commission considers that the offence is so inconsequential that there is no public interest in reporting those facts to the New Zealand Police. 35

76 Regulations

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

- (a) at any time before the start of the regulated period, declaring an advertisement, a class of advertisements, an activity, or a class of activities not to be a referendum advertisement for the purposes of this Schedule: 5
- (b) prescribing forms required for any matter in relation to a referendum:
- (c) providing for matters that are contemplated by, necessary for the administration of, or necessary for giving full effect to this Schedule.