

# **Referendums Framework Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

This Bill provides a single set of legislative provisions to govern the conduct of referendums held alongside the 2020 general election. The Bill is a generic Bill, which focuses on the mechanics of a referendum. A referendum may be conducted under this Bill only if it is—

- declared by an Order in Council to be a referendum for the purposes of the Bill; or
- declared by an Act to be a referendum for the purposes of the Bill.

The Bill is time-limited and applies only to referendums held at the next general election following enactment.

### **Conduct of referendums**

The Bill largely reproduces the same legislative framework for the conduct of referendums as will apply to the conduct of the general election. This includes provisions concerning the following:

- electoral officers and polling places:
- eligibility to vote in a referendum:
- the form of the referendum voting paper:
- counting and declaring votes:
- offences and penalties:
- petitioning the outcome of a referendum.

By aligning the legislative provisions for referendums and the general election as far as is practicable, the Electoral Commission will be able to use much of its existing electoral infrastructure and resources to conduct the referendums. This approach also

minimises confusion for voters, electoral staff, and other stakeholders participating in the referendum, for example, political parties and campaign groups.

### **Referendum advertising**

The Bill also replicates the regulatory regime that applies to third-party promoters in respect of election advertisements, to apply to any promoters of referendum advertisements. These rules aim to provide an appropriate balance between freedom of expression and transparency, and include—

- promoter (campaigner) statements, including name and address, on all referendum advertisements:
- promoters to register if they intend to spend over a certain threshold on referendum advertising:
- promoters to disclose their expenses if they spend over a certain threshold on referendum advertising:
- a limit on the amount that can be spent on referendum advertising:
- expenditure on dual advertisements (covering the election and referendum(s)) to count towards both election and referendum advertising thresholds and limits.

Promoter statements will be required on all referendum advertisements following promulgation of an Order in Council or enactment of legislation declaring a referendum to be a referendum for the purposes of the Bill.

The remaining rules will apply during the regulated period. This period is the same as the regulated period for election advertising, that is, the 3-month period immediately before the election. The limits and thresholds applying to referendum advertising are the same as those that will apply to third-party promoters in respect of election advertising.

### **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=2019&no=161>

### **Regulatory impact assessment**

The Ministry of Justice produced a regulatory impact assessment on 13 June 2019 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact assessment can be found at—

- <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/regulatory-impact-statements>; and
- <https://www.treasury.govt.nz/publications/legislation/regulatory-impact-assessments>

### Clause by clause analysis

*Clause 1* is the Title clause.

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

*Clause 3* provides that the Act is repealed on the close of 1 July 2022.

## Part 1

### Preliminary provisions

*Clause 4* states the purpose of the Bill as being to provide for 1 or more referendums to be held in conjunction with the next general election. The Bill does this by establishing a legal framework for holding a referendum in conjunction with the general election. This can be triggered for use, in relation to any referendum, by an enactment declaring that the referendum is a referendum for the purposes of the Act.

*Clause 5* gives the meanings of a number of terms used in the Bill. Referendum is defined to mean a referendum that has been declared by an Order in Council or an Act, to be a referendum for the purposes of the Bill.

*Clause 6* gives effect to any savings and transitional provisions in *Schedule 1* of the Bill.

*Clause 7* states that the Act binds the Crown.

## Part 2

### Provisions relating to referendum

#### Subpart 1—General provisions

*Clause 8* provides for an Order in Council to be made declaring a referendum to be a referendum for the purposes of the Bill. The wording of the question to be put to electors in the referendum (or, as the circumstances may require, the issue or proposal as it is to be put to electors in the referendum) must be specified in the Order in Council. The options for which voters may vote in response must also be specified in the order. Citizens initiated referendums and government initiated referendums within the meaning of section 3 of the Referenda (Postal Voting) Act 2000 are excluded from the Bill.

*Clause 9* provides that a referendum must be held on the polling day for the next general election.

*Clause 10* applies relevant provisions of the Electoral Act 1993 (the **1993 Act**), modified as necessary, to a referendum under the Bill as if it were the poll for the general election.

*Clause 11* requires the referendum to be conducted according to the first-past-the-post electoral system and states the 2 features of that system for the purposes of a referendum.

## Subpart 2—Conduct of referendum

### *Officers and polling places*

*Clause 12* provides that certain officials designated for the general election are also officials for the referendum and that the polling places for the general election are also polling places for the referendum.

### *Eligibility to vote at referendum*

*Clause 13* provides that those qualified to vote at the general election are also eligible to vote at the referendum.

### *Referendum voting paper*

*Clause 14* enables all referendums to be included in the same voting paper if more than 1 referendum is to be held at the general election.

*Clause 15* concerns a referendum with more than 1 question and provides for how the questions are to be ordered on the voting paper.

*Clause 16* enables the Electoral Commission to prescribe the form of a referendum voting paper.

*Clause 17* requires a referendum voting paper to be issued to a qualified voter at the same time as the ballot paper for the general election and excludes certain provisions in the 1993 Act from applying in relation to a referendum.

*Clause 18* provides for what a person has to do to cast a valid vote in a referendum.

## Subpart 3—Counting of votes and declaration of votes

*Clause 19* excludes certain provisions of the 1993 Act from applying to the counting of referendum votes. An important difference between the processes for counting votes in the general election and the processes for counting votes in a referendum is that there will be no preliminary count of the referendum voting papers.

*Clauses 20 to 26* set out the procedures for counting votes in the referendum, declaring results, and declaring the official result of the referendum. *Clause 26* requires the Electoral Commission to declare the result of the referendum by notice in the *Gazette* and to publish that notice on or before the latest date set for the return of the writ for the general election under section 139(1)(c) of the 1993 Act.

If more than 1 referendum is held, the results of each referendum may be declared at different times (within the time period referred to).

### Subpart 4—Petitions

*Clause 27* provides that the only way to question a referendum is to petition the High Court.

*Clause 28* provides for a group of 200 or more electors to petition the High Court for an inquiry into the conduct of the referendum or a person connected with it and states the 2 grounds of complaint on which a petition may be based. The clause also provides for the time limit within which a petition may be filed, the form of the petition, and the place where it must be filed.

*Clause 29* provides for a group of 200 or more electors to file a notice of intention to oppose a petition, not later than 3 days before the commencement of the inquiry. Those persons and, if the inquiry relates to the conduct of the referendum, the Electoral Commission are the respondents to the petition.

*Clauses 30 and 31* provide for the procedures that apply to a petition and the scope of the High Court's jurisdiction.

*Clause 32* provides that, if the court declares the referendum to be void, a fresh referendum must be held not later than 6 months after the court's declaration.

### Subpart 5—Offences and penalties

*Clause 33* provides that specified offences and penalties applying under the 1993 Act in relation to the conduct of the poll for the general election apply in respect of a referendum, with certain modifications.

*Clause 34* specifies the time limit for bringing a prosecution under *Part 2*.

### Subpart 6—Validation of irregularities

*Clause 35* provides for the Governor-General, by Order in Council, to validate certain irregularities in relation to the conduct of the referendum except if the High Court finds that the irregularity has materially affected the result of the referendum.

## Part 3

### Referendum advertising

#### *Preliminary provisions*

*Clause 36* applies *Part 3* of the Bill, which regulates referendum advertising, to conduct outside New Zealand.

*Clause 37* applies section 3C of the Parliamentary Service Act 2000 to a referendum under the Bill. That section provides for how funding of an election advertisement or a referendum advertisement is to be apportioned if the advertisement is published both during and after the regulated period.

*Clause 38* defines a number of terms used in *Part 3*. Important terms are: promoter, registered promoter, and regulated period. A promoter is a person who publishes a referendum advertisement or has a referendum advertisement published, and a regis-

tered promoter is a promoter who is registered with the Electoral Commission or has been registered with the Commission at any time. Regulated period means the period starting 3 months before polling day and ending the day before polling day.

*Clause 39* defines the term referendum advertisement. A referendum advertisement is an advertisement in any medium that—

- may reasonably be regarded as encouraging or persuading voters to vote or not to vote in a particular way in the referendum; and
- is published at any time from the date on which the provision of the enactment declaring the referendum to be a referendum for the purposes of this Act comes into force until the close of the day before polling day.

There are exceptions relating to an official publicity campaign, news and comments, and the expression of personal views.

*Clause 40* defines the term referendum expenses. Referendum expenses include the cost of all the stages of publication of an advertisement and the reasonable market cost of materials used for the advertisement if the materials are provided free of charge or at below market value. Referendum expenses do not include the cost of travel, surveys, and opinion polls, labour provided free of charge, or the replacement of any material destroyed or rendered unusable by anyone other than the promoter or a person acting on the promoter's behalf.

*Clause 41* defines the term publish, in relation to a referendum advertisement.

*Clause 42* provides that the regulated period in relation to a referendum advertisement is the same as the regulated period for the general election. *Clause 43* requires the Electoral Commission to state this in the notice of the regulated period for the general election that the Electoral Commission gives under section 3C of the 1993 Act.

### Subpart 1—General rules for advertisements

*Clause 44* provides that a promoter is entitled to promote a referendum advertisement if the promoter is either a registered promoter or does not incur referendum expenses (in relation to referendum advertisements published during the regulated period) that exceed the same amount as specified in section 204B(1)(d) of the 1993 Act (that is, the same amount as the maximum amount of election expenses that an unregistered promoter can incur under the 1993 Act in relation to election advertisements published during the regulated period).

*Clause 45* prohibits a registered promoter from incurring total referendum expenses in relation to referendum advertisements published during the regulated period exceeding the same amount as specified in section 206V of the 1993 Act (that is, the same amount as the maximum amount of election expenses that a registered promoter may incur in relation to election advertisements published during the regulated period).

*Clause 46* specifies who may incur referendum expenses in relation to a referendum advertisement published during the regulated period.

*Clause 47* provides for referendum expenses in relation to an advertisement published before and during the regulated period to be apportioned over the period of publication so that a fair proportion of the expenses is attributed to the regulated period.

### *Counting of expenses*

*Clauses 48 to 50* provide for how expenses incurred in relation to joint advertisements (advertisements that are both referendum advertisements and election advertisements or that are referendum advertisements for the purposes of more than 1 referendum (*clause 49*)) and jointly promoted referendum advertisements (referendum advertisements that are promoted by more than 1 promoter and have the promoter statement of each on them (*clause 50*)) published during the regulated period are to be counted for the purposes of determining the following:

- whether an unregistered promoter's referendum expenses in relation to referendum advertisements published during the regulated period exceed the maximum amount (specified in *clause 44(b)*) that a promoter may incur without having to register as a promoter;
- whether a registered promoter's total referendum expenses incurred in relation to referendum advertisements published during the regulated period exceed the maximum amount (specified in *clause 45*);
- whether a registered promoter's total referendum expenses in the regulated period exceed \$100,000, in which case the promoter must file a return of those expenses under *clause 72*.

### *Obligations of promoters to keep records*

*Clause 51* requires promoters to keep records to enable referendum expenses to be verified.

### *Promoter statements*

*Clause 52* requires the promoter of a referendum advertisement to ensure that the advertisement includes a statement of the promoter's name and address. If the advertisement is in a visual form, the statement must be clearly visible. If published only in an audible form, the promoter statement must be no less audible than the other content of the advertisement.

*Clause 53* requires a promoter statement in a joint election and referendum advertisement to comply with the requirements concerning content in the 1993 Act (section 204G or 204H) in addition to the requirements in *clause 52*.

## Subpart 2—Registered promoters

*Clauses 54 to 60* provide for who is eligible to be registered as a promoter, how an application for registration must be made, the grounds on which registration may be refused, the Electoral Commission's decision on an application for registration, changes to details on the register, cancellation of a registration, and when a promoter's registration expires.

*Clauses 61 to 67* relate to the establishment, purposes, and operation of the register.

*Clause 68* provides for the time within which a person must claim any expenses that a promoter may owe them and the time within which the registered promoter must pay the claim. However, *clause 69* provides for a claimant to bring court proceedings against a registered promoter in respect of a disputed claim and *clause 70* enables the District Court to grant to a registered promoter leave to pay a claim outside the time limits in *clauses 68 and 69*.

*Clause 71* requires every payment of \$50 or more in respect of any referendum expenses of a registered promoter to be evidenced by an invoice stating particulars and by a receipt.

*Clauses 72 and 73* require a registered promoter whose referendum expenses total more than \$100,000 to file a return of referendum expenses with the Electoral Commission within a specified time and enable the Commission to require the promoter to obtain an audit report on the return filed.

*Clause 74* provides for electoral returns to be publicly available.

### Subpart 3—Offences and penalties relating to referendum advertising

*Clauses 75 to 82* provide for offences and penalties in relation to referendum advertising.

*Clause 83* provides for the time within which prosecutions must be commenced.

## Part 4

### Miscellaneous provisions

*Clause 84(1)* requires the Electoral Commission, if it believes that a person has committed an offence under the Bill, to report the facts on which that belief is based to the New Zealand Police. However, this duty does not apply if the offence is under *Part 4* of the Bill (referendum advertising) and the Commissioner considers that the offence is so inconsequential that there is no public interest in reporting those facts to the Police (*subclause (2)*).

*Clause 85* empowers the Governor-General to make regulations by Order in Council.



*Hon Andrew Little*

## **Referendums Framework Bill**

Government Bill

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

**1 Title**

This Act is the Referendums Framework Act **2019**.

**2 Commencement**

This Act comes into force on the day after the date on which it receives the Royal assent. 5

**3 Repeal**

This Act is repealed on the close of 1 July 2022.

**Part 1  
Preliminary provisions**

**4 Purpose**

5

The purpose of this Act is to provide for 1 or more referendums to be held in conjunction with the first general election after the commencement of this Act.

**5 Interpretation**

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

**1993 Act** means the Electoral Act 1993 10

**general election** means the first general election after the commencement of this Act

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

**referendum** means a referendum declared by an Act or by an Order in Council made under **section 8** to be a referendum for the purposes of this Act.

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

(3) A reference to a question to be put to electors in a referendum, unless the context otherwise requires, includes a reference to a proposal or an issue as it is to be put to electors in a referendum. 20

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

**6 Transitional, savings, and related provisions**

25

The transitional, savings, and related provisions (if any) set out in **Schedule 1** have effect according to their terms.

**7 Act binds the Crown**

This Act binds the Crown.

## Part 2 Provisions relating to referendum

### Subpart 1—General provisions

- 8 Declaration of referendum by Order in Council**
- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, declare a referendum (other than a citizens initiated referendum within the meaning of section 3(1) of the Referenda (Postal Voting) Act 2000 or a government initiated referendum within the meaning of that provision) to be a referendum for the purposes of this Act. 5
- (2) A declaration must specify, as applicable,— 10
- (a) the wording of the question, or each question, to be put to electors and the wording of the options for which electors may vote in response to the question:
- (b) the proposal or issue, as it is to be put to electors in the referendum, and the wording of the options for which electors may vote in response. 15
- 9 When referendum to take place**
- A referendum of electors must be held on polling day for the general election.  
Compare: 2010 No 139 s 8(1)
- 10 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. 20
- (2) **Subsection (1)** is subject to the provisions of this Act and of any regulations made under it. 25  
Compare: 2010 No 139 s 9
- 11 Voting system**
- (1) A referendum must be conducted in accordance with the first-past-the-post electoral system. 30
- (2) For the purposes of a referendum, that system has the following features:
- (a) electors may cast 1 vote for 1 option:
- (b) the option that receives the highest number of votes is the successful option. 35  
Compare: 2015 No 66 s 7

Subpart 2—Conduct of referendum

*Officers and polling places*

**12 Manager, returning officer, polling place, officials, and use of polling places**

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

Compare: 2010 No 139 s 10

*Eligibility to vote at referendum*

**13 Who may vote at referendum**

The persons who are qualified to vote at a referendum are the persons who are qualified under section 60 of the 1993 Act to vote at the general election. 15

Compare: 2010 No 139 s 11

*Referendum voting paper*

**14 All referendums may be in single voting paper**

- (1) If more than 1 referendum is to be held at the general election, all referendums may be included in a single voting paper. 20
- (2) The order of the referendums on the voting paper must be determined by a member of the Electoral Commission drawing lots in the presence of a High Court Judge.

**15 Referendum with more than 1 question**

If a referendum has more than 1 question, the questions must appear on the voting paper in the order specified in the Act or the Order in Council declaring the referendum. 25

**16 Form of referendum voting paper**

The referendum voting paper must be in the form approved by the Electoral Commission. 30

**17 Issue of referendum voting paper**

- (1) When a ballot paper is issued to a person qualified to vote at the general election, the issuing officer must also issue a referendum voting paper to that person.

(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 **subsection (1)**.

(3) Section 167(3)(b) and (c) of the 1993 Act does not apply in respect of a referendum voting paper. 5

Compare: 2010 No 139 s 12

### **18 Method of voting**

(1) A person voting for a question in a referendum must mark the referendum voting paper by placing a tick in the circle immediately beside the option the person wishes to vote for. 10

(2) **Subsection (1)** applies to each separate question if there is more than 1 question in the referendum.

Compare: 1993 No 87 s 168(1)(b); 2010 No 139 s 13

### Subpart 3—Counting of votes and declaration of votes

### **19 Provisions of 1993 Act not to apply to count of referendum votes** 15

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

(a) sections 160, 172(4) to (7), and 174F (which relate to the appointment and functions of scrutineers); and

(b) sections 174 and 174B (which provide for a preliminary count of votes cast in polling places); and 20

(c) sections 174C to 174G (which provide for a preliminary count of early votes); and

(d) section 176 (which provides for marked copies of the rolls to be compared). 25

Compare: 2010 No 139 s 14

### **20 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. 30

(2) The ballot papers removed must be included in the preliminary count of votes in the general election.

### **21 Referendum voting papers sent to returning officer before being counted** 35

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
- (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 5
  - (ii) send those parcels to the returning officer. 10

Compare: 2010 No 139 s 16

**22 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. 15
- (2) The early votes in the referendum must be included in the counting of referendum votes under **section 23**.

**23 Counting of referendum votes**

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— 20

- (a) valid votes cast for each of the options for each question in the referendum; and
- (b) informal votes for each of the options for each question in the referendum. 25

**24 Return of results of count to Electoral Commission**

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. 30

Compare: 2010 No 139 s 18

**25 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:
  - (a) the total number of valid votes for each of the options for each question in the referendum; and 35
  - (b) the total number of informal votes for each of the options for each question in the referendum.

- (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.

Compare: 2010 No 139 s 19

## 26 Declaration of official result of referendum

- (1) The Electoral Commission must declare the result of the referendum by notice in the *Gazette*. 5
- (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 or questions in the referendum voting paper; and
  - (b) the total number of informal votes cast. 10
- (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.
- (4) If more than 1 referendum is held, the results of each referendum may be declared at different times (within the time period in **subsection (3)**). 15

Compare: 2010 No 139 s 20

## Subpart 4—Petitions

### 27 Method of questioning referendum

- (1) The referendum must not be questioned except by petition to the High Court in accordance with this subpart.
- (2) Except as provided in this subpart, the provisions in this subpart apply instead of the provisions in Part 8 of the 1993 Act. 20

Compare: 2010 No 139 s 21

### 28 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 **section 26(1)**, they may petition the High Court for an inquiry into the conduct of— 25
- (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— 30
- (a) the result declared under **section 26(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 form set out in **Schedule 2** (or in a similar form) and include the information specified in that form. 35
- (4) A petition must be filed—

- (a) not later than 28 days after publication of the *Gazette* notice under **section 26(1)**; and
  - (b) in the registry of the High Court nearest to the place where 1 or more of the petitioners live.
- (5) The Registrar of the High Court where the petition is filed must send a copy of the petition to the Electoral Commission. 5
- Compare: 2010 No 139 s 22

**29 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. 10
- (2) The Electoral Commission must also be a respondent.
- Compare: 2010 No 139 s 23

**30 Procedural matters**

- (1) The provisions listed in **subsection (2)** apply to a referendum petition as if it were an election petition, to the extent that they are relevant and with any necessary modifications. 15
- (2) The provisions that apply are—
- (a) the following sections of Part 8 of the 1993 Act (which relates to election petitions): 20
    - (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
    - (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 25
    - (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
    - (iv) section 257 (which requires the report of the High Court to be submitted to the Attorney-General); and 30
  - (b) the Constituency Election Petition Rules 2008, except that—
    - (i) rules 6, 8, and 23 do not apply; and
    - (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”. 35

Compare: 2010 No 139 s 24

**31 Jurisdiction of High Court**

- (1) A referendum petition under this subpart must be tried in open court without a jury.
- (2) The High Court may give leave for grounds other than those stated in the petition to be inquired into, on whatever terms and conditions that the court considers just. 5
- (3) Despite **section 28(2)**, the court may, in its discretion, inquire into and adjudicate on any matter relevant to the petition including, in particular,—
- (a) receiving evidence that the number of valid votes cast for an option was higher or lower than the number declared under **section 26(2)**: 10
- (b) directing that there be a recount of some or all of the referendum votes.
- (4) At the conclusion of the trial of a petition, the court must—
- (a) determine and declare—
- (i) the total number of valid votes recorded for each option for each question in the referendum voting paper; and 15
- (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.

Compare: 2010 No 139 s 25

**32 Fresh referendum** 20

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 **section 31(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 25
- (d) the same roll of electors must be used at the fresh referendum as was used at the referendum declared to be void; and 30
- (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.

Compare: 2010 No 139 s 26

Subpart 5—Offences and penalties

- 33 Application of provisions of Electoral Act 1993 in respect of referendum** 5
- 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:
- (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 10
  - (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 15
  - (e) references to the 1993 Act are to be read as references to this Act.
- Compare: 2010 No 139 s 27
- 34 Time limits for commencing prosecutions** 20
- A prosecution under this Part 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
  - (b) no later than 3 years after the alleged offence was committed. 25
- Compare: 2010 No 139 s 28

Subpart 6—Validation of irregularities

- 35 Validation of irregularities**
- (1) This section applies if anything required to be done in relation to the conduct of the referendum by or under **sections 12 to 26** or any regulations under this Act— 30
    - (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,— 35
    - (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.

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Compare: 2010 No 139 s 79

### Part 3 Referendum advertising

#### *Preliminary provisions*

- 36 Application of this Part to conduct inside or outside New Zealand** 10
- 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: 15
  - (c) outside New Zealand, in any case where the promoter of the advertisement is in New Zealand.
- Compare: 2010 No 139 s 3; 2015 No 66 s 8
- 37 Application of section 3C of Parliamentary Service Act 2000**
- Section 3C of the Parliamentary Service Act 2000 applies to a referendum as if every reference to a referendum in that section were a reference to a referendum within the meaning of this Act. 20
- 38 Interpretation**
- In this Part, unless the context otherwise requires,—
- address** means,— 25
- (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: 30
  - (b) in relation to a body corporate or unincorporated,—
    - (i) the full street address of the body's principal place of business; or
    - (ii) the full street address of the body's head office

**contact 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 5

**joint advertisement** has the meaning given in **section 49**

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

- (a) is published; or
- (b) is to be published 10

**publish** has the meaning given in **section 41**

**referendum advertisement** has the meaning given in **section 39**

**referendum expenses** has the meaning given in **section 40**

**register** means any register of registered promoters established and maintained under **section 61** 15

**registered promoter**—

- (a) means a promoter who is registered under **section 57**; and
- (b) includes a promoter who at any time in the regulated period has been registered under **section 57**

**regulated period** has the meaning given in **section 42.** 20

Compare: 1993 No 87, s 204A; 2010 No 139 s 30

### 39 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— 25
  - (i) to vote in a particular way in the referendum; or
  - (ii) not to vote in a particular way in the referendum; and
- (b) is published at any time from the date on which the provision of the enactment declaring the referendum to be a referendum for the purposes of this Act comes into force until the close of the day before polling day. 30

(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: 35
- (b) the editorial content of—

- (i) a periodical:
- (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: 5
- (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: 10
- (f) an advertisement or a class of advertisements, or an advertising activity or a class of activities, declared by regulations made under **section 85** not to be a referendum advertisement for the purposes of this Act.
- (3) In this section, **periodical** means a newspaper, magazine, or trade or professional journal that— 15
  - (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 20
    - (ii) generally available to members of the public.

Compare: 1993 No 87 s 3A; 2010 No 139 s 31

#### **40 Meaning of referendum expenses**

- (1) In this Part, **referendum expenses**—
  - (a) includes— 25
    - (i) the costs incurred in the preparation, design, composition, printing, postage, and publication of a referendum advertisement; and
    - (ii) the reasonable market value of any material used for or applied towards the advertisement, including any such material that is provided free of charge or below reasonable market value; but 30
  - (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 35



- (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): 5
  - (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. 10
- (3) In this section, **vehicle** has the meaning given to it by section 2(1) of the Land Transport Act 1998.

Compare: 1993 No 87 s 3E; 2010 No 139 s 32

**41 Meaning of publish** 15

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

- (a) including by—
  - (i) displaying on any medium: 20
  - (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: 25
  - (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: 30
  - (xi) inserting in a film or video; but
- (b) excluding by addressing 1 or more persons face to face.

Compare: 1993 No 87 s 3D; 2010 No 139 s 33

**42 Meaning of regulated period**

In this Act, 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).

Compare: 1993 No 87 s 3B

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**43 Electoral Commission to publish details of regulated period**

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.

Compare: 2010 No 139 s 35

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**Subpart 1—General rules for referendum advertisements****44 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)(d) 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).

Compare: 1993 No 87 s 204B; 2010 No 139 s 36

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**45 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).

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**46 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—

- (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.

Compare: 1993 No 87 s 206T; 2010 No 139 s 38

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- 47 Apportionment of referendum expenses for publication of referendum advertisement both before and during regulated period**
- (1) This section applies if a referendum advertisement—
    - (a) is published both before the commencement of the regulated period and during the regulated period; or 5
    - (b) is published before the commencement of the regulated period and continues to be published during the regulated period.
  - (2) If this section applies,—
    - (a) the referendum advertisement is deemed to have been published during the regulated period; but 10
    - (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.
  - (3) Only the referendum expenses attributed to being incurred during the regulated period determined in accordance with **subsection (2)** are referendum expenses for the purposes of **sections 44(b), 45, and 72.** 15

Compare: 1993 No 87 s 204B; 2010 No 139 s 39

*Counting of expenses*

- 48 Counting of expenses in relation to separate advertisements** 20
- If a person promotes an advertisement that is unique to a single 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 that single referendum for the purposes of **sections 44(b), 45, and 72.**
- 49 Counting of expenses in relation to joint advertisements** 25
- (1) In this section, **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 **subsection (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— 30
    - (a) referendum expenses for purposes of applying **sections 44(b), 45, and 72** of this Act in relation to each referendum; and
    - (b) election expenses, for the purposes applying the following provisions of the 1993 Act: 35
      - (i) section 204B(1)(d):
      - (ii) section 205C(1)(a):

- (iii) section 206C:
  - (iv) section 206V.
- (3) The promoter of a joint advertisement under **subsection (1)(b)** must count the sum of all referendum expenses incurred in relation to publication of the advertisement during the regulated period as referendum expenses for the purposes of applying **sections 44(b), 45, and 72** in relation to each referendum. 5

## 50 Counting of expenses in relation to jointly promoted referendum advertisements

- (1) In this section, a **jointly promoted referendum advertisement** is a referendum advertisement that— 10
- (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 **sections 44(b), 45, and 72** in relation to the referendum. 15

Compare: 1993 No 87 s 204C

### *Obligations of promoters to keep records*

## 51 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. 20
- (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 **section 72** to be verified. 25
- (3) Despite **section 3, subsections (1) and (2)** of this section apply until whichever is the earlier of the following: 30
- (a) the close of the day that is 3 years after polling day for the general election; or
  - (b) if a fresh referendum is held under **section 32**, the close of the day that is 3 years after the date on which the result of the fresh referendum is declared. 35

Compare: 1993 No 87 s 204E; 2010 No 139 ss 57, 62

*Promoter statements*

- 52 Referendum advertisement to include promoter statement**
- (1) This section applies to a referendum advertisement published at any time from the date that the provision of the enactment declaring the referendum to be a referendum for the purposes of this Act comes into force until the close of the day before polling day. 5
  - (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.
  - (3) A promoter statement must state the name and address of the promoter of the referendum advertisement. 10
  - (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. 15
  - (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. 20

Compare: 1993 No 87 s 204F; 2010 No 139 s 42; 2015 No 66 s 64

**53 Promoter statement in joint election and referendum advertisement to comply with all content requirements** 25

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 **section 52**.

Compare: 2010 No 139 s 40 30

**Subpart 2—Registered promoters**

- 54 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. 35
  - (2) In this section, **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
- (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.
- Compare: 1993 No 87 s 204K; 2010 No 139 s 43 5
- 55 Application for registration**
- (1) An application to be a registered promoter must be made to the Electoral Commission and made,—
- (a) if the promoter is an individual, by that individual; or
- (b) if the promoter is a company, by a person who is duly authorised by the board of directors to make the application; or 10
- (c) if the promoter is not an individual or a company, by the promoter’s representative who is authorised by the promoter to make the application.
- (2) An application to be a registered promoter must be made in the form required by the Electoral Commission and set out— 15
- (a) the name and contact details of—
- (i) the promoter; and
- (ii) if the promoter is not an individual, the person described in **subsection (1)(b) or (c)**, as the case may be, who made the application; and 20
- (b) the names of the persons occupying a position in the body that is comparable with that of a director of a company, if the promoter is not an individual or a company; and
- (c) the names of the trustees, if the promoter is a trust; and
- (d) the referendum that the application relates to. 25
- (3) An application to be a registered promoter must be accompanied by evidence of the authority to make the application, if the application is made by a person described in **subsection (1)(b) or (c)**.
- Compare: 1993 No 87 s 204L; 2010 No 139 s 44
- 56 Grounds on which registration must be refused** 30
- The Electoral Commission must refuse an application by a promoter to be registered if—
- (a) the application does not comply with **section 55**; or
- (b) the Electoral Commission is not satisfied that the promoter is eligible under **section 54** to be registered; or 35
- (c) the name of the promoter is—
- (i) indecent or offensive; or

- (ii) likely to cause confusion or mislead electors.

Compare: 1993 No 87 s 204M; 2010 No 139 s 45

**57 Electoral Commission’s decision on application**

- (1) If there are no grounds under **section 56** to refuse an application, the Electoral Commission must, as soon as is reasonably practicable after receiving the application,— 5
  - (a) register the promoter; and
  - (b) notify the person who made the application of the date of registration of the promoter.
- (2) If there are grounds under **section 56** to refuse an application, the Electoral Commission must, as soon as is reasonably practicable after receiving the application,— 10
  - (a) refuse the application; and
  - (b) notify the person who made the application of the refusal and the reasons. 15

Compare: 1993 No 87 s 204N; 2010 No 139 s 46

**58 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 **section 55(2)** within 10 working days after the change. 20

Compare: 1993 No 87 s 204O; 2010 No 139 s 47

**59 Cancellation of registration**

- (1) The Electoral Commission must cancel the registration of a promoter if— 25
  - (a) the Electoral Commission is satisfied that the promoter is not eligible to be registered; or
  - (b) the promoter—
    - (i) requests that it do so; and
    - (ii) has not incurred expenses in relation to referendum advertisements that exceed the amount specified in **section 44(b)**.
- (2) If the Electoral Commission cancels the registration of a promoter under **sub-section (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— 30
  - (a) the cancellation; and
  - (b) the reason for the cancellation. 35

Compare: 1993 No 87 s 204P; 2010 No 139 s 48

- 60 Expiry of registration**  
 Unless earlier cancelled under **section 59**, 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 **section 26(1)**.  
 Compare: 1993 No 87 s 204Q; 2010 No 139 s 49 5
- 61 Register to be established**
- (1) The Electoral Commission must establish and maintain a register of registered promoters in relation to each referendum.
- (2) The Electoral Commission must enter in the register, in relation to every registered promoter,— 10
- (a) the name of the registered promoter; and
- (b) the address of the registered promoter; and
- (c) the names of persons set out in the promoter’s application, if any, provided under **section 55(2)(a)(ii), (b), and (c)**.
- (3) The Electoral Commission may enter in the register any other information that the Electoral Commission considers necessary or desirable for the purposes of the register. 15  
 Compare: 1993 No 87 s 204R; 2010 No 139 s 50
- 62 Purposes of register**
- The purposes of the register are— 20
- (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 25
- (b) to assist with the enforcement of the provisions of this Part.  
 Compare: 1993 No 87 s 204S; 2010 No 139 s 51
- 63 Form of register**
- The register may be kept—
- (a) as an electronic register (for example, on the Electoral Commission’s Internet site); or 30
- (b) in any other manner that the Electoral Commission thinks fit.  
 Compare: 1993 No 87 s 204T; 2010 No 139 s 52
- 64 Alterations to register**
- The Electoral Commission may at any time make any amendments to the register that are necessary to— 35



- (a) reflect any changes in the information referred to in **section 61**; or
- (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.

Compare: 1993 No 87 s 204U; 2010 No 139 s 53

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**65 Register to be public**

The Electoral Commission must—

- (a) make the register available for public inspection at its office during ordinary office hours, without fee; and
- (b) supply to a person copies of all or part of the register on request, subject to payment of any charges that may be made under the Official Information Act 1982.

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Compare: 1993 No 87 s 204V; 2010 No 139 s 54

**66 Search of register**

A person may search the register for a purpose set out in **section 62**.

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Compare: 1993 No 87 s 204W; 2010 No 139 s 55

**67 When search constitutes interference with privacy of individual**

A search of the register for personal information that has not been carried out for a purpose specified in **section 62** constitutes an action that is an interference with the privacy of an individual under section 66 of the Privacy Act 1993.

20

Compare: 1993 No 87 s 204X; 2010 No 139 s 56

*Claims against registered promoters for payment of referendum expenses*

**68 Periods for claiming and paying registered promoter’s referendum expenses**

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- (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 **section 26**.
- (2) A claim that is sent to a registered promoter in accordance with **subsection (1)** must be paid within 40 working days after the day on which that declaration is made, and not otherwise.
- (3) This section is subject to **sections 69 and 70**.

30

Compare: 1993 No 87 206Y; 2010 No 139 s 58

**69 Procedure if claim disputed**

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- (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 **sec-**

**tion 68(1)**, disputes the claim, or fails to pay the claim within the period of 40 working days specified in **section 68(2)**, then—

- (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. 5
- (2) Any sum paid by the registered promoter in accordance with a judgment or order of the court in any such action is to be treated as paid within the period specified in **section 68(2)**.
- (3) To avoid doubt, **subsection (2)** has no effect for the purposes of applying the Interest on Monday Claims Act 2016 in respect of the claim. 10
- Compare: 1993 No 87 s 206Z; 2010 No 139 s 59

#### **70 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— 15
- (a) a claim for referendum expenses sent after the period specified in **section 68(1)**; or
  - (b) a claim not paid in the period specified in **section 68(2)**; or
  - (c) a disputed claim in respect of which an action was not brought within the period specified in **section 69(1)(b)**. 20
- (2) Any sum paid by the registered promoter in accordance with an order made under **subsection (1)** is to be treated as having been paid within the period specified in **section 68(2)**.
- (3) To avoid doubt, **subsection (2)** has no effect for the purposes of applying the Interest on Money Claims Act 2016 in respect of the claim. 25
- Compare: 1993 No 87 s 206G; 2010 No 139 s 60

#### **71 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. 30
- (2) **Subsection (1)** does not apply to a payment of less than \$50.
- Compare: 1993 No 87 s 206H; 2010 No 139 s 61

#### *Returns of referendum expenses*

#### **72 Return of registered promoter's referendum expenses**

- (1) This section applies to a registered promoter whose total referendum expenses in respect of any regulated period exceed \$100,000. 35

- (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.
- (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. 5
- (4) A return filed under **subsection (2)** must be in the form required by the Electoral Commission.  
Compare: 1993 No 87 s 206ZC; 2010 No 139 s 62
- 73 Electoral Commission may require auditor’s report on return of registered promoter’s referendum expenses** 10
- (1) If the Electoral Commission has reasonable grounds to believe that a return filed under **section 72** 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. 15
- (2) The auditor must state in the report—
  - (a) the position shown by the return in respect of the requirement that the registered promoter’s total referendum expenses must not exceed the maximum amount specified in **section 45**; and
  - (b) either— 20
    - (i) whether, in the auditor’s opinion, the position stated under **paragraph (a)** is correct; or
    - (ii) that the auditor has been unable to form an opinion as to whether the position stated under **paragraph (a)** is correct.
- (3) The auditor must make any examinations that the auditor considers necessary. 25
- (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
  - (b) proper records of the registered promoter’s referendum expenses have not, in the auditor’s opinion, been kept by the registered promoter. 30
- (5) The auditor—
  - (a) must have access, at all reasonable times, to all records, documents, and accounts that relate to the registered promoter’s referendum expenses and that are held by the registered promoter; and
  - (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. 35

Compare: 1993 No 87 s 206ZC; 2010 No 139 s 64

- 74 Return of registered promoter’s referendum expenses to be publicly available**
- (1) The Electoral Commission may publish, in any manner that the Electoral Commission considers appropriate, every return filed under **section 72**.
- (2) During the public inspection period, the Electoral Commission must make a copy of every return filed under **section 72** available for public inspection. 5
- (3) The Electoral Commission may make inspection under **subsection (2)** subject to the payment of any charges that may be made under the Official Information Act 1982.
- (4) In this section, **public inspection period**, in relation to a return, means the period— 10
- (a) beginning on the day that is 3 working days after the date on which the Electoral Commission receives the return; and
- (b) ending with the close of polling day for the second general election that takes place after that date. 15

Compare: 1993 No 87 s 206ZC; 2010 No 139 s 65

### Subpart 3—Offences and penalties in relation to referendum advertising

- 75 Illegal practices**
- A person is guilty of an illegal practice if the person wilfully—
- (a) promotes a referendum advertisement without being entitled to do so under **section 44**: 20
- (b) contravenes any of **subsections (1) to (7)** of **section 52**;
- (c) makes a payment in breach of **section 68(2)**;
- (d) contravenes any of **subsections (1) to (3)** of **section 76**. 25

Compare: 1993 No 87 ss 204B(3), 204D(4), 204F(7), 204Y; 2010 No 139 s 66

- 76 Illegal practice to avoid limit set out in section 44(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 **section 44(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 **section 44(b)**. 30
- (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 **section 44(b)**. 35
- (4) A person who wilfully contravenes any of **subsections (1) to (3)** of this section is guilty of an illegal practice.

Compare: 1993 No 87 s 204D

<b>77</b>	<b>Offence to incur unauthorised referendum expense</b>	
(1)	A person who wilfully contravenes <b>section 46</b> is guilty of a corrupt practice.	
(2)	A person who contravenes <b>section 46</b> in any other case is guilty of an illegal practice.	
	Compare: 1993 No 87 s 206U; 2010 No 139 s 70	5
<b>78</b>	<b>Offence to pay referendum expenses in excess of maximum</b>	
(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 <b>section 45</b> .	10
(2)	The registered promoter or other person is guilty of—	
	(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.	15
(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 <b>section 45</b> is guilty of a corrupt practice.	
	Compare: 1993 No 87 s 206X(2)(a), (b), (3)	20
<b>79</b>	<b>Offence relating to unregistered promoter’s obligation to keep records</b>	
	An unregistered promoter who fails, without reasonable excuse, to comply with <b>section 51(1)</b> is guilty of an offence and is liable on conviction to a fine not exceeding \$40,000.	
	Compare: 1993 No 87 s 204E	25
<b>80</b>	<b>Offence relating to registered promoter’s obligation to keep records</b>	
	A registered promoter who fails, without reasonable excuse, to comply with <b>section 51(2)</b> , is guilty of an offence and is liable on conviction to a fine not exceeding \$40,000.	
	Compare: 1993 No 87 s 206ZF	30
<b>81</b>	<b>Offences relating to return of registered promoter’s referendum expenses</b>	
(1)	A registered promoter who fails, without reasonable excuse, to comply with <b>section 72(2)</b> is guilty of an offence and is liable on conviction to a fine not exceeding \$40,000.	
(2)	A registered promoter who files a return under <b>section 72(2)</b> that is false in any material particular is guilty of—	35
	(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
  - (ii) they took all reasonable steps in the circumstances to ensure that the information was accurate. 5
- (3) If the registered promoter is not an individual or a company, the registered promoter’s representative who files the return in accordance with **section 72(3)** is liable under **subsections (1) and (2)**.
- (4) **Subsection (3)** does not limit the liability of a registered promoter under **subsection (1) or (2)**. 10
- Compare: 1993 No 87 s 206ZE
- 82 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:
- (a) a term of imprisonment not exceeding 2 years: 15
  - (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 **section 28** of this Act. 20
- 83 Time limit for commencing prosecutions under Part**
- The time limits for commencing prosecutions specified in **section 34** apply for the purposes of this Part. 25

## Part 4

### Miscellaneous provisions

- 84 Duty of Electoral Commission**
- (1) If the Electoral Commission believes that a person has committed an offence under this Act, the Electoral Commission must report the facts on which that belief is based to the New Zealand Police. 30
- (2) However, **subsection (1)** does not apply to an offence under **Part 3** 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.
- Compare: 2010 No 139 s 73 35

**85 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 Act: 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 Act. 10

Compare: 2010 No 139 s 80

**Schedule 1**  
**Transitional, savings, and related provisions**

**s 6**

**Part 1**  
**Provisions relating to this Act as enacted**

5

There are no transitional, savings, or related provisions relating to this Act as enacted.



**Schedule 2**  
**Form for petition**

**s 28(3)**

Form

Application for inquiry into conduct of referendum 5

**Section 28, Referendums Framework Act 2019**

No:

In the High Court of New Zealand

Registry:

In the matter of the referendum held on *[date]* on *[issue]*. 10

**Applicant**

1 The applicant is a group of *[number]* electors who are dissatisfied with the result of the referendum.

2 The names, addresses, electoral districts, and signatures of the members of the group are set out in the appendix to this application. 15

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

4 The applicant acts—

\**(a)* through a lawyer, who is *[name, address]*; or

\**(b)* through its spokesperson.

\*Select one.

**Application** 20

5 The applicant asks for an inquiry into—

\**(a)* the conduct of the referendum:

\**(b)* the conduct of *[name of person complained of, address]*, who was connected with the referendum.

\*Select those that apply.

6 The specific grounds on which the applicant is dissatisfied with the result of the referendum are as follows: *[state specific grounds]*. 25

7 The applicant asks the court to—

\**(a)* determine the total number of valid votes recorded for the options in the referendum:

\**(b)* declare the referendum void. 30

\*Select one.

**Address for service**

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

Signature:

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

\*Select one.

*Appendix*

Members of applicant group

Name	Address	Electoral district	Signature
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