

Hon Andrew Little
Minister for Justice

Proactive release – Electoral Amendment Bill and Referendums Framework Bill

Date of issue: 13 August 2019

The following documents have been proactively released in accordance with Cabinet Office Circular CO (18) 4.

Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.

No.	Document	Comments
1	Planning for the Delivery of the 2020 Election <i>Cabinet paper</i> Office of the Minister of Justice	Some information has been withheld in accordance with: <ul style="list-style-type: none">• section 9(2)(f)(iv) of the OIA to protect the confidentiality of advice tendered by Ministers of the Crown and officials• section 9(2)(g)(i) to maintain the effective conduct of public affairs through the free and frank expression of opinions• section 9(2)(h) to maintain legal professional privilege. <i>The Regulatory Impact Assessment attached to the paper is publicly available from https://treasury.govt.nz/publications/search and https://www.justice.govt.nz/justice-sector-policy/publications/</i>
2	Planning for the Delivery of the 2020 Election <i>Cabinet minute</i> Cabinet Office Meeting date: 8 April 2019	Some information has been withheld in accordance with: <ul style="list-style-type: none">• section 9(2)(f)(iv) of the OIA to protect the confidentiality of advice tendered by Ministers of the Crown and officials• section 9(2)(h) to maintain legal professional privilege.

No.	Document	Comments
3	Electoral Amendment Bill: Approval for introduction and confirmation of policy decisions <i>Cabinet paper</i> Office of the Minister of Justice	Some information has been withheld in accordance with: <ul style="list-style-type: none"> section 9(2)(g)(i) to maintain the effective conduct of public affairs through the free and frank expression of opinions section 9(2)(h) to maintain legal professional privilege. <p><i>Note that the copy of the Electoral Amendment Bill provided to Ministers with this paper has been withheld in accordance with section 61 of the Legislation Act 2012 and section 9(2)(h) of the Official Information Act 1982 to maintain legal professional privilege. Legislative instruments are publicly available from https://www.legislation.govt.nz</i></p> <p><i>The Regulatory Impact Assessment attached to the paper is publicly available from https://treasury.govt.nz/publications/search and https://www.justice.govt.nz/justice-sector-policy/publications/</i></p> <p><i>The departmental disclosure statement attached to the paper is publicly available from http://disclosure.legislation.govt.nz/</i></p>
4	Electoral Amendment Bill: Approval for introduction and confirmation of policy decisions <i>Cabinet minute</i> Cabinet Office Meeting date: 23 July 2019	Some information has been withheld in accordance with: <ul style="list-style-type: none"> section 9(2)(g)(i) to maintain the effective conduct of public affairs through the free and frank expression of opinions section 9(2)(h) to maintain legal professional privilege.
5	Referendums Framework Bill: Regulation of Referendum Advertising <i>Cabinet paper</i> Office of the Minister of Justice	Some information has been withheld in accordance with: <ul style="list-style-type: none"> section 9(2)(g)(i) to maintain the effective conduct of public affairs through the free and frank expression of opinions section 9(2)(h) to maintain legal professional privilege. <p><i>The Regulatory Impact Assessment attached to the paper is publicly available from https://treasury.govt.nz/publications/search and https://www.justice.govt.nz/justice-sector-policy/publications/</i></p>
6	Referendums Framework Bill: Regulation of Referendum Advertising <i>Cabinet minute</i> Cabinet Office Meeting date: 19 June 2019	Released in full.

No.	Document	Comments
7	Referendums Framework Bill: Approval for Introduction <i>Cabinet paper</i> Office of the Minister of Justice	Some information has been withheld in accordance with: <ul style="list-style-type: none"> • section 9(2)(g)(i) to maintain the effective conduct of public affairs through the free and frank expression of opinions • section 9(2)(h) to maintain legal professional privilege. <i>Note that the copy of the Referendums Framework Bill provided to Ministers with this paper has been withheld in accordance with section 61 of the Legislation Act 2012 and section 9(2)(h) of the Official Information Act 1982 to maintain legal professional privilege. Legislative instruments are publicly available from https://www.legislation.govt.nz</i>
8	Referendums Framework Bill: Approval for Introduction <i>Cabinet minute</i> Cabinet Office Meeting date: 29 July 2019	Some information has been withheld in accordance with: <ul style="list-style-type: none"> • section 9(2)(g)(i) to maintain the effective conduct of public affairs through the free and frank expression of opinions • section 9(2)(h) to maintain legal professional privilege.

Chair
Cabinet Social Wellbeing Committee

PLANNING FOR THE DELIVERY OF THE 2020 GENERAL ELECTION

Proposal

1. I am proposing a package of legislative initiatives to support the effective delivery of the 2020 general election by making it easier for people to enrol and vote, and by enabling multiple referendums.

Executive summary

2. To maintain a healthy democracy, we need to ensure that as many people as possible participate in elections, and make it as easy as possible for them to vote. We must also continue to uphold the integrity of the electoral system by ensuring that elections and referendums are conducted efficiently and securely.
3. I am proposing several initiatives be put in place for the 2020 general election, including:
 - enabling electors to enrol on election day;
 - enabling supermarkets and other high-pedestrian areas to be used as voting places;
 - improving the vote issuing and return processes for overseas electors, and electors in special circumstances;
 - making provision for the event of an emergency impacting on the conduct of the general election; and
 - developing a single set of rules to govern any referendums held alongside the 2020 general election.
4. I am also proposing to advance other initiatives that will take longer to implement, and so cannot be put in place until the 2023 election. It is prudent to make the necessary legislative changes now to give the Electoral Commission ("the Commssion") sufficient certainty, and time, to make the technology investments and process changes required.
5. We have already agreed to a hold a binding referendum at the 2020 General Election to determine whether personal use of recreational cannabis should be legalised. We have also discussed the possibility of other referendums being held in 2020 on the End of Life Choice Bill, s9(2)(g)(i)

6. This paper is in two parts.
- Part A covers my proposed changes to the electoral system to better enfranchise voters and improve the voting experience. These will be progressed through an **Electoral Amendment Bill** and **Electoral Amendment Regulations**.
 - Part B covers my proposal to develop a **Referendums Framework Bill**, which will set out a single legislative framework for any referendums held alongside the 2020 general election. It also outlines some considerations for holding multiple referendums which may include End of Life Choice, s9(2)(g)(i) and legalising the personal use of recreational cannabis.
7. The Electoral Amendment Bill and the Referendums Framework Bill must be enacted by the end of 2019. The Electoral Amendment Regulations should be enacted by late 2019. Any other legislation needed to trigger a specific referendum will need to be in place by March 2020, to enable the Commission to deliver the 2020 general election.
8. These proposals have financial implications. A late Budget 2019 bid has been submitted for election day enrolment. If the bid is not successful, the Commission will not be able to implement election day enrolment for the 2020 General Election. A funding bid has been submitted for the cannabis referendum as part of Budget 2019. s9(2)(f)(iv)

Part A: Improvements to the enrolment and voting processes to enfranchise voters

9. I propose several initiatives which will support the effective delivery of the 2020 general election by making it easier for people to enrol and vote.

Election day enrolment will provide a more integrated enrolment and voting service

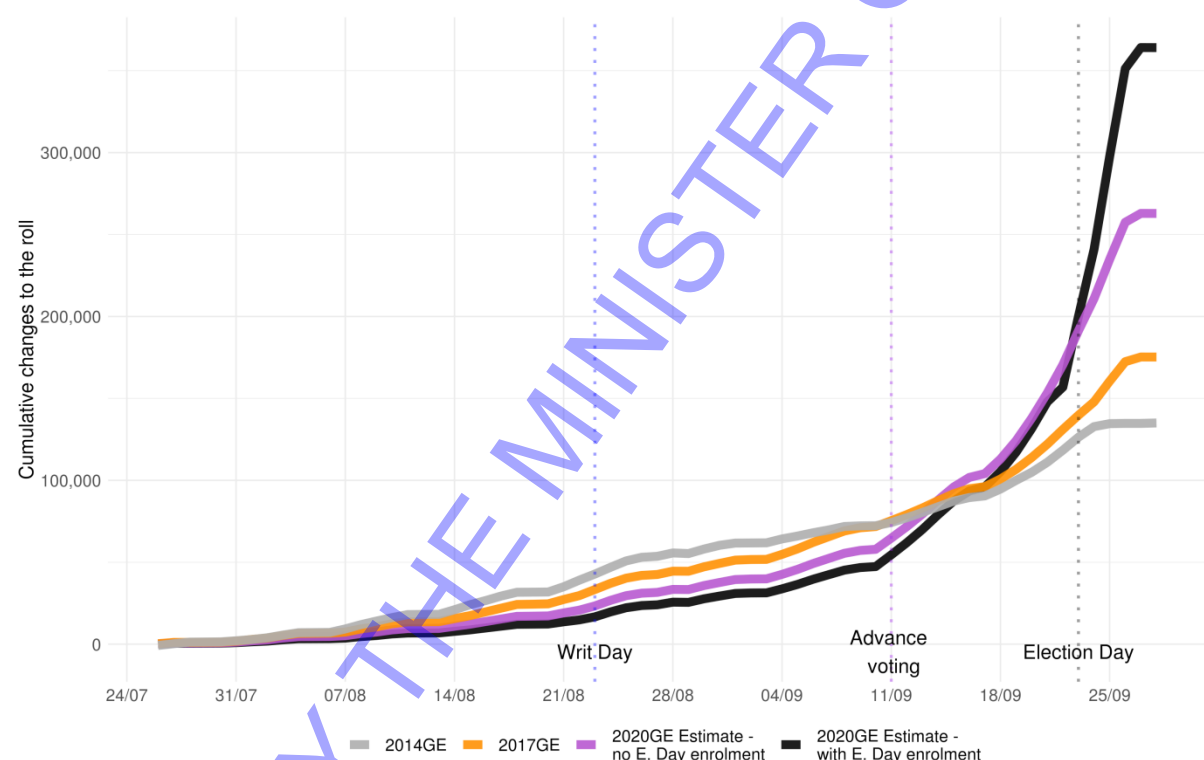
10. At the last election some 19,000 people were disenfranchised because, although they voted on election day, they were not enrolled. I consider this situation to be untenable – in my view, no elector should be disenfranchised when they have demonstrated their commitment to the democratic process by going to a voting place to cast a vote.
11. I propose to amend the Electoral Act 1993 to introduce election day enrolment for the 2020 general election. This will enable New Zealand based electors to enrol, or to update their enrolment details, on election day – just as they already can during the advance voting period. A further positive impact of this initiative is that aligning election day enrolment rules with those governing the advance voting period will reduce confusion about what rules apply on election day.
12. One counter argument to election day enrolment is that the current law, under which enrolment for election is compulsory, should be enforced. The question then is with 19,000 unenrolled voters seeking to cast a vote on election day and thousands more unenrolled voters not even seeking to vote, is it even practical for the Commission and the Police to attempt to enforce the law as it is? Or, should the law adapt to accommodate the way some voters actually operate, providing doing so doesn't compromise the integrity of the electoral system?
13. The Commission has noted a growing trend of electors enrolling after Writ Day (the date at which the electoral rolls used in voting places are closed for printing). For example, in 2017 the Commission processed 200,000 enrolment transactions during the advance voting period, of which over 94,000 were made in the last three days of the period. This

delayed the official closure of the roll by a day, placing pressure on the Commission to complete the official count within the statutory deadline.

14. Graph One shows enrolments between Writ Day and Election Day. It illustrates how voter enrolments accelerate noticeably during the advance voting period, as voters start turning their attention to casting their vote.
15. The Commission believes that this trend will continue in 2020. Its projections in Graph One illustrate the enfranchising effect of election day enrolment. Although some of the projected increase in election day enrolments will be voters who, in the absence of this change, may have enrolled earlier, some will be voters who would not have enrolled before election day, and so whose vote would otherwise not have been counted.

Graph One: Estimated cumulative impact on election-day enrolment to the electoral roll

Source: Electoral Commission



16. To support the Commission to manage enrolments on election day, as well as the delivery of multiple referendums, additional funding will be needed. This funding will allow the Commission to increase its resourcing to manage the risk of queues and delays in voting places on election day. The concern about delay is because electors who apply to enrol on election day will need to complete an application to enrol form with their personal and contact details. Further, electors will often have questions about their enrolment, for example if they are choosing between the Māori and the General roll. They then also need to cast a special vote, and therefore need to complete and sign a special vote declaration form, also setting out their personal and address details. The need to complete these forms means that electors who are applying to enrol will spend longer in the voting place, affecting everyone who is trying to vote.
17. In order to deliver election day enrolment at the 2020 general election, the Commission estimates it will need to increase its resourcing, including an additional 2,000 to 3,000 temporary election staff to support enrolling electors, while also maintaining service to other voters. This cost is not currently in the Commission's 2019 Budget bid, so I have

agreed with the Minister of Finance to include this as a late initiative bid for Budget 2019 (see Financial Implications section below). The Commission will not be able to deliver election day enrolment without this funding.

18. I am also proposing a legislative change to extend the period for the Return of the Writ from 50 to 60 days. This additional time is needed due to the increased number of late enrolments that will need to be checked and verified after election day, together with the expected increase in special votes. The extension will allow extra time before the election to get voting information to voters, as well as extra time after the election to complete the official count. This could mean that, in 2020, the official count could be released up to seven days later than in previous elections, although in practice the Commission will still aim to release the results as soon as they are known.

Allowing supermarkets and malls to be voting places will make voting more accessible

19. Making voting places more accessible will increase electoral participation, especially for people who are unfamiliar with the voting process or face challenges getting to a voting place. Venues such as supermarkets, malls and community clubs are often centrally located and have facilities such as parking and disabled access. Due to their familiarity, they can also be less intimidating for people who are new to voting.
20. Currently, venues, or parts of venues, like supermarkets or hotels, cannot be designated as voting places if they are licensed premises. This applies even if no alcohol is consumed in the venue or the part of the venue being used as a voting place. Other venues (for example shopping malls) may be used for advance voting but are not used as voting places on election day because all voting places need to have sufficient/restricted access areas for the preliminary counting of votes to be conducted onsite.
21. To provide more flexibility over the selection of voting places within a community, I propose to amend the Electoral Act 1993 to remove the prohibition on designating a licensed premise selling alcohol as a voting place. The Commission will still not designate a venue as a voting place if alcohol will be sold for consumption at the venue, or in the part of the venue, being operated as a voting place. This will maintain the decorum and dignity of the voting process.
22. I also propose enabling ballots to be counted away from the voting place on election day. This amendment will still require the count to take place at a designated local counting area, and the usual provisions for scrutineers' presence, and for restricting access to the area during the count would apply.

Ensuring that the integrity and conduct of elections is maintained in the event of an emergency

23. The Electoral Act 1993's current provisions for managing elections in the event of an emergency are very limited, inflexible, and are not well suited to the MMP system, which involves both electorate and party votes. The Commission has raised concerns about this issue in its triennial reports on the last three general elections, and the Justice and Electoral Committee has also recommended that this issue needs review.
24. The Electoral Amendment Bill provides an opportunity to update these provisions, and I have instructed Justice officials to prepare advice on what updates are needed. This work is still in progress. I therefore propose that Cabinet delegate decision-making on this issue to me and authorise me to issue any necessary drafting instructions. I will seek confirmation of these decisions through the Cabinet Legislation Committee, when it considers the Electoral Amendment Bill for introduction.

25. I prefer this approach because it enables the Bill, as introduced, to contain all my proposed revisions to electoral law. That will, in turn, enable full public and parliamentary scrutiny, which is highly desirable where any change to electoral law is concerned.

Improving administrative responsiveness will increase enfranchisement of voters in special circumstances

26. I propose several changes to the Electoral Regulations 1996 to improve the efficiency and timeliness of overseas, postal and dictation vote issuing and processing by:
- allowing the Commission to specify a deadline by which overseas postal vote applications must be made, to ensure there is sufficient time for papers to be posted out and received by the voter;
 - allowing for overseas votes, dictation votes and NZ postal votes to be processed and counted centrally by the Electoral Commission; and
 - extending the current deadline for the return of overseas postal votes from four to nine days after election day (because they can be counted centrally).
27. Reductions in the frequency of postal services risk disenfranchising postal voters, either because they do not receive their ballot papers in time, or because their completed papers are not returned in time. The requirement to return votes to a Returning Officer in each local electorate adds to the time pressures for completing the official count after each election. These amendments will enhance voter enfranchisement by ensuring there is sufficient time for their voting papers to be received by post in New Zealand; returned voting papers would still need to be postmarked before election day.
28. I also propose providing the Commission with a discretionary power to provide an emergency special voting service in the event of a localised civil emergency in New Zealand. This would apply to voters who due to a civil emergency, such as flooding, cannot access usual voting services. The change would enable them to use existing special voting mechanisms, such as dictation voting. Although this is not expected to be used often, it would be a helpful addition to the Commission's contingency toolkit.

Other changes to the electronic roll provisions and the special vote declaration could speed up vote issuing and counting, but cannot be implemented until after the next election

29. At present, voting staff mark when a voting paper has been issued to a voter on printed copies of the electoral roll. This means the rolls in the voting places do not reflect late (post-Writ day) enrolments and address changes. Only a voter who has enrolled by Writ day and is on the printed roll can be given an ordinary voting paper; everyone else receives a special vote.
30. I propose to amend the Electoral Act 1993 to allow an ordinary vote to be issued to any voter who can be found on the electronic roll when they go into a voting place, even if they enrolled after Writ Day. This is to facilitate the better use of electronic roll technology, once it is adopted. The Electoral Act 1993 allows for an electronic roll, meaning that the rolls are regularly updated with late enrollees, and that staff can record electronically that a person on the roll has been issued a voting paper. The electronic roll provisions are not currently used because the technology is not in place. However, subject to funding, the Commission hopes to introduce this technology in the future, meaning it will be able to provide electronic versions of the electoral roll in voting places. This will greatly speed up the vote issuing and counting processes.

31. I also propose enabling the Commission to permit the special vote declaration to be treated as an application to enrol or update enrolment details. At present, people can attend an advance voting place to apply to enrol or update their enrolment details and cast their vote (using a special voting paper) at the same time. In doing so, they currently complete both an enrolment form and special vote declaration form, which request similar information. In the 2017 election approximately 85,000 people had to complete both forms. Often unenrolled voters may attend a voting place and cast a special vote (because their names are not on the paper roll) but not complete the enrolment form. Not only are these votes not counted in that election, but these voters may ignore follow-up requests to enrol, and so remain unenrolled. This cycle is then repeated at future elections. This issue was noted in the Te Tai Tokerau judicial recount at the 2014 general election.
32. The Commission has advised that combining both forms requires significant re-engineering of its processing of special vote and enrolment applications, which it cannot implement until after 2020. I consider this an important change and will monitor the Commission's progress towards achieving it.

Part B: A single legislative framework to govern any referendums held in 2020

33. The Government has committed to holding a referendum on legalising the personal use of recreational cannabis at the 2020 general election (CAB-18-Min-0614.02 refers). There is also a possibility of other referendums being held in 2020, such as the End of Life Choice Bill s9(2)(g)(i)

Notwithstanding this, any additional referendum questions should continue to adhere to the maximum simplicity possible."

34. I consider it prudent to ensure that the Commission is adequately prepared for the possibility of multiple referendums in 2020. I therefore propose to introduce a single referendums framework bill to govern this election only. This will provide a single set of rules for any referendums being held with the election.

A single bill will ensure consistency between the referendum(s) and the general election

35. There is no single statutory framework for conducting referendums. Currently standalone legislative provisions would be required for each individual referendum held with the election. If multiple referendums are held, it is important that the same rules apply for each, and that these align with existing rules for the general election. This will mitigate the otherwise substantial risk of confusion and error during the campaign period and election. A framework bill will also assist the Electoral Commission by providing earlier certainty about the rules that it will need to administer in 2020.
36. My expectation is that the rules for the referendums will align, as far as possible, with that of the general election. I will report to Cabinet shortly with detailed proposals for regulating the conduct of any referendums, including expenditure limits and advertising rules.

Some broad parameters for the 2020 referendums need to be established now

37. Cabinet has already agreed that, to avoid delays to the preliminary count for the general election, there will be no preliminary count of the cannabis referendum votes on election day (CAB-18-Min-0614.02 refers). I propose this same approach apply to any other

referendums held in 2020. The referendum results will be released with, or following, the release of the official results for the general election, so as to not delay the announcement of the general election results.

38. Given the uncertainty over timing of decisions on the referendums, I am also seeking an early commitment from Cabinet that any referendums held in 2020 will be single option outcome (e.g. a yes/no vote, option A or B) and that there will be a maximum of four questions, so that all the questions will fit on one sheet of paper.
39. It is important that the Commission has early certainty about these parameters, as it affects resourcing and conduct of the poll. A single option outcome vote is important because such votes can be counted manually. Preferential voting requires an automated counting process to reallocate votes, which is costlier and time consuming to develop.
40. The Commission advises that ensuring that the referendum questions will fit on one sheet of paper is important for minimising volumes, ballot boxes, and issuing and voting times. Multiple papers will take much longer to issue which increases the risk of congestion in voting places, and also longer to count which may delay the release of the referendum votes. Its modelling and costings for the 2020 election are based on these assumptions.

Referendum-specific matters would need to be decided separately for each referendum

41. A referendums framework bill would focus on the mechanical aspects of the conduct of any referendum held in 2020. The decision to hold a referendum and the process of legislating for referendum-specific matters such as the question(s) and the wording of any options will be dealt with separately.
42. Previous Government-initiated referendums were set up by their own Act, which included the referendum question. As the referendums framework bill is a generic bill it may not be appropriate to include specific referendum-related material, such as the referendum question(s) in the bill. Instead the referendums framework bill will include a mechanism to link to other legislation or regulations, which will be the trigger for the bill to be used for a particular referendum in 2020.
43. Given the current uncertainty over whether there will be other referendums in 2020, I consider it prudent to provide for the referendums to be triggered, and the referendum questions to be set, through either primary legislation or by Order-in-Council.¹ Should there be a legally binding referendum, the referendum question would most likely be enacted as part of that primary legislation. An Order-in-Council could be used for referendums where there is no enacted legislation, or where the timing of enactment is insufficiently certain. As with any disallowable instrument, Parliament may resolve to disallow the Order-in-Council, which would prevent that referendum going ahead.
44. The Referendums Framework Bill needs to be enacted by December 2019 at the latest. Any associated legislation or Orders-in-Council needed for referendum-specific matters must be enacted by March 2020, to enable the Commission to prepare for the referendums.

¹ There is precedent for indicative referendum questions to be set by Order-in-Council, in statutes such as the Citizens Initiated Referenda Act 1993 and the Referenda (Postal Voting) Act 2000.

s9(2)(g)(i)

Justice officials can help develop referendum provisions required for the End of Life Choice Bill

49. Adding a referendum to the End of Life Choice Bill raises significant timing and drafting issues. This is a member's bill, so its progress through Parliament is not determined by the Government. It is expected to progress as a conscience vote. Any referendum related provisions will likely be added by Supplementary Order Paper when the End of Life Choice Bill is considered by the Committee of the Whole House.
50. I propose that, if the member in charge of the End of Life Choice Bill agrees, Justice officials are made available to support the development of any referendum-related provisions. This is simply to ensure the necessary connections are made between the End of Life Choice Bill and the Referendums Framework Bill. It would not otherwise indicate any formal Government position on the End of Life Choice Bill.
51. s9(2)(f)(iv)

Other electoral matters

Justice Committee Inquiry into the 2017 General Election

52. The Justice Committee is currently undertaking its Inquiry into the 2017 General Election. The Inquiry's terms of reference focus on:
- the increasing number of New Zealanders choosing to cast an early vote prior to election day
 - the increased importance and use of social media in campaigning, advertising, and expression of political opinions
 - the statutory and regulatory implications of these changes, and
 - the increased placement of polling booths in venues such as shopping malls and supermarkets.
53. In light of international trends and issues, I have also requested that the Justice Committee examine New Zealand's resilience to foreign interference in the electoral system. It is important that the public can be reassured that New Zealand has appropriate safeguards against this.
54. The Inquiry is not expected to report back until mid-2019. Depending on the exact timing of the Justice Committee's report back and any subsequent Cabinet decision, there may be an opportunity to include some Inquiry recommendations in the Electoral Amendment Bill (at either select Committee or Committee of the Whole House stage).

Consultation

55. The Electoral Commission, Parliamentary Counsel Office, Crown Law, The Treasury, the State Services Commission, the Department of Internal Affairs, the Office of the Clerk of the House of Representatives and the Civil Defence and Emergency Management Policy Unit in the Department of the Prime Minister and Cabinet were consulted on this paper. The Policy Advisory Group in the Department of the Prime Minister and Cabinet was informed. s9(2)(g)(i)
56. Most of the electoral proposals in this paper were recommended in the Electoral Commission's Report to Parliament in the 2017 General Election, or by the Justice & Electoral Committee's Inquiry into the 2014 General Election. The Justice Committee's Inquiry into the 2017 General Election is looking at the issue of advanced voting and the placement of polling booths in supermarkets and similar locations. Public submissions were received as part of both Inquiries and have been considered in developing the proposals in this paper.

Financial Implications

57. The proposals in this paper have financial implications for both the Ministry of Justice (policy development) and the Commission (implementation and delivery costs). Some of these costs can be absorbed within their respective baselines, but additional funding will be needed to progress election day enrolment, and for any referendums that are

progressed. Budget 2019 bids for the cannabis referendum and election day enrolment are currently being considered.

58. With planning for the 2020 General Election already underway, the Commission must now factor in the additional policy and operational preparation needed to deliver these initiatives and ensuring a positive voter experience. It needs early certainty on policy decisions about, and funding for, what it will need to deliver in 2020.

Funding for election day enrolment

59. Funding is needed for the Commission and the Ministry of Justice in relation to the election day enrolment proposal, to:
- prepare for the introduction of election day enrolment, including consequential system, process, training, and communications changes;
 - increase front-line staff on election day to manage the risk of delays in voting places as people are trying to enrol and vote the same time;
 - increase enrolment processing staff, because more enrolment applications will need to be processed over a condensed time-frame before the official count of eligible votes can be completed; and
 - ensure suitable programme management and governance of this proposal, and alignment with the range of election day and referendum initiatives that require policy and legislative development.
60. The Minister of Finance has agreed that the required funding for election day enrolment can be sought through a late Budget 2019 bid. If this bid is not successful, the Commission will not be able to implement election day enrolment for the 2020 General Election. The bid is just for the additional costs needed to deliver same-day enrolment at the 2020 general election; it does not include funding for same-day enrolment or any other changes at subsequent elections. These costs will be subject to a future Budget bid as necessary, when the requirements for future elections have been determined.
61. The Ministry of Justice and Commission's costs for delivering election day enrolment at the 2020 general election are:

	\$m – increase/(decrease)				
	2018/19	2019/20	2020/21	2021/22	2023/23 & Outyears
Departmental Output Expense: Justice Policy Advice (funded by revenue Crown)	0.114	0.399	0.099	-	-
Non-Departmental Output Expenses (Electoral Commission) Electoral Services	0.055	6.802	6.565	-	-
Total	0.169	7.201	6.664	-	-

Funding for referendums

62. The Ministry and Commission will also start planning for the delivery of multiple referendums in 2020 now. A funding bid for the actual delivery of each referendum will

need to be submitted when each referendum is confirmed as going ahead. This will include funding for any voter education campaigns, as necessary.

63. s9(2)(g)(i)

64. s9(2)(g)(i)

Legislative Implications

65. Both Bills should be enacted by the end of 2019, to enable any associated legislation and Regulations to be in place by March 2020. This deadline is critical for the Commission to properly administer the 2020 elections and referendums.

s9(2)(g)(i)

66. s9(2)(h)

s9(2)(g)(i)

s9(2)(g)(i)

67. s9(2)(g)(i)

68. The Bill will not bind the Crown as it will amend the Electoral Act 1993, which does not generally bind the Crown.

s9(2)(f)(iv)

69. s9(2)(f)(iv)

s9(2)(g)(i)

70. s9(2)(h)

² This bid includes a request for funding to begin developing a durable regulatory model and to engage and communicate effectively with the public to build understanding and encourage participation in the referendum process. s9(2)(g)(i)

71. s9(2)(h) This will allow sufficient time for any associated Orders-in-Council to 'trigger' a referendum be made before March 2020. s9(2)(g)(i)
s9(2)(g)(i)

72. The Bill will bind the Crown.

Power to Act on minor amendments if needed

73. I recommend that Cabinet authorise me to make minor amendments needed to implement these decisions as required during the drafting of these Bills and Regulations. The Cabinet papers seeking approval for the Bills and Regulations will identify any such changes.

Impact Analysis

Election day enrolment

74. Regulatory Impact Analysis requirements apply to the proposal to allow election day enrolment. A Regulatory Impact Assessment (RIA) is attached. The Ministry of Justice's RIA Panel has reviewed the RIA and considers that it meets the Quality Assurance Criteria.
75. The Treasury's RIA team has confirmed that the remaining proposals are exempt from the RIA requirements on the basis that they have only minor impacts on businesses, individuals or not-for-profits.
76. The Ministry of Justice will develop a RIA to accompany any policy decisions on making provision for the event of an emergency impacting on the conduct of the general election.

s9(2)(g)(i)

77. s9(2)(g)(i)

Referendums Framework Bill

78. The Treasury Regulatory Quality Team has determined that the proposed Referendum Frameworks Bill will have no or only minor impacts on businesses, individuals or not-for-profit entities.
79. The Ministry of Justice will develop a RIA to accompany the policy decisions on the regulatory regime governing referendum advertising and expenses.

Human Rights

80. The proposals in this paper do not limit any rights or freedoms provided in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Gender or Disability Implications

81. The proposals in this paper do not have any differential impact on the basis of gender or disability.

Publicity

82. I will issue a media release when the Electoral Amendment Bill is introduced to the House. The Commission will update its public information and guidance for parties, candidates and voters to reflect these changes following enactment.
83. I do not propose to issue a media release concerning the Referendums Framework Bill. Media releases will be issued on the substantive matters concerning any government-initiated referendums as appropriate.

Proactive Release

84. To enable Ministers to make decisions on the detail of the Bill before Cabinet papers are made public, I will proactively release the relevant parts of this Cabinet paper when each Bill is introduced into the House. s9(2)(g)(i)

Recommendations

85. The Minister of Justice recommends that the Committee:

Changes to the electoral system

Amendments to the Electoral Act 1993

1. **agree** to introduce election day enrolment and to extend the period for the return of the writ from 50 to 60 days to provide the additional time needed to process enrolments, special votes and complete the official count;
2. **note** that the amendment agreed in recommendation 1 is subject to funding being provided through Budget 2019;
3. **agree** to remove the prohibition on designating a licensed premise as a voting place;
4. **agree** to enable the preliminary count of ballots to be conducted away from the voting area;
5. **agree** to enable any voter whose application to enrol has been accepted and who can be electronically marked off the electoral roll, to be issued an ordinary ballot paper rather than a special voting paper;
6. **agree** to enable the Electoral Commission to permit the special vote declaration to be treated as an application to enrol or update enrolment details;
7. **authorise** the Minister of Justice to take any policy decisions on provisions for managing a general election in the event of a significant emergency impacting on its conduct, and to issue drafting instructions accordingly, subject to these decisions being confirmed by the Cabinet Legislation Committee when it considers the Electoral Amendment Bill for introduction;

Amendments to the Electoral Regulations 1996

8. **agree** to allow the Electoral Commission to specify a deadline by which overseas postal vote applications must be made;
9. **agree** that overseas votes, dictation votes and NZ postal votes can be received and processed centrally by the Electoral Commission;
10. **agree** to extend the current deadline for the return of overseas postal votes from four to nine days after election day;
11. **agree** to enable the Electoral Commission to provide an emergency special voting service in the event of a localised civil emergency in New Zealand;
12. **note** that the amendments agreed in recommendations 1 to 4, and 7 to 11 are expected to be implemented from the 2020 general election, and those agreed in recommendations 5 and 6 will not be implemented until after the 2020 general election.

Preparing for multiple referendums in 2020

13. **note** that the Government has committed to holding at least one referendum - on legalising the personal use of recreational cannabis - at the 2020 general election (CAB-18-Min-0614.02 refers) and that there is also a possibility of multiple referendums being held at the same time;

s9(2)(g)(i)

14. s9(2)(g)(i)

15. s9(2)(g)(i)

Referendum on the End of Life Choice Bill

16. **agree** that, if necessary, and subject to the agreement of the member in charge of the End of Life Choice Bill, Justice officials will be made available to support the development of any referendum-related provisions and to ensure the necessary connections are made between the End of Life Choice Bill and the Referendums Framework Bill;

Referendums Framework Bill

17. **note** that if one or more referendums are to be held alongside the 2020 general election, it is important for the smooth delivery of the election and the referendum(s) that the same legislative provisions apply to the conduct of each;

18. **agree** to the development of a single bill to provide a legislative framework for any referendum(s) held with the 2020 general election;
19. **agree** that any referendums that are held at the 2020 election will use single option outcome questions, and that all the questions can be placed on one voting paper;
20. **agree** that there will be no preliminary count of any referendum votes on election day, and that the referendum results will be released with, or following, the official results for the parliamentary election;
21. **note** that I intend to advise the Electoral Commission to plan to deliver multiple single option outcome referendums at the 2020 general election;

Triggering a referendum and setting the referendum question

22. **note** that the decision to hold a referendum, and referendum-specific elements, such as the referendum question(s) and the wording of any options will not be part of the Referendums Framework Bill, but will require a separate process to be completed;
23. **agree** that the Referendums Framework Bill should provide for any referendums to be triggered, and the referendum questions to be set, through both primary legislation and by Order-in-Council (disallowable instrument);
24. **note** that I will report to Cabinet shortly with detailed policy proposals for regulating the conduct of the referendums, including rules for referendum advertising and expenses;

Financial Implications

25. **note** that the financial implications of implementing election day enrolment for the 2020 general election is s9(2)(g)(i)
26. **note** that the Minister of Finance has agreed that a late Budget 2019 bid can be submitted to fund this proposal;
27. s9(2)(g)(i)

Legislative processes

28. **note** that the amendments to the Electoral Act 1993 will be included in an Electoral Amendment Bill, s9(2)(h) and enactment in either December 2019 or March 2020;
29. s9(2)(f)(iv)
30. s9(2)(h)

31. **invite** the Minister of Justice to prepare drafting instructions for Parliamentary Counsel Office to give effect to these recommendations;
32. **authorise** the Minister of Justice to make additional minor amendments required to implement decisions that may arise during the drafting of the Bills and Regulations referred to in recommendations 28 to 30.

Authorised for lodgement

Hon Andrew Little
Minister of Justice



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Planning for the Delivery of the 2020 General Election

Portfolio Justice

On 8 April 2019, following reference from the Cabinet Business Committee, Cabinet:

Changes to the electoral system

Amendments to the Electoral Act 1993

- 1 **agreed** to introduce election day enrolment and to extend the period for the return of the writ from 50 to 60 days to provide the additional time needed to process enrolments, special votes and complete the official count;
- 2 **noted** that the amendment set out in paragraph 1 above is subject to funding being provided through Budget 2019;
- 3 **agreed** to remove the prohibition on designating a licensed premise as a voting place;
- 4 **agreed** to enable the preliminary count of ballots to be conducted away from the voting area;
- 5 **agreed** to enable any voter whose application to enrol has been accepted and who can be electronically marked off the electoral roll, to be issued an ordinary ballot paper rather than a special voting paper;
- 6 **agreed** to enable the Electoral Commission to permit the special vote declaration to be treated as an application to enrol or update enrolment details;
- 7 **authorised** the Minister of Justice to take any policy decisions on provisions for managing a general election in the event of a significant emergency impacting on its conduct, and to issue drafting instructions accordingly, subject to these decisions being confirmed by the Cabinet Legislation Committee when it considers the Electoral Amendment Bill for introduction;

Amendments to the Electoral Regulations 1996

- 8 **agreed** to allow the Electoral Commission to specify a deadline by which overseas postal vote applications must be made;
- 9 **agreed** that overseas votes, dictation votes and New Zealand postal votes can be received and processed centrally by the Electoral Commission;

- 10 **agreed** to extend the current deadline for the return of overseas postal votes from four to nine days after election day;
- 11 **agreed** to enable the Electoral Commission to provide an emergency special voting service in the event of a localised civil emergency in New Zealand;
- 12 **noted** that the amendments in paragraphs 1 to 4, and 7 to 11 above are expected to be implemented from the 2020 general election, and those in paragraphs 5 and 6 will not be implemented until after the 2020 general election;

Preparing for multiple referendums in 2020

- 13 **noted** that:

- 13.1 in December 2018, Cabinet committed to holding at least one referendum - on legalising the personal use of recreational cannabis - at the 2020 general election [CAB-18-MIN-06414.02];
- 13.2 that there is also a possibility of multiple referendums being held at the same time;

Referendum on the End of Life Choice Bill

- 14 **agreed** that, if necessary, and subject to the agreement of the member in charge of the End of Life Choice Bill, Justice officials will be made available to support the development of any referendum-related provisions and to ensure the necessary connections are made between the End of Life Choice Bill and the Referendums Framework Bill;

Referendums Framework Bill

- 15 **noted** that if one or more referendums are to be held alongside the 2020 general election, it is important for the smooth delivery of the election and the referendum(s) that the same legislative provisions apply to the conduct of each;
- 16 **agreed** to the development of a single bill to provide a legislative framework for any referendum(s) held with the 2020 general election;
- 17 **agreed** that any referendums that are held at the 2020 election will use single option outcome questions, and that all the questions can be placed on one voting paper;
- 18 **agreed** that there will be no preliminary count of any referendum votes on election day, and that the referendum results will be released with, or following, the official results for the parliamentary election;
- 19 **noted** that the Minister of Justice intends to advise the Electoral Commission to plan to deliver multiple single option outcome referendums at the 2020 general election;

Triggering a referendum and setting the referendum question

- 20 **noted** that the decision to hold a referendum, and referendum-specific elements, such as the referendum question(s) and the wording of any options will not be part of the Referendums Framework Bill, but will require a separate process to be completed;
- 21 **agreed** that the Referendums Framework Bill should provide for any referendums to be triggered, and the referendum questions to be set, through both primary legislation and by Order-in-Council (disallowable instrument);

- 22 **noted** that the Minister of Justice will report to Cabinet shortly with detailed policy proposals for regulating the conduct of the referendums, including rules for referendum advertising and expenses;

Financial Implications

- 23 **noted** that the financial implications of implementing election day enrolment for the 2020 general election are s9(2)(f)(iv)
- 24 **noted** that the Minister of Finance has agreed that a late Budget 2019 bid can be submitted to fund the implementation of election day enrolment;
- 25 s9(2)(f)(iv)

Legislative processes

- 26 **noted** that the amendments to the Electoral Act 1993 will be included in an Electoral Amendment Bill, s9(2)(h)
- 27 s9(2)(f)(iv)
- 28 **agreed** that the Referendums Framework Bill s9(2)(h)
- 29 **invited** the Minister of Justice to prepare drafting instructions for Parliamentary Counsel Office to give effect to these decisions;
- 30 **authorised** the Minister of Justice to make additional minor amendments required to implement decisions that may arise during the drafting of the Bills and Regulations referred to in paragraphs 26 to 28 above.

Michael Webster
Secretary of the Cabinet

Secretary's note: This minute has been reissued to correct an error in paragraph 25.

Hard-copy distribution:

Prime Minister
Deputy Prime Minister
Minister of Justice

In Confidence

Office of the Minister of Justice

Chair, Cabinet Legislation Committee

Electoral Amendment Bill: Approval for introduction and confirmation of policy decisions

Proposal

1. This paper seeks approval for the introduction of the Electoral Amendment Bill (the Bill). It also seeks confirmation of policy decisions on provisions for managing a general election in the event of a significant disruption impacting on its conduct.

Policy

Improvements to enrolment and voting processes will enfranchise voters

2. Cabinet agreed to amend the Electoral Act 1993 to:
 - introduce election day enrolment
 - extend the period for the return of the writ from 50 to 60 days to provide the additional time needed to process enrolments, special votes and complete the official count
 - remove the prohibition on designating a licensed premise under the Sale and Supply of Alcohol Act 2012 as a voting place
 - enable the preliminary count of ballots to be conducted away from the voting area
 - enable any voter whose application to enrol has been accepted and who can be electronically marked off the electoral roll, to be issued an ordinary ballot paper rather than a special voting paper, and
 - enable the Electoral Commission to permit the special vote declaration to be treated as an application to enrol or update enrolment details [CAB-19-MIN-0129 refers].
3. These amendments are intended to improve enrolment and voting processes to better enfranchise voters and to support the effective delivery of future elections.

Updating provisions for managing polling disruptions

4. Cabinet authorised the Minister of Justice to take any policy decisions on provisions for managing an election in the event of a significant disruption impacting on its conduct [CAB-19-MIN-0129]. The Bill includes amendments which reflect these decisions, as outlined below.
5. The current provisions in the Electoral Act for managing disruptions to elections due to unforeseen or unavoidable events are limited, outdated and no longer fit for purpose. Where there is a polling disruption, the only responses currently available to the Electoral Commission under the Electoral Act are to either appoint alternative voting places for voting to continue ("the designation power) or to adjourn polling ("the adjournment power").

6. The current provisions do not provide the Electoral Commission with sufficient discretion and flexibility to tailor an appropriate response. They focus on physical disruptions to individual polling places. For example, the decision to adjourn polling must be made polling place by polling place, on a day-to-day basis, by each individual Returning Officer in the affected electorate. They do not address other disruptive events such as cyber-attacks on the Electoral Commission's infrastructure and systems.
7. I propose to update the existing provisions to:
- ensure a more flexible and pragmatic response to a wider range of potential polling disruptions
 - maintain the integrity and conduct of electoral processes and
 - ensure those affected by polling disruptions are still able to vote in the election.
8. The Bill includes amendments to the Electoral Act to broaden the definition of types of polling disruptions which may necessitate a response from the Electoral Commission. The expanded definition is non-exhaustive but includes health epidemics and cyber-attacks in addition to riots and violence at polling places. It also broadens the range of responses available to the Electoral Commission in the event of an unforeseen or unavoidable polling disruption that prevents voters from voting or risks the administration of the election overall.
9. The Bill streamlines the use of the power to adjourn an election. For example, it centralises decision-making on whether to adjourn polling at one or more polling places with the Chief Electoral Officer, rather than individual Returning Officers. It also allows for an initial period of adjournment of up to three days, and then for subsequent adjournments to be made, of up to seven days each time.
10. To ensure the adjournment power is used appropriately, before each subsequent adjournment the Commission will need to consult with other agencies best positioned to help it understand the threat to voter and staff safety, or the integrity of the election caused by the disruptive event. For example, in a health epidemic, the relevant person or organisation may be the Ministry of Health and the local District Health Board while in a natural disaster such as an earthquake the relevant person or organisation may be Emergency Management or the New Zealand Police. The Commission will also consult with the Prime Minister and the Leader of the Opposition about the likely impact of any extended adjournment on the election.
11. The Bill also provides the Commission with a broader range of responses to a polling disruption. It does this by allowing the Commission to extend or adapt any of its existing voting processes, as may be appropriate, to respond to a polling disruption. These 'alternative voting processes' can be adopted in the event of a polling disruption regardless of any restrictions in the Act that would usually prevent their use. For example, it may extend voting hours beyond 7pm on polling day or allow electronic download and upload of voting papers (currently only available for overseas voters) to voters in New Zealand.
12. Alternative voting processes may be adopted where an unforeseen and unavoidable disruption to polling occurs on polling day. They can also be adopted during the advance voting period when an unforeseen and unavoidable disruption occurs which is reasonably expected to extend to, and therefore impact on, polling day.

The Bill also ensures that certain conduct is prohibited when polling resumes at polling places (for example, publishing a statement intended or likely to influence an elector as to the candidate or party for whom the elector should vote). This is the same conduct that is prohibited at voting places during the advance voting period.

13. The Bill sets out that, where a polling disruption delays the close of polls (whether due to an extension of voting hours or an adjournment), no preliminary vote counts would be publicly released from any electorate until polling is completed at all polling places. This applies unless the Electoral Commission consider that the release of the results is unlikely to unduly influence voters.
14. It will be an offence and a corrupt practice for a person to disclose information about the result of the preliminary vote count (except to the Electoral Commission) before the close of polling at all polling places, with the intention of influencing voters.

Impact analysis

15. A Regulatory Impact Analysis for the proposal to introduce election day enrolment was prepared in accordance with Cabinet requirements and was submitted along with the paper seeking policy approvals in April 2019 [CAB-19-MIN-0129].
16. A Regulatory Impact Analysis for updating the provisions for managing polling disruptions is attached to this paper. The Ministry of Justice's RIA Panel has reviewed the RIA and considers that it meets the Quality Assurance Criteria.
17. The Panel concluded that the RIS sets out all the necessary information. The analysis is balanced and coherent, with a clear problem definition. There is a good outline of the assumptions and constraints guiding the development of options, and a credible analysis of those options. The analysis is convincing in its conclusions."
18. The Treasury's RIA team has confirmed that the remaining proposals are exempt from the RIA requirements on the basis that they have only minor impacts on businesses, individuals or not-for-profits.

Compliance

19. The Bill complies with:
 - 19.1. the principles of the Treaty of Waitangi
 - 19.2. the rights and freedoms contained in the Human Rights Act 1993 and the New Zealand Bill of Rights Act 1990
 - 19.3. the disclosure statement requirements (a disclosure statement prepared by the Ministry of Justice is attached)
 - 19.4. the principles and guidelines set out in the Privacy Act 1993
 - 19.5. relevant international standards and obligations, and
 - 19.6. the [Legislation Guidelines](#) (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Consultation

20. The Electoral Commission was consulted on this Bill. The National Security Policy Directorate in the Department of Prime Minister and Cabinet, the Cabinet Office and Crown Law were consulted on the amendments to the provisions for managing

polling disruptions The Policy Advisory Group of the Department of the Prime Minister and Cabinet was informed.

21. No public or external consultation has been carried out.
22. The government caucus and other parties represented in Parliament have been consulted.

Binding on the Crown

23. Cabinet Circular (02) 4: *Acts Binding the Crown: Procedures for Cabinet Decision* notes that bills that are amending existing Acts will generally follow the position of the principal Act on whether the Act is binding on the Crown. The Electoral Act 1993 does not bind the Crown and it is proposed that this Bill will follow that position. The Bill will therefore not bind the Crown.

Creating new agencies or amending law relating to existing agencies

24. The Bill does not create any new agencies.

Allocation of decision making powers

25. The Bill does not allocate decision making powers between the executive and judiciary.

Associated regulations

26. The Bill makes consequential amendments to the Electoral Regulations 1996.

Other instruments

27. The Bill does not include any provision empowering the making of other instruments deemed to be legislative instruments or disallowable instruments.

Definition of Minister/department

28. The Bill does not contain a definition of Minister, Department or Chief Executive of a department.

Commencement of legislation

29. The Bill will come into force on the day after the date of Royal assent.

Parliamentary stages

30. s9(2)(g)(i)

31. s9(2)(g)(i)

Proactive Release

32. I propose to release this Cabinet paper, and related Minute, and the relevant parts of earlier Cabinet papers and Minutes [SWC-19-SUB-0025 and CAB-19-MIN-0129], with any necessary redactions, following the introduction of the Bill.

Recommendations

The Minister of Justice recommends that the Committee:

1. **s9(2)(h)**
2. **note** that the Electoral Amendment Bill will improve enrolment and voting processes to better enfranchise voters and to support the effective delivery of future elections by:
 - 2.1. introducing election day enrolment and extending the period for the return of the writ from 50 to 60 days to provide the additional time needed to process enrolments, special votes and complete the official count
 - 2.2. removing the prohibition on designating a licensed premise under the Sale and Supply of Alcohol Act 2012 as a voting place
 - 2.3. enabling the preliminary count of ballots to be conducted away from the voting area, where required
 - 2.4. enabling any voter whose application to enrol has been accepted and who can be electronically marked off the electoral roll, to be issued an ordinary ballot paper rather than a special voting paper, to be implemented after the 2020 election, and
 - 2.5. enabling the Electoral Commission to permit the special vote declaration to be treated as an application to enrol or update enrolment details, to be implemented after the 2020 election;
3. **agree** to include amendments in the Bill to update the provisions for managing a general election in the event of a significant unforeseen and unavoidable disruption impacting on its conduct that will:
 - 3.1. provide an expanded, but non-exhaustive definition of 'unforeseen and unavoidable disruption' to polling, to cover disruptions that have a broader impact on the conduct of the election
 - 3.2. allow the Electoral Commission to initially adjourn polling up to a maximum of three days from polling day
 - 3.3. allow the Electoral Commission to adjourn polling for incremental periods of up to a maximum of seven days each, after the initial adjournment period, subject to consultation with other relevant authorities, and the Prime Minister and Leader of the Opposition, before each subsequent adjournment
 - 3.4. allow the Electoral Commission to adopt appropriate alternative voting processes in the event of an unforeseen or unavoidable polling disruption on polling day, or during the advance voting period (if the disruption to polling is reasonably expected to extend to polling day)
 - 3.5. provide that conduct that could interfere or influence voters at a resumed poll is prohibited

- 3.6. provide that, in the event of a polling disruption, the preliminary count will not be released for any electorate until polling has been completed at all polling places, unless the Electoral Commission considers release will not unduly influence voters, and
- 3.7. create an offence that anyone intentionally disclosing information about the result of the preliminary vote count (except to the Electoral Commission) before the close of polling at all polling places, with the intent of influencing voters, is guilty of a corrupt practice under the Electoral Act 1993;
4. **approve** the Electoral Amendment Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
5. **authorise** the Minister of Justice and Parliamentary Counsel Office to make minor technical and drafting changes to the Bill prior to introduction;
6. s9(2)(g)(i)
7. s9(2)(g)(i)
s9(2)(g)(i)

Authorised for lodgement

Hon Andrew Little
Minister of Justice



Cabinet Legislation Committee

Minute of Decision

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Electoral Amendment Bill: Approval for Introduction and Confirmation of Policy Decisions

Portfolio Justice

On 23 July 2019, the Cabinet Legislation Committee:

- 1 s9(2)(h)
- 2 **noted** that the Electoral Amendment Bill will improve enrolment and voting processes to better enfranchise voters and to support the effective delivery of future elections by:
 - 2.1 introducing election day enrolment and extending the period for the return of the writ from 50 to 60 days to provide the additional time needed to process enrolments, special votes and complete the official count;
 - 2.2 removing the prohibition on designating a licensed premise under the Sale and Supply of Alcohol Act 2012 as a voting place;
 - 2.3 enabling the preliminary count of ballots to be conducted away from the voting area, where required;
 - 2.4 enabling any voter whose application to enrol has been accepted and who can be electronically marked off the electoral roll, to be issued an ordinary ballot paper rather than a special voting paper, to be implemented after the 2020 election,
 - 2.5 enabling the Electoral Commission to permit the special vote declaration to be treated as an application to enrol or update enrolment details, to be implemented after the 2020 election;
- 3 **agreed** to include amendments in the Bill to update the provisions for managing a general election in the event of a significant unforeseen and unavoidable disruption impacting on its conduct that will:
 - 3.1 provide an expanded, but non-exhaustive definition of 'unforeseen and unavoidable disruption' to polling, to cover disruptions that have a broader impact on the conduct of the election;
 - 3.2 allow the Electoral Commission to initially adjourn polling up to a maximum of three days from polling day;
 - 3.3 allow the Electoral Commission to adjourn polling for incremental periods of up to a maximum of seven days each, after the initial adjournment period, subject to consultation with other relevant authorities, and the Prime Minister and Leader of the Opposition, before each subsequent adjournment;

- 3.4 allow the Electoral Commission to adopt appropriate alternative voting processes in the event of an unforeseen or unavoidable polling disruption on polling day, or during the advance voting period (if the disruption to polling is reasonably expected to extend to polling day);
- 3.5 provide that conduct that could interfere or influence voters at a resumed poll is prohibited;
- 3.6 provide that, in the event of a polling disruption, the preliminary count will not be released for any electorate until polling has been completed at all polling places, unless the Electoral Commission considers release will not unduly influence voters;
- 3.7 create an offence that anyone intentionally disclosing information about the result of the preliminary vote count (except to the Electoral Commission) before the close of polling at all polling places, with the intent of influencing voters, is guilty of a corrupt practice under the Electoral Act 1993;
- 4 **approved** the Electoral Amendment Bill [PCO 21109/15.0] for introduction, subject to the final approval of the government caucuses and sufficient support in the House of Representatives;
- 5 **authorised** the Minister of Justice and Parliamentary Counsel Office to make minor technical and drafting changes to the Bill prior to introduction;
- 6 s9(2)(g)(i)
- 7 s9(2)(g)(i)
- s9(2)(g)(i)

Vivien Meek
Committee Secretary

Present:

Rt Hon Winston Peters
Hon Chris Hipkins (Chair)
Hon Andrew Little
Hon David Parker
Hon Stuart Nash
Hon Kris Faafoi
Hon Ron Mark
Hon Tracey Martin
Hon Julie Ann Genter
Hon Eugenie Sage
Michael Wood MP (Senior Government Whip)

Officials present from:

Officials Committee for LEG
Ministry of Justice officials

Hard-copy distribution:

Minister of Justice

Chair
Cabinet Social Wellbeing Committee

REFERENDUMS FRAMEWORK BILL – REGULATION OF REFERENDUM ADVERTISING

Proposal

1. I am seeking Cabinet approval for the regulatory regime for referendum advertising which will apply to any referendums held with the 2020 General Election.

Executive summary

2. The Government has announced that it will hold a referendum on legalising the personal use of cannabis at the 2020 General Election. There is also a possibility of an additional referendum on the End of Life Choice Bill being held at this time.
3. To facilitate these referendums, Cabinet has agreed to introduce a Referendums Framework Bill, which will provide a single set of rules to govern any referendums held in 2020. This is to ensure that the referendum(s) are generally conducted using the legislative and operational infrastructure already in place to govern the conduct of a general election [CAB-19-MIN-0129].
4. I am seeking decisions on three specific issues in the referendums regulatory framework which, due to the nature of the referendums, may differ from the rules applying to parliamentary elections. The first issue is the definition of referendum advertising, and the advertising regime that should apply to the referendums.
5. Advertising is likely to be a key influencer in the public debate, informing voters and encouraging voter turnout for the referendum(s). To support an informed public debate, campaigners need the freedom to express their views, and voters need the freedom to hear a range of views. Transparency is also important, so that voters know who is behind any referendum campaign.
6. To achieve the appropriate balance between freedom of expression and transparency, I am proposing to regulate referendum advertising during the three-month period immediately prior to the referendum(s). These rules will be modelled on the existing election advertising regime and apply to all advertising mediums and campaigners. They will require:
 - 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 (~\$13k);
 - Promoters to disclose their expenses if they spend over a certain threshold on referendum advertising (~\$100k);
 - A limit of the amount that can be spent on referendum advertising (~\$330k); and
 - Expenditure on dual advertisements (covering the election and referendum(s)) to count towards both election and referendum advertising thresholds/ limits.

7. I am also seeking approval for two technical provisions which will differ slightly from the election rules. These are:
- not extracting dual votes received for the referendum(s); and
 - setting the minimum number of electors required to petition the High Court to challenge the conduct or result of a referendum at 200 electors.

Referendum advertising

Advertising will be a key influence in informing voters about the referendums

8. The public debate will be a key element in achieving an enduring referendum result, ensuring that the referendum process is transparent, and the outcome is trusted. Campaigners of all sizes and perspectives should be free to express their views, and the public free to hear these differing perspectives. Campaigners have a legitimate interest in using advertising to influence voter's views. However, it is also important to ensure that such advertising is transparent, so the public can recognise and scrutinise it accordingly.
9. I therefore propose to regulate referendum advertising in the three-month period (the 'regulated period') immediately before the election. Establishing a regulatory regime for referendum advertising will help mitigate the risk of negative perceptions arising during or after the public debate about undue influence on the referendum outcomes.
10. I propose the rules for referendum advertising should mirror the rules that apply to election advertising. These rules are well established and provide a good degree of transparency, while also allowing differing perspectives to be aired. This approach will also reduce the compliance burden on campaigners who are involved in both the referendum(s) and the election.
11. In the interests of fairness for all referendum campaigners, the same rules will apply to each referendum. As with election advertisements, the rules will apply to the publication of all referendum advertisements in New Zealand, even if the promoter of the advertisement is outside New Zealand. They will also apply to referendum advertisements published overseas, if the promoter is in New Zealand.

A broad definition of referendum advertising will cover all types of campaign and campaigner

12. I propose to adopt a broad, non-medium specific, definition of a 'referendum advertisement' that covers both traditional (e.g. print and broadcast) and newer (e.g. online and social media) forms of advertising. This broader definition is more equitable; it ensures transparency between different forms of media so that voters receive the same information from a promoter, regardless of how they engage with the advertising campaign. This is the approach taken with the definition of election advertising and was also the approach taken for the last referendum held with a general election in 2011.
13. This broad definition will include an advertisement in any medium that could reasonably be regarded as encouraging or persuading voters to vote, or not to vote, for a particular option in the referendum. As with election advertising, certain exemptions will be made for advertisements relating to the conduct of the referendum and authorised by the Electoral Commission or a government agency. Similarly, exclusions will be included to protect the normal free flow of debate and expression of opinion, including:
- the editorial content of media, such as newspapers, periodicals, and radio or television programmes (editorial content is generally considered to include any part of a publication except advertising or advertorials);

- any transmission of proceedings in the House of Representatives; and
 - personal views expressed on the internet (or other electronic medium) by an individual who does not make or receive payment for that publication; for example, an individual's Facebook or Twitter posts.
14. This broad definition could encompass the promotion activity of advocacy groups during the regulated period. This will include charities and not-for profits such as the NZ Drug Foundation or Care Alliance, which are already debating issues like drug reform and end-of-life choice.
15. The Electoral Commission will publish guidance on these rules to all promoters, including parties and candidates, in the lead up to the referendum(s), in the same way it does for election advertising. There is still a risk that some small grass-roots groups, especially online groups, may unintentionally engage in small scale promotion and become subject to the referendum advertising rules. This is already an issue in election advertising, and so to manage this I propose to extend the Electoral Commission's existing discretion to not report suspected referendum advertising offences to the New Zealand Police if it considers the offence to be so inconsequential that there is no public interest in doing so.
16. In addition to these generic exclusions and exemptions, the Bill will include a regulation-making power to enable specific exemptions to be made to the definition of referendum advertising in respect of specific referendums, prior to the start of the regulated period. This is to enable exemptions to be provided for certain types of advertising activity or content, if considered necessary in relation to a specific referendum. For example, certain ubiquitous images, such as the cannabis leaf image, might be exempted as 'referendum advertising' if the image is used without further images or words related to voting in a referendum (e.g. a 'tick' image). The 2015 and 2016 Flag Referendums excluded images of the New Zealand flag and any alternative designs published on their own from its definition of referendum advertising, to avoid capturing inadvertent use.

The referendum advertising rules must balance freedom of expression with transparency

17. The table below outlines the four main regulatory tools that I propose to use to regulate referendum advertising in 2020.¹ These tools are all currently used for regulating election advertising at the general election by parties, candidates and third-party promoters, and so are well established. They have been used previously to regulate referendum advertising in New Zealand, for both the 2011 MMP referendum (all four tools) and the 2015 and 2016 Flag Referendums (promoter statements only).

¹ In addition to any specific referendum advertising rules, the Advertising Standards Authority (ASA) codes and guidelines will also apply to referendum advertisements; these require that all advertising must be legal, decent, honest and truthful and respect the principles of fair competition, so that the public can have confidence in advertising.

Tool	Description of tool	How tool applies for general election ²
Promoter statement	Requirement for referendum advertisements to contain a promoter statement.	Promoter statements are required from political parties, candidates and third-party promoters on all election advertisements.
Registration of third party promoters	Requirement for persons or organisations to register with the Electoral Commission if they spend, or intend to spend, above a set threshold on advertising during the regulated period.	Third-party promoters are required to register if their expenditure exceeds \$13,200.
Disclosure of expenses	Obligation to file a return disclosing referendum advertising expenses over a certain limit.	Registered third party promoters must disclose any expenses exceeding \$100,000 incurred during the regulated period. Parties and candidates must disclose all expenses.
Expenditure limits	A limit on the amount of referendum advertising expenses a promoter can incur during the regulated period.	Advertising expenditure limits are: \$27,500 for each candidate base limit of \$1,169,000 for each party (plus \$27,500 for each electoral district contested by the party) \$330,000 for a registered third-party promoter.

18. I anticipate that the referendum on cannabis or any referendum on end-of-life choice, which have moral, social and commercial components, will garner significant and polarised interest and participation from a wide range of religious, civic interest and commercial groups. I propose that all four of these regulatory tools should be used to support an informed public debate. Promoter statements, promoter registration and disclosure of expenses all support transparency. An expenditure threshold will ensure that smaller campaigners are not drowned out by better-funded campaigners, and so mitigate the risk of negative perceptions arising during or after the public debate about the undue influence of wealth on a referendum outcome.

The registration and disclosure thresholds should minimise the compliance burden on smaller promoters, while maximising the transparency of larger promoters

19. The referendum advertisement rules will apply to all promoters of referendum advertisements, including candidates and parties (who will need to register as promoters for the referendum if they intend to spend over the unregistered promoter limit). For ease of compliance and simplicity of administration, I propose to align the threshold for promoters' registration and disclosure of expenses with the thresholds that will apply to third-party promoters of election advertisements at the 2020 General Election.
20. This will mean that many small advocacy groups who intend to spend less than \$13,200 will simply need to identify themselves with a promoter statement on their referendum advertisements. This ensures that the public know who is behind any advertising

² The thresholds and limits reported in this column apply as at 1 July 2019 and will apply to a regulated period starting after that date. These thresholds and limits are reviewed and adjusted annually in line with the CPI.

campaign. Promoters who intend to spend larger amounts can be expected to have a wider reach, and so it is reasonable that the level of transparency required also increases, with registration required for expenditure over ~\$13,200 and disclosure of all expenses if total expenditure exceeds \$100,000.

The expenditure limit should allow for freedom of expression while ensuring that the public discourse is not unduly influenced by wealth

21. Conceptually an expenditure limit aims to allow for all voices from all sides and to ensure public discourse is not (nor is perceived to be) unduly influenced by the expenditure of any one side to the debate. Given the expected level of public interest in the referendum(s), and the nationwide nature of any referendum, various groups will have a significant legitimate interest in advertising to influence voters' views. I consider the limit of any expenditure should be the same as the current third-party promoter limit that applies to the general election (currently \$330,000). This will allow campaigners of all sides to express their views on these important referendum issues, without allowing the debate to be unduly drowned out by wealthier interest groups.
22. To ensure compliance, the existing penalties and offence provisions for promoters in the Electoral Act 1993 (e.g. for failure to register or include a promoter statement, or for exceeding any expenditure thresholds) will be extended to cover referendum advertisements. Similarly, the rules regarding the duty of the Electoral Commission to report suspected referendum advertising offences will be the same as for election advertising. These rules are aimed at deterring behaviour that might undermine the integrity of the voting process, so it is appropriate that the offences and penalties are consistent between the referendums and the election.

Expenses will count towards both election and referendum advertising thresholds and limits

23. Dual advertisements are referendum advertisements which also meet the definition of election advertisements.³ If there is more than one referendum in 2020, there might also be 'dual advertisements' involving more than one referendum. Determining how to allocate expenditure on a dual advertisement is relevant for determining whether a promoter is required to register with the Commission and disclosure of expenses, as well as for apportioning expenses against any expenditure limit. Political parties and multi-issue campaigners are most likely to be impacted by this issue.
24. My proposal is to double count expenditure on dual advertisements during the regulated period.⁴ This means that the full cost of any dual advertisement will be counted towards a promoter's election advertising expense threshold/limit and their referendum advertising expense threshold/limit. A double-counting approach is administratively simple and provides for transparency of expenditure as both election and referendum advertising expenses would be declared. This was the approach used for the 2011 MMP referendum.
25. Some multi-issue promoters, including political parties,⁵ may see this as an unfair limitation on the amount they can allocate to advertising for a referendum during the regulated period. This is because if they use one advertisement to campaign on two

³ An election advertisement is an advertisement in any medium that may reasonably be regarded as encouraging or persuading voters to vote, or not to vote, for an electorate candidate, whether or not the name of the candidate is stated (candidate advertisements) or for a party, whether or not the name of the party is stated (party advertisements).

⁴ Expenditure on dual advertisements shown before, and which continue during the regulated period, will be apportioned between the regulated and non-regulated periods, as with election advertisement expenses. In this situation, only the expenditure attributed to the regulated period will be double counted.

⁵ The Electoral Commission's guidance to party secretaries in 2011 was to assume that any referendum advertisement they issued would also be an election advertisement, so this approach may particularly affect political parties.

referendums, or a referendum and the election, this will count towards the expenditure limit for each referendum, or for the referendum and the election. It could be argued that this places parties and other multi-issue campaigners at a disadvantage compared to single-issue campaigners with comparable funds. However, the high expenditure limit I have proposed for referendum advertising should mitigate this concern and still allow multi-interest groups to participate effectively in the public debate.

26. The alternative approach would be to apportion dual-advertisement costs between referendum and election expenses, and between each referendum, based on coverage on a 'fair and reasonable basis'. This is the approach currently used for election advertisements which are published both before and during the regulated period, as well as election advertisements which promote both candidates and their party. However, if applied to the referendum(s) this approach would be significantly more complex to comply with; apportionment could potentially be needed for candidate, party and referendum expenses, as well as between individual referendums, and also between the regulated and unregulated period.

There will be no requirement for donations to third-party promoters to be declared

27. I do not intend to introduce a requirement for donations made to third-party promoters of referendum advertisements (i.e. promoters other than parties or election candidates) to be disclosed. This means that there will be no public disclosure of the source of a third-party promoter's funds, which may lead some voters to question who is funding a particular referendum campaign or campaigner.
28. Donation disclosures have not previously been applied to referendum campaigns, nor are they required by third-party promoters at general elections. They could disproportionately impact on many not-for-profit advocacy groups, particularly those that receive donations for purposes other than the referendums. On balance, I consider that a donations disclosure requirement would introduce significantly high compliance costs for smaller advocacy groups. This could risk these groups not participating in the referendums campaign at all, which would prevent voters being able to hear and consider their perspectives.

Dual votes

29. A dual vote in the general election is where a voter appears to have voted more than once. Although the risk of dual voting could be seen as damaging the integrity of a poll outcome, in reality dual voting in New Zealand has been consistently low. For example, at the 2017 General Election, approximately 1,080 ordinary votes were extracted for dual voting; this is less than 0.04% of total votes cast. In the context of a nationwide referendum, this percentage of dual votes would be unlikely to impact on the outcome.
30. For the general election, an apparent dual vote may be identified when, following scrutiny of the marked rolls it is identified that a voter has been marked off the roll more than once. In this situation, the Electoral Commission's process is to identify and extract both voting papers, using the voter's page and line number (from the electoral roll). These numbers are written on the voting paper by the issuing officer when each voting paper is issued. If, upon inspection of both papers, the Commission is satisfied that the same voter has voted twice, both votes are disallowed.
31. This process is intended to ensure the integrity of the election result. It is a quid pro quo of New Zealand's facilitative approach to voting, which allows electors to vote in any voting place nationwide. Our practice of extracting dual votes is unusual internationally; most other countries place more emphasis on the secrecy of the ballot and prioritise the

upfront verification of voters; they do not generally extract disallowed votes but include them in the final count.

32. The ability to extract dual-referendum votes would similarly rely on a voter's page and line number details, and their electorate, being written on each referendum ballot paper. This process would add significant time to the voting paper issuing process. Given that the 2020 General Election will entail at least one referendum as well as election day enrolment, securing its efficient conduct is vital. Considering the low incidence of dual voting in New Zealand, the risk to the effective delivery of the referendum(s) and general election is unnecessarily high when weighed against the minimal impact dual votes would have upon the integrity of the referendum and its result.
33. I therefore propose to adopt the same approach as for the 2011 referendum, so that a voter's page and line number details are not written on the referendum ballot papers in 2020. This will mean that any dual-referendum votes among ordinary votes cannot be extracted. Special votes which are dual votes will still be excluded from the count.⁶
34. Referendum voting papers are only issued with election voting papers. It is an offence under the Electoral Act, for a voter to attempt to vote, or vote, twice in an election, or to remove a ballot paper from a polling place. Any person who commits such an offence in relation to the election will be assumed to also have committed such an offence in relation to the referendum. Any person who commits such an offence is guilty of a corrupt practice under the Electoral Act.

Petitions to the High Court

35. The ability to challenge the conduct or result of an electoral event provides an important check on the integrity of the processes followed. The Electoral Act provides for electors to challenge the election of a constituency candidate or allocation of party list seats by way of petition to the High Court, and a similar approach will apply to challenge the conduct or result of a referendum.
36. A petition can only be made to the High Court by a specified minimum number of electors. If the number of electors required to make a petition is set too low, it could result in frivolous petitions; if set too high, it could create a barrier to accessing the judicial process. A comparative table of relevant legislation and the thresholds set for each is set out below:

Legislation	Minimum number of electors required to petition High Court
Electoral Act 1993	1
Electoral Referendums Act 2010	6
Citizens Initiated Referenda Act 1993	50
New Zealand Flag Referendums Act 2015	200

37. Given the high amount of interest that the topic of any referendum is likely to generate, I propose to follow the most recent referendum example, and require a minimum of 200 electors to make a petition to the High Court. This will give due credibility to any petition brought, without being overly burdensome on petitioner's access to justice.

Consultation

⁶ The issue only applies to ordinary votes. The process for special votes means that both the parliamentary and referendum papers will be excluded from the official count if a special vote is disallowed for dual voting.

38. The Electoral Commission, Parliamentary Counsel Office, Crown Law, The Treasury, the State Services Commission and the Department of Internal Affairs were consulted on this paper. The Policy Advisory Group in the Department of the Prime Minister and Cabinet was informed.

Financial Implications

39. The proposals in this paper do not have additional financial implications for the Electoral Commission. The Commission has already sought operational funding to deliver the general election and the cannabis referendum as part of Budget 2019. s9(2)(g)(i)

Legislative Implications

40. The proposals in this paper will be included in the Referendums Framework Bill. s9(2)(h)
41. s9(2)(g)(i)
s9(2)(g)(i)

Impact Analysis

42. Regulatory Impact Analysis requirements apply to the proposed referendum advertising regime. A Regulatory Impact Assessment (RIA) is attached. The Ministry of Justice Regulatory Impact Assessment Quality Assurance Panel has reviewed the RIA "Referendum Advertising at the 2020 General Election" and prepared by the Ministry of Justice and considers that the information and analysis summarised in the RIA partially meets the Quality Assurance criteria
43. As noted in the agency rating of evidence certainty, previous elections and referendums provide an indication of likely impact, but do not provide hard evidence for new referendums on different subjects. Public expectations and behaviour may also have changed since previous referendums were carried out. Consultation with the Electoral Commission and relevant government agencies provides confidence in the ability to administer the proposed options. There has not been consultation with other stakeholders (e.g. potential campaigners) to confirm the feasibility of the options from their perspective. However, using the same legislative and operational infrastructure and similar rules should address many potential concerns. The QA Panel notes that, to some extent, the lack of consultation can be remedied during select committee consideration of the Bill.
44. The Treasury Regulatory Quality Team has otherwise determined that the remaining elements of the proposed Referendum Frameworks Bill will have no or only minor impacts on businesses, individuals or not-for-profit entities.

Human Rights

45. The proposals in this paper place some limits on section 14 of the New Zealand Bill of Rights Act (BORA) 1990 (freedom of expression), although this limitation is justified as necessary and proportionate, to ensure the policy objective of providing for public participation and free speech, while ensuring that the identity of advertisers is transparent and one set of voices does not unduly overwhelm others.

Gender or Disability Implications

46. The proposals in this paper do not have any differential impact on the basis of gender or disability.

Publicity

47. I will issue a media release about the Referendums Framework Bill in due course.
48. The Electoral Commission will publish guidance on the referendum advertising rules in the lead up to the referendum(s).

Proactive Release

49. I will proactively release this Cabinet paper once the Referendums Framework Bill is introduced into the House. s9(2)(g)(i)

Recommendations

50. The Minister of Justice recommends that the Committee:
1. **note** that Cabinet has agreed to the development of a single bill to provide a legislative framework for any referendum(s) held with the 2020 General Election, and that the rules for the referendum(s) should align, as far as possible, with that of the general election [CAB-19-MIN-0129];

Referendum advertising

2. **note** that advertising by political parties, candidates, and advocacy groups is expected to be a key element in informing voters and encouraging voter turnout for the referendums;
3. **agree** to include provisions in the Referendums Framework Bill to regulate advertising for any referendums held with the 2020 General Election;
4. **agree** to model the definition of referendum advertisement on the existing definition of election advertisement, which is broad, and non-medium specific and will include an advertisement in any medium that could reasonably be regarded as encouraging or persuading voters to vote, or not to vote, for a particular option in the referendum;
5. **agree** that the following be excluded or exempted from the definition of referendum advertisement:
 - advertisements relating to the conduct of the referendum and authorised by the Electoral Commission or a government agency.

- the editorial content of media, such as newspapers, periodicals, and radio or television programmes;
 - any transmission of proceedings in the House of Representatives, and
 - personal views expressed on the internet (or other electronic medium) by an individual who does not receive payment for that publication;
6. **agree** that the regulatory regime for referendum advertising in 2020 will use the following tools:
- promoter statements required on all referendum advertisements;
 - promoters to register if they intend to spend over a set threshold on referendum advertising (to be aligned to the threshold applying the third-party promoters of general election advertising under the Electoral Act 1993);
 - promoters to disclose their expenses if they spend over a set threshold on referendum advertising (to be aligned to the threshold applying the third-party promoters of general election advertising under the Electoral Act 1993); and
 - a limit of the amount that can be spent on referendum advertising (to be aligned to the expenditure limit applying to third-party promoters for general election advertising under the Electoral Act 1993);
7. **agree** to include a regulation-making power in the Referendums Framework Bill to enable specific exemptions to be made to the definition of referendum advertising in respect of specific referendums;
8. **agree** that dual expenses on both election advertising and referendum advertisements be counted towards both election and referendum advertising thresholds and limits;
9. **agree** that the regulatory regime for referendum advertising will apply in the three-month period (the 'regulated period') immediately before the election;
10. **agree** that the penalties and offence provisions for breaching the referendum advertising rules be aligned with the penalties and offence provisions already in the Electoral Act 1993 for breaching the election advertising rules;

Dual votes

11. **agree** that a voter's page and line number will not be written on the referendum voting paper, which will mean that any ordinary dual votes in the referendum cannot be extracted;

Petitions to the High Court

12. **agree** that a minimum of 200 electors required to petition the High Court to challenge the conduct or result of a referendum.

Authorised for lodgement

Hon Andrew Little
Minister of Justice



Cabinet Social Wellbeing Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Referendums Framework Bill: Regulation of Referendum Advertising

Portfolio Justice

On 19 June 2019, the Cabinet Social Wellbeing Committee:

- 1 **noted** that Cabinet has agreed to the development of a single bill to provide a legislative framework for any referendum(s) held with the 2020 General Election, and that the rules for the referendum(s) should align, as far as possible, with that of the general election [CAB-19-MIN-0129];

Referendum advertising

- 2 **noted** that advertising by political parties, candidates, and advocacy groups is expected to be a key element in informing voters and encouraging voter turnout for the referendums;
- 3 **agreed** to include provisions in the Referendums Framework Bill to regulate advertising for any referendums held with the 2020 General Election;
- 4 **agreed** to model the definition of referendum advertisement on the existing definition of election advertisement, which is broad and non-medium specific, and will include an advertisement in any medium that could reasonably be regarded as encouraging or persuading voters to vote, or not to vote, for a particular option in the referendum;
- 5 **agreed** that the following be excluded or exempted from the definition of referendum advertisement:
 - 5.1 advertisements relating to the conduct of the referendum and authorised by the Electoral Commission or a government agency;
 - 5.2 the editorial content of media, such as newspapers, periodicals, and radio or television programmes;
 - 5.3 any transmission of proceedings in the House of Representatives;
 - 5.4 personal views expressed on the internet (or other electronic medium) by an individual who does not receive payment for that publication;
- 6 **agreed** that the regulatory regime for referendum advertising in 2020 will use the following tools:
 - 6.1 promoter statements required on all referendum advertisements;

- 6.2 promoters to register if they intend to spend over a set threshold on referendum advertising (to be aligned to the threshold applying the third-party promoters of general election advertising under the Electoral Act 1993);
- 6.3 promoters to disclose their expenses if they spend over a set threshold on referendum advertising (to be aligned to the threshold applying the third-party promoters of general election advertising under the Electoral Act 1993);
- 6.4 a limit of the amount that can be spent on referendum advertising (to be aligned to the expenditure limit applying to third-party promoters for general election advertising under the Electoral Act 1993);
- 7 **agreed** to include a regulation-making power in the Referendums Framework Bill to enable specific exemptions to be made to the definition of referendum advertising in respect of specific referendums;
- 8 **agreed** that dual expenses on both election advertising and referendum advertisements be counted towards both election and referendum advertising thresholds and limits;
- 9 **agreed** that the regulatory regime for referendum advertising will apply in the three-month period (the 'regulated period') immediately before the election;
- 10 **agreed** that the penalties and offence provisions for breaching the referendum advertising rules be aligned with the penalties and offence provisions already in the Electoral Act 1993 for breaching the election advertising rules;

Dual votes

- 11 **agreed** that a voter's page and line number will not be written on the referendum voting paper, which will mean that any ordinary dual votes in the referendum cannot be extracted;

Petitions to the High Court

- 12 **agreed** that a minimum of 200 electors be required to petition the High Court to challenge the conduct or result of a referendum.

Jenny Vickers
Committee Secretary

Present:

Hon Chris Hipkins
Hon Andrew Little
Hon Dr David Clark
Hon Tracey Martin (Chair)
Hon Aupito William Sio

Officials present from:

Office of the Prime Minister
Officials Committee for SWC
Office of the Deputy Chair of SWC

Hard-copy distribution:

Minister of Justice

In Confidence

Office of the Minister of Justice

Chair, Cabinet Legislation Committee

Referendums Framework Bill: Approval for Introduction

Proposal

1. This paper seeks approval for the introduction of the Referendums Framework Bill (the Bill).

Policy

The referendum(s) will use the legislative and operational infrastructure already in place for the 2020 General Election

2. The Government has committed to holding a referendum on legalising the personal use of recreational cannabis at the 2020 General Election. [CAB-18-Min-0614.02]
3. There is also a possibility of a referendum being held on the End of Life Choice Bill (a member's bill in the name of David Seymour MP).
4. To facilitate these referendums, Cabinet agreed to develop a single set of rules to govern the conduct of any referendums held alongside the 2020 General Election. This will ensure the same rules apply to both the general election and the referendums as far as is practicable. [CAB-19-MIN-0129]
5. For example, the Bill enables the Electoral Commission to conduct the referendums using the same voting places and electoral staff as for the election. It also provides that the offence and penalty provisions in the Electoral Act apply to similar offences committed in relation to referendums (for example, personation).
6. Cabinet has approved some minor areas of difference from some rules applying to the election, which reflect the nature of referendums. For example:
 - a voter's page and line number will not be written on the referendum voting paper, which will mean that any ordinary dual votes in the referendum cannot be extracted¹
 - there will be no preliminary count of any referendum votes on election day, to avoid delays to the preliminary count of the general election

¹ A dual vote is where a voter appears to have voted more than once. In a general election, this is identified when a voter is marked off the roll more than once. The Electoral Commission is able to find both votes only by using the voter's page and line number, which is written on the voting paper by the issuing officer. This process adds significant time and complexity to the voting paper issuing process, which negatively impacts on the services provided to all voters on election day, as well as adding complexity and delay to the official count process. Therefore, referendum dual votes were not removed in the 2011 MMP referendum. Considering the low incidence of dual voting in New Zealand, dual votes would have only a minimal impact upon the integrity of the referendum and its result. Dual voting is an offence (personation). A person issued more than one parliamentary voting paper will be referred to the Police. Because a referendum voting paper must be issued with each parliamentary voting paper, the Commission's position, in making a referral to the Police, is to infer that the person has also been issued, and has voted, more than once in the referendum too. [SWC-19-MIN-0066 refers].

- the referendum results will be released with, *or following*, the official results for the parliamentary election (but still on or before the date appointed for the return of the Writ for the general election), and
- a minimum of 200 electors will be able to petition the High Court to challenge the conduct or result of a referendum (rather than 1 elector as required for an election petition).

[CAB-19-MIN-0129, SWC-19-MIN-0066 and CAB-19-MIN-0307]

The Bill includes regulation of referendum advertising

7. Cabinet agreed that, to achieve the appropriate balance between freedom of expression and transparency, referendum advertising would be regulated on the same basis as election advertising. This includes:
 - promoter (campaigner) statements, including name and address, on all referendum advertisements
 - registration of promoters intending to spend over a certain threshold (see paragraphs 9 and 10) on referendum advertising
 - disclosure of promoter expenses totalling a certain threshold
 - a limit on the amount that can be spent on referendum advertising, and
 - expenditure on dual advertisements (covering the election and referendum(s)) to count towards both election and referendum advertising thresholds/limits.
8. The Bill provides that the requirement for a promoter statement will apply from the point in time when the referendum is declared via an Order in Council or under another enactment. This was not explicitly noted in the previous policy paper, but is aligned with the approach taken to promoter statements on election advertisements.
9. The limits and thresholds applying to referendum advertising are the same as those which will apply to third-party promoters in respect of election advertising at the 2020 election. These limits will apply during the 'regulated period', being the three-month period immediately prior to the election/referendum(s).

[SWC-19-MIN-0066 and CAB-19-MIN-0307]

Each referendum will be triggered by an Order in Council or other enactment

10. The decision to hold a referendum will be taken separately by Government (as with the cannabis referendum) or by Parliament (as with an End of Life Choice referendum).
11. The Bill contains two mechanisms which trigger its use for a referendum in 2020. The first mechanism requires an Order in Council to be made declaring a referendum to be a referendum for the purposes of the Referendums Framework Bill/Act
12. The alternative mechanism is that another Act requires a referendum be held in 2020. That other Act would then define the referendum to be a referendum for the purposes of the Referendums Framework Bill/Act.
13. The Bill provides that the Order in Council (or other Act) which triggers a referendum must specify the wording of the question/statement and any options for which electors may vote.

[CAB-19-MIN-0129]

Impact analysis

14. Regulatory Impact Analysis on the proposed referendum advertising regime was prepared in accordance with Cabinet requirements and was submitted to Cabinet along with the paper seeking policy approvals on 19 June 2019.

[SWC-19-MIN-0066 and CAB-19-MIN-0307]

Compliance

15. The Bill complies with:
- the principles of the Treaty of Waitangi
 - the rights and freedoms contained in the Human Rights Act 1993 and the New Zealand Bill of Rights Act 1990
 - the disclosure statement requirements (a disclosure statement prepared by the Ministry of Justice is attached)
 - the principles and guidelines set out in the Privacy Act 1993
 - relevant international standards and obligation, and
 - the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Consultation

16. The Electoral Commission, Crown Law, the State Services Commission and the Department of Internal Affairs were consulted on this Bill. The Policy Advisory Group of the Department of the Prime Minister and Cabinet was informed.
17. No public or external consultation has been carried out.
18. The government caucus and other parties represented in Parliament have been consulted.

Binding on the Crown

19. The Bill will bind the Crown. [CAB-19-MIN-0129]

Creating new agencies or amending law relating to existing agencies

20. The Bill does not create any new agencies.

Allocation of decision making powers

21. The Bill does not allocate decision making powers between the executive and judiciary.

Associated regulations

22. The Bill contains a mechanism enabling an Order in Council to be made declaring a referendum to be a referendum for the purposes of the Referendums Framework Bill/Act.

23. An Order in Council is likely to be promulgated to allow the Referendums Framework Bill/Act to be used for the Government's cannabis referendum.
24. If required, an Order in Council may also be promulgated to allow the Referendums Framework Bill/Act to be used for any referendum on the End of Life Choice Bill/Act.
25. These Orders effectively define the referendum and declares that referendum to be a referendum for the purposes of the Act. They will specify the wording of the question for each respective referendum, and any options for which electors may vote.
26. The Orders need to be in place by April 2020 to allow the Electoral Commission sufficient time to prepare to conduct the referendum(s).

Other instruments

27. The Bill, like the Electoral Act 1993, contains standard regulation-making powers to ensure the Act can be given full effect. These include regulations:
- to validate any irregularities in relation to a referendum
 - to prescribe forms required for any matter in relation to a referendum (if any)
 - to prescribe fees payable for the purposes of the Act (if any), and
 - for any other matters necessary for administration or for giving full effect to the Act.
28. The Bill also includes a regulation-making power to enable specific exemptions to be made to the definition of referendum advertising prior to the start of the regulated period. This is because the Bill provides a generic framework for regulating referendum advertising. The regulation making power will enable exemptions to be provided for certain types of advertising activity or content, if considered necessary in relation to a specific referendum.
29. This is explained further in the explanatory note to the Bill.

Definition of Minister/department

30. The Bill does not contain a definition of Minister, Department or Chief Executive of a department

Commencement of legislation

31. The Bill will come into force on the day after the date of Royal assent. It will expire on 1 July 2022.

Parliamentary stages

32. s9(2)(g)(i)
33. s9(2)(g)(i)

Proactive Release

34. I propose to release this Cabinet paper and related Minute, and the relevant parts of earlier Cabinet papers and Minutes (SWC-19-SUB-0025, CAB-19-MIN-0129 and SWC-19-SUB-0066 and SWC-19-MIN-0066), with any necessary redactions, following the introduction of the Bill.

Recommendations

The Minister of Justice recommends that the Committee:

1. s9(2)(h)
2. **note** that the Referendums Framework Bill will provide a single set of rules to govern the conduct of any referendums held alongside the 2020 General Election and ensures that the referendum(s) are generally conducted under the same rules as the general election;
3. **approve** the Referendums Framework Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
4. **authorise** the Minister of Justice and Parliamentary Counsel Office to make minor technical and drafting changes to the Bill prior to introduction;
5. s9(2)(g)(i)
6. s9(2)(g)(i)
s9(2)(g)(i)

Authorised for lodgement

Hon Andrew Little
Minister of Justice



Cabinet

Minute of Decision

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Referendums Framework Bill: Approval for Introduction

Portfolio Justice

On 29 July 2019, following reference from the Cabinet Legislation Committee, Cabinet:

- 1 **s9(2)(h)**
- 2 **noted** that the Referendums Framework Bill will provide a single set of rules to govern the conduct of any referendums held alongside the 2020 General Election and ensures that the referendum(s) are generally conducted under the same rules as the general election;
- 3 **approved** the Referendums Framework Bill [PCO 21833/5.1] for introduction, subject to the final approval of the government caucuses and sufficient support in the House of Representatives;
- 4 **authorised** the Minister of Justice and Parliamentary Counsel Office to make minor technical and drafting changes to the Bill prior to introduction;
- 5 **s9(2)(g)(i)**
- 6 **s9(2)(g)(i)**
s9(2)(g)(i)

Martin Bell
for Secretary of the Cabinet

Hard-copy distribution:

Prime Minister
Deputy Prime Minister
Minister of Justice