

Hon Kris Faafoi
Minister of Justice

Proactive release of Cabinet papers and minutes relating to supporting the delivery of the 2020 election due to the change of election date and Covid-19

Date of issue: 22 February 2021

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	Order in Council: Electoral Main Rolls Closing Order (No 2) 2020 Cabinet paper <i>Office of the Minister of Justice</i> 17 August 2020	Released in full.
2	Electoral Main Rolls Closing Order (No 2) 2020 Cabinet Minute: CAB-20-MIN-0400 <i>Cabinet Office</i> 17 August 2020	Released in full.
3	Electoral Amendment Regulations (No 3) 2020 Cabinet paper <i>Office of the Minister of Justice</i> 24 August 2020	Released in full.
4	Electoral Amendment Regulations (No 3) 2020 Cabinet Minute: CAB-20-MIN-0408 <i>Cabinet Office</i> 24 August 2020	Released in full.
5	Additional funding to support the delivery of the 2020 General Election and referendums due to the change of election date Cabinet paper <i>Office of the Minister of Justice</i> 24 August 2020	Table one (after para 30) and table two (after para 37) are withheld in accordance with section 9(2)(g)(i) of the Official Information Act 1982. No public interest has been identified that would outweigh the reasons for withholding it.
6	Supporting the delivery of the 2020 General Election and referendums due to the change of election date Cabinet Minute: CAB-20-MIN-0418 <i>Cabinet Office</i> 24 August 2020	Released in full.

No.	Document	Comments
7	Facilitating dictation voting in managed isolation and quarantine facilities and at the maritime border: Electoral Amendment Regulations (No 4) Cabinet paper <i>Office of the Minister of Justice</i> 7 September 2020	Released in full.
8	Electoral Amendment Regulations (No 4) 2020 Cabinet Minute: CAB-20-MIN-0438 <i>Cabinet Office</i> 7 September 2020	Released in full.
9	2020 General Election and referendums: provision in Covid-19 Public Health Orders Cabinet paper <i>Office of the Minister of Justice</i> 7 September 2020	Released in full.
10	2020 General Election and referendums: provision in Covid-19 Public Health Orders Cabinet Minute: CAB-20-MIN-0439 <i>Cabinet Office</i> 7 September 2020	Released in full.

In Confidence

Office of the Minister of Justice

Chair, Cabinet

Order in Council: Electoral Main Rolls Closing Order 2020 (No 2)

Proposal

1. I recommend that Cabinet approve the attached Electoral Main Rolls Closing Order 2020 (No 2) for submission to the Executive Council. It revokes and replaces a previous order and sets a new date for the closing of the main electoral rolls to align with the date for Writ Day.

Electoral Main Rolls Closing Order (No 2)

2. The Electoral Main Rolls Closing Order is required under section 104 of the Electoral Act 1993. The Electoral Act provides for the printing of the main rolls containing the names of electors registered as at the date fixed for the closing of the main rolls.
3. In an election year, an Order in Council is required to fix this date. The date is set to ensure sufficient time after closing for printing, inspection and public scrutiny prior to election day. Traditionally this date is set as the same day planned to be Writ Day. Although it is not a requirement of the Electoral Act to set the date as the same day as Writ Day, this enables the main electoral rolls (these are the rolls which are made publicly available in libraries etc) to be closed off and printed at the same time as the composite electoral rolls (these are the rolls used in voting places). The composite electoral rolls are required under section 107 of the Act to be closed off and printed as at Writ Day.
4. The Electoral Main Rolls Closing Order was made on 6 July 2020. It fixed Sunday 16 August 2020 as the closing date of the main electoral rolls, on the advice of the Electoral Commission. This was the same day it was anticipated the Writ for the election would be issued.
5. The Electoral Main Rolls Closing Order 2020 (No 2) revokes this original order and sets a new date for the closing of the main electoral rolls. This has provisionally been drafted in the attached Order as 17 August 2020. Accordingly, this Order should only be submitted to Executive Council if 17 August is the day the Prime Minister advises the Governor General to issue the Writ. I seek Cabinet's authorisation to amend the Order in Council to refer to the date of Writ Day and advise the Executive Council accordingly if Writ Day is a different day to 17 August 2020.
6. Making this updated closure order will continue the usual process of the main electoral rolls and the composite electoral rolls both being closed and printed as at Writ Day. It is also the most operationally efficient for the Electoral Commission.
7. The closing of the main rolls is a procedural requirement of the Electoral Act. While the Order closes the roll for the purposes of printing and inspection, electors can still enrol and update their information on Election Day.

Timing and 28-day rule

8. This Order in Council will come into effect on 17 August 2020 and will apply to the 2020 General Election. A waiver of the 28-day rule is sought.

Compliance

9. The Order complies with the following:
- the principles of the Treaty of Waitangi;
 - the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - the principles and guidelines set out in the Privacy Act 1993;
 - relevant international standards and obligations; and
 - the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

10. There are no grounds on which the Regulations Review Committee should draw the Order to the special attention of the House in accordance with Standing Order 315.

Certification by Parliamentary Counsel

11. Parliamentary Counsel has certified the Order in Council as being in order for submission to the Executive Council.

Regulatory impact analysis

12. The Regulatory Quality Team at the Treasury determined that the regulatory proposals in the initial paper on the Electoral Main Rolls Closing Order 2020 were exempt from the requirement to provide a Regulatory Impact Assessment on the basis that they have no or minor impacts on businesses, individuals or not for profit entities. The proposal in this paper is closely analogous to the initial paper and has no additional impacts on businesses, individuals or not for profit entities.

Publicity

13. The Order will be published in the Gazette.

Proactive Release

14. I will proactively release this paper, with any appropriate redactions, in accordance with Cabinet Office Circular CO (18) 4.

Consultation

15. The Electoral Commission, Crown Law and Cabinet Office have been consulted on this paper. The Department of the Prime Minister and Cabinet has been informed of the contents of the paper.

Recommendations

16. The Minister of Justice recommends that Cabinet:
 1. **authorise** the submission to the Executive Council of the Electoral Main Rolls Closing Order 2020 (No 2); and
 2. **authorise** the Minister of Justice to amend the Order in Council, prior to submission to the Executive Council, if a date other than 17 August 2020 is chosen for Writ Day. The Minister of Justice may amend the date to reflect the date chosen as Writ Day and advise the Executive Council accordingly.

Authorised for lodgement

Hon Andrew Little
Minister of Justice

Attached: Electoral Main Rolls Closing Order 2020 (No 2)



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.

Electoral Main Rolls Closing Order (No 2) 2020

Portfolio Justice

On 17 August 2020, Cabinet:

- 1 **noted** that the Electoral Main Rolls Closing Order 2020 (the Order) was made on 6 July 2020, and fixed 16 August 2020 as the closing date of the main electoral rolls, on the advice of the Electoral Commission;
- 2 **noted** that the Electoral Main Rolls Closing Order (No 2) 2020 revokes the Order, and sets a new date for the closing of the main electoral rolls to align with the new date for Writ Day, of 13 September 2020;
- 3 **authorised** the submission to the Executive Council of the Electoral Main Rolls Closing Order (No 2) 2020 [PCO 23137/4.0].

Michael Webster
Secretary of the Cabinet

In Confidence

Office of the Minister of Justice

Chair, Cabinet

Electoral Amendment Regulations (No 3)

Proposal

1. I recommend that Cabinet approve the attached Electoral Amendment Regulations (No 3) for submission to the Executive Council.
2. These Regulations ensure that the temporary regulatory provisions Cabinet approved recently to assist the provision of alternative voting options in light of the COVID-19 pandemic continue to apply on the new Election date of 17 October 2020.

Background

3. The COVID-19 pandemic has required the Electoral Commission ("the Commission") to make changes to the delivery of the 2020 Election. Its preparations include contingency provisions for voters at higher risk from COVID-19, for example due to age or underlying health issues.
4. Section 61(1) of the Electoral Act 1993 provides that a person is eligible to vote away from the polling place ('remote voting') as a special voter if they meet certain conditions, for example if they:
 - are unable to attend a voting place due to illness, infirmity or pregnancy; or
 - satisfy a Returning Officer that they cannot get to a polling place 'without incurring hardship or serious inconvenience'.
5. The Commission's planning has been predicated on delivering the election at a nationwide Alert Level 2, with up to 10 'clusters' of up to 5,000 cases in total at Alert Levels 3 and 4. It has expanded the capacity of its existing remote voting options, postal voting and 'takeaway' voting services. The use of these remote voting services is not mandatory for voters.
6. On 27 July 2020 Cabinet approved the Electoral Amendment Regulations (No 2), which made temporary amendments to the Electoral Regulations 1996, to support the provision of alternative voting options for voters who cannot attend a voting place due to their risk from COVID-19 [SWC-MIN-20-0077, SWC-MIN-0099 and CAB-20-MIN-0352].
7. The Electoral Amendment Regulations (No 2) that were approved in July amended the Electoral Regulations 1996 to:
 - provide the Commission with a discretionary power to waive the witness requirement for a special vote declaration for people voting outside of a voting place or a specified facility such as a hospital, rest home, prison or quarantine and managed isolation facility, if the Commission is satisfied that it is not reasonable for the voter to have a witness present to witness their declaration;

- suspend the appointment of candidate appointed witnesses (party agents) to reduce the risk of COVID-19 transmission;
 - provide that a special vote postal vote returned by NZ Post that does not have a postmark is valid if it is received by the Commission on or before polling day; and
 - allow voters to apply for a special vote 'in any manner approved by the Electoral Commission', for example by phone.
8. These amended provisions are temporary, and apply only to the 2020 Election, because they were designed to address COVID-19 risks.

Electoral Amendment Regulations (No 3)

9. The changes made by the Electoral Amendment Regulations (No 2) apply only for the 2020 Election. The amendments were narrowly drafted, by design, with a period of application defined by reference to the General Election and referendums to be held on 19 September 2020.
10. The Electoral Amendment Regulations (No 3) amend the period for which these temporary Regulations apply, to align with the new General Election date of 17 October 2020. This will ensure that these provisions can continue to apply, to support the provision of alternative voting options for higher-risk voters. They do this by:
- changing all references from 19 September 2020 to 17 October 2020; and
 - changing the end of the application period to be the day on which the Electoral Commission returns the Writ.
11. People are required to apply for remote voting in advance. The Electoral Commission had received approximately 600 applications for remote voting. The Commission has advised that, as an operational matter, it will contact all people who have already applied for remote voting, by post. It will let them know that if they still need to use remote voting in October their application will be retained, so they do not need to do anything further. This will ensure these voters do not have to reapply and thus removes the risk of their being inadvertently disenfranchised.

Timing and 28-day rule

12. These Regulations will come into effect on 28 August 2020 (the day after gazetted). They will apply to the 2020 General Election. A waiver of the 28-day rule is sought.

Compliance

13. The Order complies with the following:
- the principles of the Treaty of Waitangi;
 - the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - the principles and guidelines set out in the Privacy Act 1993;
 - relevant international standards and obligations; and
 - the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Financial Implication

14. There are no financial implication arising from the proposal in respect of these Regulations.

Regulations Review Committee

15. There are no grounds on which the Regulations Review Committee should draw the Order to the special attention of the House in accordance with Standing Order 315.

Certification by Parliamentary Counsel

16. Parliamentary Counsel has certified the Order in Council as being in order for submission to the Executive Council.

Regulatory impact analysis

17. The Regulatory Quality Team at the Treasury has determined that the regulatory proposals in this paper are exempt from the requirement to provide a Regulatory Impact Statement (RIS) because they are intended to alleviate the short-term impacts of a declared emergency event of COVID-19 outbreak. These proposals are required urgently to be effective, making a complete, robust and timely impact analysis unfeasible.

Publicity

18. The Order will be published in the Gazette.

Proactive Release

19. I will proactively release this paper, with any appropriate redactions, in accordance with Cabinet Office Circular CO (18) 4.

Consultation

20. The Electoral Commission and Treasury have been consulted on this paper. The Department of the Prime Minister and Cabinet has been informed of the contents of the paper.

Recommendations

21. The Minister of Justice recommends that Cabinet:
1. **authorise** the submission to the Executive Council of the Electoral Amendment Regulations (No 3);
 2. **agree** to waive the 28-day rule so that the regulations can come into force on 28 August 2020.

Authorised for lodgement

Hon Andrew Little
Minister of Justice



Cabinet

Minute of Decision

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Electoral Amendment Regulations (No 3) 2020

Portfolio Justice

On 24 August 2020, Cabinet:

- 1 **noted** that on 27 July 2020, the Cabinet Social Wellbeing Committee approved the Electoral Amendment Regulations (No 2) 2020 (the No 2 Regulations), which made temporary amendments to the Electoral Regulations 1996, to support the provision of alternative voting options for voters who cannot attend a voting place due to their risk from COVID-19 [SWC-MIN-0099];
- 2 **noted** that:
 - 2.1 the No 2 Regulations apply only for the 2020 Election, and were narrowly drafted, by design, with a period of application defined by reference to the General Election and referendums to be held on 19 September 2020;
 - 2.2 the Electoral Amendment Regulations (No 3) 2020 (the No 3 Regulations) amend the period for which the temporary Regulations apply, to align with the new General Election date of 17 October 2020;
- 3 **authorised** the submission to the Executive Council of the Electoral Amendment Regulations (No 3) 2020 [PCO 23143/5.0];
- 4 **noted** that a waiver of the 28-day rule is sought so that the No 3 Regulations can come into force on 28 August 2020;
- 5 **agreed** to a waiver of the 28-day rule.

Michael Webster
Secretary of the Cabinet

In Confidence
Office of the Minister of Justice

Chair
Cabinet

Additional funding to support the delivery of the 2020 General Election and referendums due to the change of election date

Proposal

1. This paper seeks agreement to additional funding for the Electoral Commission and the Ministry of Justice to ensure the safe and effective delivery of the 2020 General Election and referendums due to the change of election date.

Relation to government priorities

2. To maintain a healthy democracy, we must uphold the integrity of our electoral system. This means ensuring, among other things, that elections and referendums are conducted fairly and efficiently and that all eligible voters who wish to do so can participate freely. Maintaining public confidence in elections and referendums underpins the public legitimacy of our democratic institutions, both now and into the future.

Executive summary

3. The Electoral Commission's planning over the last six months has been predicated on meeting the public health requirements for Covid-19 Alert Level 2, with capacity to deliver in the context of 10 'clusters' of up to 5,000 cases in total at Alert Levels 3 and 4. Cabinet approved funding of \$28.705 million in June 2020 (SWC-20-MIN-0077) for the Electoral Commission to put in place additional safety measures on this basis.
4. The Prime Minister's decision on 17 August 2020 to change the election date to 17 October 2020 has required the Electoral Commission to rapidly reschedule its delivery plans for the 2020 General Election and referendums. The change of date also means the Ministry of Justice's referendums public information programme needs to be extended. Both agencies have needed to seek specialist legal advice relating to the implications of the date change.

I seek funding of \$13.448 million for the Electoral Commission to deliver the election on a new date

5. To support the Electoral Commission to reschedule the delivery of the 2020 General Election safely and effectively, I seek \$13.448 million in funding from the Covid-19 Response and Recovery Fund. The cost is based on the best available estimates for securing voting places, staffing, undertaking additional recruitment, and changing existing communications.

6. As there is still a great deal of uncertainty about the exact costs involved, this funding is being sought on the understanding that any additional funding appropriated that is not required to deliver the election is returned to the Crown.

I seek funding of \$1.000 million for the Ministry of Justice

7. I seek \$1.000 million in funding from the Covid-19 Response and Recovery Fund for the Ministry of Justice. This will enable the Ministry of Justice to extend its public information programme for the referendums by a further four weeks. This cost is based on the need to extend signposting, the 0800-service and staff contracts.
8. Additional funding is also needed to support the Ministry of Justice in seeking specialist legal advice related to the change in election date.

I seek funding of \$12.100 million to establish a contingent workforce

9. A key cost associated with the change of election date is ensuring the Electoral Commission has certainty of workforce. There is a risk that some of the Electoral Commission's existing workforce will not be available in October, for example if existing recruits are unwilling to work because of concern over renewed community transmission of Covid-19. To manage this risk, a contingent public sector workforce will be established that can be drawn on by the Electoral Commission, if required.
10. The Ministry of Justice and the Electoral Commission, supported by the Public Service Commission, will work through the Public Service Leadership team to identify a contingent workforce from across the public service to meet the Electoral Commission's needs. The contingent workforce will need to be on standby for the entire voting period, particularly on the weekend of 10-11 October and on Saturday 17 October. Many public service agencies are likely to be called on to make their staff available to assist, where they can.
11. I am seeking delegated authority to enable the Minister of Finance and I to approve a draw down up to \$12.100 million from the Covid-19 Response and Recovery Fund for a contingent workforce for the election. Under the Public Finance Act, departments must be able to attribute any election-related expenditure to an appropriate appropriation. If required, funding will be drawn from the Covid-19 Response and Recovery Fund to a new appropriation, which will be created for this purpose.

Background

12. The Electoral Commission's preparations over the last six months have been predicated on meeting the public health requirements for Covid-19 Alert Level 2, with capacity to deliver in the context of 10 'clusters' of up to 5,000 cases in total at Alert Levels 3 and 4. On 17 June 2020 Cabinet approved funding of \$28.705 million (SWC-20-MIN-0077) to ensure that the Electoral Commission had the necessary resources to put in place the additional safety measures it required to deliver the September election, on this basis.

13. The Electoral Commission's preparations include measures that enable it to employ physical distancing and hygiene measures. These are designed to minimise congestion in voting places and smooth the flow of voters over the two-week voting period. Voters will be encouraged to 'enrol early, vote early and vote local', to help even out the flow of voters over the voting period.
14. The additional funding also enabled the Electoral Commission to increase its capacity to provide remote voting, by post or takeaway votes, (based on the Alert Level 2 and clusters scenario) to voters in hospitals, rest homes or in quarantine facilities.
15. At this point, the Electoral Commission expects that the additional \$28.705 million will be required for the delivery of the election in a Covid-19 environment. However, the Electoral Commission will review actual costs incurred after the election. Any of the additional funding that was not required will be returned to the Crown. The additional \$28.705 million was not intended, nor is it sufficient, to address the costs involved in shifting the date of the election.

The Electoral Commission is rescheduling delivery for the new election date

16. Delivery risks were already high, given the complexity of the election and referendums. The pandemic added an additional layer of complexity, which required changes to the Commission's operational delivery plans. The change of election date has required the Electoral Commission to rapidly review its delivery plans again, in order to reschedule the 2020 General Election and referendums.
17. Ahead of advance voting beginning on 3 October, the Electoral Commission will need to:
 - re-confirm whether venues are still available, and extend and renegotiate lease arrangements;
 - identify, inspect and lease any new properties required, for example if original properties are no longer available because of the date change;
 - confirm the availability of current fixed-term electorate staff to work over a different period and update any employment contracts;
 - confirm the availability of temporary staff already recruited, and update any employment contracts;
 - re-open recruitment to fill any vacancies, if existing staff are unable or unwilling to work during the October election period;
 - update voter communications, and reschedule radio, television and outdoor advertising; and
 - extending the 0800-contact centre, which responds to questions from voters about enrolment and voting and applications for remote voting.

18. There is a significant level of activity that must be undertaken in a short period of time. My immediate focus at this point is ensuring the Electoral Commission can proceed with its delivery plans with as much certainty as possible, and has sufficient capacity to manage delivery risks, including financial risks.

The new date has resulted in additional work for the Ministry of Justice

Referendums public information programme

19. The Ministry of Justice's public information programme for the referendums was scheduled to conclude on 19 September. The programme will now need to be extended until 17 October to ensure voters are still able to access information ahead of the election.
20. This will require the Ministry to extend all elements of its public information programme, including signposting activity, its 0800 service and staff contracts.

Specialist legal advice

21. The change of election date has placed unexpected demand on the Ministry, including the need to engage specialist legal advice related to the change of date.

To mitigate any potential workforce risk over the election period, a contingent workforce will be identified from the public sector

22. The Electoral Commission needs a temporary workforce of 25,000+ electoral workers to physically deliver the election. There is a risk, already being realised in areas under Alert Level 3, that some of this workforce will not be willing and available in October.

Ensuring a reliable and certain workforce is critical for success

23. The Electoral Commission needs certainty of a workforce that remains willing and able to work during the October period. If it cannot recruit enough people, for example due to staff concerns over renewed community transmission of Covid-19, this will seriously affect the delivery of the election.
24. I am advised, to mitigate this risk, it is necessary to identify a contingent workforce from the public sector, which can be on standby for the entire voting period, particularly for the weekend of 10-11 October and on Saturday 17 October. The Electoral Commission will provide training for this workforce, as and when needed.
25. Earlier this year, there was discussion between the Chief Electoral Officer, the Secretary for Justice, and the Public Service Commission regarding arrangements in the event that the Electoral Commission needed support from the public service to deliver the general election. It is necessary and prudent to now activate those arrangements.
26. As a result, the Ministry of Justice and the Electoral Commission, supported by the Public Service Commission will work through the Public Service Leadership Team to identify a contingent workforce from across the public service to meet the Electoral Commission's needs.


27. Many public service agencies are likely to be called on to make their staff available to assist, where they can. It would be helpful for Ministers to support their chief executives to respond to any requests for assistance as soon as practicable, given the importance of the task ahead.¹

Financial Implications

I seek funding of \$13.488 million for the Electoral Commission

28. The need to rapidly reschedule the delivery of the election has cost implications for the Electoral Commission. Although it will be able to leverage much of the work already undertaken, it has incurred some expenses for the 19 September date which it will have to incur again, for example re-booking its advertising.
29. I therefore seek funding of \$13.488 million for the Electoral Commission from the Covid-19 Response and Recovery Fund to meet costs resulting from the change in election date.
30. Table 1 summarises the estimated costs across key cost areas.

s9(2)(g)(i)



¹ The Electoral Commission has a statutory ability to request assistance from public sector agencies under section 20D of the Electoral Act 1993.


31. There is considerable uncertainty about the cost estimates. They have been developed within a short timeframe, and the Electoral Commission is having to reschedule all of its operational logistics in a highly uncertain environment. For this reason, the costings in Table 1 factor a 10% contingency into each category.
32. My immediate focus at this point is ensuring the Electoral Commission can proceed with its delivery plans with certainty of funding. However, to manage the inherent uncertainty of the costings, I propose that the additional funding be provided on the understanding that the Electoral Commission reviews actual costs incurred after the election, and any unused additional funding be returned to the Crown. This aligns with the approach in place for the previous allocation of additional funding due to Covid-19 for the Electoral Commission.
33. I propose that the recovery of any underspend be arranged by the Electoral Commission returning the excess funding, or through utilising the provisions of section 165 of the Crown Entities Act 2004. Section 165 requires consultation between a Crown entity, its responsible Minister and the Minister of Finance before a request to return a net surplus is made to a Crown entity. Regardless of which recovery route is used, I will seek assurance and monitoring from the Ministry of Justice over the disbursement of any additional funding to the Electoral Commission, to enable the return of any net surplus funding, if required.

I am seeking funding of \$1.000 million for the Ministry of Justice

34. The decision to change the election also has cost implications for the Ministry of Justice's public information programme for the referendums, as it needs to extend the public information programme by a further four weeks. This cost is estimated based on the need to extend all elements of the public information programme, through to 17 October 2020.
35. In addition, the Ministry of Justice will need additional funding for anticipated and unplanned costs for the Ministry, including paying for specialist legal advice related to the change of election date.
36. I seek funding of \$1.000 million for the Ministry of Justice from the Covid-19 Response and Recovery Fund to meet additional costs resulting by the change of election date.

37. Table 2 summarises the estimated costs across key cost areas.

s9(2)(g)(i)



In Principal Expense Transfer

38. In June 2020, an in-principal expense transfer of up to \$1.245m was agreed for Election 2020 – Public Provision of Referendum Related Information.

39. The June 2020 year end under spend was \$1.168m. A transfer would usually happen as part of the October baseline update. To avoid a breach of appropriation, I am seeking approval to transfer \$1.168m from 2019/20 to 2020/21, ahead of the normal process.

I seek delegated authority to draw down \$12.100 million from the Covid-19 Response and Recovery Fund for a contingent workforce for the election

40. A key cost will be establishing, and potentially, drawing on a contingent public service workforce. This would be the responsibility of the Secretary for Justice, who would work in close co-ordination with the Electoral Commission.

41. I am seeking delegated authority to enable the Minister of Finance and I to approve a draw down up to \$12.100 million from the Covid-19 Response and Recovery Fund (a tagged contingency) for a contingent workforce for the election

42. Under the Public Finance Act, departments' expenditure must be within the scope of their departmental appropriations. In making their staff available to support the election, departments need to be able to attribute any election-related expenditure to an appropriate appropriation. I am therefore proposing to create a new appropriation within Vote Justice, which other government departments can access via administration and use provisions.

43. Table 3 summarises the estimated costs for the contingent workforce.

Table 3: Contingent workforce

Category	Description	Total (\$m)
Contingent workforce	Meeting salary costs of a contingent workforce Estimated at up to 5,000 people (<i>modelled on estimated numbers of staff needed for the Auckland region</i>)	12.100
TOTAL		12.100

44. I acknowledge the Electoral Commission has been funded for its electoral workforce at the living wage rate. In the event the contingent workforce is deployed it is expected the Electoral Commission will not require all of its funding, which could then be returned.

Legislative Implications

45. This paper has no legislative implications.

Human rights

46. The proposals in this paper support the objectives of the Human Rights Act 1993 and give meaningful effect to the right to vote in section 12 of the New Zealand Bill of Rights Act 1990.

Consultation

47. Te Kawa Mataaho Public Service Commission, the Treasury, the Ministry of Health, the All of Government Group and the Policy Advisory Group in the Department of Prime Minister and Cabinet, and the Electoral Commission were consulted on this paper.

Communications

48. I do not intend to issue a media release following Cabinet decisions.

Proactive Release

49. I will proactively release this Cabinet paper, with appropriate redactions, in accordance with the Government's proactive release policy.

Recommendations

50. The Minister of Justice recommends that the Committee:

Electoral Commission

1. **note** that the change in election date has required the Electoral Commission to rapidly re-schedule the delivery of the 2020 General Election and referendums, with an estimated \$13.488 million required in additional funding;

Ministry of Justice

2. **note** that the Ministry of Justice estimates \$1.000 million will be required in additional funding to extend the referendums public information programme and provide specialist legal advice around the implications of the election date change;

Contingent workforce

3. **note** that it is necessary to identify, and make provision of up to \$12.100 million to fund, a contingent workforce from the public service to be available to assist over the voting period;
4. **note** the Ministry of Justice and the Electoral Commission, supported by the Public Service Commission, will work through the Public Service Leadership Team to identify a contingent workforce from across the public service to meet the Electoral Commission's needs;
5. **note** that public service chief executives may be asked for assistance with the administration of the election, and that such requests need to be considered urgently;

Funding

6. **agree** to fund the additional costs arising from the change in the election date;
7. **agree** to establish the following new appropriation:

Vote	Appropriation Minister	Title	Type	Scope
Justice	Minister of Justice	Support to the Electoral Commission	Departmental Output Expense	This appropriation is limited to providing support to the Electoral Commission to enable it to conduct general elections and any associated referendums.

8. **authorise** the Minister of Finance and the Minister of Justice to jointly approve a draw down of up to \$12.100 million from the Covid-19 Response and Recovery Fund for a contingent workforce for the 2020 election;

9. **approve** the following changes to appropriations to give effect to the decision in recommendation 6 above, with a corresponding impact on the operating balance and net core Crown debt:

	\$m – increase/(decrease)				
Vote Justice Minister of Justice	2020/21	2021/22	2022/23	2023/24	2024/25 and outyears
Non-Departmental Output Expense:					
Electoral Services	13.448	-	-	-	-
Departmental Output Expenses:					
Public Provision of Referendum Related Information (funded by revenue Crown)	0.500	-	-	-	-
Multi-Category Expenses and Capital Expenditure:	-				
Justice Policy Advice and Related Services (MCA)	0.500				
Departmental Output Expense:					
Justice Policy Advice (funded by revenue Crown)		-	-	-	-
Total Operating	14.448				

10. **agree** that the proposed change to appropriations for 2020/21, as set out in recommendation 9, be included in the 2020/21 Supplementary Estimates and that, in the interim, the increase be met from Imprest Supply;
11. **agree** that the expenses incurred against recommendation 9 above be charged against the Covid-19 Response and Recovery Fund;
12. **agree** that in order to facilitate the deployment of the contingent workforce, chief executives of participating departments will need to enter into agreements with the chief of executive of the Ministry of Justice under section 7C of the Public Finance Act 1989;
13. **note** that all communications relating to the Covid-19 Response and Recovery Fund and any requests for early announcement will need to have both the written approval of the Minister of Finance and sign-off from the Prime Minister's Office.

Unused funding

14. **note** that any and all underspends related to the Covid-19 Response and Recovery Fund will be returned to the Centre;
15. **note** that the recovery of any underspend will be arranged by the Electoral Commission returning the excess funding or through utilising the provisions of section 165 of the Crown Entities Act 2004;

In Principal Expense Transfer

16. **note** that joint Ministers have previously approved an in-principle expense of up to \$1.245 million from 2019/20 to 2020/21 reflecting the changed phasing of funding for the referendums' information programme;
17. **note** following completion of the annual financial statements \$1.168 million remains available to transfer;
18. **note** that early confirmation of the full amount of the available expense is required to avoid risk of unappropriated expenditure;
19. **agree** an expense transfer of \$1.168 million from 2019/20 to 2020/21;
20. **approve** the following changes to appropriations to provide for decision in recommendation 19 above, with no impact on the operating balance and/or net core Crown debt across the forecast period:

Vote Justice Minister of Justice	\$m – increase/(decrease)				
	2020/21	2021/22	2022/23	2023/24	2024/25 & Outyears
Departmental Output Expense: Public Provision of Referendum Related Information (funded by revenue Crown)	1.168	-	-	-	-

21. **agree** that the proposed change to appropriations for 2020/21 as set out in recommendation 20, be included in the 2020/21 Supplementary Estimates and that, in the interim, the increase be met from Imprest Supply.

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.

Supporting the Delivery of the 2020 General Election and Referendums: Additional Funding Due to the Change of Election Date

Portfolio Justice

On 24 August 2020, Cabinet:

Electoral Commission

- 1 **noted** that the change in election date has required the Electoral Commission to rapidly reschedule the delivery of the 2020 General Election and referendums, with an estimated \$13.488 million required in additional funding;

Ministry of Justice

- 2 **noted** that the Ministry of Justice estimates \$1.000 million will be required in additional funding to extend the referendums public information programme and provide specialist legal advice around the implications of the election date change;

Contingent workforce

- 3 **noted** that it is necessary to identify, and make provision of up to \$12.100 million to fund, a contingent workforce from the Public Service to be available to assist over the voting period;
- 4 **noted** that the Ministry of Justice and the Electoral Commission, supported by the Public Service Commission, will work through the Public Service Leadership Team to identify a contingent workforce from across the Public Service to meet the Electoral Commission's needs;
- 5 **noted** that Public Service chief executives may be asked for assistance with the administration of the election, and that such requests need to be considered urgently;

Funding

- 6 **agreed** to fund the additional costs arising from the change in the election date;

7 **agreed** to establish the following new appropriation:

Vote	Appropriation Minister	Title	Type	Scope
Justice	Minister of Justice	Support to the Electoral Commission	Departmental Output Expense	This appropriation is limited to providing support to the Electoral Commission to enable it to conduct general elections and any associated referendums.

8 **authorised** the Minister of Finance and the Minister of Justice to jointly approve a draw-down of up to \$12.100 million from the COVID-19 Response and Recovery Fund for a contingent workforce for the 2020 election;

9 **approved** the following changes to appropriations to give effect to the decision in paragraph 6 above, with a corresponding impact on the operating balance and net core Crown debt:

	\$m – increase/(decrease)				
Vote Justice Minister of Justice	2020/21	2021/22	2022/23	2023/24	2024/25 and outyears
Non-Departmental Output Expense: Electoral Services	13.448	-	-	-	-
Departmental Output Expenses: Public Provision of Referendum Related Information (funded by revenue Crown)	0.500	-	-	-	-
Multi-Category Expenses and Capital Expenditure: Justice Policy Advice and Related Services (MCA)	-				
Departmental Output Expense: Justice Policy Advice (funded by revenue Crown)	0.500	-	-	-	-
Total Operating	14.448	-	-	-	-

10 **agreed** that the changes to appropriations for 2020/21, as set out in paragraph 9 above, be included in the 2020/21 Supplementary Estimates and that, in the interim, the increases be met from Imprest Supply;

11 **agreed** that the expenses incurred under paragraph 9 above be charged against the COVID-19 Response and Recovery Fund;

- 12 **agreed** that in order to facilitate the deployment of the contingent workforce, chief executives of participating departments will need to enter into agreements with the chief of executive of the Ministry of Justice under section 7C of the Public Finance Act 1989;

Unused funding

- 13 **noted** that any and all underspends related to the COVID-19 Response and Recovery Fund will be returned to the Centre;
- 14 **noted** that the recovery of any underspend will be arranged by the Electoral Commission returning the excess funding or through utilising the provisions of section 165 of the Crown Entities Act 2004;

In-principal expense transfer

- 15 **noted** that joint Ministers have previously approved an in-principle expense of up to \$1.245 million from 2019/20 to 2020/21, reflecting the changed phasing of funding for the referendums' information programme;
- 16 **noted** that following the completion of the annual financial statements, \$1.168 million remains available to transfer;
- 17 **noted** that early confirmation of the full amount of the available expense is required to avoid risk of unappropriated expenditure;
- 18 **agreed** to an expense transfer of \$1.168 million from 2019/20 to 2020/21;
- 19 **approved** the following change to appropriations to provide for the decision in paragraph 18 above, with no impact on the operating balance and/or net core Crown debt across the forecast period:

Vote Justice Minister of Justice	\$m – increase/(decrease)				
	2020/21	2021/22	2022/23	2023/24	2024/25 & Outyears
Departmental Output Expense: Public Provision of Referendum Related Information (funded by revenue Crown)	1.168	-	-	-	-

- 20 **agreed** that the change to appropriation for 2020/21 as set out in paragraph 19 above, be included in the 2020/21 Supplementary Estimates and that, in the interim, the increase be met from Imprest Supply.

Michael Webster
Secretary of the Cabinet

In Confidence

Office of the Minister of Justice

Chair, Cabinet

Facilitating dictation voting in managed isolation and quarantine facilities and at the maritime border: Electoral Amendment Regulations (No 4)

Proposal

1. I recommend that Cabinet approve the attached Electoral Amendment Regulations (No 4) for submission to the Executive Council.
2. These Regulations will enable the Electoral Commission ("the Commission") to provide contactless voting through its telephone dictation voting service, to voters in managed isolation and quarantine facilities (MIQFs) and those isolating or in quarantine on board ships at the maritime border.

Relation to government priorities

3. To maintain a healthy democracy, we must ensure that all eligible voters who wish to do so can participate freely. Maintaining public confidence in elections and referendums underpins the public legitimacy of our democratic institutions, both now and into the future.

Remote voting ensures voters who cannot get to a voting place are still able to vote

4. The COVID-19 pandemic has required the Commission to make changes to the delivery of the 2020 Election. Its preparations include provision for voters who cannot safely attend a public place such as a voting place. This may be, for example because they are at higher risk from COVID-19 due to their age or an underlying health condition, or because they are in isolation or quarantine.
5. To ensure that these voters are not disenfranchised, the Commission has expanded the capacity of its existing remote voting options¹, and particularly its postal voting and 'takeaway' voting services. The use of these remote voting services is not mandatory for voters.

[SWC-MIN-20-0077, SWC-MIN-0099 and CAB-20-MIN-0352].

The logistics of providing takeaway voting in MIQFs is challenging

6. The Commission has been working with the Ministry of Business, Innovation and Employment (MBIE) on the provision of enrolment and voting services to eligible voters in MIQFs. MIQF's operate under Alert Level 4 protocols, are fully and securely locked down and are not publicly-accessible facilities.
7. Although some people in MIQFs may have been able to vote as an 'overseas voter' prior to travelling to New Zealand (overseas voting starts on 30 September), some will not be eligible to enrol prior to arrival. For example, New Zealand citizens who have

¹ Section 61(1) of the Electoral Act 1993 provides that a person is eligible to vote away from the polling place ('remote voting') as a special voter if they meet certain conditions, such as being unable to attend a voting place due to illness, infirmity or pregnancy; or if they satisfy a Returning Officer that they cannot get to a polling place 'without incurring hardship or serious inconvenience'.

been away from New Zealand for over three years will not be eligible to enrol until they have physically returned to New Zealand.

8. As I noted in my oral update to Cabinet in 27 July 2020, the Commission has canvassed a range of options for configuring its enrolment and voting services in a way that meets all MIQF health and security requirements. At that time, the Commission was exploring the use of takeaway voting. This would require staff to be available at each of the 32 MIQFs to distribute special voting papers, witness special vote declarations (for voters isolating alone), centrally collect completed papers, and securely transport these papers to the nearest voting place or Electorate Headquarters.
9. In working through the logistics for takeaway voting, the Commission and MBIE identified that this process carries some additional health and safety risks, because it introduces additional people into MIQF. For example, there is a need for people to enter MIQFs to distribute voting packs to individual voters, and the requirement to have someone present to witness the special vote declaration, which may be a particular challenge for those isolating alone.
10. The steps involved in takeaway voting also take time. This timing presents particular challenges for people arriving late on Friday 16 October, or on Saturday 17 October, who may need to complete their enrolment, and then receive and return their voting papers by 7pm. MBIE advises that, with advanced planning, it can ensure those arrivals can go into an Auckland-based MIQF. However, there still may not be sufficient time for voting packs to be prepared and delivered, and for completed ballot papers to be returned, before 7pm on election day.
11. MBIE has also advised that, while there are currently no scheduled international flights arriving other cities over this time period, there can often be unscheduled, one-off international flights arriving into Christchurch.

Telephone dictation voting is contactless so provides a safer option for MIQFs

12. The Commission has proposed dictation voting be used in MIQFs rather than takeaway voting. This is because dictation voting is contactless, and so poses no additional health and safety risk for staff or residents at MIQFs. It is also a more efficient, and less resource-intensive process than takeaway voting, as it does not require the production and physical distribution of papers.
13. Dictation voting involves a special vote. The dictation voting process is a two-stage process, involving the voter first applying for dictation voting and then, in the second stage, casting their vote. This staged approach protects the secrecy of the ballot. The steps involved are:

Stage one

- the voter calls an 0800 number to register for dictation voting
- the voter orally confirms the special vote declaration²
- the voter is then given a unique voter number and an identity verification question

² Because this declaration is taken by an electoral official, the issuing officer can sign the witness panel on the special vote declaration; a separate witness is not required.

Stage two

- the voter then calls the 0800 number again; this call is taken by a different operator to the stage 1 operator
 - the voter provides their unique voting number and answers their identity verification question (to protect their secrecy)
 - the voter is then presented with the list of voting options (for the election and for the referendums)
 - the vote is recorded by one electoral official and checked by a second official
14. The registration call takes approximately 5-10 minutes. The voting call can be made approximately 30 minutes after the registration call, and can take approximately 10 minutes, depending on the number of candidates listed for that voter's electorate.
15. The Commission already provides telephone dictation services from a centralised service centre in Lower Hutt. The Commission advises it can scale up its existing systems, processes and training to manage the estimated 6,000 eligible voters in MIQFs over the voting period, as well as its other existing users, such as people who are blind or sight impaired.
16. This process allows voters to register for dictation voting until up to 5pm on election day. Voters must have started voting by 7pm on election day. It therefore provides much greater certainty about the Commission's ability to provide enrolment and voting services to voters in MIQFs on election day.
17. The need to register for this service helps maintain the integrity of the ballot. Voters must also orally confirm the special vote declaration, stating their eligibility to vote using a special vote (see footnote 1).

Dictation voting could also be used for voters isolating on board ships at the maritime border

18. People arriving into New Zealand by ship are required under the COVID-19 Public Health Response (Maritime Border) Order 2020, which came into effect on 6 September, to remain in isolation or quarantine for 14 days from the date of their last contact with someone not on the ship. This isolation or quarantine may take place on board the ship, or the person may be transferred to a MIQF.
19. Access to these ships is highly restricted, so it will not be practical to offer takeaway voting to people isolating or quarantining on board a ship. The Commission considers telephone dictation voting to be the best option for this group of voters too.

Targeted communications will ensure eligible voters at MIQFs and onboard ships are aware of the dictation voting service

20. The availability of dictation voting at MIQFs and on board ships at the maritime border will be supported by additional targeted communications.
21. MBIE will work with the Commission to provide information for voters currently overseas who may be in MIQF over the voting period, to give these voters advanced notice of how voting will work in this situation.
22. As part of their welcome pack, people arriving at MIQFs will be provided an additional pack relating the 2020 Election. This will include information about how to enrol, summary information about the two referendums, and information about how to register for and vote using the telephone dictation service.
23. New Zealand and the NZ Customs Service will assist in providing a similar information pack to people in isolation and quarantine on board ships

Legislative Implications: Electoral Amendment Regulations (No 4)

24. Under the Electoral Regulations 1996, dictation voting is usually only available to people who are blind or visually impaired, or who have a physical disability which means they cannot mark the ballot paper. The Regulations also allow dictation voting to be used in a local civil emergency, for example by a voter who, as a result of adverse weather conditions or an occurrence beyond their control, is unable to get to a polling place. It is not clear that this 'emergency' exception can apply to people in MIQFs or people in isolation or quarantine on vessels.
25. It is important that the legislation relating to the conduct of the election is clear, to ensure that all votes are validly cast. I am therefore proposing a temporary amendment to the Electoral Regulations, to facilitate the use of dictation voting in MIQFs, or in isolation or quarantine on board a ship at the maritime border. The change would apply only for the 2020 Election.

Timing and 28-day rule

26. A waiver of the 28-day rule is sought, so that these Regulations can come into effect on 11 September 2020 (the day after gazetting). It is preferable that any regulations affecting the conduct of the 2020 Election are in place as early as possible before voting starts; overseas voting starts from 30 September 2020 and advance voting in New Zealand from 3 October 2020.
27. These Regulations will apply to the 2020 Election and referendums only.

Compliance

28. The Order complies with the following:
 - the principles of the Treaty of Waitangi;
 - the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - the principles and guidelines set out in the Privacy Act 1993;
 - relevant international standards and obligations; and
 - the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Financial Implication

29. Cabinet approved \$28.705 million additional funding for the Electoral Commission in June 2020, to put in place additional safety measures needed to deliver the election in a COVID-19 environment [SWC-20-MIN-0077]. No additional funding is sought as a result of the proposed change in voting method to dictation voting for voters in MIQFs and in isolation or quarantine on vessels.

Regulations Review Committee

30. There are no grounds on which the Regulations Review Committee should draw the Order to the special attention of the House in accordance with Standing Order 315.

Certification by Parliamentary Counsel

31. Parliamentary Counsel has certified the Order in Council as being in order for submission to the Executive Council.

Regulatory impact analysis

32. The Treasury has determined that this policy is exempt from providing a Regulatory Impact Statement (RIS) on the grounds that it temporarily allows for the use of telephone dictation for voting and enrolment purpose for voters in MIQFs and in isolation or quarantine on ships at New Zealand borders as a response to the declared emergency of COVID-19. The proposal would also be exempt from the requirement to provide a RIS on the basis that it has minor impacts on businesses, individuals or not for profit entities.

Publicity

33. The Order will be published in the Gazette.

Proactive Release

34. I will proactively release this paper, with any appropriate redactions, in accordance with Cabinet Office Circular CO (18) 4.

Consultation

35. The Electoral Commission, the Ministry of Health, the Ministry of Business, Innovation and Employment, Te Kawa Mataaho Public Service Commission, Maritime New Zealand, the New Zealand Customs Service, the All of Government Group in the Department of Prime Minister and Cabinet and the Treasury have been consulted on this paper. The Policy Advisory Group Department of the Prime Minister and Cabinet has been informed.
36. I have written to the Leader of the Opposition and the Leader of ACT to advise them of these proposed changes to the Electoral Regulations.
37. The Electoral Commission will continue to advise party secretaries as appropriate about its plans for delivering the election and referendums.

Recommendations

38. The Minister of Justice recommends that Cabinet:

1. **note** that the Electoral Commission had been working on arrangements for providing enrolment and 'takeaway' voting services inside MIQFs, and has advised that:
 - the manual and paper-based process of takeaway voting carries additional health and safety risks, as it introduces additional people into MIQFs;
 - the requirement to witness special declarations for voters isolating on their own introduces a higher level of health risk, particularly in quarantine facilities;
 - the time needed to prepare, deliver and collect takeaway voting packs means takeaway voting may be difficult to provide to people arriving in the facilities late on Friday 16 October or on Saturday 17 October; and
2. **note** that takeaway voting is not practical for voters at the maritime border who may be required to isolate or quarantine on board their ship;
3. **note** that the Electoral Commission has recommended providing contactless voting to voters in MIQFs, and voters in isolation or quarantine on board ships at the maritime border, using its existing telephone dictation voting service;

4. **agree** to a temporary amendment to the Electoral Regulations 1996 to allow telephone dictation voting to be used by voters in MIQFs, and voters in isolation or quarantine on board ships at the maritime border;
5. **authorise** the submission to the Executive Council of the Electoral Amendment Regulations (No 4);
6. **agree** to waive the 28-day rule so that the regulations can come into force on 11 September 2020.

Authorised for lodgement

Hon Andrew Little
Minister of Justice



Cabinet

Minute of Decision

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Electoral Amendment Regulations (No 4) 2020

Portfolio Justice

On 7 September 2020, Cabinet:

- 1 **noted** that the Electoral Commission had been working on arrangements for providing enrolment and 'takeaway' voting services inside managed isolation and quarantine facilities (MIQFs), and has advised that:
 - 1.1 the manual and paper-based process of takeaway voting carries additional health and safety risks, as it introduces additional people into MIQFs;
 - 1.2 the requirement to witness special declarations for voters isolating on their own introduces a higher level of health risk, particularly in quarantine facilities;
 - 1.3 the time needed to prepare, deliver and collect takeaway voting packs means takeaway voting may be difficult to provide to people arriving in the facilities late on Friday 16 October or on Saturday 17 October 2020;
 - 1.4 note that takeaway voting is not practical for voters at the maritime border who may be required to isolate or quarantine on board their ship;
- 2 **noted** that the Electoral Commission has recommended providing contactless voting to voters in MIQFs, and voters in isolation or quarantine on board ships at the maritime border, using its existing telephone dictation voting service;
- 3 **agreed** to a temporary amendment to the Electoral Regulations 1996 to allow telephone dictation voting to be used by voters in MIQFs, and voters in isolation or quarantine on board ships at the maritime border;
- 4 **authorised** the submission to the Executive Council of the Electoral Amendment Regulations (No 4) 2020 [PCO 23184/3.0];
- 5 **agreed** to a waiver the 28-day rule so that the regulations can come into force on 11 September 2020.

Michael Webster
Secretary of the Cabinet

In Confidence

Office of the Minister of Health
Office of the Minister of Justice

Chair
Cabinet

2020 General Election and referendums: provision in Covid-19 Public Health Orders

Proposal

1. This paper seeks agreement to the application of appropriate Covid-19 public health measures for the 2020 General Election and referendums, at Alert Levels 1, 2 and 3.

Relation to government priorities

2. The ability to vote in regular elections is an important constitutional right enshrined in the New Zealand Bill of Rights Act 1990.
3. To maintain a healthy democracy, it is important to ensure that as many people as possible can participate in elections and referendums, by making voting accessible to all voters. Ensuring that elections and referendums can be conducted safely and effectively is also critical to upholding the integrity of the electoral system.

Executive summary

4. The Prime Minister confirmed that the 2020 General Election and referendums will be held on Saturday 17 October. Advance voting will begin on Saturday 3 October.
5. The recent Covid-19 resurgence in Auckland resulted in Alert Level 3 restrictions being put in place for the Auckland region and Alert Level 2 restrictions for the rest of New Zealand. The purpose of Alert Levels is to restrict or contain people's movement to prevent any further spread of Covid-19 [CAB-20-MIN-0396 refers].
6. As the trajectory of the pandemic is uncertain, there is a risk that Alert Level 1, 2 or 3 restrictions may need to be applied in one or more regions again, either in the lead up to, or during, the election period. In the context of a general election, some Alert Level restrictions may prevent people from voting, particularly at Alert Level 3, because they involve, for example, restrictions on people's movements and on access to electoral premises.
7. The Electoral Commission is preparing to deliver the general election and referendums as safely as possible and in a way that ensures all voters can participate. Given the significant logistical exercise involved in delivering an event

at this size and scale, the Electoral Commission needs a level of certainty and clarity about how any Alert Level public health measures apply to the general election and referendums.

8. We therefore propose that provisions be put in place to make it clear how the public health measures apply to the election and referendums, using the mechanism of the COVID-19 Public Health Order under the COVID-19 Public Health Response Act 2020.
9. This would provide certainty for the Electoral Commission, electoral workers, political parties, candidates, scrutineers, Justices of the Peace and the voting public about how Covid-19 public health measures apply to the election and referendums. It would also support the Commission to provide clear and consistent messaging in the lead up to the election and referendums to reassure people about the measures it has put in place for Level 2 and would need to put in place for Level 3 to ensure safe delivery of the election.

The Electoral Commission has been planning to deliver the election in a Covid-19 environment

10. The Electoral Commission is an independent Crown entity, with a statutory duty to administer the electoral system. It is required to act independently in performing its functions and duties and exercising its statutory powers.
11. In New Zealand, general elections are 'bricks and mortar' events, largely conducted in person. This approach is not easily compatible with the hygiene, physical distancing and limits on numbers at gatherings that are key to preventing Covid-19 transmission.
12. The Electoral Commission has focussed on putting measures in place to make voting safe for voters, electoral workers and scrutineers in an Alert Level 2 environment, in a way that facilitates participation and maintains public confidence. In deciding what measures to put in place, the Electoral Commission has been guided by Ministry of Health advice.
13. For voting places, the Electoral Commission has adopted measures that enable physical distancing. These measures include:
 - extending the advance voting period by two days;
 - increasing the number of advance polling places and staff, particularly on the weekend before Election Day;
 - increasing the number of polling places and using large, enclosed places to support physical distancing, and incorporating processes to support contact tracing;

- ensuring queues are managed to ensure the number of people inside polling places is restricted (and employing extra staff for queue management);
 - enhanced hygiene measures, including hand sanitiser, making pens available for voters, PPE for electoral workers, and alcohol wipes for cleaning hard surfaces; and
 - a public information campaign to create awareness about the safety protocols and encourage people to 'enrol early, vote early and vote local'.
14. In addition, the Electoral Commission has made provision for voters at higher risk from Covid-19, for example due to illness, age or disability. This includes preparing for an increase in remote voting options such as postal or takeaway votes. The Commission has scaled up to a total remote voting capacity of up to 750,000 voters nationwide; it cannot scale up further.
 15. The Commission advises that based on current data indicators, preparations for the election and referendums are tracking well. Voter enrolment is trending upwards, with an overall enrolment rate of 89% as at 30 August. This is approximately 1% higher than the overall enrolment rate at the same date during the 2017 election.
 16. The Commission's recruitment and confirmation of voting places is also tracking well. It has received 44,565 applications to work in election related roles as at 30 August and has filled 60% of its vacancies. It has contacted all applicants over the past week, and all but 200 have confirmed that they are available for the 17 October election. All electorates are in the process of reconfirming voting places. Most voting places have been able to accommodate the new dates and new locations are being identified in cases where they have not been able to accommodate the new dates.
 17. The Commission's communications campaigns have been realigned to the new date. Its communications will encourage voters to enrol early, vote early and vote local to reduce congestion at voting places.

Providing certainty about how Covid-19 public health measure apply to the election and referendums will support the Electoral Commission's delivery

18. The public health measures proposed to apply to the election and referendums align with the approach taken in existing Alert Level Orders. However, the election does not clearly fit within existing terminology used in Covid-19 Public Health Orders, as the election is not appropriately classified as a business, service or social gathering.
19. We propose specific provisions be put in place to make it clear how the public health measures apply to the election and referendums. The objectives of any such provisions would be to:

- limit the risk of spreading Covid-19;
 - enable people to safely exercise their right to vote; and
 - provide certainty and clarity to the Commission, electoral workers, political parties and candidates, scrutineers, Justices of the Peace and the voting public about how the Covid-19 public health measures apply to the election and referendums.
20. If any part of New Zealand is at Alert Level 1, 2 or 3 it would be preferable to have provisions in place as soon as possible to provide certainty ahead of advance voting beginning on 3 October.
21. The provisions would need to cover the period from the date the Order comes into effect until the day the Commission returns the Writ. Tying the end date to the day the Writ is returned by the Commission ensures that the provisions would cover all electoral processes, including any post-election judicial recount of votes.
22. Any Order provisions would need to cover the following areas:
- enabling the personal movement of voters, electoral workers, scrutineers, Justices of the Peace and Judges (in the event of a judicial recount);
 - ensuring access to electoral premises, such as voting places, national, regional and electorate headquarters and training facilities; and
 - the application of public health measures within voting places and other electoral premises.

Voters, electoral workers and others involved in the delivery of the election need to be able to travel to provide or access voting services

Voters need to be able to access voting places, or receive their voting papers at home

23. People who are eligible to enrol and vote (voters) must be able to leave their homes to participate in the election and referendums by visiting a polling place.
24. Dependants and people assisting voters who are not independently mobile to reach polling places should also be permitted to travel for these purposes, so as not to discourage people from voting by making it difficult for them to attend a polling place because of childcare or other responsibilities, or because of mobility issues.
25. People voting by special vote because they cannot go to a voting place may need to nominate a friend or family member to pick-up and drop-off a special vote 'takeaway vote' for them. Their nominee should also be able to travel for this purpose, but with the proviso that the person nominated must live within the same Alert Level area as the voter they are assisting. If this is not possible, the

Electoral Commission will need to make arrangements for one of its staff to deliver the 'takeaway' voting papers instead.

26. In the event an inter-regional boundary is in place, voters should not need to cross an inter-regional boundary to exercise their right to vote. Polling places near boundaries are designed to be shared across electorates where practicable and should be able to manage votes from multiple electorates that border the polling place.

Electoral workers need to travel to work and to deliver voting services

27. Similarly, electoral workers need to be able to leave their homes to work or assist the Electoral Commission in the performance of its functions. This includes working or assisting at national, regional and electorate premises, training facilities and polling places.
28. In the event an inter-regional boundary is in place, some electoral workers will need to be able to move across a boundary if where they work and where they live are on different sides of an inter-regional boundary.
29. These provisions would apply also to the contingent public sector workforce, should it be required. This contingent workforce is being established by the Ministry of Justice and is being designed to be available for the Electoral Commission to draw on if required. It is one of the measures agreed by Cabinet to mitigate the risk of the Electoral Commission's usual workforce being unwilling to work because of renewed community transmission of Covid-19 [CAB-20-MIN-0418 refers].

Scrutineers, JPs and Judges need to travel to perform their independent functions

30. Scrutineers, Justices of the Peace¹ and Judges provide independent oversight and scrutiny, which is critical to assuring the integrity of the election, and voter perceptions of fairness.
31. They will also need to be able to leave their homes to observe processes at polling places and electoral, regional and national premises (i.e. observing vote issuing, special vote processing, the counts and judicial recount processes). They may also need to move across an Alert Level regional boundary either because their homes or primary places of residence are outside a regional boundary or because the electoral premise is outside a regional boundary.

¹ There are practical limits on the numbers of scrutineers that can be at an electoral premise (polling places and electorate, regional and national premises) at any one time, to support physical distancing measures. The Electoral Commission has discussed with political parties the need for limits based on the space available at polling places.

The application of public health measures at electoral premises will align with the relevant Alert Level

Polling places need to have appropriate public health measures in place

32. Premises leased or contracted by the Commission for use as polling places need to remain available for the election, even if they have been closed for their primary purpose under another Order.
33. In line with public health advice, any provision will require all polling places to have systems in place to ensure that at:
 - Alert Level 2: a person inside a polling place remains at least 1 metre away from any other person; and
 - Alert Level 3: a person inside a polling place remains at least 2 metres away from any other person to the greatest extent practicable; and
 - Alert Level 2 and 3: a person queuing outside a polling place remains at least 2 metres away from any other person to the greatest extent practicable; and
 - Alert Level 2 and 3: appropriate public health measures are in place to mitigate the risks that arise to the extent that physical distancing is not fully maintained (i.e. electoral workers wearing appropriate PPE and where possible limiting contact time with voters to less than 15 minutes); and
 - Alert Level 1, 2 and 3: a copy of the QR code for the polling place² is displayed in a prominent place at or near the main entrance; and
 - Alert Level 2 and 3: other record-keeping systems and processes are in place to support the contact tracing of all people entering the polling place.
34. The Ministry of Health has suggested that voter movements in and out of polling places should be well signposted and actively managed, to reduce transmission risks. In response the Electoral Commission is planning to have electoral workers managing queues outside polling places to restrict the total number of people inside a polling place at any time.
35. Voters will be able to wear masks/face coverings if they wish, and they will also be invited to use a QR code and/or provide information to support contact tracing. This will need to be carefully managed by the Commission, to avoid any implication that these measures are 'mandatory' prerequisites for voters to vote at a polling places, to avoid discouraging voters.

National, regional and electorate premises and training facilities

36. National, regional and electorate premises are where electoral workers provide voting services, for example: carrying out the advance vote early count,

² There will be specific QR codes for each polling place.

processing enrolments, scrutiny of the rolls, special vote processing, the official count and any judicial recounts. Training facilities are where electoral workers receive training for their roles.

37. National, regional and electorate premises are also attended by scrutineers, Justices of the Peace and, potentially, Judges to observe election procedures.
38. These premises are less public-facing, and so it will generally be easier to keep track of who is present at any particular premise at any particular time. However, in line with public health advice for a 'workplace', any Order would need to ensure that all national, regional and electorate premises and training facilities have systems in place to ensure that at:
 - Alert Level 2 and 3: a person employed or engaged by the Commission, scrutineer, Justice of the Peace and Judge remains at least 1 metre away from any other person employed or engaged by the Commission, scrutineer, Justice of the Peace and Judge; and
 - Alert Level 2 and 3: appropriate public health measures are in place to mitigate the risks that arise to the extent that physical distancing is not fully maintained (i.e. hand sanitisation); and
 - Alert Level 1, 2 and 3: a copy of the QR code for the national, regional and electorate premise and training facility is displayed in a prominent place at or near the main entrance; and
 - Alert Level 2 and 3: other record-keeping systems and processes are in place to enable contact tracing.

Compliance and enforcement will be managed under existing provisions and processes

39. There are a range of enforcement provisions in existing Orders for matters such as workplaces not displaying QR codes or people not complying with relevant stay-at-home requirements (at Alert Level 3). These provisions would remain applicable or carried over, where relevant.
40. There are also existing offences in the Electoral Act 1993 for people not acting appropriately at polling places. For example, section 194 of the Act empowers polling place managers to remove people who are wilfully and unnecessarily obstructing the proceedings at a polling place, being disorderly, or acting in defiance of directions given by polling place managers. For this reason, it is not necessary for there to be any additional infringement offences to manage behaviour at polling places.

The Commission is working with MBIE on providing voting services at managed isolation and quarantine facilities

41. Voting will be available in managed isolation and quarantine facilities (MIQFs). The Electoral Commission is working with the Ministry of Business, Innovation and Employment (MBIE) to confirm the arrangements for providing voting services in these facilities.
42. Existing Orders will apply to people working within these facilities.

Financial Implications

43. This paper has no direct financial implications.
44. Cabinet approved funding of \$28.705 million from the Covid-19 Response and Recovery Fund, for the Electoral Commission to put in place the additional safety measures needed to deliver the election and referendums in a Covid-19 environment [SWC-20-MIN-0077 refers].

Legislative Implications

Section 11 Orders under the COVID-19 Public Health Response Act 2020

45. Following Cabinet consideration of this paper, the Minister of Health will consider whether to replace, amend or create any Orders under section 11 of the COVID-19 Public Health Response Act 2020.
46. In doing so, the Minister of Health must have regard to the Director-General's advice about the risks of the outbreak or spread of COVID-19, and the nature and extent of any measures that are appropriate to address those risks.
47. The Minister of Health may also have regard to Cabinet's decision on the level of public health measures appropriate to respond to those risks and avoid, mitigate, or remedy the effects of the outbreak or spread of Covid-19. Such decisions may take into account social and other factors such as, in this case, the constitutional imperative to conduct the election in a timely manner, by:
 - upholding the principles of democracy by ensuring that as many people as possible can participate in the election (and referendums); and
 - ensuring that the election can be conducted safely and effectively.
48. The COVID-19 Public Health Response Act 2020 requires that there be 48 hours between notifying any Order and its coming into force, except where the Order is made urgently "to prevent or contain the outbreak or spread". This exception should not apply to any Order relating to the election and referendums, and so there should be at least 48 hours between the Minister's decision being published and notified, and its coming into force.

49. The provisions would need to cover the period from the date the Order comes into effect until the day the Commission returns the Writ.

Application of the Electoral Act 1993 and the Referendums Framework Act 2019

50. The conduct of the election and the referendums is governed by the Electoral Act 1993, the Referendums Framework Act 2019 and their associated regulations. A section 11 Order under the COVID-19 Public Health Response Act 2020 cannot override these electoral provisions. Any Order would simply set out how the public health requirements for managing Covid-19 apply in the context of the election and referendums.

Impact Analysis

51. In the time available to prepare this paper it has not been feasible to undertake a Regulatory Impact Analysis.

Population Impacts

52. The Minister of Justice's Cabinet paper *Supporting the delivery of the 2020 Election in a Covid-19 environment* included an analysis of the population impact of the measures the Electoral Commission was planning to introduce at voting places (such a physical distancing), and to support remote voting [SWC-20-MIN-0077 refers]. This analysis noted that the Commission's planned measures would benefit all population groups, but particularly those most at high risk from Covid-19 at Alert Level 2.
53. The proposals in this paper will support the Electoral Commission to deliver its Covid-19 related measures, as planned for Alert Level 2, and to understand what additional requirements there would be at Alert Level 3. No separate population impacts analysis has been prepared for this paper.

Human rights

54. Restrictions that limit the number of people who can access polling places at one time and impose physical distancing restrictions inside and outside polling booths may engage the New Zealand Bill of Rights Act 1990 rights to peaceful assembly (section 16), freedom of association (section 17) and freedom of movement (section 18). However, the restrictions appear to be a proportionate response because they enable people to freely access voting services but with limits on physical proximity while they are at those facilities. This may allow people greater movement than they would otherwise have, depending on the Alert Level in place. These restrictions are important because they enable people to safely exercise their right to vote under section 12 of the New Zealand Bill of Rights Act 1990.
55. Enabling voting at MIQFs will be addressed by the existing Orders regulating these facilities. These Orders may raise New Zealand Bill of Rights Act issues. In particular, they may require a person assisting with voting at MIQFs to be tested

for Covid-19. This engages the right to refuse medical treatment (section 11) and the right to be free from unreasonable search or seizure (section 21). Whether the limitation on the right to refuse medical treatment is justifiable and the search is reasonable will depend on the level of exposure of people providing these services, and how frequently they are required to be tested.

Consultation

56. This paper was prepared by the Ministry of Justice. The Electoral Commission, the Ministry of Health, the Ministry of Business, Innovation and Employment, Crown Law Office, Parliamentary Counsel Office, the All-of-Government Response Group and the Policy Advisory Group in the Department of the Prime Minister and Cabinet were consulted on this paper.

57. I have written to the Leader of the Opposition and the Leader of ACT to advise them of the proposal.

Communications

58. We do not intend to issue a media release following Cabinet decisions.

Electoral Commission

59. The Electoral Commission will lead communications with voters, staff, parties and candidates, as required. To promote voter confidence, the Electoral Commission will liaise with the Ministry of Health to ensure consistency between the Commission's messaging and the Ministry's core public health advice on staying home when you are sick, seeking a test if you have symptoms, using the COVID Tracer app, personal hygiene and physical distancing.

60. The Covid-19 All-of-Government Communications and Engagement team, who is working across government with media, will continue to assist the Electoral Commission with its public health messaging, as needed.

Proactive Release

61. We will proactively release this Cabinet paper, with appropriate redactions, in accordance with the Government's proactive release policy.

Recommendations

62. The Minister of Health and the Minister of Justice recommend that Cabinet:

1. **note** that given the potential need for Alert Level 1, 2 or 3 restrictions over the next three-month period, specific provisions are needed to make it clear how the public health measures apply to the election and referendums;
2. **note** that the public health measures that would apply to the election and referendums would align as far as practicable with the approach taken in Orders under the COVID-19 Public Health Response Act 2020;
3. **note** that the election does not clearly fit within existing terminology used in these Orders, as it is not appropriately classified as a business, service or social gathering;
4. **agree** that the appropriate public health measures should be in place from when Cabinet decisions are made until the day the Electoral Commission returns the Writ;

Movement

5. **agree** that, despite any general restrictions on movement that may apply at Alert Level 3, appropriate public health measures in the context of the general election and referendums are:
 - voters, and dependants and/or people assisting voters, will be able to leave their homes to participate in the election and referendums;
 - any person acting on behalf of a voter will be able to leave their home to pick up and drop off takeaway votes, provided the person lives within the same Alert Level area as the voter they are assisting;
 - people employed or engaged by the Electoral Commission are able to leave their homes to assist the Electoral Commission with its functions;
 - scrutineers, Justices of the Peace and Judges may leave their home to observe electoral processes at polling places, and electoral, regional and national premises;
6. **agree** that in the event that there is an Alert Level regional boundary in place, people employed or engaged by the Electoral Commission, and scrutineers, Justices of the Peace and Judges, may move across the regional boundary to perform the duties noted in recommendation 5, if where they work and where they live are on different sides of the inter-regional boundary;

Electoral premises

7. **agree** that premises leased or contracted by the Electoral Commission for use as polling places are able to remain open if they have been closed for their primary purpose under an Order;
8. **agree** that appropriate public health measures in the context of the general election and referendums are for polling places to have systems in place to require that at:
 - Alert Level 2: a person inside a polling place remains at least 1 metre away from any other person; and
 - Alert Level 3: a person inside a polling place remains at least 2 metres away from any other person to the greatest extent practicable; and
 - Alert Level 2 and 3: a person queuing outside a polling place remains at least 2 metres away from any other person to the greatest extent practicable; and
 - Alert 2 and 3: appropriate public health measures are in place to mitigate the risks that arise to the extent that physical distancing is not fully maintained; and
 - Alert Level 1, 2 and 3: a copy of the QR code for the polling place is displayed in a prominent place at or near the main entrance; and
 - Alert Level 2 and 3: other record-keeping systems and process are in place to support the contact tracing of all people entering the polling place;
9. **agree** that, in line with other workplaces, national, regional and electorate premises and training facilities are required to have systems in place to require that at:
 - Alert Level 2 and 3: a person employed or engaged by the Commission, a scrutineer, a Justice of the Peace or a Judge remains at least 1 metre away from any other person employed or engaged by the Commission, a scrutineer, a Justice of the Peace or a Judge; and
 - Alert Level, 2 and 3: appropriate public health measures are in place to mitigate the risks that arise to the extent that physical distancing is not fully maintained; and
 - Alert Level 1, 2 and 3: a copy of the QR code for the national, regional and electorate premises and training facilities is displayed in a prominent place at or near the main entrance; and

- Alert Level 2 and 3: other record-keeping systems and process are in place to enable the contact tracing of electoral workers, scrutineers, Justices of the Peace and Judges;

Compliance and enforcement

10. **note** that enforcement provisions in existing Orders would remain applicable or carried over, where relevant;

Managed isolation and quarantine facilities

11. **note** that existing Orders will apply to people providing voting services in managed isolation and quarantine facilities (MIQFs);

Other

12. **note** the Minister of Health, in making any decisions on whether to replace, amend or create any Orders under section 11 of the COVID-19 Public Health Response Act 2020, will have regard to Cabinet's decisions and further comments from Ministers arising out of consultation; and
13. **note** that, in making the decisions referred to at recommendation 12, the Minister of Health will also consider what is appropriate to achieve the purpose of the COVID-19 Public Health Response Act 2020, and take into account social factors, such as the need to uphold the principles of democracy by ensuring that as many people as possible can participate in the election and referendums.

Authorised for lodgement

Hon Chris Hipkins
Minister of Health

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.

2020 General Election and Referendums: Provision in COVID-19 Public Health Orders

Portfolios Health / Justice

On 7 September 2020, Cabinet:

Application of public health measures to General Election and referendums

- 1 **noted** that given the potential need for Alert Level 1, 2 or 3 restrictions over the next three-month period, specific provisions are needed to make it clear how the public health measures apply to the General Election and referendums;
- 2 **noted** that the public health measures that would apply to the Election and referendums would align as far as practicable with the approach taken in Orders under the COVID-19 Public Health Response Act 2020;
- 3 **noted** that the Election does not clearly fit within existing terminology used in these Orders, as it is not appropriately classified as a business, service, or social gathering;
- 4 **agreed** that the appropriate public health measures should be in place from when Cabinet decisions are made until the day the Electoral Commission returns the Writ;

Movement

- 5 **agreed** that, despite any general restrictions on movement that may apply at Alert Level 3, appropriate public health measures in the context of the general election and referendums are:
 - 5.1 voters, and dependants and/or people assisting voters, will be able to leave their homes to participate in the Election and referendums;
 - 5.2 any person acting on behalf of a voter will be able to leave their home to pick up and drop off takeaway votes, provided the person lives within the same Alert Level area as the voter they are assisting;
 - 5.3 people employed or engaged by the Electoral Commission are able to leave their homes to assist the Electoral Commission with its functions;
 - 5.4 scrutineers, Justices of the Peace and Judges may leave their home to observe electoral processes at polling places, and electoral, regional and national premises;

- 6 **agreed** that in the event that there is an Alert Level regional boundary in place, people employed or engaged by the Electoral Commission, and scrutineers, Justices of the Peace and Judges, may move across the regional boundary to perform the duties described in paragraph 5 above, if where they work and where they live are on different sides of the inter-regional boundary;

Electoral premises

- 7 **agreed** that premises leased or contracted by the Electoral Commission for use as polling places are able to remain open if they have been closed for their primary purpose under an Order;
- 8 **agreed** that appropriate public health measures in the context of the Election and referendums are for polling places to have systems in place to require that at:
- 8.1 Alert Level 2: a person inside a polling place remains at least 1 metre away from any other person;
 - 8.2 Alert Level 3: a person inside a polling place remains at least 2 metres away from any other person to the greatest extent practicable;
 - 8.3 Alert Level 2 and 3: a person queuing outside a polling place remains at least 2 metres away from any other person to the greatest extent practicable;
 - 8.4 Alert 2 and 3: appropriate public health measures are in place to mitigate the risks that arise to the extent that physical distancing is not fully maintained;
 - 8.5 Alert Level 1, 2 and 3: a copy of the QR code for the polling place is displayed in a prominent place at or near the main entrance;
 - 8.6 Alert Level 2 and 3: other record-keeping systems and processes are in place to support the contact tracing of all people entering the polling place;
- 9 **agreed** that, in line with other workplaces, national, regional and electorate premises and training facilities are required to have systems in place to require that at:
- 9.1 Alert Level 2 and 3: a person employed or engaged by the Electoral Commission, a scrutineer, a Justice of the Peace or a Judge remains at least 1 metre away from any other person employed or engaged by the Commission, a scrutineer, a Justice of the Peace or a Judge;
 - 9.2 Alert Level, 2 and 3: appropriate public health measures are in place to mitigate the risks that arise to the extent that physical distancing is not fully maintained;
 - 9.3 Alert Level 1, 2 and 3: a copy of the QR code for the national, regional and electorate premises and training facilities is displayed in a prominent place at or near the main entrance;
 - 9.4 Alert Level 2 and 3: other record-keeping systems and processes are in place to enable the contact tracing of electoral workers, scrutineers, Justices of the Peace and Judges;

Compliance and enforcement

- 10 **noted** that enforcement provisions in existing Orders would remain applicable or carried over, where relevant;

Managed isolation and quarantine facilities

- 11 **noted** that existing Orders will apply to people providing voting services in managed isolation and quarantine facilities (MIQFs);

Other

- 12 **noted** that the Minister of Health, in making any decisions on whether to replace, amend or create any Orders under section 11 of the COVID-19 Public Health Response Act 2020, will have regard to Cabinet's decisions and further comments from Ministers arising out of consultation;
- 13 **noted** that, in making the decisions referred to in paragraph 12 above, the Minister of Health will also:
- 13.1 consider what is appropriate to achieve the purpose of the COVID-19 Public Health Response Act 2020;
 - 13.2 take into account social factors, such as the need to uphold the principles of democracy by ensuring that as many people as possible can participate in the Election and referendums.

Michael Webster
Secretary of the Cabinet