

# Electoral Amendment Act (No 2) 1995

Public Act 1995 No 61  
Date of assent 6 December 1995

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**Schedule**  
**New forms 1, 4A, 11, 12, 13, 16, and 17**

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**An Act to amend the Electoral Act 1993**

**BE IT ENACTED** by the Parliament of New Zealand as follows:

**1 Short Title and commencement**

- (1) This Act may be cited as the Electoral Amendment Act (No 2) 1995, and shall be read together with and deemed part of the Electoral Act 1993 (hereinafter referred to as the principal Act).
- (2) Except as provided in sections 8(2), 9(2), 11(2), 51(3), and 80 of this Act, this Act shall come into force on the date on which this Act receives the Royal assent.

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**15 Application for registration**

- (1)
- (2) Section 63(2) of the principal Act is hereby further amended by adding the following paragraph:

- “(d) Shall be accompanied by a declaration made by the Secretary of the party in the manner provided by section 9 of the Oaths and Declarations Act 1957, which declaration shall—
- “(i) State whether the party is a party in respect of which there are one or more component parties; and
  - “(ii) Where the party has one or more component parties, state the name of each component party.”
- (3) *This subsection inserted s 63(4) of the principal Act*
- (4) Where a political party has obtained registration under Part 4 of the principal Act in the period beginning with the coming into force of section 63 of the principal Act and ending with the coming into force of section 63(2)(d) of the principal Act (as inserted by subsection (2) of this section), the Secretary of the party shall forward to the Electoral Commission, within 3 months of section 63(2)(d) of this Act coming into force, the declaration required by that section.
- (5) Where the Secretary of a political party fails to comply with subsection (4) of this section, the Electoral Commission shall—
- (a) Cancel the registration of that party; and
  - (b) As soon as reasonably practicable, give written notice of the cancellation to the Secretary of the political party; and
  - (c) Cause notice of the cancellation to be published in the *Gazette*.

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**79 New sections inserted**

The principal Act is hereby amended by inserting, after section 214A (as inserted by section 38 of this Act), the following heading and sections:

*“Political parties’ election expenses*

**“214B Maximum amount of parties’ election expenses**

“(1) Subject to this section, in this Act,—

“**Election activity**, in relation to a party that is registered under Part IV of this Act, means an activity—

“(a) Which is carried out by the party or with the party’s authority; and

“(b) Which comprises—

“(i) Advertising of any kind; or

“(ii) Radio or television broadcasting; or

- “(iii) Publishing, issuing, distributing, or displaying addresses, notices, posters, pamphlets, handbills, billboards, and cards; and
  - “(c) Which—
    - “(i) Encourages or persuades or appears to encourage or persuade voters to vote for the party; or
    - “(ii) Encourages or persuades or appears to encourage or persuade voters not to vote for any other party registered under Part IV of this Act; or
    - “(iii) Both; and
  - “(d) Which takes place within the 3 months immediately preceding polling day:
- “**Election expenses**, in relation to a party that is registered under Part IV of this Act,—
- “(a) Means expenses that are incurred by or on behalf of the party in respect of any election activity; and
  - “(b) Includes expenses that are incurred by or on behalf of the party, before or after the 3 months immediately preceding polling day, in respect of any election activity; and
  - “(c) Includes the reasonable market value of any materials applied in respect of any election activity which are given to the party or which are provided to the party free of charge or below reasonable market value; and
  - “(d) Includes the cost of any printing or postage in respect of any election activity, whether or not the expenses in respect of the printing or postage are incurred by or on behalf of the party; but
  - “(e) Does not include the labour of any person which is provided to the party free of charge by that person; and
  - “(f) Does not include expenditure relating exclusively to the election expenses of any of that party’s individual constituency candidates under section 213 of this Act; and
  - “(g) Does not include allocations of time and money made to political parties by the body responsible for such allocations under the Broadcasting Act 1989.
- “(2) In the case of a general election, the total election expenses of a party that is registered under Part IV of this Act shall not,—

- “(a) If the party is listed in the part of the ballot paper that relates to the party vote, exceed \$1,000,000 plus \$20,000 for each constituency contested by a candidate for that party (which sum shall be inclusive of goods and services tax); and
  - “(b) If the party is not listed in the part of the ballot paper that relates to the party vote, exceed \$20,000 for each constituency contested by a candidate for that party (which sum shall be inclusive of goods and services tax).
- “(3) Every person who directly or indirectly pays or knowingly aids or abets any person in paying for or on account of any election expenses any sum in excess of the maximum amount prescribed by this section is,—
- “(a) If the act is done with knowledge that the payment is in excess of the maximum amount prescribed by this section, guilty of a corrupt practice; and
  - “(b) In any other case, guilty of an illegal practice unless the person proves that he or she took all reasonable steps to ensure that the election expenses did not exceed the maximum amount prescribed by this section.

**“214C Return of election expenses**

- “(1) Within 70 days after the day on which the result of an election of candidates whose names appear on the party lists is declared by the Chief Electoral Officer in accordance with section 193(5) of this Act, the Secretary of each political party registered under Part IV of this Act shall forward to the Electoral Commission, a return of the party’s election expenses (which return shall be on a form provided by the Electoral Commission) and the auditor’s report which has been obtained under section 214E of this Act and which relates to that return.
- “(2) Every Secretary of a political party registered under Part IV of this Act commits an offence and shall be liable on summary conviction to a fine not exceeding \$20,000 who fails, without reasonable excuse, to forward to the Electoral Commission, within the time prescribed by subsection (1) of this section, the return and the auditor’s report relating to the return.
- “(3) Every Secretary of a political party registered under Part IV of this Act who forwards to the Electoral Commission under

subsection (1) of this section a return that is false in any material particular—

“(a) Is, if the Secretary forwards the return knowing that the return is false in any material particular, guilty of a corrupt practice and is liable on conviction on indictment to imprisonment for a term not exceeding one year or to a fine not exceeding \$20,000, or to both; and

“(b) Is, in any other case, guilty of an illegal practice and is liable on conviction on indictment to a fine not exceeding \$20,000, unless the Secretary proves—

“(i) That he or she had no intention to mis-state or conceal the facts; and

“(ii) That he or she took all reasonable steps in the circumstances to ensure that the information in the return was accurate.

“(4) Every person charged with an offence against subsection (3)(a) of this section may be convicted of an offence against subsection (3)(b) of this section.

“(5) It shall be the duty of the Electoral Commission to see that the provisions of this section are complied with.

“(6) Where the Electoral Commission believes that any person has committed an offence against subsection (2) or subsection (3) of this section, the Electoral Commission shall report the facts on which that belief is based to the Police.

#### “214D Appointment of auditors

“(1) Every party registered under Part IV of this Act shall appoint an auditor.

“(2) None of the following persons may be appointed or act as an auditor under subsection (1) of this section:

“(a) An employee or partner of a candidate:

“(b) An officer or employee of a political party:

“(c) A body corporate:

“(d) A person who, by virtue of section 199(1) of the Companies Act 1993, may not be appointed or act as auditor of a company:

“(e) A Returning Officer or Deputy Returning Officer:

“(f) A candidate or agent of a candidate.

- “(3) Where an auditor appointed by a party pursuant to subsection (1) of this section ceases for any reason to hold office as such or becomes ineligible as provided in subsection (2) of this section, the party shall appoint another auditor forthwith.

**“214E Auditor’s report**

- “(1) Every Secretary of a political party registered under Part IV of this Act shall, before transmitting to the Electoral Commission the return required by section 214C(1) of this Act, obtain from the auditor appointed by the party under section 214D of this Act a report on that return.
- “(2) The auditor shall state in the report whether or not, in the auditor’s opinion, the return fairly reflects the election expenses of the party.
- “(3) The auditor shall make such examinations as the auditor considers necessary.
- “(4) The auditor shall specify in the report any case in which—
- “(a) The return does not, in the auditor’s opinion, fairly reflect the election expenses of the party:
  - “(b) The auditor has not received from the party or the Secretary of the party all the information that the auditor requires to carry out his or her duties:
  - “(c) Proper records of the party’s election expenses have not, in the auditor’s opinion, been kept by the party or the Secretary of the party.
- “(5) The auditor—
- “(a) Shall have access at all reasonable times to all records, documents, and accounts which relate to the party’s election expenses and which are held by the party or the Secretary of the party; and
  - “(b) May require the party or the Secretary of the party to provide such information and explanations as, in the auditor’s opinion, may be necessary to enable the auditor to prepare the report.

*“Disclosure of donations to political parties*

**“214F Interpretation**

In sections 214G to 214L of this Act,—

“**Electorate donation**, in relation to a party registered under Part IV of this Act,—

“(a) Means a donation (whether of money or of the equivalent of money or of goods or services or of a combination of those things)—

“(i) Which is received on behalf of the party by any person or body of persons involved in the administration of the affairs of the party within an electorate; and

“(ii) Which, either on its own or when aggregated with all other such donations made in the same year by the same person within the same electorate, exceeds \$1,000 in sum or value (which sum shall be inclusive of goods and services tax); and

“(b) Includes, where goods or services are provided to the party under a contract at 90 percent or less of their reasonable market value, the amount of the difference between the contractual price of the goods or services and the reasonable market value of those goods or services; but

“(c) Does not include the labour of any person which is provided to the party free of charge by that person; and

“(d) Does not include any election donation that is included in a return made by a constituency candidate under section 210 of this Act:

“**National donation**, in relation to a party registered under Part IV of this Act,—

“(a) Means a donation (whether of money or of the equivalent of money or of goods or services or of a combination of those things)—

“(i) Which is received by or on behalf of the party by any person or body of persons involved in the administration of the affairs of the party over more than one electorate; and

“(ii) Which, either on its own or when aggregated with all other such donations made in the same year by the same person exceeds \$1,000 in sum or value (which sum shall be inclusive of goods and services tax); and

- “(b) Includes, where goods or services are provided to the party under a contract at 90 percent or less of their reasonable market value, the amount of the difference between the contractual price of the goods or services and the reasonable market value of those goods or services; but
- “(c) Does not include the labour of any person which is provided to the party free of charge by that person; and
- “(d) Does not include any election donation that is included in a return made by a constituency candidate under section 210 of this Act:

“**Year** means a period of 12 months beginning on the 1st day of January and ending with the 31st day of December.

**“214G Appointment of electorate agent**

- “(1) Every Secretary of a party registered under Part IV of this Act shall—
  - “(a) Appoint for each electorate in which persons are engaged in the administration of the affairs of the party within that electorate, an electorate agent, who shall be the person responsible for providing a return and a declaration in accordance with section 214H(1) of this Act; and
  - “(b) Supply the Electoral Commission with the name and residential address of every person appointed under paragraph (a) of this subsection and a copy of the appointee’s consent to his or her appointment.
- “(2) Where an electorate agent appointed under subsection (1)(a) of this section ceases for any reason to hold office as such, the Secretary of the party shall, unless the administration of the affairs of the party are no longer carried on within that electorate,—
  - “(a) Appoint another electorate agent forthwith; and
  - “(b) Supply the Electoral Commission with the name and residential address of every person appointed under paragraph (a) of this subsection and a copy of the appointee’s consent to his or her appointment.

**“214H Return of electorate donations**

- “(1) Every electorate agent appointed under section 214G(1)(a) of this Act, shall, not later than the 31st day of March in each year, forward to the Secretary of the political party by which the electorate agent was appointed—
- “(a) A return (which shall be on a form provided by the Electoral Commission) setting out—
- “(i) The name and address of each person who made an electorate donation in the year ending with the immediately preceding 31st day of December and the amount of each such donation; and
- “(ii) The amount of each anonymous electorate donation made in the year ending with the immediately preceding 31st day of December (being a donation that, by virtue of paragraph (a)(ii) of the definition of the term **electorate donation** in section 214F of this Act, is an electorate donation) and the fact that that donation has been received anonymously; and
- “(b) A declaration in form 17.
- “(2) Every electorate agent commits an offence and is liable on summary conviction to a fine not exceeding \$5,000 who fails without reasonable excuse to comply with subsection (1) of this section.
- “(3) Every electorate agent who forwards to the Secretary of the political party under subsection (1)(a) of this section a return that is false in any material particular—
- “(a) Commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$5,000, or to both, if the electorate agent forwards the return knowing that the return is false in any material particular; and
- “(b) In any other case, commits an offence and is liable on summary conviction to a fine not exceeding \$5,000, unless he or she proves—
- “(i) That he or she had no intention to mis-state or conceal the facts; and

- “(ii) That he or she took all reasonable steps in the circumstances to ensure that the information in the return was accurate.
- “(4) Every person charged with an offence against subsection (3)(a) of this section may be convicted of an offence against subsection (3)(b) of this section.
- “(5) Notwithstanding anything in subsection (1) of this section, where an electorate agent for a political party is required to make under that subsection a return of electorate donations that relates to the year in which the political party became registered under Part IV of this Act, that return shall relate to the period beginning with the date of the registration of that political party under Part IV of this Act and ending with the 31st day of December of that year.

**“214I Return of national donations**

- “(1) Every Secretary of a political party registered under Part IV of this Act shall, not later than the 30th day of April in each year, forward to the Electoral Commission—
  - “(a) A return (which shall be on a form provided by the Electoral Commission) setting out—
    - “(i) The name and address of each person who made a national donation in the year ending with the immediately preceding 31st day of December and the amount of each such donation; and
    - “(ii) The amount of each anonymous donation made in the year ending with the immediately preceding 31st day of December (being a donation that, by virtue of paragraph (a)(ii) of the definition of the term **national donation** in section 214F of this Act, is a national donation) and the fact that that donation has been received anonymously; and
  - “(b) The auditor’s report on the return referred to in paragraph (a) of this subsection (being the report obtained under section 214J of this Act); and
  - “(c) The returns received by the Secretary of the political party under section 214H(1) of this Act in respect of

the period of 12 months ending with the immediately preceding 31st day of December.

- “(2) Every Secretary of a political party registered under Part IV of this Act who fails, without reasonable excuse, to comply with subsection (1) of this section commits an offence and is liable on summary conviction to a fine not exceeding \$20,000.
- “(3) Every Secretary of a political party registered under Part IV of this Act who forwards to the Electoral Commission under subsection (1)(a) of this section a return that is false in any material particular—
- “(a) Is, if the Secretary forwards the return knowing that the return is false in any material particular, guilty of a corrupt practice and is liable on conviction on indictment to imprisonment for a term not exceeding one year or to a fine not exceeding \$20,000, or to both; and
  - “(b) Is, in any other case, guilty of an illegal practice and is liable on conviction on indictment to a fine not exceeding \$20,000, unless the Secretary proves—
    - “(i) That he or she had no intention to mis-state or conceal the facts; and
    - “(ii) That he or she took all reasonable steps in the circumstances to ensure that the information in the return was accurate.
- “(4) Every person charged with an offence against subsection (3)(a) of this section may be convicted of an offence against subsection (3)(b) of this section.
- “(5) Notwithstanding anything in subsection (1) of this section, where a Secretary of a political party is required to make under that subsection a return of national donations that relates to the year in which the political party became registered under Part IV of this Act, that return shall relate to the period beginning with the date of the registration of that political party under Part IV of this Act and ending with the 31st day of December of that year.

**“214J Auditor’s report**

- “(1) Every Secretary of a political party registered under Part IV of this Act shall, before forwarding to the Electoral Commission, the return required by section 214I(1)(a) of this Act, obtain

from the auditor appointed under section 214D of this Act a report on the return.

- “(2) The auditor shall state in the report whether or not, in the auditor’s opinion, the return fairly reflects the national donations received by the party.
- “(3) The auditor shall make such examinations as the auditor considers necessary.
- “(4) The auditor shall specify in the report any case in which—
  - “(a) The return does not, in the auditor’s opinion, fairly reflect the national donations received by the party:
  - “(b) The auditor has not received from the party or the Secretary for the party all the information that the auditor requires to carry out his or her duties:
  - “(c) Proper records of national donations received by the party have not, in the auditor’s opinion, been kept by the party or the Secretary for the party.
- “(5) The auditor—
  - “(a) Shall have access at all reasonable times to all records, documents, and accounts which relate to the national donations received by the party and which are held by the party or the Secretary of the party; and
  - “(b) May require the party or the Secretary of the party to provide such information and explanations as, in the auditor’s opinion, may be necessary to enable the auditor to prepare the report.

**“214K Duties of Electoral Commission**

- “(1) It shall be the duty of the Electoral Commission to see that the provisions of sections 214H(1) and 214I(1) of this Act are complied with.
- “(2) Where the Electoral Commission believes that any person has committed an offence against section 214H(2) or section 214H(3) or section 214I(2) or section 214I(3) of this Act, the Electoral Commission shall report the facts upon which that belief is based to the Police.

**“214L Inspection of returns and audit reports**

Members of the public shall be entitled, at any time between 9.00am and 4.00pm, on any day on which the office of the Electoral Commission is open, to inspect without payment—

- “(a) Returns and auditors’ reports forwarded to the Electoral Commission under section 214C(1) of this Act (being returns of election expenses):
- “(b) Returns forwarded to the Electoral Commission under section 212(1)(b) of this Act (being returns of constituency candidate election expenses):
- “(c) Returns forwarded to the Electoral Commission under section 214I(1)(a) of this Act (being returns of national donations):
- “(d) Returns forwarded to the Electoral Commission under section 214I(1)(c) of this Act (being returns of electorate donations):
- “(e) Auditors’ reports forwarded to the Electoral Commission under section 214I(1)(b) of this Act.”

**80 Commencement of provisions relating to auditors, electorate agents, and donations**

- (1) Sections 214D to 214L of the principal Act (as inserted by section 79 of this Act) shall come into force on the 1st day of April 1996.
- (2) Notwithstanding anything in section 214C of the principal Act (as inserted by section 79 of this Act), in respect of the period beginning with the commencement of section 214C of the principal Act (as so inserted) and ending with the close of the 31st day of March 1996, that section shall be read—
  - (a) As if the words **and the auditor’s report which has been obtained under section 214E of this Act and which relates to that return** were omitted from subsection (1); and
  - (b) As if the words **and the auditor’s report relating to the return** were omitted from subsection (2).
- (3) Notwithstanding anything in sections 214H and 214I of the principal Act (as inserted by section 79 of this Act),—
  - (a) The return of electorate donations to be made in respect of the year ending on the 31st day of December 1996, by

every electorate agent under section 214H(1)(a) of the principal Act shall relate to the period beginning with the 1st day of April 1996 and ending with the 31st day of December 1996; and

- (b) The return of national donations to be made in respect of the year ending on the 31st day of December 1996, by every party secretary under section 214I(1)(a) of the principal Act shall relate to the period beginning with the 1st day of April 1996 and ending with the 31st day of December 1996.

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**Schedule**

Sections 87, 88, 89, 90, 91,  
94, 95

**New forms 1, 4A, 11, 12, 13, 16, and 17**