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as at 25 September 2015



## New Zealand Flag Referendums Act 2015

Public Act      2015 No 66  
Date of assent    14 August 2015  
Commencement    see section 2

### Contents

	Page
1      Title	4
2      Commencement	4
<b>Part 1</b>	
<b>Preliminary provisions</b>	
3      Purpose	4
4      Expiry	5
5      Interpretation	5
6      General description of Preferential Voting electoral system	7
7      General description of First Past the Post electoral system	7
8      Application of Act to conduct outside New Zealand	7
9      Act binds the Crown	8
<b>Part 2</b>	
<b>Provisions relating to referendums</b>	
Subpart 1—Referendums on New Zealand flag	
10     Subject of referendums	8
11     Appointment of dates for referendums	8
12     Voting period	8

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#### Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This Act is administered by the Ministry of Justice.**

13	Alternative flag designs	9
14	Voting paper in second flag referendum	9
	Subpart 2—Officials	
15	Returning Officer	10
16	Returning Officer may employ or engage persons	10
17	Delegation by Returning Officer	10
	Subpart 3—Rolls of electors	
18	Rolls of electors	11
	Subpart 4—Conduct of referendums	
19	Who may vote	12
20	Electoral systems for referendums	12
	<i>Dispatching voting papers</i>	
21	Period for dispatching voting papers	12
22	Dispatching voting papers by post	12
23	Dispatching replacement voting papers by post	13
24	Dispatching voting papers by fax, email, or dictation	13
25	Envelopes and information accompanying voting papers	14
26	Extension of voting period	15
	<i>Marking and returning voting papers</i>	
27	Method of voting	16
28	Return of voting papers to Returning Officer	16
29	Times for return of voting papers	17
30	Voting papers returned late	17
	<i>Progressive processing of voting papers</i>	
31	Processing of voting papers	18
32	Informal voting papers	18
33	Invalid voting papers	18
34	Protection of secrecy during processing	19
35	Publicity during processing	19
36	Supervision of processing	20
	<i>Announcing results</i>	
37	Procedure after close of voting period	21
38	Declaration of result of referendum	21
39	Determination of result in event of tie	22
40	Disposal of voting papers and rolls	22
	Subpart 5—Application for inquiry into conduct of referendum	
	<i>Parties to inquiry</i>	
41	Who may make application	23
42	Who may be respondents	23
43	Group of electors may oppose application	23

<i>Making of application</i>		
44	Making of application	24
45	Application to be served on respondents	24
<i>Hearing of application</i>		
46	More than 1 application relating to same referendum	24
47	Matters to be inquired into at hearing	24
<i>Court's decision</i>		
48	Decision of court as to result of referendum	25
49	Fresh referendum	25
<b>Subpart 6—Offences</b>		
50	Unauthorised use or disclosure of referendum information	25
51	Influencing electors generally	26
52	Offences in relation to voting papers	26
53	Bribery by any person at any time	27
54	Bribery by any person after voting period	28
55	Bribery by elector before or during voting period	29
56	Treating	29
57	Undue influence	30
58	Interference with voting or compromising secrecy of voting	30
59	Personation	31
60	Offences in relation to processing	31
61	Property may be stated as vesting in Returning Officer	32
<b>Subpart 7—Advertising</b>		
62	Interpretation	32
63	Meaning of referendum advertisement	32
64	Referendum advertisement to include promoter statement	34
65	Failure to include promoter statement in referendum advertisement	34
66	Duty of Electoral Commission	34
67	Regulated periods for purposes of Parliamentary Service Act 2000	35
<b>Part 3</b>		
<b>Miscellaneous provisions</b>		
<i>Orders in Council</i>		
68	Regulations	35
69	Validation of irregularities	35
<i>Provisions relating to change of New Zealand flag</i>		
70	Amendments to Flags, Emblems, and Names Protection Act 1981	36
5	The New Zealand Flag	36
5A	1902 Flag	37
71	Amendments to Land Transport (Driver Licensing) Rule 1999	38
63A	Validity not affected by change of New Zealand Flag	38

72	Transitional provision	38
	<b>Schedule 1</b>	39
	<b>Voting paper for first flag referendum</b>	
	<b>Schedule 2</b>	40
	<b>Voting paper for second flag referendum</b>	
	<b>Schedule 3</b>	41
	<b>Forms</b>	
	<b>Schedule 4</b>	46
	<b>Method of counting preferential votes</b>	
	<b>Schedule 5</b>	51
	<b>New Schedules 1 and 1A inserted</b>	

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

**1 Title**

This Act is the New Zealand Flag Referendums Act 2015.

**2 Commencement**

- (1) This Act (except sections 70, 71, and 72) comes into force on the day after the date on which it receives the Royal assent.
- (2) If, in the second flag referendum, the alternative flag design gains a greater number of votes than the current New Zealand Flag, then sections 70, 71, and 72 commence on whichever of the following dates is earlier:
  - (a) a date set by the Governor-General by Order in Council:
  - (b) the day that is 6 months after the date on which the result of the second flag referendum is declared.
- (3) If, in the second flag referendum, the current New Zealand Flag gains a greater number of votes than the alternative flag design, then sections 70, 71, and 72 do not commence.
- (4) In this section, **alternative flag design** means the alternative flag design referred to in section 14(1)(a).

**Part 1**

**Preliminary provisions**

**3 Purpose**

The purpose of this Act is to make provision for 2 postal referendums to be held to enable electors to decide whether New Zealand should have a new flag,

and to provide for a change of the New Zealand flag if electors decide New Zealand should have a new flag.

#### 4 Expiry

- (1) This Act expires and is repealed on the close of the day that is 2 years after the date on which the result of the second flag referendum is declared.
- (2) Despite subsection (1), if section 49(1) (which provides for a fresh referendum to be held in the case of the court declaring a referendum void) applies in the case of the second referendum, this Act expires and is repealed 2 years after the date on which the result of the fresh referendum is declared.

Compare: 2010 No 139 s 5

#### 5 Interpretation

In this Act, unless the context otherwise requires,—

**2000 Act** means the Referenda (Postal Voting) Act 2000

**agency** means any department or instrument of the Executive Government of New Zealand, or any branch or division of any of those departments or instruments

**alternative flag design** means an alternative flag design prescribed under section 13(1)

**Clerk of the House** means the Clerk of the House of Representatives

**current New Zealand Flag** means the flag declared by section 5(1) of the Flags, Emblems, and Names Protection Act 1981 to be the New Zealand Flag

**district** means a General electoral district or a Maori electoral district constituted under the Electoral Act 1993

**elector** means a person whose name lawfully appears on the referendum roll or any supplementary referendum roll

**Electoral Commission** means the Electoral Commission established by section 4B of the Electoral Act 1993

**first flag referendum** means the referendum held under section 10(1)

**First Past the Post** means the electoral system described generally in section 7

**Internet site** means the page on the Electoral Commission Internet site maintained by the Returning Officer for the purpose of receiving voting papers returned in electronic form

**Minister** means the Minister of the Crown who is, with the authority of the Prime Minister, for the time being responsible for the administration of this Act

**official description**, in relation to a flag or flag design, means the description of that flag or flag design prescribed under section 13(2)(a) or 14(3)

**option** means,—

- (a) in relation to the first flag referendum, any of the 5 alternative flag designs for which a vote may be cast:
- (b) in relation to the second flag referendum, either of the 2 options (the current New Zealand Flag and the alternative flag design referred to in section 14(1)(a)) for which a vote may be cast

**panel** means any panel appointed by the Minister to conduct, on behalf of the New Zealand Government, a publicity campaign or other activity in relation to a referendum or referendums

**Preferential Voting** means the electoral system described generally in section 6

**promoter** has the meaning given in section 62

**random order**, in relation to the arrangement of options on a voting paper, means an arrangement where the order of the options is determined by the Electoral Commission randomly by lot and all voting papers use that order

**referendum** means the first flag referendum or the second flag referendum

**referendum advertisement** has the meaning given in section 63

**referendum material** means material that is prepared by a panel and presented to electors for the purpose of informing them about each of the options

**referendum roll** has the meaning given in section 3(1) of the 2000 Act

**referendums** means the first flag referendum and the second flag referendum

**returned**, in relation to a voting paper, means—

- (a) returned to the office of the Returning Officer; or
- (b) uploaded to the Internet site

**Returning Officer**—

- (a) means the Returning Officer referred to in section 15(1); and
- (b) includes any person acting under a delegation under section 17(1)

**Returning Officer's copy of the roll** has the meaning given in section 3(1) of the 2000 Act

**second flag referendum** means the referendum held under section 10(2)

**supplementary referendum roll** has the meaning given in section 3(1) of the 2000 Act and includes a partial supplementary referendum roll compiled under section 18(3)(a)

**voting paper** means,—

- (a) in relation to the first flag referendum, a voting paper in the form prescribed in Schedule 1; and
- (b) in relation to the second flag referendum, a voting paper in the form prescribed in Schedule 2

**voting period**, in relation to a referendum, means the period specified in section 12(1)

**working day** means a day of the week other than—

- (a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, and Labour Day; and
- (b) a day in the period commencing with 25 December in a year and ending with 2 January in the following year; and
- (c) if 1 January falls on a Friday, the following Monday; and
- (d) if 1 January falls on a Saturday or a Sunday, the following Monday and Tuesday; and
- (e) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday.

Compare: 2000 No 48 s 3; 1997 No 13 s 3

Section 5 **option** paragraph (a): amended, on 25 September 2015, by section 4 of the New Zealand Flag Referendums Amendment Act 2015 (2015 No 86).

## **6 General description of Preferential Voting electoral system**

For the purposes of the first flag referendum, the Preferential Voting electoral system has the following features:

- (a) voters express a first preference for 1 option and may express second and further preferences for other options:
- (b) the first preferences are counted and, if an option's first preference votes equal or exceed the absolute majority of votes, that option is the successful option:
- (c) if no option succeeds under paragraph (b), the option with the fewest votes is excluded and that option's votes are redistributed according to voters' further preferences:
- (d) if no option succeeds under paragraph (c), the steps described in paragraph (c) are repeated until 1 option achieves an absolute majority of votes.

Compare: 2001 No 35 s 5B(b)(i), (iii), (iv), (v)

## **7 General description of First Past the Post electoral system**

For the purposes of the second flag referendum, the First Past the Post electoral system has the following features:

- (a) voters may cast 1 vote for 1 option:
- (b) the option that receives the highest number of votes is the successful option.

## **8 Application of Act to conduct outside New Zealand**

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

- (a) in New Zealand, in any case where the promoter of the advertisement is outside New Zealand; and
- (b) outside New Zealand, in any case where the promoter of the advertisement is in New Zealand.

Compare: 2010 No 139 s 3

## **9 Act binds the Crown**

This Act binds the Crown.

## **Part 2** **Provisions relating to referendums**

### Subpart 1—Referendums on New Zealand flag

#### **10 Subject of referendums**

- (1) During the voting period for the first flag referendum, a referendum of electors must be held on the question set out in the voting paper in Schedule 1.
- (2) During the voting period for the second flag referendum, a referendum of electors must be held on the question set out in the voting paper in Schedule 2.

#### **11 Appointment of dates for referendums**

The Governor-General must, by Orders in Council made on the recommendation of the Minister, as soon as practicable after the commencement of this Act,—

- (a) appoint a date for the close of the first flag referendum that is at least 90 days after the day on which this Act commences; and
- (b) appoint a date for the close of the second flag referendum that is at least 90 days after the day appointed under paragraph (a).

#### **12 Voting period**

- (1) For each referendum,—
  - (a) the voting period commences at the start of the 21st day before the day appointed under section 11 for the close of that referendum; and
  - (b) the voting period closes at 7 pm on the day appointed under section 11 for the close of that referendum.
- (2) The Governor-General may, from time to time, before the commencement of the voting period for a referendum, by Order in Council,—
  - (a) revoke an Order in Council made under section 11 and appoint a later date for the close of the referendum:



- (b) revoke any Order in Council made under section 21(2) of the 2000 Act as that provision applies to this Act, and appoint a later date for the closing of the referendum roll.

Compare: 2000 No 48 s 30; 1997 No 13 s 28

### **13 Alternative flag designs**

- (1) The Governor-General must, by Order in Council made on the recommendation of the Minister, at least 40 days before the commencement of the voting period for the first flag referendum, prescribe 5 alternative flag designs to appear on the voting paper.
- (2) For each of the alternative flag designs prescribed, the Order in Council must include—
  - (a) an official description of the design, to be used for the purposes of dictating the relevant parts of the voting paper under section 24(4)(c); and
  - (b) an image of the design, to be used for the purposes of subsection (3) and section 14(1); and
  - (c) the technical specifications of the design, including the colours, dimensions, and proportions of the design and of any shapes or images in it.
- (3) When producing voting papers for the first flag referendum, the Electoral Commission must ensure that the 5 alternative flag designs prescribed under subsection (1) are inserted in the spaces indicated on the form in Schedule 1.
- (4) For the purposes of subsection (3), the Electoral Commission must arrange the alternative flag designs on the voting paper in random order.

Compare: SR 2001/145 r 31(5)

Section 13(1): amended, on 25 September 2015, by section 5(1) of the New Zealand Flag Referendums Amendment Act 2015 (2015 No 86).

Section 13(3): amended, on 25 September 2015, by section 5(2) of the New Zealand Flag Referendums Amendment Act 2015 (2015 No 86).

### **14 Voting paper in second flag referendum**

- (1) When producing voting papers for the second flag referendum, the Electoral Commission must ensure that the following 2 flag designs are inserted in the spaces indicated on the form in Schedule 2:
  - (a) the alternative flag design that was successful in the first flag referendum; and
  - (b) the current New Zealand Flag.
- (2) For the purposes of subsection (1), the Electoral Commission must arrange the 2 options on the voting paper in random order.
- (3) The Governor-General must, by Order in Council made on the recommendation of the Minister, at least 28 days before the commencement of the voting period for the second flag referendum, prescribe an official description of the

current New Zealand Flag, to be used for the purposes of dictating the relevant parts of the voting paper under section 24(4)(c).

- (4) For the purposes of dictating the relevant parts of the voting paper under section 24(4)(c),—
- (a) the alternative flag design is to be described in accordance with the official description of that design; and
  - (b) the current New Zealand Flag is to be described in accordance with the official description of that flag.

Compare: SR 2001/145 r 31(5)

## Subpart 2—Officials

### 15 Returning Officer

- (1) For each referendum, the Electoral Commission must designate an Electoral Commissioner to be the Returning Officer.
- (2) The Returning Officer is, under the direction of the Electoral Commission, charged with the duty of implementing this Act, except subpart 3 of this Part.
- (3) The Returning Officer must, as his or her first duty, make a declaration in form 1 of Schedule 3 before a Justice of the Peace or a lawyer.

Compare: 2000 No 48 s 8; 1997 No 13 s 7

### 16 Returning Officer may employ or engage persons

- (1) The Returning Officer for a referendum may employ or engage such persons as the Returning Officer considers are required for the purposes of that referendum.
- (2) A person engaged under subsection (1) in respect of a referendum may employ or engage such other persons as the person considers are required for the purposes of that referendum.
- (3) Every person employed or engaged under subsection (1) or (2)—
  - (a) is under the direction of the Returning Officer; and
  - (b) must, as the person's first duty, make a declaration in form 1 of Schedule 3 before the Returning Officer, a Justice of the Peace, or a lawyer.

Compare: 2000 No 48 s 9; 1997 No 13 s 8

### 17 Delegation by Returning Officer

- (1) The Returning Officer may, either generally or particularly, delegate any of the Returning Officer's functions, powers, rights, and duties, except this power of delegation, to—
  - (a) any specified person employed or engaged under section 16; or
  - (b) persons of a specified class employed or engaged under section 16.

- (2) A delegation under this section must be made in writing, and the document must be signed by the Returning Officer.
- (3) Section 12 of the 2000 Act applies to a delegation under this section.  
Compare: 2000 No 48 s 11; 1997 No 13 s 10

### Subpart 3—Rolls of electors

#### **18 Rolls of electors**

- (1) The following provisions of the 2000 Act apply, except to the extent specified in subsections (2) and (3), with the modifications described in this section and any other necessary modifications, to referendums conducted under this Act:
  - (a) section 10(1):
  - (b) Part 4:
  - (c) sections 64 and 65.
- (2) Sections 14 to 20 of the 2000 Act do not apply to the second flag referendum.
- (3) Section 21(3) of the 2000 Act does not apply, and, for the purposes of a referendum under this Act, the Electoral Commission—
  - (a) may, after the closing of the referendum rolls and before the commencement of the voting period, compile 1 or more partial supplementary referendum rolls; and
  - (b) must compile the final supplementary referendum roll as soon as practicable after the commencement of the voting period.
- (4) For the purposes of this section, all references in Part 4 of the 2000 Act to the following terms, used within the meaning of that Act, must be read as references to those terms within the meaning of this Act:
  - (a) referendum:
  - (b) Returning Officer:
  - (c) supplementary referendum roll:
  - (d) voting period.
- (5) The reference in section 19 of the 2000 Act to “this Act” must be read as a reference to this Act.
- (6) The reference in section 27 of the 2000 Act to other provisions of that Act must be read as references to the corresponding provisions of this Act.
- (7) The references in section 64(3)(a) and (b) of the 2000 Act to sections 34(3)(b), 35(5), and 42(2)(b) of that Act must be read as references to sections 23(3)(b), 24(5), and 31(2)(b) of this Act respectively.

## Subpart 4—Conduct of referendums

### 19 Who may vote

Every elector is qualified to vote at a referendum.

Compare: 2000 No 48 s 29; 1997 No 13 s 27

### 20 Electoral systems for referendums

- (1) The first flag referendum is to be conducted in accordance with the Preferential Voting electoral system.
- (2) The second flag referendum is to be conducted in accordance with the First Past the Post electoral system.

### *Dispatching voting papers*

### 21 Period for dispatching voting papers

- (1) The Returning Officer may dispatch voting papers—
  - (a) before the start of the voting period only in accordance with section 22(2); and
  - (b) at any time during the voting period except the last day of the voting period.
- (2) However, in the case of electors to whom section 24(2) applies, the Returning Officer may dispatch voting papers at any time during the voting period, including the last day of the voting period.
- (3) A voting paper is dispatched by the Returning Officer to an elector when,—
  - (a) if the voting paper is posted under section 22 or 23, the Returning Officer authorises New Zealand Post Limited to deliver the voting paper to the elector:
  - (b) if the voting paper is faxed under section 24(4)(a), the Returning Officer's fax machine generates a record of the transmission of the voting paper to the elector's fax number:
  - (c) if the voting paper is emailed under section 24(4)(b), the Returning Officer receives an electronic receipt of delivery of the email to the elector's email address:
  - (d) if the relevant parts of the voting paper are dictated under section 24(4)(c), the Returning Officer is satisfied that the elector has heard every word dictated.

Compare: 2000 No 48 ss 31, 32; 1997 No 13 s 29

### 22 Dispatching voting papers by post

- (1) As soon as practicable after the commencement of the voting period for a referendum, the Returning Officer must post to each elector 1 voting paper ad-

dressed to the elector at the address shown against the elector's name on the Returning Officer's copy of the roll.

- (2) In order to carry out his or her duty under subsection (1), the Returning Officer may,—
  - (a) for voting papers addressed to electors residing in New Zealand, provide delivery authorisation to New Zealand Post Limited on the day before the first day of the voting period;
  - (b) for voting papers addressed to electors residing overseas, provide delivery authorisation to New Zealand Post Limited up to 3 working days before the first day of the voting period.

Compare: 2000 No 48 s 33; 1997 No 13 s 31

### **23 Dispatching replacement voting papers by post**

- (1) An elector may apply to the Returning Officer for a replacement voting paper, on the grounds that he or she has—
  - (a) spoiled, destroyed, or lost his or her voting paper; or
  - (b) not received his or her voting paper.
- (2) An application must—
  - (a) be made before noon on the day that is 3 days before the last day of the voting period; and
  - (b) be made in the manner described in regulation 4 of the Referenda (Postal Voting) Regulations 2009.
- (3) If the Returning Officer is satisfied that the person is an elector, the Returning Officer must—
  - (a) post the elector 1 voting paper addressed to the elector at his or her current postal address; and
  - (b) make a mark on the Returning Officer's copy of the roll, next to the elector's name, to indicate that the Returning Officer posted a replacement voting paper to the elector; and
  - (c) provide the Electoral Commission with the name, date of birth, and current postal address of the elector, if the current postal address is different from the postal address shown on the Returning Officer's copy of the roll.

Compare: 2000 No 48 s 34; 1997 No 13 s 32

### **24 Dispatching voting papers by fax, email, or dictation**

- (1) An elector may apply to the Returning Officer to have the voting paper faxed or emailed to him or her, or to have the relevant parts of the voting paper dictated to him or her, on the grounds that he or she—
  - (a) will be, or is, during the voting period,—

- (i) on Tokelau, Campbell Island, or Raoul Island; or
  - (ii) in the Ross Dependency; or
  - (iii) on a fishing vessel or naval vessel; or
  - (iv) in some remote location overseas; and
- (b) will not receive, or has not received, a voting paper posted to him or her at the address shown against his or her name on the Returning Officer's copy of the roll; and
- (c) cannot reasonably be expected, in all the circumstances, to make, or to have made, his or her own arrangements for the voting paper to be forwarded to him or her; and
- (d) has the facility for receiving the voting paper by the method applied for.
- (2) An elector may apply to the Returning Officer to have the relevant parts of the voting paper dictated to him or her on the grounds that he or she—
- (a) is blind; or
  - (b) is partially blind and is unable to mark the ballot paper without assistance; or
  - (c) has another physical disability and is unable to mark the ballot paper without assistance.
- (3) An application under this section must,—
- (a) if made under subsection (1), be made before noon on the day before the last day of the voting period; and
  - (b) be made in the manner described in regulation 5 of the Referenda (Postal Voting) Regulations 2009, read with any necessary modifications.
- (4) If the Returning Officer is satisfied that subsection (1) or (2) applies to an elector, the Returning Officer may—
- (a) fax the voting paper to the elector; or
  - (b) email the voting paper to the elector; or
  - (c) dictate the relevant parts of the voting paper to the elector.
- (5) The Returning Officer must make a mark on the Returning Officer's copy of the roll, next to the elector's name, to indicate that the voting paper has been faxed or emailed, or that its relevant parts have been dictated, to the elector under subsection (4).

Compare: 2000 No 48 s 35; 1997 No 13 s 33; SR 1996/93 r 23A(1)

## **25 Envelopes and information accompanying voting papers**

- (1) When the Returning Officer posts a voting paper under section 22 or 23, the Returning Officer must post it with an envelope of one of the following kinds:

- (a) a postage-paid envelope addressed to the Returning Officer, if the address shown against the elector's name on the Returning Officer's copy of the roll is an address in New Zealand; or
  - (b) an envelope addressed to the Returning Officer, if the address shown against the elector's name on the Returning Officer's copy of the roll is an address outside New Zealand.
- (2) When the Returning Officer posts under section 22 or 23, or faxes or emails under section 24, a voting paper, the Returning Officer—
- (a) must post or fax or email with it a copy of the referendum material, if any; and
  - (b) may post or fax or email with it information, in any language or languages, on how to vote and how to return the voting paper.

Compare: 2000 No 48 s 36; 1997 No 13 s 34

## **26 Extension of voting period**

- (1) The Returning Officer may extend the voting period if he or she is of the opinion that industrial action, natural disaster, adverse weather conditions, or any other thing has had, or will have, the effect of—
- (a) delaying the dispatch of voting papers so much that electors have not had, or will not have, a reasonable opportunity to vote and return their voting papers before the close of the voting period; or
  - (b) delaying the return of voting papers so much that voting papers that would otherwise have been returned before the close of the voting period will not be returned by that time.
- (2) An extension may apply to—
- (a) the whole of New Zealand; or
  - (b) an area or areas of New Zealand; or
  - (c) any or all of Tokelau, Campbell Island, Raoul Island, or the Ross Dependency.
- (3) The Returning Officer may extend the voting period as many times as he or she thinks necessary.
- (4) Each extension is to be for the period the Returning Officer thinks necessary, up to a maximum of 14 days.
- (5) As soon as practicable, the Returning Officer must give—
- (a) public notice of every extension of the voting period; and
  - (b) such other notice of the extension as he or she thinks fit.

Compare: 2000 No 48 s 37; 1997 No 13 s 35

*Marking and returning voting papers***27 Method of voting**

- (1) An elector voting in the first flag referendum—
  - (a) must mark the voting paper by expressing a first preference for 1 option; and
  - (b) may express second and further preferences for other options.
- (2) An elector voting in the second flag referendum must mark the voting paper with a tick in the circle corresponding to the option that the elector wishes to vote for.
- (3) The voting paper may be marked in the manner described in subsection (4) if an elector—
  - (a) is visually impaired; or
  - (b) is unable to read or write for any reason; or
  - (c) is not sufficiently familiar with any language or languages used on the voting paper to vote without assistance.
- (4) The manner is—
  - (a) by the elector, with the assistance of a person authorised by the elector; or
  - (b) by a person authorised by the elector, in accordance with the elector's instructions.
- (5) An elector to whom the Returning Officer has dictated the relevant parts of the voting paper under section 24(4)(c) may dictate his or her vote to the Returning Officer, and the Returning Officer must mark the voting paper in accordance with the elector's instructions.

Compare: 2000 No 48 s 38; 1997 No 13 s 36

**28 Return of voting papers to Returning Officer**

- (1) An elector to whom a voting paper was faxed under section 24(4)(a) or emailed under section 24(4)(b) must, if returning the voting paper, return it to the office of the Returning Officer—
  - (a) by fax; or
  - (b) by uploading the voting paper to the Internet site; or
  - (c) by post.
- (2) An elector residing overseas who has received a voting paper by post may return it by any of the methods specified in subsection (1).
- (3) Any other elector may return the voting paper by—
  - (a) delivering it by hand to the office of the Returning Officer during normal business hours; or



- (b) posting it to the office of the Returning Officer.
- (4) An elector to whom section 27(3) applies may ask the authorised person to—
  - (a) assist the elector to return the voting paper in compliance with subsection (1), (2), or (3); or
  - (b) return the voting paper in compliance with subsection (1), (2), or (3) on behalf of the elector.
- (5) When an elector votes in accordance with section 27(5), the voting paper is returned when the Returning Officer marks the voting paper.

Compare: 2000 No 48 s 39; 1997 No 13 s 37

### **29 Times for return of voting papers**

- (1) A voting paper returned by post, or by hand, or by fax, or by upload to the Internet site must be returned before 7 pm on the last day of the voting period.
- (2) However, a voting paper may be returned by post after the last day of the voting period as long as—
  - (a) it is returned before noon on the fourth day (not including statutory holidays) after the last day of the voting period; and
  - (b) it bears a postmark or date stamp, either on its envelope (if any) or on the voting paper itself, that was impressed—
    - (i) on a day during the voting period by a postal operator registered under section 29 of the Postal Services Act 1998; or
    - (ii) before or on the day before the last day of the voting period, in any country other than New Zealand.
- (3) A vote cast by dictation under section 24(4)(c) must be returned before 7 pm on the last day of the voting period (the **deadline**).
- (4) However, if an elector is voting by dictation at the deadline,—
  - (a) the elector is entitled to complete his or her vote; and
  - (b) the voting paper must be returned under section 28(5).

Compare: 2000 No 48 s 40; 1997 No 13 s 38

### **30 Voting papers returned late**

If any voting papers or envelopes containing voting papers are returned, but not in accordance with section 29, the Returning Officer must—

- (a) enclose them in 1 or more parcels; and
- (b) seal each parcel and mark it “Disallowed, received late”.

Compare: 2000 No 48 s 41; 1997 No 13 s 39

*Progressive processing of voting papers***31 Processing of voting papers**

- (1) As soon as practicable after any voting paper is returned in accordance with section 29, the Returning Officer must process it under subsection (2).
- (2) The Returning Officer must, in a manner that preserves the secrecy of the vote,—
  - (a) if the voting paper is in an envelope, extract the voting paper; and
  - (b) make a mark on the Returning Officer's copy of the roll, next to the elector's name, to indicate that the voting paper dispatched to that elector has been returned; and
  - (c) if the voting paper is valid and—
    - (i) the vote is formal, record the elector's vote as marked; or
    - (ii) the vote is informal, record the elector's vote as informal; and
  - (d) if the voting paper is invalid, record the voting paper as invalid and the reasons for its invalidity; and
  - (e) place the voting paper in secure storage under the control of the Returning Officer.
- (3) The Returning Officer may carry out the duties in subsection (2) by any method and procedure he or she thinks fit, including the use of computer technology.

Compare: 2000 No 48 s 42; 1997 No 13 s 40

**32 Informal voting papers**

A voting paper is informal if the Returning Officer is satisfied,—

- (a) in the case of the first flag referendum, that the voting paper does not clearly indicate the voter's first preference; or
- (b) in the case of the second flag referendum, that the voting paper does not clearly indicate the option for which the elector wished to vote.

Compare: 2000 No 48 s 43; 1997 No 13 s 41

**33 Invalid voting papers**

A voting paper is invalid if the Returning Officer is satisfied that the voting paper—

- (a) is a forgery or a copy; or
- (b) was dispatched by the Returning Officer to a person whose roll identifier number was supplied to the Returning Officer under section 26 of the 2000 Act as it applies to this Act; or
- (c) was posted to an elector under section 22, if—

- (i) a voting paper was also posted under section 23 or faxed under section 24(4)(a) or emailed under section 24(4)(b) to the elector; or
- or
- (ii) the relevant parts of the voting paper were also dictated to the elector under section 24(4)(c); or
- (d) was marked by a person other than—
  - (i) the elector intended to receive the voting paper; or
  - (ii) if section 27(3) applies, a person authorised by the elector to mark the voting paper; or
  - (iii) if section 27(5) applies, the Returning Officer; or
- (e) was marked in breach of section 58(2) or 59(1); or
- (f) was not returned in accordance with section 29; or
- (g) if returned by fax, is not a true copy of the original voting paper marked by the elector; or
- (h) is damaged in such a way as to prevent it from being processed.

Compare: 2000 No 48 s 44; 1997 No 13 s 42

### **34 Protection of secrecy during processing**

- (1) The Returning Officer must ensure that—
  - (a) the processing of voting papers is conducted at the office of the Returning Officer or in premises authorised by the Returning Officer; and
  - (b) when the office of the Returning Officer or any other premises are being used for the processing of voting papers, a sign is placed outside the office or premises stating that this is the case and that entry is prohibited without the express authorisation of the Returning Officer; and
  - (c) no person, without the express authorisation of the Returning Officer, enters the office of the Returning Officer or any other premises when the sign is in place.
- (2) The Returning Officer must take all reasonable steps to ensure the safe custody of all returned voting papers until they have been sent to the Clerk of the House under section 40.
- (3) Despite section 35(1), the Returning Officer may from time to time during the voting period assess the feasibility of any method chosen to calculate the result of the referendum if the assessment does not compromise the secrecy of voting or the result of the referendum.

Compare: 2000 No 48 s 45; 1997 No 13 s 43(1)(a)–(c), (2)

### **35 Publicity during processing**

- (1) The Returning Officer must ensure that the result of voting is not calculated, whether partially or finally, before 7 pm on the last day of the voting period.

- (2) Despite subsection (1), the Returning Officer may from time to time during the voting period issue a press statement giving the total number of votes received at a date specified in the statement, but not the number of votes received for each option.

Compare: 2000 No 48 s 46; 1997 No 13 s 43(1)(d)

### 36 Supervision of processing

- (1) In this section,—

**duty** means the duty to observe the processing of voting papers

**Judge** means a person appointed under subsection (2)

**Justice** means a person appointed under subsection (3)

**place** means the place at which voting papers are processed.

- (2) After consultation with the Chief District Court Judge, the Minister must appoint as many District Court Judges or retired District Court Judges to observe the processing of voting papers as the Minister considers necessary.
- (3) The Minister may also appoint as many Justices of the Peace to observe the processing of voting papers as the Minister considers necessary.
- (4) A Justice—
- (a) is subject, in the exercise of his or her duty, to the direction of any Judge who is present at the place; but
  - (b) may exercise his or her duty whether or not any Judge is present at the place.
- (5) A Judge must finally determine whether any voting paper is valid or informal, if asked to do so by the Returning Officer.
- (6) A Justice must not finally determine whether any voting paper is valid or informal.
- (7) In the case of the first flag referendum, if asked to do so by the Returning Officer, a Judge must finally determine whether any voting paper is exhausted within the meaning of clause 1 of Schedule 4 for either of the following reasons:
- (a) all of the options for which a preference was validly expressed on the voting paper have been excluded; or
  - (b) the voting paper does not clearly indicate any preference consecutive to the preference indicated for the option that was last excluded.

Compare: 2000 No 48 s 47; 1997 No 13 s 44

*Announcing results*

**37 Procedure after close of voting period**

As soon as practicable after 7 pm on the last day of the voting period, the Returning Officer must,—

- (a) in the case of the first flag referendum, count, in the manner described in Schedule 4, the votes received for each option from the voting papers processed as at 7 pm on the last day of the voting period; and
- (b) in the case of the second flag referendum, calculate the number of votes received for each option from the voting papers processed as at 7 pm on the last day of the voting period; and
- (c) issue a press statement giving the numbers; and
- (d) complete the processing of voting papers in accordance with section 31.

Compare: 2000 No 48 s 48; 1997 No 13 s 45

**38 Declaration of result of referendum**

(1) When all the voting papers returned in accordance with section 29 have been processed, the Returning Officer must,—

- (a) in the case of the first flag referendum,—
  - (i) calculate the number of first preference votes received for each option; and
  - (ii) count the votes in the manner described in Schedule 4; and
  - (iii) declare the result of the referendum by giving public notice of the following:
    - (A) the absolute majority of votes determined at the first iteration; and
    - (B) the number of first preference votes received for each option; and
    - (C) the absolute majority of votes determined at each iteration at which an option was successful or excluded; and
    - (D) the number of votes recorded for each option and the number of transferable votes at each iteration at which an option was excluded; and
    - (E) the iteration number at which each option was excluded, where applicable; and
    - (F) the number of informal voting papers; and
    - (G) the outcome of the referendum; and
- (b) in the case of the second flag referendum,—
  - (i) calculate the total number of votes received for each option; and

- (ii) declare the result of the referendum by giving public notice of it in form 2 of Schedule 3; and
  - (iii) give public notice of the following for each district:
    - (A) the number of votes received for each option; and
    - (B) the number of informal votes.
- (2) However, if there is a tie within the meaning of section 39(3), the Returning Officer must not declare the result of the referendum until the tie has been resolved under section 39(1) or (2).
- (3) In this section, **absolute majority of votes** means the number arrived at using the formula specified in clause 3 of Schedule 4.

### 39 Determination of result in event of tie

- (1) If there is a tie in the first flag referendum, the Electoral Commission must resolve the tie in the manner described in clause 10 of Schedule 4.
- (2) If there is a tie in the second flag referendum, the current New Zealand Flag is to be taken to have received the greatest number of votes.
- (3) In this section, **tie** means,—
  - (a) in relation to the first flag referendum, any of the circumstances described in clause 10 of Schedule 4;
  - (b) in relation to the second flag referendum, that there is an equality of votes between the 2 options.

Compare: 1993 No 87 s 179(6); SR 2001/145 cl 58(5), Schedule 1A Part 5

### 40 Disposal of voting papers and rolls

- (1) As soon as practicable after declaring the result of the referendum, the Returning Officer must—
  - (a) enclose and securely seal in 1 or more separate parcels—
    - (i) all returned voting papers, used or unused; and
    - (ii) the record of informal and invalid voting papers; and
    - (iii) the Returning Officer's copy of the roll; and
  - (b) send the parcels to the Clerk of the House.
- (2) The Clerk of the House must,—
  - (a) as soon as practicable, sign a receipt for the parcels and send it to the Returning Officer; and
  - (b) keep the parcels safely for 6 months unopened, unless a court of competent jurisdiction or the House of Representatives orders them, or any of them, to be opened; and
  - (c) ensure that at the end of 6 months the parcels are destroyed unopened in the presence of the Clerk of the House.

- (3) Section 190 of the Electoral Act 1993 applies, as far as is applicable and with any necessary modifications, to everything kept by the Clerk of the House under subsection (2).

Compare: 2000 No 48 s 50; 1997 No 13 s 47

## Subpart 5—Application for inquiry into conduct of referendum

### *Parties to inquiry*

#### **41 Who may make application**

- (1) Any group of electors may apply to the High Court for an inquiry into the conduct of a referendum or of any person connected with it on the grounds that the group is dissatisfied with the conduct of the referendum or of any person connected with the conduct of the referendum, and that that conduct could have altered the outcome of the referendum.
- (2) A group may make an application only if it has at least 200 members.

Compare: 2000 No 48 s 52; 1993 No 101 s 48(1)

#### **42 Who may be respondents**

The person complained of is a respondent to the application if the person is—

- (a) the Returning Officer; or
- (b) a person employed or engaged under section 16; or
- (c) the Electoral Commission; or
- (d) an employee of New Zealand Post Limited; or
- (e) a person acting under a delegation under section 17.

Compare: 2000 No 48 s 54; 1993 No 101 s 48(2)

#### **43 Group of electors may oppose application**

- (1) Any group of electors may file notice of its intention to oppose an application, if there is only 1, or to oppose specified applications, if there are more than 1.
- (2) A group may file such a notice only if it has at least 24 members.
- (3) The notice must—
- (a) be in form 3 of Schedule 3; and
  - (b) be filed at least 3 working days before the day fixed for the start of the hearing.
- (4) A group filing a notice in accordance with this section becomes a respondent to the application or applications.

Compare: 2000 No 48 s 53; 1993 No 101 s 49

*Making of application***44 Making of application**

- (1) An applicant makes its application by filing the application in the High Court in Wellington.
- (2) The application must—
  - (a) be in form 4 of Schedule 3, or in a similar form; and
  - (b) state the specific grounds on which the applicant is dissatisfied with the conduct of the referendum or of any person connected with it; and
  - (c) be made within 20 working days after the Returning Officer has declared the result of the referendum under section 38(1)(a)(iii) or (b)(ii).
- (3) The Registrar of the court must send a copy of the application to the Returning Officer as soon as practicable after it is filed.

Compare: 2000 No 48 ss 55–58

**45 Application to be served on respondents**

- (1) An application must be served on a group that becomes a respondent under section 43(4) as soon as practicable after that group files its notice.
- (2) An application that asks for an inquiry into the conduct of a person connected with the referendum must be served on the person complained of as soon as practicable after it is made.
- (3) An application must be served in a manner as close as possible to that in which a statement of claim is served.

Compare: 2000 No 48 s 59; 1993 No 101 s 48(5)

*Hearing of application***46 More than 1 application relating to same referendum**

Where 2 or more applications are filed that relate to the same referendum, all those applications must be dealt with as 1 application.

**47 Matters to be inquired into at hearing**

- (1) At the hearing, the court has jurisdiction to inquire into and adjudicate on any matter relating to the application in any manner that the court thinks fit.
- (2) The court may, on any terms and conditions it considers just, give leave for grounds other than those stated in the application to be inquired into.
- (3) Evidence may be given to prove that the total number of valid votes recorded for each of the options on the voting paper was other than that declared, without any applicant having to state that as a ground of dissatisfaction or the court having to give leave for the ground to be inquired into.



- (4) The provisions of the Electoral Act 1993 specified in subsection (5), as far as they are applicable and with the necessary modifications, apply to a hearing of an application for an inquiry under this subpart or an incidental matter.
- (5) The provisions of the Electoral Act 1993 referred to in subsection (4) are sections 232, 235, 236(1), (2), and (4) to (7), 240, 241, 242, 247 to 255, 256(1)(a) and (b), and 257.

Compare: 2000 No 48 s 60; 1993 No 101 s 48(3)

### *Court's decision*

#### **48 Decision of court as to result of referendum**

At the end of a hearing, the court must—

- (a) determine the total number of valid votes recorded for each option; or
- (b) determine whether the referendum is void because of some irregularity that in the court's opinion materially affected the outcome of the referendum.

Compare: 2000 No 48 s 61; 1993 No 101 s 50

#### **49 Fresh referendum**

- (1) If the court declares a referendum void under section 48(b), a fresh referendum must be held in the manner specified by this Act.
- (2) The Registrar of the court must notify the Returning Officer that the referendum has been declared void.
- (3) Despite section 12, the voting period for the fresh referendum must commence at the start of the 21st day before the day appointed for the close of the voting period under subsection (4) and no later than 30 working days after the date on which the Returning Officer is notified under subsection (2).
- (4) The voting period for a fresh referendum closes at 7 pm on a day to be appointed by the Returning Officer by notice in the *Gazette*.
- (5) At the fresh referendum, the same roll of electors must be used as was used at the voided referendum.

Compare: 2000 No 48 s 62; 1993 No 101 s 51

### Subpart 6—Offences

#### **50 Unauthorised use or disclosure of referendum information**

- (1) An official who uses or discloses information, acquired in connection with a referendum in his or her capacity as an official, knowing that the use or disclosure is not required or permitted for the performance of his or her official duty commits an offence against this section and is guilty of a corrupt practice for the purposes of the Electoral Act 1993.
- (2) In this section, **official** means any of the following persons:

- (a) the Returning Officer:
- (b) any person employed or engaged under section 16:
- (c) the Electoral Commission:
- (d) any employee of New Zealand Post Limited:
- (e) any person acting under a delegation under section 17.

Compare: 2000 No 48 s 63; 1997 No 13 s 49

### **51 Influencing electors generally**

- (1) This section applies to any person who, at any time during the 3 days immediately before the commencement of a voting period or during a voting period, prints or distributes or delivers to any person anything—
  - (a) that is or purports to be an imitation of the voting paper, together with any direction or indication as to the option for which any person should or should not vote; or
  - (b) that is or purports to be an imitation of the voting paper and that has on it any matter likely to influence any vote.
- (2) Every such person commits an offence and is liable on conviction to a fine not exceeding \$5,000.
- (3) Nothing in this section applies to anything said or done, for the purposes of a referendum, by—
  - (a) the Returning Officer; or
  - (b) a panel; or
  - (c) a person employed or engaged under section 16; or
  - (d) a person acting under a delegation under section 17.

Compare: 2000 No 48 s 66; 1997 No 13 s 52

### **52 Offences in relation to voting papers**

- (1) Every person commits an offence who—
  - (a) forges, or counterfeits, or fraudulently defaces, or fraudulently destroys a voting paper or an envelope containing a voting paper; or
  - (b) supplies a voting paper to any person knowing that the person is not the person intended to receive the voting paper; or
  - (c) dictates the relevant parts of the voting paper to a person, knowing that the person is not the person to whom the parts were intended to be dictated; or
  - (d) without due authority, destroys, takes, or interferes with a voting paper or an envelope containing a voting paper that—
    - (i) is in use for the purposes of the referendum; or

- (ii) is kept after the declaration of the result as a record of the referendum.
- (2) Every person who commits an offence against this section is liable on conviction,—
  - (a) if the Returning Officer, or any person employed or engaged under section 16, or any person acting under a delegation under section 17, to imprisonment for a term not exceeding 2 years:
  - (b) if any other person, to imprisonment for a term not exceeding 6 months.
- (3) Every person who commits an offence against this section is guilty of a corrupt practice for the purposes of the Electoral Act 1993, except that the maximum term of imprisonment to which the person is liable is the term specified in subsection (2) instead of the term specified in section 224(1)(a) of that Act.

Compare: 2000 No 48 s 68; 1997 No 13 s 54

### 53 Bribery by any person at any time

- (1) In this section,—
  - (a) **elector** includes a person who claims to have a right to vote at a referendum:
  - (b) references to giving money include the following actions in relation to any money or valuable consideration:
    - (i) giving it; or
    - (ii) lending it; or
    - (iii) agreeing to give or lend it; or
    - (iv) offering it; or
    - (v) promising it; or
    - (vi) promising to get, or to try to get, it:
  - (c) references to getting any office include the following actions in relation to any office, place, or employment:
    - (i) giving it; or
    - (ii) getting it; or
    - (iii) agreeing to give or get it; or
    - (iv) offering it; or
    - (v) promising it; or
    - (vi) promising to get, or to try to get, it.
- (2) This section does not apply to money paid, or agreed to be paid, for or on account of any legal expenses incurred in good faith at or in relation to a referendum.
- (3) Every person commits the offence of bribery who—

- (a) gives any money to, or gets any office for, an elector in order to induce the elector to vote or refrain from voting at the referendum; or
  - (b) gives any money to, or gets any office for, a person, on behalf of an elector, in order to induce the elector to vote or refrain from voting at the referendum; or
  - (c) gives any money to, or gets any office for, a person in order to induce an elector to vote or refrain from voting at the referendum; or
  - (d) corruptly does an act described in any of paragraphs (a) to (c) on account of an elector having voted or refrained from voting at the referendum; or
  - (e) makes a gift to, or gets an office for, a person in order to induce that person to get, or try to get, the vote of any elector at the referendum.
- (4) A person commits the offence described in subsection (3) whether he or she does an act described there—
- (a) directly or indirectly:
  - (b) on his or her own or through another person.
- (5) Every person commits the offence of bribery who—
- (a) offers or pays or causes to be paid any money to, or for the use of, any other person intending that the money or part of it will be expended in bribery at a referendum; or
  - (b) knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or partly expended in bribery at a referendum.
- (6) Every person who commits the offence of bribery is guilty of a corrupt practice for the purposes of the Electoral Act 1993.
- Compare: 2000 No 48 s 69; 1997 No 13 ss 55(1), (4), (5), 56

#### **54 Bribery by any person after voting period**

- (1) Every person commits the offence of bribery if, after the voting period, he or she receives any money or valuable consideration on account of—
- (a) any person having voted or refrained from voting at the referendum; or
  - (b) any person having induced any other person to vote or refrain from voting at the referendum.
- (2) A person commits the offence described in subsection (1) whether he or she does an act described there—
- (a) directly or indirectly:
  - (b) on his or her own or through another person.
- (3) Every person who commits the offence of bribery is guilty of a corrupt practice for the purposes of the Electoral Act 1993.
- Compare: 2000 No 48 s 70; 1997 No 13 s 55(4), (5)

**55 Bribery by elector before or during voting period**

- (1) In this section, **elector** includes a person who claims to have a right to vote at a referendum.
- (2) An elector commits the offence of bribery if he or she receives, or agrees to receive, or contracts for, any money, gift, loan, valuable consideration, office, place, or employment for himself or herself, or for any other person, for—
  - (a) voting or agreeing to vote at the referendum; or
  - (b) refraining or agreeing to refrain from voting at the referendum.
- (3) An elector commits the offence described in subsection (2) whether he or she does an act described there—
  - (a) before or during the voting period:
  - (b) directly or indirectly:
  - (c) on his or her own or through another person.
- (4) Every person who commits the offence of bribery is guilty of a corrupt practice for the purposes of the Electoral Act 1993.

Compare: 2000 No 48 s 71; 1997 No 13 ss 55(3), (5), 56

**56 Treating**

- (1) Every person commits the offence of treating who corruptly gives or provides, or pays wholly or partly the cost of giving or providing, any food, drink, entertainment, or provision to or for any person—
  - (a) for the purpose of corruptly influencing that person or any other person to vote or refrain from voting at a referendum; or
  - (b) on account of that person or any other person having voted or refrained from voting, or being about to vote or refrain from voting, at a referendum.
- (2) A person commits the offence described in subsection (1) whether he or she does an act described there—
  - (a) before, during, or after the voting period:
  - (b) directly or indirectly:
  - (c) on his or her own or through another person.
- (3) Every person who is the holder of a licence for the retail sale of alcohol (within the meaning of the Sale and Supply of Alcohol Act 2012) commits the offence of treating who, before or during the voting period, knowingly supplies any food, drink, entertainment, or provision—
  - (a) to any person when the supply is demanded for the purpose of treating;  
or

- (b) to any persons, whether electors or not, for the purpose of getting votes for any response, and without receiving payment for it at the time when it is supplied.
- (4) Every elector who corruptly accepts or takes any such food, drink, entertainment, or provision also commits the offence of treating.
- (5) Every person who commits the offence of treating is guilty of a corrupt practice for the purposes of the Electoral Act 1993.

Compare: 2000 No 48 s 72; 1997 No 13 s 57

### **57 Undue influence**

- (1) Every person commits the offence of undue influence who makes use of, or threatens to make use of, any force, violence, or restraint upon or against any person—
  - (a) in order to induce or compel that person to vote for any response; or
  - (b) on account of that person having voted for any response; or
  - (c) on account of that person having voted or refrained from voting at a referendum.
- (2) A person commits the offence described in subsection (1) whether he or she does an act described there—
  - (a) directly or indirectly;
  - (b) on his or her own or through another person.
- (3) Every person commits the offence of undue influence who, by abduction, duress, or any fraudulent device or means,—
  - (a) impedes or prevents the free exercise of the vote of any elector at a referendum; or
  - (b) compels, induces, or prevails upon any elector either to vote or to refrain from voting at a referendum.
- (4) Every person who commits the offence of undue influence is guilty of a corrupt practice for the purposes of the Electoral Act 1993.

Compare: 2000 No 48 s 73; 1997 No 13 s 58

### **58 Interference with voting or compromising secrecy of voting**

- (1) Every person commits an offence and is liable on conviction to a fine not exceeding \$1,000 who—
  - (a) is present in accordance with section 27(4) when a voter votes; and
  - (b) communicates at any time to any person any information obtained about the response for which the voter is about to vote or has voted.
- (2) Every person commits an offence and is liable on conviction to a fine not exceeding \$5,000—
  - (a) who—

- (i) is authorised by a voter to mark the voting paper under section 27(4)(b); or
    - (ii) is the Returning Officer or a person acting under a delegation under section 17(1) and marks a voting paper under section 27(5); and
  - (b) who does not mark the voting paper in accordance with the voter's instructions.
- (3) Every person who, except for a lawful purpose, interferes with or attempts to interfere with a voter marking his or her voting paper at the referendum commits an offence and is liable on conviction to a fine not exceeding \$5,000.

Compare: 2000 No 48 s 74; 1997 No 13 s 59

### **59 Personation**

- (1) Every person commits the offence of personation who—
- (a) marks any voting paper knowing that he or she is not the person intended to receive the voting paper; or
  - (b) dictates a vote knowing that he or she is not the person to whom the relevant parts of the voting paper were intended to be dictated; or
  - (c) having returned a voting paper, returns another voting paper with the intention of returning an additional valid voting paper, whether or not any voting paper he or she returns is valid.
- (2) If the Returning Officer believes that any person has committed an offence against this section, the Returning Officer must report the facts on which that belief is based to the New Zealand Police.
- (3) Every person who commits, or aids, abets, counsels, or procures the commission of, the offence of personation is guilty of a corrupt practice for the purposes of the Electoral Act 1993.

Compare: 2000 No 48 s 75; 1997 No 13 s 60

### **60 Offences in relation to processing**

- (1) Every person who, without the express authorisation of the Returning Officer, enters the office of the Returning Officer or any other premises when the sign referred to in section 34(1)(b) is in place commits an offence and is liable on conviction to a fine not exceeding \$2,000.
- (2) If the Returning Officer, or a person acting under a delegation under section 17(1), fails to take all reasonable steps as required by section 34(2), with the result that any returned voting paper is removed from his or her custody, he or she commits an offence and is liable on conviction to a fine not exceeding \$2,000.
- (3) Every person commits an offence who is present at the processing of voting papers and—

- (a) fails to maintain and aid in maintaining the secrecy of the voting; or
  - (b) communicates any information obtained at the processing of voting papers about the response for which any vote is given in any particular voting paper.
- (4) Every person who commits an offence against subsection (3) is guilty of a corrupt practice for the purposes of the Electoral Act 1993.
- Compare: 2000 No 48 s 76; 1997 No 13 s 61

### 61 Property may be stated as vesting in Returning Officer

In any prosecution for an offence in relation to any voting paper or any envelope containing any voting paper, the property in the voting paper or envelope may be stated as vesting in the Returning Officer.

Compare: 2000 No 48 s 77; 1997 No 13 s 62

## Subpart 7—Advertising

### 62 Interpretation

In this subpart, unless the context otherwise requires,—

**address** means,—

- (a) in relation to an individual,—
  - (i) the full street address of the place where that individual usually lives; or
  - (ii) the full street address of any other place where that individual can usually be contacted between the hours of 9 am and 5 pm on any working day:
- (b) in relation to a body corporate or unincorporated,—
  - (i) the full street address of the body's principal place of business; or
  - (ii) the full street address of the body's head office

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

**referendum advertisement** has the meaning given in section 63.

Compare: 2010 No 139 s 30

### 63 Meaning of referendum advertisement

- (1) In this subpart, **referendum advertisement** means an advertisement that—
- (a) may reasonably be regarded as encouraging or persuading electors—
    - (i) to vote in a particular way in a referendum; or
    - (ii) not to vote in a particular way in a referendum; and
  - (b) is published, at any time from the date of the commencement of this Act until the close of the voting period for the second flag referendum, by—



- (i) broadcasting on the radio or television; or
  - (ii) displaying on a billboard (including an electronic billboard); or
  - (iii) printing in a newspaper, magazine, or journal; or
  - (iv) printing in a professionally printed brochure, pamphlet, flyer, handbill, or poster for the purpose of distribution.
- (2) However, none of the following is a referendum advertisement:
- (a) an advertisement that—
    - (i) is published, or caused or permitted to be published, by a panel, an agency, or the Electoral Commission; and
    - (ii) relates to electoral matters or the conduct or subject matter of 1 or both of the referendums; and
    - (iii) contains—
      - (A) a statement indicating that the advertisement has been authorised by the panel, agency, or Electoral Commission, as the case may be; or
      - (B) a symbol indicating that the advertisement has been authorised by the panel, agency, or Electoral Commission, as the case may be:
  - (b) the editorial content of—
    - (i) a periodical:
    - (ii) a radio or television programme:
  - (c) any display of, or visual representation or description of, the current New Zealand Flag or any alternative flag design, or any associated symbol, that is published without further promotional words or images relating to voting in a referendum:
  - (d) any transmission (whether live or not) of proceedings in the House of Representatives:
  - (e) any publication on the Internet.
- (3) Subsection (2)(e) is for the avoidance of doubt.
- (4) In this section,—
- distribution** includes—
- (a) displaying in or leaving at a public place:
  - (b) delivering to an address:
  - (c) sending by post or otherwise:
  - (d) circulating
- periodical** means a newspaper, magazine, or journal that—

- (a) was established for purposes unrelated to the conduct of either or both of the referendums; and
- (b) since its establishment—
  - (i) has been published at regular intervals; and
  - (ii) has been generally available to members of the public

**professionally printed** means—

- (a) printed by a person or group whose core business is or includes printing; or
- (b) printed under a contract or arrangement for money or other consideration; or
- (c) printed in a volume clearly designed to encourage or persuade a significant proportion of electors to vote or not to vote in a particular way at a referendum.

Compare: 2010 No 139 s 31

**64 Referendum advertisement to include promoter statement**

- (1) A person may publish or cause or permit to be published a referendum advertisement only if the advertisement includes a promoter statement.
- (2) A promoter statement must state the name and address of the promoter of the referendum advertisement.
- (3) If the promoter is a body corporate or unincorporated, the promoter statement must, in addition to the name and address of the body provided under subsection (2), include the name of a member of the body who is the duly authorised representative of the promoter.
- (4) If the referendum advertisement is in a visual form, the promoter statement must clearly appear in the advertisement.
- (5) If the referendum advertisement is broadcast on the radio, the promoter statement when stated must be no less audible than the other content of the advertisement.

Compare: 2010 No 139 s 42(1), (2), (4), (5), (6)

**65 Failure to include promoter statement in referendum advertisement**

Every person who, in contravention of section 64, fails to include a promoter statement in a referendum advertisement is guilty of an offence and is liable on conviction to a fine not exceeding \$40,000.

Compare: 2010 No 139 ss 66(c), 71(2)

**66 Duty of Electoral Commission**

- (1) If the Electoral Commission believes that any person has committed an offence under section 65, it must report the facts on which that belief is based to the New Zealand Police.

- (2) Subsection (1) does not apply if the Electoral Commission considers that the effect of the offence is so inconsequential that there is no public interest in reporting those facts to the New Zealand Police.

Compare: 2010 No 139 s 73

**67 Regulated periods for purposes of Parliamentary Service Act 2000**

For the purposes of the Parliamentary Service Act 2000,—

- (a) the regulated period for the first flag referendum—
- (i) begins on the date on which this Act commences; and
  - (ii) ends with the close of the day appointed under section 11(a) of this Act for the close of that referendum; and
- (b) the regulated period for the second flag referendum—
- (i) begins on the date on which this Act commences; and
  - (ii) ends with the close of the day appointed under section 11(b) of this Act for the close of that referendum.

**Part 3**

**Miscellaneous provisions**

*Orders in Council*

**68 Regulations**

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

- (a) prescribing forms for the purposes of this Act;
- (b) applying, with or without modifications, for the purposes of this Act, any other provisions of the Electoral Act 1993 and any regulations made under that Act;
- (c) applying, with or without modifications, for the purposes of this Act, any other provisions of the 2000 Act and any regulations made under that Act;
- (d) providing for such other matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.

Compare: 2000 No 48 s 80

**69 Validation of irregularities**

- (1) In the circumstances described in subsection (2), the Governor-General may, by Order in Council, do any of the things described in subsection (3).
- (2) The circumstances are—

- (a) if anything is omitted to be done at the time required by or under this Act; or
  - (b) if anything cannot be done at the time required by or under this Act; or
  - (c) if anything is done before or after the time required by or under this Act; or
  - (d) if anything is otherwise irregularly done in matter of form; or
  - (e) if sufficient provision for something that needs to be done is not made by or under this Act.
- (3) The things are—
- (a) at any time before or after the time within which the thing is required to be done, to extend that time; or
  - (b) to validate anything done before or after the time required; or
  - (c) to validate anything irregularly done in matter of form; or
  - (d) to make such other provision for the case as the Governor-General thinks fit.

Compare: 2000 No 48 s 78; 1997 No 13 s 63

*Provisions relating to change of New Zealand flag*

**70 Amendments to Flags, Emblems, and Names Protection Act 1981**

- (1) This section amends the Flags, Emblems, and Names Protection Act 1981.
- (2) In the Long Title, replace “**to declare the New Zealand Ensign to be the New Zealand Flag**” with “**to prescribe the New Zealand Flag**”.
- (3) In section 2, insert in its appropriate alphabetical order:
 

**1902 Flag** means the flag depicted in Schedule 1A
- (4) Replace section 5 with:

**5 The New Zealand Flag**

- (1) The flag described in Part 1 of Schedule 1, being the flag depicted in Part 2 of Schedule 1, is declared to be the New Zealand Flag.
- (2) The New Zealand Flag is the symbol of the Realm, Government, and people of New Zealand.
- (3) The New Zealand Flag—
  - (a) is the national flag of New Zealand for general use on land within New Zealand and, where appropriate for international purposes, overseas; and
  - (b) is the proper national colours to be worn by all New Zealand Government ships, and by such other New Zealand ships as may for the time being be authorised to wear the New Zealand Flag by or under the Ship Registration Act 1992.

Compare: 1952 No 49 s 5(1), (2); Flags Act 1953 s 3(1) (Aust)

**5A 1902 Flag**

- (1) The 1902 Flag is recognised as a flag of historical significance to the Realm, Government, and people of New Zealand.
- (2) Any person or body (other than a government department) may use the 1902 Flag, except where required by law to use the New Zealand Flag or another specified flag for a particular purpose.
- (5) In the heading to section 9, replace “**alternative flags**” with “**New Zealand White Ensign and New Zealand Red Ensign**”.
- (6) In the heading to section 10, replace “**flying of New Zealand Flag**” with “**flying of flags**”.
- (7) Replace section 10(1)(c) with:
  - (c) without derogating from the general design depicted in Part 2 of Schedule 1, the sizes, dimensions, proportions, and colours of the New Zealand Flag—
    - (i) in a degree of detail greater than that provided in Part 1 of Schedule 1; or
    - (ii) to be used for specific purposes, circumstances, or events:
  - (d) the days or occasions on which and the times during which the 1902 Flag, or any other flag of historical or national significance, may be flown:
  - (e) the manner in which the 1902 Flag, or any other flag of historical or national significance, is to be flown, including the precedence that such flag is to be accorded in relation to other specified flags or classes of flags.
- (8) Replace section 10(2) and (3) with:
  - (2) The Minister may, either in any notice issued under subsection (1) or otherwise, set out for general information and guidance rules of conduct and the etiquette to be followed in the flying or other use of any of the following:
    - (a) the New Zealand Flag:
    - (b) the 1902 Flag:
    - (c) any other flag of historical or national significance.
  - (3) Any rules set out under subsection (2) do not have the force of law.
  - (4) A notice or other prescription made under subsection (1) or rules set out under subsection (2) do not alter or affect the unique status of the New Zealand Flag as the symbol of the Realm, Government, and people of New Zealand.
- (9) In section 11(2), replace “Schedule 1” with “Part 2 of Schedule 1”.
- (10) Replace Schedule 1 with the new Schedules 1 and 1A set out in Schedule 5 of this Act.
- (11) In Schedule 1 (as substituted by this Act),—

- (a) in Part 1, in the space indicated by the words “[*Insert description*]”, insert in place of those words the technical specifications of the flag design that gained the greatest number of votes in the second flag referendum, as those specifications were first prescribed under section 13(2)(c); and
  - (b) in Part 2, in the space indicated by the words “[*Insert image*]”, insert in place of those words the image of the flag design that gained the greatest number of votes in the second flag referendum, as that image was first prescribed under section 13(2)(b).
- (12) In Schedule 2, repeal Part A.

#### **71 Amendments to Land Transport (Driver Licensing) Rule 1999**

- (1) This section amends the Land Transport (Driver Licensing) Rule 1999.
- (2) After clause 63, insert:

#### **63A Validity not affected by change of New Zealand Flag**

- (1) For the purposes of clauses 62(g) and 63(2)(b), **New Zealand Flag** means the flag that, at the time the licence was issued or at any time within the 6 months immediately before the licence was issued, was declared under the Flags, Emblems, and Names Protection Act 1981 to be the New Zealand Flag.
- (2) The validity of a driver licence is not affected by a change of the New Zealand Flag that occurs at any time during the period of validity of the licence.

#### **72 Transitional provision**

For the purposes of section 58(2) of the Ship Registration Act 1992, until the day that is 6 months after the date on which this provision commences, the 1902 Flag may be flown as the New Zealand Flag.

## Schedule 1

### Voting paper for first flag referendum

s 10(1)

Schedule 1: replaced, on 25 September 2015, by section 6 of the New Zealand Flag Referendums Amendment Act 2015 (2015 No 86).

**Voting Paper for the 1st Referendum on the New Zealand Flag**

INSERT  
QR CODE  
and NO.

**QUESTION:**  
**If the New Zealand flag changes, which flag would you prefer?**  
*Rank flags using the instructions above.*

Option A	Option B	Option C	Option D	Option E
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

WRITE  
NUMBERS(S)  
HERE

**Schedule 2**  
**Voting paper for second flag referendum**

s 10(2)

**Voting Paper for the 2nd Referendum on the  
New Zealand Flag**

INSERT  
QR CODE  
and NO.

**QUESTION:**  
**What is your choice for the  
New Zealand flag?**

Option A

Option B

 **TICK ONLY  
ONE BOX**







## Schedule 3

### Forms

ss 15(3), 16(3)(b), 38(1)(b)(ii), 43(3)(a),  
44(2)(a)

#### Form 1

#### Declaration by Returning Officer or by person employed or engaged for purposes of referendum

ss 15(3), 16(3)(b)

\*I, [*name, place of residence, and occupation*], solemnly and sincerely declare that I will faithfully serve in the office of the Returning Officer and will not do anything prohibited by section 50, 52, 58, or 60(2) and (3) of the New Zealand Flag Referendums Act 2015 or section 64 of the Referenda (Postal Voting) Act 2000.

**or**

\*I, [*name, place of residence, and occupation*], solemnly and sincerely declare that I will faithfully serve in the position for which I am employed/engaged† under section 16 of the New Zealand Flag Referendums Act 2015, and will not do anything prohibited by section 50, 52, 58, or 60(2) and (3) of the New Zealand Flag Referendums Act 2015 or section 64 of the Referenda (Postal Voting) Act 2000.

\*Select the paragraph that applies.

†Select one.

[*Name, signature*]

Declared at [*place, date*]

Before me: [*name, signature*]

(Justice of the Peace/lawyer/Returning Officer\*)

\*Select one.

#### Notes

- 1 Sections 50, 52, 58, and 60(2) and (3) of the New Zealand Flag Referendums Act 2015 and section 64 of the Referenda (Postal Voting) Act 2000 are printed on the back of this form and must be read by or to the declarants to whom they apply.
- 2 A declaration by the Returning Officer must be made before a Justice of the Peace or a lawyer.

Form 2  
Declaration of result of referendum

s 38(1)(b)(ii)

I declare the result of the referendum taken over the period commencing on *[date]* and ending on *[date]* on the question “What is your choice for the New Zealand flag?” is as follows:

\*Votes received for *[identify option]*: *[number]*

Dated at *[place, date]*

*[Name, signature]*

(Returning Officer)

\*Repeat for each option.

Form 3  
Notice of opposition to inquiry into conduct of referendum

s 43(3)(a)

In the High Court of New Zealand  
Wellington Registry

No: *[number of proceeding]*

In the matter of a referendum held from *[dates of voting period]* on *[describe question]*

**Respondent**

- 1 The respondent is a group of *[number in group]* electors who intend to oppose the application or applications *[describe application or applications]* for an inquiry into the conduct of the referendum.
  - 2 The name, address, electoral district, and signature of each member of the group are set out in the appendix to this notice.
  - 3 The spokesperson for the respondent is *[name, address of spokesperson]*.
  - 4 The respondent acts—
    - \*(a) through a lawyer, who is *[name, address of lawyer]*;
    - \*(b) through its spokesperson.
- \*Select the paragraph that applies.

**Address for service**

The respondent's address for service is *[address]*.

**Signature**

*[Signature, date]*

(spokesperson for respondent/person on behalf of spokesperson for respondent\*)

\*Select one.

**Appendix**

**Members of respondent group**

Name	Address	Electoral district	Signature
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Form 4  
Application for inquiry into conduct of referendum

s 44(2)(a)

In the High Court of New Zealand

Wellington Registry

No: *[number of proceeding]*In the matter of a referendum held from *[dates of voting period]* on *[describe question]***Applicant's details**

- 1 The applicant is a group of *[number in group]* electors who are dissatisfied with the conduct of the referendum.
  - 2 The name, address, electoral district, and signature of each member of the group are set out in the appendix to this application.
  - 3 The spokesperson for the applicant is *[name, address of spokesperson]*.
  - 4 The applicant acts—
    - \*(a) through a lawyer, who is *[name, address of lawyer]*;
    - \*(b) through its spokesperson.
- \*Select the paragraph that applies.

**Application**

- 5 \*The applicant asks for an inquiry into the conduct of the referendum.  
*or*  
\*The applicant asks for an inquiry into the conduct of *[name of person complained of]*, *[office described in section 42 of the New Zealand Flag Referendums Act 2015, if relevant]*, of *[address of person complained of]*, who was connected with the referendum.  
\*Select the paragraph that applies.
- 6 The specific grounds on which the applicant is dissatisfied with the conduct of the referendum are as follows: *[state specific grounds]*.
- 7 \*The applicant asks the court to determine the total number of valid votes recorded for each option.  
*or*  
\*The applicant asks the court to declare the referendum void.  
\*Select the paragraph that applies.

**Address for service**

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

**Signature**

[*Signature, date*]

\*Spokesperson for applicant

\*Person on behalf of spokesperson for applicant.

\*Select one.

***Appendix***

***Members of applicant group***

<b>Name</b>	<b>Address</b>	<b>Electoral district</b>	<b>Signature</b>
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## Schedule 4

### Method of counting preferential votes

ss 37(a), 38(1)(a)(ii)

#### *Interpretation*

- 1 In this schedule, unless the context otherwise requires,—
- AAFD method** means the Ahead At First Difference method set out in Part 3 of this schedule
- exhausted**, in relation to a voting paper, means the point at which no further votes from that voting paper can be redistributed by the operation in clause 6
- non-transferable votes** means the votes that remain untransferred when a voting paper becomes exhausted
- preference** means a preference expressed for an option on a voting paper as a rank, for example, 1, 2, or 3
- PRN** means the pseudo-random number generated by the PRNG method
- PRNG method** means the Pseudo Random Number Generation method set out in Part 3 of this schedule
- votes** means whole number values.

### Part 1

#### Method of counting votes

- 2 Votes are counted by recognising preferences as provided for in Part 2 of this schedule, and by performing the steps in clauses 3 to 9 until an option is successful.

#### *Step 1*

- 3 Determine the absolute majority of votes using the following formula:

$$m = (v - vnt) \div 2$$

where—

- m** is the absolute majority of votes and if **m** is not a whole number, it is rounded up to the next whole number
- v** is the number of voting papers
- vnt** is the total number of non-transferable votes.
- 4 An option is successful if the number of first preference votes equals or exceeds the absolute majority of votes.

*Step 2*

- 5 If no option is successful, the option with the fewest first preference votes is excluded.
- 6 For each voting paper on which the option excluded under clause 5 is the first preference, redistribute that vote to the option that is the next preference on that voting paper.
- 7 An option is successful if its votes equal or exceed the absolute majority of votes.
- 8 If no option is successful, repeat the operations in clauses 3 and 5 to 7 (those clauses being read with any modifications that the context requires).

*Exceptional cases*

- 9 If clause 10 applies, the steps in clauses 3 and 5 to 7 must be modified by carrying out the operations set out in the relevant parts of clause 10.

*Ties*

- 10 This clause applies if—
  - (a) an option with the lowest number of votes is to be excluded but 2 or more options share the lowest number of votes; or
  - (b) an option that has votes that equal or exceed the absolute majority of votes is to succeed but 2 options' votes equal the absolute majority of votes.

If this clause applies, exclude the option identified by the AAFD method as the option to exclude. In the case of paragraph (a), if the AAFD method does not identify an option to exclude, exclude the option with the lowest PRN.

In the case of paragraph (b), the option that is not excluded is successful.

**Part 2**  
**Recognising preferences**

- 11 In carrying out the operations in Part 1 of this schedule, do not recognise—
  - (a) a preference that is not unique; or
  - (b) a preference (other than a first preference) that is not consecutive; or
  - (c) any preference on the same voting paper that is lower in rank than a preference to which paragraph (a) or (b) applies.

*Example 1: not unique*

Heading: replaced, on 25 September 2015, by section 7(1) of the New Zealand Flag Referendums Amendment Act 2015 (2015 No 86).

## 12 A voting paper that expresses these preferences—

Option A	1	
Option B	2	
Option C	3	
Option D	2	Not unique
Option E	4	

generates the following preferences for the purposes of counting votes:

First preference	Option A
Second preference	None
Third preference	None
Fourth preference	None
Fifth preference	None

Schedule 4 clause 12: replaced, on 25 September 2015, by section 7(1) of the New Zealand Flag Referendums Amendment Act 2015 (2015 No 86).

*Example 2: not consecutive*

Heading: replaced, on 25 September 2015, by section 7(1) of the New Zealand Flag Referendums Amendment Act 2015 (2015 No 86).

## 13 A voting paper that expresses these preferences—

Option A	1	
Option B	4	Not consecutive
Option C	5	
Option D	2	
Option E	6	

generates the following preferences for the purposes of counting votes:

First preference	Option A
Second preference	Option D
Third preference	None
Fourth preference	None
Fifth preference	None

Schedule 4 clause 13: replaced, on 25 September 2015, by section 7(1) of the New Zealand Flag Referendums Amendment Act 2015 (2015 No 86).



### Part 3 Methods relevant to tie breaking

#### *AAFD method*

- 14 To use the AAFD method, determine which tied option, or options, does not have more votes than the other tied option or options at the earliest point at which the options had different numbers of votes. If one option is identified, exclude that option.

#### *PRNG method*

- 15 Allocate a unique pseudo-random whole number (a **PRN**) for each option at each stage of the counting.
- 16 To generate PRNs, calculate x, y, and z using the following formulas:

$$\begin{aligned}x &= 10 \\y &= 1 \\z &= [v + 1\,000 (v \text{ rem } 10)] \text{ rem } 30\,323\end{aligned}$$

where—

v is the total number of valid voting papers

rem is the remainder operator such that a rem b gives the remainder of dividing whole number a by whole number b.

Schedule 4 clause 16 formula: amended, on 25 September 2015, by section 7(2) of the New Zealand Flag Referendums Amendment Act 2015 (2015 No 86).

- 17 Generate a random whole number rc using the following formulas:

$$\begin{aligned}x &= (171x) \text{ rem } 30\,269 \\y &= (172y) \text{ rem } 30\,307 \\z &= (170z) \text{ rem } 30\,323 \\rc &= [(10\,000x) \text{ div } 30\,269] + [(10\,000y) \text{ div } 30\,307] + [(10\,000z) \text{ div } 30\,323]\end{aligned}$$

where—

rc is a pseudo-random number

rem is the remainder operator such that a rem b gives the remainder of dividing whole number a by whole number b

div is the integer division operation such that a div b gives the whole number quotient of dividing whole number a by whole number b.

- 18 Repeat the step in clause 17 4 times, discarding the first 4 values of rc.

- 
- 19 Assign the current value of *rc* to the first option.
  - 20 Repeat the step in clause 17 until a pseudo-random number *rc* results that is distinct from all previous pseudo-random numbers assigned to options. Assign *rc* to the next option.
  - 21 Repeat the step in clause 20 until all options have been assigned a pseudo-random number.
  - 22 For the second and subsequent stages in the counting, repeat the step in clause 20 so that all options have been assigned a unique pseudo-random whole number at each stage of the counting.

**Schedule 5**  
**New Schedules 1 and 1A inserted**

s 70(10)

**Schedule 1**  
**New Zealand Flag**

s 5

**Part 1**

*[Insert description]*

**Part 2**

*[Insert image]*

**Schedule 1A**  
**1902 Flag**

s 2



## Reprints notes

### **1** *General*

This is a reprint of the New Zealand Flag Referendums Act 2015 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### **2** *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### **3** *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### **4** *Amendments incorporated in this reprint*

New Zealand Flag Referendums Amendment Act 2015 (2015 No 86): Part 1