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# **New Zealand's Constitution of 1852 with Amendments through 2014**

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# Legislature Act 1908

## Preamble

An Act to consolidate certain enactments of the General Assembly relating to the Legislature of New Zealand

### 1. Short Title, etc

1. The Short Title of this Act is the Legislature Act 1908.
2. This Act is a consolidation of the enactments mentioned in Schedule 1, and with respect to those enactments the following provisions shall apply:
  - a. all districts, appointments, offices, Representation Commissioners, Proclamations, Orders in Council, orders, warrants, regulations, rules, rolls, lists, electors' rights, voting permits, claims, applications, declarations, notices, instruments, records, and generally all acts of authority which originated under any of the said enactments or any enactment thereby repealed, and are subsisting or in force on the coming into operation of this Act, shall enure for the purposes of this Act as fully and effectually as if they had originated under the corresponding provisions of this Act, and accordingly shall, where necessary, be deemed to have so originated.
  - b. all matters and proceedings commenced under any such enactment, and pending or in progress on the coming into operation of this Act, may be continued, completed, and enforced under this Act.
3. This Act is divided into Divisions and Parts, as follows:
  - Division I—The Legislative Council. (Sections 2 to 11.)
  - Division II—The House of Representatives. (Sections 12 to 241.)
    - Part 1—Constitution of House. (Sections 13 to 34.)
    - Part 2—Preliminary to the Election. (Sections 35 to 96.)
    - Part 3—Regulation of Elections. (Sections 97 to 179.)
    - Part 4—Maori Representation. (Sections 180 to 187.)
    - Part 5—Election Petitions and Corrupt and Illegal Practices. (Sections 188 to 232.)
    - Part 6—Miscellaneous. (Sections 233 to 241.)
  - Division III—Privileges of Parliament. (Sections 242 to 271.)
  - Division IV—Private, Local, and Private Estates Bills. (Sections 272 to 284.)

4. In this Act, if not inconsistent with the context,—
- Member of Parliament means member of the House of Representatives
  - Parliament, when used alone, means the General Assembly.

## Division I: The Legislative Council

### 2-11. [Repealed]

## Division II

### 12-241. [Repealed]

## Division III: Privileges of Parliament

### A. Privileges generally

#### 242. Privileges of House of Representatives. Journals as evidence

1. The House of Representatives and the Committees and members thereof shall hold, enjoy, and exercise such and the like privileges, immunities, and powers as on 1 January 1865 were held, enjoyed, and exercised by the Commons House of Parliament of Great Britain and Ireland, and by the Committees and members thereof, so far as the same are not inconsistent with or repugnant to such of the provisions of the Constitution Act as on 26 September 1865 (being the date of the coming into operation of the Parliamentary Privileges Act 1865) were unrepealed, whether such privileges, immunities, or powers were so held, possessed, or enjoyed by custom, statute, or otherwise.
2. Such privileges, immunities, and powers shall be deemed to be part of the general and public law of New Zealand, and it shall not be necessary to plead the same, and the same shall be judicially taken notice of in all Courts and by and before all Judges.
3. Upon any inquiry touching the privileges, immunities, and powers of the said House of Representatives, or of any Committee or member thereof, a copy of the Journals of the said Commons House of Parliament, printed or purporting to be printed by order of the said Commons House of Parliament by the printer to the said Commons House, shall be admitted as evidence of such Journals by all Courts, Judges, Justices, and others without any proof being given that such copies were so printed.

#### 243-251. [Repealed]

• Immunity of legislators

• Legislative committees  
• Reference to country's history

## B. Parliamentary witnesses

### 252. Right to administer oaths

The House of Representatives and any Committee of such House may respectively administer an oath to any witness examined before such House or Committee; and any person examined as aforesaid who wilfully gives false evidence is liable to the penalties of perjury.

### 253. Indemnity to witness. Immunities and privileges

1. Where any person sworn and examined as a witness by or before any Select Committee of the House of Representatives on any matter which is a subject of inquiry before such Committee, claims, upon such examination, excuse from answering any question put to him by any such Committee on the ground that the answer to such question may criminate or tend to criminate him, and the Committee is of opinion that full answers are required in order to enable it to deal satisfactorily with the matter under inquiry, it shall make a report thereof to the House, and if such House passes a resolution that the witness shall give full evidence, then such witness shall answer accordingly.
2. Every such witness who thereupon answers fully and faithfully any question put to him by the Committee to the satisfaction of such Committee shall be entitled to receive a certificate under the hand of the Chairman of the Committee stating that such witness was, upon his examination, so required to answer and had answered all such questions.
3. On production and proof in any Court of law of such certificate, the Court shall stay the proceedings in any action or prosecution against such witness for any act or thing done by him before that time and revealed by the evidence of such witness, and may at its discretion award to such witness such costs as he may have been put to.
4. No statement made by any person in answer to any question put by or before any Committee as aforesaid shall, except in cases of a charge of perjury, be admissible as evidence in any proceeding, civil or criminal.
5. Every witness sworn and examined under this or the last preceding section shall have, in respect of the testimony given by him when so sworn, the like privileges, immunities, and indemnities in all respects as are possessed by or belong to any witness sworn and examined in the High Court.

## C. Hansard

### 253A. Hansard

1. An official report (to be known as Hansard) shall be made of such portions of the proceedings of the House of Representatives and its committees as may be determined by the House of Representatives or by the Speaker of the House of Representatives.
2. The report shall be made in such form and subject to such rules as may be from time to time approved by the House of Representatives itself or by the Speaker of the House of Representatives.

## D. Other privileges

## 254-256. [Repealed]

### 257. Interpretation. Exemption of members and officers from attendance as witnesses

1. In this and the succeeding sections of this Division of this Act—
  - Court of record means the Court of Appeal, the High Court, and every District Court
  - process includes every writ, summons, and subpoena
  - Speaker includes the person for the time being acting in that capacity.
2. Where any member of Parliament or any of the officers specified in Schedule 6, not being in attendance on Parliament, is required by the process of any Court of record to attend thereat personally, either during any session of the General Assembly or within 10 days before the commencement thereof, as a party or witness in any civil proceeding, or as a witness in any criminal proceeding, such member or officer may apply to such Court to be exempted from attendance on such Court.

### 258. Exemption of members and officers bound by recognisance

[Repealed]

### 259. Court to make inquiry and grant exemption

On any such application for an exemption from attendance being made to any such Court as aforesaid, or to any Judge thereof, unless it appears to the satisfaction of the Court or Judge that the ends of public justice would be defeated or injuriously delayed or irreparable injury would be caused to any party to the proceedings by the non-attendance of such member or officer in obedience to such process or in pursuance of such process, the Court or Judge shall order that such member or officer shall be discharged from attendance in obedience to such process until the expiration of 10 days after the termination of the session of the General Assembly in respect of which such exemption is claimed, and may make order for the attendance of such member or officer at the sitting of such Court at such future date after the expiration of such 10 days as such Court or Judge thinks fit.

### 260. Exemption of Speaker from attendance on Courts

Where the Speaker of the House of Representatives, being in attendance on Parliament, is required by the process of any Court to attend thereat personally either as a party or a witness in any civil proceeding, or as a witness in any criminal proceeding, he shall submit the matter to the House of Representatives and such order may be made thereon as the House thinks fit; and if it is resolved that the Speaker shall be exempted from attendance, such resolution shall be presented in like manner and shall have the same effect as the certificate mentioned in section 263 in respect of any other member not being a Speaker:

provided that if the House is under adjournment, and it is necessary to act without delay, the Speaker whose attendance is required may sign a certificate to the like effect as is hereinafter provided in the said section in respect of any other member not being a Speaker, but such certificate shall remain in force only until the matter is submitted by the Speaker at the first convenient opportunity to the House, and order is made thereon.

## **261. Application to Speaker for exemption from attendance in civil Courts**

Where any member of Parliament (other than the Speaker thereof) or any such officer as aforesaid, being in attendance on Parliament, is required by the process of any Court to attend thereat personally as a party or witness in any civil proceeding, or as a witness in any criminal proceeding, such member or officer may apply to the Speaker or Acting Speaker of the House to be exempted from such attendance on such Court.

## **262. Application by members and officers bound by recognisance**

[Repealed]

## **263. Speaker to make inquiry and grant certificate**

On any such application to a Speaker or Acting Speaker as aforesaid, unless it appears to his satisfaction, on such inquiry as he thinks fit to make into the circumstances of the case, that the ends of public justice would be defeated or injuriously delayed, or that irreparable injury would be caused to any party to the proceedings by the non-attendance of such member or officer in obedience to such process, such Speaker or Acting Speaker shall grant a certificate under his hand to the effect that the attendance in the General Assembly of the member or officer therein named is required during the session.

## **264. Effect of certificate**

On such certificate being presented to the Court in which the attendance of such member or officer is required he shall be thereby exempted from attending therein until 10 days after the termination of the session then being held; and no proceedings, civil or criminal, shall be taken against such member or officer in respect of his non-attendance in obedience to such process, and the Court shall direct such postponement of trial or other proceedings, and make such order as it deems convenient and just, regard being had to such exemption as aforesaid.

## 265. Adjournment of civil proceedings against members and officers

Where any civil proceedings are pending in any Court of record against any such member or officer as aforesaid, and such proceedings are set down for trial or hearing, or are likely in the ordinary course to come on for trial or hearing, at a sitting of any such Court to be held within the period extending from 10 days before the holding of any session of the General Assembly, to 30 days after the termination of the said session, such member or officer may obtain an adjournment or appointment of such trial or hearing to some day later than the period of 30 days last mentioned, upon the conditions following:

- a. where such member or officer is not in attendance on Parliament, and the proceedings are likely to come on or are set down for trial or hearing at a sitting of any such Court to be held within 10 days before the commencement of the session or during such session, such member or officer shall make application to the Court in which such proceedings are pending for an adjournment or appointment of such trial or hearing to some day beyond the period of 30 days after the end of such session, accompanying such application with an affidavit made by such member or officer that he has been summoned to attend in his place in Parliament, and that it is necessary that opportunity should be afforded him of being personally present at the trial or hearing of such proceedings, and that his attendance on Parliament will prevent his being able so to be present on such trial or hearing:
- b. where such member or officer is in attendance on Parliament, and such proceedings are likely to come on or are set down for trial or hearing at a sitting of such Court to be held at any time during a session of Parliament or within 30 days thereafter, then such member or officer shall apply to the Speaker of the House of Representatives for a certificate entitling him to an adjournment of such trial or hearing, whereupon the following provisions shall apply:
  - i. such application shall be supported by an affidavit made by such member or officer, and delivered to the Speaker, that such proceedings are likely to come on or are set down for trial or hearing at a sitting of such Court to be held during such session or within 30 days thereafter, and that the personal attendance of such member or officer at such trial or hearing is necessary for his interest:
  - ii. the Speaker shall, after making inquiry in manner provided by section 263, and unless satisfied that irreparable injury would be caused to any party to such proceedings if the trial or hearing thereof was postponed, forward such affidavit, together with a certificate in terms of the said section, to the Court in which such proceedings are pending.



## **266. Court may make inquiry and adjourn case**

The Court in which such civil proceedings are pending shall, in either of the cases referred to in the last preceding section, cause the trial or hearing of such proceedings to be adjourned without cost to such member or officer, from time to time, to some sitting of the Court to be held after the expiration of 30 days after the termination of the session: provided that in the case referred to in paragraph (a) of the said last preceding section, the Court may make the same inquiries as the Speaker of the House of Representatives is required to make under the said section 263, and shall not be bound to adjourn or postpone the trial or hearing if it is satisfied that irreparable injury would be caused to any party to such proceedings by such adjournment or postponement.

## **267. Service of process of Courts not of record**

If any person serves or causes to be served any summons or process issued out of any Court not of record (other than a summons or warrant on a charge of any offence), upon or for any such member or officer as aforesaid by sending, leaving, or delivering the same in any way which would otherwise be good service by law, during any session of the General Assembly, or within 10 days before the commencement or 10 days after the termination of such session, such service shall be invalid and of no effect.

## **268. Court to take judicial notice of signature of Speaker**

It shall be the duty of all Courts, Judges, and Justices, and all other persons, to take judicial notice of the signatures of the Speaker or Acting Speaker of the House of Representatives when affixed to any such certificate as aforesaid.

## **269. Leave to members and officers to attend Court**

Nothing in this Act shall be construed to limit or abridge in any respect the power of the House of Representatives to give leave to any of the members or officers of the House of Representatives to attend any Court in respect of which it appears desirable to the House of Representatives that such leave should be granted:

provided that any member of the House of Representatives having obtained leave of absence without any reference to the process of any Court shall, so far as regards any Court not being a Court of record, but not as regards a Court of record, be considered as in attendance upon his duties in Parliament.

## **270. [Repealed]**

## **271. [Repealed]**

## **Division IV: Private, local, and private estates bills**

## **272-284. [Repealed]**

## **Schedule 1: Enactments consolidated**

Alcoholic Liquors Sale Control Act Amendment Act 1895 (1895 No 45) - Amendment(s) incorporated in the Act(s).

Disqualification Act 1878 (1878 No 30)

Electoral Act 1893 (1893 No 18)

Electoral Act 1905 (1905 No 29)

Legislative Council Act 1891 (1891 No 25)

Legislative Council Act Amendment Act 1902 (1902 No 50)

Legislative Officers' Salaries Act 1867 (1867 No 85)

Legislative Officers' Salaries Act Amendment Act 1906 (1906 No 54)

Licensing Acts Amendment Act 1904 (1904 No 42) - Amendment(s) incorporated in the Act(s).

Parliamentary and Executive Titles Act 1907 (1907 No 50) - Amendment(s) incorporated in the Act(s).

Parliamentary Privileges Act 1865 (1865 No 13)

Parliamentary Privileges Act 1865 Amendment Act 1875 (1875 No 20)

Parliamentary Witnesses Indemnity Act 1883 (1883 No 3)

Payment of Members Act 1904 (1904 No 24)

Private and Local Bills Costs Act 1882 (1882 No 24)

Private Estates Bills Act 1867 (1867 No 17)

Privileges Act 1866 (1866 No 73)

Privileges Act 1866 Amendment Act 1872 (1872 No 73)

Privileges Act 1866 Amendment Act 1878 (1878 No 16)

Public Service Classification Act 1907 (1907 No 55) - Amendment(s) incorporated in the Act(s).

Statute Law Amendment Act 1906 (1906 No 58) - Amendment(s) incorporated in the Act(s).

## **Schedule 2**

[Repealed]

## **Schedule 3**

[Repealed]

## **Schedule 4**

[Repealed]

## **Schedule 5**

[Repealed]

## Schedule 6

### A. HOUSE OF REPRESENTATIVES

The Clerk of the House of Representatives.

The Deputy Clerk of the House of Representatives.

The Sergeant-at-Arms.

The Clerk Assistant of the House of Representatives.

## Schedule 7

[Repealed]

### Amendment Act 1: Legislature Amendment Act 1992

Public Act: 1992 No 106

Date of assent: 26 November 1992

Commencement: 1 February 1993

#### 1. Short Title and commencement

1. This Act may be cited as the Legislature Amendment Act 1992, and shall be read together with and deemed part of the Legislature Act 1908.
2. This Act shall come into force on 1 February 1993.

#### 2. Interpretation

In this Act, unless the context otherwise requires,—

- authorised Parliamentary paper means a Parliamentary paper published by order or under the authority of the House of Representatives
- Parliamentary paper means any report, paper, votes, or proceedings.

#### 3. Act to bind the Crown

This Act binds the Crown.

#### 4. Stay of proceedings where publication made by order of House of Representatives

1. Where any proceedings (whether civil or criminal) are commenced against any person in respect of the publication, by that person or that person's employee, by order or under the authority of the House of Representatives, of any Parliamentary paper, that person may, subject to subsections (2) and (3), produce to the Court a certificate signed by the Speaker of the House of Representatives stating that the Parliamentary paper in respect of which the proceedings are commenced was published, by that person or that person's employee, by order or under the authority of the House of Representatives.

• Immunity of legislators

2. No certificate may be produced to any Court under subsection (1) unless the person seeking to produce it has given to the plaintiff or prosecutor in the proceedings, or to the plaintiff's or prosecutor's solicitor, at least 24 hours' notice of that person's intention to do so.
3. Every certificate produced under subsection (1) shall be accompanied by an affidavit verifying the certificate.
4. Where a certificate is produced to any Court in accordance with subsections (1) to (3), the Court shall immediately stay the proceedings, and the proceedings shall be deemed to be finally determined by virtue of this section.

## 5. Stay of proceedings in respect of copy of Parliamentary paper

1. Where any proceedings (whether civil or criminal) are commenced in respect of the publication of a copy of an authorised Parliamentary paper, the defendant in those proceedings may, at any stage of the proceedings, produce to the Court the authorised Parliamentary paper and the copy, together with an affidavit verifying the authorised Parliamentary paper and the correctness of the copy.
2. Where, in any proceedings, the defendant produces the documents required by subsection (1), the Court shall immediately stay the proceedings, and the proceedings shall be deemed to be finally determined by virtue of this section.

# Judicature Act 1908

## Preamble

An Act to consolidate certain enactments of the Parliament of New Zealand relating to the High Court and the Court of Appeal, and to certain rules and provisions of law in judicial matters generally

### 1. Short Title, etc

1. The Short Title of this Act is the Judicature Act 1908.
2. This Act is a consolidation of the enactments mentioned in Schedule 1.
3. Without affecting the specific saving provisions of this Act, it is hereby declared as follows:
  - a. all Proclamations, Orders in Council, districts, offices, appointments, commissions, patents, scales of fees, rules, regulations, orders, registers, records, instruments, and generally all acts of authority which originated under any of the enactments mentioned in Schedule 1 or any enactment thereby repealed, and are subsisting or in force on the coming into operation of this Act, shall enure for the purposes of this Act as fully and effectually as if they had originated under the corresponding provisions of this Act, and accordingly shall, where necessary, be deemed to have so originated:
  - b. all actions, matters, and proceedings commenced under any such enactment, and pending or in progress on the coming into operation of this Act, may be continued, completed, and enforced under this Act.

4. This Act is divided into Parts, as follows:
- Part 1: The High Court. (Sections 3 to 56.)
  - Part 1A: Special provisions applying to certain proceedings in the High Court and the Federal Court of Australia. (Sections 56D to 56S.)
  - Part 2: The Court of Appeal. (Sections 57 to 75.)
  - Part 3: Rules and provisions of law in judicial matters generally. (Sections 76 to 101.)

## 2. Interpretation

In this Act, unless the context otherwise requires,—

- Associate Judge means an Associate Judge of the High Court
- Chief High Court Judge—
  - a. means the person holding that office under section 4A; and
  - b. includes a Judge of the High Court acting in place of the Chief High Court Judge under section 4A(5)
- civil proceedings means any proceedings in the court, other than criminal proceedings
- court means the High Court of New Zealand
- Court of Appeal Rules means rules which are made under section 51C and which regulate the practice and procedure of the Court of Appeal (including the practice and procedure on civil appeals from any court or person to the Court of Appeal); and includes the Court of Appeal (Civil) Rules 2005
- defendant means a person served or intended to be served with any application to the court for the exercise of its civil or criminal jurisdiction
- existing means existing on the coming into operation of this Act
- High Court Rules means the rules from time to time set out in Schedule 2
- inferior court means any court of judicature within New Zealand of inferior jurisdiction to the High Court
- interlocutory application—
  - a. means any application to the court in any civil proceedings or criminal proceedings or intended civil proceedings or intended criminal proceedings for an order or a direction relating to a matter of procedure or, in the case of civil proceedings, for some relief ancillary to that claimed in a pleading; and
  - b. includes an application for a new trial; and
  - c. includes an application to review an order made, or a direction given, on any application to which paragraph (a) or paragraph (b) applies
- Judge means a Judge of the High Court
- judgment includes decree

- medical practitioner means a health practitioner who is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine
- plaintiff means a person who makes an application (other than an interlocutory application) to the court for the exercise of its civil or criminal jurisdiction
- Supreme Court means the Supreme Court of New Zealand established by section 6 of the Supreme Court Act 2003.

## Part 1: The High Court

### A. Constitution of the court

#### 3. Supreme Court reconstituted as High Court

1. There shall continue to be in and for New Zealand a court of record, for the administration of justice throughout New Zealand, henceforth to be called the High Court of New Zealand.
2. The High Court is hereby declared to be the same court as that established by this Act, and called, before the commencement of section 2 of the Judicature Amendment Act 1979, the Supreme Court.

#### 4. The Judges of the High Court

1. The High Court consists of—
  - a. a Judge called the Chief Justice of New Zealand; and
  - b. the other Judges, up to a maximum of 55, who are from time to time appointed.
- 1A. For the purposes of subsection (1)(b),—
  - a. a Judge who is acting on a full-time basis counts as 1:
  - b. a Judge who is acting on a part-time basis counts as an appropriate fraction of 1:
  - c. the aggregate number (for example, 54.5) must not exceed the maximum number of Judges that is for the time being permitted.
- 1B. Subsection (1) is subject to subsections (1C) and (1D) and the other provisions of this Act.
- 1C. An additional Judge or additional Judges may be appointed whenever the Governor-General thinks it necessary because of the absence or anticipated absence of any of the Judges on leave preliminary to retirement.
- 1D. Every appointment made under subsection (1C) must be a permanent appointment from the time when it is made, and must fill the vacancy next occurring in the office of Judge, not being a vacancy filled by an earlier appointment under subsection (1C).
2. The Judges of the High Court shall be appointed by the Governor-General in the name and on behalf of Her Majesty.

• Structure of the courts

• Ordinary court selection

• Ordinary court selection

• Ordinary court selection

- 2A. A Judge must not undertake any other paid employment or hold any other office (whether paid or not) unless the Chief High Court Judge is satisfied that the employment or other office is compatible with judicial office.
- 3. As between the Judges of the High Court who are not Judges of the Supreme Court or Court of Appeal,—
  - a. the Chief High Court Judge has seniority over the other Judges:
  - b. the other Judges have seniority among themselves according to the dates of their appointments as Judges of the High Court:
  - c. 2 or more of the other Judges appointed as Judges of the High Court on the same date,—
    - i. have seniority according to the precedence assigned to them by the Governor-General on appointment; or
    - ii. if no precedence is assigned to them, according to the order in which they take the Judicial Oath.
- 3A. Permanent Judges have seniority over temporary Judges.
- 3B. Subsection (3A) overrides subsection (3).
- 4. The jurisdiction of the High Court shall not be affected by any vacancy in the number of the Judges of that court.

#### 4A. Chief High Court Judge

- 1. The Governor-General must by warrant appoint a Judge of the High Court who is not a Judge of the Supreme Court or the Court of Appeal to be the Chief High Court Judge.
- 2. The Chief High Court Judge holds that office until the earliest of the following:
  - a. ceasing to hold office as a Judge of the High Court:
  - b. being appointed a Judge of the Supreme Court or the Court of Appeal:
  - c. resigning the office of Chief High Court Judge without resigning office as a Judge of the High Court.
- 3. The Chief High Court Judge cannot resign the office of Chief High Court Judge without resigning office as a Judge of the High Court, except with the prior approval of the Governor-General.
- 4. The Judge of the High Court who is next senior after the Chief High Court Judge may act in place of the Chief High Court Judge if,—
  - a. because of illness or absence from New Zealand, or for any other reason, the Chief High Court Judge is unable to exercise the duties of that office; or
  - b. the office of Chief High Court Judge is vacant.
- 5. While acting in place of the Chief High Court Judge, the next senior Judge—
  - a. may perform the functions and duties of the Chief High Court Judge; and

• Ordinary court selection

- b. may for that purpose exercise all the powers of the Chief High Court Judge.
6. The fact that the next senior Judge exercises any of the powers of the Chief High Court Judge is conclusive proof of his or her authority to do so.

#### **4B. Functions of Chief High Court Judge**

1. The Chief High Court Judge is responsible to the Chief Justice for ensuring the orderly and prompt conduct of the High Court's business.
2. The Chief High Court Judge may make all the arrangements that are necessary for the sittings of the court and the conduct of its business.

#### **4C. Judges of High Court act on full-time basis but may be authorised to act part-time**

1. A person acts as a Judge of the High Court on a full-time basis unless he or she is authorised by the Attorney-General to act on a part-time basis.
2. The Attorney-General may, in accordance with subsection (4), authorise a Judge appointed under section 4 or section 4A to act on a part-time basis for any specified period.
3. To avoid doubt, an authorisation under subsection (2) may take effect as from a Judge's appointment or at any other time, and may be made more than once in respect of the same Judge.
4. The Attorney-General may authorise a Judge to act on a parttime basis only—
  - a. on the request of the Judge; and
  - b. with the concurrence of the Chief High Court Judge.
5. In considering whether to concur under subsection (4), the Chief High Court Judge must have regard to the ability of the court to discharge its obligations in an orderly and expeditious way.
6. A Judge who is authorised to act on a part-time basis must resume acting on a full-time basis at the end of the authorised part-time period.
7. The basis on which a Judge acts must not be altered during the term of the Judge's appointment without the Judge's consent, but consent under this subsection is not necessary if the alteration is required by subsection (6).
8. An authorisation may not be granted under subsection (2) for any person appointed as a Judge of the Court of Appeal or Supreme Court.

#### **5. Senior Judge to act as Chief Justice in certain circumstances**

[Repealed]

#### **6. Judges to be barristers or solicitors**

No person shall be appointed a Judge unless he has held a practising certificate as a barrister or solicitor for at least 7 years.



## **7. Commissions of Judges to continue during good behaviour**

[Repealed]

## **8. Judges may be removed or suspended on address of both Houses of Assembly to the Queen**

[Repealed]

## **9. Governor may suspend Judge when Parliament not sitting**

[Repealed]

### **9A. Salaries and allowances of Judges**

1. There shall be paid to the Chief Justice, to the other Judges of the Supreme Court, to the President of the Court of Appeal, to the other Judges of the Court of Appeal, and to the other Judges, out of public money, without further appropriation than this section,—

- a. salaries at such rates as the Remuneration Authority from time to time determines; and
- b. such allowances as are from time to time determined by the Remuneration Authority; and
- ba. a higher duties allowance payable and calculated in accordance with subsection (1A); and
- c. such additional allowances, being travelling allowances or other incidental or minor allowances, as may be determined from time to time by the Governor-General.

1A. The higher duties allowance under subsection (1)(ba) is—

- a. payable only to a Judge who—
  - i. is or was not a Judge of the Court of Appeal holding office under section 57(2) (in this subsection called a permanent Judge); but
  - ii. is or was under sections 58A to 58C or section 58F serving as a member of a criminal or civil division, or as a member of the full court, of the Court of Appeal; and
- b. payable only in respect of periods of the Judge's service as a member of the division or full court; and
- c. calculated at a rate expressed per day of service as a member of the division or full court in accordance with the following formula:

$$(a - b) \times c/d$$

where—

- a is the applicable yearly rate of salary determined by the Remuneration Authority to be payable to a permanent Judge
  - b is the applicable yearly rate of salary determined by the Remuneration Authority to be payable to a Judge who is not a permanent Judge
  - c is 0.0383561 (the standard payroll factor, which represents the proportion of an annual salary that is paid per fortnight)
  - d is 10 (the number of working days per fortnight).
2. Subject to the Remuneration Authority Act 1977, any determination made under subsection (1), and any provision of any such determination, may be made so as to come into force on a date to be specified in that behalf in the determination, being the date of the making of the determination or any other date, whether before or after the date of the making of the determination or the date of the commencement of this section.
  3. Every such determination, and every provision of any such determination, in respect of which no date is specified as afore- said shall come into force on the date of the making of the determination.
  4. The salary and allowances payable for a period during which a Judge acts on a part-time basis must be calculated and paid as a pro rata proportion of the salary and allowances for a full-time equivalent position.
  5. For the purpose of section 24 of the Constitution Act 1986, neither the cessation of the payment of a higher duties allowance payable and calculated under subsections (1)(ba) and (1A), nor the payment of salary and allowances on a pro rata basis under subsection (4), is a reduction of salary.

## 10. Salaries of Judges not to be diminished

[Repealed]

## 11. Temporary Judges

1. Subject to section 11B, at any time during the illness or absence of any Judge, or for any other temporary purpose, the Governor-General may, in the name and on behalf of Her Majesty, appoint any person (including a former Judge) to be a Judge for such term, not exceeding 12 months, as the Governor-General may specify.
2. Any person appointed a Judge under this section may be reappointed, but no Judge shall hold office under this section for more than 2 years in the aggregate.
3. Every person appointed a Judge under this section shall, during the term of his appointment, be paid the salary and allowances payable by law to a Judge other than the Chief Justice, the other Judges of the Supreme Court, the President of the Court of Appeal, the other Judges of the Court of Appeal, or the Chief High Court Judge.

### 11A. Former Judges

1. Subject to section 11B, the Governor-General may, in the name and on behalf of Her Majesty, appoint any former Judge to be an acting Judge for such term not exceeding 2 years or, if the former Judge has attained the age of 72 years, not exceeding 1 year, as the Governor-General may specify.

2. During the term of his appointment, the former Judge may act as a Judge during such period or periods only and in such place or places only as the Chief High Court Judge may determine.
3. Every former Judge appointed under this section shall, during each period when he acts as a Judge, but not otherwise, be paid a salary at the rate for the time being payable by law to a Judge other than the Chief Justice or the President of the Court of Appeal or a Judge of the Court of Appeal, and must also be paid the higher duties allowance payable and calculated under section 9A(1)(ba) and (1A) and such travelling allowances or other incidental or minor allowances as may be fixed from time to time by the Governor-General.
4. Every former Judge appointed under this section shall, during each period when he acts as a Judge, have all the jurisdiction, powers, protections, privileges, and immunities of a Judge.

## **11B. Certificate by Chief Justice and Chief High Court Judge**

No appointment may be made under section 11 or section 11A except on a certificate signed by the Chief Justice and the Chief High Court Judge to the effect that, in their opinion, it is necessary for the due conduct of the court's business that 1 or more temporary Judges, or (as the case may require) for 1 or more acting Judges, to be appointed.

## **12. Superannuation allowance of Judges**

[Repealed]

## **13. Age of retirement**

Every Judge, other than a former Judge appointed under section 11 or section 11A or a person who is deemed by section 58(10) to be a Judge, shall retire from office on attaining the age of 70 years.

## **14. Rights on retirement before attaining retiring age**

If the Chief Justice or the President of the Court of Appeal resigns from office before attaining the age of 70 years and is, at the time of his or her resignation and but for the fact of his or her resignation, entitled to a period of leave of absence, he or she shall continue to receive the salary, privileges, and allowances of his or her former office until the expiration of that period or until he or she attains the age of 70 years or until he or she dies, whichever is the sooner, and his or her rights and obligations under the Government Superannuation Fund Act 1956 and all the rights which his or her surviving wife, husband, civil union partner, or de facto partner may have under that Act shall be the same as they would have been if he or she had been in office while his or her salary, privileges, and allowances so continued.

## **15. How superannuation allowances of the existing Judges to be computed**

[Repealed]

## B. Jurisdiction of the court

### 16. General jurisdiction

The court shall continue to have all the jurisdiction which it had on the coming into operation of this Act and all judicial jurisdiction which may be necessary to administer the laws of New Zealand.

#### 16A. Power to award damages as well as, or in substitution for, injunction or specific performance

Where the court has jurisdiction to entertain an application for an injunction or specific performance, it may award damages in addition to, or in substitution for, an injunction or specific performance.

### 17. Jurisdiction as to mentally disordered persons, etc

The court shall also have within New Zealand all the jurisdiction and control over the persons and estates of mentally disordered persons, and persons of unsound mind, and over the managers of such persons and estates respectively, as the Lord Chancellor of England, or any Judge or Judges of Her Majesty's High Court of Justice or of Her Majesty's Court of Appeal, so far as the same may be applicable to the circumstances of New Zealand, has or have in England under the Sign-manual of Her Majesty or otherwise.

#### 17A. Jurisdiction as to liquidation of associations

1. In this section, association includes any partnership, company, or other body corporate, or unincorporated body of persons other than—
  - a. a company or an overseas company, as defined in section 2 of the Companies Act 1993; or
  - b. [Repealed]
  - c. a body corporate that may be put into liquidation in accordance with the provisions of any Act under which it is constituted.
2. The court has jurisdiction to appoint a named person or an Official Assignee for a named district as the liquidator of an association.
3. An application for the appointment of a liquidator may be made by the association or a director or member or creditor or the Registrar of Companies.
4. The court may appoint a liquidator if it is satisfied that—
  - a. the association is dissolved or has ceased to carry on business or is carrying on business solely for the purpose of terminating its affairs; or
  - b. the association is unable to pay its debts; or
  - c. it is just and equitable that the association be put into liquidation.

## 17B. Application of Companies Act 1993

Part 16 of the Companies Act 1993 (except sections 241(1) to (4) and 268) shall apply, with such modifications as may be necessary, in relation to the liquidation of an association and as if references to—

- a. a company registered under that Act included a reference to an association:
- b. a director included references to any person occupying the position of director by whatever name called:
- c. shareholders or persons entitled to surplus assets under the constitution of a company and the Companies Act 1993 were references to such persons as the court may determine to be justly entitled to any surplus assets after the satisfaction of the claims of all the creditors.

## 17C. Meaning of inability to pay debts

For the purposes of section 17A, an association is unable to pay its debts—

- a. if—
  - i. a creditor who is owed an amount exceeding \$100 by the association has served on the association a demand for payment of that amount by leaving it at the principal office of the association in New Zealand, or delivering it to the secretary or a director or manager or principal officer of the association; and
  - ii. the association has for 3 weeks after the demand was served on it failed to pay the amount due or secure the payment of it or compound for it to the satisfaction of the creditor; or
- b. if—
  - i. an action or proceeding has been commenced against a member of the association for the payment of an amount owing by the association or that member in his or her capacity as a member; and
  - ii. notice in writing of the action or proceeding has been served on the association by leaving it at its principal place of business in New Zealand or by delivering it to the secretary or a director, or principal officer of the association or serving it on the association in such manner as the court may approve or direct; and
  - iii. the association has not, within 10 days after the notice was served on it, paid or secured the debt, or compounded for it or had the action or proceeding stayed or indemnified the member for the amount of any judgment that may be entered against him or her and any costs, damages, and expenses that may be incurred by him or her in the action or proceeding; or

- c. if execution or other process issued on a judgment, decree, or order obtained in a court in favour of a creditor against the association, or a member of the association in his or her capacity as a member, or a person authorised to be sued on behalf of the association, is returned unsatisfied; or
- d. if it is proved to the satisfaction of the High Court that the association is unable to pay its debts, and in determining whether an association is unable to pay its debts, the court shall take into account the contingent and prospective liabilities of the association.

## **17D. Power of liquidator to enforce liabilities**

The liquidator may, by notice in writing, require any person who is liable to pay or contribute to the payment of—

- a. any debt or liability of the association; or
- b. any sum for the adjustment of the rights of the members among themselves; or
- c. the costs and expenses of the liquidation—

to pay or contribute accordingly and every such person is liable to pay or contribute the amount due in respect of that liability.

## **17E. Actions stayed on liquidation**

Where the court appoints a liquidator of an association, no action or proceeding shall be commenced or continued against any person referred to in section 17D in respect of any debt of the association, except with the leave of the court, and subject to such terms as the court may impose.

## **18. No jurisdiction in cases of felonies or misdemeanours committed prior to 14 January 1840**

The court shall not have jurisdiction to try any felony or misdemeanour committed before 14 January 1840.

## **19. Powers of the court may be exercised by 1 or more Judges**

1. Each Judge or any 2 or more Judges may in any part of New Zealand exercise all the powers of the court, except such powers as may by any statute be required to be exercised by the full court or by any specified number of Judges.
2. Subsection (1) shall be read subject to the provisions of any enactment that provides for the appointment of persons other than Judges to sit with the court or as members of the court in respect of any specified proceedings or class of proceedings.

## **19A. Certain civil proceedings may be tried by jury**

1. This section applies to civil proceedings in which the only relief claimed is payment of a debt or pecuniary damages or the recovery of chattels.
2. If the debt or damages or the value of the chattels claimed in any civil proceedings to which this section applies exceeds \$3,000, either party may have the civil proceedings tried before a Judge and a jury on giving notice to the court and to the other party, within the time and in the manner prescribed by the High Court Rules, that he requires the civil proceedings to be tried before a jury.
3. Notwithstanding anything in subsection (2), in any case where, after notice has been given pursuant to that subsection but before the trial has commenced, the debt or damages or the value of the chattels claimed is reduced to \$3,000 or less, the civil proceedings shall be tried before a Judge without a jury.
4. If, in any civil proceedings to which this section applies, the defendant sets up a counterclaim, then, unless pursuant to this section the civil proceedings and the counterclaim are both to be tried before a Judge without a jury, the following provisions shall apply:
  - a. on the application of either party made with the consent in writing of the other party, both the civil proceedings and counterclaim shall be tried before a Judge without a jury, or before a Judge with a jury, whichever is specified in the application:
  - b. if no such application is made, the civil proceedings and the counterclaim shall, subject to any direction of the court or a Judge under section 19B, be tried in accordance with the foregoing provisions of this section: provided that if the court or a Judge orders that the civil proceedings and the counterclaim be tried together, they shall be tried before a Judge with a jury.
5. Notwithstanding anything to the contrary in the foregoing provisions of this section, in any case where notice is given as aforesaid requiring any civil proceedings to be tried before a jury, if it appears to a Judge before the trial—
  - a. that the trial of the civil proceedings or any issue therein will involve mainly the consideration of difficult questions of law; or
  - b. that the trial of the civil proceedings or any issue therein will require any prolonged examination of documents or accounts, or any investigation in which difficult questions in relation to scientific, technical, business, or professional matters are likely to arise, being an examination or investigation which cannot conveniently be made with a jury,— the Judge may, on the application of either party, order that the civil proceedings or issue be tried before a Judge without a jury.
6. Nothing in this section shall apply in respect of any civil proceedings to be heard by the court in its admiralty jurisdiction.

## **19B. All other civil proceedings to be tried before Judge alone, unless court otherwise orders**

1. Except as provided in section 19A of this Act, civil proceedings shall be tried before a Judge alone.

2. Notwithstanding subsection (1), if it appears to the court at the trial, or to a Judge before the trial, that the civil proceedings or any issue therein can be tried more conveniently before a Judge with a jury the court or Judge may order that the civil proceedings or issue be so tried.

### **19C. Questions of foreign law to be decided by Judge**

1. Where, for the purpose of disposing of any civil proceedings or any criminal proceedings which are being tried by a Judge of the High Court with a jury, it is necessary to ascertain the law of any other country which is applicable to the facts of the case, any question as to the effect of the evidence given with respect to that law shall, instead of being submitted to the jury, be decided by the Judge alone.
2. This section has effect notwithstanding anything in section 19A or section 19B.

### **20. Governor in Council may divide New Zealand into districts**

[Repealed]

### **21. Actions and proceedings to be taken in the district prescribed by the Code of Civil Procedure**

[Repealed]

### **22. How applications to be made when Judge absent or unable to act**

[Repealed]

### **23. Governor-General may appoint special sittings**

The Governor-General in Council may from time to time appoint special sittings of the court for the despatch of civil and criminal business, to be held at such time and place or places, and before such Judge or Judges, as he thinks fit.

### **23A. Offices of the High Court**

1. The Governor-General may from time to time, by notice in the Gazette, declare an office or offices of the court to be established at such place or places as may be specified in the notice, as from such date, in the case of each office, as may be so specified.
- 1A. [Repealed]
2. [Repealed]
3. Where any office of the court is abolished, the Minister of the Crown who is responsible for the Ministry of Justice may direct that all documents, books, and records in that office shall be delivered to some other office of the court (in this section referred to as the substituted office). From the time of their delivery to the Registrar of the substituted office, those documents, books, and records shall be deemed to be in the lawful custody of that Registrar.



4. Where any office of the court is abolished, the following provisions shall apply:
  - a. any act or thing that could have been done under any enactment or rule by the Registrar of that office may be done by the Registrar of the substituted office:
  - b. any step in any proceedings that would, but for the abolition of that office, have been taken there under any enactment or rule may be taken at the substituted office:
  - c. any act or thing required or authorised by any enactment or rule to be done by any person at that office, whether in respect of any proceedings or in respect of any transaction recorded or document filed there, may be done at the substituted office:
  - d. any address for service, being an address conforming to the requirements of the rules of court, that has been given by any party to any proceedings in respect of which the records are delivered to the substituted office shall continue to be the address for service of that party for the purposes of those proceedings, notwithstanding that because of its distance from the substituted office it may cease to conform to those requirements: provided that where, because of its distance from the substituted office, the address does not conform to the requirements of the rules, the party shall give a new address for service conforming to those requirements when he first files in the substituted office any document in the proceedings:
  - e. if in respect of any proceedings, or of any transaction, document, record, or other matter, any question arises as to the application of any provision of this section or as to the proper procedure to be followed, the court or a Judge may determine the question and make such order thereon as the court or Judge thinks fit.

## 24. Registrar may act for Judge in certain cases

[Repealed]

### C. Commercial list

#### 24A. Establishment of commercial list

1. The Governor-General may from time to time by notice in the Gazette declare a commercial list to be established at any office of the High Court as from a date to be specified in the notice.
2. The first commercial list shall be established at the office of the High Court at Auckland for a period to be specified in the notice (which period shall not be less than 4 years).
3. The Governor-General may, on or before the expiration of the period specified under subsection (2), either—
  - a. extend that period by notice in the Gazette; or

- b. declare by notice in the Gazette that the commercial list at the office of the High Court at Auckland shall continue indefinitely.
4. Where the Governor-General exercises the power given by subsection (3)(a), the Governor-General may, on or before the expiration of the extended period, declare by notice in the Gazette that the commercial list established at the office of the High Court at Auckland shall continue indefinitely.
5. Where the commercial list established at the office of the High Court at Auckland ceases to be established upon the expiration of the period specified under subsection (2) or the extended period specified under subsection (3)(a), the commercial list shall be deemed to continue for the purpose of completing any proceeding entered on the commercial list at the expiration of that period.

## 24B. Proceedings eligible for commercial list

1. The classes of proceedings eligible for entry on a commercial list are as follows:
  - a. any proceedings arising out of or otherwise relating to:
    - i. the ordinary transactions of persons engaged in commerce or trade or of shippers:
    - ii. the carriage of goods for the purpose of trade or commerce:
    - iii. the construction of commercial, shipping, or transport documents:
    - iv. the export or import of merchandise:
    - v. insurance, banking, finance, guarantee, commercial agency, or commercial usages:
    - vi. disputes arising out of intellectual property rights between parties engaged in commerce:
  - b. applications to the court under the Arbitration Act 1996:
  - c. appeals against determinations of the Commerce Commission:
  - d. proceedings under any of the provisions of sections 80, 81, 82, and 89 of the Commerce Act 1986:
  - e. cases stated by the Financial Markets Authority, and civil proceedings under the Securities Act 1978 or the Securities Markets Act 1988:
  - f. the following proceedings in relation to companies registered under the Companies Act 1955 or the Companies Act 1993, as the case may be:
    - i. applications for directions by liquidators and receivers:

- ii. defended applications under section 209ZG of the Companies Act 1955 or section 174 of the Companies Act 1993:
  - iii. disputes relating to takeovers:
  - iv. disputes between shareholders or classes of shareholders of companies (other than companies registered under Part 8 of the Companies Act 1955 and companies registered under the Companies Act 1993 and having not more than 25 shareholders):
  - g. proceedings of a commercial nature required or permitted to be entered on a commercial list by or under any Act or by or under the High Court Rules or any rules made under section 51C of this Act.
2. Where any appeal belonging to the class of appeals described in subsection (1)(c) is entered on a commercial list,—
- a. that appeal shall, notwithstanding section 75(2) of the Commerce Act 1986, be heard and determined by the court; and
  - b. any lay member appointed pursuant to section 77 of the Commerce Act 1986 shall, for the purpose of the hearing and determination of that appeal by the court, be deemed to be a lay member of the court; and
  - c. section 77 and sections 91 to 97 of the Commerce Act 1986 shall, subject to section 24E, apply with all necessary modifications to that appeal.
3. Rules made under section 51C shall make provision for—
- a. the manner in which proceedings eligible for entry on a commercial list are to be entered on a commercial list:
  - b. orders for the removal of proceedings entered on a commercial list:
  - c. the procedure governing the determination of proceedings entered on a commercial list.

## 24C. Commercial list Judges

1. A commercial list established under section 24A is supervised by a Judge nominated from time to time by the Chief Justice after consulting the Chief High Court Judge.
- 1A. The Chief High Court Judge can be nominated under subsection (1).
2. After consulting the Chief High Court Judge, the Chief Justice may nominate 1 or more Judges to help the Judge nominated under subsection (1) and to supervise the list when that Judge is absent from duty.
3. Every interlocutory application in any proceeding entered on a commercial list shall be determined by a Judge nominated under subsection (1) or subsection (2).

4. Where—
  - a. any dispute has arisen concerning the construction, status, or application of a contract or document; and
  - b. the dispute could be determined in a proceeding eligible for entry on a commercial list; and
  - c. no proceeding has been commenced in respect of the dispute,—  
any party to the dispute may apply to a Judge nominated under subsection (1) or subsection (2) for the determination of the questions involved in the dispute.

#### **24D. Directions for speedy determination of real questions in proceedings on commercial list**

The court may from time to time give such directions as the court thinks fit (whether or not inconsistent with the High Court Rules or any rules made under section 51C) for the speedy and inexpensive determination of the real questions between the parties to proceedings entered on a commercial list.

#### **24E. Agreement not to appeal**

The parties to any proceedings entered on a commercial list may agree that the decision of the court shall be final.

#### **24F. Proceedings not to be tried by jury**

Notwithstanding anything in section 19A, no proceeding entered on a commercial list shall be tried before a jury.

#### **24G. Restriction of right of appeal from interlocutory decisions**

1. No appeal shall lie from an interlocutory decision of the High Court in respect of any proceeding entered on a commercial list unless leave to appeal to the Court of Appeal is given by the High Court on application made within 7 days of the decision being given or within such further time as the High Court may allow.
2. If the High Court refuses leave to appeal from any such interlocutory decision, the Court of Appeal may grant that leave on application made to the Court of Appeal within 21 days of the refusal of leave by the High Court.

#### **D. Administrative Division of the court**

[Repealed]

#### **25. Administrative Division of the High Court**

[Repealed]

#### **26. Jurisdiction of Administrative Division**

[Repealed]

## 26A. Lay members or assessors in certain cases

[Repealed]

## 26B. Rules relating to Administrative Division

[Repealed]

## E. Associate Judges of the High Court

### 26C. Appointment of Associate Judges

1. The Governor-General may from time to time, by warrant, appoint fit and proper persons to be Associate Judges of the High Court.
2. The maximum number of Associate Judges is 9.
3. For the purposes of subsection (2),—
  - a. an Associate Judge who is acting on a full-time basis counts as 1:
  - b. an Associate Judge who is acting on a part-time basis counts as an appropriate fraction of 1:
  - c. the aggregate number (for example, 5.5) must not exceed the maximum number of Associate Judges that is for the time being permitted.
4. A person must not be appointed as an Associate Judge unless he or she has held a practising certificate as a barrister or solicitor for at least 7 years.
5. An Associate Judge must not undertake any other paid employment or hold any other office (whether paid or not) unless the Chief High Court Judge is satisfied that the employment or other office is compatible with judicial office.
6. An Associate Judge holds office until, in accordance with section 26E, he or she retires or resigns or is removed from office.
7. Subsection (6) applies to—
  - a. every Associate Judge appointed after the commencement of this section; and
  - b. every person deemed by section 6(1) of the Judicature Amendment Act 2004 to have been appointed as an Associate Judge at the commencement of this section (despite any provision to the contrary in any enactment or warrant of appointment).

### 26D. Associate Judges act on full-time basis but may be authorised to act part-time

1. A person acts as an Associate Judge on a full-time basis unless he or she is authorised by the Attorney-General to act on a part-time basis.
2. The Attorney-General may, in accordance with subsection (4), authorise an Associate Judge appointed under section 26C to act on a part-time basis for a specified period.

3. To avoid doubt, an authorisation under subsection (2) may take effect as from an Associate Judge's appointment or at any other time, and may be made more than once in respect of the same Associate Judge.
4. The Attorney-General may authorise an Associate Judge to act on a part-time basis only—
  - a. on the request of the Associate Judge; and
  - b. with the concurrence of the Chief High Court Judge.
5. In considering whether to concur under subsection (4), the Chief High Court Judge must have regard to the ability of the court to discharge its obligations in an orderly and expeditious way.
6. An Associate Judge who is authorised to act on a part-time basis must resume acting on a full-time basis at the end of the authorised part-time period.
7. The basis on which an Associate Judge acts must not be altered during the term of the Associate Judge's appointment without the Associate Judge's consent, but consent under this subsection is not necessary if the alteration is required by subsection (6).

## 26E. Vacation of office

1. The Governor-General may, if the Governor-General thinks fit, remove an Associate Judge for inability or misbehaviour.
2. An Associate Judge may resign the office of Associate Judge by notice in writing addressed to the Attorney-General.
3. Subject to section 26H, every Associate Judge shall retire from office on attaining the age of 70 years.

## 26F. Salaries and allowances of Associate Judges

1. Subject to subsection (5), there shall be paid to every Associate Judge, out of public money, without further appropriation than this section,—
  - a. a salary at such rate as the Remuneration Authority from time to time determines; and
  - b. such allowances as are from time to time determined by the Remuneration Authority; and
  - c. such additional allowances, being travelling allowances or other incidental or minor allowances, as may be determined from time to time by the Governor-General.
2. Subject to subsection (5), the salary of an Associate Judge shall not be diminished during the continuance of the Associate Judge's appointment.
3. Subject to the Remuneration Authority Act 1977, any determination made under subsection (1), and any provision of any such determination, may be made so as to come into force on a date to be specified in that behalf in the determination, being the date of the making of the determination or any other date, whether before or after the date of the making of the determination or the date of the commencement of this section.
4. Every such determination, and every provision of any such determination, in respect of which no date is specified as aforesaid shall come into force on the date of the making of the determination.

• Supreme/ordinary court judge removal

• Mandatory retirement age for judges

• Protection of judges' salaries

5. The salary and allowances payable for a period during which an Associate Judge acts on a part-time basis must be calculated and paid as a pro rata proportion of the salary and allowances for a full-time equivalent position.
6. For the purpose of subsection (2), the payment of salary and allowances on a pro rata basis under subsection (5) is not a diminution of salary.

## 26G. Superannuation or retiring allowances of Associate Judges

For the purpose of providing a superannuation fund or retiring allowance for persons appointed as Associate Judges, sums by way of subsidy or contribution may from time to time be paid under Part 5B of the Government Superannuation Fund Act 1956 or to any registered superannuation scheme in accordance with a determination of the Remuneration Authority.

## 26H. Temporary Associate Judges

• Ordinary court selection

1. The Governor-General may, subject to this section, appoint any person (including a former Associate Judge) to act as an Associate Judge for such period as is specified in the warrant of appointment.
2. The period so specified shall not exceed 12 months; but any person appointed under this section may from time to time be reappointed.
3. No person shall be appointed as an Associate Judge under this section unless that person is eligible for appointment as an Associate Judge pursuant to section 26C, save that, subject to subsection (4) of this section, a person otherwise qualified who has attained the age of 70 years (including an Associate Judge who has retired after attaining that age) may be appointed as an Associate Judge under this section.
4. No person shall be appointed or reappointed as an Associate Judge under this section who has attained the age of 72 years.
5. Subject to section 26F(5), every person appointed as an Associate Judge under this section shall, during the term of that Associate Judge's appointment, be paid the salary and allowances payable by law to an Associate Judge.
6. No appointment may be made under this section otherwise than on a certificate signed by the Chief Justice to the effect that, in the opinion of the Chief Justice, it is necessary for the due conduct of the business of the court that a temporary Associate Judge be appointed.
7. The Chief Justice must not sign the certificate without first consulting the Chief High Court Judge.

• Eligibility for ordinary court judges

• Eligibility for ordinary court judges

## 26I. Associate Judge may exercise certain powers of the court

1. An Associate Judge shall have and may exercise all the jurisdiction and powers of the court in relation to the following matters:
  - a. any application for summary judgment:
  - b. [Repealed]
  - c. any proceedings under which relief is claimed solely under any of the provisions of sections 140, 143, 144, 145, 145A, and 148 of the Land Transfer Act 1952 (which provisions relate to caveats):

- d. the assessment of damages where liability has been determined, or the trial of proceedings in which only the amount of the debt or damages is disputed:
  - e. the entry of any judgment by consent, or the making of any other order by consent:
  - ea. the making of any order (other than an arrest order or an order relating to an arrest order) that may be made under rules of court against a judgment debtor who has been ordered to attend court for examination:
  - eb. the making, variation, suspension, or discharge of attachment orders under rules of court:
  - f. any other matter in respect of which jurisdiction is conferred on an Associate Judge by or under any Act.
2. An Associate Judge shall have and may exercise all the jurisdiction and powers which are vested in the court or a Judge by the following enactments:
- a. article 11 of Schedule 1 of the Arbitration Act 1996:
  - b. sections 205 to 207 of the Companies Act 1955, as applied to compromises and arrangements by section 35 of the Companies Amendment Act 1993:
  - c. sections 220 to 222, 226, 231(4), 233 to 237, 239, 240(1)(a), 246 to 249, 250 to 263, 265 to 267, 311A, 311B, 312, and 332 of the Companies Act 1955, as applied in relation to the winding up of a company by section 42(1) of the Companies Amendment Act 1993:
  - d. sections 139, 168, 209N to 209P, 209R to 209T, 209X to 209ZA, 209ZF, 211, 213, 216 to 218, 220, 231(2), 235(5), 240, 243, 258, 260, 264, 265, 268 to 270, 281, 288, and 467 of the Companies Act 1955, as continued in force by section 3 of the Companies Act Repeal Act 1993:
  - e. sections 123, 154, 165 to 168, 173, 179, 232 to 234, 236 to 238, Part 15A, Part 16, and section 329 of the Companies Act 1993:
  - f. rules 39, 41, 71, 87 to 89, 91, 94, 95, 96, 111, 125(3), 136, 137, 141 to 143, 190, and 191 of the Companies (Winding Up) Rules 1956, as continued in force by section 42(7) of the Companies Amendment Act 1993:
  - g. section 42(2) of the Corporations (Investigation and Management) Act 1989:
  - h. section 26, Part 10, section 119, and Part 15 of the Insolvency Act 1967:
  - ha. the Insolvency Act 2006 (except sections 150, 166(3), 180, and 236(2)):
  - hb. any regulations or rules made under the Insolvency Act 2006:



- i. rules 41 and 43 of the Insolvency Rules 1970:
  - j. any regulations relating to liquidations made under the Companies Act 1955 or under the Companies Act 1993:
  - k. sections 118, 128, 131, 167, 168, 170, 179, 181, 182, and 186 of the Personal Property Securities Act 1999:
  - l. the Model Law on Cross-Border Insolvency as set out in Schedule 1 of the Insolvency (Cross-border) Act 2006.
3. An Associate Judge shall have and may exercise all the jurisdiction and powers of the court to deal with costs and other matters incidental to the matters over which an Associate Judge has jurisdiction pursuant to subsection (1) or subsection (2).
  4. Rules made under section 51C or rules made under any other Act in the manner provided in that section may contain such provisions as may be necessary—
    - a. to enable the proper exercise by Associate Judges of the jurisdiction and powers conferred by this section; and
    - b. to regulate the practice and procedure of the court on appeals against the exercise by Associate Judges of the jurisdiction and powers so conferred.
  5. [Repealed]

## **26IA. Ancillary powers of Associate Judge**

1. Subject to subsection (2), an Associate Judge shall have, in all proceedings (including proceedings on an interlocutory application) properly before the Associate Judge, jurisdiction to make any order or to exercise any authority or jurisdiction that might be made or exercised by a Judge of the High Court.
2. Nothing in subsection (1) confers on an Associate Judge any jurisdiction or power of a kind described in subsection (3) or subsection (4) of section 26J.

## **26IB. Judge or Associate Judge may, by video link, preside at hearing of specified matters**

1. A Judge or Associate Judge may, by video link, preside at the hearing of any matter—
  - a. over which an Associate Judge has jurisdiction under section 26I; and
  - b. that is specified in rules made under section 51C for the purposes of this section.
2. A hearing conducted under the authority of subsection (1)—
  - a. has effect as if the Judge or Associate Judge were physically present:
  - b. does not affect the privileges and immunities of the Judge or Associate Judge or of any witnesses, counsel, or parties appearing at the hearing.

3. Rules made under section 51C may—
  - a. specify a class or classes of matters in respect of which hearings authorised by subsection (1) may be conducted:
  - b. regulate the manner in which hearings authorised by subsection (1) are conducted.

## **26J. Power to make rules conferring specified jurisdiction and powers of Judge in chambers on Associate Judges**

1. Notwithstanding anything contained in any other provision of this Act or of any other Act but subject to the provisions of this section, rules made under section 51C or rules made under any other Act in the manner provided in that section may confer on Associate Judges, subject to such limitations and restrictions as may be specified in the rules, such of the jurisdiction and powers of a Judge sitting in chambers, conferred by this Act or any other Act, as may be specified in the rules.
2. Any such rules may contain such other provisions as may be necessary—
  - a. to enable the proper exercise by Associate Judges of the jurisdiction and powers so conferred; and
  - b. to regulate the practice and procedure of the court on any application to the court under section 26P(1) to review the exercise by an Associate Judge of the jurisdiction and powers so conferred.
3. Nothing in subsection (1) or subsection (2) authorises the making of any rule which confers on Associate Judges any jurisdiction or power in respect of any of the following matters:
  - a. any criminal proceeding, other than an uncontested application for bail or an application for the setting aside of a witness summons:
  - b. any application for a writ of habeas corpus:
  - c. any proceedings for the issue or renewal of a writ of sequestration:
  - d. any proceedings under or by virtue of the Care of Children Act 2004:
  - e. any action in rem under or by virtue of the Admiralty Act 1973:
  - f. any application to review, or any appeal against, the exercise, or the refusal to exercise, by any Registrar or Deputy Registrar, of any jurisdiction or power conferred on any Registrar or Deputy Registrar by or under this Act or any other Act.
4. Nothing in subsection (1) or subsection (2) authorises the making of any rule which confers on Associate Judges any jurisdiction or power—
  - a. to grant an Anton Piller order, or an injunction (whether interlocutory or otherwise):

- b. to grant any relief on an application for review under section 4(1) of the Judicature Amendment Act 1972:
- c. to grant any relief in any proceedings for a writ or order of or in the nature of mandamus, prohibition, or certiorari, or for a declaration or injunction:
- d. to grant any application to remove any person from public office:
- e. to try the right of any person to hold any public office.

## **26K. Power of Associate Judge to deal with witnesses and to punish for contempt**

Sections 56A, 56B, and 56C shall apply in respect of any proceedings before an Associate Judge, and an Associate Judge shall have and may exercise all the jurisdiction and powers which, pursuant to those sections, are vested in the court or a Judge.

## **26L. Associate Judge to have no power to make order for committal, attachment, or arrest**

Except as provided by section 26K, an Associate Judge shall have no jurisdiction or power to make an order for the committal, attachment, or arrest of any person.

## **26M. Associate Judge may act as referee**

An Associate Judge may act as a referee under the High Court Rules in respect of any proceedings or any question arising in the course of any proceedings.

## **26N. Transfer of proceedings from Associate Judge to Judge**

1. In any proceedings before an Associate Judge, an Associate Judge may, on the application of any party to the proceedings, or of the Associate Judge's own motion, refer the proceedings or any matter arising therein to a Judge if the Associate Judge is satisfied that because of the complexity of the proceedings or of that matter, or of any question in issue in the proceedings, it is expedient that the proceedings or that matter be referred to a Judge.
2. Where any proceedings are to be dealt with or are being dealt with by an Associate Judge, a Judge may, at any time before the conclusion of those proceedings, on application made on notice by any party to the proceedings, order that the proceedings or any part thereof be transferred to a Judge if that Judge is satisfied that it is desirable that the proceedings or that part thereof be dealt with by a Judge.
3. Upon the reference of any proceedings, or any matter arising therein, to a Judge under subsection (1), or the transfer of any proceedings or any part thereof to a Judge under subsection (2), the Judge may—
  - a. dispose of the proceedings; or

- b. refer the proceedings or the matter back to the Associate Judge with such directions as the Judge thinks fit.

## 26O. Power of Associate Judge to adjourn proceedings

An Associate Judge shall have power to order the adjournment of any proceedings, notwithstanding that an Associate Judge would not otherwise have jurisdiction in respect of those proceedings.

## 26P. Review of, or appeals against, decisions of Associate Judges

1. Any party to any proceedings who is affected by any order or decision made by an Associate Judge in chambers may apply to the court to review that order or decision and, where a party so applies in accordance with the High Court Rules, the court—
  - a. must review the order or decision in accordance with the High Court Rules; and
  - b. may make such order as may be just.

**1AA.** The determination of the High Court on a review under subsection (1) is final, unless the High Court gives leave (or the High Court refuses leave, but the Court of Appeal gives special leave) to appeal from it to the Court of Appeal.

- 1A.** Rules under section 51C may—
  - a. specify the nature and extent of reviews or classes of review under subsection (1);
  - b. regulate the procedure for hearing applications or classes of application under subsection (1);
  - c. regulate the procedure for hearing applications or classes of application for leave under subsection (1AA).
2. Any party to any proceedings may appeal to the Court of Appeal against any order or decision of an Associate Judge in those proceedings (other than an order or decision made in chambers).
3. Section 66 shall apply to any appeal under subsection (2).

## 26Q. Immunity of Associate Judges

Every Associate Judge has the same immunities as a Judge of the High Court.

## 26R. Jurisdiction of Judge not affected

Nothing in this Act or in any rules made under section 51C or in any rules made under any other Act in the manner provided in that section shall prevent the exercise by any Judge of any jurisdiction or power conferred on an Associate Judge by this Act or by any such rules.

## F. Officers

### 27. Appointment of officers

There may from time to time be appointed under the State Sector Act 1988 such Registrars, Deputy Registrars, and other officers as may be required for the conduct of the business of the court.

#### Subpart 1: Registrars

### 28. Powers of Registrars

1. In order that the court may be enabled to exercise the jurisdiction conferred upon it by this Act, every Registrar and Deputy Registrar shall have all the powers and perform all the duties in respect of the court (except such powers and duties as any other officer may be specially appointed to exercise and perform) which Registrars and Deputy Registrars have hitherto performed or which by any rule or statute they may be required to perform.
2. Each Deputy Registrar has the same powers and privileges, performs the same duties, and is subject to the same provisions and penalties under this Act and under any other Act as if he or she were the Registrar for the time being, whether or not those powers, privileges, duties, provisions, or penalties are conferred, imposed, or enacted under this Act or that other Act.
3. Subsection (2) is subject to any provision to the contrary in any other enactment.

#### Subpart 2: Sheriffs

### 29. Sheriffs and Deputy Sheriffs

1. Every Registrar of the High Court for the time being shall be a Sheriff for New Zealand.
2. There may be appointed under the State Sector Act 1988 in respect of any office of the court 1 or more Deputy Sheriffs.
3. Every Deputy Sheriff shall, in the absence of the Sheriff or when acting for the Sheriff, have the powers and privileges, duties and responsibilities of the Sheriff under this Act or any other enactment.

### 30. Sheriff's oath

[Repealed]

### 31. Sureties may withdraw

[Repealed]

### 32. Duties, etc, of Sheriffs

Every Sheriff shall have such powers and privileges, duties and responsibilities, as a Sheriff by law has or is liable to in England as a ministerial officer of one of Her Majesty's Courts at Westminster.

### **33. Sheriff to act as Queen's bailiff**

In addition to his powers and privileges, duties and responsibilities, as a ministerial officer, each Sheriff shall also have and exercise the powers and duties of the Queen's bailiff.

### **34. Sheriff not to act as barrister or solicitor**

No Sheriff shall be in any way concerned in any action in any court in New Zealand either as a barrister, solicitor, or agent.

### **35. Service of process when Sheriff disqualified**

Where any process issues which the Sheriff ought not by law to execute, the High Court shall authorise some fit person to execute the same; and in every such case the cause of such special proceeding shall be entered upon the records of the court.

### **36. Persons arrested by Sheriffs may be committed to prison at once**

Where any Sheriff, Sheriff's officer, bailiff, or other person employed under the Sheriff, has arrested any person under or by virtue of any writ or process whatsoever, he may forthwith thereafter convey such person, or cause him to be conveyed, to such prison as he ought to be sent to by virtue of the writ or process against him.

## **Subpart 3: Poundage and fees**

### **37. Calculation of Sheriff's poundage**

[Repealed]

### **38. Appointment of, and oath taken by, appraiser**

[Repealed]

### **39. Goods defined**

[Repealed]

### **40. Sheriffs' and poundage fees**

[Repealed]

### **41. Fee in special cases**

[Repealed]

### **42. Fees to be paid into Crown Bank Account**

All fees taken by a Sheriff under this Act must be paid immediately into a Crown Bank Account.

## Subpart 4: Deputy Sheriffs and Acting Sheriffs

[Repealed]

### 43. Where Sheriff not present at sitting of court, duties of Sheriff may be performed by any person appointed by the court or Judge

[Repealed]

### 44. Provision in cases of vacancy in office of Sheriff

[Repealed]

### 45. Governor may appoint Deputy Sheriffs

[Repealed]

### 46. When Deputies to act

[Repealed]

## Subpart 5: Commissioners to administer oaths

### 47. Commissioners to take affidavits, etc, out of New Zealand

1. Any Judge of the High Court, by a commission to be issued under the seal of the court, may from time to time appoint any person to be and act as a Commissioner of the High Court in any country or place beyond the jurisdiction of the High Court, for the purpose of administering and taking any oath, affidavit, or affirmation, whether-
  - a. in any civil or criminal proceedings commenced or pending in the High Court; or
  - b. in any action, cause, proceeding, matter, or thing commenced or pending in any court of concurrent jurisdiction in New Zealand or in any inferior court; or
  - c. in any proceedings or in any matter or thing within the cognisance or jurisdiction of the High Court or of any court of concurrent jurisdiction in New Zealand or of any inferior court.
2. Every such appointment shall be gazetted.

## **48. Affidavits, etc, so taken to be of like effect as if taken in New Zealand**

Every oath, affidavit, or affirmation taken or made before any such Commissioner as aforesaid shall within New Zealand be of the like effect in all respects as if the same had been administered, made, or taken by or before any court or persons having authority to administer or take the same in New Zealand.

## **49. Commission may be revoked**

1. Any commission issued as aforesaid may be revoked by any Judge of the court for any cause which such Judge deems sufficient; but no such revocation shall affect or prejudice any act, matter, or thing done by any Commissioner by virtue of his commission prior to a notification of such revocation having been given or sent to him.
2. Every revocation of any such appointment shall be gazetted, and the notice published in the Gazette shall state the date when notice of revocation was given or sent to the Commissioner affected thereby.

## **Subpart 6: Practice and procedure of the court**

### **50. Seal of the court**

1. The court shall have in the custody of each Registrar a seal of the court, for the sealing of all writs and other instruments or documents issued by such Registrar and requiring to be sealed.
2. [Repealed]

### **51. High Court Rules**

1. Subject to subsections (2) to (4) and to sections 51A to 56C, the practice and procedure of the court in all civil proceedings shall be regulated by the High Court Rules.
2. The High Court Rules shall be subject to any other rules which are made pursuant to section 51C and which prescribe the procedure applicable in respect of any class of civil proceedings or in respect of the practice or procedure of the Court of Appeal.
3. Where any provision of the High Court Rules or of any rules made under section 51C restricts or excludes the application of the High Court Rules or any provisions of the High Court Rules, the provision that effects the restriction or exclusion shall have effect according to its tenor.
4. If in any civil proceedings any question arises as to the application of any provision of the High Court Rules or of any rules made under section 51C, the court may, either on the application of any party or of its own motion, determine the question and give such directions as it thinks fit.

### **51A. Publication of High Court Rules under Legislation Act 2012**

1. The High Court Rules, and any reprint of the High Court Rules, may be published under the Legislation Act 2012 as if the rules were a legislative instrument within the meaning of that Act.
2. The Legislation Act 2012 applies accordingly to rules published in that way.



## 51B. Rules Committee

1. For the purposes of this Act and the District Courts Act 1947 and the Criminal Procedure Act 2011, there is a Rules Committee consisting of—
  - a. the Chief Justice:
  - ab. the Chief High Court Judge:
  - b. 2 other Judges of the High Court appointed by the Chief Justice:
  - c. the Chief District Court Judge:
  - d. 1 other District Court Judge appointed by the Chief Justice on the recommendation of the Chief District Court Judge:
  - e. the Attorney-General:
  - f. the Solicitor-General:
  - g. the chief executive of the Ministry of Justice:
  - h. 2 persons, who are barristers and solicitors of the High Court, nominated by the Council of the New Zealand Law Society and approved by the Chief Justice.
2. The Chief Justice may appoint any other person to be a member for a special purpose. That person holds office during the pleasure of the Chief Justice.
3. The members referred to in paragraphs (b), (d), and (h) of subsection (1)—
  - a. must be appointed for terms not exceeding 3 years:
  - b. may be reappointed:
  - c. may resign office by notice in writing to the Chief Justice.
4. The Rules Committee is a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.
5. The members referred to in subsections (1)(h) and (2) may be paid, out of money appropriated by Parliament, remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951.

## 51C. Power to make rules

1. The Governor-General in Council, with the concurrence of the Chief Justice and any 2 or more of the members of the Rules Committee, of whom at least 1 shall be a Judge, may, for the purposes of facilitating the expeditious, inexpensive, and just dispatch of the business of the court, or of otherwise assisting in the due administration of justice, from time to time make rules regulating the practice and procedure of the High Court and of the Court of Appeal and of the Supreme Court (including the practice and procedure on appeals from any court or person to the Supreme Court, the Court of Appeal, or the High Court).

• Head of state powers  
• Advisory bodies to the head of state

2. Rules made pursuant to subsection (1) may—
  - a. repeal the High Court Rules set out in Schedule 2, and substitute a new set of High Court Rules:
  - b. alter or revoke any of the rules contained in the High Court Rules:
  - c. add to the High Court Rules any further rules touching the practice and procedure of the High Court in all or any of the civil proceedings within its jurisdiction:
  - cc. add to the High Court Rules any rules made for the purposes of Part 1A:
  - d. alter or revoke any rules regulating the practice or procedure of the Court of Appeal (including those contained in the Court of Appeal Rules 1955):
  - e. revoke the Court of Appeal Rules 1955:
  - f. alter or revoke any other rules of the High Court, the Court of Appeal, or the Supreme Court that are now or may hereafter be in force:
  - g. fix scales of costs.

## **51D. Rules of court under other Acts to be made in manner provided by this Act**

Where any other Act confers power to make rules of procedure in relation to civil proceedings, that power shall be exercised by the Governor-General in Council in the manner prescribed by section 51C, and not otherwise.

## **51E. Power to prescribe procedure on applications to High Court, Court of Appeal, or Supreme Court**

1. Notwithstanding anything to the contrary in any Act or in any Imperial Act in force in New Zealand, rules may be made under section 51C prescribing the form and manner in which any class or classes of applications to the High Court or a Judge thereof or to the Court of Appeal or to the Supreme Court shall be made.
2. So far as the provisions of any Act prescribing the form or manner in which any such applications are to be made, whether by petition, motion, summons, or otherwise, are inconsistent with or repugnant to the High Court Rules or the Court of Appeal Rules or to any rules made under section 51C, the Act prescribing that form or manner shall be deemed to be subject to the rules.

• Head of state powers  
• Advisory bodies to the head of state

• Head of state powers  
• Advisory bodies to the head of state

## 51F. Power to make rules conferring specified jurisdiction and powers of Judge on Registrars or Deputy Registrars

1. Notwithstanding anything contained in any other provision of this Act or of any other Act, but subject to the provisions of this section, rules made under section 51C or rules made under any other Act in the manner provided in that section may confer on Registrars and Deputy Registrars (whether of the High Court, the Court of Appeal, or the Supreme Court), subject to such limitations and restrictions as may be specified in the rules, such of the jurisdiction and powers of a Judge sitting in chambers, conferred by this Act or any other Act, as may be specified in the rules, and may contain such other provisions as may be necessary to enable the proper exercise by Registrars and Deputy Registrars of the jurisdiction and powers so conferred.
2. Any jurisdiction and any powers conferred under this section may be conferred on specified Registrars or Deputy Registrars or on any specified class or classes of Registrars or Deputy Registrars.
3. Where any matter in respect of which a Registrar or Deputy Registrar has jurisdiction under any rules of court appears to the Registrar or Deputy Registrar to be one of special difficulty, the Registrar or Deputy Registrar may refer the matter to a Judge, who may dispose of the matter or may refer it back to the Registrar or Deputy Registrar with such directions as the Judge thinks fit.
4. Any party to any proceedings or any intended proceedings who is affected by any order or decision made by any Registrar or Deputy Registrar under any rules of court may apply to the court to review that order or decision, and where a party so applies the court may make such order as may be just.
5. Nothing in this section or in the High Court Rules or in any rules made under section 51C or in any rules made under any other Act shall prevent the exercise by any Judge of any jurisdiction or powers conferred on any Registrar or Deputy Registrar by any such rules.

## 51G. Jurisdiction of court to award costs in all cases

1. Where any Act confers jurisdiction on the High Court or a Judge thereof in regard to any civil proceedings or any criminal proceedings or any appeal, without expressly conferring jurisdiction to award or otherwise deal with the costs of the proceedings or appeal, jurisdiction to award and deal with those costs and to make and enforce orders relating thereto shall be deemed to be also conferred on the court or Judge.
2. Such costs shall be in the discretion of the court or Judge, and may, if the court or Judge thinks fit, be ordered to be charged upon or paid out of any fund or estate before the court.

## 52. Power of Judge to hold or adjourn sitting

1. A Judge may hold any sitting of the court at any time and place the Judge thinks fit.
2. A Judge may adjourn a sitting of the court to a time and place the Judge thinks fit.
3. If a Judge is not present at the time appointed for a sitting of the court, the Registrar may adjourn the sitting to a time that is convenient.

## 53. Fees to be paid into Crown Bank Account

All fees received under this Act must be paid into a Crown Bank Account.

• Head of state powers  
• Advisory bodies to the head of state

• Right to appeal judicial decisions

## 54. Service of process on Sundays void

1. Subject to any rule of court, no person shall serve or execute, or cause to be served or executed, on Sunday any statement of claim, application, writ, process, warrant, order, or judgment of the High Court or Court of Appeal (except in cases of crime or of breach of the peace), and such service or execution shall be void to all intents and purposes whatsoever.
2. Nothing in subsection (1) shall apply to—
  - a. the service of any writ in rem or warrant of arrest in respect of any proceedings heard or to be heard in the High Court in its admiralty jurisdiction; or
  - b. the service of any subpoena or interlocutory injunction.
3. Nothing in this section shall be construed to annul, repeal, or in any way affect the common law, or the provisions of any statute or rule of practice or procedure, now or hereafter in force, authorising the service of any statement of claim, application, writ, process, or warrant, in cases other than those excepted in subsection (1).

## 54A. Verdict of three-fourths

[Repealed]

## 54B. Discharge of juror or jury

Nothing in this Act affects the powers of a court or Judge to discharge a juror or jury for a civil case under section 22 of the Juries Act 1981.

## G. Miscellaneous rules of law and of practice

### Subpart 1: Habeas corpus

[Repealed]

### 54C. Procedure in respect of habeas corpus

[Repealed]

### Subpart 2: Absconding debtors

## 55. Power under certain circumstances to arrest defendant about to quit New Zealand

1. A person shall not be arrested upon mesne process in any civil proceedings in the High Court.

2. Where in any civil proceedings in the High Court in which, if brought before 1 October 1874 (being the date of the coming into operation of the Imprisonment for Debt Abolition Act 1874), the defendant would have been liable to arrest, the plaintiff proves at any time before final judgment, by evidence on oath to the satisfaction of a Judge of the court, that the plaintiff has good cause of action against the defendant to the amount of \$100 or upwards, and that there is probable cause for believing that the defendant is about to quit New Zealand unless he is apprehended, and that the absence of the defendant from New Zealand will materially prejudice the plaintiff in the prosecution of those proceedings, such Judge may, in the prescribed manner, order such defendant to be arrested and imprisoned for a period not exceeding 6 months, unless and until he has sooner given the prescribed security, not exceeding the amount claimed in those proceedings, that he will not go out of New Zealand without the leave of the High Court.
3. Where the civil proceedings are for a penalty, or sum in the nature of a penalty, other than a penalty in respect of any contract, it shall not be necessary to prove that the absence of the defendant from New Zealand will materially prejudice the plaintiff in the prosecution of those proceedings; and the security given (instead of being that the defendant will not go out of New Zealand) shall be to the effect that any sum recovered against the defendant in those proceedings will be paid or that the defendant shall be rendered to prison.
4. All the powers conferred by this section upon a Judge may be exercised by the Registrar of the court: provided that such powers shall be exercised by the said Registrar only in the absence of the Judge from the place where the office of the court is situate at which the application for such order as aforesaid is made.

### **Subpart 3: Foreign creditors**

#### **56. Memorials of judgments obtained out of New Zealand may be registered**

1. Any person in whose favour any judgment, decree, rule, or order, whereby any sum of money is made payable, has been obtained in any court of any of Her Majesty's dominions may cause a memorial of the same containing the particulars hereinafter mentioned, and authenticated by the seal of the court wherein such judgment, decree, rule, or order was obtained, to be filed in the office of the High Court; and such memorial being so filed shall thenceforth be a record of such judgment, decree, rule, or order, and execution may issue thereon as hereinafter provided.
2. Every seal purporting to be the seal of any such court shall be deemed and taken to be the seal of such court until the contrary is proved, and the proof that any such seal is not the seal of such court shall lie upon the party denying or objecting to the same.
3. Every such memorial shall be signed by the party in whose favour such judgment, decree, rule, or order was obtained, or his attorney or solicitor, and shall contain the following particulars, that is to say: the names and additions of the parties, the form or nature of the action or other proceeding, and, when commenced, the date of the signing or entering-up of the judgment, or of passing the decree, or of making the rule or order, and the amount recovered, or the decree pronounced, or rule or order made, and, if there was a trial, the date of such trial and amount of verdict given.

4. The court or any Judge thereof, on the application of the person in whose favour such judgment, decree, rule, or order was obtained, or his solicitor, may grant a rule or issue a summons calling upon the person against whom such judgment, decree, rule, or order was obtained to show cause, within such time after personal or such other service of the rule or summons as such court or Judge directs, why execution should not issue upon such judgment, decree, rule, or order, and such rule or summons shall give notice that in default of appearance execution may issue accordingly; and if the person served with such rule or summons does not appear, or does not show sufficient cause against such rule or summons, such court or Judge, on due proof of such service as aforesaid, may make the rule absolute, or make an order for issuing execution as upon a judgment, decree, rule, or order of the court, subject to such terms and conditions (if any) as such court or Judge thinks fit.
5. All such proceedings may be had or taken for the revival of such judgment, decree, rule, or order, or the enforcement thereof by and against persons not parties to such judgment, decree, rule, or order as may be had for the like purposes upon any judgment, decree, rule, or order of the court.

## **Subpart 4: Witnesses**

### **56A. Failure of witness to attend**

1. If any witness who is compellable to attend to give evidence at the hearing of any civil proceeding in the High Court and who has been duly summoned fails to attend at the time and place appointed, the court may issue a warrant to arrest him and bring him before the court, and may adjourn the hearing.
2. The court may impose on any such witness who fails without just excuse (the proof of which excuse shall be on him) to attend as aforesaid a fine not exceeding \$500.
3. No witness shall be compellable to attend at the hearing of any civil proceeding in the High Court unless at the time of the service of the order of subpoena, or at some other reasonable time before the hearing, a sum in respect of his allowances and travelling expenses in accordance with the scale prescribed for the time being by regulations made under the Criminal Procedure Act 2011 is tendered or paid to him.

### **56B. Refusal of witness to give evidence**

1. If any witness in any civil proceeding in the High Court, without offering any just excuse, refuses to give evidence when required, or refuses to produce any document which he has been required to produce, or refuses to be sworn, or having been sworn refuses to answer such questions concerning that proceeding as are put to him, the court may order that, unless he sooner consents to give evidence or to produce the document or to be sworn or to answer these questions put to him, as the case may be, he be detained in custody for any period not exceeding 7 days, and may issue a warrant for his arrest and detention in accordance with the order.
2. If the person so detained, on being brought up again at the hearing, again refuses to give evidence or to produce the document or to be sworn or, having been sworn, to answer the questions put to him, the court, if it thinks fit, may again direct that the witness be detained in custody for the like period, and so again from time to time until he consents to give evidence or to produce the document or to be sworn or to answer as aforesaid.

3. Nothing in this section shall limit or affect any power or authority of the court to punish any witness for contempt of court in any case to which this section does not apply.

## **56BB. Witnesses entitled to expenses**

[Repealed]

## **Subpart 5: Contempt of court**

### **56C. Contempt of court**

1. If any person—
  - a. assaults, threatens, intimidates, or wilfully insults a Judge, or any Registrar, or any officer of the court, or any juror, or any witness, during his sitting or attendance in court, or in going to or returning from the court; or
  - b. wilfully interrupts or obstructs the proceedings of the court or otherwise misbehaves in court; or
  - c. wilfully and without lawful excuse disobeys any order or direction of the court in the course of the hearing of any proceedings—

any constable or officer of the court, with or without the assistance of any other person, may, by order of the Judge, take the offender into custody and detain him until the rising of the court.
2. In any such case as aforesaid, the Judge, if he thinks fit, may sentence the offender to imprisonment for any period not exceeding 3 months, or sentence him to pay a fine not exceeding \$1,000 for every such offence; and in default of payment of any such fine may direct that the offender be imprisoned for any period not exceeding 3 months, unless the fine is sooner paid.
3. Nothing in this section shall limit or affect any power or authority of the court to punish any person for contempt of court in any case to which this section does not apply.

## **Subpart 6: Immigration matters**

### **56CA. Judicial review of decisions under Immigration Act 1987**

[Repealed]

## Part 1A: Special provisions applying to certain proceedings in the High Court and the Federal Court of Australia

### 56D. Interpretation

In this Part, unless the context otherwise requires,—

- Australian proceeding means a proceeding in which a matter for determination arises under—
  - a. any of sections 46A, 155A, or 155B of the Trade Practices Act 1974 of the Parliament of the Commonwealth of Australia; or
  - b. a provision of Part 6 or Part 12 of the Trade Practices Act 1974 of the Parliament of the Commonwealth of Australia in so far as it relates to any of sections 46A, 155A, or 155B of that Act,—
- whether or not any other matter arises for determination; and includes an interlocutory proceeding related to such a proceeding and an application for the issue of execution or enforcement of a judgment or order or injunction given or made or granted in such a proceeding
- Federal Court means the Federal Court of Australia
- New Zealand proceeding means a proceeding in which a matter for determination arises under—
  - a. any of sections 36A, 98H, or 99A of the Commerce Act 1986; or
  - b. a provision of Part 6 or Part 7 of the Commerce Act 1986 in so far as it relates to any of sections 36A, 98H, or 99A of that Act,—
- whether or not any other matter arises for determination; and includes an interlocutory proceeding related to such a proceeding and an application for the issue of execution or enforcement of a judgment or order or injunction given or made or granted in such a proceeding.

### 56DB. Trans-Tasman Proceedings Act 2010 does not affect this Part

This Part is not limited or affected by the Trans-Tasman Proceedings Act 2010.

### 56DC. Courts (Remote Participation) Act 2010 does not apply to remote appearances under this Part

Nothing in the Courts (Remote Participation) Act 2010 applies to any appearance by video link or telephone conference in accordance with this Part.



## **56E. High Court may order New Zealand proceedings to be heard in Australia**

1. The High Court may, if it is satisfied that a New Zealand proceeding could more conveniently or fairly be tried or heard by the High Court in Australia or that the evidence in a New Zealand proceeding could more conveniently be given in Australia, as the case may be, order that the proceeding be tried or heard in Australia, or that the evidence be taken in Australia, and may sit in Australia for that purpose.
2. The order shall specify—
  - a. the place in Australia where the proceeding will be tried or heard or the evidence taken, as the case may be:
  - b. the date or dates of the trial or hearing or on which the evidence will be taken, as the case may be:
  - c. such other matters relating to the trial or the hearing or the taking of the evidence, as the case may be, as the court thinks fit.
3. Without limiting the powers of the High Court in relation to the proceeding, the High Court may give judgment in, or make any determination for the purposes of, a New Zealand proceeding in Australia.

## **56F. Australian counsel entitled to practise in High Court**

A person who is entitled to practise as a barrister, or solicitor, or both, in the Federal Court is entitled to practise as a barrister, or solicitor, or both in relation to—

- a. a New Zealand proceeding before the High Court sitting in Australia:
- b. the examination, cross-examination, or re-examination of a witness in Australia whose evidence is being taken by video link or telephone conference in a New Zealand proceeding before the High Court in New Zealand:
- c. the making of submissions by video link or telephone conference to the High Court in New Zealand in a New Zealand proceeding.

## **56G. High Court may set aside subpoena issued in New Zealand proceeding**

1. The High Court may set aside an order of subpoena issued by the High Court requiring the attendance of a person in Australia to testify or to produce documents to the High Court for the purposes of a New Zealand proceeding.
2. An application under subsection (1) shall be made by the person served with the order of subpoena and may be made ex parte.
3. Without limiting the grounds on which the order of subpoena may be set aside, the High Court may set the order aside on any of the following grounds:
  - a. that the witness does not have, and could not reasonably be expected to obtain, the necessary travel documents:

- b. that the witness is liable to be detained for the purpose of serving a sentence:
  - c. that the witness is liable to prosecution for an offence:
  - d. that the witness is liable to the imposition of a penalty in civil proceedings, not being proceedings for a pecuniary penalty under section 80 or section 83 of the Commerce Act 1986:
  - e. that the evidence of the witness could be obtained without significantly greater expense by other means:
  - f. that compliance with the order of subpoena would cause hardship or serious inconvenience to the witness:
  - g. in the case of an order of subpoena that requires a witness to produce documents, whether or not it also requires the witness to testify, that the court is satisfied that the documents should not be taken out of Australia and that evidence of the contents of the documents can be given by other means.
4. Every application to set aside an order of subpoena under subsection (1) shall be made by affidavit.
  5. The affidavit shall—
    - a. be sworn by the applicant; and
    - b. set out the facts on which the applicant relies; and
    - c. be filed in the office of the court that issued the order of subpoena.
  6. The Registrar of the court shall cause a copy of the affidavit to be served on the solicitor on the record for the party to the proceedings who obtained the order of subpoena, or if there is no solicitor on the record, on that party.

## **56H. Injunctions and orders in New Zealand proceedings**

Notwithstanding any rule of law, the High Court may, in a New Zealand proceeding, make an order or grant an injunction that the court is empowered to make or grant that requires a person to do an act, or refrain from engaging in conduct, in Australia.

## **56I. Issue of subpoenas in New Zealand proceedings**

1. An order of subpoena may, with the leave of a Judge, be obtained in a New Zealand proceeding requiring a person in Australia to testify, or produce documents or things, or both, to the High Court at a sitting of that court in New Zealand or in Australia.
2. An order of subpoena issued for the purposes of a New Zealand proceeding that requires a witness in Australia to produce documents or things, but does not require the witness to testify, must permit the witness to comply with the order of subpoena by producing the documents or things to a specified registry of the Federal Court.

## 56J. Powers of Federal Court of Australia

1. The Federal Court of Australia may exercise all the powers of that court—
  - a. at a sitting of that court in New Zealand held for the purposes of an Australian proceeding:
  - b. at a sitting of that court in Australia held for the purposes of an Australian proceeding at which the evidence of a witness in New Zealand is taken by video link or telephone conference or at which submissions are made in New Zealand by a barrister, or solicitor, or both or a party to the proceedings by video link or telephone conference.
2. Without limiting subsection (1), the Federal Court of Australia Act 1976 and the rules of court made under that Act that are applicable in relation to Australian proceedings generally shall apply to the practice and procedure of the Federal Court at any sitting of that court of the kind referred to in that subsection.
3. Without limiting subsection (1), the Federal Court may, at any such sitting of the court in New Zealand or in Australia, by order—
  - a. direct that the hearing or any part of the hearing be held in private:
  - b. require any person to leave the court:
  - c. prohibit or restrict the publication of evidence or the name of any party or any witness.
4. Nothing in subsection (1) or subsection (2) applies in relation to—
  - a. the power of the court to punish any person for contempt; or
  - b. the prosecution of any person for an offence committed as a witness; or
  - c. the enforcement or execution of any judgment, order, injunction, writ, or declaration given, made, or granted by the court.
5. An order made under subsection (3) may be enforced by a Judge of the High Court who, for that purpose, shall have and may exercise the powers, including the power to punish for contempt, that would be available to enforce the order if it had been made by that Judge.

## 56K. Issue of subpoenas in Australian proceedings

1. An order of subpoena that is issued by the Federal Court with the leave of a Judge of that court requiring the attendance of a person in New Zealand to testify or to produce documents for the purposes of an Australian proceeding may be served on that person in New Zealand by leaving a sealed copy of the subpoena with that person personally together with a statement setting out the rights and obligations of that person, including information as to the manner in which application may be made to that court to have the subpoena set aside.
2. A person who has been served with an order of subpoena under subsection (1) is not compellable to comply with the order unless, at the time of service of the order or at some other reasonable time before the hearing, allowances and travelling expenses or vouchers sufficient to enable that person to comply with the order are tendered or paid to that person.

## 56L. Failure of witness to comply with subpoena issued in Australian proceeding

1. The court may, on receiving a certificate under the seal of the Federal Court stating that a person named in the certificate has failed to comply with an order of subpoena requiring that person to attend as a witness for the purposes of an Australian proceeding, issue a warrant requiring any constable to arrest that person and bring that person before the court.
2. The court may, on the appearance of that person before the court, impose a fine not exceeding \$1,000 unless the court is satisfied, the onus of proof of which shall lie with that person, that the failure to comply with the order of subpoena should be excused.
3. In determining whether the failure to comply with the order of subpoena should be excused, the High Court may have regard to—
  - a. any matters that were not brought to the attention of the Federal Court, if the High Court is satisfied that—
    - i. the Federal Court would have been likely to have set aside the order of subpoena if those matters had been brought to the attention of that court; and
    - ii. the failure to bring those matters to the attention of the Federal Court was not due to any fault on the part of the person alleged to have failed to comply with the order of subpoena or was due to an omission by that person that should be excused; and
  - b. any matters to which the High Court would have regard if the order of subpoena had been issued by the High Court.
4. For the purposes of this section, but subject to subsection (3), a certificate under the seal of the Federal Court stating—
  - a. that the order of subpoena was issued by that court:
  - b. that the witness failed to comply with the order of subpoena:
  - c. in relation to any application made to that court to have the order of subpoena set aside, the decision of that court or any orders or findings of fact made by that court—shall be conclusive evidence of the matters stated in it.
5. Subject to subsection (3), no findings of fact made by the Federal Court on an application to that court to have the order of subpoena set aside may be challenged by any person alleged to have failed to comply with the order unless the court was deliberately misled in making those findings of fact.

## 56M. Federal Court of Australia may administer oaths in New Zealand

1. The Federal Court may—

- a. at any sitting of that court in New Zealand held for the purposes of an Australian proceeding; or
  - b. for the purposes of obtaining the testimony of a person in New Zealand by video link or telephone conference at a sitting of that court in Australia—administer an oath or affirmation in accordance with the practice and procedure of that court.
2. Evidence given by a person on oath or affirmation administered by the Federal Court under subsection (1), for the purposes of section 108 of the Crimes Act 1961 (which relates to perjury), be deemed to have been given as evidence in a judicial proceeding on oath.

## **56N. Orders made by Federal Court of Australia not subject to review**

No application for review under Part 1 of the Judicature Amendment Act 1972 and no application for an order of mandamus or prohibition or certiorari or for a declaration or injunction may be brought in respect of any judgment or order or determination of the Federal Court made or given at a sitting of that court in New Zealand in an Australian proceeding.

## **56O. Contempt of Federal Court of Australia**

1. Every person commits an offence who, at any sitting of the Federal Court in New Zealand,—
  - a. assaults, threatens, intimidates, or wilfully insults—
    - i. a Judge of that court; or
    - ii. a registrar or officer of that court; or
    - iii. a person appearing as a barrister, or solicitor, or both, before that court; or
    - iv. a witness in proceedings before that court; or
  - b. wilfully interrupts or obstructs the proceedings; or
  - c. wilfully and without lawful excuse disobeys any order or direction of the court in the course of the proceedings.
2. Every person who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$1,000.

## **56P. Arrangements to facilitate sittings**

1. The Chief Justice of New Zealand may make arrangements with the Chief Justice of the Federal Court for the purposes of giving effect to this Part.

2. Without limiting subsection (1) arrangements may be made—
  - a. to enable the High Court to sit in Australia in New Zealand proceedings in the courtrooms of the Federal Court or in other places in Australia:
  - b. to enable the Federal Court to sit in New Zealand in the courtrooms of the High Court or in other places in New Zealand:
  - c. to enable evidence to be given and the submissions of counsel to be made in New Zealand proceedings or in Australian proceedings by video link or telephone conference:
  - d. for the provision of registry facilities and court staff.

### **56Q. Privileges and immunities of Judges, counsel, and witnesses in Australian proceedings**

1. A Judge of the Federal Court sitting as a Judge of that court in New Zealand in an Australian proceeding has all the protections, privileges, and immunities of a Judge of the High Court.
2. Every witness who gives evidence in an Australian proceeding—
  - a. at a sitting in New Zealand of the Federal Court; or
  - b. by video link or telephone conference at a sitting in Australia of the Federal Court— has all the privileges and immunities of a witness in the High Court.
3. A person appearing as a barrister, or solicitor, or both, in an Australian proceeding—
  - a. at a sitting in New Zealand of the Federal Court; or
  - b. by video link or telephone conference at a sitting in Australia of the Federal Court— has all the privileges and immunities of counsel in the High Court.
4. A person appearing as a party in an Australian proceeding—
  - a. at a sitting in New Zealand of the Federal Court; or
  - b. by video link or telephone conference at a sitting in Australia of the Federal Court—
 has all the privileges and immunities of a party in a proceeding in the High Court.

### **56R. High Court may take evidence at request of Federal Court**

1. The High Court may, at the request of the Federal Court, take evidence in New Zealand for the Federal Court for the purposes of an Australian proceeding and may, by order, make any provision it considers appropriate for the purpose of taking that evidence.
2. An order may require a specified person to take such steps the High Court considers appropriate for taking the evidence.

3. Without limiting subsections (2) and (3), an order may, in particular, make provision—
  - a. for the examination of witnesses, either orally or in writing; or
  - b. for the production of documents or things; or
  - c. for the inspection, photographing, preservation, custody, or detention of any property; or
  - d. for taking samples of property and carrying out experiments on or with property.
4. The High Court may make an order requiring a person to give evidence either orally or by tendering a written document otherwise than on oath or affirmation if the Federal Court requests it to do so.
5. A person who has been served with an order made under this section is not compellable to comply with the order unless, at the time of service of the order or at some other reasonable time before that person is required to comply with the order, allowances and travelling expenses or vouchers sufficient to enable that person to comply with the order are tendered or paid to that person.
6. A person is not compellable to give evidence pursuant to an order under this section that he or she is not compellable to give in the Australian proceeding to which the request relates.

## 56S. Power to make rules for purposes of this Part

1. Rules may be made under section 51C, for or in relation to, Australian proceedings and New Zealand proceedings.
2. Without limiting subsection (1), rules may be made that make provision for, or in relation to,—
  - a. the giving of evidence and the making of submissions in New Zealand proceedings by video link or telephone conference:
  - b. receiving, for the purposes of the Evidence Amendment Act 1990, facsimiles as evidence of documents or things:
  - c. the issuing of subpoenas for service in Australia for the purposes of New Zealand proceedings and the service of those subpoenas:
  - d. the payment of witnesses required to comply with orders of subpoena served in Australia for the purposes of New Zealand proceedings of amounts in respect of expenses and loss of income occasioned by compliance with those orders:
  - e. the lodging of documents or things with the Federal Court in compliance with orders of subpoena issued in New Zealand proceedings that require only the production of documents or things by witnesses:

- Head of state powers
- Advisory bodies to the head of state

- f. the transmission of documents or things lodged with the High Court in Australian proceedings in compliance with orders of subpoena issued by the Federal Court or certified copies of such documents to the Federal Court:
- g. the hearing of applications for orders under section 56G:
- h. sittings of the High Court in Australia:
- i. giving effect to arrangements made under section 56P:
- j. the form of certification of judgments, orders, and injunctions in New Zealand proceedings:
- k. the taking of evidence under section 56R:
- l. such other matters as are contemplated by or necessary for giving effect to this Part.

## Part 2: The Court of Appeal

### A. Constitution of the court

#### 57. Constitution of Court of Appeal

1. There shall continue to be in and for New Zealand a court of record called, as heretofore, the Court of Appeal of New Zealand:  
provided and it is hereby declared that the Court of Appeal heretofore and now held and henceforth to be held is and shall be deemed and taken to be the same court.
2. Subject to this Part, the Court of Appeal comprises—
  - a. a Judge of the High Court appointed by the Governor-General as a Judge of the Court of Appeal and as President of that court:
  - b. not fewer than 5 nor more than 9 other Judges of the High Court appointed by the Governor-General as Judges of the Court of Appeal.
3. Any Judge may be appointed to be a Judge of the Court of Appeal either at the time of his appointment as a Judge of the High Court or at any time thereafter.
4. Every Judge of the Court of Appeal shall continue to be a Judge of the High Court, and may from time to time sit as or exercise any of the powers of a Judge of the High Court.
5. Every Judge of the Court of Appeal shall hold office as a Judge of that court so long as he holds office as a Judge of the High Court: provided that, with the prior approval of the Governor-General, any Judge of the Court of Appeal may resign his office as a Judge of that court without resigning his office as a Judge of the High Court.

• Structure of the courts

• Ordinary court selection

• Ordinary court selection

• Eligibility for ordinary court judges



6. The Judges of the Court of Appeal have seniority over all the Judges of the High Court (including any additional Judge of the Court of Appeal) except the Chief Justice and the other Judges of the Supreme Court.
- 6A. The President of the Court of Appeal has seniority over the other Judges of the Court of Appeal.
- 6B. Other Judges of the Court of Appeal appointed on different dates have seniority among themselves according to those dates.
- 6C. Other Judges of the Court of Appeal appointed on the same date have seniority among themselves according to their seniority as Judges of the High Court.
- 6D. A Judge of the Court of Appeal who resigns office as a Judge of that court without resigning office as a Judge of the High Court then has, as a Judge of the High Court, the seniority that he or she would have had if he or she had not been appointed as a Judge of the Court of Appeal.
7. While any vacancy exists in the office of President of the Court of Appeal, or during any absence from New Zealand of the President, or while by reason of illness or any other cause he is prevented from exercising the duties of his office, the senior Judge of the Court of Appeal shall have authority to act as President of the Court of Appeal and to execute the duties of that office and to exercise all powers that may be lawfully exercised by the President.
8. The jurisdiction of the Court of Appeal shall not be affected by any vacancy in the number of the Judges of that court.

### **57A. Judges of Court of Appeal act on full-time basis but may be authorised to act part-time**

1. A person acts as a Judge of the Court of Appeal on a full-time basis unless he or she is authorised by the Attorney-General to act on a part-time basis.
2. The Attorney-General may, in accordance with subsection (4), authorise a Judge to act on a part-time basis for any specified period.
3. To avoid doubt, an authorisation under subsection (2) may take effect as from a Judge's appointment or at any other time, and may be made more than once in respect of the same Judge.
4. The Attorney-General may authorise a Judge to act on a parttime basis only—
  - a. on the request of the Judge; and
  - b. with the concurrence of the President of the Court of Appeal.
5. In considering whether to concur under subsection (4), the President of the Court of Appeal must have regard to the ability of the court to discharge its obligations in an orderly and expeditious way.
6. A Judge who is authorised to act on a part-time basis must resume acting on a full-time basis at the end of the authorised part-time period.
7. The basis on which a Judge acts must not be altered during the term of the Judge's appointment without the Judge's consent, but consent under this subsection is not necessary if the alteration is required by subsection (6).
8. This section applies only to Judges who are appointed as Judges of the Court of Appeal.

### **58. Court of Appeal to sit in divisions**

1. Except as provided in sections 58D and 61A, for the purposes of any proceedings in the Court of Appeal, the court sits in divisions comprising 3 Judges.

2. [Repealed]
3. There are—
- a. 1 or more divisions of the Court of Appeal for the purposes of criminal proceedings; and
  - b. 1 or more divisions of the Court of Appeal for the purposes of civil proceedings.
4. Each division of the Court of Appeal may exercise all the powers of the Court of Appeal.
5. A division of the court may exercise any powers of the court even though 1 or more divisions of the court or a full court is exercising any powers of the court at the same time.
6. If the majority of the members of a division of the court considers it desirable to do so, the division may—
- a. refer any proceeding; or
  - b. state any case; or
  - c. reserve any question— for the consideration of a full court of the Court of Appeal, and in that case a full court has the power to hear and determine the proceeding, case, or question.

## 58A. Composition of criminal appeals division or divisions

1. For the purposes of any criminal proceeding that is heard by a division, the Court of Appeal comprises—
  - a. 3 Judges of the Court of Appeal holding office under section 57(2); or
  - b. 2 Judges of the Court of Appeal holding office under section 57(2) and 1 Judge of the High Court nominated by the Chief Justice under subsection (2); or
  - c. 1 Judge of the Court of Appeal holding office under section 57(2) and 2 Judges of the High Court nominated by the Chief Justice under subsection (2).
2. Except where the work of the High Court renders it impracticable for the Chief Justice to do so, the Chief Justice must from time to time, after consulting the President of the Court of Appeal and the Chief High Court Judge, nominate the Judges of the High Court who may comprise members of the Court of Appeal for the purposes of any proceeding or proceedings to which subsection (1) relates.
3. Every nomination under subsection (2) must be made either—
  - a. in respect of a specified case or specified cases; or
  - b. in respect of every case to be heard by the Court of Appeal during a specified period not exceeding 3 months.

4. For the purposes of this section, criminal proceeding means an appeal or application to the Court of Appeal under Part 6 of the Criminal Procedure Act 2011.

## 58B. Composition of civil appeals division or divisions

1. For the purposes of any civil proceeding that is heard by a division of the court, the Court of Appeal comprises—
  - a. 3 Judges of the Court of Appeal holding office under section 57(2); or
  - b. 2 Judges of the Court of Appeal holding office under section 57(2) and 1 Judge of the High Court nominated by the Chief Justice under subsection (2); or
  - c. 1 Judge of the Court of Appeal holding office under section 57(2) and 2 Judges of the High Court nominated by the Chief Justice under subsection (2).
2. Except where the work of the High Court renders it impracticable for the Chief Justice to do so, the Chief Justice must from time to time, after consulting the President of the Court of Appeal and the Chief High Court Judge, nominate the Judges of the High Court who may comprise members of the Court of Appeal for the purposes of any proceeding or proceedings to which subsection (1) relates.
3. Every nomination under subsection (2) must be made either—
  - a. in respect of a specified case or specified cases; or
  - b. in respect of every case to be heard by the Court of Appeal during a specified period not exceeding 3 months.
4. For the purposes of this section, the term civil proceeding means—
  - a. any appeal to the Court of Appeal against any judgment or order given or made in a proceeding other than a criminal proceeding;
  - b. any application relating to an appeal of the kind mentioned in paragraph (a);
  - c. any application for leave to bring an appeal of the kind mentioned in paragraph (a);
  - d. any proceeding transferred to the Court of Appeal under section 64.

## 58C. Assignment of Judges to divisions

1. Judges are assigned to act as members of a criminal or civil division of the Court of Appeal in accordance with a procedure adopted from time to time by Judges of the Court of Appeal holding office under section 57(2).
2. The President of the Court of Appeal must publish in the Gazette any procedure adopted under subsection (1).
3. A Judge of the High Court who is eligible to act as a Judge of a division of the Court of Appeal because of a nomination made under section 58A(2) or section 58B(2) may not be assigned to a division without the concurrence of the Chief Justice and the Chief High Court Judge.

## 58D. Court of Appeal to sit as full court in certain cases

1. Subject to subsection (3), a full court consists of 5 Judges.
2. Subject to section 58F, a full court is constituted only by Judges of the Court of Appeal holding office under section 57(2).
3. Where, pending the determination of any proceeding, 1 or more of the members of a full court before whom the proceeding is being heard or was heard—
  - a. dies; or
  - b. becomes seriously ill; or
  - c. is otherwise unavailable for any reason,— it is not necessary for that proceeding to be reheard, and the remaining members may continue to act as a full court for the purposes of this section with power to determine the proceeding or any incidental matter (including the question of costs) that may arise in the course of that proceeding.
4. The Court of Appeal must sit as a full court to hear and determine—
  - a. cases that are considered, in accordance with the procedure adopted under section 58E, to be of sufficient significance to warrant the consideration of a full court:
  - b. any proceeding, case, or question referred under section 58(6) for hearing and determination by a full court:
  - c. any appeal from a decision of the Court Martial Appeal Court under section 10 of the Court Martial Appeals Act 1953.

## 58E. Cases of sufficient significance for full court

1. The question whether a case is of sufficient significance to warrant the consideration of a full court must be determined in accordance with the procedure which those Judges of the Court of Appeal holding office under section 57(2) from time to time adopt.
2. The President of the Court of Appeal must publish in the Gazette any procedure adopted by the Judges of the Court of Appeal under subsection (1).

## 58F. High Court Judges sitting on full court

1. Whenever the President of the Court of Appeal certifies in writing that due to—
  - a. the illness or absence on leave of any of the Judges holding office under section 57(2); or
  - b. the need for the expertise of a specific Judge of the High Court in a particular case; or
  - c. any other exceptional circumstances,— it is necessary for a specified Judge who has been assigned to a division of the court under section 58C to sit as a member of the full court, that Judge may sit as a member of the full court.

2. No more than 1 Judge of the High Court may sit as a member of the full court at any one time.

## **58G. Authority of High Court Judges**

1. The fact that a Judge of the High Court acts as a Judge of the Court of Appeal is conclusive evidence of the Judge's authority to do so, and no judgment or determination given or made by the Court of Appeal while the Judge so acts may be questioned on the ground that the occasion for the Judge so acting had not arisen or had ceased to exist.
2. A Judge of the High Court who has acted as a Judge of the Court of Appeal may attend sittings of the Court of Appeal for the purpose of giving any judgment or passing sentence in or otherwise completing any proceeding in relation to any case that has been heard by the Judge while he or she so acted.

## **59. Judgment of Court of Appeal**

1. The judgment of the court must be in accordance with the opinion of a majority of the Judges hearing the proceeding concerned.
2. If the Judges present are equally divided in opinion, the judgment or order appealed from or under review is taken to be affirmed.
3. The delivery of the judgment of the Court of Appeal may be effected in any manner provided by rules made under section 51C.

## **60. Sittings of Court of Appeal**

1. The Court of Appeal may from time to time appoint ordinary or special sittings of the court, and may from time to time make rules, not inconsistent with the rules of practice and procedure of the Court of Appeal for the time being in force under this Act or with the laws of New Zealand, in respect of the places and times for holding sittings of the court, the order of disposing of business, and any other necessary matters.
2. If present at a sitting of the Court of Appeal, the President presides.
3. If the President of the Court of Appeal is absent from a sitting of the court, the senior Judge of the court present presides.
4. The court has power from time to time to adjourn any sitting until such time and to such place as it thinks fit.

## **60A. Court of Appeal may sit in divisions**

[Repealed]

## **61. Adjournment in cases of absence of some of the Judges**

Where, by reason of the absence of all or any 1 or more of the Judges of the Court of Appeal at the time appointed for the sitting of the court or any adjournment thereof, it is necessary to adjourn the sitting of the court to a future day, any 1 or more of the Judges at the time appointed for such sitting, or at the time of any adjournment thereof, or the Registrar of the said court in case none of the Judges thereof are present, may adjourn or further adjourn such sitting to such future day and hour as such Judge or Judges or such Registrar think fit.

## **61A. Incidental orders and directions may be made and given by 1 Judge**

1. In any civil appeal or in any civil proceeding before the Court of Appeal, any Judge of that court, sitting in chambers, may make such incidental orders and give such incidental directions as he thinks fit, not being an order or a direction that determines the appeal or disposes of any question or issue that is before the court in the appeal or proceeding.
2. Every order or direction made or given by a Judge of the Court of Appeal under subsection (1) may be discharged or varied by any Judges of that court who together have jurisdiction, in accordance with section 58A or section 58B or section 58D, as the case may be, to hear and determine the proceeding.
3. Any Judge of the Court of Appeal may review a decision of the Registrar made within the civil jurisdiction of the court under a power conferred on the Registrar by any rule of court, and may confirm, modify, or revoke that decision as he thinks fit.
4. The provisions of this section shall apply notwithstanding anything in section 58.
5. This section shall have effect from a date to be appointed by the Governor-General by Order in Council.

## **62. Power to remit proceedings to the High Court**

The Court of Appeal shall have power to remit any proceedings in any cause pending before it to the High Court or a single Judge thereof.

## **63. Judgments of Court of Appeal may be enforced by the High Court**

All judgments, decrees, and orders of the Court of Appeal may be enforced by the High Court as if they had been given or made by that court.

## **B. Civil jurisdiction**

### **Subpart 1: Removal of proceedings from the High Court**

## **64. Transfer of civil proceedings from High Court to Court of Appeal**

1. If the circumstances of a civil proceeding pending before the High Court are exceptional, the High Court may order that the proceeding be transferred to the Court of Appeal.
2. Without limiting the generality of subsection (1), the circumstances of a proceeding may be exceptional if—
  - a. a party to the proceeding intends to submit that a relevant decision of the Court of Appeal should be overruled by the Court of Appeal:
  - b. the proceeding raises 1 or more issues of considerable public importance that need to be determined urgently, and those issues are unlikely to be determined urgently if the proceeding is heard and determined by both the High Court and the Court of Appeal:

- c. the proceeding does not raise any question of fact or any significant question of fact, but does raise 1 or more questions of law that are the subject of conflicting decisions of the High Court.
3. In deciding whether to transfer a proceeding under subsection (1), a Judge must have regard to the following matters:
  - a. the primary purpose of the Court of Appeal as an appellate court:
  - b. the desirability of obtaining a determination at first instance and a review of that determination on appeal:
  - c. whether a full court of the High Court could effectively determine the question in issue:
  - d. whether the proceeding raises any question of fact or any significant question of fact:
  - e. whether the parties have agreed to the transfer of the proceeding to the Court of Appeal:
  - f. any other matter that the Judge considers that he or she should have regard to in the public interest.
4. The fact that the parties to a proceeding agree to the transfer of the proceeding to the Court of Appeal is not in itself a sufficient ground for an order transferring the proceeding.
5. If the High Court transfers a proceeding under subsection (1), the Court of Appeal has the jurisdiction of the High Court to hear and determine the proceeding.

## **65. Decision of Court of Appeal final as regards tribunals of New Zealand**

[Repealed]

### **Subpart 2: Appeals from decisions of the High Court**

## **66. Court may hear appeals from judgments and orders of the High Court**

The Court of Appeal shall have jurisdiction and power to hear and determine appeals from any judgment, decree, or order save as hereinafter mentioned, of the High Court, subject to the provisions of this Act and to such rules and orders for regulating the terms and conditions on which such appeals shall be allowed as may be made pursuant to this Act.

## Subpart 3: Appeals from inferior courts

### 67. Appeals against decisions of High Court on appeal

1. The decision of the High Court on appeal from an inferior court is final, unless a party, on application, obtains leave to appeal against that decision—
  - a. to the Court of Appeal; or
  - b. directly to the Supreme Court (in exceptional circumstances as provided for in section 14 of the Supreme Court Act 2003).
2. An application under subsection (1) for leave to appeal to the Court of Appeal must be made to the High Court or, if the High Court refuses leave, to the Court of Appeal.
3. An application under subsection (1) for leave to appeal directly to the Supreme Court must be made to the Supreme Court.
4. If leave to appeal referred to in subsection (1)(a) is obtained, the decision of the Court of Appeal on appeal from the High Court is final unless a party, on application, obtains leave to appeal against that decision to the Supreme Court.
5. Subsections (1), (3), and (4) are subject to the Supreme Court Act 2003.

### 68. Direct appeal from decision of inferior courts

[Repealed]

## C. Criminal jurisdiction

### Subpart 1: Trial at bar

#### 69. Trial at bar

1. Where a bill of indictment has been found in the High Court, or any inquisition has been found, or any criminal information been granted against any person for any crime, if it appears to the High Court on affidavit on the part of the accused or of the prosecutor that the case is one of extraordinary importance or difficulty, and that it is desirable that it should be tried before the Judges at bar, the High Court may grant a rule nisi, and, if no sufficient cause is shown, may make the same absolute for the removal of such indictment, inquisition, or information, and the proceedings thereon, into the Court of Appeal, and for the trial of the same at bar at the next or other sitting of such Court of Appeal, and may direct that a special or common jury, as the High Court thinks fit, be summoned from such jury district as the court directs to serve upon such trial; and such proceedings, as nearly as may be, shall thereupon be had as upon a trial at bar in England.
2. The Court of Appeal shall have the same jurisdiction, authority, and power in respect thereof as the Queen's Bench Division of the High Court of Justice has in England in respect of a trial at bar.

### Subpart 2: Appeals from convictions

[Repealed]



## **70. Appeal from judgment of Supreme Court on conviction**

[Repealed]

## **D. Miscellaneous**

### **71. Rules of practice**

[Repealed]

### **72. Appointment of officers**

There may from time to time be appointed under the State Sector Act 1988 such Registrars, Deputy Registrars, and other officers as may be required for the conduct of the business of the Court of Appeal.

### **73. Powers and duties of officers**

All such Registrars and other officers shall have in respect of the Court of Appeal such powers and duties as are prescribed by rules made under this Act.

### **74. Court seal**

The Court of Appeal shall have in the custody of the Registrar a seal for the sealing of writs, orders, decrees, office copies, certificates, reports, and other instruments issued by such Registrar and requiring to be sealed.

### **75. Power to fix fees**

[Repealed]

## **Part 3: Rules and provisions of law in judicial matters generally**

### **Subpart 1: Removal of technical defects**

[Repealed]

### **76. Power to courts to amend mistakes and supply omissions in warrants, orders, etc**

[Repealed]

### **Subpart 2: Limitation of actions**

[Repealed]

### **77. Limitation of actions for merchants' accounts**

[Repealed]

## **78. Limitation not barred by claims subsequently arising**

[Repealed]

## **79. Absence beyond seas or imprisonment of a creditor not to be a disability**

[Repealed]

## **80. Period of limitation to run as to joint debtors in New Zealand, though some are beyond seas**

[Repealed]

## **81. Judgment recovered against joint debtors in New Zealand to be no bar to proceeding against others beyond seas after their return**

[Repealed]

## **82. Part payment by one contractor, etc, not to prevent bar in favour of another contractor, etc**

[Repealed]

### **Subpart 3: Sureties**

## **83. Consideration for guarantee need not appear by writing**

[Repealed]

## **84. A surety who discharges the liability to be entitled to assignment of all securities held by the creditor**

Every person who, being surety for the debt or duty of another, or being liable with another for any debt or duty, pays or satisfies such debt or performs such duty shall be entitled to have assigned to him, or a trustee for him, every judgment, specialty, or other security held by the creditor in respect of such debt or duty, whether such judgment, specialty, or other security is or is not deemed at law to be satisfied by the payment of the debt or performance of the duty.

## **85. Rights of surety in such case**

1. Every such person shall be entitled to stand in the place of the creditor, and to use all the remedies, and if need be, and upon a proper indemnity, to use the name of the creditor in any civil proceedings in order to obtain from the principal debtor or any co-surety, co-contractor, or co-debtor, as the case may be, indemnification for the advances made and loss sustained by the person paying or satisfying such debt or performing such duty.

2. Such payment, satisfaction, or performance made by such surety shall not be pleadable in bar of any such action or other proceeding by him.

## 86. Rights of co-sureties, etc, as between themselves

A co-surety, co-contractor, or co-debtor shall not be entitled to recover from any other co-surety, co-contractor, or co-debtor by the means aforesaid more than the just proportion to which, as between those parties themselves, such last-mentioned person is justly liable.

### Subpart 4: Interest on money

## 87. Interest on debts and damages

1. In any proceedings in the High Court, the Court of Appeal, or the Supreme Court for the recovery of any debt or damages, the court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate, not exceeding the prescribed rate, as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment:  
provided that nothing in this subsection shall—
  - a. authorise the giving of interest upon interest; or
  - b. apply in relation to any debt upon which interest is payable as of right, whether by virtue of any agreement, enactment, or rule of law, or otherwise; or
  - c. affect the damages recoverable for the dishonour of a bill of exchange.
2. In any proceedings in the High Court, the Court of Appeal, or the Supreme Court for the recovery of any debt upon which interest is payable as of right, and in respect of which the rate of interest is not agreed upon, prescribed, or ascertained under any agreement, enactment, or rule of law or otherwise, there shall be included in the sum for which judgment is given interest at such rate, not exceeding the prescribed rate, as the court thinks fit for the period between the date as from which the interest became payable and the date of the judgment.
3. In this section the term the prescribed rate means the rate of 7.5% per annum, or such other rate as may from time to time be prescribed for the purposes of this section by the Governor-General by Order in Council.

### Subpart 5: Lost instruments

## 88. Actions on lost instruments

In case of any action founded on any negotiable instrument, the court may order that the loss of such instrument shall not be taken advantage of, provided an indemnity is given to the satisfaction of the court or a Registrar thereof against the claims of any other person upon such negotiable instrument.

## **Subpart 6: Continued exercise of powers by judicial officers**

### **88A. Judicial officers to continue in office to complete proceedings**

1. A judicial officer whose term of office has expired or who has retired may continue in office for the purpose of determining, or giving judgment in, proceedings that the judicial officer has heard either alone or with others.
2. A judicial officer must not continue in office under subsection (1) for longer than a month without the consent of the Minister of Justice.
3. The fact that a judicial officer continues in office does not affect the power to appoint another person to that office.
4. A judicial officer who continues in office is entitled to be paid the remuneration and allowances to which the officer would have been entitled if the term of office had not expired or the officer had not retired.
5. In this section, judicial officer means a person who has in New Zealand authority under an enactment to hear, receive, and examine evidence.

## **Subpart 7: Miscellaneous provisions and rules of law**

### **88B. Restriction on institution of vexatious actions**

1. If, on an application made by the Attorney-General under this section, the High Court is satisfied that any person has persistently and without any reasonable ground instituted vexatious legal proceedings, whether in the High Court or in any inferior court, and whether against the same person or against different persons, the court may, after hearing that person or giving him an opportunity of being heard, order that no civil proceeding or no civil proceeding against any particular person or persons shall without the leave of the High Court or a Judge thereof be instituted by him in any court and that any civil proceeding instituted by him in any court before the making of the order shall not be continued by him without such leave.
2. Leave may be granted subject to such conditions (if any) as the court or Judge thinks fit and shall not be granted unless the court or Judge is satisfied that the proceeding is not an abuse of the process of the court and that there is prima facie ground for the proceeding.
3. No appeal shall lie from an order granting or refusing such leave.

### **89. Administration suits**

[Repealed]

### **90. Stipulations not of the essence of contracts**

Stipulations in contracts as to time or otherwise which would not, before 13 September 1882 (the date of the coming into force of the Law Amendment Act 1882), have been deemed to be or to have become the essence of such contracts in a court of equity shall receive in all courts the same construction and effect as they would have theretofore received in equity.

## **91. Damages by collision at sea**

[Repealed]

## **92. Discharge of debt by acceptance of part in satisfaction**

An acknowledgement in writing by a creditor, or by any person authorised by him in writing in that behalf, of the receipt of a part of his debt in satisfaction of the whole debt shall operate as a discharge of the debt, any rule of law notwithstanding.

## **93. Provisions of 9 Geo IV, c 14, ss 1 and 8, extended to acknowledgments by agents**

[Repealed]

## **94. Judgment against one of several persons jointly liable not a bar to action against others**

A judgment against 1 or more of several persons jointly liable shall not operate as a bar or defence to civil proceedings against any of such persons against whom judgment has not been recovered, except to the extent to which the judgment has been satisfied, any rule of law notwithstanding.

### **94A. Recovery of payments made under mistake of law**

1. Subject to the provisions of this section, where relief in respect of any payment that has been made under mistake is sought in any court, whether in civil proceedings or by way of defence, set off, counterclaim, or otherwise, and that relief could be granted if the mistake was wholly one of fact, that relief shall not be denied by reason only that the mistake is one of law whether or not it is in any degree also one of fact.
2. Nothing in this section shall enable relief to be given in respect of any payment made at a time when the law requires or allows, or is commonly understood to require or allow, the payment to be made or enforced, by reason only that the law is subsequently changed or shown not to have been as it was commonly understood to be at the time of the payment.

### **94B. Payments made under mistake of law or fact not always recoverable**

Relief, whether under section 94A or in equity or otherwise, in respect of any payment made under mistake, whether of law or of fact, shall be denied wholly or in part if the person from whom relief is sought received the payment in good faith and has so altered his position in reliance on the validity of the payment that in the opinion of the court, having regard to all possible implications in respect of other persons, it is inequitable to grant relief, or to grant relief in full, as the case may be.

## **95. Limitation of time within which wills may be impeached**

[Repealed]

## 96. Jurisdiction as to costs in administration suits

[Repealed]

## 97. Court empowered to grant special relief in cases of encroachment

[Repealed]

## 98. Custody and education of infants

[Repealed]

## 98A. Proceedings in lieu of writs

1. Where, immediately before the commencement of the Judicature Amendment Act (No 2) 1985,—
  - a. the court had jurisdiction to grant any relief or remedy or do any other thing by way of writ, whether of prohibition, mandamus, certiorari, or any other description; or
  - b. in any proceedings in the court for any relief or remedy any writ might have issued out of the court for the purpose of the commencement or conduct of the proceedings, or otherwise in relation to the proceedings, whether the writ might have issued pursuant to any rule or order of the court or of course,—

then, after the commencement of that Act,—
  - c. the court shall continue to have jurisdiction to grant that relief or remedy or to do that thing; but
  - d. the court shall not issue any such writ; and
  - e. the court shall grant that relief or remedy or do that thing by way of judgment or order under this Act and the High Court Rules; and
  - f. proceedings for that relief or remedy or for the doing of that thing shall be in accordance with this Act and the High Court Rules.
2. Subject to the High Court Rules, this section does not apply to—
  - a. the writ of habeas corpus; or
  - b. any writ of execution for the enforcement of a judgment or order of the court; or
  - c. any writ in aid of any such writ of execution.

## 99. In cases of conflict rules of equity to prevail

Generally in all matters in which there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter the rules of equity shall prevail.

### 99A. Costs where intervener or counsel assisting court appears

1. Where the Attorney-General or the Solicitor-General or any other person appears in any civil proceedings or in any proceedings on any appeal and argues any question of law or of fact arising in the proceedings, the court may, subject to the provisions of any other Act, make such order as it thinks just—
  - a. as to the payment by any party to the proceedings of the costs incurred by the Attorney-General or the Solicitor-General in so doing; or
  - b. as to the payment by any party to the proceedings or out of public funds of the costs incurred by any other person in so doing; or
  - c. as to the payment by the Attorney-General or the Solicitor-General or that other person of any costs incurred by any of those parties by reason of his so doing.
2. Where the court makes an order pursuant to subsection (1)(b), the Registrar of the court shall forward a copy of the order to the chief executive of the Ministry of Justice who shall make the payment out of money appropriated by Parliament for the purpose.

### 99B. Technical advisers

1. The Court of Appeal or the Supreme Court may appoint a suitably qualified person (a technical adviser) to assist it by giving advice in an appeal in a proceeding involving a question arising from evidence relating to scientific, technical, or economic matters, or from other expert evidence, if the court is of the opinion that, in considering the evidence, it is desirable to have expert assistance.
2. The technical adviser must give the advice in such manner as the court may direct during the course of the proceeding on any question referred to the technical adviser.
3. Advice given by a technical adviser—
  - a. is information provided to the court; and
  - b. may be given such weight as the court thinks fit.
4. [Repealed]

### 99C. Appointment and other matters

1. A technical adviser may be appointed by the Court of Appeal on its own initiative or on the application of a party to the proceeding.
2. A technical adviser may be removed from office by the Court of Appeal for disability affecting performance of duty, neglect of duty, bankruptcy, or misconduct proved to the satisfaction of the court.

3. A technical adviser may resign office by notice in writing to the Court of Appeal.
4. The remuneration of a technical adviser must—
  - a. be fixed by the Court of Appeal; and
  - b. include a daily fee for any day on which the technical adviser is required to assist the court.
5. Civil or criminal proceedings may not be commenced against a technical adviser in relation to advice given to the Court of Appeal in good faith under section 99B.

## 99D. Procedure and rules relating to technical advisers

1. The Court of Appeal may adopt any procedures and practices in relation to the advice of a technical adviser as it considers just, but those procedures and practices are subject to any rules referred to in subsection (2).
2. Rules may be made under section 51C relating to—
  - a. the appointment of technical advisers, including (without limitation)—
    - i. the information to be given to the parties to an appeal, before a technical adviser is appointed for the appeal,—
      - A. about the persons who are considered suitable for appointment; and
      - B. about the matters on which the assistance of the proposed technical adviser is to be sought:
    - ii. the submissions that those parties may make to the Court of Appeal about the proposed appointment of a technical adviser and the assistance to be given by the technical adviser:
  - b. the conduct of proceedings involving technical advisers.

## 100. Independent medical examination

1. Where the physical or mental condition of a person who is a party to any civil proceedings is relevant to any matter in question in those proceedings, the High Court may order that that person submit himself to examination at a time and place specified in the order by 1 or more medical practitioners named in the order.
2. A person required by an order under subsection (1) to submit to examination may have a medical practitioner chosen by that person attend that person's examination.
3. The court may order that the party seeking the order pay to the person to be examined a reasonable sum to meet that person's travelling and other expenses of and incidental to the examination, including the expenses of having a medical practitioner chosen by that person attend that person's examination.



4. Where an order is made under subsection (1), the person required by that order to submit to examination shall do all things reasonably requested, and answer all questions reasonably asked of that person, by the medical practitioner for the purposes of the examination.
5. If a person ordered under subsection (1) to submit to examination fails, without reasonable excuse, to comply with the order, or in any way obstructs the examination, the court may, on terms, stay the proceedings or strike out the pleading of that person.
6. This section applies to the Crown and every department of the public service.
7. Nothing in this section affects the provisions of the Workers' Compensation Act 1956.

## 100A. Regulations

1. Notwithstanding anything in sections 51 and 51C, the Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:
  - a. prescribing the matters in respect of which fees are payable under this Act:
  - b. prescribing scales of fees for the purposes of this Act and for the purposes of any proceedings before the High Court or the Court of Appeal, whether under this Act or any other enactment:
  - c. prescribing the fees, travelling allowances, and expenses payable to interpreters and to persons giving evidence in proceedings to which this Act applies:
  - d. in order to promote access to justice, empowering Registrars or Deputy Registrars of the High Court and the Court of Appeal to waive, reduce, or postpone the payment of a fee required in connection with a proceeding or an intended proceeding, or to refund, in whole or in part, such a fee that has already been paid, if satisfied on the basis of criteria specified under paragraph (da) that—
    - i. the person otherwise responsible for payment of the fee is unable to pay or absorb the fee in whole or in part; or
    - ii. unless 1 or more of those powers are exercised in respect of a proceeding that concerns a matter of genuine public interest, the proceeding is unlikely to be commenced or continued:
  - da. prescribing, for the purposes of the exercise of a power under paragraph (d), the criteria—
    - i. for assessing a person's ability to pay a fee; and
    - ii. for identifying proceedings that concern matters of genuine public interest:

• Head of state powers  
• Advisory bodies to the head of state

- db. empowering Registrars or Deputy Registrars of the High Court and the Court of Appeal to postpone the payment of a fee pending the determination of—
    - i. an application for the exercise of a power specified in paragraph (d); or
    - ii. an application for review under section 100B:
  - dc. making provision in relation to the postponement, under the regulations, of the payment of any fee, which provision may (without limitation) include provision—
    - i. for the recovery of the fee after the expiry of the period of postponement; and
    - ii. for restrictions to apply (after the expiry of the period of postponement and so long as the fee remains unpaid) on the steps that may be taken in the proceedings in respect of which the fee is payable:
  - dd. providing for the manner in which an application for the exercise of a power specified in paragraph (d) or paragraph (db) is to be made, including, without limitation, requiring such an application to be in a form approved for the purpose by the chief executive of the Ministry of Justice:
  - e. altering or revoking any rules relating to fees contained in the High Court Rules or the Court of Appeal Rules or any other rules of court.
2. No fee is payable for an application for the exercise of a power specified in subsection (1)(d) or (db).

## 100B. Reviews of decisions of Registrars concerning fees

- 1. Any person who is aggrieved by any decision of a Registrar or Deputy Registrar under regulations made under section 100A(d) may apply for a review,—
  - a. in the case of a decision by the Registrar or a Deputy Registrar of the Court of Appeal, to a Judge of that court:
  - b. in the case of a decision by a Registrar or Deputy Registrar of the High Court, to a Judge or an Associate Judge of that court.
- 2. An application under subsection (1) may be made within 20 working days after the date on which the applicant is notified of the decision of the Registrar or Deputy Registrar, or within any further time that the Judge or Associate Judge allows on application made for that purpose either before or after the expiration of those 20 working days.
- 3. Applications under this section may be made on an informal basis.
- 4. Reviews under this section are—
  - a. conducted by way of rehearing of the matter in respect of which the Registrar or Deputy Registrar made the decision; and

• Right to appeal judicial decisions

- b. dealt with on the papers, unless the Judge or Associate Judge directs otherwise.
5. On dealing with an application for a review of a decision of a Registrar or Deputy Registrar, the Judge or Associate Judge may confirm, modify, or reverse the decision of the Registrar or the Deputy Registrar.
6. No fee is payable for an application under this section.

## **101. Words imputing unchastity to women actionable without special damage**

[Repealed]

### **Schedule 1: Enactments Consolidated**

[Schedule 1 omitted due length - full text is available online at: [http://www.legislation.govt.nz/act/public/1908/0089/latest/DLM147652.html?search=ts\\_act%40bill%40regulation%40deemedreg\\_judicature+act\\_resel\\_25\\_a&p=1](http://www.legislation.govt.nz/act/public/1908/0089/latest/DLM147652.html?search=ts_act%40bill%40regulation%40deemedreg_judicature+act_resel_25_a&p=1)]

### **Schedule 2: High Court Rules**

[Schedule 2 omitted due length - full text is available online at: [http://www.legislation.govt.nz/act/public/1908/0089/latest/DLM147653.html?search=ts\\_act%40bill%40regulation%40deemedreg\\_judicature+act\\_resel\\_25\\_a&p=1](http://www.legislation.govt.nz/act/public/1908/0089/latest/DLM147653.html?search=ts_act%40bill%40regulation%40deemedreg_judicature+act_resel_25_a&p=1)]

### **Schedule 3: Rules of the Court of Appeal**

[Repealed]

## **Amendment Act 1: Judicature Amendment Act 1910**

Public Act: 1920 No 27

Date of assent: 21 November 1910

Commencement: 21 November 1910

### **1. Short Title**

This Act may be cited as the Judicature Amendment Act 1910, and shall form part of and be read together with the Judicature Act 1908.

### **3. Execution of instruments by order of the High Court**

1. Where any person neglects or refuses to comply with a judgment or order of the High Court or Court of Appeal directing him to execute any conveyance, contract, or other document, or to indorse any negotiable instrument, the High Court may, on such terms and conditions (if any) as may be just, order that such conveyance, contract, or other document shall be executed or that such negotiable instrument shall be indorsed by such person as the High Court may nominate for that purpose; and in such case the conveyance, contract, document, or instrument so executed or indorsed shall operate and be for all purposes available as if it had been executed or indorsed by the person originally directed to execute or indorse it.

2. This section shall not affect any action or other proceeding already commenced in any court, or invalidate anything heretofore lawfully done, or validate anything already declared to be invalid in any proceedings heretofore taken in any court.

#### **4. Court or Judge to have discretion in cases coming within paragraphs (c) and (d) of section 3 of the Imprisonment for Debt Limitation Act 1908**

In any case coming within the exceptions specified in paragraphs (c) and (d) of section 3 of the Imprisonment for Debt Limitation Act 1908, or within either of those exceptions, any court or Judge making the order for payment, or having jurisdiction in the action or proceeding in which the order for payment is made, may inquire into the case, and (subject to the provisoes contained in the said section 3) may grant or refuse, either absolutely or upon terms, any application for a writ of attachment, or other process or order of arrest or imprisonment, and any application to stay the operation of any such writ, process, or order, or for discharge from arrest or imprisonment thereunder.

### **Amendment Act 2: Judicature Amendment Act 1952**

Public Act: 1952 No 24

Date of assent: 16 October 1952

Commencement 16: October 1952

#### **1. Short Title**

This Act may be cited as the Judicature Amendment Act 1952, and shall be read together with and deemed part of the Judicature Act 1908 (hereinafter referred to as "the principal Act").

#### **2. Offices of the High Court**

1. Amendment(s) incorporated in the Act(s).
2. Every office of the court heretofore established shall be deemed to have been lawfully established.

### **Amendment Act 3: Judicature Amendment Act 1972**

Public Act: 1972 No 130

Date of assent: 20 October 1972

Commencement 20: October 1972

#### **1. Short Title**

This Act may be cited as the Judicature Amendment Act 1972, and shall be read together with and deemed part of the Judicature Act 1908 (hereinafter referred to as "the principal Act").

## Part 1: Single procedure for the judicial review of the exercise of or failure to exercise a statutory power

### 2. Relation to Part 1 of principal Act and commencement of this Part

1. This Part shall be deemed part of Part 1 of the principal Act.
2. This Part shall come into force on 1 January 1973.

### 3. Interpretation

In this Part, unless the context otherwise requires,—

- application for review means an application under subsection (1) of section 4
- decision includes a determination or order
- licence includes any permit, warrant, authorisation, registration, certificate, approval, or similar form of authority required by law
- person includes a corporation sole, and also a body of persons whether incorporated or not; and, in relation to the exercise, refusal to exercise, or proposed or purported exercise by any person of a statutory power of decision, includes a District Court, the Compensation Court, the Maori Land Court, and the Maori Appellate Court
- statutory power means a power or right conferred by or under any Act or by or under the constitution or other instrument of incorporation, rules, or bylaws of any body corporate—
  - a. to make any regulation, rule, bylaw, or order, or to give any notice or direction having force as subordinate legislation; or
  - b. to exercise a statutory power of decision; or
  - c. to require any person to do or refrain from doing any act or thing that, but for such requirement, he would not be required by law to do or refrain from doing; or
  - d. to do any act or thing that would, but for such power or right, be a breach of the legal rights of any person; or
  - e. to make any investigation or inquiry into the rights, powers, privileges, immunities, duties, or liabilities of any person
- statutory power of decision means a power or right conferred by or under any Act, or by or under the constitution or other instrument of incorporation, rules, or bylaws of any body corporate, to make a decision deciding or prescribing or affecting—
  - a. the rights, powers, privileges, immunities, duties, or liabilities of any person; or
  - b. the eligibility of any person to receive, or to continue to receive, a benefit or licence, whether he is legally entitled to it or not.

• Constitutionality of legislation

### 3A. Jurisdiction of Employment Court

This Part is subject to the provisions of the Employment Relations Act 2000 relating to the jurisdiction of the Employment Court and High Court in respect of applications for review or proceedings for a writ or order of, or in the nature of, mandamus, prohibition, certiorari, or for a declaration or injunction against any body constituted by, or any person acting pursuant to, the Employment Relations Act 2000.

### 4. Application for review

1. On an application which may be called an application for review, the High Court may, notwithstanding any right of appeal possessed by the applicant in relation to the subject matter of the application, by order grant, in relation to the exercise, refusal to exercise, or proposed or purported exercise by any person of a statutory power, any relief that the applicant would be entitled to, in any 1 or more of the proceedings for a writ or order of or in the nature of mandamus, prohibition, or certiorari or for a declaration or injunction, against that person in any such proceedings.
2. Where on an application for review the applicant is entitled to an order declaring that a decision made in the exercise of a statutory power of decision is unauthorised or otherwise invalid, the court may, instead of making such a declaration, set aside the decision.
- 2A. Notwithstanding any rule of law to the contrary, it shall not be a bar to the grant of relief in proceedings for a writ or an order of or in the nature of certiorari or prohibition, or to the grant of relief on an application for review, that the person who has exercised, or is proposing to exercise, a statutory power was not under a duty to act judicially; but this subsection shall not be construed to enlarge or modify the grounds on which the court may treat an applicant as being entitled to an order of or in the nature of certiorari or prohibition under the foregoing provisions of this section.
3. Where in any of the proceedings referred to in subsection (1) the court had, before the commencement of this Part, a discretion to refuse to grant relief on any grounds, it shall have the like discretion, on like grounds, to refuse to grant any relief on an application for review.
4. Subsection (3) shall not apply to the discretion of the court, before the commencement of this Part, to refuse to grant relief in any of the said proceedings on the ground that the relief should have been sought in any other of the said proceedings.
5. Without limiting the generality of the foregoing provisions of this section, on an application for review in relation to the exercise, refusal to exercise, or purported exercise of a statutory power of decision the court if it is satisfied that the applicant is entitled to relief under subsection (1), may, in addition to or instead of granting any other relief under the foregoing provisions of this section, direct any person whose act or omission is the subject matter of the application to reconsider and determine, either generally or in respect of any specified matters, the whole or any part of any matter to which the application relates. In giving any such direction the court shall—
  - a. advise the person of its reasons for so doing; and
  - b. give to him such directions as it thinks just as to the reconsideration or otherwise of the whole or any part of the matter that is referred back for reconsideration.

- 5A. If the court gives a direction under subsection (5) it may make any order that it could make by way of interim order under section 8, and that section shall apply accordingly, so far as it is applicable and with all necessary modifications.
- 5B. Where any matter is referred back to any person under subsection (5), that person shall have jurisdiction to reconsider and determine the matter in accordance with the court's direction notwithstanding anything in any other enactment.
- 5C. Where any matter is referred back to any person under subsection (5), the act or omission that is to be reconsidered shall, subject to any interim order made by the court under subsection (5A), continue to have effect according to its tenor unless and until it is revoked or amended by that person.
6. In reconsidering any matter referred back to him under subsection (5) the person to whom it is so referred shall have regard to the court's reasons for giving the direction and to the court's directions.

## 5. Defects in form, or technical irregularities

On an application for review in relation to a statutory power of decision, where the sole ground of relief established is a defect in form or a technical irregularity, if the court finds that no substantial wrong or miscarriage of justice has occurred, it may refuse relief and, where the decision has already been made, may make an order validating the decision, notwithstanding the defect or irregularity, to have effect from such time and on such terms as the court thinks fit.

## 6. Disposal of proceedings for mandamus, prohibition, or certiorari

Where proceedings are commenced for a writ or order of or in the nature of mandamus, prohibition, or certiorari, in relation to the exercise, refusal to exercise, or proposed or purported exercise of a statutory power, the proceedings shall be treated and disposed of as if they were an application for review.

## 7. Disposal of proceedings for declaration or injunction

Where proceedings are commenced for a declaration or injunction, or both, whether with or without a claim for other relief, and the exercise, refusal to exercise, or proposed or purported exercise of a statutory power is an issue in the proceedings, the court on the application of any party to the proceedings may, if it considers it appropriate, direct that the proceedings be treated and disposed of, so far as they relate to that issue, as if they were an application for review.

## 8. Interim orders

1. Subject to subsection (2), at any time before the final determination of an application for review, and on the application of any party, the court may, if in its opinion it is necessary to do so for the purpose of preserving the position of the applicant, make an interim order for all or any of the following purposes:
  - a. prohibiting any respondent to the application for review from taking any further action that is or would be consequential on the exercise of the statutory power:
  - b. prohibiting or staying any proceedings, civil or criminal, in connection with any matter to which the application for review relates:

- c. declaring any licence that has been revoked or suspended in the exercise of the statutory power, or that will expire by effluxion of time before the final determination of the application for review, to continue and, where necessary, to be deemed to have continued in force.
2. Where the Crown is the respondent (or one of the respondents) to the application for review the court shall not have power to make any order against the Crown under paragraph (a) or paragraph (b); but, instead, in any such case the court may, by interim order,—
  - a. declare that the Crown ought not to take any further action that is or would be consequential on the exercise of the statutory power:
  - b. declare that the Crown ought not to institute or continue with any proceedings, civil or criminal, in connection with any matter to which the application for review relates.
3. Any order under subsection (1) or subsection (2) may be made subject to such terms and conditions as the court thinks fit, and may be expressed to continue in force until the application for review is finally determined or until such other date, or the happening of such other event, as the court may specify.

## 9. Procedure

1. An application for review shall be made by motion accompanied by a statement of claim.
2. The statement of claim shall—
  - a. state the facts on which the applicant bases his claim to relief:
  - b. state the grounds on which the applicant seeks relief:
  - c. state the relief sought.
3. It shall not be necessary for the statement of claim to specify the proceedings referred to in section 4(1) in which the claim would have been made before the commencement of this Part.
4. The person whose act or omission is the subject matter of the application for review, and, subject to any direction given by a Judge under section 10, every party to the proceedings (if any) in which any decision to which the application relates was made, shall be cited as a respondent.
- 4A. For the purposes of subsection (4), where the act or omission is that of a Judge, Registrar, or presiding officer of any court or tribunal,—
  - a. that court or tribunal, and not that Judge, Registrar, or presiding officer, shall be cited as a respondent; but
  - b. that Judge, Registrar, or presiding officer may file, on behalf of that court or tribunal, a statement of defence to the statement of claim.
5. For the purposes of subsection (4), where the act or omission is that of any 2 or more persons acting together under a collective title, they shall be cited by their collective title.

• Ultra-vires administrative actions  
• Constitutionality of legislation

• Ultra-vires administrative actions  
• Constitutionality of legislation



6. Subject to any direction given by a Judge under section 10, every respondent to the application for review shall file a statement of his defence to the statement of claim.
7. Subject to this Part, the procedure in respect of any application for review shall be in accordance with rules of court.

## 10. Powers of Judge to call conference and give directions

1. For the purpose of ensuring that any application or intended application for review may be determined in a convenient and expeditious manner, and that all matters in dispute may be effectively and completely determined, a Judge may at any time, either on the application of any party or intended party or without any such application, and on such terms as he thinks fit, direct the holding of a conference of parties or intended parties or their counsel presided over by a Judge.
2. At any such conference the Judge presiding may—
  - a. settle the issues to be determined:
  - b. direct what persons shall be cited, or need not be cited, as respondents to the application for review, or direct that the name of any party be added or struck out:
  - c. direct what parties shall be served:
  - d. direct by whom and within what time any statement of defence shall be filed:
  - e. require any party to make admissions in respect of questions of fact; and, if that party refuses to make an admission in respect of any such question, that party shall be liable to bear the costs of proving that question, unless the Judge by whom the application for review is finally determined is satisfied that the party's refusal was reasonable in all the circumstances, and accordingly orders otherwise in respect of those costs:
  - f. fix a time by which any affidavits or other documents shall be filed:
  - g. fix a time and place for the hearing of the application for review:
  - h. require further or better particulars of any facts, or of the grounds for relief, or of the relief sought, or of the grounds of defence, or of any other circumstances connected with the application for review:
  - i. require any party to make discovery of documents, or permit any party to administer interrogatories:
  - j. in the case of an application for review of a decision made in the exercise of a statutory power of decision, determine whether the whole or any part of the record of the proceedings in which the decision was made should be filed in court, and give such directions as he thinks fit as to its filing:

- k. exercise any powers of direction or appointment vested in the court or a Judge by its rules of court in respect of originating applications:
  - l. give such consequential directions as may be necessary.
3. Notwithstanding any of the foregoing provisions of this section, a Judge may, at any time before the hearing of an application for review has been commenced, exercise any of the powers specified in subsection (2) without holding a conference under subsection (1).

## 11. Appeals

Any party to an application for review who is dissatisfied with any final or interlocutory order in respect of the application may appeal to the Court of Appeal; and section 66 of the principal Act shall apply to any such appeal.

## 13. This Part to bind the Crown

Subject to section 14, this Part shall bind the Crown.

## 14. Application of Crown Proceedings Act 1950

1. Amendment(s) incorporated in the Act(s).
2. In its application to the Crown, this Part shall be read subject to the Crown Proceedings Act 1950, as amended by subsection (1).

## 16. References in enactments

Subject to sections 14 and 15, every reference to any enactment (other than this Act), or in any regulation, to any of the proceedings referred to in subsection (1) of section 4 shall hereafter, unless the context otherwise requires, be read as including a reference to an application for review.

## Part 2: Miscellaneous amendments

### 20. Sheriffs and Deputy Sheriffs

1. Amendment(s) incorporated in the Act(s).
2. Every person who at the commencement of this section holds office as Deputy Sheriff shall continue to hold that office as if he had been appointed pursuant to section 29 of the principal Act (as substituted by this section).
3. This section shall come into force on a date to be appointed for the commencement thereof by the Governor-General by Order in Council.

## Amendment Act 4: Judicature Amendment Act 1997

Public Act: 1997 No 10

Date of assent: 22 May 1997

Commencement: see section 1(2)

## 1. Short Title

1. This Act may be cited as the Judicature Amendment Act 1997, and is part of the Judicature Act 1908 (“the principal Act”).
2. This Act comes into force on the date on which it receives the Royal assent.

## 4. Validations

1. All persons who have, in the period beginning on 1 April 1988 and ending with the commencement of this Act, been appointed under the State Sector Act 1988 as Registrars, Deputy Registrars, ushers, Clerks, criers, or other officers of the High Court or the Court of Appeal are deemed to be, and to have always been, validly appointed to their respective offices.
2. Where any person is deemed, by subsection (1), to have been validly appointed as an officer of the High Court, any action taken by that person, in his or her capacity as an officer of the High Court, in the period beginning on 1 April 1988 and ending with the commencement of this Act, is deemed to be, and to have always been, as valid as it would have been if that person had been validly appointed to the office in accordance with section 27 of the principal Act (in the form in which that section stood at the time of that person’s appointment).
3. Where any person is deemed, by subsection (1), to have been validly appointed as an officer of the Court of Appeal, any action taken by that person in his or her capacity as an officer of the Court of Appeal, in the period beginning on 1 April 1988 and ending with the commencement of this Act, is deemed to be, and to have always been, as valid as it would have been if that person had been validly appointed to the office in accordance with section 72 of the principal Act (in the form in which that section stood at the time of that person’s appointment).

# Treaty of Waitangi Act 1975

An Act to provide for the observance, and confirmation, of the principles of the Treaty of Waitangi by establishing a Tribunal to make recommendations on claims relating to the practical application of the Treaty and to determine whether certain matters are inconsistent with the principles of the Treaty

## Preamble

Whereas on 6 February 1840 a Treaty was entered into at Waitangi between Her late Majesty Queen Victoria and the Maori people of New Zealand:

And whereas the text of the Treaty in the English language differs from the text of the Treaty in the Maori language:

And whereas it is desirable that a Tribunal be established to make recommendations on claims relating to the practical application of the principles of the Treaty and, for that purpose, to determine its meaning and effect and whether certain matters are inconsistent with those principles.

## 1. Short Title

This Act may be cited as the Treaty of Waitangi Act 1975.

## 2. Interpretation

In this Act, unless the context otherwise requires,—

- historical Treaty claim means a claim made under section 6(1) that arises from or relates to an enactment referred to in section 6(1)(a) or (b) enacted, or to a policy or practice adopted or an act done or omitted by or on behalf of the Crown, before 21 September 1992
- Maori means a person of the Maori race of New Zealand; and includes any descendant of such a person
- private land means any land, or interest in land, held by a person other than—
  - a. the Crown; or
  - b. a Crown entity within the meaning of the Public Finance Act 1989
- submit, in relation to a historical Treaty claim, means submitted in accordance with a practice note made by the Tribunal under clause 5(10) of Schedule 2
- Treaty means the Treaty of Waitangi as set out in English and in Maori in Schedule 1
- Tribunal means the Waitangi Tribunal established under this Act.

## 3. Act to bind Crown

This Act shall bind the Crown.

## 4. Waitangi Tribunal

1. There is hereby established a tribunal to be known as the Waitangi Tribunal.
2. The Tribunal shall consist of—
  - a. a Judge or retired Judge of the High Court or the Chief Judge of the Maori Land Court; and the Judge is both a member of the Tribunal and its Chairperson, and is appointed by the Governor-General on the recommendation of the Minister of Maori Affairs made after consultation with the Minister of Justice:
  - b. not less than 2 other members and not more than 20 other members to be appointed by the Governor-General on the recommendation of the Minister of Maori Affairs made after consultation with the Minister of Justice.
- 2A. In considering the suitability of persons for appointment to the Tribunal, the Minister of Maori Affairs—
  - a. shall have regard to the partnership between the 2 parties to the Treaty; and
  - b. shall have regard not only to a person's personal attributes but also to a person's knowledge of and experience in the different aspects of matters likely to come before the Tribunal.

- 2B. The Chairperson of the Tribunal appointed under subsection (2)(a) holds office for such term not exceeding 5 years as the Governor-General specifies in the instrument appointing that Chairperson, and the Chairperson may from time to time be reappointed.
- 2C. Where the Chairperson of the Tribunal is the Chief Judge of the Maori Land Court and he or she ceases to hold office as Chief Judge during the term of his or her appointment as Chairperson, that person's appointment as Chairperson also ceases at that time.
3. Every member of the Tribunal appointed under subsection (2)(b) shall hold office for such term as the Governor-General shall specify in his or her appointment, being a term not exceeding 3 years, but may from time to time be reappointed.
4. No person shall be deemed to be employed in the service of Her Majesty for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956 by reason of his being a member of the Tribunal.
5. The Ministry of Justice shall furnish such secretarial, recording, and other services as may be necessary to enable the Tribunal to exercise its functions and powers.
6. The provisions of Schedule 2 shall have effect in relation to the Tribunal and its proceedings.

#### **4A. Deputy Chairperson**

1. The Chairperson of the Tribunal may from time to time appoint a Judge (including the Chief Judge) of the Maori Land Court as the deputy of the Chairperson of the Tribunal.
2. In any case in which the Chairperson of the Tribunal becomes incapable of acting by reason of illness, absence, or other sufficient cause or during any vacancy in the office of Chairperson, the deputy of the Chairperson of the Tribunal shall have and may exercise all the powers, functions, and duties of the Chairperson.
3. No acts done by a person holding office as the deputy of the Chairperson of the Tribunal in that person's capacity as such deputy, and no act done by the Tribunal while a deputy of the Chairperson of the Tribunal is acting as such deputy, shall in any proceedings be questioned on the ground that the occasion for the deputy's so acting had not arisen or had ceased.

#### **4B. Appointment of Judge not to affect tenure, etc**

The appointment of a Judge as Chairperson, the deputy of the Chairperson, or as a member of the Tribunal, or service by that Judge as Chairperson, the deputy of the Chairperson, or a member of the Tribunal, does not affect the Judge's tenure of the judicial office or the Judge's rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as a Judge (including those in relation to superannuation) and, for all purposes, the Judge's service as a member is service as a Judge.

#### **5. Functions of Tribunal**

1. The functions of the Tribunal shall be—
  - a. to inquire into and make recommendations upon, in accordance with this Act, any claim submitted to the Tribunal under section 6:

- aa. to make recommendations, in accordance with section 8D, that land or interests in land be no longer subject to resumption under section 27B of the State-Owned Enterprises Act 1986 or section 212 of the Education Act 1989:
- ab. to make any recommendation or determination that the Tribunal is required or empowered to make under Schedule 1 of the Crown Forest Assets Act 1989:
- ac. to make recommendations in accordance with section 8HE that land, or any part of any land, that is subject to a Crown forestry licence under the Crown Forest Assets Act 1989, be no longer liable to be returned to Maori ownership under section 36 of that Act:
- ad. to make recommendations in accordance with section 8D (as applied by section 8HJ) that land or any interest in land that, immediately before being vested in a Crown transferee company pursuant to section 6 of the New Zealand Railways Corporation Restructuring Act 1990, was land owned by the Crown or an interest owned by the Crown in land, be no longer subject to resumption under section 39 of that Act:
- b. to examine and report on, in accordance with section 8, any proposed legislation referred to the Tribunal under that section.

- 2. In exercising any of its functions under this section the Tribunal shall have regard to the 2 texts of the Treaty set out in Schedule 1 and, for the purposes of this Act, shall have exclusive authority to determine the meaning and effect of the Treaty as embodied in the 2 texts and to decide issues raised by the differences between them.

## 6. Jurisdiction of Tribunal to consider claims

- 1. Where any Maori claims that he or she, or any group of Maoris of which he or she is a member, is or is likely to be prejudicially affected—
  - a. by any ordinance of the General Legislative Council of New Zealand, or any ordinance of the Provincial Legislative Council of New Munster, or any provincial ordinance, or any Act (whether or not still in force), passed at any time on or after 6 February 1840; or
  - b. by any regulations, order, proclamation, notice, or other statutory instrument made, issued, or given at any time on or after 6 February 1840 under any ordinance or Act referred to in paragraph (a); or
  - c. by any policy or practice (whether or not still in force) adopted by or on behalf of the Crown, or by any policy or practice proposed to be adopted by or on behalf of the Crown; or
  - d. by any act done or omitted at any time on or after 6 February 1840, or proposed to be done or omitted, by or on behalf of the Crown,—

and that the ordinance or Act, or the regulations, order, proclamation, notice, or other statutory instrument, or the policy or practice, or the act or omission, was or is inconsistent with the principles of the Treaty, he or she may submit that claim to the Tribunal under this section.

- Constitutionality of legislation
2. The Tribunal must inquire into every claim submitted to it under subsection (1), unless—
    - a. the claim is submitted contrary to section 6AA(1); or
    - b. section 7 applies.
  - Constitutionality of legislation
    3. If the Tribunal finds that any claim submitted to it under this section is well-founded it may, if it thinks fit having regard to all the circumstances of the case, recommend to the Crown that action be taken to compensate for or remove the prejudice or to prevent other persons from being similarly affected in the future.
    - Constitutionality of legislation
      4. A recommendation under subsection (3) may be in general terms or may indicate in specific terms the action which, in the opinion of the Tribunal, the Crown should take.
      - 4A. Subject to sections 8A to 8I, the Tribunal shall not recommend under subsection (3),—
        - a. the return to Maori ownership of any private land; or
        - b. the acquisition by the Crown of any private land.
      5. The Tribunal shall cause a sealed copy of its findings and recommendation (if any) with regard to any claim to be served on—
        - a. the claimant:
        - b. the Minister of Maori Affairs and such other Ministers of the Crown as in the opinion of the Tribunal have an interest in the claim:
        - c. such other persons as the Tribunal thinks fit.
      6. Nothing in this section shall confer any jurisdiction on the Tribunal in respect of any Bill that has been introduced into the House of Representatives unless the Bill has been referred to the Tribunal pursuant to section 8.
      7. Notwithstanding anything in this Act or any other Act or rule of law, on and from the commencement of this subsection the Tribunal shall not have jurisdiction to inquire or further inquire into, or to make any finding or recommendation in respect of,—
        - a. commercial fishing or commercial fisheries (within the meaning of the Fisheries Act 1983); or
        - b. the Deed of Settlement between the Crown and Maori dated 23 September 1992; or
        - c. any enactment, to the extent that it relates to such commercial fishing or commercial fisheries.

8. Despite anything in this Act or in any other Act or rule of law,—
  - a. the jurisdiction of the Tribunal is subject to the enactments listed in Schedule 3; and
  - b. without limiting paragraph (a), the Tribunal does not have jurisdiction, in relation to licensed land (within the meaning of the Crown Forest Assets Act 1989) in the takiwā of Ngāi Tahu Whānui, to make a recommendation for compensation or for the return of the land to Māori ownership.
9. [Repealed]
10. [Repealed]
11. [Repealed]
12. [Repealed]
13. [Repealed]
14. [Repealed]
15. [Repealed]
16. [Repealed]
17. [Repealed]
18. [Repealed]
19. [Repealed]
20. [Repealed]
21. [Repealed]
22. [Repealed]
23. [Repealed]
24. [Repealed]
25. [Repealed]
26. [Repealed]
27. [Repealed]
28. [Repealed]
29. [Repealed]
30. [Repealed]
31. [Repealed]
32. [Repealed]

## **6AA. Limitation of Tribunal's jurisdiction in relation to historical Treaty claims**

1. Despite section 6(1), after 1 September 2008 no Maori may—
  - a. submit a claim to the Tribunal that is, or includes, a historical Treaty claim; or
  - b. amend a claim already submitted to the Tribunal that is not, or does not include, a historical Treaty claim by including a historical Treaty claim.
2. However, subsection (1) does not prevent a historical Treaty claim submitted to the Tribunal on or before 1 September 2008 from being amended in any way after 1 September 2008.



3. The Tribunal does not have jurisdiction (including, but not limited to, the jurisdiction to inquire or further inquire into, or to make any finding or recommendation) in respect of a historical Treaty claim that is—
  - a. submitted contrary to subsection (1)(a); or
  - b. included in a claim contrary to subsection (1)(b).
4. To avoid doubt, if a claim is submitted to the Tribunal contrary to subsection (1), it must be treated for all purposes (including, for example, for the purposes of sections 8A(2), 8C(1), 8HB(1), 8HD(1), and 8HJ) as not having been submitted.

## 6A. Power of Tribunal to state case for Maori Appellate Court or Maori Land Court

1. Where a question of fact,—
  - a. concerning Maori custom or usage; and
  - b. relating to the rights of ownership by Maori of any particular land or fisheries according to customary law principles of “take” and occupation or use; and
  - c. calling for the determination, to the extent practicable, of Maori tribal boundaries, whether of land or fisheries,—
 

arises in proceedings before the Tribunal, the Tribunal may refer that question to the Maori Appellate Court for decision.
2. Where a question relating to the Maori or group of Maori to whom any land or any part of any land or any interest in land is to be returned pursuant to a recommendation under section 8A(2)(a) arises in proceedings before the Tribunal, the Tribunal may refer that question to the Maori Land Court for decision.
3. Any question referred to the Maori Appellate Court under subsection (1) or to the Maori Land Court under subsection (2) shall be in the form of a special case to be drawn up by the parties (if any) to the proceedings and, if the parties do not agree, or if there are no parties, to be settled by the Tribunal.
4. The Maori Appellate Court shall have jurisdiction—
  - a. to decide any question referred to it under subsection (1); and
  - b. to hear and determine any appeal against any decision of the Maori Land Court on any question referred to that court under subsection (2).
5. The Maori Land Court shall have jurisdiction to decide any question referred to it under subsection (2).
6. The decision of the Maori Appellate Court on any question referred to it under subsection (1) and on any appeal determined by it pursuant to subsection (4)(b) shall be binding on the Tribunal.
7. Subject to subsection (8), the decision of the Maori Land Court on any question referred to it under subsection (2) shall be binding on the Tribunal.

8. An appeal may be brought under section 58 of Te Ture Whenua Maori Act 1993 against any decision of the Maori Land Court on a question referred to it under subsection (2); and section 58 of Te Ture Whenua Maori Act 1993 shall apply in relation to any such appeal as if that decision were a final order of the Maori Land Court.
9. The Maori Appellate Court shall inform the Waitangi Tribunal of the decision of the Maori Appellate Court on—
  - a. any question referred to it under subsection (1); and
  - b. any appeal brought against any decision made by the Maori Land Court on any question referred to it under subsection (2).
10. The Maori Land Court shall inform the Waitangi Tribunal of—
  - a. the decision of the Maori Land Court on any question referred to it under subsection (2); and
  - b. the bringing of any appeal under subsection (8).

## 7. Tribunal may refuse to inquire into claim

1. The Tribunal may in its discretion decide not to inquire into, or, as the case may require, not to inquire further into, any claim made under section 6 if in the opinion of the Tribunal—
  - a. the subject matter of the claim is trivial; or
  - b. the claim is frivolous or vexatious or is not made in good faith; or
  - c. there is in all the circumstances an adequate remedy or right of appeal, other than the right to petition the House of Representatives or to make a complaint to the Ombudsman, which it would be reasonable for the person alleged to be aggrieved to exercise.
- 1A. The Tribunal may, from time to time, for sufficient reason, defer, for such period or periods as it thinks fit, its inquiry into any claim made under section 6.
2. In any case where the Tribunal decides not to inquire into or further inquire into a claim or to defer its inquiry into any claim, it shall cause the claimant to be informed of that decision, and shall state its reasons therefor.

## 8. Jurisdiction of Tribunal to consider proposed legislation

1. The Tribunal shall examine any proposed legislation referred to it under subsection (2) and shall report whether, in its opinion, the provisions of the proposed legislation or any of them are contrary to the principles of the Treaty.
2. Proposed legislation may be referred to the Tribunal—
  - a. in the case of a Bill before the House of Representatives, by resolution of the House:
  - b. in the case of any proposed regulations or Order in Council, by any Minister of the Crown.

• Constitutionality of legislation

3. The Tribunal's report shall be given—
  - a. in the case of a Bill, to the Speaker of the House:
  - b. in every other case, to the person or body who referred the proposed regulations or Order in Council to the Tribunal.
4. A copy of every report made by the Tribunal under this section shall be given by the Tribunal to the Minister of Maori Affairs and shall be laid before the House of Representatives as soon as practicable.

## **8A. Recommendations in respect of land transferred to or vested in State enterprise**

1. This section applies in relation to—
  - a. any land or interest in land transferred to a State enterprise under section 23 of the State-Owned Enterprises Act 1986 or vested in a State enterprise by a notice in the Gazette under section 24 of that Act or by an Order in Council made under section 28 of that Act, whether or not the land or interest in land is still vested in a State enterprise:
  - b. any land or interest in land transferred to an institution within the meaning of section 159 of the Education Act 1989 under section 207 of that Act or vested in such an institution by an Order in Council made under section 215 of that Act, whether or not the land or interest in land is still vested in that institution.
2. Subject to section 8B, where a claim submitted to the Tribunal under section 6 relates in whole or in part to land or an interest in land to which this section applies, the Tribunal may—
  - a. if it finds—
    - i. that the claim is well-founded; and
    - ii. that the action to be taken under section 6(3) to compensate for or remove the prejudice caused by the ordinance or Act, or the regulations, order, proclamation, notice, or other statutory instrument, or the policy or practice, or the act or omission that was inconsistent with the principles of the Treaty, should include the return to Maori ownership of the whole or part of that land or of that interest in land,—
 

include in its recommendation under section 6(3), a recommendation that that land or that part of that land or that interest in land be returned to Maori ownership (which recommendation shall be on such terms and conditions as the Tribunal considers appropriate and shall identify the Maori or group of Maori to whom that land or that part of that land or that interest in land is to be returned); or
  - b. if it finds—
    - i. that the claim is well-founded; but

- ii. that a recommendation for return to Maori ownership is not required, in respect of that land or any part of that land or that interest in land, by paragraph (a)(ii),—

recommend to the Minister within the meaning of section 4 of the Cadastral Survey Act 2002 that that land or that part of that land or that interest in land be no longer subject to resumption under section 27B of the State-Owned Enterprises Act 1986 or section 212 of the Education Act 1989; or

- c. if it finds that the claim is not well-founded, recommend to the Minister within the meaning of section 4 of the Cadastral Survey Act 2002 that that land or that part of that land or that interest in land be no longer subject to resumption under section 27B of the State-Owned Enterprises Act 1986 or section 212 of the Education Act 1989.
3. In deciding whether to recommend the return to Maori ownership of any land or interest in land to which this section applies, the Tribunal shall not have regard to any changes that, since immediately before the date of the transfer of the land or interest in land from the Crown to a State enterprise, or an institution within the meaning of section 159 of the Education Act 1989, have taken place in—
    - a. the condition of the land or of the land in which the interest exists and any improvements to it; or
    - b. its ownership or possession or any other interests in it.
  4. Nothing in subsection (2) prevents the Tribunal making in respect of any claim that relates in whole or in part to any land or interest in land to which this section applies any other recommendation under subsection (3) or subsection (4) of section 6.
  5. Notwithstanding section 24(4) of the State-Owned Enterprises Act 1986, on the making of a recommendation for the return of any land or interest in land to Maori ownership under subsection (2), sections 40 and 41 of the Public Works Act 1981 shall cease to apply in relation to that land or that interest in land.
  6. Where any interest in land exists in respect of any land to which this section applies being—
    - a. an interest in land which was in existence immediately before the land was transferred to the State enterprise under section 23 of the State-Owned Enterprises Act 1986 or vested in the State enterprise by a notice in the Gazette under section 24 of that Act or by an Order in Council made under section 28 of that Act but which was not so transferred to or vested in the State enterprise; or
    - b. an interest in land which was in existence immediately before the land was transferred to an institution within the meaning of section 159 of the Education Act 1989 under section 207 of that Act or vested in such an institution by an Order in Council made under section 215 of that Act but which was not so transferred to or vested in the institution,—
 as the case may be, no recommendation under this section shall relate to that interest in land.

## 8B. Interim recommendations in respect of land transferred to or vested in State enterprise

1. Where the recommendations made by the Tribunal include a recommendation made under section 8A(2)(a) or section 8A(2)(b), all of those recommendations shall be in the first instance interim recommendations.
2. The Tribunal shall cause copies of its interim findings and interim recommendations to be served on the parties to the inquiry.
3. Subject to subsection (5), the Tribunal shall not, without the written consent of the parties, confirm any interim recommendations that include a recommendation made under section 8A(2)(a) or section 8A(2)(b), until at least 90 days after the date of the making of the interim recommendations.
4. Where any party to the inquiry is served with a copy of any interim recommendations that include a recommendation made under section 8A(2)(a) or section 8A(2)(b), that party—
  - a. may, within 90 days after the date of the making of the interim recommendations, offer to enter into negotiations with the other party for the settlement of the claim; and
  - b. shall, within 90 days after the date of the making of the interim recommendations, inform the Tribunal—
    - i. whether the party accepts or has implemented the interim recommendations; and
    - ii. if the party has made an offer under paragraph (a), the result of that offer.
5. If, before the confirmation of any interim recommendations that include a recommendation made under section 8A(2)(a) or section 8A(2)(b), the claimant and the Minister of Maori Affairs settle the claim, the Tribunal shall, as the case may require, cancel or modify the interim recommendations and may make, if necessary, a final recommendation under section 8A(2)(a) or section 8A(2)(b).
6. If subsection (5) does not apply in relation to any interim recommendations that include a recommendation made under section 8A(2)(a) or section 8A(2)(b), upon the expiration of the 90th day after the date of the making of the interim recommendations, the interim recommendations shall take effect as final recommendations.
7. Notwithstanding anything in subsections (1) to (6), if any interim recommendations contain a clerical mistake or an error arising from any accidental slip or omission, whether the mistake, error, slip, or omission was made by an officer of the Tribunal or not, or if any interim recommendations are so drawn up as not to express what was actually decided and intended, the interim recommendations may be corrected by the Tribunal, either of its own motion or on the application of any party.
8. Where the interim recommendations are corrected under subsection (7),—
  - a. the Tribunal shall cause copies of the corrected interim recommendations to be served on the parties to the inquiry as soon as practicable; and
  - b. the period that applies for the purposes of subsections (3), (4), and (6) shall expire on the 90th day after the date of the making of the corrected interim recommendations.

## 8C. Right to be heard on question in relation to land transferred to or vested in State enterprise

1. Where, in the course of any inquiry into a claim submitted to the Tribunal under section 6, any question arises in relation to any land or interest in land to which section 8A applies, the only persons entitled to appear and be heard on that question shall be—
  - a. the claimant;
  - b. the Minister of Maori Affairs;
  - c. any other Minister of the Crown who notifies the Tribunal in writing that he or she wishes to appear and be heard;
  - d. any Maori who satisfies the Tribunal that he or she, or any group of Maori of which he or she is a member, has an interest in the inquiry apart from any interest in common with the public.
2. Notwithstanding anything in clause 7 of Schedule 2 or in section 4A of the Commissions of Inquiry Act 1908 (as applied by clause 8 of Schedule 2), no person other than a person designated in paragraph (a) or paragraph (b) or paragraph (c) or paragraph (d) of subsection (1) shall be entitled to appear and be heard on a question to which subsection (1) applies.
3. Nothing in subsection (2) affects the right of any person designated in paragraph (a) or paragraph (b) or paragraph (c) or paragraph (d) of subsection (1) to appear, with the leave of the Tribunal, by—
  - a. a barrister or solicitor of the High Court; or
  - b. any other agent or representative authorised in writing.

## 8D. Special power of Tribunal to recommend that land be no longer liable to resumption

1. The Tribunal may, in its discretion, on the application of a State enterprise or other owner of any land or interest in land to which section 8A applies, recommend to the Minister within the meaning of section 4 of the Cadastral Survey Act 2002 that the whole or part of that land or that that interest in land be no longer subject to resumption under section 27B of the State-Owned Enterprises Act 1986 or section 212 of the Education Act 1989 if—
  - a. public notice has been given, in accordance with section 8G, of the making of an application under this section in respect of that land or interest in land; and
  - b. either—
    - i. no claim in relation to that land or interest in land has been submitted to the Tribunal under section 6 before the date specified in the notice; or

- ii. all the parties to any claim submitted to the Tribunal under section 6 in relation to that land or interest in land have informed the Tribunal in writing that they consent to the making of the recommendation.
- 2. The Tribunal may make a recommendation pursuant to subsection (1)(b)(ii) without being obliged to determine first whether or not the claim is well-founded.
- 3. The Tribunal may, where it considers it appropriate, consult with a Judge of the Maori Land Court about—
  - a. the directions to be given under section 8F; or
  - b. the public notice to be given under section 8G,—  
in relation to any application under this section.

## 8E. Issue of certificate on recommendation of Tribunal

1. The Minister within the meaning of section 4 of the Cadastral Survey Act 2002 shall, on receiving in respect of any land or interest in land a recommendation under—
  - a. section 8A(2)(a) or section 8A(2)(b) or section 8A(2)(c); or
  - b. section 8D(1),—  
issue a certificate to the effect that the land or interest in land is no longer subject to resumption under section 27B of the State-Owned Enterprises Act 1986 or section 212 of the Education Act 1989.
2. Where the land or the land in which the interest in land exists is subject to the Land Transfer Act 1952, the Minister within the meaning of section 4 of the Cadastral Survey Act 2002 shall cause a copy of the certificate to be lodged with the District Land Registrar of the land registration district within which the land is situated.
3. The District Land Registrar shall, without fee,—
  - a. register the certificate against the certificate of title to the land or interest in land; and
  - b. take all steps necessary to discharge or cancel any memorials or entries showing that the land or interest in land is subject to resumption under section 27B of the State-Owned Enterprises Act 1986 or section 212 of the Education Act 1989.
4. Where—
  - a. the land or the land in which the interest in land exists is not subject to the Land Transfer Act 1952; and
  - b. instruments relating to the land or the interest in land are not registerable under the Deeds Registration Act 1908,—  
the Minister within the meaning of section 4 of the Cadastral Survey Act 2002 shall cause a copy of the certificate to be lodged in the office of the Surveyor-General, and the Surveyor-General shall note the certificate upon the proper plans and records of the district affected.

## 8F. Directions as to service

1. Where an application is made under section 8D, the applicant shall apply to the Tribunal ex parte for directions as to service.
2. The applicant shall furnish with the application under this section a description of the land or interest in land to which the application under section 8D relates, which description—
  - a. shall include a full legal description of the land or interest in land; and
  - b. shall be sufficient to enable the Tribunal to decide which persons may be adversely affected by the making, under section 8D, of the recommendation sought.
3. The application under this section—
  - a. shall specify the directions considered appropriate; and
  - b. shall be accompanied by a memorandum—
    - i. by the applicant's solicitor or counsel; or
    - ii. by any other agent or representative authorised in writing by the applicant,—

giving the reasons for the directions considered appropriate.
4. On an application under this section the Tribunal shall give such directions for service as it deems proper.

## 8G. Public notice

1. Where an application is made under section 8D, the applicant shall, in addition to complying with the directions given under section 8F(4), give, in accordance with the directions of the Tribunal, public notice of the application.
2. The public notice shall be published both—
  - a. in the Gazette; and
  - b. in such newspapers circulating in the district in which the land or interest in land is situated as the Tribunal directs.
3. The public notice shall—
  - a. describe the land or interest in land and its location; and
  - b. state that an application has been made under section 8D in respect of the land or interest in land; and
  - c. indicate that—



- i. the land or interest in land has been or was transferred to a State enterprise under section 23 of the State-Owned Enterprises Act 1986 or vested in a State enterprise by a notice in the Gazette under section 24 of that Act or by an Order in Council made under section 28 of that Act; or
  - ii. the land or interest in land has been or was transferred to an institution within the meaning of section 159 of the Education Act 1989 under section 207 of that Act or vested in such an institution by an Order in Council made under section 215 of that Act— as the case may be.
- d. invite any Maori who considers that he or she, or any group of Maori of which he or she is a member, has grounds for a claim under section 6 in relation to the land or interest in land, to submit that claim to the Tribunal before a date specified in the notice (which date shall be not less than 90 days after the first or only publication of the notice in the Gazette); and
  - e. describe briefly any claims already submitted under section 6 in respect of the land or interest in land; and
  - f. where no claim has been submitted under section 6 in respect of the land or interest in land, state that if no claim in relation to the land or interest in land is submitted to the Tribunal under section 6 before the date specified in the notice, the Tribunal may recommend that the land or interest in land be no longer liable to resumption under section 27B of the State-Owned Enterprises Act 1986 or section 212 of the Education Act 1989; and
  - g. contain such other information as the Tribunal directs.

## 8H. Service of decision

The Tribunal shall cause a sealed copy of its decision and recommendation (if any) with regard to any application under section 8D to be served on—

- a. the applicant; and
- b. the Minister within the meaning of section 4 of the Cadastral Survey Act 2002; and
- c. the Minister of Maori Affairs; and
- d. such other persons as the Tribunal thinks fit.

## Subpart 1: Recommendations in relation to Crown forest land

### 8HA. Interpretation of certain terms

For the purposes of sections 8HB to 8HI, the expressions Crown forestry assets, Crown forest land, Crown forestry licence, and licensed land shall have the same meanings as they have in section 2 of the Crown Forest Assets Act 1989.

### 8HB. Recommendations of Tribunal in respect of Crown forest land

1. Subject to section 8HC, where a claim submitted to the Tribunal under section 6 relates to licensed land the Tribunal may,—

a. if it finds—

i. that the claim is well-founded; and

ii. that the action to be taken under section 6(3) to compensate for or remove the prejudice caused by the ordinance or Act, or the regulations, order, proclamation, notice, or other statutory instrument, or the policy or practice, or the act or omission that was inconsistent with the principles of the Treaty of Waitangi, should include the return to Maori ownership of the whole or part of that land,—

include in its recommendation under section 6(3) a recommendation that the land or that part of that land be returned to Maori ownership (which recommendation shall be on such terms and conditions as the Tribunal considers appropriate and shall identify the Maori or group of Maori to whom that land or that part of that land is to be returned); or

b. if it finds—

i. that the claim is well-founded; but

ii. that a recommendation for return to Maori ownership is not required, in respect of that land or any part of that land by paragraph (a)(ii),—

recommend to the Minister within the meaning of section 4 of the Cadastral Survey Act 2002 that that land or that part of that land not be liable to return to Maori ownership; or

c. if it finds that the claim is not well-founded, recommend to the Minister within the meaning of section 4 of the Cadastral Survey Act 2002 that that land or that part of that land not be liable to return to Maori ownership.

2. In deciding whether to recommend the return to Maori ownership of any licensed land, the Tribunal shall not have regard to any changes that have taken place in—
  - a. the condition of the land and any improvements to it; or
  - b. its ownership or possession or any other interests in it— that have occurred after or by virtue of the granting of any Crown forestry licence in respect of that land.
3. Nothing in subsection (1) prevents the Tribunal making in respect of any claim that relates in whole or in part to licensed land any other recommendation under subsection (3) or subsection (4) of section 6; except that in making any other recommendation the Tribunal may take into account payments made, or to be made, by the Crown by way of compensation in relation to the land pursuant to section 36 and Schedule 1 of the Crown Forest Assets Act 1989.
4. On the making of a recommendation for the return of any land to Maori ownership under subsection (1), sections 40 to 42 of the Public Works Act 1981 shall cease to apply in relation to that land.

### **8HC. Interim recommendations in respect of Crown forest land**

1. Where the recommendations made by the Tribunal include a recommendation made under section 8HB(1)(a) or section 8HB(1)(b), all of those recommendations shall be in the first instance interim recommendations.
2. The Tribunal shall cause copies of its interim findings and interim recommendations to be served on the parties to the inquiry.
3. Subject to subsection (5), the Tribunal shall not, without the written consent of the parties, confirm any interim recommendations that include a recommendation made under section 8HB(1)(a) or section 8HB(1)(b), until at least 90 days after the date of the making of the interim recommendations.
4. Where any party to the inquiry is served with a copy of any interim recommendations that include a recommendation made under section 8HB(1)(a) or section 8HB(1)(b), that party—
  - a. may, within 90 days after the date of the making of the interim recommendations, offer to enter into negotiations with the other party for the settlement of the claim; and
  - b. shall, within 90 days after the date of the making of the interim recommendations, inform the Tribunal—
    - i. whether the party accepts or has implemented the interim recommendations; and
    - ii. if the party has made an offer under paragraph (a), the result of that offer.
5. If, before the confirmation of any interim recommendations that include a recommendation made under section 8HB(1)(a) or section 8HB(1)(b), the claimant and the Minister of Maori Affairs settle the claim, the Tribunal shall, as the case may require, cancel or modify the interim recommendations and may make, if necessary, a final recommendation under section 8HB(1)(a) or section 8HB(1)(b).

6. If subsection (5) does not apply in relation to any interim recommendations that include a recommendation made under section 8HB(1)(a) or section 8HB(1)(b), upon the expiration of the 90th day after the date of the making of the interim recommendations, the interim recommendations shall become final recommendations.
7. Notwithstanding anything in subsections (1) to (6), if any interim recommendations contain a clerical mistake or an error arising from any accidental slip or omission, whether the mistake, error, slip, or omission was made by an officer of the Tribunal or not, or if any interim recommendations are so drawn up as not to express what was actually decided and intended, the interim recommendations may be corrected by the Tribunal, either of its own motion or on the application of any party.
8. Where the interim recommendations are corrected under subsection (7),—
  - a. the Tribunal shall cause copies of the corrected interim recommendations to be served on the parties to the inquiry as soon as practicable; and
  - b. the period that applies for the purposes of subsections (3), (4), and (6) shall expire on the 90th day after the date of the making of the corrected interim recommendations.

## **8HD. Right to be heard on question in relation to Crown forest land**

1. Where, in the course of any inquiry into a claim submitted to the Tribunal under section 6 any question arises in relation to licensed land, the only persons entitled to appear and be heard on that question shall be—
  - a. the claimant:
  - b. the Minister of Maori Affairs:
  - c. any other Minister of the Crown who notifies the Tribunal in writing that he or she wishes to appear and be heard:
  - d. any Maori who satisfies the Tribunal that he or she, or any group of Maori of which he or she is a member, has an interest in the inquiry apart from any interest in common with the public.
2. Notwithstanding anything in clause 7 of Schedule 2 or in section 4A of the Commissions of Inquiry Act 1908 (as applied by clause 8 of Schedule 2), no person other than a person designated in any of paragraphs (a) to (d) of subsection (1) shall be entitled to appear and be heard on a question to which subsection (1) applies.
3. Nothing in subsection (2) affects the right of any person designated in any of paragraphs (a) to (d) of subsection (1) to appear, with the leave of the Tribunal, by—
  - a. a barrister or solicitor of the High Court; or
  - b. any other agent or representative authorised in writing.

## **8HE. Special power of Tribunal to recommend that land not be liable to be returned to Maori ownership**

1. The Tribunal may, in its discretion, on the application of any Minister of the Crown or any licensee of Crown forest land, recommend to the Minister within the meaning of section 4 of the Cadastral Survey Act 2002 that the whole or part of any licensed land not be liable to be returned to Maori ownership if—
  - a. public notice has been given, in accordance with section 8HH, of the making of an application under this section in respect of that land; and
  - b. either—
    - i. no claim in relation to that land has been submitted to the Tribunal under section 6 before the date specified in the notice; or
    - ii. all the parties to any claim submitted to the Tribunal under section 6 in relation to that land have informed the Tribunal in writing that they consent to the making of the recommendation.
2. The Tribunal may make a recommendation pursuant to subsection (1)(b)(ii) without being obliged to determine first whether or not the claim is well-founded.
3. The Tribunal may, where it considers it appropriate, consult with a Judge of the Maori Land Court about—
  - a. the directions to be given under section 8HG; or
  - b. the public notice to be given under section 8HH,—  
in relation to any application under this section.

## **8HF. Issue of certificate on recommendation of Tribunal**

1. The Minister within the meaning of section 4 of the Cadastral Survey Act 2002 shall, on receiving in respect of any licensed land a recommendation under section 8HB or section 8HE, issue a certificate to the effect that the land is not liable to be returned to Maori ownership.
2. Where the licensed land is subject to the Land Transfer Act 1952 or where the Crown forestry licence is registered pursuant to section 30 of the Crown Forest Assets Act 1989, the Minister within the meaning of section 4 of the Cadastral Survey Act 2002 shall cause a copy of the certificate to be lodged with the District Land Registrar of the land registration district within which the land is situated.
3. The District Land Registrar shall, without fee, register the certificate against the certificate of title to the land or endorse a memorial on the copy of the Crown forestry licence, as the case may be.
4. Where—
  - a. the land is not subject to the Land Transfer Act 1952; and
  - b. a copy of the Crown forestry licence has not been registered pursuant to section 30 of the Crown Forest Assets Act 1989; and

- c. instruments relating to the land are not registrable under the Deeds Registration Act 1908,—

the Minister within the meaning of section 4 of the Cadastral Survey Act 2002 shall cause a copy of the certificate to be lodged in the office of the Surveyor-General for the district in which the land is situated, and the Surveyor-General shall note the certificate on the plans and records relating to the land.

## **8HG. Directions as to service**

1. Where an application is made under section 8HE, the applicant shall apply to the Tribunal ex parte for directions as to service.
2. The applicant shall furnish with the application under this section a description of the land to which the application under section 8HE relates, which description—
  - a. shall include a full legal description of the land; and
  - b. shall be sufficient to enable the Tribunal to decide which persons may be adversely affected by the making, under section 8HE, of the recommendation sought.
3. The application under this section—
  - a. shall specify the directions considered appropriate; and
  - b. shall be accompanied by a memorandum by or on behalf of the applicant giving the reasons for the directions considered appropriate.
4. On an application being made under this section the Tribunal shall give such directions for service as it deems proper.

## **8HH. Public notice**

1. Where an application is made under section 8HE, the applicant shall, in addition to complying with the directions given under section 8HG, give, in accordance with the directions of the Tribunal, public notice of the application.
2. The public notice shall be published both—
  - a. in the Gazette; and
  - b. in such newspapers circulating in the district in which the land is situated as the Tribunal directs.
3. The public notice shall—
  - a. describe the land and its location; and
  - b. state that an application has been made under section 8HE in respect of the land; and
  - c. indicate the land is Crown forest land that is subject to a Crown forestry licence; and

- d. invite any Maori who considers that he or she, or any group of Maori of which he or she is a member, has grounds for a claim under section 6 in relation to the land, to submit that claim to the Tribunal before a date specified in the notice (which date shall be not less than 90 days after the first or only publication of the notice in the Gazette); and
- e. describe briefly any claims already submitted under section 6 in respect of the land; and
- f. where no claim has been submitted under section 6 in respect of the land, state that if no claim in relation to the land is submitted to the Tribunal under that section before the date specified in the notice, the Tribunal may recommend that the land not be liable to be returned to Maori ownership and the effect of any such recommendation; and
- g. contain such other information as the Tribunal directs.

## **8HI. Service of decision**

The Tribunal shall cause a sealed copy of its decision and recommendations (if any) with regard to any application under section 8HE to be served on—

- a. the applicant; and
- b. the Minister within the meaning of section 4 of the Cadastral Survey Act 2002; and
- c. the Minister of Maori Affairs; and
- d. the Minister for State Owned Enterprises and the Minister of Finance; and
- e. such other persons as the Tribunal thinks fit.

## Subpart 2: Recommendations in relation to land vested under New Zealand Railways Corporation Restructuring Act 1990

### 8HJ. Claims relating to land vested under New Zealand Railways Corporation Restructuring Act 1990

In respect of every claim submitted to the Tribunal under section 6 that relates in whole or in part to land or an interest in land that, immediately before being vested in a Crown transferee company pursuant to section 6 of the New Zealand Railways Corporation Restructuring Act 1990, was land owned by the Crown or an interest owned by the Crown in land, whether or not the land or interest in land is still vested in that company, the provisions of sections 8A to 8H shall apply with such modifications as may be necessary and, in particular, as if—

- a. the reference in section 8A(1) to land or an interest in land to which that section applies was a reference to land or an interest in land that, immediately before being vested in a Crown transferee company pursuant to section 6 of the New Zealand Railways Corporation Restructuring Act 1990, was land owned by the Crown or an interest owned by the Crown in land, whether or not that land or interest in land is still vested in that company:
- b. the reference in section 8A(6) to an interest in land was a reference to an interest in land that was vested in a Crown transferee company under section 6 of the New Zealand Railways Corporation Restructuring Act 1990 but where the land itself was not vested in that company:
- c. the references in sections 8A(2)(b) and (c), 8D(1), 8E(1) and (3)(b), and 8G(3)(f) to section 27B of the State-Owned Enterprises Act 1986 were references to section 39 of the New Zealand Railways Corporation Restructuring Act 1990:
- d. the reference in section 8G(3)(c) to land or an interest in land transferred to or vested in a State enterprise was a reference to land or an interest in land vested in a Crown transferee company pursuant to the New Zealand Railways Corporation Restructuring Act 1990.

### 8I. Annual report on implementation of recommendations

The Minister of Maori Affairs shall in each year prepare and lay before the House of Representatives a report on the progress being made in the implementation of recommendations made to the Crown by the Tribunal.

### 9. Right to petition House of Representatives unaffected

Nothing in this Act shall affect in any way the right of any person to petition the House of Representatives for the redress of any grievance, or the jurisdiction of any committee or other body set up by the House of Representatives to deal with a petition to the House of Representatives.



## Schedule 1: Treaty of Waitangi

### The Text in English

HER MAJESTY VICTORIA Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favour the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorized to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or any part of those islands — Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects has been graciously pleased to empower and to authorize me William Hobson a Captain in Her Majesty's Royal Navy Consul and Lieutenant Governor of such parts of New Zealand as may be or hereafter shall be ceded to her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

### Article the First

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole Sovereigns thereof.

### Article the Second

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

### Article the Third

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

### Signed

W HOBSON, Lieutenant Governor.

Now therefore We the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in Congress at Victoria in Waitangi and We the Separate

and Independent Chiefs of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names, having been made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof: in witness of which we have attached our signatures or marks at the places and the dates respectively specified.

Done at Waitangi this Sixth day of February in the year of Our Lord One thousand eight hundred and forty.

[Here follow signatures, dates, etc.]

## The Text in Maori

[Text in Maori omitted due to length - full text can be found online at <http://www.legislation.govt.nz/act/public/1975/0114/latest/DLM435843.html>]

## Schedules 2-3

# Letters Patent Constituting the Office of Governor-General of New Zealand

## Preamble

Elizabeth the Second, by the Grace of God Queen of New Zealand and Her Other Realms and Territories, Head of the Commonwealth, Defender of the Faith:

To all to whom these presents shall come, Greeting:

1. Recites Letters Patent of 11 May 1917

Whereas by certain Letters Patent under the Great Seal of the United Kingdom bearing date at Westminster the 11th day of May 1917, His late Majesty King George the Fifth constituted, ordered, and declared that there should be a Governor-General and Commander-in-Chief in and over the Dominion of New Zealand:

2. Recites Letters Patent of 18 December 1918

And whereas by certain Letters Patent under the Great Seal of the United Kingdom bearing date at Westminster the 18th day of December 1918, His late Majesty King George the Fifth made other provision for the publication and the coming into operation of the said Letters Patent bearing date the 11th day of May 1917, in lieu of the provision made in the Fifteenth Clause thereof:

3. Recites Royal Instructions of 11 May 1917

And whereas at the Court at St. James's on the 11th day of May 1917, His late Majesty King George the Fifth caused certain Instructions under the Royal Sign Manual and Signet to be given to the Governor-General and Commander-in-Chief:

• Source of constitutional authority  
• Name/structure of executive(s)

• Designation of commander in chief  
• Reference to country's history

• Reference to country's history

• Reference to country's history

• Reference to country's history

4. Recites Dormant Commission of 23 July 1917

And whereas at the Court at St. James's on the 23rd day of July 1917, His late Majesty King George the Fifth caused a Dormant Commission to be passed under the Royal Sign Manual and Signet, appointing the Chief Justice or the Senior Judge for the time being of the Supreme Court of New Zealand to administer the Government of New Zealand, in the event of the death, incapacity, or absence of the Governor-General and Commander-in-Chief and of the Lieutenant-Governor (if any):

• Source of constitutional authority  
• Advisory bodies to the head of state

5. Recites approval by Executive Council of draft of new Letters Patent

And whereas, by Order in Council bearing date at Wellington the 26th day of September 1983, Our Governor-General and Commander-in-Chief of New Zealand, acting by and with the advice and consent of the Executive Council of New Zealand, has requested the issue of new Letters Patent revoking and determining the said Letters Patent bearing date the 11th day of May 1917, the said Letters Patent bearing date the 18th day of December 1918, the said Instructions, and the said Dormant Commission, and substituting in place of the revoked documents other provision in the form of the draft of new Letters Patent set out in Schedule 1 to that Order in Council:

6. Recites application of Letters Patent, Royal Instructions, and Dormant Commission to Cook Islands and Niue

And whereas the said Letters Patent bearing date the 11th day of May 1917, the said Letters Patent bearing date the 18th day of December 1918, the said Instructions, and the said Dormant Commission extend to the self-governing state of the Cook Islands and to the self-governing state of Niue as part of the law of the Cook Islands and of Niue, respectively:

• Source of constitutional authority

7. Recites approval by Government of Cook Islands and Government of Niue of draft of new Letters Patent

And whereas approval of the said draft of new Letters Patent has been signified on behalf of the Government of the Cook Islands and the Government of Niue:

• Advisory bodies to the head of state

8. Effects revocations

Now, therefore, We do by these presents revoke and determine the said Letters Patent bearing date the 11th day of May 1917, the said Letters Patent bearing date the 18th day of December 1918, the said Instructions, and the said Dormant Commission, but without prejudice to anything lawfully done thereunder; and We do hereby declare that the persons who are members of the body known as the Executive Council of New Zealand immediately before the coming into force of these Our Letters Patent shall be members of Our Executive Council hereby constituted as though they had been appointed thereto under these Our Letters Patent.

• Source of constitutional authority

And We do declare Our will and pleasure as follows:

• Name/structure of executive(s)

**1. Office of Governor-General and Commander-in-Chief constituted**

We do hereby constitute, order, and declare that there shall be, in and over Our Realm of New Zealand, which comprises—

- a. New Zealand; and
- b. the self-governing state of the Cook Islands; and

- c. the self-governing state of Niue; and
- d. Tokelau; and
- e. the Ross Dependency,—

a Governor-General and Commander-in-Chief who shall be Our representative in Our Realm of New Zealand, and shall have and may exercise the powers and authorities conferred on him by these Our Letters Patent, but without prejudice to the office, powers, or authorities of any other person who has been or may be appointed to represent Us in any part of Our Realm of New Zealand and to exercise powers and authorities on Our behalf.

## 2. Appointment of Governor-General and Commander-in-Chief

And We do hereby order and declare that Our Governor-General and Commander-in-Chief (hereinafter called Our Governor-General) shall be appointed by Us, by Commission under the Seal of New Zealand, and shall hold office during Our pleasure.

## 3. Governor-General's powers and authorities

And We do hereby authorise and empower Our Governor-General, except as may be otherwise provided by law,—

- a. to exercise on Our behalf the executive authority of Our Realm of New Zealand, either directly or through officers subordinate to Our Governor-General; and
- b. for greater certainty, but not so as to restrict the generality of the foregoing provisions of this clause, to do and execute in like manner all things that belong to the Office of Governor-General including the powers and authorities hereinafter conferred by these Our Letters Patent.

## 4. Manner in which Governor-General's powers and authorities are to be executed

Our Governor-General shall do and execute all the powers and authorities of the Governor-General according to—

- a. the tenor of these Our Letters Patent and of such Commission as may be issued to Our Governor-General under the Seal of New Zealand; and
- b. such laws as are now or shall hereafter be in force in Our Realm of New Zealand or in any part thereof.

## 5. Publication of Governor-General's Commission

Every person appointed to fill the Office of Governor-General shall, before entering on any of the duties of the office, cause the Commission appointing him to be Governor-General to be publicly read, in the presence of the Chief Justice, or some other Judge of the High Court of New Zealand, and of members of the Executive Council thereof.

## 6. Oaths to be taken by Governor-General

Our Governor-General shall, immediately after the public reading of the Commission appointing him, take—

- a. the Oath of Allegiance in the form for the time being prescribed by the law of New Zealand; and
- b. the Oath for the due execution of the Office of Governor-General in the form following:

I, [name], swear that, as Governor-General and Commander-in-Chief of the Realm of New Zealand, comprising New Zealand; the self-governing states of the Cook Islands and Niue; Tokelau; and the Ross Dependency, I will faithfully and impartially serve Her [or His] Majesty [specify the name of the reigning Sovereign, as thus: Queen Elizabeth the Second], Queen of New Zealand [or King of New Zealand], Her [or His] heirs and successors, and the people of the Realm of New Zealand, in accordance with their respective laws and customs. So help me God.

which Oaths the Chief Justice or other Judge in whose presence the Commission is read is hereby required to administer.

## 7. Constitution of Executive Council

And We do by these presents constitute an Executive Council to advise Us and Our Governor-General in the Government of Our Realm of New Zealand.

## 8. Membership of Executive Council

The Executive Council shall consist of those persons who, having been appointed to the Executive Council from among persons eligible for appointment under the Constitution Act 1986, are for the time being Our responsible advisers.

## 9. Quorum of Executive Council

The Executive Council shall not proceed to the despatch of business unless two members at the least (exclusive of any member presiding in the absence of Our Governor-General) be present throughout the whole of the meeting at which any such business is despatched, except that in a situation of urgency or emergency, members may be present by any method of communication that allows each member to participate effectively during the whole of the meeting.

## 10. Appointment of members of Executive Council, etc

And We do hereby authorise and empower Our Governor- General, from time to time in Our name and on Our behalf, to constitute and appoint under the Seal of New Zealand, to hold office during pleasure, all such members of the Executive Council, Ministers of the Crown, commissioners, diplomatic or consular representatives of New Zealand, principal representatives of New Zealand in any other country or accredited to any international organisation, and other necessary officers as may be lawfully constituted or appointed by Us.

## 11. Exercise of prerogative of mercy

And We do further authorise and empower Our Governor-General, in Our name and on Our behalf, to exercise the prerogative of mercy in Our Realm of New Zealand, except in any part thereof where, under any law now or hereafter in force, the prerogative of mercy may be exercised in Our name and on Our behalf by any other person or persons, to the exclusion of Our Governor-General; and for greater certainty but not so as to restrict the authority hereby conferred, Our Governor-General may:

- a. grant, to any person concerned in the commission of any offence for which he may be tried in any court in New Zealand or in any other part of Our said Realm to which this clause applies or to any person convicted of any offence in any such court, a pardon, either free or subject to lawful conditions; or
- b. grant, to any person, a respite, either indefinite or for a specified period, of the execution of any sentence passed on that person in any court in New Zealand or in any other part of Our said Realm to which this clause applies; or
- c. remit, subject to such lawful conditions as he may think fit to impose, the whole or any part of any such sentence or of any penalty or forfeiture otherwise due to Us on account of any offence in respect of which a person has been convicted by any court in New Zealand or in any other part of Our said Realm to which this clause applies.

## 12. Administrator of the Government

Whenever the Office of Governor-General is vacant, or the holder of the Office is for any reason unable to perform all or any of the functions of the Office, We do hereby authorise, empower, and command the Chief Justice of New Zealand to perform the functions of the Office of Governor-General. If, however, there is for the time being no Chief Justice able to act as Governor-General, then the next most senior Judge of the New Zealand judiciary who is able so to act is so authorised, empowered, and commanded. The Chief Justice or the next most senior Judge, while performing all or any of the functions of the Office of Governor-General, is to be known as the Administrator of the Government; and in these Our Letters Patent every reference to Our Governor-General includes, unless inconsistent with the context, a reference to Our Administrator of the Government.

### 13. Oaths to be taken by Administrator of the Government

The said Chief Justice or next most senior Judge of the New Zealand judiciary shall, on the first occasion on which he is required to act as Administrator of the Government and before entering on any of the duties of the Office of Governor-General, take the Oaths hereinbefore directed to be taken by Our Governor-General, which Oaths, with such modifications as are necessary, shall be administered by some other Judge of the High Court of New Zealand, in the presence of not less than two members of the Executive Council.

### 14. Powers and authorities of Governor-General not abridged

While Our Administrator of the Government is performing all or any of the functions of the Office of Governor-General, the powers and authorities of Our Governor-General shall not be abridged, altered, or in any way affected, otherwise than as We may at any time hereafter think proper to direct.

### 15. Governor-General's absence

[Revoked]

### 16. Ministers to keep Governor-General informed

Our Ministers of the Crown in New Zealand shall keep Our Governor-General fully informed concerning the general conduct of the Government of Our said Realm, so far as they are responsible therefor, and shall furnish Our Governor-General with such information as he may request with respect to any particular matter relating to the Government of Our said Realm.

### 17. Ministers and others to obey, aid, and assist Governor-General

Our Ministers of the Crown and other officers, civil and military, and all other inhabitants of Our Realm of New Zealand, shall obey, aid, and assist Our Governor-General in the performance of the functions of the Office of Governor-General.

### 18. Power reserved to Her Majesty to revoke, alter, or amend the present Letters Patent

And We do hereby reserve to Ourselves, Our heirs and successors, full power and authority from time to time to revoke, alter, or amend these Our Letters Patent as to Us or them shall seem meet.

### 19. Present Letters Patent to have effect as law

And We do further declare that these Our Letters Patent shall take effect as part of the law of Our Realm of New Zealand, comprising New Zealand, the self-governing state of the Cook Islands, the self-governing state of Niue, Tokelau, and the Ross Dependency on the 1st day of November 1983.

In witness whereof We have caused these Our Letters to be made Patent, and for the greater testimony and validity thereof We have caused the Seal of New Zealand to

be affixed to these presents, which We have signed with Our Regal Hand.

Given the 28th day of October in the Year of Our Lord One Thousand Nine Hundred and Eighty-three and in the 32nd Year of Our Reign.

# Constitution Act 1986

## Preamble

An Act to reform the constitutional law of New Zealand, to bring together into one enactment certain provisions of constitutional significance, and to provide that the New Zealand Constitution Act 1852 of the Parliament of the United Kingdom shall cease to have effect as part of the law of New Zealand

## 1. Short Title and commencement

1. This Act may be cited as the Constitution Act 1986.
2. This Act shall come into force on 1 January 1987.

## Part 1: The Sovereign

### 2. Head of State

1. The Sovereign in right of New Zealand is the head of State of New Zealand, and shall be known by the royal style and titles proclaimed from time to time.
2. The Governor-General appointed by the Sovereign is the Sovereign's representative in New Zealand.

### 3. Exercise of royal powers by the Sovereign or the Governor-General

1. Every power conferred on the Governor-General by or under any Act is a royal power which is exercisable by the Governor-General on behalf of the Sovereign, and may accordingly be exercised either by the Sovereign in person or by the Governor-General.
2. Every reference in any Act to the Governor-General in Council or any other like expression includes a reference to the Sovereign acting by and with the advice and consent of the Executive Council.

### 3A. Advice and consent of Executive Council

1. The Sovereign or the Governor-General may perform a function or duty, or exercise a power, on the advice and with the consent of the Executive Council if that advice and consent are given at a meeting of the Executive Council at which neither the Sovereign nor the Governor-General is present if the Sovereign or the Governor-General is prevented from attending the meeting by some necessary or reasonable cause.
2. The performance of the function or duty, or the exercise of the power takes effect from the date of the meeting unless another time is specified for the performance of the function or duty, or for the exercise of the power, to take effect.



3. Neither the validity of the performance of the function or duty, nor the validity of the exercise of the power, can be challenged in any legal proceedings on the ground that the Sovereign or the Governor-General was not prevented from attending the meeting of the Executive Council by some necessary or reasonable cause.

### 3B. Exercise of powers and duties by Administrator

1. The Administrator of the Government may perform a function or duty imposed on the Governor-General, or exercise a power conferred on the Governor-General, if-
  - a. the office of Governor-General is vacant; or
  - b. the Governor-General is unable to perform the function or duty or exercise the power.
2. The performance or exercise by the Administrator of the Government of a function or duty imposed, or a power conferred, on the Governor-General is conclusive evidence of the authority of the Administrator to perform the function or duty or exercise the power.

## 4. Regency

1. Where, under the law of the United Kingdom, the royal functions are being performed in the name and on behalf of the Sovereign by a Regent, the royal functions of the Sovereign in right of New Zealand shall be performed in the name and on behalf of the Sovereign by that Regent.
2. Nothing in subsection (1) limits, in relation to any power of the Sovereign in right of New Zealand, the authority of the Governor-General to exercise that power.

## 5. Demise of the Crown

1. The death of the Sovereign shall have the effect of transferring all the functions, duties, powers, authorities, rights, privileges, and dignities belonging to the Crown to the Sovereign's successor, as determined in accordance with the enactment of the Parliament of England intituled The Act of Settlement (12 & 13 Will 3, c 2) and any other law relating to the succession to the Throne, but shall otherwise have no effect in law for any purpose.
2. Every reference to the Sovereign in any document or instrument in force on or after the commencement of this Act shall, unless the context otherwise requires, be deemed to include a reference to the Sovereign's heirs and successors.

## Part 2: The Executive

### 6. Ministers of Crown to be members of Parliament

1. A person may be appointed and may hold office as a member of the Executive Council or as a Minister of the Crown only if that person is a member of Parliament.

• Deputy executive

• Head of state replacement

• Establishment of cabinet/ministers  
 • Eligibility for cabinet  
 • Advisory bodies to the head of state

2. Notwithstanding subsection (1),—
  - a. a person who is not a member of Parliament may be appointed and may hold office as a member of the Executive Council or as a Minister of the Crown if that person was a candidate for election at the general election of members of the House of Representatives held immediately preceding that person's appointment as a member of the Executive Council or as a Minister of the Crown but shall vacate office at the expiration of the period of 40 days beginning with the date of the appointment unless, within that period, that person becomes a member of Parliament; and
  - b. where a person who holds office both as a member of Parliament and as a member of the Executive Council or as a Minister of the Crown ceases to be a member of Parliament, that person may continue to hold office as a member of the Executive Council or as a Minister of the Crown until the expiration of the 28th day after the day on which that person ceases to be a member of Parliament.

## 7. Power of member of Executive Council to exercise Minister's powers

Any function, duty, or power exercisable by or conferred on any Minister of the Crown (by whatever designation that Minister is known) may, unless the context otherwise requires, be exercised or performed by any member of the Executive Council.

## 8. Appointment of Parliamentary Under-Secretaries

1. The Governor-General may from time to time, by warrant under the Governor-General's hand, appoint any member of Parliament to be a Parliamentary Under-Secretary in relation to such Ministerial office or offices as are specified in that behalf in the warrant of appointment.
2. A Parliamentary Under-Secretary shall hold office as such during the pleasure of the Governor-General, but shall in every case vacate that office within 28 days of ceasing to be a member of Parliament.

## 9. Functions of Parliamentary Under-Secretaries

1. A Parliamentary Under-Secretary holding office as such in respect of any Ministerial office shall have and may exercise or perform under the direction of the Minister concerned such of the functions, duties, and powers of the Minister of the Crown for the time being holding that office as may from time to time be assigned to the Parliamentary Under-Secretary by that Minister.
2. Nothing in subsection (1) limits the authority of any Minister of the Crown to exercise or perform personally any function, duty, or power.
3. The fact that any person holding office as a Parliamentary Under-Secretary in respect of any Ministerial office purports to exercise or perform any function, duty, or power of the Minister concerned shall be conclusive evidence of that person's authority to do so.

• Powers of cabinet  
• Advisory bodies to the head of state

• Head of state powers

## 9A. Solicitor-General may perform functions of Attorney-General

The Solicitor-General may perform a function or duty imposed, or exercise a power conferred, on the Attorney-General.

## 9B. Appointment of person to act in place of Solicitor-General

1. The Governor-General may appoint a barrister or solicitor of at least 7 years' practice to act—
  - a. in place of, or for, the Solicitor-General during the absence from office of the Solicitor-General or if the Solicitor-General is incapacitated in a way that affects the performance of his or her duties; or
  - b. during a vacancy in the office of Solicitor-General.
2. The performance of a function or duty or the exercise of a power by a person appointed under subsection (1) is, in the absence of proof to the contrary, sufficient evidence of the authority of that person to do so.

## 9C. Delegation of powers of Attorney-General and Solicitor-General

1. The Solicitor-General may, with the written consent of the Attorney-General, in writing delegate to a Deputy Solicitor-General, any of the functions or duties imposed, or powers conferred, on the Attorney-General.
2. The Solicitor-General may in writing delegate to a Deputy Solicitor-General any of the functions or duties imposed, or powers conferred, on the Solicitor-General, except for the power to delegate conferred by this subsection.
3. A delegation is revocable and does not prevent the Attorney-General or the Solicitor-General from performing the function or duty or exercising the power.
4. A delegation may be made on conditions specified in the instrument of delegation.
5. The fact that a Deputy Solicitor-General performs a function or duty or exercises a power is, in the absence of proof to the contrary, sufficient evidence of his or her authority to do so.

## Part 3: The Legislature

### A. The House of Representatives

#### 10. House of Representatives

1. There shall continue to be a House of Representatives for New Zealand.
2. The House of Representatives is the same body as the House of Representatives referred to in section 32 of the New Zealand Constitution Act 1852 of the Parliament of the United Kingdom.
3. The House of Representatives shall be regarded as always in existence, notwithstanding that Parliament has been dissolved or has expired.

- First chamber selection
4. The House of Representatives shall have as its members those persons who are elected from time to time in accordance with the provisions of the Electoral Act 1993, and who shall be known as members of Parliament.

## 11. Oath of allegiance to be taken by members of Parliament

- Oaths to abide by constitution
1. A member of Parliament shall not be permitted to sit or vote in the House of Representatives until that member has taken the Oath of Allegiance in the form prescribed in section 17 of the Oaths and Declarations Act 1957.
  2. The oath to be taken under this section shall be administered by the Governor-General or a person authorised by the Governor-General to administer that oath.

## 12. Election of Speaker

- Leader of first chamber

The House of Representatives shall, at its first meeting after any general election of its members, and immediately on its first meeting after any vacancy occurs in the office of Speaker, choose one of its members as its Speaker, and every such choice shall be effective on being confirmed by the Governor-General.

## 13. Speaker to continue in office notwithstanding dissolution or expiration of Parliament

- Leader of first chamber

A person who is in office as Speaker immediately before the dissolution or expiration of Parliament shall, notwithstanding that dissolution or expiration, continue in office until the close of polling day at the next general election unless that person sooner vacates office as Speaker.

## B. Parliament

### 14. Parliament

- Structure of legislative chamber(s)
1. There shall be a Parliament of New Zealand, which shall consist of the Sovereign in right of New Zealand and the House of Representatives.
  2. The Parliament of New Zealand is the same body as that which before the commencement of this Act was called the General Assembly (as established by section 32 of the New Zealand Constitution Act 1852 of the Parliament of the United Kingdom) and which consisted of the Governor-General and the House of Representatives.

### 15. Power of Parliament to make laws

- Initiation of general legislation
1. The Parliament of New Zealand continues to have full power to make laws.
  2. No Act of the Parliament of the United Kingdom passed after the commencement of this Act shall extend to New Zealand as part of its law.

### 16. Royal assent to Bills

- Approval of general legislation

A Bill passed by the House of Representatives shall become law when the Sovereign or the Governor-General assents to it and signs it in token of such assent.

## 17. Term of Parliament

1. The term of Parliament shall, unless Parliament is sooner dissolved, be 3 years from the day fixed for the return of the writs issued for the last preceding general election of members of the House of Representatives, and no longer.
2. Section 268 of the Electoral Act 1993 shall apply in respect of subsection (1).

## 18. Summoning, proroguing, and dissolution of Parliament

1. The Governor-General may by Proclamation summon Parliament to meet at such place and time as may be appointed therein, notwithstanding that when the Proclamation is signed or when it takes effect Parliament stands prorogued to a particular date.
- 1A. The Governor-General may, by Proclamation, change the place of meeting of Parliament set out in the Proclamation summoning Parliament if that place is unsafe or uninhabitable.
2. The Governor-General may by Proclamation prorogue or dissolve Parliament.
3. A Proclamation summoning, proroguing, or dissolving Parliament shall be effective—
  - a. on being gazetted; or
  - b. on being publicly read, by some person authorised to do so by the Governor-General, in the presence of the Clerk of the House of Representatives and 2 other persons,
    - whichever occurs first.
4. Every Proclamation that takes effect pursuant to subsection (3)(b) shall be gazetted as soon as practicable after it is publicly read.

## 19. First meeting of Parliament after general election

After any general election of members of the House of Representatives, Parliament shall meet not later than 6 weeks after the day fixed for the return of the writs for that election.

## 20. Lapse or reinstatement of parliamentary business

1. Any Bill, petition, or other business before the House of Representatives or any of its committees during a session of a Parliament (any parliamentary business)—
  - a. does not lapse on the prorogation of that Parliament and may be resumed in the next session of Parliament (a session of that Parliament):
  - b. lapses on the dissolution or expiration of that Parliament, but may be reinstated in the next session of Parliament (a session of the next Parliament).
2. Parliamentary business is reinstated in that next session if, after that dissolution or expiration, the House of Representatives resolves that the parliamentary business be reinstated in that next session.

## C. Parliament and public finance

### 21. Bills appropriating public money

[Repealed]

### 22. Parliamentary control of public finance

It shall not be lawful for the Crown, except by or under an Act of Parliament,—

- a. to levy a tax; or
- b. to borrow money or to receive money borrowed from any person; or.
- c. to spend any public money.

## Part 4: The Judiciary

### 23. Protection of Judges against removal from office

A Judge of the High Court shall not be removed from office except by the Sovereign or the Governor-General, acting upon an address of the House of Representatives, which address may be moved only on the grounds of that Judge's misbehaviour or of that Judge's incapacity to discharge the functions of that Judge's office.

### 24. Salaries of Judges not to be reduced

The salary of a Judge of the High Court shall not be reduced during the continuance of the Judge's commission.

## Part 5: Miscellaneous provisions

### 25. General Assembly Library to be known as the Parliamentary Library

1. The library heretofore known as the General Assembly Library shall, as from the commencement of this Act, be known as the Parliamentary Library.
2. The officer heretofore known as the Chief Librarian of the General Assembly Library shall be known, as from the commencement of this Act, as the Parliamentary Librarian.
3. Subject to section 27, all references to the General Assembly Library or to the Chief Librarian of the General Assembly Library in any other enactment or in any document whatsoever shall hereafter, unless the context otherwise requires, be read as references to the Parliamentary Library and to the Parliamentary Librarian respectively.

## 26. United Kingdom enactments ceasing to have effect as part of the law of New Zealand

1. As from the commencement of this Act the following enactments of the Parliament of the United Kingdom, namely,—
  - a. the New Zealand Constitution Act 1852 (15 and 16 Vict, c 72); and
  - b. the Statute of Westminster 1931 (22 Geo V, c 4); and
  - c. the New Zealand Constitution (Amendment) Act 1947 (11 Geo VI, c 4),  
— shall cease to have effect as part of the law of New Zealand.
2. The provisions of sections 20, 20A, and 21 of the Acts Interpretation Act 1924 shall apply with respect to the enactments specified in subsection (1) as if they were Acts of the Parliament of New Zealand that had been repealed by that subsection.
3. Without limiting the provisions of subsection (2), it is hereby declared that the effect of section 11 of the Statute of Westminster 1931 (22 Geo V, c 4) (which section declared that the expression Colony shall not, in any Act of the Parliament of the United Kingdom passed after the commencement of the Statute of Westminster 1931, include a Dominion or any Province or State forming part of a Dominion) shall not be affected by virtue of the Statute of Westminster 1931 ceasing, by virtue of subsection (1), to have effect as part of the law of New Zealand.

## 27. Consequential amendments to other enactments

The enactments specified in Schedule 1 are hereby amended in the manner indicated in that schedule.

## 28. Repeals

1. The enactments specified in Schedule 2 are hereby repealed.
2. The Regulations Amendment Act 1962 is hereby consequentially repealed.
- (3)(4). Amendment(s) incorporated in the Act(s).

## 29. Transitional and consequential provisions relating to Parliament

1. The Parliament in being at the commencement of this Act (before the commencement of this Act called the General Assembly) shall continue in accordance with and subject to the provisions of this Act.
2. As from the commencement of this Act, every reference to the General Assembly or to the General Assembly of New Zealand in any enactment passed before the date of commencement of this Act and in any document executed before that date shall, unless the context otherwise requires, be read as a reference to the Parliament of New Zealand.
3. Subsection (2) shall not apply in respect of the Acts Interpretation Act 1924.

## Schedule 1: Consequential amendments

Agriculture (Emergency Powers) Act 1934 (1934 No 34) (RS Vol 1, p 87) - Amendment(s) incorporated in the Act(s).

Civil Defence Act 1983 (1983 No 46) - Amendment(s) incorporated in the Act(s).

Civil List Act 1979 (1979 No 33) - Amendment(s) incorporated in the Act(s).

Customs Act 1966 (1966 No 19) (RS Vol 2, p 57) - Amendment(s) incorporated in the Act(s).

Economic Stabilisation Act 1948 (1948 No 38) (RS Vol 6, p 227) - Amendment(s) incorporated in the Act(s).

Foreign Affairs and Overseas Service Act 1983 (1983 No 128) - Amendment(s) incorporated in the Act(s).

Government Superannuation Fund Act 1956 (1956 No 47) (RS Vol 13, p 97) - Amendment(s) incorporated in the Act(s).

Judicature Act 1908 (1908 No 89) (1957 Reprint, Vol 6, p 699) - Amendment(s) incorporated in the Act(s).

Oaths and Declarations Act 1957 (1957 No 88) (RS Vol 4, p 1) - Amendment(s) incorporated in the Act(s).

Official Information Act 1982 (1982 No 156) - Amendment(s) incorporated in the Act(s).

Ombudsmen Act 1975 (1975 No 9) - Amendment(s) incorporated in the Act(s).

Parliamentary Service Act 1985 (1985 No 128) - Amendment(s) incorporated in the Act(s).

Petroleum Demand Restraint Act 1981 (1981 No 12) - Amendment(s) incorporated in the Act(s).

Primary Products Marketing Act 1953 (1953 No 10) (RS Vol 4, p 201) - Amendment(s) incorporated in the Act(s).

Public Finance Act 1977 (1977 No 65) - Amendment(s) incorporated in the Act(s).

Public Safety Conservation Act 1932 (1932 No 3) (RS Vol 4, p 233) - Amendment(s) incorporated in the Act(s).

Regulations Act 1936 (1936 No 17) (RS Vol 10, p 723) - Amendment(s) incorporated in the Act(s).

Statutes Amendment Act 1936 (1936 No 58) (RS Vol 1, p 31) - Amendment(s) incorporated in the Act(s).

Treaty of Waitangi Act 1975 (1975 No 114) (RS Vol 8, p 877) - Amendment(s) incorporated in the Act(s).

## **Schedule 2: Enactments repealed**

Demise of the Crown Act 1908 (1908 No 42) (RS Vol 2, p 323)

Legislature Amendment Act 1977 (1977 No 22) (RS Vol 6, p 764)

New Zealand Constitution Amendment Act 1970 (1970 No 94) (RS Vol 10, p 463)

New Zealand Constitution Amendment Act 1973 (1973 No 114) (RS Vol 10, p 463)

New Zealand Constitution Amendment (Request and Consent) Act 1947 (1947 No 44) (RS Vol 10, p 461)

Royal Powers Act 1983 (1983 No 20)

Statute of Westminster Adoption Act 1947 (1947 No 38) (RS Vol 11, p 393)



# New Zealand Bill of Rights Act 1990

## Preamble

An Act—

- a. to affirm, protect, and promote human rights and fundamental freedoms in New Zealand; and
- b. to affirm New Zealand's commitment to the International Covenant on Civil and Political Rights

## 1. Short Title and commencement

1. This Act may be cited as the New Zealand Bill of Rights Act 1990.
2. This Act shall come into force on the 28th day after the date on which it receives the Royal assent.

## Part 1: General provisions

### 2. Rights affirmed

The rights and freedoms contained in this Bill of Rights are affirmed.

### 3. Application

This Bill of Rights applies only to acts done—

- a. by the legislative, executive, or judicial branches of the Government of New Zealand; or
- b. by any person or body in the performance of any public function, power, or duty conferred or imposed on that person or body by or pursuant to law.

### 4. Other enactments not affected

No court shall, in relation to any enactment (whether passed or made before or after the commencement of this Bill of Rights),—

- a. hold any provision of the enactment to be impliedly repealed or revoked, or to be in any way invalid or ineffective; or
- b. decline to apply any provision of the enactment— by reason only that the provision is inconsistent with any provision of this Bill of Rights.

### 5. Justified limitations

Subject to section 4, the rights and freedoms contained in this Bill of Rights may be subject only to such reasonable limits prescribed by law as can be demonstrably

justified in a free and democratic society.

## **6. Interpretation consistent with Bill of Rights to be preferred**

Wherever an enactment can be given a meaning that is consistent with the rights and freedoms contained in this Bill of Rights, that meaning shall be preferred to any other meaning.

## **7. Attorney-General to report to Parliament where Bill appears to be inconsistent with Bill of Rights**

Where any Bill is introduced into the House of Representatives, the Attorney-General shall,—

- a. in the case of a Government Bill, on the introduction of that Bill; or
- b. in any other case, as soon as practicable after the introduction of the Bill,—

bring to the attention of the House of Representatives any provision in the Bill that appears to be inconsistent with any of the rights and freedoms contained in this Bill of Rights.

## **Part 2: Civil and political rights**

### **Subpart 1: Life and security of the person**

#### **8. Right not to be deprived of life**

No one shall be deprived of life except on such grounds as are established by law and are consistent with the principles of fundamental justice.

#### **9. Right not to be subjected to torture or cruel treatment**

Everyone has the right not to be subjected to torture or to cruel, degrading, or disproportionately severe treatment or punishment.

#### **10. Right not to be subjected to medical or scientific experimentation**

Every person has the right not to be subjected to medical or scientific experimentation without that person's consent.

#### **11. Right to refuse to undergo medical treatment**

Everyone has the right to refuse to undergo any medical treatment.

- Attorney general
- Constitutionality of legislation

- Right to life

- Prohibition of cruel treatment
- Prohibition of torture

- Reference to science

## Subpart 2: Democratic and civil rights

### 12. Electoral rights

Every New Zealand citizen who is of or over the age of 18 years—

- a. has the right to vote in genuine periodic elections of members of the House of Representatives, which elections shall be by equal suffrage and by secret ballot; and
- b. is qualified for membership of the House of Representatives.

### 13. Freedom of thought, conscience, and religion

Everyone has the right to freedom of thought, conscience, religion, and belief, including the right to adopt and to hold opinions without interference.

### 14. Freedom of expression

Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.

### 15. Manifestation of religion and belief

Every person has the right to manifest that person's religion or belief in worship, observance, practice, or teaching, either individually or in community with others, and either in public or in private.

### 16. Freedom of peaceful assembly

Everyone has the right to freedom of peaceful assembly.

### 17. Freedom of association

Everyone has the right to freedom of association.

### 18. Freedom of movement

1. Everyone lawfully in New Zealand has the right to freedom of movement and residence in New Zealand.
2. Every New Zealand citizen has the right to enter New Zealand.
3. Everyone has the right to leave New Zealand.
4. No one who is not a New Zealand citizen and who is lawfully in New Zealand shall be required to leave New Zealand except under a decision taken on grounds prescribed by law.

## Subpart 3: Non-discrimination and minority rights

### 19. Freedom from discrimination

1. Everyone has the right to freedom from discrimination on the grounds of discrimination in the Human Rights Act 1993.
2. Measures taken in good faith for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination that is unlawful by virtue of Part 2 of the Human Rights Act 1993 do not constitute discrimination.

## 20. Rights of minorities

A person who belongs to an ethnic, religious, or linguistic minority in New Zealand shall not be denied the right, in community with other members of that minority, to enjoy the culture, to profess and practise the religion, or to use the language, of that minority.

### Subpart 4: Search, arrest, and detention

## 21. Unreasonable search and seizure

Everyone has the right to be secure against unreasonable search or seizure, whether of the person, property, or correspondence or otherwise.

## 22. Liberty of the person

Everyone has the right not to be arbitrarily arrested or detained.

## 23. Rights of persons arrested or detained

1. Everyone who is arrested or who is detained under any enactment-
  - a. shall be informed at the time of the arrest or detention of the reason for it; and
  - b. shall have the right to consult and instruct a lawyer without delay and to be informed of that right; and
  - c. shall have the right to have the validity of the arrest or detention determined without delay by way of habeas corpus and to be released if the arrest or detention is not lawful.
2. Everyone who is arrested for an offence has the right to be charged promptly or to be released.
3. Everyone who is arrested for an offence and is not released shall be brought as soon as possible before a court or competent tribunal.
4. Everyone who is-
  - a. arrested; or
  - b. detained under any enactment-
 

for any offence or suspected offence shall have the right to refrain from making any statement and to be informed of that right.
5. Everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the person.

## 24. Rights of persons charged

Everyone who is charged with an offence—

- a. shall be informed promptly and in detail of the nature and cause of the charge; and
- b. shall be released on reasonable terms and conditions unless there is just cause for continued detention; and
- c. shall have the right to consult and instruct a lawyer; and
- d. shall have the right to adequate time and facilities to prepare a defence; and
- e. shall have the right, except in the case of an offence under military law tried before a military tribunal, to the benefit of a trial by jury when the penalty for the offence is or includes imprisonment for 2 years or more; and
- f. shall have the right to receive legal assistance without cost if the interests of justice so require and the person does not have sufficient means to provide for that assistance; and
- g. shall have the right to have the free assistance of an interpreter if the person cannot understand or speak the language used in court.

## 25. Minimum standards of criminal procedure

Everyone who is charged with an offence has, in relation to the determination of the charge, the following minimum rights:

- a. the right to a fair and public hearing by an independent and impartial court:
- b. the right to be tried without undue delay:
- c. the right to be presumed innocent until proved guilty according to law:
- d. the right not to be compelled to be a witness or to confess guilt:
- e. the right to be present at the trial and to present a defence:
- f. the right to examine the witnesses for the prosecution and to obtain the attendance and examination of witnesses for the defence under the same conditions as the prosecution:
- g. the right, if convicted of an offence in respect of which the penalty has been varied between the commission of the offence and sentencing, to the benefit of the lesser penalty:

- Right to appeal judicial decisions
  - h. the right, if convicted of the offence, to appeal according to law to a higher court against the conviction or against the sentence or against both:
- Privileges for juveniles in criminal process
  - i. the right, in the case of a child, to be dealt with in a manner that takes account of the child's age.

## 26. Retroactive penalties and double jeopardy

- Protection from ex post facto laws
  - 1. No one shall be liable to conviction of any offence on account of any act or omission which did not constitute an offence by such person under the law of New Zealand at the time it occurred.
- Prohibition of double jeopardy
  - 2. No one who has been finally acquitted or convicted of, or pardoned for, an offence shall be tried or punished for it again.

## 27. Right to justice

- Constitutionality of legislation
  - 1. Every person has the right to the observance of the principles of natural justice by any tribunal or other public authority which has the power to make a determination in respect of that person's rights, obligations, or interests protected or recognised by law.
  - 2. Every person whose rights, obligations, or interests protected or recognised by law have been affected by a determination of any tribunal or other public authority has the right to apply, in accordance with law, for judicial review of that determination.
  - 3. Every person has the right to bring civil proceedings against, and to defend civil proceedings brought by, the Crown, and to have those proceedings heard, according to law, in the same way as civil proceedings between individuals.

## Part 3: Miscellaneous provisions

### 28. Other rights and freedoms not affected

An existing right or freedom shall not be held to be abrogated or restricted by reason only that the right or freedom is not included in this Bill of Rights or is included only in part.

### 29. Application to legal persons

Except where the provisions of this Bill of Rights otherwise provide, the provisions of this Bill of Rights apply, so far as practicable, for the benefit of all legal persons as well as for the benefit of all natural persons.

# Electoral Act 1993

## Preamble

An Act to reform the electoral system and to provide, in particular, if the proposal for the introduction of the mixed member proportional system is carried at the referendum held under the Electoral Referendum Act 1993,—

- a. for the introduction of the mixed member proportional system of representation in relation to the House of Representatives:
- b. for the establishment of an Electoral Commission:
- c. for the repeal of the Electoral Act 1956

## 1. Short Title

This Act may be cited as the Electoral Act 1993.

## 2. Commencement

1. If the Chief Electoral Officer makes, in accordance with section 19(5) of the Electoral Referendum Act 1993, a declaration that the proposal favouring the introduction of the proposed mixed member proportional system as provided in this Act is carried, Part 4 and Parts 6 to 9 and Schedules 2 and 3 shall, except as provided in subsection (2), come into force on 1 July 1994.
2. If the Chief Electoral Officer makes, in accordance with section 19(5) of the Electoral Referendum Act 1993, a declaration that the proposal favouring the introduction of the proposed mixed member proportional system as provided in this Act is carried, section 3 and Parts 1, 2, 3, and 5 and sections 267, 269, and 270 and Schedule 1 shall come into force on the day after the date on which that declaration is published in the Gazette.
3. If the Chief Electoral Officer makes, in accordance with section 19(5) of the Electoral Referendum Act 1993, a declaration that the proposal favouring the introduction of the proposed mixed member proportional system as provided in this Act is not carried,—
  - a. section 3 and Parts 1 to 9 and Schedules 1, 2, and 3 shall not come into force; and
  - b. on 1 July 1994, this Act shall be deemed to be repealed.
4. Except as provided in subsections (1) to (3), this Act shall come into force on the day on which it receives the Royal assent.

## 3. Interpretation

1. In this Act, unless the context otherwise requires,—
  - adult—
    - a. means a person of or over the age of 18 years; but

• Source of constitutional authority  
• Motives for writing constitution  
• Referenda

• First chamber selection

• Electoral commission

- b. where a writ has been issued for an election, includes, on or after the Monday immediately before polling day, a person under the age of 18 years if that person's 18th birthday falls in the period beginning on that Monday and ending on polling day
- approved electronic medium, in relation to the making of an application or the providing of any information, means an electronic medium approved by the Electoral Commission for the making of that application or the providing of that information
- bribery has the meaning assigned to that term by section 216 by-election means any election other than a general election
- candidate,—
  - a. means a constituency candidate; and
  - b. includes a list candidate (other than in Parts 6AA and 6A); and
  - c. in the definition of candidate advertisement and in section 3A and Parts 6AA, 6A, 7, and 8 includes a person who has declared his or her intention of becoming a constituency candidate; and
  - d. in Parts 7 and 8 includes a person who has declared his or her intention of becoming a list candidate
- candidate advertisement means an advertisement in any medium that may reasonably be regarded as encouraging or persuading voters to do either or both of the following:
  - a. to vote for a constituency candidate (whether or not the name of the candidate is stated):
  - b. not to vote for a constituency candidate (whether or not the name of the candidate is stated)
- census means the census of population and dwellings carried out by the Department of Statistics pursuant to the Statistics Act 1975
- Chief Electoral Officer means the Chief Electoral Officer appointed under this Act; and includes any person authorised to exercise the powers, duties, and functions of the Chief Electoral Officer
- component party means, in relation to a registered political party (in this definition called the registered party) or in relation to a political party that is applying for registration (in this definition called the applicant party),—
  - a. a political party that is a member of the registered party or of the applicant party; or

• Census



- b. a political party that has combined some or all of its membership with that of another political party and thereby formed the registered party or the applicant party or augmented the membership of such a party, as the case may be
- constituency candidate means a person who has been nominated as a candidate for a seat in the House of Representatives representing an electoral district
- corrupt practice means any act declared by this Act to be a corrupt practice
- Corrupt Practices List, in relation to any district, means the Corrupt Practices List made out for that district under section 100
- costs includes charges and expenses
- Crown means Her Majesty in respect of the Government of New Zealand
- current financial member, in relation to a political party, means a member of the party—
  - a. whose membership of the party resulted from an application made by the member to join the party; and
  - b. who is, under the party's rules, subject to an obligation to pay to the party a membership fee—
    - i. on becoming a member; and
    - ii. then at specified intervals of not more than 3 years; and
  - c. who has paid to the party every membership fee that has for the time being become payable by the member in accordance with those rules
- district or electoral district or electorate means a General electoral district or a Maori electoral district constituted under this Act
- election means an election of a member of the House of Representatives
- election advertisement has the meaning given to it by section 3A
- election expenses,—
  - a. in relation to a constituency candidate, has the meaning given to it by section 205:
  - b. in relation to a party that is registered under Part 4, has the meaning given to it by section 206

• Electoral districts

- elector, in relation to any district, means a person registered, or qualified to be registered, as an elector of that district

- Electoral commission

- Electoral Commission means the Electoral Commission established by section 4B

- Electoral commissioner

- Electoral Commissioner or Commissioner means a member of the Electoral Commission

- electoral official means any person that the Electoral Commission employs or engages for the purpose of assisting with the performance of its functions

- electoral roll, in relation to any district, means, subject to sections 101 to 103, the forms of application for registration kept by the Registrar of persons registered as electors of that district (including a form returned following an inquiry under section 89D)

- eligible political party means a political party that has at least 500 current financial members who are eligible to enrol as electors

- enduring power of attorney means a power of attorney described in section 95 of the Protection of Personal and Property Rights Act 1988

- general election means an election that takes place after the dissolution or expiration of Parliament

- Electoral districts

- General electoral district means an electoral district other than a Maori electoral district

- Census

- General electoral population means total ordinarily resident population as shown in the last periodical census of population and dwellings with the exception of the Maori electoral population

- Government means the Government of New Zealand

- hospital means a hospital care institution within the meaning of section 58(4) of the Health and Disability Services (Safety) Act 2001

- illegal practice means any act declared by this Act to be an illegal practice

- issuing officer, in relation to a polling place, means the manager of the polling place or a person authorised, under section 158(3)(a), to issue ballot papers in the polling place

- list candidate means any person whose name is specified in a party list submitted to the Electoral Commission under section 127

- main roll, in relation to any district, means, subject to section 107, the main roll printed for the district and for the time being in force
- manager, in relation to a polling place, means the person designated, under section 158(2), as the manager of the polling place
- Maori means a person of the Maori race of New Zealand; and includes any descendant of such a person
- Maori electoral district means an electoral district constituted under section 45
- Maori electoral population means a figure representing both the persons registered as electors of the Maori electoral districts and a proportion of the persons of New Zealand Maori descent who are not registered as electors of any electoral district and a proportion of the persons of New Zealand Maori descent under the age of 18 years, which figure shall be fixed—
  - a. by ascertaining a proportion determined by dividing—
    - i. the total number of persons registered as at the close of the last day of the period specified in the last notice published under section 77(2) as electors of Maori electoral districts, and persons on the dormant rolls for Maori electoral districts; by
    - ii. the total number of persons of New Zealand Maori descent registered as at the close of the day referred to in subparagraph (i) as electors of either General electoral districts or Maori electoral districts, and persons on the dormant rolls for Maori electoral districts and General electoral districts; and
  - b. by applying the proportion ascertained under paragraph (a) to the total number of ordinarily resident persons of New Zealand Maori descent as determined by the last periodical census
- medical practitioner means a health practitioner who is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine
- member of the Defence Force means any person resident in New Zealand within the meaning of this Act who is for the time being a member of the New Zealand Defence Force constituted by section 11(1) of the Defence Act 1990; and includes any person so resident who is attached to, or employed by, or carries out duties of the New Zealand Defence Force which necessitate his or her being outside New Zealand
- mental impairment, in relation to any person, means an impairment causing a person to lack, wholly or partly, the capacity to understand the nature of any decision about registering as an elector

• Electoral districts

- meshblock means statistical meshblock
- Minister means the Minister of Justice
- nomination day, in relation to any election, means the day appointed in the writ for that election as the latest day for the nomination of candidates
- party, in Parts 6AA, 6A, and 6B,—
  - a. means a political party registered under Part 4; and
  - b. includes a political party that at any time during the regulated period has been registered under Part 4
- party advertisement means an advertisement in any medium that may reasonably be regarded as encouraging or persuading voters to do either or both of the following:
  - a. to vote for a party (whether or not the name of the party is stated):
  - b. not to vote for a party (whether or not the name of the party is stated)
- party secretary or, in relation to a party, secretary means the person (whatever his or her designation or office) whose duties include responsibility for—
  - a. carrying out the administration of the party; and
  - b. conducting the correspondence of the party
- permanent resident of New Zealand has the meaning assigned thereto by section 73
- personation has the meaning assigned to that term by section 215
- polling day, in relation to any election, means the day appointed in the writ for that election for the polling to take place if a poll is required
- polling place official means a person appointed, under section 158(1), as an official for a polling place
- prescribed means prescribed by this Act or by regulations made thereunder or (for the purposes of Part 8) by rules of court
- prison means a prison established or deemed to be established under the Corrections Act 2004
- public inspection period means, in relation to a return filed under sections 205K, 206I, 206ZC, 209, 210, 210C, 214C, and 214F, the period—

- a. beginning 3 working days after the date of receipt by the Electoral Commission of the duly completed return; and
  - b. ending with the close of polling day for the second general election that takes place after the date of receipt by the Electoral Commission of the duly completed return
- public money has the same meaning as in the Public Finance Act 1989
- public notice or public notification means a notice printed in some newspaper circulating in the district intended to be affected by the notice
- public place has the same meaning as in section 2 of the Summary Offences Act 1981
- public servant—
  - a. means a person employed in the service of the Crown, not being honorary service; and
  - b. includes a person employed in—
    - i. the Education service as defined in the State Sector Act 1988; or
    - ii. the Cook Islands Public Service; or
    - iii. the Western Samoan Public Service; and
  - ba. includes an electoral official; but
  - bb. does not include an electoral official who has been appointed as a Deputy Electoral Commissioner or Returning Officer; and
  - c. does not include any person to whom subsection (2) or subsection (3) applies; and
  - d. does not include—
    - i. any person by reason of his or her holding an office for which salary is payable under the Members of Parliament (Remuneration and Services) Act 2013; or
    - ii. any person by reason of his or her being employed in any of Her Majesty's forces except the Royal New Zealand Navy, the Regular Force of the New Zealand Army, or the Regular Air Force of the Royal New Zealand Air Force; or

- iii. any person remunerated by fees or commission and not by wages or salary
- Registrar, in relation to any district, means the Registrar of Electors appointed for that district under section 22; and includes his or her deputy
- Registrar of Births and Deaths means Registrar within the meaning of section 2 of the Births, Deaths, Marriages, and Relationships Registration Act 1995
- regulated period has the meaning given to it by section 3B
- representative, in Part 5, means,—
  - a. in relation to a person who is outside New Zealand, or who has a physical impairment,—
    - i. a person who is a registered elector:
    - ii. an attorney appointed under a power of attorney:
  - b. in relation to a person who has a mental impairment,—
    - i. a person who is a registered elector:
    - ii. a welfare guardian appointed under section 12(1) of the Protection of Personal and Property Rights Act 1988:
    - iii. an attorney appointed under an enduring power of attorney
- residence and to reside have the meanings assigned thereto by section 72
- Returning Officer means an electoral official designated under section 20B; and includes a person authorised to exercise or perform the powers, duties, or functions of a Returning Officer
- roll means an electoral roll, a main roll, or a supplementary roll, as the case may be; and includes a composite roll printed under section 107
- Speaker means—
  - a. the Speaker of the House of Representatives; or
  - b. if the Speaker of the House of Representatives is (for whatever reason) unable to act, the Deputy Speaker of the House of Representatives; or

• Leader of second chamber

- c. if neither the Speaker of the House of Representatives nor the Deputy Speaker of the House of Representatives is (for whatever reason) able to act, an Acting Speaker of the House of Representatives who is able to act
  - special voter, in relation to any election, means a person qualified under this Act to vote as a special voter at that election
  - statement includes not only words but also pictures, visual images, gestures, and other methods of signifying meaning
  - supplementary roll, in relation to any district, means a supplementary roll printed for the district and for the time being in force
  - treating has the meaning assigned to that term by section 217
  - undue influence has the meaning assigned to that term by section 218
  - working day means any day of the week other than—
    - a. Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, and Waitangi Day; and
    - ab. if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and
    - b. a day in the period commencing with 25 December in any year and ending with 15 January in the following year
  - writ means a writ for an election issued under this Act
  - writ day, in relation to any election, means the day of the issue of the writ for that election.
  - A reference to a numbered form is a reference to the form so numbered in Schedule 2.
2. Where any person—
- a. is appointed by the Crown, or the Government, or any department or agency of the Government to be a member of any commission, council, board, committee, or other body; or
  - b. is a member of any commission, council, board, committee, or other body of which any members receive any payment out of public money,—
- he or she shall not by reason of that membership be deemed to be a public servant, whether or not he or she receives any travelling allowances or travelling expenses.

3. No person shall, by reason only of being a head of mission or head of post within the meaning of the Foreign Affairs Act 1988, be deemed to be a State servant within the meaning of section 52(1) or a public servant, whether or not that person receives any salary, allowances, or expenses.

### 3A. Meaning of election advertisement

1. In this Act, election advertisement—
  - a. means an advertisement in any medium that may reasonably be regarded as encouraging or persuading voters to do either or both of the following:
    - i. to vote, or not to vote, for a type of candidate described or indicated by reference to views or positions that are, or are not, held or taken (whether or not the name of the candidate is stated):
    - ii. to vote, or not to vote, for a type of party described or indicated by reference to views or positions that are, or are not, held or taken (whether or not the name of the party is stated); and
  - b. includes—
    - i. a candidate advertisement; and
    - ii. a party advertisement.
2. None of the following are election advertisements:
  - a. an advertisement that—
    - i. is published, or caused or permitted to be published, by the Electoral Commission or any other agency charged with responsibilities in relation to the conduct of any official publicity or information campaign to be conducted on behalf of the Government of New Zealand; and
    - ii. relates to electoral matters or the conduct of any general election or by-election; and
    - iii. contains either—
      - A. a statement indicating that the advertisement has been authorised by that officer or agency; or
      - B. a symbol indicating that the advertisement has been authorised by that officer or agency:
  - b. contact information (as defined in subsection (3)) published in any medium by a member of Parliament that satisfies all of the following requirements:



- i. the information was published by a member of Parliament in the course of performing his or her role and functions as a member of Parliament; and
  - ii. the information was prepared for publication and published by the member of Parliament using funding received under Vote Parliamentary Service; and
  - iii. the information was routinely published in that medium before the commencement of the regulated period and continues to be published in that medium during the regulated period; and
  - iv. the information is published during the regulated period no more often and to no greater extent than before the commencement of the regulated period; and
  - v. the information is published during the regulated period in the same form and style as before the commencement of the regulated period; and
  - vi. the information is not included, combined, or associated with an election advertisement (as defined in subsection (1)), or with any other information so as to constitute an election advertisement, that is published by—
    - A. the member of Parliament; or
    - B. the secretary of the party to which the member of Parliament belongs; or
    - C. any other person with the authority of the member of Parliament:
- c. the editorial content of—
    - i. a periodical:
    - ii. a radio or television programme:
    - iii. a publication on a news media Internet site:
  - d. any transmission (whether live or not) of proceedings in the House of Representatives:
  - e. any publication on the Internet, or other electronic medium, of personal political views by an individual who does not make or receive a payment in respect of the publication of those views.

3. In this section,—

- contact information, in relation to a member of Parliament, means information that—
  - a. must include—
    - i. the name of the member of Parliament; and
    - ii. the contact details of the member of Parliament, being 1 or more of the following:
      - A. telephone number:
      - B. physical or postal address:
      - C. email address; and
    - iii. the name of the electoral district that the member of Parliament represents or, if the member has not been elected to represent an electoral district, the fact that the member has been elected from a party list; and
  - b. may include 1 or more of the following:
    - i. a photograph of the member of Parliament:
    - ii. the website address of either or both—
      - A. the member of Parliament:
      - B. the party to which the member of Parliament belongs:
    - iii. the name of the party to which the member of Parliament belongs:
    - iv. the logo of the party to which the member of Parliament belongs:
    - v. the times when the member of Parliament is available for consultation by the public
- periodical means a newspaper, magazine, or trade or professional journal that—
  - a. was established for purposes unrelated to the conduct of election campaigns; and
  - b. since its establishment has been—

- i. published at regular intervals; and
- ii. generally available to members of the public.

### 3B. Meaning of regulated period

1. In this Act, regulated period, in relation to a general election, has the meaning given to it by subsections (2) and (3).
2. If before the close of the default day the Prime Minister gives public notice of the day that is to be polling day for the election, the regulated period—
  - a. commences on the later of the following days:
    - i. the day after the date on which the Prime Minister gives that public notice:
    - ii. the day that is 3 months before polling day; and
  - b. ends with the close of the day before polling day.
3. If at the close of the default day the Prime Minister has not given public notice of the day that is to be polling day for the election, the regulated period—
  - a. commences on the close of the default day; and
  - b. ends with the close of the day before polling day.
4. In this Act, regulated period, in relation to a by-election, means the period that—
  - a. commences on the day after the notice of the vacancy to be filled by the by-election is published under section 129(1); and
  - b. ends with the close of the day before polling day.
5. In this section,—
  - default day means the day that is 2 years and 9 months after the polling day for the preceding general election
  - give public notice means issue a media statement.

### 3C. Electoral Commission to publish details relating to regulated period

The Electoral Commission must, as soon as practicable after the commencement of the regulated period for a general election, publish in the Gazette notice of—

- a. the date on which the regulated period commenced; and
- b. the date on which the regulated period will end.

### 3D. Meaning of publish

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

- a. including—
  - i. displaying on any medium:
  - ii. distributing by any means:
  - iii. delivering to an address:
  - iv. leaving at a place:
  - v. sending by post or otherwise:
  - vi. printing in a newspaper or other periodical:
  - vii. broadcasting by any means:
  - viii. disseminating by means of the Internet or any other electronic medium:
  - ix. storing electronically in a way that is accessible to the public:
  - x. incorporating in a device for use with a computer:
  - xi. inserting in a film or video; but
- b. excluding addressing 1 or more persons face to face.

### 3E. Meaning of advertising expenses

1. In this Act, advertising expenses, in relation to an election advertisement—
  - a. includes—
    - i. the cost incurred in the preparation, design, composition, printing, postage, and publication of the advertisement; and
    - ii. the reasonable market value of any material used for or applied towards the advertisement, including any such material that is provided free of charge or below reasonable market value; but
  - b. excludes the cost of—
    - i. the conduct of any survey or public opinion poll; and

- ii. any framework (other than a commercial framework) that supports a hoarding on which the advertisement is displayed; and
  - iii. the labour of any person that is provided free of charge by that person; and
  - iv. the replacement of any material used in respect of the advertisement if that advertisement has been destroyed or rendered unusable by—
    - A. 1 or more persons, other than the person promoting the advertisement (person A):
    - B. the occurrence of an event beyond the control of person A, or any person acting on behalf of person A.
2. To avoid doubt, advertising expenses does not include the cost (including running costs) of any vehicle used to display an election advertisement if the use of the vehicle for that purpose is not the subject of a contract, arrangement, or understanding for the payment of money or money's worth.
  3. In this section, vehicle has the meaning given to it by section 2(1) of the Land Transport Act 1998.

## **Subpart 1: Extraterritorial application**

### **3F. Application of Act to conduct outside New Zealand**

1. The provisions of Part 6AA and 6A apply in respect of the publication of an election 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.
2. Subsection (1) does not affect the application of the provisions of this Act (other than those provisions in Parts 6AA and 6A that apply in respect of the publication of an election advertisement) in respect of an offence that under any provision of the Crimes Act 1961 is deemed to be committed in New Zealand.

## **Part 1: Electoral Commission**

### **4. Electoral Commission**

[Repealed]

#### **4A. Crown Entities Act 2004 to apply**

[Repealed]

## 4B. Electoral Commission

1. This section establishes the Electoral Commission.
2. The Electoral Commission is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.
3. The Crown Entities Act 2004 applies to the Electoral Commission except to the extent that this Act expressly provides otherwise.
4. The Electoral Commission established by subsection (1) is not the same body as the Electoral Commission established by section 4.

## 4C. Objective

The objective of the Electoral Commission is to administer the electoral system impartially, efficiently, effectively, and in a way that—

- a. facilitates participation in parliamentary democracy; and
- b. promotes understanding of the electoral system and associated matters; and
- c. maintains confidence in the administration of the electoral system.

## 4D. Membership of Electoral Commission

1. The Governor-General, on the recommendation of the House of Representatives, must appoint 3 members of the Electoral Commission as follows:
  - a. 1 member as the Chief Electoral Officer; and
  - b. 1 member as the chairperson; and
  - c. 1 member as the deputy chairperson.
2. The member appointed as the Chief Electoral Officer under subsection (1)(a) is the chief executive of the Electoral Commission.
3. The members of the Electoral Commission are the board for the purposes of the Crown Entities Act 2004.
4. Subsection (1) applies despite—
  - a. section 28(1)(b) of the Crown Entities Act 2004; and
  - b. clause 1(2) of Schedule 5 of the Crown Entities Act 2004.

## 4E. Appointment of Judge as member not to affect tenure, etc

The appointment of a Judge as a member of the board of the Electoral Commission does not affect the Judge's tenure of his or her judicial office or the Judge's rank, title, status, precedence, salary, annual or other allowances, or other rights or privileges as a Judge (including those in relation to superannuation) and, for all purposes, the Judge's services as a member must be taken to be service as a Judge.

## 4F. Resignation of member

1. A member of the Electoral Commission may resign from office by written notice to the Governor-General (with a copy to the Electoral Commission) signed by the member.
2. The resignation is effective when the Governor-General receives the notice or at any later time specified in the notice.
3. This section applies despite section 44 of the Crown Entities Act 2004.

## 4G. Power to remove or suspend members

1. Section 42 of the Crown Entities Act 2004 applies to any member of the Electoral Commission who is a Judge.
2. Section 39(1) of the Crown Entities Act 2004 does not apply to any member.
3. Instead, any member who is not a Judge may be removed for just cause by the Governor-General acting upon an address from the House of Representatives.
4. Just cause has the same meaning as in section 40 of the Crown Entities Act 2004.

## 4H. Filling of vacancy

1. If a vacancy occurs in the membership of the Electoral Commission, the Governor-General, on the recommendation of the House of Representatives, may appoint a successor.
2. Despite subsection (1), if the vacancy exists at the close of a session, or the vacancy occurs while Parliament is not in session, and the House of Representatives has not recommended an appointment to fill the vacancy, the Governor-General in Council may appoint a successor at any time before the commencement of the next session of Parliament.
3. An appointment made under subsection (2) lapses, and the office again becomes vacant, unless the appointment is confirmed by the House of Representatives before the end of the 24th sitting day following the date of the appointment.

## 4I. Deputy Electoral Commissioners

1. The Electoral Commission may, by written notice, appoint an electoral official to be the deputy for an Electoral Commissioner.
2. The persons described in section 30(2) of the Crown Entities Act 2004 are disqualified from being appointed as Deputy Electoral Commissioners.
3. The notice of appointment must—
  - a. state the date on which the appointment takes effect, which must not be earlier than the date on which the notice is received; and
  - b. state the term of the appointment; and
  - c. be published by the Electoral Commission in the Gazette as soon as practicable after the appointment is made.
4. If an Electoral Commissioner becomes incapable of performing his or her functions or duties or exercising his or her powers by reason of illness, absence, or other sufficient cause, the functions, duties, and powers of that Electoral Commissioner may be performed and exercised by his or her deputy.

5. Despite subsection (4), a Deputy Electoral Commissioner—
  - a. must not act as chairperson or deputy chairperson of the board of the Electoral Commission; and
  - b. is not eligible to be appointed by the board of the Electoral Commission as a temporary deputy chairperson under clause 5 of Schedule 5 of the Crown Entities Act 2004.
6. The Electoral Commission may, at any time, revoke the appointment of any deputy.
7. A Deputy Electoral Commissioner is a public servant for the purposes of sections 28(2)(f) and 80(3)(a)(i).
8. [Repealed]

#### 4J. Proceedings of Electoral Commission

The provisions of Schedule 1 apply to the Electoral Commission and to its proceedings.

### 5. Functions

The functions of the Electoral Commission are to—

- a. carry the provisions of this Act into effect:
- b. carry out duties in relation to parliamentary election programmes that are prescribed by Part 6 of the Broadcasting Act 1989:
- c. promote public awareness of electoral matters by means of the conduct of education and information programmes or by other means:
- d. consider and report to the Minister or to the House of Representatives on electoral matters referred to the Electoral Commission by the Minister or the House of Representatives:
- e. make available information to assist parties, candidates, and others to meet their statutory obligations in respect of electoral matters administered by the Electoral Commission:
- f. carry out any other functions or duties conferred on the Electoral Commission by or under any other enactment.

### 6. Powers of Electoral Commission

1. The Electoral Commission may, if it considers that it is necessary for the proper discharge of its functions,—
  - a. initiate, sponsor, and carry out any studies or research:
  - b. make any inquiries:



- c. consult with any persons or classes of persons:
  - d. publicise, in any manner that it thinks fit, any parts of its work:
  - e. provide information and advice on any matter—
    - i. to the Minister for the Minister's consideration:
    - ii. to the Minister for presentation to the House of Representatives:
  - f. request advice, assistance, and information from any government department or any State enterprise as defined in section 2 of the State-Owned Enterprises Act 1986.
2. Subsection (1) does not limit sections 16 and 17 of the Crown Entities Act 2004.
  3. If the Electoral Commission provides any information or advice to the Minister under subsection (1)(e)(ii), the Minister must present the information or advice to the House of Representatives within 5 working days after receiving it or, if Parliament is not in session, as soon as possible after the commencement of the next session of Parliament.

• Electoral commission

## 7. Independence

The Electoral Commission must act independently in performing its statutory functions and duties, and exercising its statutory powers, under—

- a. this Act; and
- b. any other enactment that expressly provides for the functions, duties, or powers of the Electoral Commission (other than the Crown Entities Act 2004).

• Electoral commission

## 8. Electoral Commission must report on general election

1. The Electoral Commission must, within 6 months of the return of the writ after a general election, report in writing to the Minister on the administration of that election, including—
  - a. the services provided to electors to facilitate voting; and
  - b. enrolment and voting statistics; and
  - c. any substantive issue arising during the course of the election; and
  - d. any changes that are necessary or desirable in respect of—
    - i. administration processes or practices; or
    - ii. this Act or any other law; and

- e. any matter that the Minister of Justice asks the Electoral Commission to address; and
  - f. any other matter that the Electoral Commission considers relevant.
2. The Minister must present any report received under subsection (1) to the House of Representatives within 5 working days after receiving it or, if Parliament is not in session, as soon as possible after the commencement of the next session of Parliament.
  3. The Electoral Commission must publish any report made under subsection (1) as soon as practicable after it has been presented to the House of Representatives, but in any case not later than 10 working days after the report is received by the Minister.

## 9. Electoral Commission may delegate functions or powers to electoral officials engaged by Commission

1. The Electoral Commission's board may under section 73 of the Crown Entities Act 2004 delegate any of the Commission's functions or powers, either generally or specifically, not only to any person or persons listed in section 73(1) of the Crown Entities Act 2004, but also to any electoral official who is engaged (rather than employed) by the Commission.
2. The functions or powers delegated may (without limitation) be or include either or both of the following:
  - a. the Commission's power under section 73 of the Crown Entities Act 2004 to delegate particular functions or powers of the Commission:
  - b. all or any of the Commission's functions or powers that relate to registration of electors.
3. The electoral official may (without limiting the definition of that term in section 3(1)) be a person of one of the following kinds that the Electoral Commission engages for the purpose of assisting with the performance of its functions:
  - a. a body corporate:
  - b. an individual who holds an office in, or is employed by, a body corporate.
4. For the purposes of this section, the Commission's functions or powers that relate to registration of electors include, without limitation, its functions or powers under (or under any regulations under) Part 5 of this Act, and also its functions or powers under (or under any regulations under) the following Acts:
  - a. Bay of Plenty Regional Council (Maori Constituency Empowering) Act 2001:
  - b. Citizens Initiated Referenda Act 1993:
  - c. Energy Companies Act 1992:
  - d. Juries Act 1981:

• Electoral commission

- e. Local Electoral Act 2001:
  - f. Referenda (Postal Voting) Act 2000.
5. The provisions of the Crown Entities Act 2004, including in particular sections 74 (powers of delegate), 75 (effect of delegation), and 76 (revocations), apply in respect of a delegation by virtue of this section to any electoral official who is engaged (rather than employed) by the Electoral Commission as if it were a delegation under section 73 of the Crown Entities Act 2004 to any person or persons listed in section 73(1) of the Crown Entities Act 2004.

## **9A. Ownership of intellectual property developed by delegates of functions or powers**

1. Any intellectual property of any kind in, or in respect of, any matter or thing belongs to the Crown if it is devised or developed (entirely or mainly) after 30 June 2012 by or on behalf of an electoral official to whom or to which all or any of the Commission's functions or powers that relate to registration of electors have been delegated under section 73 of the Crown Entities Act 2004 (alone, or in conjunction with section 9 of this Act) and—
  - a. in the exercise or performance by or on behalf of that official of those delegated functions or powers; or
  - b. entirely or mainly by or through the use of public money appropriated by Parliament to facilitate the exercise or performance of those delegated functions or powers.
2. However, the Crown acting by and through the Minister of Finance may grant to any person a licence in respect of, or transfer to any person all or any ownership of, all or any of that intellectual property.
3. This section applies despite any contrary instrument or law.

## **10. Term of office**

[Repealed]

## **11. Vacation of office of additional members who hold office for purposes of jurisdiction under Part 6 of Broadcasting Act 1989**

[Repealed]

## **11A. Appointment of deputies**

[Repealed]

## **11B. Status of deputies**

[Repealed]

## **11C. Protection from civil liability**

[Repealed]

## **12. Delegation of Commission's powers**

[Repealed]

## **13. Procedure**

[Repealed]

## **14. Proceedings of Electoral Commission**

[Repealed]

## **15. Annual report**

[Repealed]

## **Part 2: Officers**

### **16. Clerk of the Writs**

[Repealed]

### **17. Deputy Clerk of the Writs**

[Repealed]

### **18. Chief Electoral Officer**

[Repealed]

### **19. Deputy Chief Electoral Officer**

[Repealed]

### **20. Electoral officials**

[Repealed]

### **20A. Electoral officials under direction of Electoral Commission**

1. The Electoral Commission may give oral or written directions to all or any electoral officials.
2. Every electoral official must exercise or perform his or her powers, duties, and functions in accordance with any directions given by the Electoral Commission.

• Electoral commission

## 20B. Designation of Returning Officers

1. For every election to be held in a district, the Electoral Commission must, by notice in writing, designate an electoral official as the Returning Officer for the district.
2. A Returning Officer is a public servant for the purposes of sections 28(2)(f) and 80(3)(a)(i).

## 20C. Returning Officers may delegate functions, duties, or powers

A Returning Officer may delegate any of his or her functions, duties, or powers, except this power of delegation, to another electoral official.

### 20CA. Powers of delegate

1. An electoral official to whom any functions, duties, or powers of a Returning Officer are delegated may, unless the delegation provides otherwise, perform the function or duty or exercise the power in the same manner, subject to the same restrictions, and with the same effect as if the electoral official were the Returning Officer.
2. An electoral official who purports to perform a function or duty or exercise a power under a delegation from a Returning Officer is, in the absence of proof to the contrary, presumed to do so in accordance with the terms of that delegation.

### 20CB. Effect of delegation on Returning Officer

No delegation under section 20C—

- a. affects or prevents the performance of any function or duty or the exercise of any power by the Returning Officer; or
- b. affects the responsibility of the Returning Officer for the actions of any electoral official acting under the delegation; or
- c. is affected by any change in the person appointed as Returning Officer.

### 20CC. Revocation of delegations

A delegation under section 20C may be revoked at will by—

- a. the Returning Officer by written notice to the electoral official; or
- b. any other method provided for in the delegation.

## 20D. State sector agencies to assist with administration of elections

1. The Electoral Commission may seek assistance from any State sector agency in order to facilitate the effective administration of elections.

2. Any agency approached by the Electoral Commission for assistance must have regard to the public interest in a whole-of government approach to support the effective administration of elections in considering the assistance it can provide.
3. Any assistance that a State sector agency provides must be provided in a manner that is consistent with the statutory framework establishing that agency.
4. For the purposes of this section, a State sector agency means any part of the State services as defined in section 2 of the State Sector Act 1988, any Crown entity within the meaning of section 7 of the Crown Entities Act 2004, and any State enterprise within the meaning of the State-Owned Enterprises Act 1986.

## 21. Chief Registrar of Electors

[Repealed]

## 22. Registrar of Electors

1. Each electoral district must have a Registrar of Electors to be appointed by the Electoral Commission.
2. Every Registrar—
  - a. must be an individual who is an electoral official (as defined in section 3(1)); and
  - b. may, but need not, hold an office in, or be an employee of, a body corporate to which all or any of the Commission's functions or powers that relate to registration of electors have been delegated; and
  - c. must, subject to subsection (3), be stationed at an office within the electoral district of which he or she is Registrar.
3. The Electoral Commission may appoint as the Registrar for an electoral district a person stationed at an office occupied by the Electoral Commission, by the electoral official, or by the body corporate in or by which the electoral official holds an office or is employed, and in an adjoining electoral district if, in the Electoral Commission's opinion,—
  - a. there is in the electoral district no suitable office occupied by the Electoral Commission, the electoral official, or that body corporate; or
  - b. an officer more suitable for appointment is stationed at an office occupied by the Electoral Commission, the electoral official, or that body corporate in an adjoining district; or
  - c. making the appointment is, for 1 or more other reasons, in the public interest.
4. A district is, for the purposes of subsection (3), an adjoining district for another district if the boundaries of both districts—
  - a. are wholly or partly shared; or
  - b. are separated by no more than 2 intermediate districts.

- Electoral districts
- Electoral commission

5. The Registrar must, under the Electoral Commission's direction,—
  - a. compile and keep, as required by this Act, the electoral roll for the Registrar's electoral district; and
  - b. carry out the functions and duties conferred and imposed on the Registrar by or under this Act.
6. The Electoral Commission may from time to time appoint to be the Deputy Registrar for any electoral district an individual who—
  - a. is an electoral official (as defined in section 3(1)); and
  - b. may, but need not, hold an office in, or be an employee of, a body corporate to which all or any of the Commission's functions or powers that relate to registration of electors have been delegated.
7. The Deputy Registrar has and may carry out (exercise or perform), subject to the control of the Registrar for that electoral district, all of that Registrar's powers, functions, and duties.
8. Neither the Registrar nor his or her deputy may hold any official position in any political organisation.
9. The powers conferred on the Electoral Commission by subsections (1) and (6) include the power to appoint a Registrar or a Deputy Registrar for a named electoral district—
  - a. that is not yet in being; or
  - b. in respect of which a roll has not been compiled.
10. All appointments made under section 22 as repealed on 1 July 2012 by section 31 of the Electoral (Administration) Act 2011 and in force at the close of 30 June 2012 continue on and after 1 July 2012, and may be amended, revoked, or revoked and replaced, as if they had been made under this section.

## **23. Appropriation of expenses of New Zealand Post Limited**

[Repealed]

## **24. Employees appointed by Chief Electoral Officer**

[Repealed]

## **25. General provision as to Returning Officers**

No Returning Officer shall hold any official position in any political organisation.

## **26. Returning Officer to make declaration**

Every Returning Officer shall, before entering on the duties of his or her office, make a declaration in form 1.

## Part 3: The House of Representatives

### 27. Members of Parliament

The House of Representatives shall have as its members those persons who are elected from time to time in accordance with the provisions of the Electoral Act 1956 or this Act, and who shall be known as members of Parliament.

#### Subpart 1: Representation Commission

### 28. Representation Commission

1. In order to provide for the periodical readjustment of the representation of the people of New Zealand in the House of Representatives, there shall be a commission to be known as the Representation Commission.

2. The Commission shall consist of—

- a. the Surveyor-General:
- b. the Government Statistician:
- c. the Chief Electoral Officer:
- d. the Chairperson of the Local Government Commission:
- e. 2 persons (not being public servants directly concerned with the administration of this Act or members of the House of Representatives), who shall be appointed by the Governor-General by Order in Council, on the nomination of the House of Representatives, as members of the Commission, 1 of those members being nominated to represent the Government and 1 to represent the Opposition:
- f. 1 person (not being a public servant directly concerned with the administration of this Act or a member of the House of Representatives), who shall be appointed as a member of the Commission by the Governor-General by Order in Council, on the nomination of the members of the Commission who hold office under paragraph (a) or paragraph (b) or paragraph (c) or paragraph (e), or a majority of them, to be the Chairperson of the Commission.

3. For the purposes of determining the boundaries of the Maori electoral districts, the Commission shall consist not only of the members specified in subsection (2) but also of—

- a. the chief executive of Te Puni Kokiri:
- b. 2 persons (not being public servants directly concerned with the administration of this Act or members of the House of Representatives), who shall be appointed by the Governor-General by Order in Council on the nomination of the House of Representatives as members of the Commission, 1 of those members being nominated to represent the Government and 1 to represent the Opposition.



4. Each of the persons appointed under subsection (3)(b) shall be a Maori.
5. Notwithstanding subsection (2)(d), the Chairperson of the Local Government Commission shall not be entitled to vote on any matter before the Commission, and shall not be regarded as a member of the Commission for the purpose of forming part of a quorum pursuant to section 43(1).

## 29. Term of office

The Chairperson and every member of the Commission who holds office under section 28(2)(e) or section 28(3)(b), unless he or she sooner ceases to be a member as provided in section 30, shall cease to be a member on the date on which the first periodical census of population is taken after the date of his or her appointment.

## 30. Extraordinary vacancies

The Chairperson or any member of the Commission who holds office under section 28(2)(e) or section 28(3)(b) may resign his or her appointment by writing addressed to the Governor-General, in which case, or in case of any such member being convicted of an offence punishable by imprisonment for life or by 2 or more years' imprisonment, or of his or her refusing to act, or of his or her death or mental or physical incapacity, or of his or her absence from New Zealand when his or her services are required, the Governor-General may, by Order in Council, appoint another person in his or her stead on the same nomination as in the case of the original appointment: provided that, if Parliament is not in session at the time, an appointment of a member to represent the Government or the Opposition may be made on the nomination of the Prime Minister or of the Leader of the Opposition, as the case may be.

## 31. Remuneration and travelling allowances

There shall be paid out of money appropriated by Parliament for the purpose to the Chairperson and each member of the Commission who holds office under section 28(2)(e) or section 28(3)(b) remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly, and the Commission shall be a statutory board for the purposes of that Act.

## 32. Deputies of appointed members

1. In this section appointed member means a member of the Commission appointed under section 28(2)(e) or section 28(2)(f) or section 28(3)(b).
2. Any appointed member may from time to time, by writing under his or her hand, appoint any person to be the deputy of that appointed member.
3. No person other than a Maori shall be appointed under this section as the deputy of a member of the Commission appointed under section 28(3)(b).
4. The deputy of any appointed member may exercise the powers conferred on that appointed member by this Act during any period when that appointed member is incapacitated by illness, absence from New Zealand, or other sufficient cause from performing the duties of his or her office.
5. The deputy of the appointed member who holds office as the Chairperson of the Commission shall, in addition, have authority to act as Chairperson of the Commission during any period when the Chairperson of the Commission is incapacitated by illness, absence from New Zealand, or other sufficient cause from performing the duties of his or her office.

6. Every deputy appointed under this section shall hold office during the pleasure of the appointed member by which that deputy was appointed.
7. No act done by any deputy appointed under this section in that capacity, and no act done by the Commission while any such deputy is so acting, shall in any proceedings be questioned on the ground that the occasion for so acting had not arisen or had ceased.

### 33. Deputies of ex officio members

1. Where the Chairperson of the Local Government Commission is unable or likely to be unable to perform his or her duties as a member of the Representation Commission because of illness, absence, or any other reason, and it appears to the Minister of Local Government that the inability to perform the duties is likely to continue for a period of more than 14 days, the Minister of Local Government may appoint a deputy (who shall be another member of the Local Government Commission) to perform all the functions, duties, and powers of the Chairperson of the Local Government Commission in his or her capacity as a member of the Representation Commission.
2. The Deputy Surveyor-General appointed pursuant to section 8 of the Survey Act 1986 shall have and may exercise, subject to the control of the Surveyor-General, all the functions, duties, and powers of the Surveyor-General in his or her capacity as a member of the Commission.
3. Any Deputy Government Statistician appointed pursuant to section 17 of the Statistics Act 1975 shall have and may exercise, subject to the control of the Government Statistician, all the functions, duties, and powers of the Government Statistician in his or her capacity as a member of the Commission.
4. The Deputy Electoral Commissioner appointed under section 41 as the deputy for the Chief Electoral Officer has and may exercise, subject to the control of the Chief Electoral Officer, all the functions, duties, and powers of the Chief Electoral Officer in his or her capacity as a member of the Commission.
5. Where the chief executive who holds office under section 28(3)(a) as a member of the Commission is unable or likely to be unable to perform his or her duties as such a member because of illness, absence, or any other reason, or where there is a vacancy in the position of that chief executive, that chief executive or any acting chief executive acting under section 40(1) of the State Sector Act 1988 may appoint a deputy nominated by the chief executive to perform all the functions, duties, and powers of the chief executive in his or her capacity as a member of the Representation Commission.
6. Every deputy appointed under subsection (1) or subsection (5) shall hold office during the pleasure of the person by which that deputy was appointed.
7. No act done by any deputy to which this section applies and no act done by the Commission while any such deputy is so acting, shall in any proceedings be questioned on the ground that the occasion for so acting had not arisen or had ceased.
8. Nothing in section 41(1) of the State Sector Act 1988 authorises a chief executive or acting chief executive or deputy of a chief executive to delegate to any other person any of the functions, duties, or powers of the chief executive or acting chief executive or deputy of the chief executive in his or her capacity as a member of the Representation Commission.

## 34. Submissions

Any political party to which a member of Parliament belongs and any independent member of Parliament and any political party whose candidates have, at the immediately preceding general election, obtained 5% or more of the valid votes cast by electors at that general election may make submissions to the Commission in relation to the matters to be considered by the Commission under section 35(3) or section 45(6).

## 35. Division of New Zealand into General electoral districts

1. It shall be the duty of the Commission to divide New Zealand into General electoral districts from time to time in accordance with this section and section 269.
2. The Commission—
  - a. shall effect the first division under subsection (1) as soon as practicable after the commencement of this section; and
  - b. shall, in accordance with section 77(5), effect the second division under subsection (1) after the census taken in the year 1996; and
  - c. shall effect such subsequent division under subsection (1) only after each subsequent periodical census and on no other occasion.
3. Subject to section 269, each division effected under subsection (1) shall be effected on the following basis:
  - a. the South Island shall be divided into 16 General electoral districts:
  - b. the General electoral population of the South Island shall be divided by 16, and the quotient so obtained shall be the quota for the South Island:
  - c. the General electoral population of the North Island shall be divided by the quota for the South Island, and the quotient so obtained shall be the number of General electoral districts in the North Island. Where that quotient includes a fraction, the fraction shall be disregarded unless it exceeds a half, in which case the number of such General electoral districts shall be the whole number next above that quotient:
  - d. the quota for the North Island shall be ascertained by dividing the General electoral population of that Island by the number of General electoral districts in that Island, as ascertained under paragraph (c):
  - e. the extent of each General electoral district in each Island shall be such that, at the time of making the division, the General electoral population of the General electoral district shall, subject to the provisions of paragraphs (f) and (g) and to the provisions of section 36 as to the allowance, be equal to the quota for that Island:
  - f. in forming the several General electoral districts, due consideration shall be given to—

- i. the existing boundaries of General electoral districts; and
- ii. community of interest; and
- iii. facilities of communications; and
- iv. topographical features; and
- v. any projected variation in the General electoral population of those districts during their life:

g. no General electoral district shall be situated partially in the North Island and partially in the South Island.

- 4. As soon as possible after each periodical census, the Surveyor-General shall call a meeting of the members of the Commission who hold office under any of the provisions of paragraphs (a) to (e) of section 28(2) for the purpose of nominating a Chairperson of the Commission.
- 5. As soon as possible after each periodical census and each period specified in a notice published under section 77(2), the Electoral Commission shall supply the Government Statistician with the information that the Electoral Commission is required to supply to the Government Statistician under section 77(6).
- 6. When the Government Statistician—

- a. has the results of the census; and
- b. has been supplied by the Electoral Commission with the information that the Electoral Commission is required, under section 77(6), to supply to the Government Statistician as soon as practicable after the last day of the period specified in the notice published under section 77(2),—

the Government Statistician shall thereupon report the results of the census and his or her calculation of the Maori electoral population as at the close of the last day of that period to the Surveyor-General and to the other members of the Commission.

- 7. Upon receipt of the report of the Government Statistician, the Surveyor-General shall prepare maps showing the distribution of the population and provisional boundaries for the electoral districts, and shall then call a meeting of the Commission.
- 8. The report so made by the Government Statistician, and the maps so prepared by the Surveyor-General, shall be sufficient evidence as to the General electoral population of New Zealand or of the North Island or of the South Island or of any district.

### 36. Allowance for adjustment of quota

Where, in the opinion of the Commission, General electoral districts cannot be formed consistently with the considerations provided for in section 35 so as to contain exactly the quota, the Commission may for any General electoral district make an allowance by way of addition or subtraction of General electoral population to an extent not exceeding 5%.

### 37. Classification of electoral districts for purposes of pay or allowances

The Representation Commission, if it is informed by the Remuneration Authority that it requires the districts to be classified for the purposes of determining salaries or allowances or both under the Remuneration Authority Act 1977, shall classify those districts in accordance with the categories given to it by the Remuneration Authority.

### 38. Notice of proposed boundaries and classification

1. When the Commission proposes to make a division under section 35 or section 45, it shall publish in the Gazette a notice—
  - a. stating places at which the public may inspect, without charge,—
    - i. the names, and a description of the boundaries, of the proposed districts; and
    - ii. any classification of the proposed districts that is required for the purposes of the Remuneration Authority Act 1977; and
    - iii. a summary, in respect of each proposed district, of the reasons why the boundaries described are being proposed; and
  - b. stating the last date on which the Commission will receive written objections to the proposed boundaries or any of them and to the proposed names or any of them and to the proposed classification (if any) (which date shall be not less than 1 month after the date of the publication of the notice in the Gazette).
- 1A. The boundaries fixed by the Commission in respect of the proposed districts shall be defined by the Commission by the use of such words, maps, and graphic means as are sufficient to define those proposed boundaries accurately.
2. The places stated pursuant to subsection (1)(a) shall include the office of each Registrar of Electors.
3. Any failure to comply with subsection (1)(a)(iii) shall not of itself invalidate any decision or proceedings of the Commission.
4. Where any objections are received under subsection (1)(b), the Commission shall publish in the Gazette a notice—
  - a. containing a summary of the objections; and
  - b. stating a place or places at which the objections are available for public inspection; and
  - c. stating the last date on which the Commission will receive written counter-objections to those objections or any of them (which date shall not be less than 2 weeks after the date of the publication of the notice in the Gazette).
5. The Commission shall, before coming to a final determination, duly consider any objections lodged under subsection (1)(b) and any counter-objections lodged under subsection (4).

## 39. Communications to officials

1. When, after the gazetting, pursuant to section 38, of a notice stating places (which shall include the office of each Registrar of Electors) at which the public may inspect, without charge, a description of the boundaries of the proposed districts, the Commission makes a determination relating to the boundaries of any district, the Surveyor-General must communicate the details of that determination to the Electoral Commission and such other entities or persons directly concerned with the administration of this Act as have been specified by the Representation Commission by name or by position or by the functions they perform.
2. Any entity or person to whom information is communicated pursuant to subsection (1) shall use that information only for the purposes of this Act.

## 40. Report of Commission

1. The Commission shall, in every case within 6 months after the date of the meeting of the Commission called pursuant to section 35(7) or, in the case of the meeting called pursuant to section 269(4), within 8 months after the date of that meeting,—
  - a. report to the Governor-General the names and boundaries of the electoral districts fixed by the Commission; and
  - b. publish in the Gazette a notice—
    - i. stating that the Commission has fixed the names and boundaries of the electoral districts; and
    - ii. stating that the names and boundaries of the electoral districts fixed by the Commission are available for public inspection; and
    - iii. stating places at which copies of the names and boundaries fixed by the Commission are available for public inspection without charge (which places shall include the office of each Registrar of Electors).
2. The boundaries of the electoral districts fixed by the Commission shall be defined by the Commission by the use of such words, maps, and graphic means as are sufficient to define those boundaries accurately.
3. From the date of the gazetting of the notice required by subsection (1)(b), the electoral districts fixed by the report shall be the electoral districts of New Zealand for the purpose of the election of members of Parliament after the dissolution or expiration of the then existing Parliament, and shall so continue until the next report of the Commission takes effect as a result of the publication in the Gazette of the notice required by subsection (1)(b) in respect of that report.

## 41. Report and maps to be laid before House of Representatives

1. A copy of every report of the Commission, together with properly authenticated maps of the electoral districts fixed by the report, shall be presented by the Governor-General to the House of Representatives within 3 sitting days after the date of the receipt thereof if Parliament is then in session, and, if not, then within 3 sitting days after the date of the commencement of the next ensuing session.
2. The Minister shall, forthwith after every report of the Commission is presented to the Governor-General, cause to be deposited in the office of the Clerk of the House of Representatives properly authenticated maps of the electoral districts fixed by the report.

## 42. Indexes of streets and places

1. The Surveyor-General—
  - a. shall, as soon as practicable after the gazetting of a notice under section 40(1)(b), compile, in respect of each electoral district, an index of streets and places within that district; and
  - b. shall compile from time to time, a comprehensive index which shall contain the names of all streets and places in New Zealand and which shall show the electoral district or electoral districts in which each street or place is to be found.
2. At the office of each Registrar and at such other convenient places within each district as the Minister from time to time directs, there shall be kept, for inspection by the public,—
  - a. a copy of the index compiled in respect of that district under subsection (1)(a); and
  - b. a copy of the index compiled under subsection (1)(b).
3. Copies of each index compiled under subsection (1)(a) shall be sold by the department within the meaning of section 2 of the Survey Act 1986.
4. Copies of each index compiled under subsection (1)(b) in respect of an electoral district shall be sold at every office of the department within the meaning of section 2 of the Survey Act 1986 and at such other convenient places as the Electoral Commission from time to time directs.

## 43. Proceedings of Commission

1. Any 4 members of the Commission, of whom 2 are the members holding office under section 28(2)(e), shall be a quorum, and may exercise all functions vested in the Commission.
2. The Commission may make such rules for the conduct of its business, not inconsistent with the provisions of this Act, as it thinks fit.

## 44. Commissioner not eligible as member of House of Representatives

No member of the Commission shall, within 2 years after he or she ceases to be a member, be capable of being elected to be a member of the House of Representatives.

### Subpart 2: Maori representation

## 45. Maori representation

1. It shall be the duty of the Commission, for the purpose of the representation of the Maori people in the House of Representatives, to divide New Zealand into Maori electoral districts from time to time in accordance with this section and section 269.
2. The Commission—
  - a. shall effect the first division under subsection (1) as soon as practicable after the commencement of this section; and
  - b. shall, in accordance with section 77(5), effect the second division under subsection (1) after the census taken in the year 1996; and
  - c. shall effect each subsequent division under subsection (1) only after each subsequent periodical census and on no other occasion.
3. Subject to section 269, each division effected under subsection (1) shall be effected on the following basis:
  - a. the Maori electoral population of New Zealand shall be divided by the quota for General electoral districts in the South Island determined pursuant to section 35(3)(b), and the quotient so obtained shall be the number of Maori electoral districts:
  - b. where the quotient includes a fraction, the fraction shall be disregarded unless it exceeds a half, in which case the number of Maori electoral districts shall be the next whole number above the quotient:
  - c. subject to subsection (7), the Maori electoral districts shall each contain an equal number of members of the Maori electoral population.
4. Upon receipt of the report of the Government Statistician under section 35(6), the Surveyor-General shall prepare maps showing the distribution of the Maori electoral population and provisional boundaries for the Maori electoral districts.
5. The report so made by the Government Statistician and the maps so prepared by the Surveyor-General shall be sufficient evidence as to the Maori electoral population.
6. In dividing the Maori electoral population equally between the Maori electoral districts, due consideration shall be given to—
  - a. the existing boundaries of the Maori electoral districts; and



- b. community of interest among the Maori people generally and members of Maori tribes; and
  - c. facilities of communications; and
  - d. topographical features; and
  - e. any projected variation in the Maori electoral population of those districts during their life.
7. Where, in the opinion of the Commission, the Maori electoral population cannot, consistently with the considerations provided for in subsection (6), be divided equally between the Maori electoral districts, the Commission may for any district make an allowance by way of addition or subtraction of Maori electoral population to an extent not exceeding 5%.
8. Due notice of the issuing of the proposed names and boundaries of the Maori electoral districts shall be given in the Gazette and section 38, with all necessary modifications, shall apply accordingly.
9. The Commission shall, in every case within 6 months after the date of the meeting of the Commission called pursuant to section 35(7) or, in the case of the meeting called pursuant to section 269(4), within 8 months after the date of that meeting,—
- a. report to the Governor-General the names and boundaries of the Maori electoral districts fixed by the Commission; and
  - b. publish in the Gazette a notice—
    - i. stating that the Commission has fixed the names and boundaries of the Maori electoral districts; and
    - ii. stating that the names and boundaries of the Maori electoral districts fixed by the Commission are available for public inspection; and
    - iii. stating places at which copies of the names and boundaries fixed by the Commission are available for public inspection without charge (which places shall include the office of each Registrar of Electors).
10. The boundaries fixed by the Commission in respect of the Maori electoral districts shall be defined by the Commission by the use of such words, maps, and graphic means as are sufficient to define those boundaries accurately.
11. From the date of the gazetting of the notice required by subsection (9)(b), the boundaries of the Maori electoral districts as fixed by the report shall be the boundaries of the Maori electoral districts for the purpose of the election of members of Parliament for those districts after the dissolution or expiration of the then existing Parliament, and shall so continue until the next report of the Commission takes effect as a result of the publication in the Gazette of that notice required by subsection (9)(b) in respect of that report.

12. Notwithstanding the foregoing provisions of this section or of any other provision of this Act,—
  - a. if on the application of paragraphs (a) and (b) of subsection (3) a quotient is obtained that does not require the division of New Zealand into a Maori electoral district or districts, New Zealand shall not be divided into a Maori electoral district or districts and the other provisions of this Act shall, so far as they are applicable, apply with any necessary modifications; and
  - b. if on the application of paragraphs (a) and (b) of subsection (3) a quotient is obtained that requires the division of New Zealand into 1 Maori electoral district, the foregoing provisions of this section and the other provisions of this Act shall, so far as they are applicable, apply with any necessary modifications.

### Subpart 3: Chatham Islands

#### 46. Electoral districts for and polling in Chatham Islands

1. The area comprised in the Chatham Islands shall be included in such General electoral district and Maori electoral district as the Representation Commission thinks fit, after giving due consideration to the matters contained in sections 35(3)(f) and 45(6).
2. For the purposes of sections 35, 45, and 269, the General electoral population and Maori electoral population of the Chatham Islands shall be treated—
  - a. as part of the General electoral population and Maori electoral population of New Zealand; and
  - b. as part of the General electoral population or Maori electoral population, as the case may require, of the General electoral district or Maori electoral district within which the Chatham Islands are included; and
  - c. in the case of the General electoral population, as part of the General electoral population of the South Island and, in the case of the Maori electoral population, as part of the Maori electoral population of the North Island.
3. In any case where the Commission has determined the number of General electoral districts in both the North Island and the South Island, and has, in doing so, applied the provisions of subsection (2)(c),—
  - a. the Commission shall not be precluded from including the Chatham Islands in a General electoral district or Maori electoral district, as the case may require, that is located, either in whole or in part, in a different Island to that in which the General electoral population or the Maori electoral population of the Chatham Islands has been included pursuant to subsection (2)(c); and
  - b. the Commission shall not, by reason of the application of paragraph (a), reconsider its determination of the number of General electoral districts in either the North Island or the South Island.

## Subpart 4: Qualifications of candidates and members

### 47. Registered electors may be members, unless disqualified

1. Subject to the provisions of this Act, every person who is registered as an elector of an electoral district, but no other person, is qualified to be a candidate and to be elected a member of Parliament, whether for that electoral district, any other electoral district or as a consequence of the inclusion of that person's name in a party list submitted pursuant to section 127.
2. Notwithstanding anything in subsection (1), if a person is disqualified for registration as an elector, that person shall not be qualified to be a candidate or to be elected.
3. Regardless of anything in subsection (1), a person is not qualified to be a candidate or to be elected unless he or she is a New Zealand citizen.

### 47A. Certain persons disqualified from candidacy

The following persons are not qualified to be a candidate or to be elected as a member of Parliament:

- a. an Electoral Commissioner:
- b. a Deputy Electoral Commissioner:
- c. a Returning Officer.

### 48. Offence for public servant or Returning Officer to sit

Every member of Parliament who sits or votes therein after his or her seat has become vacant by reason of that member having become a public servant or having been appointed as a Returning Officer, knowing that his or her seat is so vacant, shall be liable on conviction to a fine not exceeding \$400.

### 49. Candidate not disqualified if name removed from roll without cause

1. This section applies to a person—
  - a. who is qualified to be registered as an elector of an electoral district; and
  - b. whose name was entered on the electoral roll for that district; but
  - c. whose name has been subsequently removed from that electoral roll through no fault or failure of that person.
2. A person is not, by reason only of his or her name having been removed from an electoral roll, disqualified from becoming a candidate and being elected as a member of Parliament.

3. However, a person who consents to his or her nomination as a candidate must make a statutory declaration declaring that—
  - a. he or she is qualified to be registered as an elector of the electoral district in respect of which he or she was previously registered; and
  - b. his or her name was removed from the electoral roll for that district through no fault or failure of his or her own.
4. A person nominated as a candidate must, when giving his or her consent to the nomination, send the statutory declaration to—
  - a. the Returning Officer, if the person was nominated as a constituency candidate by registered electors under section 143; or
  - b. the party secretary, if the person is to be nominated as—
    - i. a constituency candidate by the party secretary under section 146D; or
    - ii. a list candidate.

## 50. Effect of registration on wrong roll

The nomination of any person as a candidate for election, or his or her election as a member of Parliament, shall not be questioned on the ground that, though entitled to be registered as an elector of any district, that person was not in fact registered as an elector of that district but was registered as an elector of some other district.

## 51. Member ceasing to be elector

A member of Parliament ceasing to be registered as an elector shall not from that cause only be disqualified from sitting as a member.

## 52. Candidacy and election of State servants

1. In this section, the term State servant—
  - a. means—
    - i. a public servant; and
    - ii. any other person whose conditions of employment are prescribed under, or are required by any enactment to be prescribed in accordance with or having regard to provisions of, the State Sector Act 1988; and
  - b. includes employees of the New Zealand Police.
2. Any State servant who desires to become a candidate for election as a member of Parliament shall be placed on leave of absence for the purposes of his or her candidature.

3. Subject to subsection (4), the period of leave shall commence on nomination day, and, in the event of his or her nomination as a constituency candidate or of the inclusion of his or her name in a list submitted under section 127, shall continue until the first working day after polling day, unless, in any case where he or she is a constituency candidate, he or she withdraws his or her nomination.
4. Where the employer of any State servant is satisfied that the State servant desires to become a candidate and that the candidacy will materially affect the ability of that State servant—
  - a. to carry out satisfactorily his or her duties as a State servant; or
  - b. to be seen as independent in relation to particular duties,—
 

the period of leave shall, if the employer so determines after consultation with the State servant, commence before nomination day on a day appointed by the employer.
5. During the period of his or her leave, the State servant shall not be required or permitted to carry out any of his or her official duties, nor shall he or she be entitled to receive any salary or other remuneration as a State servant in respect of that period or any part thereof, except to the extent to which he or she takes during that period any leave with pay to which he or she is entitled:
 

provided that a candidate who, at the time of his or her nomination or of the inclusion of his or her name in a list submitted under section 127, is a member of the staff of a university or a university college or a technical institute or a community college or a teachers college may continue to teach or supervise the studies of students at that university or university college or technical institute or community college or teachers college who are preparing for an examination and may engage in marking the examination papers of such students, and may receive remuneration in respect of such teaching, supervision, and marking.
6. Except as provided in the foregoing provisions of this section, a candidate's rights as a State servant shall not be affected by his or her candidature.

### 53. Members disqualified from being State servants

1. In this section, the term State servant has the meaning given to it by section 52(1).
2. If any State servant is elected as a member of Parliament, he or she shall forthwith on being declared so elected, be deemed, subject to subsections (3) to (6), to have vacated his or her office as a State servant.
3. Where a person who has been declared elected as the result of a poll is not the person declared elected on an amended declaration of the result of that poll or where, at the conclusion of the trial of an election petition, the High Court or Court of Appeal determines that the person whose election or return was complained of was not duly elected or returned or that the election at which that person was elected or returned was void, that person,—
  - a. if he or she was a State servant when he or she was declared to be elected; and
  - b. if by written election, given to his or her former employer within 1 month after the amended declaration or the determination of the High Court or Court of Appeal, he or she elects to be reinstated in his or her former office as a State servant,— he or she shall, on the date on which his or her election is so given to his or her employer, be deemed, subject to subsections (4) to (6), to have been reinstated in his or her office as a State servant.

• Outside professions of legislators

• Outside professions of legislators

4. Nothing in this section shall entitle any person who is reinstated in office as a State servant to receive any salary or other remuneration as a State servant in respect of the period or any part of the period beginning on the day after the date on which he or she vacated office under subsection (2) and ending with the day before the date on which he or she resumed office under subsection (3).
5. Where the position that the person held at the date on which he or she vacated office has been filled or where that position no longer exists, that person shall, on his or her reinstatement, be employed, where practicable and at the discretion of his or her employer, in a position that involves duties and responsibilities which are the same or substantially the same as those of the position held at the time of vacation of office.
6. Subject to subsection (4), where a person is reinstated in office under this section,—
  - a. his or her service, for the purpose of any rights and benefits that are conditional on unbroken service, shall not be broken by the period of vacation of office; and
  - b. the period of vacation of office shall count—
    - i. as time served under his or her contract of employment; and
    - ii. subject to payment of his or her contributions, as service for the purpose of any superannuation scheme to which he or she belongs in his or her capacity as a State servant.

## Subpart 5: Term of office of member of Parliament

### 54. Term of office of member of Parliament

1. Where an election is held for any electoral district, the person whose name is endorsed on the writ issued for the election as the person declared to be elected shall, subject to this Act,—
  - a. come into office as the member of Parliament for that electoral district on the day after the day of the return of that writ; and
  - b. vacate that office at the close of polling day at the next general election.
2. Where any person whose name is entered on a party list submitted pursuant to section 127, is declared by the Electoral Commission to be elected as a member of Parliament, the person shall, subject to this Act,—
  - a. come into office on the date after the date of the return made by the Electoral Commission pursuant to section 193; and
  - b. vacate that office at the close of polling day at the next general election.

• First chamber selection

• Electoral commission

## Subpart 6: Vacancies

### 55. How vacancies created

1. The seat of any member of Parliament shall become vacant—
  - a. if, otherwise than by virtue of being a head of mission or head of post within the meaning of the Foreign Affairs Act 1988, for one whole session of Parliament he or she fails, without permission of the House of Representatives, to give his or her attendance in the House; or
  - b. if he or she takes an oath or makes a declaration or acknowledgement of allegiance, obedience, or adherence to a foreign State, foreign Head of State, or foreign Power, whether required on appointment to an office or otherwise; or
  - c. if he or she does or concurs in or adopts any act whereby he or she may become a subject or citizen of any foreign State or Power, or entitled to the rights, privileges, or immunities of a subject or citizen of any foreign State or Power; or
  - ca. if he or she ceases to be a New Zealand citizen; or
  - cb. if he or she accepts nomination as, or otherwise agrees to be, a candidate for election, or agrees to appointment as—
    - i. a member of Parliament (or other governing body) of a country, State, territory, or municipality, in any country other than New Zealand; or
    - ii. a member of any governing body of any association of countries, States, territories, or municipalities exercising governing powers, of which New Zealand is not a member (for example, the European Union); or
  - d. if he or she is convicted of an offence punishable by imprisonment for life or by 2 or more years' imprisonment, or is convicted of a corrupt practice, or is reported by the High Court in its report on the trial of an election petition to have been proved guilty of a corrupt practice; or
  - e. if he or she becomes a public servant; or
  - ea. if he or she is appointed as a Returning Officer; or
  - f. if he or she resigns his or her seat by signing a written notice that is addressed and delivered to the Speaker; or
  - g. if on an election petition the High Court or Court of Appeal declares his or her election void; or
  - h. if he or she dies; or

- i. if he or she becomes mentally disordered, as provided in section 56; or
  - j. [Repealed]
2. Notwithstanding anything in subsection (1)(c), where a member of Parliament marries a person who is a subject or citizen of a foreign State or Power and the laws of that foreign State or Power confer on that member of Parliament by reason of that marriage, citizenship of that foreign State or Power or the rights, privileges, or immunities of a subject or citizen of that foreign State or Power, the seat of a member of Parliament shall not become vacant by reason only of the marriage.

### **55AA. Dual or multiple citizenship permissible in certain circumstances**

Despite section 55(1)(b) and (c), the seat of a member of Parliament does not become vacant by reason only of the member—

- a. becoming a subject or citizen of any foreign State or Power, or entitled to the rights, privileges, or immunities of a subject or citizen of any foreign State or Power, by reason only of the member's—
  - i. country or place of birth; or
  - ii. descent; or
- b. renewing a passport or travel document that was issued to him or her by a foreign State or Power before the member took office.

### **55A. Member ceasing to be parliamentary member of political party**

[Expired]

### **55B. Notice from member**

[Expired]

### **55C. Notice from parliamentary leader of party**

[Expired]

### **55D. Form of statement to be made by parliamentary leader**

[Expired]

### **55E. Definitions**

[Expired]



## 56. Member becoming mentally disordered

1. Where a member of Parliament is, or is deemed to be, subject to a compulsory treatment order made under Part 2 of the Mental Health (Compulsory Assessment and Treatment) Act 1992, the court by which the order is made shall, as soon as may be, give a notice to the Speaker of the making of the order.
2. Where a member of Parliament is received or detained in a hospital in accordance with an inpatient order made under Part 2 of the Mental Health (Compulsory Assessment and Treatment) Act 1992, the person in charge of that hospital shall, as soon as may be, give notice to the Speaker of the reception or detention.
3. Where the Speaker receives a notice under subsection (1) or subsection (2), the Speaker shall forthwith transmit the notice to the Director-General of Health, who, together with some medical practitioner named by the Speaker, shall without delay visit and examine the member to whom the notice relates, and shall report to the Speaker whether the member is mentally disordered.
4. If the report is to the effect that the member is mentally disordered the Speaker shall, at the expiration of 6 months from the date of the report if Parliament is then in session, and, if not, then as soon as may be after the date of the commencement of the next ensuing session, require the said Director-General, together with the said medical practitioner or some other medical practitioner named by the Speaker, again to visit and examine the member; and, if they report that he or she is still mentally disordered, the Speaker shall forthwith lay both reports before the House of Representatives, and thereupon the seat of the member shall be vacant.
5. Every person having charge of any hospital in which any member of Parliament is so received or detained, who wilfully commits a breach of subsection (2) shall be liable on conviction to a fine not exceeding \$2,000.

## 57. Registrar of court to notify cause of vacancy in certain cases

1. The Registrar of the court in which any member of Parliament has been convicted of an offence punishable by imprisonment for life or by 2 or more years' imprisonment, or has been convicted of a corrupt practice, shall, within 48 hours after the conviction, notify the fact to the Speaker.
2. Every person commits an offence and shall be liable on conviction to a fine not exceeding \$100 who, being the Registrar of a court, fails to send any notice required by subsection (1).

## 58. Registrar of Births and Deaths to notify Speaker of death of member

1. The Registrar of Births and Deaths by whom the death of any member of Parliament is registered shall, within 12 hours of making the registration, notify the fact to the Speaker.
2. Every person commits an offence and shall be liable on conviction to a fine not exceeding \$100 who, being a Registrar of Births and Deaths, fails to send any notice required by subsection (1).

## 59. No person to be candidate for more than 1 district or on more than 1 list

1. No person shall at any general election be—
  - a. a candidate for more than 1 electoral district; or
  - b. a candidate whose name is included on more than 1 party list submitted pursuant to section 127.
2. If 2 or more by-elections are held on the same polling day, no person shall be a candidate at more than 1 of those by-elections.
3. At any general election, any person may be both—
  - a. a candidate for any one electoral district; and
  - b. a candidate whose name is included on any one party list submitted pursuant to section 127.
4. If any person breaches subsection (1) or subsection (2), all nominations of that person as a candidate for those districts, party lists, or by-elections, as the case may be, shall be void, and any deposits made by him or her or on his or her behalf shall be forfeited and be paid into a Crown Bank Account.

## Subpart 7: Persons qualified to vote

### 60. Who may vote

Subject to the provisions of this Act, the following persons, and no others, shall be qualified to vote at any election in any district, namely,—

- a. any person whose name lawfully appears on the main roll or any supplementary roll for the district and who is qualified to be registered as an elector of the district:
- b. any person—
  - i. who is qualified to be registered as an elector of the district; and
  - ii. who is registered as an elector of the district as a result of having applied for registration as an elector of the district before polling day:
- c. any person who is qualified to be registered as an elector of the district, and was at the time of the last preceding election duly registered as an elector of the district or, where a change of boundaries has intervened, of some other district in which his or her then place of residence within the first-mentioned district was then situated:
- d. any person—
  - i. who is qualified to be registered as an elector of the district; and

- ii. who is registered as an elector of the district as a result of having applied, since the last preceding election and before polling day, for registration as an elector of the district or, where a change of boundaries has intervened, of some other district in which that person's then place of residence within the first-mentioned district was then situated:
- e. any person who is qualified to be registered as an elector of the district pursuant to section 74 and who resides on Campbell Island or Raoul Island or has resided on either of those Islands at any time in the 1 month before polling day:
- f. any member of the Defence Force who is outside New Zealand, if he or she is or will be of or over the age of 18 years on polling day, and his or her place of residence immediately before he or she last left New Zealand is within the district.

## 61. Special voters

1. A person who is qualified to vote at any election in any district may vote as a special voter if—
  - a. that person's name does not appear on the main roll or any supplementary roll for the district or has been wrongly deleted from any such roll:
  - b. the person intends to be absent or is absent from the district on polling day:
  - c. the person intends to be outside New Zealand on polling day or is outside New Zealand on polling day:
  - d. the person is, by reason of illness, infirmity, pregnancy, or recent childbirth, unable to attend to vote at any polling place in the district:
  - e. the person is, by reason of a religious objection, unable to attend to vote on the day of the week on which polling day falls:
  - f. the person satisfies the Returning Officer or issuing officer that on any other ground it will not be practicable for that person to vote at a polling place in the district without incurring hardship or serious inconvenience.
2. A person who is registered as an elector of a Maori electoral district and who is qualified to vote at any election in that district may vote as a special voter not only on the grounds set out in subsection (1) but also on the ground that the person attends to vote on polling day at a polling place that is not a polling place for that district.
3. A person whose name appears on the main roll or any supplementary roll for an electoral district and who is qualified to vote at an election in that district may vote as a special voter if the person—
  - a. applies to vote in person before polling day; and

- b. does so within that district or at an office maintained by the Returning Officer of that district.

## Part 4: Registration of political parties and party logos

### Subpart 1: Registration of political parties

#### 62. Register of Political Parties

1. Subject to this Part, an eligible political party may be registered for the purposes of this Act.
2. The Electoral Commission shall establish and maintain a Register, to be known as the Register of Political Parties, containing a list of the political parties registered under this Part.

#### 63. Application for registration

1. An application for the registration of an eligible political party may be made to the Electoral Commission—
  - a. by the secretary of the party; or
  - b. by any member of Parliament who is a current financial member of that party.
2. An application for the registration of an eligible political party—
  - a. shall be in writing; and
  - b. shall be signed by the applicant; and
  - c. must—
    - i. set out the name of the party; and
    - ii. if the party wishes to be able to use for the purposes of this Act an abbreviation of its name, set out the name of that abbreviation; and
    - iii. set out the name and address of the applicant and the capacity in which he or she makes the application; and
    - iv. if the applicant is not the secretary of the party, set out the name and address of the secretary of the party; and
    - v. set out the name and address of the person eligible under section 206K who is to be appointed as the auditor of the party, and be accompanied by that person's signed consent to the appointment; and

• Electoral commission

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- vi. be accompanied by evidence, in a form approved by the Electoral Commission, that the party has at least 500 current financial members who are eligible to enrol as electors; and
  - vii. 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 that the party has at least 500 current financial members who are eligible to enrol as electors; and
  - viii. [Repealed]
- ca. must 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 must state that the party intends, at general elections,—
- i. to submit a list of candidates under section 127; or
  - ii. to have 1 or more constituency candidates stand for the party or for a related political party; or
  - iii. both; and
- 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 1 or more component parties; and
  - ii. where the party has 1 or more component parties, state the name of each component party; and
- e. must be accompanied by the application fee payable under section 63A.
3. Upon receipt of an application for the registration of a political party, the Electoral Commission shall deal with the application in accordance with this Part and determine whether the party can be registered.
4. Notwithstanding subsection (3), the Electoral Commission shall not be obliged to deal with any application for registration if it receives notice in writing withdrawing the application from a person entitled to apply for the registration of that party and the Electoral Commission is satisfied that the application is made by that person on behalf of the party.
5. [Repealed]

### **63A. Application fee**

1. The fee payable on making an application under section 63 is \$500 (inclusive of goods and services tax).
2. The fee must be paid by—
  - a. direct credit to a bank account nominated by the Electoral Commission; or

- b. bank cheque.

## 64. Times when registration prohibited

1. At no time in the period that, in relation to a general election,—
  - a. commences on the date beginning with the issue of the writ for the election of members of Parliament for all electoral districts within New Zealand; and
  - b. ends with the day appointed as the latest day for the return of the writ containing the names of constituency candidates who are elected,—  
shall action be taken in relation to any application for the registration of a political party.
2. [Repealed]

## 65. Parties with certain names not to be registered

The Electoral Commission shall refuse an application for the registration of a political party if, in its opinion, the name of the party or any proposed abbreviation—

- a. is indecent or offensive; or
- b. is excessively long; or
- c. is likely to cause confusion or mislead electors; or
- d. contains any reference to a title or honour or similar form of identification.

## 65A. Certain logos not to be registered

[Repealed]

## 66. Other grounds on which registration may be refused

1. The Electoral Commission shall refuse an application for the registration of a political party if—
  - a. the application does not comply with section 63; or
  - b. if it is satisfied that the party does not have 500 current financial members who are eligible to enrol as electors.
2. Unless section 65 or subsection (1) applies, the Electoral Commission shall, subject to section 64, register the political party that is the subject of the application.
3. [Repealed]

## 67. Registration

- Electoral commission
- 1. Where the Electoral Commission determines that a political party should be registered, the Electoral Commission shall—
  - a. register the party by entering in the Register—
    - i. the name of the party; and
    - ii. if an abbreviation of the name of the party was set out in the application, that abbreviation; and
    - iii. the names of any separate political parties that are component parties of the party; and
  - b. give written notice to the applicant that the Electoral Commission has registered the party; and
  - c. cause notice of the registration of the party, including details of any component parties of the party, to be published in the Gazette.
  - d. [Repealed]
- Electoral commission
- 2. Where the Electoral Commission determines that an application for the registration of a political party should be refused, the Commission shall, as soon as reasonably practicable, and in any case not later than 10 working days after the date of the determination, give the applicant written notice that the Commission has refused the application, setting out the reasons for the refusal.
- 3. It shall be the duty of the secretary of any political party registered under this Act—
  - a. to supply the Electoral Commission with an address for service of all correspondence under this Part; and
  - b. to notify the Electoral Commission of any changes in the address for service of correspondence; and
  - c. to notify the Electoral Commission whenever a new secretary of the party is appointed; and
  - d. to notify the Electoral Commission if the number of current financial members of the party who are eligible to enrol as electors falls below 500; and
  - e. subject to subsection (4), to notify the Electoral Commission by way of a declaration in the manner provided by section 9 of the Oaths and Declarations Act 1957 whenever there is any change in the details recorded in the Register of Political Parties in respect of the party under subsection (1)(a)(iii).
  - f. [Repealed]
- 4. [Repealed]

## 67A. Registration of party logos

[Repealed]

## 68. Inspection of Register

Members of the public shall be entitled to inspect the Register of Political Parties without payment at any time between 9 am and 5 pm on any day on which the office of the Electoral Commission is open.

## 68A. Inspection of party logos

[Repealed]

## 69. Changes to Register

[Repealed]

## 69A. Changes to party logos

[Repealed]

## 70. Cancellation of registration

1. The Electoral Commission shall cancel the registration of a political party at the request of one of the persons specified in section 63(1) if satisfied that the request for cancellation is made by the applicant on behalf of the party.
- 1A. The provisions of section 64, with any necessary modifications, apply to every request under subsection (1).
2. The Electoral Commission shall cancel the registration of any political party on being satisfied that the number of current financial members of the party who are eligible to enrol as electors has fallen below 500.
- 2A. For the purposes of exercising the powers conferred on it by subsection (2), the Electoral Commission may require a political party to supply to it a list of the party's current financial members within any reasonable time that the Electoral Commission specifies.
3. Where the Electoral Commission cancels the registration of any political party, it shall, as soon as reasonably practicable, and in any event not later than 10 working days after the date of the cancellation,—
  - a. give, where the cancellation was effected under subsection (1), written notice of the cancellation to both the applicant for cancellation and the secretary of the political party:
  - b. give, where the cancellation was effected under subsection (2), written notice of the cancellation to the secretary or the last-known secretary of the political party, which written notice shall set out the reasons for the cancellation:
  - c. cause notice of the cancellation to be published in the Gazette.



## 70A. Cancellation of registration of party logo

[Repealed]

## 71. Requirement for registered parties to follow democratic procedures in candidate selection

Every political party that is for the time being registered under this Part shall ensure that provision is made for participation in the selection of candidates representing the party for election as members of Parliament by—

- a. current financial members of the party who are or would be entitled to vote for those candidates at any election; or
- b. delegates who have (whether directly or indirectly) in turn been elected or otherwise selected by current financial members of the party; or
- c. a combination of the persons or classes of persons referred to in paragraphs (a) and (b).

## 71A. Obligation to provide annual declaration regarding party

The secretary of any political party registered under this Act must ensure that the Electoral Commission receives by 30 April in each year a declaration made by the secretary in the manner provided by section 9 of the Oaths and Declarations Act 1957, which declaration must—

- a. state that the party intends, at general elections,—
  - i. to submit a list of candidates under section 127; or
  - ii. to have 1 or more constituency candidates stand for the party or for a related political party; or
  - iii. both; and
- b. state whether the party has at least 500 current financial members who are eligible to enrol as electors.

## 71B. Obligation to provide copy of party membership rules and candidate selection rules

1. The secretary of any political party registered under this Act must supply the Electoral Commission with the following:
  - a. a copy of the rules governing membership of the party:
  - b. a copy of the rules governing the selection of persons to represent that party as candidates for election as members of Parliament:

- c. a copy of any changes to the rules referred to in paragraph (a) or paragraph (b).
2. The copies required by subsection (1)(a) and (b) must be supplied within 1 month after notice of the registration of the party is notified in the Gazette in accordance with section 67(1)(c).
3. The copies required by subsection (1)(c) must be supplied within 1 month after the date on which the changes to the rules are adopted by the party.
4. Members of the public are entitled to inspect the documents supplied to the Electoral Commission under this section. They may inspect them, without payment, at any time between 9 am and 5 pm on any day on which the office of the Electoral Commission is open.

## Subpart 2: Registration of party logos

### 71C. Application for registration of party logo

1. An application may be made to the Electoral Commission to register the logo of a political party if the political party—
  - a. is registered under subpart 1; or
  - b. is unregistered, but an application has been made under subpart 1 to register that party and that application has not been determined by the Electoral Commission.
2. An application to register a party logo—
  - a. may be made by—
    - i. the secretary of the party; or
    - ii. any member of Parliament who is a current financial member of the party; and
  - b. must—
    - i. be in writing; and
    - ii. be signed by the applicant; and
    - iii. be accompanied by—
      - A. 2 identical representations of the party logo in a form satisfactory to the Electoral Commission that show the parts of the logo that are to be in colour and the PMS (Pantone Matching System) colours that are to be used for those parts when the logo is reproduced on the ballot paper; and
      - B. a black and white reproduction of the party logo in a form satisfactory to the Electoral Commission; and

iv. be accompanied by a declaration, made by the applicant in the manner provided for by section 9 of the Oaths and Declarations Act 1957, that the use of the logo by the political party will not be an infringement of an intellectual property right of any person, or a breach of any enactment; and

v. set out—

A. the name and address of the applicant, and the capacity in which he or she makes the application; and

B. the name and address of the secretary of the political party, if the applicant is not the secretary of the political party.

3. On receipt of an application to register a party logo, the Electoral Commission must deal with the application in accordance with this subpart and determine whether to register the party logo.

4. Subsection (3) does not apply if, before determining whether to register a party logo, the Electoral Commission—

a. receives from any person described in subsection (2)(a) written notice that the application to register the party logo is withdrawn; and

b. is satisfied the written notice is given by that person on behalf of the party.

## 71D. Grounds on which registration refused

1. The Electoral Commission must refuse an application to register the logo of a political party if—

a. the Electoral Commission has determined that the political party's application for registration should be refused (in the case of an application made under section 71C(1)(b)); or

b. the application does not comply with—

i. section 71C(2)(b)(iii); or

ii. section 71C(2)(b)(iv); or

c. the Electoral Commission has reasonable cause to believe that the declaration accompanying the application under section 71C(2)(b)(iv) is not correct; or

d. the Electoral Commission is of the opinion that the logo—

i. is indecent; or

ii. is offensive; or

• Electoral commission

• Electoral commission

• Restrictions on political parties

- iii. is likely to cause confusion or mislead electors; or
  - iv. contains any reference to a title or an honour or a similar form of identification.
2. If the Electoral Commission refuses an application to register the logo of a political party, the Electoral Commission must, as soon as is reasonably practicable, and in any case not later than 10 working days after the date of refusal, give the applicant written notice of—
- a. the refusal; and
  - b. the reasons for the refusal.

### **71E. Times when registration of party logos prohibited**

No action may be taken in relation to any application made under section 71C during the period that,—

- a. in relation to a general election,—
  - i. commences on the date beginning with the issue of the writ for the election of members of Parliament for all electoral districts within New Zealand; and
  - ii. ends with the day appointed as the latest day for the return of the writ containing the names of constituency candidates who are elected; and
- b. in relation to a by-election,—
  - i. commences on the date beginning with the issue of the writ for the by-election; and
  - ii. ends with the day appointed as the latest day for the return of the writ for the by-election.

### **71F. Registration of party logos**

If, on receipt of an application under section 71C, the Electoral Commission determines to register the logo of a political party, the Electoral Commission must—

- a. register the logo of the political party in the Register of Political Parties established under section 62(2); and
- b. give written notice of the registration to the applicant; and
- c. arrange for the registration to be published in the Gazette.

• Electoral commission

## 71G. Inspection of party logos

The Electoral Commission may publish, in any manner that the Electoral Commission considers appropriate, every party logo that is, or has been, registered in the Register of Political Parties.

## 71H. Changes to party logos

1. A person described in section 71C(2)(a) may, on behalf of a party whose logo has been registered, apply to the Electoral Commission to—
  - a. vary the form of the party logo; or
  - b. substitute a new party logo; or
  - c. amend the party logo to refer to the new name of the party in any case where there has been a change in the party name.
2. Sections 71C to 71F apply, with any necessary modifications, to an application made under subsection (1).

## 71I. Cancellation of registration of party logo

1. The Electoral Commission must cancel the registration of the logo of a political party if—
  - a. a person described in section 71C(2)(a) applies to cancel the registration of the logo and the Electoral Commission is satisfied that the application is made on behalf of the political party; or
  - b. the registration of the political party is cancelled under section 70; or
  - c. the Electoral Commission is satisfied that the use of the logo by the political party constitutes an infringement of an intellectual property right or a breach of an enactment.
2. Section 71E applies, with any necessary modifications, to an application made under subsection (1)(a).
3. If the Electoral Commission cancels the registration of the logo of a political party, the Electoral Commission must, as soon as is reasonably practicable and in any case not later than 10 working days after the date of cancellation,—
  - a. give written notice of the cancellation and the reasons for the cancellation to—
    - i. the applicant, if the registration of the logo was cancelled under subsection (1)(a) on the application of a person described in section 71C(2)(a)(ii); and
    - ii. the secretary of the political party; and
  - b. arrange for the cancellation to be published in the Gazette.

## Part 5: Registration of electors

### 72. Rules for determining place of residence within New Zealand

1. Subject to the provisions of this section, the place where a person resides within New Zealand at any material time or during any material period shall be determined for the purposes of this Act by reference to the facts of the case.
2. For the purposes of this Act, a person can reside in one place only.
3. A person resides at the place where that person chooses to make his or her home by reason of family or personal relations, or for other domestic or personal reasons.
4. Where the property on which a person's home is located is divided between 2 or more electoral districts, that person shall,—
  - a. if his or her dwelling is located wholly within one of those electoral districts, be deemed to reside in that electoral district; or
  - b. in any other case, be deemed to reside in the electoral district in which is located—
    - i. the front door or other main entrance of his or her dwelling; or
    - ii. where his or her dwelling is an apartment, the front door or other main entrance of the building in which the apartment is situated.
5. A person who is detained in any prison or hospital by virtue of any enactment shall not, by reason only of that detention, be treated for the purpose of subsection (3) as residing there.
6. The place where, for the purposes of this Act, a person resides shall not change by reason only of the fact that the person—
  - a. is occasionally or temporarily absent from that place; or
  - b. is absent from that place for any period because of his or her service or that of his or her spouse, civil union partner, or de facto partner as a member of Parliament; or
  - c. is absent from that place for any period because of his or her occupation or employment or that of his or her spouse, civil union partner, or de facto partner; or
  - d. is absent from that place for any period because he or she, or his or her spouse, civil union partner, or de facto partner, is a student,— even if such absence involves occasional or regular residence at another place or other places.
7. Except as provided in subsection (8), a person who has permanently left his or her former home shall be deemed not to reside at that place, notwithstanding that his or her home for the time being is temporary only.

8. A New Zealand citizen who is outside New Zealand shall be deemed to reside where he or she had his or her last home in New Zealand; but nothing in this subsection shall affect the application of section 80(1)(a) for the purpose of determining the qualification of any person for registration as an elector.
9. Notwithstanding anything in this section, a person who is residing on, or has resided on, Campbell Island or Raoul Island and who, before residing on Campbell Island or Raoul Island resided in some other part of New Zealand, shall be deemed to reside, or to have resided, throughout that period of residence on Campbell Island or Raoul Island, in the place in New Zealand where that person had his or her last home before beginning residence on Campbell Island or Raoul Island.
10. In the case of a person who is appointed to be a member of the Executive Council, or who is the spouse, civil union partner, or de facto partner of any person so appointed, the following provisions shall apply notwithstanding anything to the contrary in this section, namely,—
  - a. so long as he or she holds that office he or she shall be deemed to continue to reside at the place of residence in respect of which he or she was registered as an elector of an electoral district (in this subsection referred to as the original district), notwithstanding his or her absence therefrom at the seat of Government or otherwise, unless and until he or she duly applies for registration as an elector of another electoral district of which he or she is, apart from the provisions of this paragraph, qualified to be an elector:
  - b. upon being registered as an elector of the other district pursuant to an application as aforesaid, the applicant shall cease to be entitled to continue to be registered under this subsection as an elector of the original district.
11. A person whose home is on any ship, boat, or vessel permanently located in any harbour shall be deemed to reside in the electoral district in which the wharf or landing place or the main wharf or landing place in the harbour is situated. If any question arises under this subsection as to the district in which the wharf or landing place or main wharf or landing place in any harbour is situated, it shall be determined by the Representation Commission.

### **73. Meaning of permanent resident of New Zealand**

For the purposes of this Act, a person is a permanent resident of New Zealand if, and only if, that person—

- a. resides in New Zealand; and
- b. is not—
  - i. a person to whom section 15 or 16 of the Immigration Act 2009 applies; or
  - ii. a person obliged by or under that Act to leave New Zealand immediately or within a specified time; or
  - iii. treated for the purposes of that Act as being unlawfully in New Zealand.

## Subpart 1: Qualification of electors

### 74. Qualification of electors

• Claim of universal suffrage

1. Subject to the provisions of this Act, every adult person is qualified to be registered as an elector of an electoral district if—
  - a. that person is—
    - i. a New Zealand citizen; or
    - ii. a permanent resident of New Zealand; and
  - b. that person has at some time resided continuously in New Zealand for a period of not less than 1 year; and
  - c. that electoral district—
    - i. is the last in which that person has continuously resided for a period equalling or exceeding 1 month; or
    - ii. where that person has never resided continuously in any one electoral district for a period equalling or exceeding 1 month, is the electoral district in which that person resides or has last resided.
2. Where a writ has been issued for an election, every person—
  - a. who resides in an electoral district on the Monday before polling day; and
  - b. who would, if he or she continued to reside in that electoral district until the close of polling day, have continuously resided in that electoral district for a period equalling or exceeding 1 month,—
 

shall (whether or not he or she does so continue to reside in that electoral district) be deemed, for the purposes of subsection (1)(c), to have completed on that Monday a period of 1 month's continuous residence in that electoral district.

• Electoral districts

### 75. Registration in respect of more than 1 electoral district

1. Subject to subsection (2), a person shall not be entitled to be registered as an elector of more than 1 electoral district.
2. Where an elector is qualified to be registered as an elector of an electoral district, his or her registration as an elector of that district shall not be invalid by reason only of the fact that at the time of that registration he or she was registered as an elector of a district for which he or she was not, or was no longer, qualified to be registered.
3. Notwithstanding that the validity of the registration of an elector of an electoral district is preserved by subsection (2), for the purposes of section 60, such an elector is not qualified, by virtue of that registration, to vote at an election unless, when the elector votes, he or she is no longer registered as an elector of another electoral district.



## 76. Maori option

1. Subject to this section and to sections 77 to 79, a Maori who possesses the qualifications prescribed in that behalf by this Act shall have the option of being registered either as an elector of a Maori electoral district or as an elector of a General electoral district.
2. Every such option shall be exercised—
  - a. at the time the Maori first qualifies and applies to be registered as an elector of any electoral district; or
  - b. in the case of a Maori who was not registered as an elector of any electoral district on the first day of the period last specified in a notice published under section 77(2), on the first subsequent application for registration as an elector; or
  - c. in any other case, in accordance with section 77 or section 78.

## 77. Periodic exercise of Maori option and determination of Maori population

1. Every elector who is a Maori may exercise periodically, in accordance with this section, the option given by section 76(1).
2. The Minister shall, in accordance with this section, specify from time to time, by notice in the Gazette, a period of 4 months during which any Maori may exercise the option given by section 76(1).
3. The Minister shall, as soon as practicable after the commencement of this section, and in accordance with section 269(2), publish the first notice under subsection (2).
4. Subject to subsections (3) and (5) and to section 269(2), the Minister shall, in every year that a quinquennial census of population is taken, but in no other year, publish a notice under subsection (2).
5. Notwithstanding subsection (4), where a Parliament is due to expire in a year in which a quinquennial census of population is to be taken, the Minister shall not, in that year, publish a notice under subsection (2), but shall instead, in the year following the year in which the quinquennial census of population is taken, publish such a notice.
6. For the purpose of enabling the Government Statistician to calculate the Maori electoral population, the Electoral Commission shall, as soon as practicable after the last day of each period specified in a notice published under subsection (2), supply to the Government Statistician—
  - a. the total number of persons registered as electors of the Maori electoral districts as at the close of that last day; and
  - b. the total number of persons registered as electors of the General electoral districts, who, as at the close of that last day, are recorded as having given written notice to the Registrar that they are persons of New Zealand Maori descent; and
  - c. the total number of persons whose names are shown on the dormant rolls maintained under section 109 for the Maori electoral districts; and

- d. the total number of persons whose names are shown on the dormant rolls maintained under section 109 for General electoral districts who are recorded as having given written notice that they are persons of New Zealand Maori descent.

## 78. Exercise of Maori option

1. A Maori who is registered as an elector on the first day of an option period may exercise once in that period the Maori option.
2. The Registrar must send by post on the first day of an option period a notice in the prescribed form to—
  - a. every person registered as an elector of a Maori electoral district; and
  - b. every person registered as an elector of a General electoral district who has,—
    - i. in his or her application for registration as an elector, specified that he or she is a Maori; or
    - ii. in response to an inquiry under section 89D, notified the Registrar that he or she is a Maori.
3. Subsection (4) applies to every Maori—
  - a. who receives a notice sent under subsection (2); and
  - b. who—
    - i. being registered as an elector of a Maori electoral district, wishes to be registered as an elector of a General electoral district; or
    - ii. being registered as an elector of a General electoral district, wishes to be registered as an elector of a Maori electoral district.
4. A Maori to whom this subsection applies may exercise the Maori option by advising whether he or she wishes to be registered as an elector of—
  - a. a General electoral district; or
  - b. a Maori electoral district.
5. A Maori who wishes to exercise the Maori option under subsection (4) must advise the Registrar as to which option he or she has chosen by—
  - a. indicating his or her choice on the notice received under subsection (2), adding his or her signature and the date, and then returning the notice to the Registrar:
  - b. indicating his or her choice using an approved electronic medium:

- c. completing an application for registration as an elector in accordance with section 83.
- 6. A Maori who is outside New Zealand, or who has a physical or mental impairment may exercise the Maori option through a representative, and section 86 applies with any necessary modifications.
- 7. On receipt of any advice under subsection (5), the Registrar must send that advice to the Registrar in whose district the Maori resides.
- 8. Advice received under subsection (5) is deemed to be an application for registration as an elector for the purposes of—
  - a. the definition of electoral roll in section 3(1); and
  - b. sections 89A, 98, and 103.
- 9. A Maori who receives a notice sent under subsection (2) but who does not exercise the option given by section 76(1) in the option period continues to be registered on the roll as an elector of the electoral district in which he or she is currently registered.
- 10. If a notice returned to a Registrar under subsection (5)(a) is received by the Registrar by post after the end of the option period but not later than noon on the day after the last day of that period, the notice is deemed to have been received in that option period, and the elector must, if the notice is otherwise in order, be deemed to have exercised the option given by section 76(1) in that option period.
- 11. If a notice returned to a Registrar under subsection (5)(a) is received by the Registrar within the option period but that notice does not comply with the requirements for signing and dating, the Registrar may treat the notice as being in accordance with those requirements before the end of that option period if the non-compliance is remedied within 6 days after the end of that option period.
- 12. For the purposes of this section,—
  - Maori option means the option provided by section 76(1)
  - option period means the period specified in a notice published under section 77(2)
  - person registered as an elector includes a person of or over the age of 17 years who has had an application under section 82(2) to register as an elector accepted by a Registrar of Electors.

## 79. Restriction on transfer between General and Maori electoral rolls

Except as provided in sections 76 to 78,—

- a. no Maori may transfer from a General electoral roll to a Maori electoral roll or vice versa:
- b. no Maori whose name has been removed from an electoral roll or who ceases to be qualified as an elector of an electoral district may be registered as an elector for a different type of electoral district.

## 80. Disqualifications for registration

• Restrictions on voting

1. The following persons are disqualified for registration as electors:
  - a. a New Zealand citizen who (subject to subsection (3)) is outside New Zealand and has not been in New Zealand within the last 3 years:
  - b. a permanent resident of New Zealand (not being a New Zealand citizen) who (subject to subsection (3)) is outside New Zealand and has not been in New Zealand within the last 12 months:
  - c. a person who is detained in a hospital under the Mental Health (Compulsory Assessment and Treatment) Act 1992 or in a secure facility under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, and to whom one of the following applies:
    - i. the person has been found by a court or a Judge to be unfit to stand trial within the meaning of the Criminal Procedure (Mentally Impaired Persons) Act 2003, or has been acquitted on account of his or her insanity, and (in either case) is detained under an order or direction under section 24 or section 31 or section 33 of that Act or under the corresponding provisions of the Criminal Justice Act 1985 and has been so detained for a period exceeding 3 years:
    - ii. the person has been found by a court, on conviction of any offence, to be mentally impaired, and is detained under an order made under section 34 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 or section 118 of the Criminal Justice Act 1985, and has been so detained for a period exceeding 3 years:
    - iii. the person is subject to, and has for a period exceeding 3 years been subject to, a compulsory treatment order made following an application under section 45(2) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 or a compulsory care order made following an application under section 29(1) of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003:
    - iv. the person is detained under section 46 of the Mental Health (Compulsory Assessment and Treatment) Act 1992, and is a person to whom paragraph (d) would otherwise apply:
  - d. a person who is detained in a prison pursuant to a sentence of imprisonment imposed after the commencement of the Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010:
  - e. a person whose name is on the Corrupt Practices List made out for any district.

2. The Registrar of the court in which any compulsory treatment order or any order under section 24 or section 34 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 is made or any person is convicted of a corrupt practice shall, not later than the fifth day of the month next succeeding the date of the order or conviction, forward to the Registrar of Electors of the electoral district in which the patient or offender was residing a certificate showing the name, place of abode, and description of the patient or offender and particulars of the order or conviction.
3. Nothing in subsection (1)(a) or (b) applies to—
  - a. a person, being—
    - i. a public servant or a member of the Defence Force; or
    - ii. a head of mission or head of post within the meaning of the Foreign Affairs Act 1988, who is outside New Zealand in the course of that person's duties; or
    - iii. an officer or employee of New Zealand Trade and Enterprise established by the New Zealand Trade and Enterprise Act 2003; or
  - b. a person who—
    - i. is accompanying a person described in subparagraph (i) or subparagraph (ii) or subparagraph (iii) of paragraph (a) who is outside New Zealand in the course of that person's duties; and
    - ii. is the spouse, civil union partner, de facto partner, or child of the person referred to in subparagraph (i), or the child of the spouse, civil union partner, or de facto partner of that person.

## 81. Detention in prison pursuant to sentence of imprisonment

1. Where a person who has been sentenced to imprisonment is received into a prison in which that person is to serve the whole or part of the sentence, the prison manager of that prison shall, not later than the seventh day after the day on which the prisoner is received into the prison, forward to the Electoral Commission a notice—
  - a. showing the name, previous residential address, and date of birth of that person; and
  - b. showing the name and address of the prison.
  - c. [Repealed]
2. The Electoral Commission shall, on receiving a notice under subsection (1), forward a copy of that notice to the appropriate Registrar of Electors.
3. In subsection (1), prison manager has the meaning given to it by section 3(1) of the Corrections Act 2004.

## Subpart 2: Registration

### 82. Compulsory registration of electors

1. A person who is qualified to be registered as an elector of any electoral district and who is in New Zealand must apply to a Registrar of Electors for registration as an elector—
  - a. within 1 month after the date on which he or she first becomes qualified to be registered as an elector:
  - b. within 1 month after the date on which he or she ceases to be registered as an elector by reason of the inclusion of his or her name on the dormant roll under section 89G.
2. Any person aged 17 years or older, but under 18 years, may apply to a Registrar of Electors for registration as an elector, and that person is not then required to apply for registration as an elector on attaining the age of 18 years.
3. A person who is qualified to be registered as an elector of any electoral district and who is outside New Zealand may apply at any time to a Registrar of Electors for registration as an elector.
4. Where a Maori is qualified to be registered as an elector of both a Maori electoral district and a General electoral district, that person may apply for registration as an elector of only one of those districts, being the district in respect of which that person has exercised his or her option under section 76.
5. A person commits an offence against this section who, being required by this section to apply for registration as an elector during any period, knowingly and wilfully fails to apply.
6. A person who applies for registration as an elector is not liable to prosecution for his or her earlier failure to apply for registration as an elector.
7. A person who commits an offence against this section is liable on conviction to a fine not exceeding—
  - a. \$100 on a first conviction; and
  - b. \$200 on a second or subsequent conviction.

### 83. Application for registration

1. An application for registration as an elector may be made to a Registrar of Electors—
  - a. in writing, by completing and signing the prescribed form and returning it to the Registrar of Electors; or
  - b. in an approved electronic medium, by providing the information necessary to complete the prescribed form.
2. An application for registration as an elector must state, in respect of the person making the application,—
  - a. the person's full name; and

- b. the person's date of birth; and
  - c. the place of residence in respect of which registration is claimed, specified in a manner that enables it to be clearly identified; and
  - d. the person's postal address, if different from the address given under paragraph (c); and
  - e. the person's occupation, if any; and
  - f. the honorific (if any) by which the person wishes to be addressed; and
  - g. whether or not the person is a Maori; and
  - h. any other particulars that are prescribed in regulations.
3. A Registrar of Electors may reject an application for registration as an elector if—
- a. the application is made under subsection (1)(a) and the prescribed form is not—
    - i. signed; or
    - ii. completed with the details specified in subsection (2)(a), (b), (c), and (h); or
  - b. the application is made under subsection (1)(b) and the information provided does not include the details specified in subsection (2)(a), (b), (c), and (h).
4. If a person does not specify in his or her application whether he or she is a Maori, this Act applies as if the person had specified in his or her application that he or she is not a Maori.
5. An application for registration as an elector that is rejected by the Registrar of Electors is treated as not having been made.
6. Where it appears to a Registrar of Electors that a person who has applied for registration as an elector in an electoral district is qualified to be registered as an elector in another electoral district, the Registrar must immediately send that person's application to the Registrar of Electors of that other district.

### **83A. Procedure following inquiry under section 83**

[Repealed]

### **83B. No form of inquiry required if application for registration as elector received**

[Repealed]

### **83C. Elector who cannot be contacted to be included in dormant roll**

[Repealed]

### **83D. Transfer of electors between electorates**

[Repealed]

## **84. Registration of persons outside New Zealand**

A person who is outside New Zealand may apply for registration as an elector under section 83 through a representative, and section 86 applies with any necessary modifications.

## **85. Registration of persons who have physical or mental impairment**

A person who has a physical or mental impairment may apply for registration as an elector under section 83 through a representative, and section 86 applies with any necessary modifications.

## **86. Representatives**

1. A representative acting on behalf of a person must, when making any application or giving any notification, provide a statement that—
  - a. sets out the capacity in which he or she is acting; and
  - b. confirms that he or she is duly authorised to act in making that application or providing that information.
2. A statement under subsection (1) must be provided—
  - a. in writing, by completing and signing a form approved for the purpose by the Electoral Commission; or
  - b. in an approved electronic medium, by providing the information necessary to complete the form.

## **87. Procedure if immigration status means applicant apparently not qualified to be registered**

1. This section applies in accordance with section 263A(6)(a) if the Electoral Commission under section 263A(5) advises the Registrar of an electoral district that a comparison carried out pursuant to section 263A(4) indicates that a person who has applied to be (but is not yet) registered as an elector of the electoral district is a person who the chief executive of the responsible department (as defined in section 263A(1)) believes is—
  - a. unlawfully in New Zealand; or



- b. a person who is lawfully in New Zealand but only by virtue of being the holder of a temporary entry class visa of whatever type.
- 2. When this section applies the Registrar must comply with subsections (3) to (5) before determining under section 87 whether the applicant for registration as an elector is qualified to be registered.
- 3. The Registrar must within 5 working days of receiving that advice deliver to the applicant for registration personally, or send by post to that person, a written notice (in this section referred to as a or the notice) communicating—
  - a. the advice that the Registrar received under section 263A(5) in respect of the applicant; and
  - b. that the Registrar may determine that the applicant's immigration status means that the applicant is not qualified to be registered as an elector if information to the contrary is not made available to the Registrar by or on behalf of the applicant within 5 working days after the applicant receives the notice.
- 4. If no response to the notice is made to the Registrar by or on behalf of the applicant within 10 working days of the notice being delivered to the applicant personally, or sent by post to that person, the Registrar must promptly deliver to the applicant for registration personally, or send by post to that person, a written notice (in this section referred to as a or the further notice) communicating—
  - a. the advice that the Registrar received under section 263A(5) in respect of the applicant; and
  - b. the fact that, and the date on which, a notice was delivered to the applicant personally, or sent by post to that person; and
  - c. that the Registrar may determine that the applicant's immigration status means that the applicant is not qualified to be registered as an elector if information to the contrary is not made available to the Registrar by or on behalf of the applicant within 5 working days after the applicant receives the further notice.
- 5. The Registrar may determine under section 87 whether the applicant for registration as an elector is qualified to be registered only—
  - a. after considering any response to the notice or a further notice made to the Registrar by or on behalf of the applicant within 5 working days after the notice or a further notice was delivered to the applicant personally, or received by that person by post; or
  - b. if no response to a further notice is made to the Registrar by or on behalf of the applicant within 10 working days of the further notice being delivered personally to the applicant, or received by that person by post.
- 6. A notice or further notice purportedly sent to the applicant by post—
  - a. is, in the absence of proof to the contrary, treated as having been received by that person by post on the fourth working day after the day on which it is sent by post; and

- b. is treated as sent by post to that person on a day if it is proved to have been properly addressed to that person and to have been submitted on that day to a person for the time being registered as a postal operator under the Postal Services Act 1998 for postage to that person.
7. If, after complying with subsections (3) to (5), the Registrar determines under section 87 that the applicant for registration as an elector is not qualified to be registered, the Registrar must deliver to the applicant for registration personally, or send by post to that person, a written notice communicating the determination.

## 88. Applications received after issue of writ

1. Where a writ has been issued requiring the conduct of an election in a district, then, subject to subsections (2) and (3), the Registrar shall not, at any time in the period beginning on polling day and ending with the day of the return of the writ, register any application for registration as an elector that the Registrar receives on or after polling day.
2. For the purposes of subsection (1), an application for registration shall be deemed to have been received before polling day if—
  - a. the application or the envelope in which it is contained bears a postmark or date stamp impressed at any New Zealand Post outlet or agency before polling day; or
  - b. the applicant for registration produces a receipt which relates to the application and which was issued by any New Zealand Post outlet or agency before polling day.
  - c. [Repealed]
3. Where any person applies for registration after a writ has been issued requiring the conduct of an election in a district and before polling day,—
  - a. the Registrar shall, if the Registrar is satisfied that that person is qualified to be registered, forthwith enter the name of that person on the electoral roll; and
  - b. the Registrar shall not be required to enter the name of that person on the main roll or any supplementary roll or composite roll used at that election; and
  - c. that person may, at that election, vote only by way of a special vote.

## 89. Procedure following application for registration

1. If the Registrar is satisfied that any applicant for registration as an elector (whether by transfer from another district, or otherwise) is qualified to be registered, he or she shall forthwith enter the name of the applicant on the roll.

2. Where it appears to the Registrar that an applicant who is a Maori is prevented, by the manner in which he or she last exercised the option given by section 76, from being registered as an elector of the district to which his or her application relates, the Registrar shall forthwith send the application to the Registrar of the district in respect of which the applicant is entitled to be registered and shall notify the elector of his or her reasons for refusing the application and of the Registrar to whom the application has been sent.
3. Where an application for registration as an elector has been received before the issue of a writ and it has not been possible for the Registrar to ascertain, at the time of the issue of the writ, whether the applicant is currently registered as an elector of another electoral district, the Registrar shall, subject to subsection (4), include the name of the applicant on any main, supplementary, or composite roll printed as at writ day.
4. Notwithstanding anything in this Act, where the Registrar has, under subsection (3), included the name of any person on any main, supplementary, or composite roll printed as at writ day, the Registrar shall, within 6 days after writ day determine, either—
  - a. to enter the name of the applicant on the electoral roll; or
  - b. to delete the name of the applicant from that main, supplementary, or composite roll.

## 89A. Notice of registration

The Registrar must, not later than 14 days after the registration of a person as an elector, deliver to that person personally, or send to that person by post, written notice of the registration.

## Subpart 2A: Change of address

### 89B. Elector must give notice of change of place of residence within electoral district

1. This section applies to an elector who, being registered as an elector of an electoral district, changes his or her place of residence within that district.
2. The elector must, within 2 months after the date on which he or she changed his or her place of residence, give notice of—
  - a. the change of his or her place of residence; and
  - b. the address of the new place of residence.
3. Notice under subsection (2) must be given—
  - a. in writing to the Registrar for the electoral district in which the elector resides; or
  - b. in an approved electronic medium.
4. An elector who has a physical or mental impairment may give notice under subsection (2) through a representative, and section 86 applies with any necessary modifications.

5. On receiving a notice under subsection (2), a Registrar must—
  - a. amend the roll to record the change in the elector's place of residence; and
  - b. give confirmation to the elector, in accordance with section 94A, of that amendment.
6. An elector who knowingly and wilfully fails to comply with subsection (2)—
  - a. commits an offence and is liable on conviction to a fine—
    - i. not exceeding \$50 on a first conviction; and
    - ii. not exceeding \$100 on any subsequent conviction; but
  - b. is not, by reason only of that failure, disqualified from voting at an election in the electoral district in which he or she is registered.
7. Despite subsection (6), an elector who gives notice of the matters specified in subsection (2) after the expiry of the period referred to in that subsection but before the commencement of a prosecution is not liable for prosecution for his or her earlier failure to give notice.

### **89C. Elector must give notice of change of place of residence to different electoral district**

1. This section applies to an elector who, being registered as an elector of an electoral district, changes his or her place of residence to a different electoral district (the new electoral district).
2. After continuously residing in the new electoral district for a period of 1 month, the elector must, before the end of a further 1-month period, give notice of—
  - a. the change in his or her place of residence; and
  - b. the address of his or her new place of residence.
3. Notice under subsection (2) must be given—
  - a. in an approved electronic medium; or
  - b. by applying, under section 83, to Registrar B for registration as an elector; or
  - c. in writing (personally, or through an agent) to—
    - i. Registrar B; or
    - ii. Registrar A.
4. An elector who has a physical or mental impairment may give notice under subsection (2) through a representative, and section 86 applies with any necessary modifications.

5. If notice under subsection (2) is given by an elector in the manner permitted by subsection (3)(a), Registrar B must—
  - a. register that elector, in accordance with section 89, on roll B; and
  - b. give notice of that registration to—
    - i. the elector, in accordance with section 89A; and
    - ii. Registrar A, who must, in accordance with section 98(1)(a), remove the elector's name from roll A.
6. If notice under subsection (2) is given by an elector in the manner permitted by subsection (3)(b), Registrar B must—
  - a. deal with the application in accordance with sections 88 to 89A; and
  - b. if he or she registers the name of the elector on roll B, give notice of that registration to Registrar A, who must, in accordance with section 98(1)(a), remove the elector's name from roll A.
7. If notice under subsection (2) is given by an elector in the manner permitted by subsection (3)(c)(i), Registrar B must send that notification to Registrar A.
8. If notice under subsection (2) is given by an elector in the manner permitted by subsection (3)(c)(ii), or if a notification is received by Registrar A under subsection (7), subsections (9) to (13) apply.
9. If Registrar A believes that at least 1 month has elapsed since the change in the elector's place of residence, Registrar A must send to the elector a request for confirmation of the elector's new place of residence.
10. A request under subsection (9) must be made—
  - a. in writing, in the prescribed form, and contain—
    - i. the particulars of the enrolment of the elector to whom it is addressed; and
    - ii. the address of the elector's new place of residence; and
    - iii. provision for the elector to make changes to the information referred to in subparagraphs (i) and (ii); or
  - b. in an approved electronic medium that enables the elector to make changes to—
    - i. the elector's particulars of enrolment; and
    - ii. the particulars of the address of the elector's new place of residence.
11. An elector who receives a request made pursuant to subsection (10)(a) must, within the time stated by Registrar A, complete and sign the form and return it to Registrar B.

12. An elector who receives a request made pursuant to subsection (10)(b) may respond to that request by sending to Registrar B in an approved electronic medium confirmation of his or her new place of residence.
13. After a form is returned under subsection (11) or a response is received under subsection (12), Registrar B must—
  - a. register that elector, in accordance with section 89, on roll B; and
  - b. give notice of that registration to—
    - i. the elector in accordance with section 89A; and
    - ii. Registrar A, who must, in accordance with section 98(1)(a), remove the elector's name from roll A.
14. An elector who knowingly or wilfully fails to comply with subsection (2) commits an offence and is liable on conviction to a fine—
  - a. not exceeding \$100 on a first conviction; and
  - b. not exceeding \$200 on any subsequent conviction.
15. Despite subsection (14), an elector who gives notice of the matters specified in subsection (2) after the expiry of the period referred to in that subsection but before the commencement of a prosecution is not liable for prosecution for his or her earlier failure to give notice.
16. In this section,—
  - Registrar A, in relation to an elector, means the Registrar for the electoral district in which the elector previously resided
  - Registrar B, in relation to an elector, means the Registrar for the electoral district in which the elector currently resides
  - roll A, in relation to an elector, means the roll for the electoral district in which the elector previously resided
  - roll B, in relation to an elector, means the roll for the electoral district in which the elector currently resides.

## Subpart 2B: Updating of electoral rolls

### 89D. Inquiry to be made to update electoral rolls

1. Every Registrar must, at the times required by or under this section, direct an inquiry to be made in relation to the particulars on the roll for every person registered as an elector of the district.
2. An inquiry must be made,—
  - a. where practicable, within the period of 12 months ending with the day on which a Parliament is due to expire; and

- b. at any other time directed by the Electoral Commission.
- 3. In any year in which a triennial general election of members of any local authority must be held under the Local Electoral Act 2001, every Registrar of a district that is, in part or in whole, within the local government area of a local authority must direct an inquiry to be made concerning the particulars on the roll of every person who—
  - a. is registered as an elector of that district; and
  - b. appears from those particulars to reside within that local government area.
- 4. If a roll that is not yet in force has been compiled under section 101(1), the inquiry directed to be made under this section must be in respect of that roll.
- 5. Every inquiry made under subsection (1) must—
  - a. be in the prescribed form; and
  - b. contain the particulars on the roll for the elector to whom it is addressed; and
  - c. require the elector, if any of those particulars have changed or are incorrect, to notify the Registrar by—
    - i. changing or correcting on the form where provided any particular that is wrong, and returning the form; or
    - ii. using an approved electronic medium to make any change or correction required to the particulars.
- 6. An elector who has a physical or mental impairment may give a notification required by subsection (5) through a representative, and section 86 applies with any necessary modifications.
- 7. For the purposes of this section,—
  - a. a person registered as an elector includes any person of or over the age of 17 years who has had an application to register as an elector accepted by a Registrar of Electors; and
  - b. the particulars contained in the application to register are the particulars on the roll for that person.

### **89E. No inquiry required if application for registration as elector received**

If a Registrar receives, during an inquiry under section 89D(1), or within 28 days before the commencement of an inquiry under that section, a duly completed application for registration as an elector,—

- a. that application is deemed to be a completed form for the purposes of section 89D; and

- b. the Registrar must notify that elector that he or she will not receive an inquiry under section 89D.

## **89F. Procedure following inquiry under section 89D**

1. If, following an inquiry under section 89D, the Registrar receives notice under section 89D(5)(c) that an elector has changed his or her place of residence and now resides in another electoral district,—
  - a. the Registrar must,—
    - i. in accordance with section 98(1)(a), remove the elector's name from the roll for the district in which the elector previously resided; and
    - ii. ensure that the notification is sent to the Registrar for the new electoral district (the new Registrar); and
  - b. the notification is deemed to be an application for registration for the purposes of section 82; and
  - c. the new Registrar must register that elector, in accordance with section 89, on the roll for the district in which the elector resides.
2. If, following an inquiry under section 89D, the Registrar receives notice under section 89D(5)(c) of any change or correction to an elector's particulars, other than a change of place of residence referred to in subsection (1), the Registrar must amend the elector's particulars on the roll in accordance with that notification.
3. An elector remains on the roll and his or her particulars on the roll remain unchanged if—
  - a. the Registrar does not receive from the elector a form or information under section 89D(5)(c); or
  - b. the Registrar receives from the elector a form or information under section 89D(5)(c) with no changes.
4. A form that a person intends to return, or returns, under section 89D(5)(c)(i) must be signed and may be rejected for incompleteness, in accordance with subsections (1)(a), (2), and (3) of section 83 (which apply with all necessary modifications), as if the form were an application in respect of registration as an elector.
5. Information that an elector intends to supply, or supplies, electronically under section 89D(5)(c)(ii)—
  - a. is not an application in respect of registration as an elector required by section 83(1)(a) to be signed; but
  - b. may be rejected for incompleteness under section 83(3) (which applies with all necessary modifications) if it does not include all the details specified in section 83(2)(a), (b), (c), and (h).



## 89G. Elector who cannot be contacted to be included in dormant roll

1. This section applies if—
  - a. a Registrar is notified that an inquiry made under section 89D(1) or a notice sent under section 78(2) cannot be delivered to the elector to whom it is addressed because the whereabouts of the elector are not known; or
  - b. at any other time, the elector cannot be contacted at the elector's address on the roll.
2. If this section applies, a Registrar must—
  - a. make any inquiry as to the whereabouts of the elector that the Registrar thinks fit or that the Electoral Commission directs; and
  - b. if the Registrar is unable to contact the elector, remove the name of the elector from the roll and include the name in the dormant roll maintained under section 109.

### Subpart 3: Changes of address

[Repealed]

### 90. Changes of address to be notified

[Repealed]

### 91. Effect of failure to notify change of address

[Repealed]

### Subpart 4: Death of registered elector

### 92. Notification of death of registered elector

1. The Registrar-General appointed under section 79(1) of the Births, Deaths, Marriages, and Relationships Registration Act 1995 must, as soon as is reasonably practicable after the registration of the death of any person of or over the age of 17 years, notify the information described in subsection (2) to the Electoral Commission.
2. The information referred to in subsection (1) is the fact of the death, together with any particulars known to the Registrar-General appointed under section 79(1) of the Births, Deaths, Marriages, and Relationships Registration Act 1995 that may be required to enable the Electoral Commission—
  - a. to determine the electoral district in which the deceased person resided; and
  - b. to take appropriate steps in relation to the roll and other records.

## Subpart 5: Marriage or civil union of registered elector

### 93. Notification of marriages and civil unions

1. In this section, Registrar-General means the Registrar-General appointed under section 79(1) of the Births, Deaths, Marriages, and Relationships Registration Act 1995.
2. As soon as is reasonably practicable after the registration of a marriage under Part 7 of the Births, Deaths, Marriages, and Relationships Registration Act 1995, or the registration of a civil union under Part 7A of that Act, the Registrar-General must provide to the Electoral Commission the following information in respect of each of the parties to the marriage or civil union:
  - a. full name:
  - b. date of birth:
  - c. usual residential address:
  - d. date of marriage or civil union.
3. Subsection (4) applies if a party to the marriage or civil union is—
  - a. registered as an elector of any district; or
  - b. a person who has applied under section 82(2) for registration as an elector.
4. The Electoral Commission must—
  - a. send to the party to the marriage or civil union a notice asking for details of any changes resulting from the marriage or civil union that may be required to the name, address, and occupation under which he or she is registered on the roll; and
  - b. if a change is required, amend the roll in accordance with the details supplied.
5. If an amendment to the roll is required under subsection (4) and the amendment does not appear on the main or supplementary roll printed for any election, the person is, if otherwise qualified, entitled to vote at the election under his or her former name as it appears on the roll.

## Subpart 6: Change of name of registered elector

### 94. Notification of change of name

1. This section applies if a person registers a change of his or her name under section 21B of the Births, Deaths, Marriages, and Relationships Registration Act 1995.

2. The Registrar-General appointed under section 79(1) of the Births, Deaths, Marriages, and Relationships Registration Act 1995 must provide to the Electoral Commission the following information for the purposes of determining whether any change is required to the name and address under which that person is registered on the roll:
  - a. the old name and the new name of the person; and
  - b. the person's date of birth; and
  - c. the person's full residential address.

## **Subpart 7: Confirmation of change of name, address, or other particulars**

### **94A. Confirmation of change of name, address, or other particulars**

1. This section applies if the Registrar, in accordance with this Act, amends, in relation to any person whose name appears on the roll, any of the following particulars:
  - a. the place of residence of the person, following a change of residence within an electoral district; or
  - b. the name of the person; or
  - c. any other particulars of a kind specified in section 83(2)(d), (g), or (h).
2. The Registrar must, not later than 14 days after the roll is amended, deliver to that person personally, or send to that person by post, notice in writing of the amendment of the particulars on the roll.

## **Subpart 8: Objections to registration**

### **95. Elector's objection**

1. Any elector may at any time object to the name of any person being on the roll for any district on the ground that that person is not qualified to be registered as an elector of that district.
2. Every such objection—
  - a. shall be made in writing to the Registrar for the district; and
  - b. shall specify—
    - i. the name of the objector; and

- ii. sufficient particulars to inform the person objected to of the ground for the objection and the reason or reasons supporting the ground for objection.
3. Where the Registrar considers that the particulars included in an objection are insufficient to inform the person objected to of the ground for the objection or the reason or reasons supporting that ground, the Registrar shall by written notice require the objector to provide within 14 days of the giving of the notice such further particulars as the Registrar thinks fit.
4. Where any objector fails to comply with a notice given under subsection (3), the Registrar shall give a second such notice to the objector and, if the objector fails to comply with the second such notice, the Registrar shall take no further action in relation to the objection and shall notify the objector accordingly.

## 95A. Notice of elector's objection

1. Subject to subsections (3) and (4) of section 95, the Registrar shall, on receipt of an objection under section 95, forthwith serve on—
  - a. the person objected to; or
  - b. the person who, under section 12(1) of the Protection of Personal and Property Rights Act 1988, is the welfare guardian for the person objected to; or
  - c. the attorney appointed by the person objected to under an enduring power of attorney,—

notice in writing of the objection, which notice shall include both the name of the objector and the particulars specified by the objector (being particulars sufficient to inform the person objected to of the ground for the objection and the reason or reasons supporting the ground for objection).
2. Any notice issued under subsection (1) shall be served personally in accordance with the rules governing personal service contained in the District Courts Rules 1992.
3. The notice issued by the Registrar under subsection (1) shall also inform the person objected to—
  - a. that he or she may forward to the Registrar a statement signed by him or her giving reasons why his or her name should be retained on the roll; and
  - b. that his or her name will be retained on the roll if he or she provides the Registrar with evidence that satisfies the Registrar that the name of the person objected to should be retained on the roll; and
  - c. that if he or she fails to forward a statement to the Registrar within 14 days after the day on which that notice is served on the person objected to, the Registrar will, under section 95B, remove from the roll the name of the person objected to.
4. Where, after making such inquiry as he or she thinks fit, or the Electoral Commission directs, the Registrar is unable, after making at least 2 attempts to do so, to serve the notice of objection on that person personally, the Registrar shall remove the name of that person from the roll and include the name in the dormant roll maintained under section 109.

## 95B. Power to remove name from roll

Where, within 14 days after the day on which a notice under section 95A(1) or section 96(2) is served on the person objected to,—

- a. the person objected to; or
- b. the person who, under section 12(1) of the Protection of Personal and Property Rights Act 1988, is the welfare guardian for the person objected to; or
- c. the attorney appointed by the person objected to under an enduring power of attorney,— either fails to provide evidence of eligibility to be on the roll or notifies the Registrar that he or she consents to the removal from the roll of the name of the person objected to, the Registrar shall, unless the objection has been withdrawn by the objector, remove from the roll the name of the person objected to and shall notify the parties accordingly.

## 95C. Power to retain name on roll

Where, within 14 days after the day on which a notice under section 95A(1) or section 96(2) is served on the person objected to,—

- a. the person objected to; or
- b. the person who, under section 12(1) of the Protection of Personal and Property Rights Act 1988, is the welfare guardian for the person objected to; or
- c. the attorney appointed by the person objected to under an enduring power of attorney,—

provides the Registrar with evidence that satisfies the Registrar that the person objected to is qualified to be on the roll, the name of the person objected to shall be retained on the roll and the Registrar shall notify the parties accordingly.

## 95D. Reference of elector's objection to District Court

1. Unless,—
  - a. within 14 days after the day on which a notice under section 95A(1) or section 96(2) is served on the person objected to, the objection is withdrawn; or
  - b. the name of the person who is objected to is removed from the roll under section 95B or retained on the roll under section 95C,— the Registrar shall refer the objection to a District Court, and shall notify the parties of the time and place appointed for the hearing.
2. Subject to subsection (3), where any party notifies the Registrar that the party is dissatisfied with a decision of the Registrar made under section 95B or section 95C, the Registrar shall refer the objection to a District Court, and shall notify the parties of the time and place appointed for the hearing.

3. Any notification given by a party under subsection (2) shall be in writing and shall be given within 14 days after the day on which the party is notified by the Registrar under section 95B or section 95C, as the case may be.

## 96. Registrar's objection

1. The Registrar for any district may at any time object to the name of any person being on the roll for the district on the ground that the person is not qualified to be registered as an elector of that district.
2. The Registrar shall forthwith give to—
  - a. the person objected to; or
  - b. the welfare guardian appointed for the person objected to under section 12(1) of the Protection of Personal and Property Rights Act 1988; or
  - c. the attorney appointed by the person objected to under an enduring power of attorney,—notice in writing of the objection and of such particulars of the objection as are sufficient to inform the person objected to of the ground for the objection and the reason or reasons supporting the ground for objection.
3. The notice issued by the Registrar under subsection (2) shall be served personally in accordance with the rules governing personal service contained in the District Courts Rules 1992.
4. The notice issued by the Registrar under subsection (1) shall also inform the person objected to—
  - a. that he or she may forward to the Registrar a statement signed by him or her giving reasons why his or her name should be retained on the roll; and
  - b. that his or her name will be retained on the roll if he or she provides the Registrar with evidence that satisfies the Registrar that the name of the person objected to should be retained on the roll; and
  - c. that if he or she fails to forward a statement to the Registrar within 14 days after the day on which that notice is served on the person objected to, the Registrar will, under section 95B, remove from the roll the name of the person objected to.
5. Where, after making such inquiry as he or she thinks fit, or as the Electoral Commission directs, the Registrar is unable, after making at least 2 attempts to do so, to serve notice of objection on that person personally, the Registrar shall remove the name of that person from the roll and include the name in the dormant roll maintained under section 109.
6. Nothing in this section affects the provisions of this Act as to the removal of names from the roll by the Registrar.

## 97. Procedure on reference of application or objection to District Court

1. The following provisions of this section shall apply with respect to proceedings on the reference to a District Court of an objection under section 95 or section 96.

2. The Registrar of Electors, any objector, and the person objected to may appear before the court either in person or by some person appointed by him or her in writing or by a barrister or solicitor.
3. In the case of an objection, the person objected to may forward to the Registrar of the court a statement signed by him or her giving reasons why his or her name should be retained on the roll, and the court shall take any such statement into account in determining the objection.
- 3A. If a person objected to has a physical or mental impairment, that person's representative may sign and forward to the Registrar a statement giving reasons why the person's name should not be removed from the roll.
4. If any person objected to does not either appear or forward a statement as aforesaid, the court shall make an order that his or her name be removed from the roll.
5. Except as otherwise provided in this section, the name of any person objected to shall not be removed from the roll until the objection has been determined.
6. At the hearing of an objection no grounds of objection shall be taken into account except those specified in the particulars of the objection.
7. In any proceedings to which this section applies the court may make such order as to costs as the court thinks fit.
8. Subject to the provisions of this section, the ordinary rules of procedure of the court shall apply.
9. The Registrar of Electors shall make any additions, deletions, and alterations to the roll that may be necessary to give effect to the order of the court.

## **Subpart 9: Removal of names from roll and alterations to roll**

### **98. Removal of names from roll by Registrar**

1. Subject to subsection (6), the Registrar shall remove from the roll—
  - a. the name of every person who, consequent on a change in his or her place of residence,—
    - i. is not qualified to be registered as an elector of the district; and
    - ii. resides in, and is registered as an elector of, another district:
  - b. the name of every person of whose identity the Registrar is satisfied and whose death has been notified to the Registrar—
    - i. by any Registrar of Births and Deaths; or
    - ii. by the father, mother, or spouse, civil union partner, or de facto partner of that person or by a sister or brother of that person:
  - c. [Repealed]

- d. the name of every person who, as a result of an inquiry made at that person's address on the roll, the Registrar of Electors has reason to believe has ceased for 1 month or upwards to reside in the district:
  - e. the name of every person whose name is entered on the Corrupt Practices List made out for any district:
  - f. the name of every person whose disqualification under section 80—
    - i. is duly certified to the Registrar; or
    - ii. is duly notified to the Registrar under section 81:
  - g. the name of every person who, being a Maori,—
    - i. has indicated his or her choice, pursuant to section 78, to be registered as an elector for a different type of electoral district; or
    - ii. is registered in contravention of section 79:
  - h. where the roll is for a Maori electoral district, the name of every person who is not a Maori:
  - i. the name of every person who has been registered for the district—
    - i. by mistake; or
    - ii. by clerical error; or
    - iii. as a result of false information.
2. Notwithstanding anything in this Act, the Registrar, on being satisfied that the name of any person has been omitted or removed from the roll—
- a. by mistake; or
  - b. by clerical error; or
  - c. as a result of false information,—  
may place the name of that person on the roll at any time or restore the name of that person to the roll at any time.
3. In addition to other powers of alterations conferred by this Act, the Registrar may at any time, subject to subsection (6), alter the roll—
- a. by correcting any mistake or omission in the particulars of the enrolment of a person:
  - b. by striking out the superfluous entry when the name of a person appears more than once on the roll.



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4. Where—
  - a. a person has been registered as an elector of a district other than the district in which the person should have been registered; and
  - b. the person's name has, pursuant to subsection (1)(h) or subsection (1)(i), been removed from the roll of the district for which the person was correctly registered,-

the Registrar of the district in which the person should have been registered may, subject to subsection (6), place that person's name on the roll for that district.
5. Where, pursuant to this section, the name of a person is removed from the roll in the period commencing on the day after writ day and ending on the day before polling day, the Registrar shall, on removing that name, enter it on a list to be known as the list of post-writ day deletions.
6. No alteration pursuant to this section shall be made to the roll for a district in the period beginning on polling day and ending on the day after the day of the return of the writ.

## 99. Notice of alterations to roll

1. Where, pursuant to any of the provisions of paragraphs (c) to (i) of section 98(1), the name of a person is removed from the roll, the Registrar shall, in accordance with subsection (3) or subsection (4), deliver or send to that person, notice in writing of the removal of that person's name from the roll.
2. Where the name of a person (being a name which, pursuant to section 98(1)(h) or section 98(1)(i), has been removed from a roll) is entered, pursuant to section 98(4), on another roll, the Registrar who enters that person's name on that other roll shall, in accordance with subsection (3) or subsection (4), deliver or send to that person notice in writing of the entry of that person's name on that other roll.
3. Subject to subsection (4), the notice required by subsection (1) or subsection (2)—
  - a. shall be delivered to the person personally or sent to the person by post; and
  - b. shall be so delivered or sent not later than 14 days after the date on which,—
    - i. where the notice is required by subsection (1), the person's name is removed; or
    - ii. where the notice is required by subsection (2), the person's name is entered.
4. Where the name of a person is removed or entered, as the case may be, in the period beginning on the day after writ day and ending on the day before polling day, the notice required by subsection (1) or subsection (2) shall forthwith be delivered to that person personally.

## 100. Corrupt Practices List

1. Where it is proved before the Registrar for any district that any person who is registered or who applies for registration as an elector of the district has, within the immediately preceding period of 3 years,—
  - a. been convicted of a corrupt practice; or
  - b. been reported by the High Court in its report on the trial of an election petition to have been proved guilty of a corrupt practice,—
 the Registrar shall enter the name, residence, and description of that person and particulars of the conviction or report on a list to be called the Corrupt Practices List.
2. The Registrar shall remove the name of every person from the Corrupt Practices List at the expiration of 3 years from the date of the conviction or report in respect of which his or her name is entered on the list, or sooner if so ordered by the High Court.
3. Whenever a main roll is printed for the district, a copy of the Corrupt Practices List for the district shall be appended to it and printed and published with it.
4. Whenever a supplementary roll is printed for the district, a copy of so much of the Corrupt Practices List as has not been printed with the main roll or any existing supplementary roll for the district shall be appended to the supplementary roll and printed and published with it.

## Subpart 10: Electoral rolls

### 101. Electoral rolls

1. Where a notice is gazetted under section 40(1)(b) or section 45(9)(b), the Electoral Commission shall—
  - a. decide, on the basis of the then existing rolls, which of the electors are entitled to be registered as electors of each electoral district whose boundaries are fixed by the report to which the notice relates; and
  - b. compile for each electoral district whose boundaries are fixed by the report to which the notice relates a list of persons appearing to be entitled to be registered as electors of that electoral district (in this section called the compiled list).
2. For the purposes of any inquiry under section 89D which is considered before the dissolution or expiration of the Parliament in existence when any list is compiled pursuant to subsection (1)(b), the compiled list shall be the electoral roll for the district to which it relates.
3. For the purposes of the printing of the main rolls and the supplementary rolls, each compiled list shall, if the Electoral Commission so directs, be the electoral roll for the district to which it relates.
4. Where a compiled list is, under subsection (2) or subsection (3), the electoral roll for the district to which it relates, that electoral roll shall come into force on the dissolution or expiry of the then existing Parliament.
5. The compiled lists shall be compiled immediately before—
  - a. the next succeeding inquiry under section 89D; or

- b. the printing of the main rolls (where the Electoral Commission directs that, for the purposes of the printing of the main rolls and the supplementary rolls, each compiled list shall be the electoral roll for the district to which it relates),—  
whichever is the earlier.
- 6. Every roll to which subsection (4) applies, as it may be updated from time to time following an inquiry under section 89D, continues in force until a new roll for the district is compiled and comes into force.
- 7. The Registrar shall keep every roll to which subsection (4) applies up to date by making all such additions, alterations, and deletions as become necessary.

## 102. Maintenance of rolls being replaced

1. Where the Electoral Commission has compiled the lists referred to in section 101(1)(b), the respective Registrars of Electors shall not be obliged to keep up to date the rolls for the districts that were in existence immediately before the gazetting under section 40(1)(b) or section 45(9)(b) of the notice that immediately preceded the compilation of those lists.
2. Notwithstanding subsection (1), the Electoral Commission shall ensure that each Registrar of a district to which that subsection applies has available to him or her, until the roll for that district ceases to be in force, all information necessary to enable him or her to bring his or her roll up to date in the event of a by-election in that district (which information may include or consist of photocopies of original documents).
3. Where a by-election is to take place in a district to which subsection (1) applies, the Registrar of that district shall cause an up to date composite roll for the district to be closed and printed as at writ day for the by-election.
4. Where a by-election has taken place in a district to which subsection (1) applies, the Registrar of that district shall, after the time allowed for the filing of an election petition in respect of the by-election has expired or, where an election petition is filed in respect of that by-election, after that election petition has been finally disposed of, send to other Registrars of Electors such of the original applications for registration as electors held by him or her as the Electoral Commission specifies.

## 103. Rolls where Parliament dissolved after change of boundaries and before new rolls completed

1. Where a Parliament is dissolved in the period between the gazetting of a notice under section 40(1)(b) or section 45(9)(b) and the completion of the compilation of the rolls pursuant to section 101, the Electoral Commission shall—
  - a. comply with paragraphs (a) and (b) of section 101(1); and
  - b. direct which of the applications for registration as electors which constituted the rolls of the electoral districts that were defined immediately before the report to which that notice relates took effect shall be sent to the respective Registrars of the electoral districts fixed by that report.
2. Subject to subsection (3), each list compiled under section 101(1)(b) (as applied by subsection (1)(a) of this section) shall be the electoral roll for the district to which it relates and shall come into force as soon as it is compiled.

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3. The applications for registration sent, pursuant to a direction under subsection (1)(b), to the Registrar of an electoral district shall, on being received by that Registrar, constitute the electoral roll for the district and the electoral roll specified in subsection (2) shall (without its status as a main roll being affected) then cease to have effect as the electoral roll for the district.
4. Every electoral roll to which subsection (3) applies, as it may be updated from time to time following an inquiry under section 89D, continues in force until a new electoral roll for the district is compiled and comes into force.
5. The Registrar shall keep every electoral roll to which subsection (2) or subsection (3) applies up to date by making all such additions, alterations, and deletions as become necessary and any additions, alterations, and deletions made to an electoral roll to which subsection (2) applies shall be incorporated, where necessary, in the electoral roll which supersedes it by virtue of subsection (3).

• Electoral districts

## 104. Main roll to be printed

1. The Registrar for every district shall, at least once in each year, cause to be printed a main roll for the district, which shall contain a list of all persons whose names are lawfully on the electoral roll for the district on a date to be fixed for the closing of the main rolls.
2. The date to be fixed for the purposes of subsection (1) shall,—
  - a. in the case of a year in which Parliament is due to expire, be fixed by the Governor-General by Order in Council published in the Gazette; and
  - b. in the case of any other year, be fixed by the Electoral Commission by notice in the Gazette.
3. Every main roll printed for any district under this section shall be the main roll for the district until a new main roll is printed for the district.

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## 105. Supplementary rolls to be printed

1. The Registrar for every district shall from time to time cause to be printed a supplementary roll for the district, which shall contain a list of all persons whose names do not appear on the main roll or any existing supplementary roll for the district but are lawfully on the electoral roll for the district on a date to be fixed for the closing of that supplementary roll by the Electoral Commission:
 

provided that a supplementary roll shall be printed as soon as may be after the issue of a writ for an election in the district, and the date for the closing of that roll shall be writ day.
2. Every supplementary roll printed for any district under this section shall be a supplementary roll for the district until a new main roll is printed for the district.

## 106. Form of main roll and supplementary rolls

1. Every main roll or supplementary roll printed for any district shall show the names, residences, and occupations (if any) of the persons included therein, arranged alphabetically in order of surnames.
2. The names on each page of the main roll and of every supplementary roll printed for any district shall be numbered consecutively, beginning with the number 1 in the case of the first name on each page.

3. The pages of every main roll or supplementary roll printed for any district shall be numbered consecutively, beginning with the number 1 in the case of the first page of the main roll and, in the case of a supplementary roll, with the number immediately following the number of the last page of the last printed roll of the district, whether main or supplementary.
4. The number appearing on the main roll or, as the case may be, on any supplementary roll printed for any district against the name of any elector, preceded by the number of the page on which his or her name appears, shall be deemed to be his or her number on the roll.
5. With the consent of the Government Statistician, the Registrar may divide the main electoral roll and every supplementary roll into such statistical subdivisions, as the Government Statistician approves.

## 107. Composite rolls

1. The Registrar of Electors for any district may from time to time cause to be printed a composite roll for the district, which roll—
  - a. shall, subject to any additions, alterations, and deletions made to the electoral roll for the district, contain a list of—
    - i. all persons whose names appear on the main roll for the district; and
    - ii. all persons whose names appear on any existing supplementary roll for the district; and
    - iii. all persons whose names do not appear on the main roll for the district or any existing supplementary roll for the district but are lawfully on the electoral roll for the district on a date to be fixed for the closing of that composite roll by the Electoral Commission; and
  - b. shall, subject to paragraph (a), be printed in the manner prescribed by section 106 in respect of a main roll.
2. Notwithstanding anything in subsection (1), in the case of a by-election in any district, the Registrar of Electors for that district shall cause a composite roll for that district to be closed and printed as at writ day for the by-election.
3. Where the date for the closing of a composite roll for a district is writ day in relation to an election in that district, the Registrar of Electors—
  - a. shall cause the composite roll to be printed as soon as may be after the issue of the writ for the election; and
  - b. shall not be obliged to issue a supplementary roll for the district under the proviso to section 105(1) in relation to that election.
4. Where a composite roll for a district is printed under this section,—
  - a. the composite roll shall, notwithstanding section 104(3), be the main roll for the district until a new main roll is printed for the district under section 104(1) or a new composite roll is printed for the district under this section; and

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- b. the main roll and any supplementary rolls that were in force for the district immediately before the date of the closing of the composite roll shall cease to be in force.
5. Nothing in this section—
- a. limits the provisions of section 104(1); or
  - b. prevents any main roll or supplementary roll that is no longer in force from being examined for the purpose of determining—
    - i. whether any person's name should appear on the main roll or any supplementary roll for the time being in force for any district; or
    - ii. whether any person is qualified to vote in any district as a special voter.

## 108. Habitation indexes

The Electoral Commission—

- a. may from time to time compile in respect of any electoral district a habitation index—
  - i. listing, in accordance with their residential addresses, the electors who reside in that electoral district; and
  - ii. showing, against the name of each elector, the number of the elector on the main roll, or, as the case may be, on any supplementary roll for that electoral district; and
- b. shall, as soon as practicable after the printing of a main roll for an electoral district, compile a habitation index under paragraph (a) in respect of that district.

## 109. Dormant roll

1. The Registrar must maintain a dormant roll showing the particulars of those persons whose names have been removed from the roll for the district—
  - a. under section 89G; or
  - b. as a result of the removal of the name of that person from the roll under section 95A(4) or section 96(5).
2. The Registrar must remove the name of a person from the dormant roll on the first occurrence of any of the following events:
  - a. in the case of a person whose name has been removed from the electoral roll under section 89G, when the person registers as an elector of any district; or

- b. in the case of a person whose name has been removed from the electoral roll under section 95A(4) or section 96(5), when the person registers as an elector of any district; or
  - c. in the case of a person who dies, when the Registrar is satisfied of the identity of the person and the death has been notified to the Registrar—
    - i. by any Registrar of Births and Deaths; or
    - ii. by the father, mother, spouse, civil union partner, de facto partner, sister, or brother of the person; or
    - iii. by the administrator of the estate of the person; or
  - d. the expiration of the period of 3 years beginning with the date on which the person's name was placed on the dormant roll.
3. The Registrar must keep, for the purposes of the next election to be held in the district to which the dormant roll relates, a copy of the dormant roll as it exists on the day before polling day.
  4. The Registrar must from time to time cause to be printed a computer-compiled list showing, in relation to each person whose name appears on the dormant roll, the person's name and place of residence.
  5. The dormant roll as it exists on the day before polling day may be used for the purpose of determining whether any person is qualified, under section 60(c) or (d), to vote at any election held in the district to which the roll relates.

## 110. Public inspection of rolls, etc

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1. A copy or copies of—
    - a. the main roll and of the supplementary rolls for any district; and
    - b. the latest index compiled under section 108 in respect of the electoral district; and
    - c. the most recent computer-compiled list printed pursuant to section 109(5) for the electoral district—
 shall be kept for inspection by the public at the Office of the Registrar of Electors, and at such other places within the district as the Electoral Commission directs.
  2. Any direction given by the Electoral Commission may be given in respect of any or all of the categories of documents specified in subsection (1).
  3. Any person may inspect at the Registrar's office, without payment, at any time between 9 am and 4 pm on any day on which the office is open for the transaction of business,—
    - a. the documents specified in subsection (1):

- b. the most recent computer-compiled list which is held by the Registrar and which shows the names and particulars of the persons who are on the roll for the district:
  - c. the names and particulars of any person whose name is on the electoral roll but not on the main roll or any supplementary roll or the most recent computer-compiled list to which paragraph (b) applies:
  - d. the application of any person who has applied to be registered as an elector of the district but who is prevented, by section 88, from being registered as an elector of the district:
  - e. his or her own application for registration as an elector:
  - f. the application for registration of any person whose name is on the electoral roll if—
    - i. that person consents to his or her application being inspected; or
    - ii. the Registrar is satisfied that the inspection of the application is justified by a genuine and proper interest:
  - g. the list of post-writ day deletions referred to in section 98(5).
4. In the case of—
- a. the computer-compiled list printed pursuant to section 109(5); and
  - b. the computer-compiled list referred to in subsection (3)(b)—  
neither the power of inspection conferred by subsection (3) nor the power to inspect the list when it is made available for public inspection under section 111 includes the power to copy the list.
5. Any person may, on paying the prescribed fee, obtain a copy of—
- a. the main or supplementary roll for a district:
  - b. an index compiled under section 108.
6. Regulations made under section 267—
- a. may prescribe a scale of fees for the purposes of subsection (5); and
  - b. shall provide for any fee payable under subsection (5) to be reduced wherever the copy of the roll or index is required for any purpose relating to an election or poll.
7. Where any person is entitled, pursuant to any provision of paragraphs (d) to (f) of subsection (3), to inspect any application, the Registrar shall produce that application for inspection not later than 2 working days after a request has been made.



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8. Where land in a General electoral district is included within the boundaries of a Maori electoral district, a copy of the most recent computer-compiled list printed pursuant to section 109(5) in respect of the Maori electoral district shall be kept open for inspection by the public at the office of the Registrar of the General electoral district as well as at the office of the Registrar of the Maori electoral district.

## 111. Inspection of rolls at hui

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1. Subject to subsection (2), the Electoral Commission shall, at the request of any person, make available for public inspection, under the supervision of any Registrar of Electors or person nominated by the Electoral Commission, at any meeting or hui—
  - a. the main roll and the supplementary rolls kept for any district:
  - b. the most recent computer-compiled list which is held by the Registrar of Electors for any district and which shows the names and particulars of the persons who are on the roll for the district:
  - c. any computer-compiled list printed pursuant to section 109(5).
2. A request made under subsection (1) shall not be granted unless the Electoral Commission is satisfied that a large number of persons are likely to attend the meeting or hui in respect of which the request is made.
3. Where a roll or list is made available for public inspection under subsection (1), the roll or list shall be made available at such times and places as the Electoral Commission thinks fit.

### 111A. Objectives of sections 111B to 111F

The objectives of sections 111B to 111F are—

- a. to enable specified electoral information in relation to any Maori elector, with the consent of that Maori elector, to be used to facilitate the establishment and maintenance of accurate and comprehensive registers of iwi affiliations; and
- b. to ensure that registers of iwi affiliations are established and maintained by a body which—
  - i. is accountable to the organisations to which it is authorised to supply information; and
  - ii. is financially viable and well managed; and
  - iii. manages information in compliance with the requirements of this Act and the Privacy Act 1993; and
  - iv. makes iwi affiliation information available to iwi organisations and other Maori organisations at a reasonable cost; and

- v. except as required for the purpose of establishing and maintaining the register or registers of iwi affiliations, does not create or maintain information on whakapapa; and
- c. to enable information from a register of iwi affiliations to be supplied to iwi organisations and other Maori organisations for the purposes of those organisations; and
- d. to leave unaffected—
  - i. any right of an iwi organisation or other Maori organisation or court to determine whether any person claiming affiliation with the organisation is so affiliated; or
  - ii. any right of a person to claim an affiliation with a particular iwi organisation or other Maori organisation or to approach the iwi organisation or other Maori organisation with which that person claims affiliation.

## **111B. Interpretation of terms in sections 111C to 111F**

For the purposes of sections 111C to 111F,—

- designated body means the person or body of persons from time to time designated under section 111E
- Maori elector means a person registered as an elector who has given written notice to a Registrar that the person is of Maori descent
- register of iwi affiliations means a list or lists of persons of Maori descent and their iwi affiliations, together with the information described in section 111C(2) in respect of those persons.

## **111C. Electoral Commission may seek consent of Maori electors to supply of information to designated body**

1. The Electoral Commission may seek the consent of any Maori elector to the supply by the Electoral Commission from time to time of the particulars described in subsection (2) to the designated body for the purpose of establishing and maintaining a register or registers of iwi affiliations.
2. The particulars referred to in subsection (1) are—
  - a. the elector's name, including first names, surname, and preferred honorific (if any):
  - b. the elector's postal address, email address (if any), and contact telephone numbers (if any):
  - c. the elector's date of birth:
  - d. any randomly generated number assigned to that elector by the Electoral Commission.

3. The Electoral Commission may ask a Maori elector—
  - a. whether the Maori elector consents to the supply of his or her iwi affiliation information to the designated body for the purpose of establishing and maintaining a register or registers of iwi affiliations; and
  - b. if the answer under paragraph (a) is in the affirmative,—
    - i. to give his or her iwi affiliation information; and
    - ii. if the elector wishes, to specify the iwi organisation or organisations or other Maori organisation or organisations to which the elector's iwi affiliation information may be supplied by the designated body.
4. Despite subsections (1) and (3), the Electoral Commission must not seek the consent under this section of a person in respect of whom the Electoral Commission has given a direction under section 115.
5. If the Electoral Commission seeks the consent of a person under this section, the Electoral Commission must advise the person of the provisions of section 111D(4) and section 111F(1) to (4).
6. If the Electoral Commission seeks the consent of a person under subsection (1), the Electoral Commission must advise the person that a consent given under that subsection may be withdrawn at any time.
7. The Electoral Commission—
  - a. may hold iwi affiliation information obtained in response to a request under subsection (3) only for such time as is reasonable for the purpose of forwarding that information to the designated body; and
  - b. must not retain any of that iwi affiliation information.

### **111D. Electoral Commission may supply information to designated body**

1. The Electoral Commission may supply the information described in subsection (2) to the designated body if—
  - a. the Electoral Commission has obtained the consent of a Maori elector under section 111C(1) (and that consent has not been withdrawn); and
  - b. the Electoral Commission has under section 111C(3) obtained the consent of a Maori elector to the supply of the iwi affiliation information of that elector.
2. The information referred to in subsection (1) is—
  - a. the particulars of the elector described in section 111C(2); and
  - b. the elector's iwi affiliation information; and
  - c. if, under section 111C(3)(b)(ii), the elector specified a particular organisation or organisations to which the iwi affiliation information may be supplied, the name of that organisation or those organisations.

3. The Electoral Commission may charge a reasonable fee for the supply of information to the designated body under this section.
4. Information supplied under this section is supplied for the purpose of enabling the designated body to—
  - a. establish and maintain a register or registers of iwi affiliations; and
  - b. supply the information on that register or registers to any organisation to which it is authorised to supply that information under section 111F.
5. Except as required for the purpose described in subsection (4), the designated body must not use the information supplied to it under this section to create or maintain information on the whakapapa of any Maori elector.

### **111E. Ministers of Justice and Maori Affairs may designate body to receive information**

1. The Minister of Justice and the Minister of Maori Affairs may, by notice in the Gazette, designate any person or body of persons (whether corporate or unincorporate) as suitable to receive the information described in subsection (2) for the purpose of establishing and maintaining a register or registers of iwi affiliations.
2. The information referred to in subsection (1) is—
  - a. information described in section 111C(2); and
  - b. information described in section 111C(3)(b).
3. The Minister of Justice and the Minister of Maori Affairs must not designate a person or body of persons under subsection (1) unless the Ministers are satisfied that—
  - a. the person or body of persons has adequate procedures in place to ensure that it is accountable to the organisations to which it is authorised to supply information under section 111F; and
  - b. the person or body of persons is financially viable and can demonstrate prudent and adequate management policies and practices, including in matters of financial management; and
  - c. the person's or body of persons' information management policies and practices are adequate to ensure compliance with this Act and the Privacy Act 1993; and
  - d. the person or body of persons has the ability to fund the establishment and maintenance of the register of iwi affiliations; and
  - e. the person or body of persons meets any other criteria that may be specified in regulations made under section 267(c).
4. The Minister of Justice and the Minister of Maori Affairs may, at any time, by notice in the Gazette, revoke a designation made under subsection (1).

## 111F. Designated body may supply information from register of iwi affiliations to iwi organisation and other Maori organisation

1. The designated body may supply the information in relation to a particular Maori elector that is held on a register of iwi affiliations—
  - a. if the Maori elector has specified a particular organisation or organisations under section 111C(3)(b)(ii), to that organisation or organisations; or
  - b. in any other case, to any iwi organisation or organisations or other Maori organisation or organisations that the designated body is satisfied represents the iwi to which the Maori elector claims an affiliation.
2. If the designated body is satisfied that iwi affiliation information given by a Maori elector under section 111C(3)(b)(i) contains a spelling error or other obvious mistake, but the designated body is satisfied that it is clear to which iwi the Maori elector was referring, the designated body may apply subsection (1) as if the elector had specified that iwi.
3. If the designated body is satisfied that the name of an organisation or organisations specified by a Maori elector under section 111C(3)(b)(ii) contains a spelling error or other obvious mistake, but the designated body is satisfied that it is clear to which organisation or organisations the elector was referring, the designated body may apply subsection (1) as if the elector had specified that organisation or organisations.
4. Information supplied under this section is supplied for the purposes of the iwi organisation or other Maori organisation to which it is supplied.
5. Any fee charged by the designated body for the supply of information under this section must be a reasonable fee.

## 112. Supply of information on age and Maori descent

1. Any person may, in the manner specified in subsection (3), request the Electoral Commission to provide to that person,—
  - a. for the purposes of research conducted by that person on a topic that relates to a scientific matter,—
    - i. a list of electors in a particular age group as defined in section 114(9); or
    - ii. a list of electors of Maori descent; or
  - b. for the purposes of research being conducted by that person on a topic that relates to human health,—
    - i. a list of electors whose birthdays fall within a period of 12 months; or
    - ii. a list of electors of Maori descent.
2. Every list supplied pursuant to a request under subsection (1) shall specify, in relation to each elector on that list, his or her name, postal address, residential address, occupation (if any), preferred honorific (if any), and meshblock.

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3. Any request made under subsection (1) may seek information about electors appearing to be entitled to vote in—
  - a. 1 or more named electoral districts; or
  - b. all electoral districts; or
  - c. 1 or more named regions or constituencies of a region; or
  - d. 1 or more named territorial authority districts; or
  - e. 1 or more named wards; or
  - f. 1 or more named community board areas;—  
but shall not include any request for a random sample of electors.
4. Every list supplied following a request under subsection (1) may be supplied in the form of a computer-compiled list or in electronic form.
5. The Electoral Commission shall comply with a request under subsection (1) if—
  - a. the person requesting the list pays the prescribed fee; and
  - b. the person requesting the list supplies a statement that the list is required for research being conducted by that person on a topic which is specified in the statement and which relates to a scientific matter or to human health; and
  - c. the statement supplied under paragraph (b) is signed by the chief executive of any department, organisation, or local authority to which the Official Information Act 1982 or the Local Government Official Information and Meetings Act 1987 applies; and
  - d. the person requesting the list states in a form to be provided by the Electoral Commission that the list is required for the purpose of that person's research and will not be used for any other purpose; and
  - e. the Electoral Commission is satisfied that the list should be provided; and
  - f. if the person requesting the list requires the list to be supplied in electronic form, that person supplies to the Electoral Commission a storage medium for that electronic information that complies with the prescribed requirements.

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### **113. Supply of computer-compiled lists and electronic storage media to local authorities**

1. Subject to this section, if an electoral official of a local authority (as defined in section 5 of the Local Electoral Act 2001) wishes to obtain specified information for the purposes of any election, by-election, or poll that is required by or under any Act, the electoral official is entitled to obtain from the Electoral Commission a computer-compiled list or electronic storage medium containing that information.

2. For the avoidance of doubt, it is hereby declared that subsection (1) shall not apply where the list or information is required for the purpose of determining whether or not there has been a valid demand for a poll or a survey of electors.
3. The specified information, which shall be provided free of charge, shall be provided in accordance with any regulations made pursuant to section 267.
4. Any electronic storage medium supplied by the Electoral Commission must be returned to the Electoral Commission as soon as practicable after use.
5. Where the specified information is requested for a by-election or poll to be conducted at some time other than a triennial general election, the Electoral Commission may supply only such of the specified information as is relevant to the conduct of the by-election or poll.
6. If an electoral official requires specified information for any purpose other than a purpose specified in subsection (1), and the latest information already available to the electoral official is not suitable for the purpose, the electoral official may make a special request to the Electoral Commission for the information, which must be supplied subject to, and in accordance with, any regulations made under section 267.
7. [Repealed]
8. Regulations made under section 267 may prescribe—
  - a. fees for the supply of an electronic storage medium by the Electoral Commission in any case; and
  - b. fees for providing information under this section on an electronic storage medium in any case to which subsection (1) does not apply.
9. If an electoral official of a local authority (as defined in section 5 of the Local Electoral Act 2001) wishes to obtain, for the purposes of compiling a roll of electors for the local authority and for no other purpose, any specified information, the Electoral Commission may, in accordance with regulations made under this Act, give that electoral official, on payment of the prescribed fee, a computer-compiled list or electronic storage medium containing that information.
- 9A. Any electoral official of a local authority (as defined in section 5 of the Local Electoral Act 2001) may, on payment of the prescribed fee, and in accordance with regulations made under this Act, obtain from the Electoral Commission a computer-compiled list or electronic storage medium containing specified information, for the purpose of conducting an election for any body, where the Electoral Commission is satisfied that—
  - a. the body is established by statute or is a corporate or unincorporate body established by a local authority or local authorities or is a body contracted by a local authority or local authorities to provide services to some or all local residents or is a body that provides health services or disability support services or electricity supply or is a trust that owns shares in a body or bodies involved in electricity supply to some or all local residents; and
  - b. the body has in place procedures for the democratic conduct of its elections; and
  - c. it is in the public interest that the election be conducted by a local authority.

• Municipal government

• Municipal government

• Municipal government

- 9B.** Nothing in subsection (9A) or subsection (9D) requires a local authority to conduct an election on behalf of any other body but, where a local authority conducts an election for another body, the local authority may impose a charge in respect of the conduct of the election.
- 9C.** Where any officer of a body designated by notice in writing pursuant to subsection (9D) wishes to obtain, for the purpose of compiling a roll of electors for an election and for no other purpose, any specified information, the Electoral Commission may, in accordance with regulations made under this Act, give that officer, on payment of the prescribed fee, a computer-compiled list or electronic storage medium containing that information.
- 9D.** The Minister may, by notice in writing, designate bodies for the purposes of subsection (9C) if the Minister is satisfied that—
- a. the body has in place procedures for the democratic conduct of its elections; and
  - b. it is in the public interest that the elections are conducted using the specified information.
- 10.** For the purposes of this section, the term specified information means, in respect of each elector appearing to reside in the appropriate area and entitled to vote in the election, by-election, or poll, so much of the following information as is requested by an electoral officer or electoral official or designated body:
- a. the elector's name, including first names, surname, and preferred honorific (if any):
  - b. the elector's residential address and postal address (if different):
  - c. the elector's occupation (if any):
  - d. the elector's electoral district (whether Maori or General):
  - e. statistical meshblock details:
  - f. a description of each—
    - i. region or constituency of a region; or
    - ii. territorial authority district; or
    - iii. ward; or
    - iv. community board area; or
    - v. other local authority and, where appropriate, local authority subdivision,— in respect of which the elector appears to be entitled to vote.



## 114. Supply of electoral information to candidates, political parties, and members of Parliament

1. The Electoral Commission must supply to a person specified in subsection (2), on a request made in accordance with this section by that person,—
  - a. the information described in subsection (3); and
  - b. if the person so requests, the information described in subsection (4).
2. The persons referred to in subsection (1) are—
  - a. any candidate or any person acting on behalf of a political party who wishes to obtain the information for the purposes of the candidate or the political party:
  - b. any candidate or any person acting on behalf of a political party who wishes to obtain the information for the purposes of the candidate or the political party in connection with any local authority elections:
  - c. a member of Parliament or person acting on behalf of a member of Parliament who wishes to obtain the information for the purposes of the member of Parliament:
  - d. [Repealed]
  - e. any other person charged with responsibilities in relation to the conduct of any official publicity or information campaign to be conducted on behalf of the Government of New Zealand and relating to electoral matters or the conduct of any general election or by-election.
3. The information referred to in subsection (1)(a) is—
  - a. the names, residential addresses, occupations (if any), preferred honorifics (if any), meshblock, and postal addresses of, and any randomly generated number assigned by the Electoral Commission to, any or all of the following persons:
    - i. the electors of an electoral district:
    - ii. the persons whose names are on the dormant roll for an electoral district:
    - iii. the electors of an electoral district who were registered as electors for that district on or after the date fixed for the closing of the main roll for the district pursuant to section 104, or on or after a date nominated by the applicant, that date being not earlier than the date on which the roll was last closed for printing:
    - iv. the electors of an electoral district whose names have been removed from the electoral roll for that district on or after a date nominated by the applicant, that date being not earlier than the date on which the roll was last closed for printing; and



## 114A. General provision concerning supply of information by Electoral Commission in electronic form

If the Electoral Commission is required in accordance with this Act to supply information in electronic form, the Electoral Commission is only required to supply that information in a form, or using a medium, that is compatible with computer systems being used by the Electoral Commission at the time.

## 115. Unpublished names

1. Notwithstanding sections 101, 104, 105, 107, 108, and 110(3)(c) and (d), where the Electoral Commission is satisfied, on the application of any person, that the publication of that person's name would be prejudicial to the personal safety of that person or his or her family, the Electoral Commission may direct that—
  - a. the name, residence, and occupation of that person shall not be published in any main or supplementary roll or in any list or index that may be available for inspection by the public; and
  - b. the name and particulars of that person shall not be available for inspection under section 110(3)(c); and
  - c. the application for registration of that person shall not be available for inspection under section 110(3)(d).
2. Without limiting the discretion conferred on the Electoral Commission by subsection (1), the Electoral Commission may on the production of—
  - a. a protection order that is in force under the Domestic Violence Act 1995 in respect of any person; or
  - aa. a restraining order that is in force under the Harassment Act 1997 in respect of any person; or
  - b. a statutory declaration from a constable to the effect that he or she believes that the personal safety of a person or of a person's family could be prejudiced by the publication of that person's name,—  
exercise in respect of that person's name, and without further evidence or inquiry, the power conferred on the Electoral Commission by that subsection.

## Subpart 11: Offences

### 116. Offences relating to use of electoral information

1. Every person commits an offence who knowingly and wilfully supplies, receives, or uses information supplied in electronic form, or derived from information supplied in electronic form, under section 112, 113, or 114 for a purpose other than a purpose authorised by those sections.

2. Every person who commits an offence against this section is liable on conviction,—
  - a. in the case of information supplied, received, or used for a commercial purpose, to a fine not exceeding \$50,000; or
  - b. in any other case, to a fine not exceeding \$10,000.

## **117. Offences in respect of manipulating or processing electoral information**

1. Every person commits an offence who processes, manipulates, or otherwise changes by optical scanning or other electronic or mechanical means, any information obtained pursuant to section 112 or section 113 or section 114 or contained in any habitation index or any printed roll, in such a way as to produce that information or part of that information in a different form from that in which it was supplied under this Act.
2. It shall not be an offence against subsection (1) to process, manipulate, or otherwise change information obtained pursuant to any of the provisions of sections 112 to 114 into a different form if—
  - a. the processing or manipulation is done, or the change is effected, by or on behalf of the person by whom the information was obtained; and
  - b. the information, in its different form, is used only for purposes authorised by the provision under which it was obtained.
3. It shall not be an offence against subsection (1) to process, manipulate, or otherwise change information obtained pursuant to any of the provisions of sections 112 to 114 or contained in any habitation index or any printed roll into a different form if the information was obtained under this Act more than 10 years before the date on which the processing or manipulation is done or the change is effected.
4. Every person who commits a breach of subsection (1) is liable on conviction to a fine not exceeding \$50,000.
5. Every person commits an offence who—
  - a. uses for any purpose; or
  - b. supplies to any person—  
any information the production of which contravenes subsection (1).
6. Every person who commits a breach of subsection (5) is liable on conviction,—
  - a. where the use or supply was for a commercial purpose, to a fine not exceeding \$50,000; or
  - b. where the use or supply was for any other purpose, to a fine not exceeding \$10,000.

## **117A. Offence relating to misuse of electoral information supplied under section 111D**

1. Every person commits an offence who knowingly and wilfully supplies, receives, or uses information of a kind described in section 111C(2) that is provided by, or derived from information provided by, the Electoral Commission under section 111D, for any purpose other than a purpose authorised by section 111D(4) or section 111F(4).
2. Every person who commits an offence against this section is liable on conviction,—
  - a. in the case of information supplied, received, or used for a commercial purpose, to a fine not exceeding \$50,000; or
  - b. in any other case, to a fine not exceeding \$10,000.

## **118. False statements**

Every person who knowingly and wilfully makes a false statement in any application, certificate, or information supplied for the purposes of this Part is liable on conviction to—

- a. a term of imprisonment not exceeding 3 months; or
- b. a fine not exceeding \$2,000.

## **119. Wilfully misleading Registrar**

Every person shall for each offence be liable on conviction to a fine not exceeding \$2,000 who—

- a. wilfully misleads any Registrar in the compilation of any roll or list, or wilfully enters or causes to be entered thereon any false or fictitious name or qualification or the name of any person whom he or she knows to be dead:
- b. signs the name of any person, whether requested to do so or not, or any false or fictitious name to any form of application or objection for the purposes of this Part either as applicant, objector, or witness:
- c. signs his or her name as witness to any signature upon any such form of application or objection without either seeing the signature written or hearing the person signing declare that the signature is in his or her own handwriting and that the name so signed is his or her own proper name.

## **120. Duty to report suspected offences**

Where the Registrar believes that any person has committed an offence against section 119, he or she shall report the facts on which that belief is based to the New Zealand Police.

## 121. Failure to deliver application

Every person shall be liable on conviction to a fine not exceeding \$2,000 who, having obtained possession of an application for registration signed by any other person for the purpose of being delivered to the Registrar for registration, wilfully fails so to deliver it so that the applicant's name is not entered on the roll.

## Subpart 12: Miscellaneous provisions

### 122. Assistance to be given to Registrar

1. All constables—
  - a. must, at the Registrar's request, assist the Registrar by informing him or her of the name of any person whom they have reason to believe is qualified to be registered as an elector but is not registered, or is registered but is not qualified to be registered; and
  - b. must give the Registrar any information the Registrar requests relating to the qualifications of any person for registration as an elector.
2. All constables must also assist the Registrar by making such inquiries and obtaining such information as he or she requests.

### 123. Copies of rolls for Returning Officer

1. The Registrar shall supply to the Returning Officer for the district—
  - a. as many copies as he or she may require of the main roll and the supplementary rolls, showing all deletions (except deletions made in the period beginning on the day after writ day and ending on the day before polling day) from the electoral roll and certified correct by the Registrar; and
  - b. a copy of the list of post-writ day deletions referred to in section 98(5).
2. Despite section 106, the Electoral Commission may direct Registrars to modify the form of any rolls supplied under this section if that is necessary to facilitate the use of technology for the scrutiny of the rolls under this Act.

### 124. Power to destroy records

1. Subject to subsection (3), the Registrar may destroy any of the records described in subsection (2) if—
  - a. the Registrar considers that the records are no longer required; and
  - b. 2 general elections have taken place since the records were made.
2. The records referred to in subsection (1) are records held by the Registrar, being—
  - a. applications for registration as electors; and

- b. forms returned following an inquiry under section 89D; and
  - c. records forming part of the dormant roll maintained under section 109(1).
3. Nothing in this section authorises any person to destroy any records if he or she has reason to believe that those records are relevant to an election petition or that the time for bringing an election petition to which those records may be relevant has not expired.
  4. Despite subsections (1) to (3), the Registrar may destroy paper copies of any of the records described in subsection (2) if satisfied that accurate electronic images of those records have been created by or on behalf of the Registrar and are being stored by or on behalf of the Registrar in a manner that ensures that those electronic images are and will be able to be used for the same purposes as the paper copies would, if not destroyed, have been required by the rest of this Act to be able to be used.
  5. A requirement in or under this Act that a paper copy of a record be used for a particular purpose is, after that paper copy is destroyed under subsection (4), satisfied by using for that purpose the accurate electronic image, created and stored under subsection (4), of that paper copy.

## Part 6: Elections

### Subpart 1: General elections

#### 125. Writ for general election

Whenever Parliament is dissolved or expires, the Governor-General must, not later than 7 days after the dissolution or expiration, issue a writ in form 3 to the Electoral Commission requiring the Electoral Commission to make all necessary arrangements for the conduct of a general election.

#### 126. Writs for general election

[Repealed]

#### 127. Election of list candidates

1. At any general election any secretary of a political party that is registered under Part 4 may forward to the Electoral Commission a list of candidates for election to the seats reserved for those members of Parliament elected from lists submitted under this section.
2. A list submitted under this section shall be in form 4 and shall list candidates in order of the party's preference commencing with the first in order of preference and ending with the last.
3. Every list submitted under this section, and the declaration required by subsection (3A),—
  - a. must be submitted to the Electoral Commission not later than noon on the date specified in the writ for the election of constituency candidates as the latest date for the nomination of constituency candidates; and
  - b. may be submitted by hand, post, or electronically.

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- 3A.** Every list submitted under this section must 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, that must—
- a. declare that the secretary is satisfied that each person named on the list submitted under this section is qualified under this Act to be a candidate; and
  - b. state whether the party is a party in respect of which there are 1 or more component parties; and
  - c. if the party has 1 or more component parties, state the name of each component party.
- 4.** The secretary of the political party must lodge with the list submitted under this section, in relation to each candidate nominated in the list,—
- a. a statement in a form provided by the Electoral Commission, signed by the candidate, and confirming the candidate's consent to the nomination; and
  - b. any statutory declaration made by the candidate received under section 49(4)(b).
- 5.** [Repealed]
- 6.** The Electoral Commission shall give a receipt in writing for every list accepted by the Electoral Commission.
- 7.** Where a list under this section is submitted by a political party that has a logo registered under section 71F, the secretary of that political party may submit with the list a copy of the logo so registered for inclusion—
- a. on the left-hand side of the ballot paper beside the name of that party on the party vote part of the ballot paper; and
  - b. on the right-hand side of the ballot paper beside the name of any constituency candidate of that party (if any) on the electorate vote part of the ballot paper.
- 8.** Every logo submitted under this section—
- a. must be submitted to the Electoral Commission not later than noon on the date specified in the writ for the election of constituency candidates as the latest date for the nomination of constituency candidates; and
  - b. may be submitted by hand, post, or electronically.

### **127A. Deposit by party secretary**

- 1.** If a secretary of a political party submits a list under section 127, he or she must pay to the Electoral Commission, no later than noon on nomination day, a deposit of \$1,000 (inclusive of goods and services tax).
- 2.** The deposit must be paid by—
  - a. direct credit to a bank account nominated by the Electoral Commission; or

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- b. bank cheque.
- 3. The deposit is forfeit and must be paid into a Crown Bank Account if the party neither—
  - a. receives in total at least 0.5% of the total number of all party votes received by all the parties listed on the part of the ballot paper that relates to the party vote; nor
  - b. wins a constituency seat.
- 4. In every other case the deposit must be returned to the secretary of the party on whose behalf the deposit is paid, but only after the Electoral Commission has received—
  - a. a duly completed return under section 206I in respect of that party; and
  - b. the auditor's report obtained under section 206L that relates to that return.
- 5. For the purposes of subsection (3)(b), a party wins a constituency seat if—
  - a. a constituency candidate for that party has his or her name endorsed on the writ under section 185 as a person declared to be elected as a member of Parliament; or
  - b. a constituency candidate for a component party of that party (being a component party that is not listed on the part of the ballot paper that relates to the party vote but is, in accordance with the details held by the Electoral Commission under any of the provisions of sections 127(3A) and 128A, a component party of that party) has his or her name endorsed on a writ under section 185 as a person declared to be elected as a member of Parliament.

## 128. Acceptance or rejection of lists by Electoral Commission

- 1. The Electoral Commission must reject a list submitted under section 127—
  - a. if the list is not submitted by a political party registered under Part 4; or
  - b. if the list is not lodged with the Electoral Commission by noon on nomination day; or
  - c. if the list does not contain the name of at least 1 candidate; or
  - d. if the list is not accompanied by the declaration required by section 127(3A); or
  - da. [Repealed]

- e. if the deposit required by section 127A is not paid by noon on nomination day.
2. Where—
- a. any person named as a candidate on a list submitted under section 127 is not qualified both to be a candidate and to be elected a member of Parliament; or
  - b. the consent of any person named as a candidate on a list submitted under section 127 is not lodged in the required form with the Electoral Commission not later than noon on nomination day,—
- the Electoral Commission shall delete the name of that person from the list and the order of preference in the list shall be deemed to be amended accordingly.
3. If, after the deletion of any name or names of candidates from a list pursuant to subsection (2), there are no names of candidates left remaining on the list, the provisions of subsection (1)(c) shall apply.

### **128A. Notice of change in component parties**

1. Where the list of any political party has been accepted by the Electoral Commission under section 127(6), it shall be the duty of the secretary of that political party to notify the Electoral Commission by a declaration in the manner provided for by section 9 of the Oaths and Declarations Act 1957 of any change occurring before polling day in the details recorded in the declaration made under section 127(3A).
2. Every change to which subsection (1) applies shall be notified under that subsection as soon as practicable after the time at which the change occurs.

### **128B. Electoral Commission must record and notify change in component parties**

If the component parties of a political party listed in the copy of any declaration received by the Electoral Commission under section 127(3A) differ from those recorded in the Register of Political Parties established by section 62(2), the Electoral Commission—

- a. must amend the Register so that the component parties recorded in the Register are the same as those recorded in the declaration made to the Electoral Commission; and
- b. must, immediately after amending the Register under paragraph (a), publish in the Gazette a notice of the amendment made under that paragraph.

### **128C. Withdrawal of list of candidates**

1. Any secretary of a political party may withdraw a list of candidates submitted by him or her under section 127 by notice in form 4A signed by him or her and witnessed by a Justice of the Peace or solicitor.
2. No withdrawal of a list of candidates under subsection (1) shall have any effect unless it is lodged with the Electoral Commission not later than noon on the date specified in the writ for the election of constituency candidates as the latest date for the nomination of constituency candidates.

- 2A. If a list of candidates is withdrawn under subsection (1), the deposit paid under section 127A must be returned to the party secretary, unless the party secretary submits another list of candidates in accordance with section 127.
3. Where a list of candidates is withdrawn under subsection (1), the party secretary may submit another list of candidates in accordance with section 127.

## **Subpart 2: By-elections for vacancies in seats of members representing electoral districts**

### **129. By-elections for members representing electoral districts**

1. If the Speaker is satisfied that the seat of a member elected to represent an electoral district has become vacant, the Speaker must, without delay, publish a notice of the vacancy and its cause in the Gazette.
2. The Governor-General must, within 21 days after the date of a notice published in accordance with subsection (1), issue to the Electoral Commission a writ in form 6 requiring the Electoral Commission to make all necessary arrangements for the conduct of a by-election to fill the vacancy.
3. In any case in which it appears to the Governor-General to be necessary for special reasons, the Governor-General may, by Order in Council, authorise the postponement of the issue of a writ for a by-election until a day stated in the Order in Council, being a day not later than 42 days after the date on which the notice was published in accordance with subsection (1).
4. This section does not apply to a vacancy that occurs in the period between a dissolution or expiration of Parliament and the close of polling day at the next general election.

### **130. When Governor-General to act for Speaker**

[Repealed]

### **131. Power to resolve in certain cases that by-election not be held**

Notwithstanding anything in section 129, no writ shall be issued for a by-election to supply a vacancy in the House of Representatives if—

- a. the vacancy arises in the period of 6 months ending with the date of the expiration of the Parliament and a resolution that a writ not be issued to supply the vacancy is passed by a majority of 75% of all the members of the House of Representatives; or
- b. following the presentation to the House of Representatives by the Prime Minister of a document informing the House that a general election is to be held within 6 months of the occurrence of the vacancy, a resolution is passed by a majority of 75% of all the members of the House of Representatives to the effect that a writ is not to be issued to supply the vacancy.

## 132. Writ for by-election

[Repealed]

## 133. No writ to issue pending election petition

If after a petition has been presented against the return of any member representing an electoral district his or her seat becomes vacant on any of the grounds mentioned in section 55, no writ to fill the vacancy shall be issued until after the petition has been disposed of, and not then if the court determines that that member was not duly elected or returned and that some other person was duly elected or returned.

### Subpart 3: Filling of vacancies in other seats

## 134. Supply of vacancy of seat of member elected from party list

1. If the Speaker is satisfied that the seat of a member elected as a consequence of inclusion of the member's name on a list submitted under section 127 has become vacant, the Speaker must, without delay, publish a notice of the vacancy and its cause in the Gazette.
2. The Governor-General must, as soon as practicable after the date of a notice published in accordance with subsection (1), issue to the Electoral Commission a warrant in form 7 directing the Electoral Commission to proceed forthwith to supply the vacancy.
3. This section does not apply to a vacancy that occurs in the period between a dissolution or expiration of Parliament and the close of polling day at the next general election.

## 135. When Governor-General to act for Speaker

[Repealed]

## 136. Power to resolve in certain cases not to supply vacancy

Notwithstanding anything in section 134, no direction shall be issued under that section to the Electoral Commission to supply a vacancy in the House of Representatives if—

- a. the vacancy arises in the period of 6 months ending with the date of the expiration of the Parliament and a resolution that a direction not be issued to supply the vacancy is passed by a majority of 75% of all the members of the House of Representatives; or
- b. following the presentation to the House of Representatives by the Prime Minister of a document informing the House that a general election is to be held within 6 months of the occurrence of the vacancy, a resolution is passed by a majority of 75% of all the members of the House of Representatives to the effect that a direction is not to be issued to supply the vacancy.

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## 137. Method of supplying vacancy

1. On receipt of any direction under section 134, the Electoral Commission must proceed to fill the vacancy in the manner prescribed in this section.
2. The Electoral Commission must determine which of the unelected candidates whose name was included in the same party list as the member whose seat has been declared vacant stood highest in the order of preference.
3. If that candidate is still alive, the Electoral Commission must inquire of the secretary of the political party on whose list the candidate appeared, whether the candidate remains a member of that party.
4. If that candidate is still alive and remains a member of that political party, the Electoral Commission must then inquire of that candidate whether that candidate is willing to be a member of Parliament, and if that candidate so indicates his or her willingness, the Electoral Commission must declare that person to be elected by notifying the person's election in the Gazette.
5. If that person has died or is no longer a member of the political party or does not signify his or her willingness to be a member of Parliament, the Electoral Commission must proceed to make the inquiries described in subsections (3) and (4) in respect of the following candidate in order of preference on the party list, and so on, in descending order of preference, until one of the candidates who remains a member of the party signifies his or her willingness to be a member of Parliament, in which case the Electoral Commission must declare that person to be elected by notifying the person's election in the Gazette.
6. If—
  - a. no candidate signifies his or her willingness to be a member of Parliament;  
or
  - b. there is no candidate lower in the order of preference on the party list than the member of Parliament whose seat has been declared vacant,—  
the vacancy shall not be filled until the next general election.
7. Whenever subsection (6) applies, the Electoral Commission must publish in the Gazette a notice stating that the vacancy cannot be filled.

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## 138. Filing of return

Where any vacancy is filled under section 137, or the Electoral Commission determines that the vacancy cannot be filled, the Electoral Commission shall, as soon as is convenient, file with the Clerk of the House of Representatives a return indicating,—

- a. in any case where the vacancy can be filled, the name of the person declared to be elected and the date of the return; or
- b. in any case where the vacancy cannot be filled, the fact that the vacancy cannot be filled and the date of the return.

## Subpart 4: Issue of writ

### 139. Contents of writ

1. In every writ for a general election or a by-election there shall be appointed—
  - a. the latest day for the nomination of constituency candidates; and
  - b. a day for the polling to take place if a poll is required, being a Saturday; and
  - c. the latest day for the return of the writ.
2. Polling day shall not be earlier than the 20th day after nomination day nor later than the 27th day after nomination day.
3. [Repealed]
4. The latest day for the return of the writ (other than a writ issued under section 153E(2)) shall be the 50th day after its issue.
5. The latest day for the return of a writ issued under section 153E(2) shall be the 78th day after its issue.

### 140. Chief Registrar to be notified of writ

[Repealed]

### 141. Returning Officer to be notified of writ

Immediately after receiving a writ requiring an election to be held in a district, the Electoral Commission must notify the Returning Officer for the district of the following matters:

- a. the issue of the writ:
- b. the nomination day appointed in the writ:
- c. the polling day appointed in the writ.

### 142. Returning Officer to give public notice of polling day, nomination day, and nomination process

1. Immediately after receiving notification under section 141, the Returning Officer must give public notice of the following matters:
  - a. the polling day appointed in the writ:
  - b. the nomination day appointed in the writ:
  - c. the requirements for submitting nominations of candidates.
2. Every notice given under subsection (1) must be in a form approved by the Electoral Commission.

## Subpart 5: Nominations

### 143. Nominations of candidates for electoral districts

1. Any person qualified under this Act may, with his or her consent, be nominated as a constituency candidate for election for any electoral district, by not fewer than 2 registered electors of that district, by a nomination paper on a form provided by the Electoral Commission.
2. A person's consent to nomination—
  - a. must, unless subsection (3) applies, be given in writing or electronically; but
  - b. need not be given at the time the nomination paper is lodged.
3. Where any person is for the time being outside New Zealand, his or her consent, for the purposes of subsection (2), may be signified to the Returning Officer in any manner approved by the Electoral Commission.
- 3A. If a nomination paper is lodged with the Returning Officer under subsection (1) in relation to a candidate for a political party, and the political party has a logo registered under section 71F, then in the following cases a copy of the logo may be submitted to the Returning Officer for inclusion on the ballot paper in accordance with section 150(13):
  - a. in the case of a general election,—
    - i. if the political party is not registered under Part 4; or
    - ii. if the political party is registered under Part 4, but is not submitting a party list under section 127:
  - b. in the case of a by-election, whether the political party is registered under Part 4 or not.
4. Every nomination paper and every consent and every logo submitted under subsection (3A) for inclusion on the ballot paper shall be lodged with or given to the Returning Officer for the district not later than noon on nomination day. The Returning Officer shall give a receipt in writing for every nomination accepted by him or her.
5. Each constituency candidate shall be nominated by a separate nomination paper in such manner as, in the opinion of the Returning Officer, is sufficient to identify the constituency candidate.
6. Every constituency candidate shall ensure that the name or names shown on the nomination paper as the name or names to be used on the ballot paper are short enough to fit on the ballot paper.
7. No elector may nominate more than 1 constituency candidate.
8. Any registered elector of the district may inspect any nomination paper or consent at the Returning Officer's office without payment at any time when the office is open for the transaction of business.

### 144. Deposit by candidate

1. Every constituency candidate, or some person on the constituency candidate's behalf, shall deposit with the Returning Officer the sum of \$300 not later than noon on nomination day.

2. The deposit shall be paid in the form of money, a bank draft, or a bank cheque.
3. The deposit of an unsuccessful candidate is forfeit and must be paid into a Crown Bank Account if the candidate receives in total less than 5% of the total number of votes received by constituency candidates in the district.
4. In every other case, the deposit of a constituency candidate must be returned to the person who paid it, but only after the Electoral Commission has received from that candidate duly completed returns under sections 205K and 209.

## 145. Acceptance or rejection of nomination

1. The Returning Officer shall reject the nomination of any constituency candidate—
  - a. if the nomination paper and the consent of the candidate are not lodged with the Returning Officer not later than noon on nomination day; or
  - b. if the nomination paper does not state that the candidate is a registered elector of a specified electoral district, or, where section 49 applies, is a qualified elector of a specified electoral district; or
  - c. if the nomination paper is not signed by at least 2 registered electors of the district for which the nomination is made; or
  - ca. [Repealed]
  - d. if the required deposit is not paid as required by this Act.
2. Subject to the concurrence of the Electoral Commission, the Returning Officer shall not accept the nomination of any constituency candidate if the Returning Officer is not satisfied, by such evidence (if any) as the Returning Officer requires, that the name under which the candidate is nominated is—
  - a. the name under which the candidate's birth was registered, with any alteration or addition made thereto under section 20 of the Births, Deaths, Marriages, and Relationships Registration Act 1995 or an earlier corresponding provision; or
  - b. in the case of a person who has been adopted, the name conferred on that person by the adoption order; or
  - c. the name by which the candidate was commonly known throughout the period of 12 months ending with the day on which the nomination paper is lodged with the Returning Officer; or
  - d. the name which was adopted by the candidate through a name change registered under section 21B of the Births, Deaths, Marriages, and Relationships Registration Act 1995 (or an earlier corresponding provision) before the period of 12 months ending with the day on which the nomination paper is lodged with the Returning Officer and which was used by the candidate throughout that period.



3. Despite anything in subsection (2), in applying that subsection in the case of any constituency candidate who is, or has been, married to, or in a civil union with, another person, the other person's surname may be substituted for the candidate's surname in any of the cases specified in paragraphs (a) to (d) of that subsection, unless, if the other person were nominated as a constituency candidate under that surname, the Returning Officer would be required to reject his or her nomination under the provisions of that subsection.
4. [Repealed]
5. Notwithstanding anything in subsection (2), the Returning Officer may, with the concurrence of the Electoral Commission, accept the nomination of any constituency candidate under a name that does not comply with the provisions of that subsection, if the Returning Officer is satisfied that the name has been adopted by the candidate in good faith and for good reason and is not indecent or offensive or likely to deceive or cause confusion.
6. In every other case the Returning Officer shall accept the nomination.
7. Nothing in subsection (6) limits the jurisdiction of the court hearing an election petition.

## 146. Withdrawal of nomination

1. Any constituency candidate may withdraw his or her nomination by a notice in form 10, signed by him or her and witnessed by a Justice of the Peace or a solicitor.
2. No withdrawal of nomination shall have any effect unless it is lodged with the Returning Officer not later than noon on nomination day.
3. Where a candidate has duly withdrawn his or her nomination his or her deposit shall be returned to the person who paid it.

## Subpart 6: Bulk nomination of candidates by registered political parties

### 146A. Purpose of sections 146B to 146L

Sections 146B to 146L provide an alternative to the procedures set out in sections 143 to 146 by which people can be nominated as candidates for election for electoral districts.

### 146B. Notice of intention to lodge bulk nomination

1. If, at any general election, a political party that is registered under Part 4 intends to lodge a bulk nomination schedule of candidates for election for electoral districts, the secretary of that party must notify that intention to the Electoral Commission.
2. A notification under subsection (1)—
  - a. must be given not later than 1 working day after writ day for the general election; and
  - b. must be on a form provided by the Electoral Commission; and
  - c. may be given by hand, post, or electronically.

3. The secretary of a party may, at any time before lodging a bulk nomination schedule, withdraw a notification under subsection (1) by notifying the withdrawal to the Electoral Commission.
4. A withdrawal under subsection (3)—
  - a. must be on a form provided by the Electoral Commission; and
  - b. may be given by hand, post, or electronically.

### **146C. Effect of notification of intention to lodge bulk nomination on nominations under section 143**

1. If the secretary of a political party notifies the party's intention to the Electoral Commission under section 146B(1), that notification remains in force for the purposes of the general election unless—
  - a. the notification is withdrawn under section 146B(3); or
  - b. any bulk nomination schedule lodged by the secretary of that party is rejected under section 146G; or
  - c. the secretary of that party withdraws, under section 146I, a bulk nomination schedule previously lodged by the secretary without providing either of the following:
    - i. an express statement on the form on which the withdrawal is made that the party intends to lodge another bulk nomination schedule; or
    - ii. another bulk nomination schedule in accordance with section 146D.
2. While a notification of a party's intention under section 146B remains in force for the purposes of a general election,—
  - a. no Returning Officer may accept a nomination made under section 143 in respect of a candidate for that political party; and
  - b. if a Returning Officer has already accepted a nomination made under section 143 in respect of a candidate for that political party, that nomination is of no effect and is to be treated as if it had been withdrawn under section 146.

### **146D. Bulk nomination of constituency candidates**

1. At any general election, the secretary of a political party that is registered under Part 4 may, in accordance with this section, nominate as candidates for election for electoral districts persons who are qualified under this Act and who consent to be nominated.
2. The secretary of a party may nominate its candidates under this section by lodging, with the Electoral Commission, a single bulk nomination schedule on a form provided by the Electoral Commission.

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3. A bulk nomination schedule—
  - a. may be lodged by hand, post, or electronically; and
  - b. must be lodged with the Electoral Commission not later than noon on the day before nomination day.
4. The Electoral Commission must give a written receipt for every bulk nomination schedule that the Electoral Commission accepts.

### **146E. Bulk nomination schedule**

1. The following requirements apply in relation to a bulk nomination schedule:
  - a. the schedule must specify the electoral districts for which candidates are nominated in the schedule:
  - b. the schedule must state, in relation to each such electoral district,—
    - i. the full name of the constituency candidate; and
    - ii. if the candidate's full name is not to be used on the ballot paper, the name or names to be used, which must be short enough to fit on the ballot paper.
2. Every bulk nomination schedule must contain a declaration, made by the secretary of the party in the manner provided by section 9 of the Oaths and Declarations Act 1957, that the secretary is satisfied that each constituency candidate nominated in the schedule is qualified under this Act to be a constituency candidate.
3. The secretary of the political party must lodge with the bulk nomination schedule, in relation to each constituency candidate nominated in the schedule,—
  - a. a statement in a form provided by the Electoral Commission, signed by the constituency candidate, and confirming the candidate's consent to the nomination; and
  - b. any statutory declaration made by the constituency candidate received under section 49(4)(b).
4. If the secretary of a political party lodges a bulk nomination schedule and the political party has a logo registered under section 71F, but the political party is not submitting a party list under section 127, then a copy of the logo may be lodged with the Electoral Commission for inclusion on the ballot paper in accordance with section 150(13).
5. Every logo lodged under subsection (4)—
  - a. may be lodged by hand, post, or electronically; and
  - b. must be lodged with the Electoral Commission not later than noon on nomination day.

## **146F. Deposit payable in respect of bulk nomination schedule**

1. If a secretary of a party lodges a bulk nomination schedule under section 146D, he or she must pay to the Electoral Commission, by noon on the day before nomination day, a deposit of \$300 (inclusive of goods and services tax) for every constituency candidate nominated in the bulk nomination schedule.
2. The deposit must be paid in 1 lump sum by—
  - a. direct credit to a bank account nominated by the Electoral Commission; or
  - b. bank cheque.
3. If an unsuccessful constituency candidate nominated in a bulk nomination schedule receives in total less than 5% of the total number of votes received by constituency candidates in the district for which the unsuccessful candidate was nominated, the amount of the deposit paid under subsection (1) in respect of that unsuccessful candidate is forfeit and must be paid into a Crown Bank Account.
4. After deducting any amounts forfeit under subsection (3), the Electoral Commission must return the remainder (if any) of the amount paid under subsection (1) to the party secretary, but only if the Electoral Commission has received from every constituency candidate nominated in the bulk nomination schedule duly completed returns under sections 205K and 209.

## **146G. Acceptance or rejection of bulk nomination schedule or nomination of candidate**

1. The Electoral Commission must reject a bulk nomination schedule lodged under section 146D—
  - a. if the schedule is not lodged by the secretary of a political party registered under Part 4; or
  - b. if the intention to lodge the schedule has not been notified under section 146B; or
  - c. if the schedule is not lodged with the Electoral Commission by noon on the day before nomination day; or
  - d. if the schedule does not contain the declaration required by section 146E(2); or
  - da. [Repealed]
  - e. if the deposit required by section 146F(1) is not paid by noon on the day before nomination day.
2. The Electoral Commission must not accept the nomination of a candidate listed on a bulk nomination schedule in any case where a Returning Officer would be required to reject the nomination of that candidate under section 145(2) if the candidate had been nominated under section 143; and the provisions of subsections (2) to (5) of section 145 apply accordingly with all necessary modifications.

3. The Electoral Commission must reject the nomination of a candidate listed on a bulk nomination schedule if—
  - a. the candidate is not qualified both to be a candidate and to be elected as a member of Parliament; or
  - b. the written notice required by section 146E(3) in relation to that candidate is not lodged with the Electoral Commission by noon on nomination day.
4. In every other case the Electoral Commission must accept the bulk nomination schedule and the nominations made on the schedule.
5. Subsection (4) does not limit the jurisdiction of the court hearing an election petition.

### **146H. Amendment of bulk nomination schedule**

1. If the secretary of a party lodges a bulk nomination schedule with the Electoral Commission by noon on the day before nomination day, the secretary may, at any time before noon on nomination day, provide to the Electoral Commission any information necessary to remedy any defect or omission in the schedule, or in any document required to be lodged with the schedule.
2. Information may be provided under subsection (1) to the Electoral Commission by hand, post, or electronically.
3. If the Electoral Commission receives any information under subsection (1),—
  - a. the Electoral Commission must, where appropriate, amend the bulk nomination schedule or other document to which the information relates:
  - b. the Electoral Commission must take the information into account in determining whether to accept or reject, under section 146G, the bulk nomination schedule, or the nomination of a candidate listed on the schedule.
4. This section does not authorise the secretary of a party to—
  - a. substitute a different person as a candidate for election for an electoral district; or
  - b. nominate a candidate for election for an electoral district for which no candidate was nominated in the schedule as originally lodged with the Electoral Commission.

### **146I. Withdrawal of bulk nomination schedule**

1. A secretary of a party may withdraw a bulk nomination schedule lodged by him or her under section 146D.
2. A bulk nomination schedule may be withdrawn under subsection (1) by notice, on a form provided by the Electoral Commission, signed by the secretary of the party and witnessed by a Justice of the Peace or a solicitor.
3. The withdrawal of a bulk nomination schedule has no effect unless the withdrawal is lodged with the Electoral Commission, by hand, post, or electronically, by noon on nomination day.

4. If the secretary of a party withdraws a bulk nomination schedule under subsection (1), any notification given by that party under section 146B(1) automatically ceases to be in force, unless—
  - a. the form on which the withdrawal is made expressly states that the party intends to lodge another bulk nomination schedule; or
  - b. at the time of lodging the withdrawal, the party secretary lodges another bulk nomination schedule in accordance with section 146D.
5. If a bulk nomination schedule is withdrawn under subsection (1), the party secretary may lodge another bulk nomination schedule in accordance with section 146D.
6. If a bulk nomination schedule is withdrawn under subsection (1), the deposit paid under section 146F must be returned to the party secretary, unless the party secretary submits another bulk nomination schedule in accordance with section 146D.

### **146J. Withdrawal of nomination in bulk nomination schedule**

1. A constituency candidate nominated in a bulk nomination schedule or in accordance with section 146K may withdraw his or her nomination by a notice on a form provided by the Electoral Commission, signed by him or her and witnessed by a Justice of the Peace or a solicitor.
2. No withdrawal of nomination under subsection (1) has any effect unless it is lodged with the Electoral Commission not later than noon on nomination day.
3. If a candidate for election for an electoral district withdraws his or her nomination under subsection (1), the amount of the deposit paid under section 146F(1) in respect of that candidate must be returned to the party secretary, unless another candidate for election for that electoral district is nominated under section 146K.

### **146K. Replacement nomination if earlier nomination withdrawn or lapses**

1. If a candidate for election for an electoral district withdraws his or her nomination under section 146J, or the nomination of a constituency candidate nominated in a bulk nomination schedule is required by section 152 or section 152A(3) to be treated as if it had not been made, the secretary of the party may nominate another candidate for election for that electoral district in the following manner:
  - a. written notice of the nomination must be lodged with the Electoral Commission, by hand, post, or electronically, not later than noon on nomination day:
  - b. the requirements set out in subsections (1) to (3) of section 146E apply in relation to a notice under this section as if the nomination were made in a bulk nomination schedule:

- c. the secretary of the party must lodge with the Electoral Commission, by noon on nomination day, a deposit (in the form of money, a bank draft, or a bank cheque) of the amount payable under section 146F(1) for a constituency candidate nominated in a bulk nomination schedule, unless the Electoral Commission holds the amount of the deposit paid under section 146F(1) in respect of the candidate whose nomination was withdrawn or (as the case may be) who died or became incapacitated.
2. Sections 146F(3) and (4), 146G, and 146H apply in relation to a nomination lodged under this section as if the nomination had been included in a bulk nomination schedule, except that the references in those sections to the day before nomination day are to be read as references to nomination day.

## 146L. Inspection of bulk nomination schedules and consents to nomination

Any registered elector may inspect the following material at the Electoral Commission's office without payment at any time when the office is open for the transaction of business:

- a. any bulk nomination schedule lodged under this Act:
- b. any copy of a consent lodged with a bulk nomination schedule in accordance with section 146E(3):
- c. any information provided to the Electoral Commission under section 146H:
- d. any nomination lodged under section 146K.

## Subpart 7: Advertisements

### 147. Advertisement of nomination and polling places

1. After the close of nominations in any district the Returning Officer shall forthwith forward to the Electoral Commission at Wellington—
  - a. the names of the constituency candidates who have been nominated under section 143 and who have not withdrawn their nominations; and
  - b. the party affiliations (if any) of the candidates referred to in paragraph (a) and copies of the party logos (if any) submitted under section 143(3A) in respect of those candidates.
2. The Electoral Commission must immediately notify to every Returning Officer—
  - a. the names of the constituency candidates who have been nominated for each district in which a poll is required to be taken and who have not withdrawn their nominations; and
  - b. the party affiliations (if any) of the candidates referred to in paragraph (a), and copies of the party logos (if any) submitted in accordance with section 143(3A) or section 146E(4) in respect of those candidates; and

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- c. the names of the political parties that have submitted lists in accordance with section 127 and the party logos (if any) submitted in accordance with subsections (7) and (8) of that section in respect of those parties; and
  - d. the names of the candidates on the lists referred to in paragraph (c) or, where the names of more than 65 candidates are included on any such list, the first 65 of those names.
3. Subject to subsection (4), the Returning Officer for each district in which a poll is required to be taken shall, not later than the day before polling day, publish—
- a. the names of constituency candidates contesting the district and their party affiliations (if any); and
  - b. the name of each political party that submitted a list in accordance with section 127 and, under the name of each political party, the names of the political party's list candidates in the political party's order of preference (up to a maximum of 65 candidates); and
  - c. the polling places for the district; and
  - d. the polling places in the district that have suitable access for persons who are physically disabled—
- in at least 1 newspaper circulating in the district in such manner as the Returning Officer considers most likely to give full publicity thereto.
4. The Returning Officer for a district in which a poll is required to be taken shall not be obliged to comply with subsection (3) if the Electoral Commission exercises, in respect of that district, the power conferred on the Electoral Commission by subsection (5).
5. The Electoral Commission may, by such methods as the Electoral Commission considers appropriate (including by post), send to every residential address in an electoral district at which 1 or more electors reside the information specified in paragraphs (a) to (d) of subsection (3).

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## Subpart 8: Uncontested elections

### 148. Procedure where election not contested

1. If—
  - a. only 1 constituency candidate is nominated in a district; or
  - b. any constituency candidate who has been nominated duly withdraws his or her nomination and there remains only 1 constituency candidate,—
 the Electoral Commission must, in accordance with section 179(2), declare the constituency candidate to be duly elected.
2. The name of the person so elected must be endorsed on the writ by an Electoral Commissioner on behalf of the Electoral Commission, and the writ must be returned to the Clerk of the House of Representatives in accordance with section 185.



## Subpart 9: Elections

### 149. Poll to be taken

A poll shall be taken by secret ballot at the several polling places of the district on polling day.

### 150. Form of ballot papers

1. Subject to subsection (18), the ballot papers to be used at any election shall be in form 11.
2. Forthwith after nomination day for an election, the Electoral Commission must cause ballot papers to be printed in sufficient numbers for the election.
3. Subject to subsection (4), each ballot paper in form 11 shall comprise 2 votes, namely, a party vote and an electorate vote.
4. If only 1 constituency candidate is nominated or if the withdrawal of 1 or more nominations results in a declaration under section 148, the part of the ballot paper that relates to the electorate vote shall not be printed and the ballot paper shall thereafter be treated as if it comprised only the party vote.
5. If more than 1 constituency candidate is nominated, and a sufficient number of constituency candidates do not withdraw their nominations so as to leave only 1 constituency candidate, the part of the ballot paper relating to the electorate vote shall contain a list of all the persons nominated as constituency candidates who have not withdrawn their nominations (which list shall be arranged in the manner prescribed by this section).
6. On the part of the ballot paper relating to the electorate vote—
  - a. the names of the constituency candidates shall be arranged alphabetically in order of their surnames:
  - b. the other names of each constituency candidate that are required to appear on the ballot paper shall follow the candidate's surname:
  - c. the surnames of the constituency candidates shall (except in the case of a special ballot paper that is not fully printed) be in large characters and bold type:
  - d. the name of the political party of the constituency candidate, if any,—
    - i. shall be shown immediately below the candidate's name; and
    - ii. shall be in characters that are smaller than those used for the surname of the constituency candidate; and
    - iii. shall not be in bold type:
  - e. such other matter (if any) as may be necessary to distinguish the names of the constituency candidates shall be shown.

7. A constituency candidate (other than an independent candidate) who seeks election shall not use the name of any political party that contested the last general election or any by-election held since the last general election unless that political party has endorsed that candidate as one of its candidates.
8. No constituency candidate who seeks election as an independent candidate shall use the name of any political party that contested the last general election or any by-election held since the last general election but shall have the word "INDEPENDENT", without further qualification or addition, shown on the ballot paper immediately below that candidate's name.
9. On the part of the ballot paper relating to the party vote the name of each political party that has submitted a list in accordance with section 127 (not being a political party that has submitted a list that has been rejected under section 128) shall be shown.
10. The names of the political parties that, pursuant to subsection (9), are required to be shown on the part of the ballot paper that relates to the party vote, shall be arranged so that—
  - a. where the name of any such political party is shown, immediately below the name of a constituency candidate whose name appears on the part of the ballot paper that relates to the electorate vote, the name of that political party shall be shown on the part of the ballot paper that relates to the party vote in a box that is aligned with the box that contains, on the part of the ballot paper that relates to the electorate vote, the name of that constituency candidate and the name of that political party; and
  - b. where the names of any such political parties are not shown on the part of the ballot paper that relates to the electorate vote, the names of those political parties shall be shown in alphabetical order on the part of the ballot paper that relates to the party vote, with each such name being placed after the names of the political parties shown on that part of the ballot paper under paragraph (a) and in a box that is aligned with an empty box on the part of the ballot paper that relates to the electorate vote.
11. Subject to subsections (6)(e), (12)(b), and (13)(b), no other identification, such as an occupation, title, honour, or degree shall be included on the ballot paper in relation to any candidate's name or political party.
12. On the part of the ballot paper that relates to the party vote,—
  - a. a circle shall be shown on the ballot paper to the right of the name of each political party; and
  - b. the party's logo, if registered by the Electoral Commission and submitted to the Electoral Commission for inclusion on the ballot paper, shall be shown to the left of the name of the political party.
13. On the part of the ballot paper that relates to the electorate vote,—
  - a. a circle shall be shown on the ballot paper to the left of each candidate's name; and
  - b. the party's logo, if registered by the Electoral Commission and submitted to the Electoral Commission in accordance with subsections (7) and (8) of section 127 or to the Returning Officer in accordance with subsections (3A) and (4) of section 143 or in accordance with subsections (4) and (5) of section 146E for inclusion on the ballot paper, shall be shown to the right of the name of the candidate.

14. Every ballot paper shall have a counterfoil in form 13.
15. There shall also be printed (in a form that is readable either with or without the aid of technology)—
  - a. on the ballot paper; and
  - b. in the space provided in the counterfoil attached to the ballot paper,— a number (called a consecutive number) beginning with the number 1 in the case of the first ballot paper printed, and on all succeeding ballot papers printed the numbers shall be consecutive so that no 2 ballot papers for the district shall bear the same number.
16. Where any question arises concerning the order or manner in which the names of the constituency candidates or the names of the political parties are to be shown on the ballot paper, the Electoral Commission must decide the question.
17. At any by-election no ballot paper shall contain more than 1 part and the provisions of subsections (3), (9), (10), and (12) shall not apply.
18. Every ballot paper used at a by-election shall be in form 12.
19. Where the name or names given by a candidate as the name or names to be used on the ballot paper are too long to fit on the ballot paper, the Electoral Commission may abbreviate the name or names to be shown in such manner as will enable them to fit on the ballot paper.

## **151. Name of political party for constituency candidates**

1. Where a name is shown on a nomination paper, or other document on which a constituency candidate consents to his or her nomination, as the name of the constituency candidate's political party, the Returning Officer may, if he or she considers it necessary, require the candidate to produce evidence sufficient to satisfy the Returning Officer of the candidate's eligibility to claim that accreditation.
2. Where the Returning Officer considers that the name shown on the nomination paper or other document as the name of the constituency candidate's political party is indecent or offensive or excessively long or likely to cause confusion to or mislead electors,—
  - a. the Returning Officer shall, after consultation with the candidate, show on the ballot paper as the name of the candidate's political party such name as the Returning Officer and the candidate agree upon in place of that shown on the nomination paper or other document; and
  - b. if, on such consultation, the Returning Officer and the candidate cannot agree, or if consultation is not reasonably practicable, the Returning Officer shall not show any name on the ballot papers as the name of the candidate's political party.

## Subpart 10: Death or incapacity of candidate

### 151A. Interpretation

For the purposes of sections 152A to 153H, a candidate is incapacitated if the Returning Officer or, as the case requires, the Electoral Commission is satisfied that, because the candidate is suffering from a serious illness or has sustained a serious injury,—

- a. if section 152A applies, the candidate is unable to personally withdraw his or her nomination; and
- b. in any case, the candidate, if elected, would be unlikely to be capable of taking the Oath of Allegiance as a member of Parliament on the 51st day after writ day.

### 152. Death before close of nominations

1. If a constituency candidate who has been nominated and has not withdrawn his or her nomination dies before the close of nominations,—
  - a. his or her nomination is to be treated in all respects as if it had not been made; and
  - b. his or her deposit must be returned to his or her personal representatives or, as the case may be, to the person who paid it.
2. Subsection (3) applies if the candidate dies on nomination day before noon, or on any of the 3 days immediately before nomination day.
3. If this subsection applies, then, once the Returning Officer is satisfied of the fact of death,—
  - a. the time for the close of nominations in that district is postponed until noon on the fourth day after the date of the candidate's death; and
  - b. the Returning Officer must immediately give public notice of the fact that the close of nominations in that district has been postponed and of the new time for the close of nominations.
4. If subsection (3) applies, but the candidate was nominated in a bulk nomination schedule or in accordance with section 146K, the references to Returning Officer in subsection (3) are to be read as references to the Electoral Commission.

### 152A. Incapacity of candidate before close of nominations

1. If a constituency candidate who has been nominated and has not withdrawn his or her nomination becomes incapacitated before the close of nominations, an application may be made for the cancellation of the nomination.
2. Section 152B sets out how an application under subsection (1) must be made, and section 152C sets out how it is to be dealt with.

3. If the Returning Officer or, as the case requires, the Electoral Commission cancels the nomination in accordance with section 152C(3),—
  - a. the candidate's nomination is to be treated in all respects as if it had not been made; and
  - b. the candidate's deposit must be returned to the candidate or, as the case may be, to the person who paid it.
4. If the candidate's nomination is cancelled on nomination day, or on any of the 3 days immediately before nomination day, then—
  - a. the time for the close of nominations in the district is postponed until noon on the fourth day after the date on which the candidate's nomination is cancelled; and
  - b. the Returning Officer or, as the case requires, the Electoral Commission must immediately give public notice of the fact that the close of nominations in the district has been postponed and of the new time for the close of nominations.

### **152B. Procedural provisions relating to making of application under section 152A(1)**

1. An application under section 152A(1) must be made as follows:
  - a. if the candidate was nominated under section 143,—
    - i. the application must be made by the 2 registered electors who nominated the candidate, or, if either or both of them are unavailable or unable to act for any reason, then by the candidate's agent:
    - ii. the application must be made to the Returning Officer for the district:
  - b. if the candidate was nominated in a bulk nomination schedule or in accordance with section 146K,—
    - i. the application must be made by the secretary of the party:
    - ii. the application must be made to the Electoral Commission.
2. The application must be made on a form provided by the Electoral Commission, and must be witnessed by a Justice of the Peace or a solicitor.
3. The application must be accompanied by a certificate signed by a medical practitioner that certifies—
  - a. as to the candidate's condition; and
  - b. that, in the practitioner's opinion, the candidate is incapacitated within the meaning of section 151A.

4. The application—
  - a. must be submitted to the Returning Officer or, as the case requires, the Electoral Commission not later than 4 pm on nomination day; and
  - b. may be submitted by hand, post, or electronically.

### **152C. How application under section 152A to be dealt with**

1. On receiving an application made under section 152A(1), the Returning Officer or, as the case requires, the Electoral Commission must, without delay, determine whether or not the candidate became incapacitated before the close of nominations.
2. For the purpose of making a determination under subsection (1), the Returning Officer or Electoral Commission may make any inquiries, and seek any assistance (including, without limitation, expert medical assistance), that the Returning Officer or Electoral Commission considers necessary.
3. If, before midnight on nomination day, the Returning Officer or Electoral Commission determines that the candidate became incapacitated before the close of nominations, the Returning Officer or Electoral Commission must cancel the candidate's nomination.
4. If the Returning Officer or Electoral Commission has not made a determination under subsection (1) before midnight on nomination day, then—
  - a. section 152A does not apply; and
  - b. the application is to be treated as if it were an application under section 153G(1), and is to be determined accordingly.
5. As soon as practicable after making a determination under subsection (1), the Returning Officer or Electoral Commission must inform the applicant or applicants of that determination.

### **153. Death or incapacity of list candidate after submission of list**

1. This section applies if a list candidate dies, or his or her nomination is cancelled on the grounds of incapacity, after the submission of the list and before the declaration required by section 193(5).
2. If this section applies,—
  - a. the poll must proceed; and
  - b. the list must be treated subsequently as if the candidate's name had never been included on that list.

### **153A. Death or incapacity of constituency candidate after close of nominations and before polling day**

1. This section applies if a constituency candidate dies, or his or her nomination is cancelled on the grounds of incapacity, after the close of nominations and before polling day.

2. If this section applies, then once the Returning Officer is satisfied that the candidate has died or, as the case requires, that the candidate's nomination has been cancelled, the Returning Officer must,—
  - a. in the case of a general election,—
    - i. issue a notice cancelling the poll for the election of a member of Parliament for the district; and
    - ii. proceed to conduct the poll on the part of the ballot paper that relates to the party vote, which for these purposes is to be treated as if it were the only part of the ballot paper; and this Part applies with any necessary modifications; and
  - b. in the case of a by-election, issue a notice cancelling the poll; and
  - c. report to the Electoral Commission—
    - i. the issue and the date of the notice, under paragraph (a) or paragraph (b), cancelling the poll; and
    - ii. whether the poll was cancelled because of the candidate's death or because of the candidate's incapacity; and
    - iii. the date of the candidate's death, if applicable; and
    - iv. if the candidate's incapacity was determined, under section 153H, by the Returning Officer, the date of the determination.
3. Immediately after the Electoral Commission receives the Returning Officer's report under subsection (2)(c), an Electoral Commissioner must, on behalf of the Electoral Commission, endorse on the writ—
  - a. the name of the candidate whose death or whose incapacity resulted in the cancellation of the poll for the election of a member of Parliament for the district concerned; and
  - b. the date of the notice by which the poll was cancelled; and
  - c. the date on which the candidate died or, as the case requires, the date on which the candidate's incapacity was determined.

### **153B. Death or incapacity of constituency candidate on polling day**

1. This section applies if a constituency candidate dies, or his or her nomination is cancelled on the grounds of incapacity, on polling day before the close of the poll.

2. If this section applies, then once the Returning Officer is satisfied that the candidate has died or, as the case requires, that the candidate's nomination has been cancelled, the Returning Officer must,—
  - a. in the case of a general election,—
    - i. immediately close the part of the poll that is based on electorate votes and declare that part of the poll to be of no effect; and
    - ii. proceed to conduct the poll on the part of the ballot paper that relates to the party vote, which for these purposes is to be treated as if it were the only part of the ballot paper; and this Part applies with any necessary modifications; and
  - b. in the case of a by-election, immediately close the poll; and
  - c. report to the Electoral Commission—
    - i. the closure of the poll or part of the poll and the time of the closure; and
    - ii. whether the poll or part of the poll was closed because of the candidate's death or because of the candidate's incapacity; and
    - iii. if the candidate's incapacity was determined, under section 153H, by the Returning Officer, the date of the determination.
3. Immediately after the Electoral Commission receives the Returning Officer's report under subsection (2)(c), an Electoral Commissioner must, on behalf of the Electoral Commission, endorse on the writ—
  - a. the name of the candidate whose death or whose incapacity resulted in the closure of the poll for the election of a member of Parliament for the district concerned; and
  - b. the time of that closure; and
  - c. the date on which the candidate died or, as the case requires, the date on which the candidate's incapacity was determined.

### **153C. Death or incapacity of successful constituency candidate after close of poll and before declaration of result**

1. This section applies if—
  - a. a constituency candidate dies, or his or her nomination is cancelled on the grounds of incapacity, after the close of the poll and before the declaration of the result of the poll; and



- b. it is found on the completion of the count of votes or on a recount that the candidate, if still living or if not incapacitated, would have been elected.
2. If this section applies, then once the Returning Officer is satisfied that the candidate has died or, as the case requires, that the candidate's nomination has been cancelled, the Returning Officer must report to the Electoral Commission—
  - a. the death or incapacity of the candidate; and
  - b. the date of the candidate's death, if applicable; and
  - c. if the candidate's incapacity was determined, under section 153H, by the Returning Officer, the date of the determination.
3. Immediately on the Electoral Commission being satisfied of the Returning Officer's report under subsection (2), an Electoral Commissioner must, on behalf of the Electoral Commission, endorse on the writ—
  - a. the name of the candidate; and
  - b. that the candidate would, if still living or if not incapacitated, have been elected as the member of Parliament for the district concerned; and
  - c. the date on which the candidate died or, as the case requires, the date on which the candidate's incapacity was determined.

### **153D. Application of equality of votes provisions if constituency candidate dies or becomes incapacitated after close of poll**

The provisions of this Act as to an equality of votes between constituency candidates apply even though, after the close of the poll, one of those candidates dies or the nomination of one of those candidates is cancelled on the grounds of incapacity.

### **153E. New election to be held if writ vacated**

1. Immediately after an Electoral Commissioner has endorsed the writ in accordance with section 153A or section 153B or section 153C, the Electoral Commission must notify the Governor-General of the need for a fresh election because of the death or the incapacity of the candidate concerned.
2. On receiving notification under subsection (1), the Governor-General must, without delay, issue a writ for a fresh election in that district, and that election must be conducted as if it were a by-election unless this Act provides otherwise.
3. The main roll and supplementary rolls which were to be used at the election which has failed must be used at the new election without any amendment or addition.
4. Any candidate who, at the time of the cancellation or closure of the poll, was a duly nominated candidate does not need to be nominated again, but the candidate may withdraw his or her nomination before the time appointed for the close of nominations for the new election.
5. All appointments of polling places made in respect of the election that has failed continue in respect of the new election.

## **153F. Destruction of ballot papers if by-election interrupted**

1. This section applies if, in the case of a by-election, the poll is interrupted as a result of the death of a constituency candidate or the cancellation of the nomination of a constituency candidate on the grounds of incapacity.
2. If this section applies,—
  - a. all ballot papers that have been placed in ballot boxes must be taken out by the managers of polling places and made up into secured packages; and
  - b. those packages must be sent, unopened, to the Returning Officer; and
  - c. the Returning Officer must immediately destroy those packages in the presence of a District Court Judge or a Justice of the Peace.

## **153G. Application for cancellation of nomination if candidate incapacitated after close of nominations**

1. An application may be made for the cancellation of the nomination of a candidate if,—
  - a. in the case of a candidate whose name is included on a list submitted under section 127, the candidate becomes incapacitated after the submission of the list and before the declaration required by section 193(5):
  - b. in the case of a constituency candidate, the candidate becomes incapacitated after the close of nominations and before the declaration of the result of the poll.
2. An application under subsection (1) must be made as follows:
  - a. if the candidate was nominated under section 143,—
    - i. the application must be made by the 2 registered electors who nominated the candidate or, if either or both of them are unavailable or unable to act for any reason, then by the candidate's agent:
    - ii. the application must be made to the Returning Officer for the district:
  - b. if the candidate was nominated in a bulk nomination schedule or in accordance with section 146K, or is a candidate whose name is included on a list submitted under section 127,—
    - i. the application must be made by the secretary of the party:
    - ii. the application must be made to the Electoral Commission.
3. The application must be made on a form provided by the Electoral Commission, and must be witnessed by a Justice of the Peace or a solicitor.

4. The application must be accompanied by a certificate signed by a medical practitioner that certifies—
  - a. as to the candidate's condition; and
  - b. that, in the practitioner's opinion, the candidate is incapacitated within the meaning of section 151A.
5. The application—
  - a. must be submitted to the Returning Officer or, as the case requires, the Electoral Commission—
    - i. as soon as practicable after the candidate becomes incapacitated; and
    - ii. before the declaration of the result of the poll; and
  - b. may be submitted by hand, post, or electronically.

### **153H. How application under section 153G to be dealt with**

1. On receiving an application made under subsection (1) of section 153G, the Returning Officer or, as the case requires, the Electoral Commission must, without delay, determine whether or not the candidate became incapacitated in the circumstances set out in that subsection.
2. For the purpose of making a determination under subsection (1), the Returning Officer or Electoral Commission may make any inquiries, and seek any assistance (including, without limitation, expert medical assistance), that the Returning Officer or Electoral Commission considers necessary.
3. If, before the declaration of the result of the poll, the Returning Officer or Electoral Commission determines that the candidate became incapacitated in the circumstances set out in section 153G(1), the Returning Officer or Electoral Commission must cancel the candidate's nomination.
4. If the Returning Officer or Electoral Commission has not made a determination under subsection (1) before the declaration of the result of the poll, the application is to be treated as having been declined.
5. As soon as practicable after making a determination under subsection (1), the Returning Officer or Electoral Commission must inform the applicant or applicants of that determination.

## Subpart 11: Candidates' meetings

### 154. Use of public schoolrooms for election meetings

1. Any candidate at an election may, for the purpose of holding public meetings of electors for electoral purposes during the period of an election, use free of charge, other than the cost of lighting and heating, and of cleaning after use, and of repairing any damage done, any suitable room in any public primary school or intermediate school or secondary school after the ordinary school hours, subject to the following provisions:
  - a. 3 days' notice of the proposed public meeting shall be given to the governing body of the school:
  - b. the use of the school shall be granted in the order of receipt of applications by or on behalf of the candidates:
  - c. no candidate shall have the use of the same room on a second occasion if any other candidate who has not before used it desires to make use of it at the same time under this section.
2. If it is proved that any such meeting was not a public meeting within the meaning of this section, the person by whom and the candidate on whose behalf the meeting was convened shall each be liable on conviction to a fine not exceeding \$1,000.
3. For the purposes of this section, the term candidate means—
  - a. any person who has declared his or her intention of becoming a candidate either by advertisement in a newspaper, or by circular, or by announcement at a public meeting, or by duly consenting to nomination, but does not include a candidate who has withdrawn his or her nomination; or
  - b. any person whose name has been included in a list submitted under section 127.

## Subpart 12: Polling at elections

### 155. Power to appoint polling places

1. In respect of each election, the Electoral Commission may from time to time, subject to subsections (2) to (4), appoint polling places for any district, and may revoke, alter, or add to any such appointment.
2. The polling places appointed for any district may include polling places that are not within the limits of that district.
3. No polling place shall be appointed in any licensed premises under the Sale and Supply of Alcohol Act 2012 that will, at any time on polling day, be open for the sale, supply, or consumption of alcohol (within the meaning of section 5(1) of the Sale and Supply of Alcohol Act 2012).
4. At least 12 polling places within the limits of each district shall have access that is suitable for persons who are physically disabled.
5. The Electoral Commission may make the details of every appointment, revocation, alteration, or addition publicly available by any means that the Electoral Commission considers appropriate.

• Electoral commission

6. Subsection (5) does not limit section 147.

## 156. Use of public schools as polling places

1. Any public primary school or intermediate school or secondary school may be appointed to be a polling place under section 155, and in every such case it shall be the duty of the governing body of the school to place it at the free disposal of the Returning Officer from 4 pm on the day before polling day and for the whole of polling day.
2. The cost of cleaning any part of a school used as a polling place, the cost of lighting and heating used on polling day, and the cost of repairing any damage arising from the use of a school as a polling place, shall be defrayed by the Returning Officer out of money to be appropriated by Parliament.

## 157. Materials for polling places

1. The Returning Officer must ensure that each polling place has the following things for the purposes of the poll:
  - a. 1 or more inner compartments to enable voters to vote in secret:
  - b. in each inner compartment, suitable facilities for the marking of ballot papers:
  - c. 1 or more ballot boxes:
  - d. 1 or more copies of the main roll and supplementary rolls for the district:
  - e. a sufficient number of ballot papers.
2. The Returning Officer must ensure that there is displayed prominently in every polling place either—
  - a. the name of each political party that submitted a list in accordance with section 127 and, under the name of each political party, the names of the political party's list candidates in the political party's order of preference (up to a maximum of 65 candidates); or
  - b. copies of the information sent to electors under section 147(5).

## 158. Appointment of polling place officials

1. The Returning Officer must, for each polling place, appoint in writing as many polling place officials as the Returning Officer thinks are required for the conduct of the poll, and the preliminary count of votes, at that place.
2. The Returning Officer must, in relation to each polling place, designate, by notice in writing, one of the polling place officials as the manager of the place.
3. The Returning Officer may, in relation to each polling place,—
  - a. authorise in writing 1 or more polling place officials to issue ballot papers at the place; and

- b. designate in writing 1 or more of the polling place officials as interpreters; and
  - c. authorise in writing or, if the appointment is made on polling day, orally, any person to act for the manager of the polling place in case of the manager's absence.
4. The Returning Officer for an electoral district may delegate his or her duties and powers under subsections (1) to (3) to a Returning Officer for another electoral district.
  5. The State Sector Act 1988 does not apply to a person appointed under this section.

## **158A. Polling place officials under direction of Electoral Commission and Returning Officer**

- Electoral commission
1. The Electoral Commission and the Returning Officer may each give oral or written directions to all or any polling place officials.
  2. Every polling place official must exercise or perform his or her powers, duties, and functions in accordance with any directions given by the Electoral Commission or the Returning Officer.

## **159. Exercise of powers and duties of polling place officials**

1. The Returning Officer may exercise in person all the powers, duties, and functions of a manager of a polling place.
2. A person authorised under section 158(3)(c) has, while acting for a manager of a polling place, all the powers, duties, and functions of the manager.
3. Every polling place official must, before being allowed to act, make a declaration in form 1 before the Returning Officer, or a Justice of the Peace, or a solicitor, or the manager, or an issuing officer of the polling place concerned.

## **159A. Interpreters**

1. Whenever the Returning Officer designates polling place officials as interpreters, the Returning Officer must, at the request of a candidate, give the candidate the names of the interpreters.
2. Regulations made under section 267 may prescribe procedures governing the use of interpreters.

## **160. Scrutineers**

1. Each constituency candidate may appoint 1 or more scrutineers for each polling place at any election.
2. If, at an election in a district, no constituency candidate is standing for a political party that is listed in the part of the ballot paper that relates to the party vote, the secretary of the party may appoint 1 or more scrutineers for each polling place in the district.
3. Every appointment of a scrutineer—
  - a. must be in writing; and

- b. must be signed by the constituency candidate or, as the case requires, the secretary of the party.
4. Every scrutineer must, before being allowed to act, make a declaration in form 1 before the Returning Officer, or a Justice of the Peace, or a solicitor, or the manager, or an issuing officer of the polling place concerned.
5. The number of scrutineers for a candidate or for a political party who may be present in a polling place may not exceed the number of issuing officers designated for the polling place.
6. A scrutineer may at any time during the hours of polling leave and re-enter the polling place for which he or she is appointed.
7. Nothing in this Act renders it unlawful for a scrutineer to communicate to a person information as to the names of persons who have voted.
8. No candidate may act as a scrutineer under this section.

## 161. Hours of polling

1. The poll at every election shall commence at 9 am on polling day, and, except as otherwise provided in this Act, shall finally close at 7 pm on the same day.
2. Every elector who at the close of the poll is present in a polling place for the purpose of voting shall be entitled to receive a ballot paper and to mark and deposit it in the same manner as if he or she had voted before the close of the poll.

## 162. Employees to have time off to vote

1. Subject to the provisions of this section, on the polling day at any election every employer shall allow every worker in his or her employment who is an elector of any electoral district in which the election is being held, and who has not had a reasonable opportunity of voting before commencing work, to leave his or her work for the purpose of voting not later than 3 o'clock in the afternoon for the remainder of the day, and it shall not be lawful for any employer to make any deduction from any remuneration payable to any such worker in respect of any time after the time of his or her leaving his or her work as aforesaid.
2. Where any such worker is required to work after 3 o'clock in the afternoon of polling day for the purpose of carrying on any essential work or service, his or her employer shall on that day allow the worker to leave his or her work for a reasonable time for the purpose of voting, and it shall not be lawful for the employer to make any deduction from any remuneration payable to the worker in respect of any time, not exceeding 2 hours, occupied in voting as aforesaid.
3. Every person commits an offence and shall be liable on conviction to a fine not exceeding \$1,000 who contravenes subsection (1) or subsection (2).
4. Every master of a ship that happens to be in any port in New Zealand at the time of any general election or by-election in any district, at the request of any of the crew being registered or qualified to be registered as electors of that district, shall allow them to go ashore at a proper time to admit of their voting at the election; and every master who without reasonable cause commits any breach of this subsection shall be liable on conviction to a fine not exceeding \$1,000.
5. For the purposes of this section,—
  - employer has the same meaning as in section 5 of the Employment Relations Act 2000

- master, in relation to any ship, includes any person (except a pilot) having command or charge of the ship
  - worker has the same meaning as that given to employee in section 6 of the Employment Relations Act 2000.
6. This section shall bind the Crown.

## Subpart 13: Voting

### 163. Ballot box to remain closed during poll

1. The manager of the polling place shall, before the opening of the poll, and in sight of any of the scrutineers present,—
  - a. see that the ballot box is empty; and
  - b. close the ballot box; and
  - c. ensure that the ballot box is sealed or locked in such a manner as to prevent it being opened without breaking the seal or lock.
2. Subject to subsection (3), the ballot box, after being sealed or locked in accordance with subsection (1), shall not again be opened until after the close of the poll.
3. If the ballot box becomes full and no other ballot box is available, the manager of the polling place, in sight of any of the scrutineers present, may open the ballot box and compress the papers in it.
4. Where a ballot box is opened pursuant to subsection (3), the manager of the polling place shall, after compressing the papers and in sight of any of the scrutineers present,—
  - a. close the ballot box; and
  - b. ensure that the ballot box is sealed or locked in such a manner as to prevent it being opened without breaking the seal or lock.

### 164. Persons not to remain in polling places

No person not actually engaged in voting may remain in a polling place other than the following:

- a. the Returning Officer:
- b. polling place officials:
- c. scrutineers:
- d. any other person with the permission of the Returning Officer.



## 165. Voters not to be communicated with in polling place

1. No scrutineer or other official or unofficial person shall communicate with any voter in a polling place either before or after the voter has given his or her vote, except only the issuing officer (with an interpreter if necessary), who may ask the questions he or she is authorised to put, and give such general directions as may assist any voter to give his or her vote, and in particular may on request inform a voter orally of the names of—
  - a. all the constituency candidates in alphabetical order with their party designations; and
  - b. all the parties in alphabetical order who have submitted a party list, and the names of the candidates on each list in the order of preference submitted by the party in accordance with section 127.
2. Every person who offends against this section shall be liable on conviction to a fine not exceeding \$400 and may at once be removed from the polling place by order of the manager.

## 166. Questions may be put to voters

1. The issuing officer may, and if so required by any scrutineer shall, before allowing any person to vote, put to that person the following questions:
  - a. are you the person whose name appears as AB in the electoral roll now in force for the [name of district] Electoral District?
  - b. have you already voted at this election in this or any other electoral district?
2. In every such case the issuing officer shall require the questions to be answered in writing signed by the person to whom they are put.
3. Every person to whom those questions are put who does not answer them, or does not answer the first in the affirmative and the second in the negative, shall be liable on conviction to a fine not exceeding \$1,000, and shall be prohibited from voting then or afterwards at that election.
4. Every person who wilfully and knowingly makes a false answer to either of the questions that the issuing officer may put to that person under this section shall be liable on conviction to a fine not exceeding \$1,000.

## 167. Issue of ordinary ballot papers

1. Every issuing officer must, in accordance with this section, issue ballot papers to every elector who applies to vote.
2. An elector who applies to vote must—
  - a. verbally give or verbally confirm his or her name; and
  - b. give or confirm any other particulars that may be necessary to find the elector's name on the rolls.

- 2A. If an elector is unable to comply with the requirement in subsection (2)(a) because of an inability to understand English or because of a physical disability, the elector may comply with that requirement by—
- a. gesture; or
  - b. any other means with the assistance of a person nominated by the elector who is present with the elector.
3. If the name of the elector is on the rolls, the issuing officer must—
- a. mark the rolls to indicate that the elector has applied to vote:
  - b. if the consecutive number printed on the ballot paper can be read without the aid of technology, ensure that a piece of gummed paper is firmly fixed over the consecutive number on the ballot paper to conceal it effectively:
  - c. write on the counterfoil of the ballot paper—
    - i. the issuing officer's initials; and
    - ii. the number of the page, and the number of the line, on which the elector's name appears on the roll:
  - d. ensure that the official mark of the issuing officer is placed on the ballot paper to indicate that it was issued by an authorised person:
  - e. issue the ballot paper to the elector.
4. Every person commits an offence and is liable on conviction to a fine not exceeding \$1,000 who, being an issuing officer, fails to comply with the requirements of this section.

## 168. Method of voting

1. The voter, having received a ballot paper,—
- a. shall immediately retire into one of the inner compartments provided for the purpose; and
  - b. shall there alone and secretly vote—
    - i. by marking the party vote with a tick within the circle immediately after the name of the party for which the voter wishes to vote; and
    - ii. by marking the electorate vote with a tick within the circle immediately before the name of the constituency candidate for whom the voter wishes to vote.
2. Where the ballot paper comprises only a party vote or only an electorate vote, the provisions of subsection (3) shall apply instead of subsection (1).

3. The voter, having received a ballot paper,—
  - a. shall immediately retire into one of the inner compartments provided for the purpose; and
  - b. shall there alone and secretly vote either—
    - i. by marking the party vote with a tick within the circle immediately after the name of the party by which the voter wishes to vote; or
    - ii. by marking the electorate vote with a tick within the circle immediately before the name of the constituency candidate for whom the voter wishes to vote.
4. Every voter shall, before leaving the inner compartment, fold the ballot paper so that the contents cannot be seen, and shall then deposit it so folded in the ballot box.
5. Nothing in this section limits the provisions of section 178(5)(a)(ii).

### **169. Spoilt ballot papers**

1. Any voter who, not having deposited his or her ballot paper, in the ballot box, satisfies the issuing officer that the voter has spoilt it by inadvertence may be supplied with a fresh ballot paper, but only after the spoilt one has been returned to the issuing officer.
2. The issuing officer shall—
  - a. cancel every such spoilt ballot paper by writing across the face thereof the words “Spoilt by voter, and a fresh ballot paper issued” and writing his or her initials thereon:
  - b. if any ballot paper is inadvertently spoilt by the issuing officer or any other official, cancel it by writing across the face thereof the words “Spoilt by official” and also the words “and a fresh ballot paper issued” if that is the case, and writing his or her initials thereon:
  - c. retain all spoilt ballot papers in his or her possession until the close of the poll.

### **170. Blind, disabled, or illiterate voters**

1. Any elector who is wholly or partially blind, or (whether because of physical handicap or otherwise) is unable to read or write or has severe difficulty in reading or writing, or is not sufficiently familiar with the English language to vote without assistance, may vote in accordance with the provisions of this section.
2. At the request of any such voter, any person nominated by the voter, or, if no person is so nominated, the issuing officer, shall accompany the voter into one of the inner compartments provided for the marking of ballot papers, and the ballot paper may there be marked by the voter with the assistance of the person nominated or, as the case may be, of the issuing officer, or may be marked by the person nominated or, as the case may be, by the issuing officer in accordance with the instructions of the voter.

3. A voter to whom subsection (2) applies, whether or not he or she nominates a person for the purposes of that subsection, may nominate a person or another person, as the case may require, to inspect the ballot paper before it is deposited in the ballot box.
4. Any elector voting as a special voter may vote in the manner prescribed by this section, with any necessary modifications, or in any manner prescribed by regulations made under this Act.
5. Every person commits an offence, and shall be liable on conviction to a fine not exceeding \$1,000, who, being a person who is present in accordance with this section or with any regulations when an elector votes, communicates at any time to any person any information obtained as to the constituency candidate or party for whom the voter is about to vote or has voted, or as to the number on the ballot paper given to the voter.
6. Regulations made under section 267 may make provision for electors who are wholly or partially blind to vote by means of devices that enable them to vote without assistance despite the fact that they are wholly or partially blind.

### **171. Procedure when second vote given in same name**

If any person proposing to vote at any election gives as his or her name the name of any person to whom a ballot paper has already been given at the same election, he or she shall be dealt with in all respects in like manner as any other voter: provided that the ballot paper of any such person shall not be deposited in the ballot box or allowed by the issuing officer, but shall be set aside for separate custody.

## **Subpart 14: Special voting**

### **172. Voting by special voters**

1. Notwithstanding anything to the contrary in this Act, a special voter may vote at such place (whether at a polling place or not and whether in or outside New Zealand), at such time, in such manner, and upon or subject to such conditions as may be prescribed in that behalf by regulations made under this Act.
2. Different methods of voting may be prescribed for different classes of special voters.
3. The ballot papers for use by special voters or by any class of special voters may be in such form as is prescribed by regulations, and the consecutive numbers of the special ballot papers for any district may be in a different series from that used for the ordinary ballot papers.
- 3A. The special vote ballot papers may contain the logos submitted in accordance with section 127(7) and (8) or section 143(3A) and (4) or section 146E(4) and (5) or a depiction of those logos in black and white; but nothing in this Act requires the inclusion of those logos on the special vote ballot papers.
4. Each constituency candidate may, by writing under his or her hand, appoint 1 or more scrutineers to be present at the office of the Registrar of Electors when he or she is performing his or her duties in relation to declarations in respect of special votes.
5. Every scrutineer shall, before being allowed to act, make a declaration in form 1 before the Registrar of Electors or the Returning Officer or a Justice of the Peace or a solicitor.
6. Where a constituency candidate appoints more than 1 scrutineer under subsection (4), not more than 1 scrutineer for that candidate shall be present at the office of the Registrar of Electors at any time.
7. No candidate shall act as scrutineer under this section.

8. Subject to the provisions of this section and section 61, and to the provisions of any regulations made for the purposes of this section, all the provisions of this Act shall, as far as applicable and with the necessary modifications, apply with respect to voting by special voters and to their votes.

### **173. Voting by special voters on Tokelau, Campbell Island, and Raoul Island, in Ross Dependency, and on fishing vessels**

[Repealed]

### **173A. Special voting by facsimile**

[Repealed]

## **Subpart 15: Preliminary count of votes**

### **174. Preliminary count of votes cast in polling place**

1. The manager of every polling place must, as soon as practicable after the close of the poll, in the presence of any scrutineers (including those lawfully in the polling place under any other Act) and the polling place officials, but of no other person, arrange for a preliminary count of the votes to be conducted in accordance with this section.
2. For the purposes of the preliminary count, all ballot papers must be taken from the ballot boxes to ascertain, as the case may require,—
  - a. the number of votes received by each party listed in the part of the ballot paper that relates to the party vote; or
  - b. the number of votes received by each candidate listed in the part of the ballot paper that relates to the electorate vote; or
  - c. both.
3. For the purposes of subsection (2), the following votes must be set aside as informal:
  - a. any party votes that do not clearly indicate the party for which the voter desired to vote:
  - b. any electorate votes that do not clearly indicate the candidate for whom the voter desired to vote.
4. As soon as possible after ascertaining a result of the voting, the manager must ensure that the result is reported to the Returning Officer.
5. If a referendum has, under any Act, been taken with the poll, the manager must ensure that the preliminary count of the party votes and the electorate votes, and the reports under subsection (4) take priority over the counting of the votes of the referendum.

• Referenda

## 174A. Ballot papers, etc, to be compiled, certified, and sent to Returning Officer

1. After completing the preliminary count under section 174, the manager of the polling place must—
  - a. ensure that the following documents are enclosed in 1 or more parcels:
    - i. the used ballot papers:
    - ii. the ballot papers set aside under section 171:
    - iii. the certified copies of the main roll and supplementary rolls that have been marked by issuing officers to indicate the persons who applied to vote:
    - iv. all the counterfoils of ballot papers that have been issued to voters and all the unused ballot papers:
    - v. all the spoiled ballot papers; and
  - b. ensure that each parcel is properly secured and endorsed with a description of its contents, the name of the district, the name or other identifier of the polling place, and the date of the polling; and
  - c. ensure that 1 or more certificates are prepared that certify—
    - i. the number of votes received by each party (if applicable):
    - ii. the number of votes received by each candidate (if applicable):
    - iii. the number of informal party votes:
    - iv. the number of informal electorate votes:
    - v. the number of ballot papers set aside under section 171:
    - vi. the number of spoiled ballot papers:
    - vii. the number of ballot papers issued to special voters:
    - viii. the number of unused ballot papers:
    - ix. the total number of ballot papers allocated for use at the polling place; and

- d. sign, and invite each scrutineer who is present to sign, every endorsement prepared under paragraph (b) and every certificate prepared under paragraph (c).
2. The manager must ensure that all parcels mentioned in this section are sent to the Returning Officer without delay.
3. This section does not prevent any of the documents referred to in subparagraphs (ii) to (v) of subsection (1)(a) from being placed in 1 or more parcels before the preliminary count under section 174 has commenced or while it is in progress.

### **174B. No preliminary count if fewer than 6 ordinary ballot papers issued**

1. If, at any election, the number of ordinary ballot papers issued for a district at a polling place is smaller than 6, the manager of the polling place must, after the close of the poll, arrange for the secure dispatch of those ballot papers to the Returning Officer for the district.
2. This section overrides sections 174 and 174A.

### **174C. Preliminary count of early votes**

1. In this section and in sections 174D to 174G, early votes means special votes that—
  - a. are delivered or sent to the Returning Officer on or before polling day; and
  - b. were, in accordance with regulations made under this Act, issued in substantially the same manner as ordinary ballot papers are issued under section 167.
2. The Returning Officer must, in the presence of any scrutineers appointed under section 174F and any of the Returning Officer's assistants, but of no other person, conduct, in accordance with this section, a preliminary count of early votes.
3. The Returning Officer must take the early votes and ascertain, as the case may require,—
  - a. the number of votes received by each party listed in the part of the ballot paper that relates to the party vote; or
  - b. the number of votes received by each candidate listed in the part of the ballot paper that relates to the electorate vote; or
  - c. both.
4. For the purposes of subsection (3), the Returning Officer must set aside as informal—
  - a. all party votes that do not clearly indicate the party for which the voter desired to vote:
  - b. all electorate votes that do not clearly indicate the candidate for whom the voter desired to vote.

5. A count under this section must be commenced,—
  - a. if the conditions stated in section 174D(2) apply, as soon as practicable after 2 pm on polling day; or
  - b. if those conditions do not apply, as soon as practicable after the close of the poll.
6. If a referendum has, under any Act, been taken with the poll, the Returning Officer must ensure that the count, under this section, of party votes and electorate votes takes priority over the counting of the votes of the referendum.

### **174D. Conditions for counting early votes before close of poll**

1. In this section and in sections 174E to 174G, restricted area means an area, in the office of the Returning Officer, that—
  - a. is designated by the Returning Officer for the purpose of the count of early votes; and
  - b. has features that—
    - i. preclude persons who are not in the area from seeing or hearing any aspect of the count; and
    - ii. permit the Returning Officer to control persons who wish to enter or leave the area.
2. The conditions referred to in section 174C(5)(a) are as follows:
  - a. the Electoral Commission has authorised the Returning Officer to commence the count before the close of the poll:
  - b. the count is to be conducted in a restricted area:
  - c. on every entrance to the restricted area there is a notice stating that it is an offence, without the express authorisation of the Returning Officer, to enter the area:
  - d. on every exit from the restricted area there is a notice stating that it is an offence, without the express authorisation of the Returning Officer, to leave the area.

### **174E. Maintenance of secrecy of count of early votes**

1. On polling day, no person (other than a scrutineer appointed under section 174F) may, without the express authorisation of the Returning Officer, enter a restricted area.
2. On polling day, a person who enters, whether with or without authorisation, a restricted area may not leave the area before the close of the poll without the express authorisation of the Returning Officer.



3. The Electoral Commission may issue instructions to Returning Officers setting further requirements for the purpose of maintaining the secrecy of counts conducted before the close of the poll.
4. The Returning Officer must ensure that all persons who take part in the counts conducted before the close of the poll are familiar with any instructions issued under subsection (3), and the Returning Officer and those persons must comply with those instructions.

### **174F. Scrutineers for count of early votes**

1. Each constituency candidate may appoint a scrutineer to attend at the count of early votes conducted under section 174C.
2. Every appointment of a scrutineer—
  - a. must be in writing; and
  - b. must be signed by the constituency candidate.
3. Every scrutineer must, before being allowed to attend at the count, make a declaration in form 1 before the Returning Officer or a Justice of the Peace or a solicitor.
4. If the count is conducted before the close of the poll, every scrutineer appointed under this section may enter and be present in the restricted area from 1.30 pm on polling day until the conclusion of the count.
5. No scrutineer may, before the close of the poll, enter a restricted area with a device that enables information to be conveyed to a person or machine outside the area.
6. If a scrutineer fails to comply with subsection (5) or an instruction issued under section 174E(3) and communicated to the scrutineer, the Returning Officer may—
  - a. refuse to allow the scrutineer to enter the restricted area; or
  - b. require the scrutineer to leave the restricted area.

### **174G. Offences in relation to count of early votes conducted before close of poll**

1. Every person commits an offence and is liable on conviction to a fine not exceeding \$2,000 who,—
  - a. not being a scrutineer appointed under section 174F, enters, on polling day, a restricted area without the express authorisation of the Returning Officer; or
  - b. being a scrutineer appointed under section 174F, enters, on polling day, a restricted area with a device that enables information to be conveyed to a person or machine outside the area; or
  - c. leaves, on polling day, a restricted area without the express authorisation of the Returning Officer.

2. Every person commits an offence and is guilty of a corrupt practice who, being or having been in a restricted area, discloses, before the close of the poll, to any person outside the area any information about the results of a count of early votes conducted under section 174C.

## Subpart 16: Scrutiny of the rolls

### 175. Scrutiny of the rolls

1. The Returning Officer—
  - a. shall make arrangements for a scrutiny of the rolls as soon as practicable after the close of the poll; and
  - b. shall give notice in writing to each of the constituency candidates or their scrutineers of the time and place at which the Returning Officer will commence the scrutiny.
2. Each constituency candidate may appoint 1 or more scrutineers to be present at the scrutiny of the rolls.
3. Every scrutineer must, before being allowed to act, make a declaration in form 1 before an Electoral Commissioner, the Returning Officer, a Justice of the Peace, or a solicitor.
4. Where a constituency candidate appoints more than 1 scrutineer to be present at the scrutiny of the rolls, only 1 scrutineer for that candidate, or such greater number as is permitted by the Returning Officer, shall be present at the scrutiny of the rolls at any time.
5. The only persons who may be present at the scrutiny are—
  - a. an Electoral Commissioner:
  - b. the Returning Officer:
  - c. any assistant of the Electoral Commissioner or of the Returning Officer:
  - d. any expert or technician who provides advice or support to the Electoral Commissioner or to the Returning Officer for the purpose of the scrutiny:
  - e. any scrutineer.
6. No candidate shall act as scrutineer under this section.
7. A scrutineer may be appointed under this section electronically.

### 176. Marked copies of rolls to be compared

1. The Returning Officer or the Electoral Commissioner must, in the presence of any assistants, experts, or technicians and any scrutineers that are entitled to be present under this Act or any other Act, but of no other person,—
  - a. compare (either manually or by any electronic means)—
    - i. all the certified copies of the main roll and supplementary rolls that have been marked to indicate the persons who applied to vote; and

- ii. all records of special votes exercised; and
    - iii. the list of post-writ day deletions supplied to the Returning Officer by the Registrar of Electors under section 123(b); and
  - b. compile a master roll by marking (either manually or by any electronic means) on an unmarked copy of the main roll and on every supplementary roll the number and name of any elector—
    - i. who is shown on any of the certified copies of the rolls as having received a ballot paper; or
    - ii. who is shown in any record of special votes issued as having received a ballot paper; or
    - iii. whose name is shown on the list of post-writ day deletions.
- 2. If on that comparison or from the checking of declarations in respect of special votes or from the report of a manager of a polling place on the ballot papers set aside under section 171, and after any inquiry the Returning Officer considers necessary, it appears that the same voter has received more than 1 ballot paper, the Returning Officer must,—
  - a. in the presence of any assistants and any scrutineers that choose to be present, but of no other person, open the parcel or parcels of ballot papers that are likely to contain the ballot papers issued to the voter; and
  - b. select from the parcel or parcels the ballot papers that appear from their consecutive numbers and counterfoils to have been issued to that voter; and
  - c. subject to subsection (3), disallow every vote that appears to have been given by means of the ballot papers so selected.
- 3. Notwithstanding subsection (2)(c), if the Returning Officer is satisfied—
  - a. that 1 and only 1 of the ballot papers was lawfully received by the voter entitled thereto; and
  - b. that the voter entitled thereto was not in any way concerned in the issue of the other ballot paper or ballot papers,—the Returning Officer shall allow the vote of that voter and shall disallow the other vote or votes.

4. If, on the comparison with all the certified copies of the main roll and supplementary rolls on which the fact of any person having received a ballot paper has been noted, and all records of special votes exercised in respect of the district, and the list of post-writ day deletions, it appears that any person has received a ballot paper by giving a name shown on the list of post-writ day deletions, the Returning Officer—
  - a. must, in the presence of any assistants and any scrutineers that choose to be present, but of no other person, open the parcel or parcels of ballot papers that are likely to contain the ballot papers issued to the voter; and
  - b. must select from the parcel or parcels the ballot papers that appear from their consecutive numbers and counterfoils to have been issued to that voter; and
  - c. subject to subsections (5) and (6), shall disallow every vote appearing to have been given by means of any ballot paper so selected.
5. Notwithstanding subsection (4)(c), but subject to subsection (6), if the Returning Officer is satisfied that the name by which a ballot paper selected under subsection (4)(b) was received was entered on the list of post-writ day deletions by mistake or clerical error or as a result of false information, he or she shall allow each vote given by means of that ballot paper.
6. Notwithstanding subsections (4) and (5), if—
  - a. the Returning Officer is satisfied that the name by which a ballot paper selected under subsection (4)(b) was received was entered on the list of post-writ day deletions by mistake or clerical error or as a result of false information; and
  - b. more than 1 ballot paper was received by the giving of a name shown on the list of post-writ day deletions; and
  - c. the Returning Officer is satisfied—
    - i. that 1 and only 1 of the ballot papers was lawfully received by the voter entitled thereto; and
    - ii. that the voter entitled thereto was not in any way concerned in the issue of the other ballot paper or ballot papers,—the Returning Officer shall allow the vote of that voter and shall disallow the other vote or votes.
7. [Repealed]
8. Except in the case of the ballot papers so selected therefrom, the Returning Officer shall inspect only the consecutive numbers on the ballot papers in the several parcels so opened, and shall so cover the ballot papers that no person present shall have the opportunity of determining the party or constituency candidate for whom any particular voter has voted.

## 177. Parcels to be secured after scrutiny

1. When the Returning Officer has selected from any parcel all the ballot papers he or she is required to select therefrom, he or she shall forthwith, in the presence of his or her assistants (if any) and such scrutineers as are present, but of no other person, close and secure the parcel, and shall endorse thereon a memorandum of the fact of the ballot papers having been selected from that parcel, specifying the same by the name of the person to whom the same appear to have been delivered, and shall sign the endorsement with his or her name.
2. The Returning Officer shall set aside all ballot papers selected by him or her from any parcel as herein provided, and shall in the presence of his or her assistants (if any) and such scrutineers as are present, but of no other person, secure those ballot papers in a separate parcel, and shall endorse the parcel with a description of the contents thereof, and shall sign the endorsement with his or her name.

## Subpart 17: Official count and declaration of poll

### 178. Counting the votes

1. On or before the completion of the scrutiny under section 175, the Returning Officer, with any assistants the Returning Officer considers necessary, and in the presence of any of the scrutineers appointed under section 175 that are present (not exceeding, unless the Returning Officer otherwise permits, 1 scrutineer for each candidate) and also in the presence of a Justice (who is to attend at the request of the Returning Officer), but of no other person, must select and open one of the parcels of used ballot papers referred to in section 174A(1)(a)(i).
2. The procedure set out in subsection (1) need not be delayed until the inquiries under section 176(2), or the inquiries as to the qualifications of persons casting a special vote at the election, have been completed, and the ballot papers from any particular polling place may be counted while any inquiries in respect of ballot papers from that place or in respect of the qualifications of persons casting a special vote at the election are being completed, but the count shall not be completed until those inquiries have been completed.
3. No special vote shall be disallowed by reason only of some error or omission on the part of an official, if the Returning Officer is satisfied that the voter was qualified to vote at the election.
4. Where a person who has voted in an election dies before the close of the day before polling day, the Returning Officer shall, on receiving from a Registrar of Births and Deaths notification of that person's death, disallow that person's vote.
5. When the parcel selected under subsection (1) has been opened, the Returning Officer shall, in the presence of his or her assistants (if any) and the scrutineers and Justice as aforesaid, but of no other person, deal with the ballot papers as follows:
  - a. he or she shall reject as informal—
    - i. any ballot paper that does not bear the official mark if there is reasonable cause to believe that it was not issued to a voter by an issuing officer; and

- ii. a ballot paper that does not clearly indicate the constituency candidate or the party, as the case may require, for which the voter desired to vote:

provided that no ballot paper or part of the ballot paper shall be rejected as informal by reason only of some informality in the manner in which it or any other part of the ballot paper has been dealt with by the voter if the ballot paper or part of the ballot paper being considered is otherwise regular, and if, in the opinion of the Returning Officer, the intention of the voter is clearly indicated:

provided also that no ballot paper or part of a ballot paper shall be rejected as informal by reason only of some error or omission on the part of an official, if the Returning Officer is satisfied that the voter was qualified to vote at the election:

- b. the Returning Officer shall then—
    - i. count, as the case may require, the number of votes received by each party or the number of votes received by each constituency candidate or both; and
    - ii. count the number of party votes rejected as informal; and
    - iii. count the number of electorate votes rejected as informal; and
    - iv. compare the results of the counts conducted under subparagraphs (i) to (iii) with the certificate of the Deputy Returning Officer in respect of the preliminary count; and
  - c. the Returning Officer shall then, where necessary, amend the certificate of the polling place manager in respect of the preliminary count; and every such certificate shall be initialled by the Returning Officer and the Justice attending:
  - d. the Returning Officer must then endorse on the parcel the name or other identifier of the polling place where the votes were recorded; and that endorsement must be signed by the Returning Officer and the Justice who attends.
- 5A. Despite section 60, if a voter who was qualified to vote as an elector of a particular district votes as if he or she were an elector of another district, the voter's party vote—
- a. may not be disallowed simply because of the voter's error with regard to the district; and
  - b. for the purposes of this section and sections 179 to 181, is to be regarded as having been cast by an elector of the other district.
6. The ballot papers from all the parcels shall be dealt with in the manner aforesaid and the ballot papers from one parcel may be so dealt with while those from another parcel or parcels are also being so dealt with.

7. The ballot papers of special voters shall be dealt with in like manner, after which they shall be made up together into a parcel which shall be properly secured and shall be endorsed in the manner hereinbefore described.
8. When all the ballot papers have been dealt with in the prescribed manner, the Justice attending shall sign a certificate stating the total number of ballot papers used at the election, the number of votes received by each party or constituency candidate, as the case may require, and the number of informal votes, and that certificate shall be preserved by the Returning Officer for production when required.
9. Where at any count of the ballot papers under this section counting of the ballot papers extends beyond 1 day, the Justice attending shall give his or her certificate day by day showing the progress of that counting and describing the parcels counted in his or her presence.

## 179. Declaration of result of poll

1. When the official count under section 178 is completed, the Returning Officer must give the Electoral Commission the following information:
  - a. the total number of valid votes received by each of the parties listed on the party vote part of the ballot paper:
  - b. the total number of valid votes received by each constituency candidate:
  - c. the total number of informal party votes:
  - d. the total number of informal electorate votes.
2. As soon as practicable after receiving from a Returning Officer the information specified in subsection (1), the Electoral Commission must declare the results of the official count for the district concerned by publishing in the Gazette a notice in form 14.
3. The Electoral Commission may declare the results for any number of districts on the same day, if the Electoral Commission considers it appropriate to do so.
4. The Electoral Commission may make arrangements under which persons with a particular interest in any declaration under subsection (2) are informed of the result, by any means the Electoral Commission considers appropriate.
5. If there is an equality of votes between constituency candidates for a district and the addition of 1 vote would entitle one of those candidates to be declared elected, the Electoral Commission must, without delay, apply to a District Court Judge for a recount under section 180, and all the provisions of that section apply accordingly, except that no deposit is necessary.
6. If on a recount under section 180 there is an equality of votes between constituency candidates and the addition of 1 vote would entitle one of those candidates to be declared elected, the Electoral Commission must determine by lot which of those candidates is to be elected.

## Subpart 18: Recount

### 180. Application to District Court Judge for recount

1. Any constituency candidate for a district may, within 3 working days after the public declaration made under section 179 in respect of that district, apply to a District Court Judge for the conduct, in respect of that district, of a recount of

the electorate votes.

2. Any secretary of a political party that is listed on the part of the ballot paper that relates to the party vote may, within 3 working days after the public declaration made under section 179 in respect of a district, apply to a District Court Judge for the conduct, in respect of that district, of a recount of the party votes.
3. Every application under subsection (1) shall be accompanied by a deposit of \$1,000 (which deposit shall be inclusive of goods and services tax).
4. Every application under subsection (2) shall be accompanied by a deposit of \$1,500 (which deposit shall be inclusive of goods and services tax).
5. The District Court Judge—
  - a. shall cause a recount of the electorate votes or the party votes, as the case may require, to be commenced within 3 working days after receiving the application; and
  - b. shall give notice in writing of the time and place at which the recount will be made—
    - i. to the Returning Officer; and
    - ii. in the case of an application made under subsection (1), to each of the candidates who may be affected by the recount; and
    - iii. in the case of an application under subsection (2), to each of the political parties that may be affected by the recount.
6. The recount shall be made in the presence of the District Court Judge or of an officer appointed by the District Court Judge for the purpose, and shall, as far as practicable, be made in the manner provided in the case of the original count.
7. No person shall be present at the recount except—
  - a. the District Court Judge or the officer appointed by the District Court Judge; and
  - b. the assistants (if any) of the District Court Judge or the officer appointed by the District Court Judge; and
  - c. the Returning Officer and the assistants (if any) of the Returning Officer; and
  - d. in the case of a recount of electorate votes, the scrutineers appointed under section 175 or section 183(1) (not exceeding, unless the District Court Judge or the officer appointed by the District Court Judge otherwise permits, 1 scrutineer for each constituency candidate); and
  - e. in the case of a recount, made on an application under subsection (2), of party votes, the scrutineers appointed under section 183(2)(a) (not exceeding, unless the District Court Judge or the officer appointed by the District Court Judge otherwise permits, 1 scrutineer for each political party); and



- f. in the case of a recount, made on an application under section 181(1), of party votes, the scrutineers appointed under section 183(2)(b) (not exceeding, unless the District Court Judge or the officer appointed by the District Court Judge otherwise permits, 1 scrutineer for each political party).
8. The District Court Judge shall have all the powers that the Returning Officer had on the original count, and may, in addition, review any decision of the Returning Officer or the Registrar of Electors in respect of—
  - a. the checking of special voting declarations; or
  - b. the allowance or disallowance of special votes.
9. Any decision referred to in subsection (8) and any other decision made by the Returning Officer in the exercise of the Returning Officer's powers on the original count may be confirmed, reversed, or set aside by the District Court Judge.
10. If on the recount the District Court Judge finds that the public declaration was incorrect, the District Court Judge shall order the Electoral Commission to give an amended declaration of the result of the poll.
11. The District Court Judge may make such order as to the costs of and incidental to the recount as the District Court Judge thinks just, and, subject to any such order, shall direct that the deposit made under this section be returned to the person who paid it.

## **181. Application by political party for recount in every electoral district**

1. Any secretary of a political party listed on the part of the ballot paper that relates to the party vote may, instead of making 1 or more separate applications for recounts under section 180(2), apply to the Chief District Court Judge for recounts of the party votes to be conducted in every electoral district.
2. Every application under subsection (1) must be made within 3 working days after the date of the last public declaration made under section 179 for any electoral district.
3. Every application under subsection (1) shall be accompanied by a deposit of \$90,000 (which deposit shall be inclusive of goods and services tax).
4. The Chief District Court Judge shall cause a separate recount of the party votes to be conducted for each electoral district and, for that purpose, shall, within 3 working days after receiving the application for the recounts, arrange, in respect of each recount, for a District Court Judge to conduct it.
5. Each recount conducted under this section shall be conducted in accordance with subsections (5) to (10) of section 180, except that each recount shall be commenced within 3 working days of the date on which the District Court Judge conducting the recount is assigned that task.
6. At the conclusion of all recounts under this section, the Chief District Court Judge may make such order or orders as to the costs of and incidental to those recounts as the Chief District Court Judge thinks just, and, subject to any such order, shall direct that the deposit made under this section be returned to the person who paid it.

## 182. Ability to combine recounts

Nothing in section 180 or section 181 requires the electorate votes or the party votes to be the subject of more than 1 recount and, where more than 1 application is received that would involve recounts of the same votes or of both parts of the same ballot papers, those applications may be combined by the District Court Judge conducting the recount.

## 183. Scrutineers for recounts and allocation of list seats

1. Any constituency candidate affected by an application under section 180(1) for a recount of electorate votes in an electoral district may appoint 1 or more scrutineers to be present at the recount.
2. Any political party affected—
  - a. by an application under section 180(2) for a recount of party votes in an electoral district; or
  - b. by an application under section 181(1) for recounts of the party votes in every electoral district,—  
may appoint 1 or more scrutineers to be present at any such recount.
3. Any political party listed in the part of the ballot paper that relates to the party vote may appoint 1 or more scrutineers to be present during the allocation of list seats by the Electoral Commission under sections 191 to 193.
4. Every scrutineer appointed under this section must, before being allowed to act, make a declaration in form 1 before an Electoral Commissioner, the Returning Officer, a Justice of the Peace, or a solicitor.
5. Where a political party appoints more than 1 scrutineer to be present during the allocation of list seats, only 1 scrutineer for that political party, or such greater number as is permitted by the Electoral Commission, shall be present at any one time.
6. No candidate shall act as a scrutineer under this section.
7. A scrutineer appointed under this section may be appointed by facsimile transmission.

## 184. Ballot papers and certificate to be compared on recount

1. At any recount made as aforesaid the Returning Officer shall produce to the District Court Judge all the used ballot papers, together with the Justice's certificate stating the total number of ballot papers used at the election.
2. If, on comparing the number of ballot papers stated in the certificate with the ballot papers used at the election, the District Court Judge finds that any of the ballot papers have been lost, stolen, or in any way interfered with during the interval between the official count and the recount, the official count made by the Returning Officer shall be deemed to be correct, and the result of the poll declared accordingly. Where in any such case there is an equality of votes between constituency candidates and the addition of a vote would entitle one of those constituency candidates to be declared elected, the Electoral Commission must determine by lot which candidate shall be elected.

## Subpart 19: Return of writ

### 185. Endorsement and return of writ

• Electoral commission

1. As soon as practicable after the Electoral Commission has, under section 179(2), declared the result for every district, an Electoral Commissioner must, on behalf of the Electoral Commission,—
  - a. endorse on the writ—
    - i. the full name of every constituency candidate declared to be elected; and
    - ii. the date of the endorsement; and
  - b. sign the writ; and
  - c. immediately after endorsing and signing the writ, transmit the writ to the Clerk of the House of Representatives.
2. The date endorsed on the writ under subsection (1) is the day of the return of the writ.
3. The writ must be returned within the time specified in the writ for its return.
4. If any application for a recount of the votes for any constituency candidates has been made, the Electoral Commission must postpone the return of the writ until the completion of every recount.
5. If, at any time before the expiry of the time for an application for a recount of the votes for constituency candidates, it appears to the Electoral Commission that such an application may be made, the Electoral Commission may postpone the return of the writ until that expiry.
6. Subsections (4) and (5) prevail over subsections (1) to (3).

• Electoral commission

### 186. Electoral Commission may correct writ

1. If the Electoral Commission is satisfied that the name of a member elected to represent an electoral district is not correctly recorded on the writ, an Electoral Commissioner may, on behalf of the Electoral Commission, before or after complying with the requirements of section 185(1), make any alterations to the writ necessary to ensure that the member's name is correctly recorded.
2. Before making a correction under subsection (1), the Electoral Commissioner must consult with the member concerned and with the Returning Officer.
3. If the Electoral Commissioner makes a correction under subsection (1) after complying with the requirements of section 185(1),—
  - a. the Electoral Commission must forward to the Clerk of the House of Representatives a copy of the writ as corrected; and
  - b. that copy is to be treated for all purposes as the copy forwarded to the Clerk of the House of Representatives under section 185(1).

## Subpart 20: Disposal of ballot papers

### 187. Disposal of ballot papers, rolls, etc

1. As soon as practicable after giving the Electoral Commission the information specified in section 179(1), the Returning Officer must destroy or cause to be destroyed all unused ballot papers.
- 1A. As soon as practicable after complying with the requirements of subsection (1), the Returning Officer must—
  - a. enclose or cause to be enclosed in 1 or more packets all parcels that have been received, or made up, by the Returning Officer and that contain any of the following documents:
    - i. used ballot papers, including the special voters' ballot papers:
    - ii. counterfoils of issued ballot papers and counterfoils of unused ballot papers:
    - iii. spoiled ballot papers:
    - iv. ballot papers set aside under section 171 or section 177; and
  - b. enclose or cause to be enclosed in 1 or more packets the following materials:
    - i. ballot paper accounts:
    - ii. copies of rolls (except the master roll):
    - iii. books or other papers provided for by this Act:
    - iv. all letters and other papers received from any manager of a polling place or issuing officer about special votes; and
  - c. ensure that each packet is properly secured and endorsed with a description of its contents, the name of the district, the name or other identifier of the polling place, and the date of the polling; and
  - d. sign the endorsement on each packet; and
  - e. ensure that every packet is sent to the Clerk of the House of Representatives without delay.
2. The Clerk of the House of Representatives shall forthwith give or send to the Returning Officer a receipt under his or her hand for the said packets and parcel.

3. The Returning Officer shall attach to the master roll a list which shall set out the names and addresses of all special voters whose names were not on the printed roll (other than those whose names were not on that roll by virtue of section 115) and which shall indicate the special voters whose votes have been disallowed. The master roll, and the attached list, shall then be sent by the Returning Officer to the Registrar of Electors for the district.
4. The Registrar of Electors shall keep the master roll, and the attached list, until the next general election.
5. Any registered elector of the district may inspect any master roll, and the attached list, at the Registrar's office without payment of any fee at any time when the office is open for the transaction of business.

### **188. Annotation of list of special voters**

1. A constituency candidate at an election who applies for a recount of the votes or a person who files an election petition may, by notice in writing to the Returning Officer, require the Returning Officer forthwith to annotate the list attached to the master roll pursuant to section 187(3): provided that this subsection shall not apply where the Returning Officer receives the notice after he or she has forwarded to the Clerk of the House of Representatives the packets required, by section 187(1)(b), to be forwarded to the Clerk of the House of Representatives.
2. The annotations shall show, in relation to each special voter whose vote is shown on the list as having been disallowed, the reason for the disallowance of the vote.
3. The annotated list shall be sent by the Returning Officer to the Registrar of Electors for the district.
4. Any registered elector of the district may inspect the annotated list at the Registrar's office without payment of any fee at any time when the office is open for the transaction of business.

### **189. Disposal of packets**

1. The packets and parcels must be safely kept for 6 months unopened, unless a court of competent jurisdiction or the House of Representatives orders them, or any of them, to be opened.
2. At the end of 6 months, the packets and parcels must be destroyed unopened in the presence of the Clerk of the House of Representatives and an Electoral Commissioner.
3. Despite subsection (2), a packet or parcel may not be destroyed so long as the packet or parcel is, or may reasonably be expected to be, required for the purposes of an investigation into, or a prosecution of, an offence against this Act.

### **190. Papers taken from parcels as evidence in certain cases**

1. Any ballot paper, and any copy of a roll, and any book purporting to be taken from any such parcel as aforesaid, and having written thereon respectively, under the hand of the Clerk of the House of Representatives, a certificate of the several particulars by this Act required to be endorsed on the parcel, shall be conclusive evidence in any court or before any Committee of the House of Representatives that it was so taken and that it, if a ballot paper, was deposited and, if a roll or book, was kept or used at the election and polling place to which the endorsement and writing relate.

2. Every ballot paper so certified shall be evidence of a vote given at the poll, and of the correspondence of the number appearing on the ballot paper with the number appearing on any roll so certified as of the same election and polling place, according to the tenor of the said ballot paper.
3. But, in the case of the ballot papers set aside or selected by an issuing officer or by the Returning Officer, the correspondence shall be evidence only of some person having voted in the name appearing on the roll.

## Subpart 21: List seats

### 191. Election of other members

1. When the Electoral Commission has received from all Returning Officers the information required by section 179(1) to be forwarded to the Electoral Commission, the Electoral Commission must proceed to determine which of the candidates whose names have been included in party lists submitted pursuant to section 127 have been elected.
2. The Electoral Commission must first ascertain from the information given under section 179(1)(a) the total number of all the party votes received by each of the parties listed on the part of the ballot paper that relates to the party vote.
3. The Electoral Commission must enter those totals in separate columns under the name of each party in a working sheet in the manner prescribed in form 15.
4. The Electoral Commission must disregard any total under the name of any party that—
  - a. has not achieved a total that is at least 5% of the total number of all the party votes received by all the parties listed on the part of the ballot paper that relates to the party vote; and
  - b. is a party in respect of which no constituency candidate who is either—
    - i. a candidate for that party; or
    - ii. a candidate for a component party of that party (being a component party that is not listed on the part of the ballot paper that relates to the party vote but is, in accordance with the details held by the Electoral Commission under any of the provisions of sections 127(3A) and 128A, a component party of that party)— has had his or her name endorsed on the writ pursuant to section 185 as a person declared to be elected as a member of Parliament.
- 4A. Where the Electoral Commission disregards the name of a party in accordance with subsection (4), that party shall, for the purpose of this section and sections 192 and 193, be deemed to have been deleted from the list of parties included in the part of the ballot paper that relates to the party vote.
5. The Electoral Commission must then proceed to divide each of the remaining totals successively by a series of numbers beginning with 1, 3, 5, 7, 9, 11, 13 and thereafter by every odd number as may be necessary to ensure that the number of seats required to be allocated by this section and sections 192 and 193 are allocated.
6. The quotient of each successive division shall be recorded on the working sheet.

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7. Once the quotient of each successive division is entered on the working sheet, the Electoral Commission must then proceed to ascertain from a comparison of all the figures in the working sheet in form 15 listed under the heading "Quotients of divisions", the highest 120 quotients or such lower number as is required by subsection (8).
8. If any person whose name is endorsed on the writ pursuant to section 185 as a person declared to be elected as a member of Parliament, is—
  - a. an independent; or
  - b. a member of a political party that did not appear on the list of parties in that part of the ballot paper that relates to the party vote (not being a political party that is, in accordance with the details held by the Electoral Commission under any of the provisions of sections 127(3A) and 128A, a component party of a political party that did appear on that list),—
 

the Electoral Commission must, for the purposes of applying subsection (7), deduct from the number of 120 the number of any such persons.
9. In any case where the lowest of the numbers required to be ascertained under subsection (7) constitutes 2 or more numbers in different columns which are of exactly the same value, the Electoral Commission must determine by lot which of those numbers is to be selected for the purpose of subsection (7).
10. The Electoral Commission, having ascertained the numbers required by subsection (7), must cause a circle to be drawn on the working sheet around each of those numbers.

## 192. Determination of party eligibility for list seats

1. Having ascertained the numbers required by section 191(7), the Electoral Commission must then proceed to ascertain the number of seats in Parliament to which each remaining party listed in the part of the ballot paper that relates to the party vote is entitled by adding the number of circles in the column of numbers under the name of that party.
2. Subject to subsection (3), the Electoral Commission must then proceed, in respect of each remaining party listed in the part of the ballot paper that relates to the party vote, to deduct from the number of seats to which each party is entitled under subsection (1)—
  - a. the number of persons who stood as constituency candidates for that party and whose names were endorsed on the writ pursuant to section 185 as having been elected as members of Parliament; and
  - b. the number of persons who stood as constituency candidates for a party that is, in accordance with the details held by the Electoral Commission under any of the provisions of sections 127(3A) and 128A, a component party of that party and whose names were endorsed on a writ pursuant to section 185 as having been elected as members of Parliament.
3. The deduction described in subsection (2)(b) shall not be made in respect of constituency seats gained by a component party that is listed on the part of the ballot paper that relates to the party vote.
4. Subject to subsection (5), after the process of deduction described in subsection (2) has been completed in respect of each party, the remainder derived therefrom shall be the number of seats to be allocated to that party from the list of candidates submitted pursuant to section 127.

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• First chamber selection

5. If any party listed in the part of the ballot paper that relates to the party vote has obtained, through the election of any of its constituency candidates or any of the constituency candidates for any party that is, in accordance with the details held by the Electoral Commission under any of the provisions of sections 127(3A) and 128A, a component party of that party or both, a number of seats that is equal to or greater than the total number of seats in Parliament to which it would be entitled under subsection (1), that party shall not be allocated any seats from the list of candidates submitted by that party pursuant to section 127, but the seats of the constituency candidates of that party who have been elected as members of Parliament shall not be affected.

### 193. Selection of candidates

1. Upon completing the procedures outlined in section 192, the Electoral Commission must proceed to determine which of the candidates whose names appear on the list submitted pursuant to section 127 by each of the parties listed in the part of the ballot paper that relates to the party vote are entitled to be elected.
2. The Electoral Commission must determine which candidates are entitled to be elected by selecting those candidates on the list of each party, beginning with the first candidate on the list and ending with the lowest ranking candidate, which are equal in number to the number of seats to which that party is entitled to have allocated from its list submitted pursuant to section 127.
3. In performing the duties required by subsection (2), the Electoral Commission must disregard the name of any candidate whose name has been endorsed on the writ pursuant to section 185, and the name of that candidate shall be deemed to have been deleted from the list submitted pursuant to section 127.
4. Where all the candidates appearing on a list submitted by a party pursuant to section 127 are entitled to be selected, no further candidates for that party may be selected, notwithstanding that the party may be entitled to a greater number of seats than the number of candidates appearing on that list and those seats shall not be filled.
5. The Electoral Commission must, as soon as practicable after selecting the names of those candidates entitled to be elected,—
  - a. declare those candidates to be elected by publishing in the Gazette the full names of the members elected; and
  - b. forward to the Clerk of the House of Representatives a return listing the names of the members elected.
6. Notwithstanding any other provision of this section or any provision of sections 191 and 192, the Electoral Commission may proceed to select the names of those candidates entitled to be elected from lists submitted under section 127, by such method and procedure as the Electoral Commission thinks fit, including the use of computer technology: provided that, before declaring any candidates to be elected under subsection (5), the Electoral Commission shall complete the procedures required by sections 191 and 192 and this section.
7. In completing the procedures required by sections 191 and 192 and this section, the Electoral Commission may use such assistants as the Electoral Commission considers necessary.



## 193A. Electoral Commission may correct list of members elected

1. If the Electoral Commission is satisfied that the name of a member declared to be elected is not correctly recorded on a return forwarded to the Clerk of the House of Representatives under section 193(5)(b),—
  - a. the Electoral Commission may forward to the Clerk of the House a further return that correctly records the member's name; and
  - b. that further return—
    - i. is to be treated for the purposes of section 54(2)(a) as dated the same as the earlier return; and
    - ii. is to be treated for all purposes as the return forwarded to the Clerk of the House under section 193(5)(b).
2. The Electoral Commission may not forward a further return to the Clerk of the House under subsection (1)(a) unless the Electoral Commission has first consulted with the member concerned.

## Subpart 22: Maintenance of order at elections

### 194. Manager of polling place to maintain order

1. Every manager of a polling place must maintain order and keep the peace at the polling place, and may, without any other warrant than this Act,—
  - a. cause to be arrested and taken before a Justice any person reasonably suspected of committing or attempting to commit at the polling place any of the offences set out in section 201; or
  - b. cause to be removed a person who obstructs the approaches to the polling place or wilfully and unnecessarily obstructs the proceedings at the polling or conducts himself or herself in a disorderly manner or causes a disturbance or wilfully acts in any manner in defiance of the lawful directions of the manager of the polling place.
2. All constables must aid and assist the manager of the polling place in the performance of his or her duty.

## Subpart 23: Adjournment of poll

### 195. Adjournment of poll

1. Where the polling at any polling place cannot start or has to be suspended whether by reason of riot or open violence, natural disaster, or any other cause, the Returning Officer may adjourn the taking of the poll at that polling place to the following day, and if necessary from day to day until the poll can be taken, and shall, if he or she adjourns the taking of the poll, forthwith give public notice of the adjournment in such manner as he or she thinks fit.

2. Notwithstanding subsection (1), the poll shall not be kept open for more than 10 hours in all at any polling place.
3. Where the close of the poll at any polling place is adjourned under this section for any number of days, the day on or before which the writ is made returnable shall be postponed by the same number of days.

## Subpart 24: Custody of ballot papers

### 196. Obligation of persons in possession of ballot papers

1. Every person who is, other than for the purpose of recording his or her vote, in possession of 1 or more ballot papers must—
  - a. take all reasonable steps to ensure the safe custody of the ballot papers; and
  - b. deal with the ballot papers in accordance with—
    - i. any applicable provisions of this Act or regulations made under this Act; and
    - ii. in the case of an electoral official or a polling place official, any applicable directions given under section 20A or section 158A; and
    - iii. in the case of a person involved in performing or assisting with the performance of a contract with an electoral official or a polling place official, the terms of the relevant contract and any instructions given by or on behalf of the official.
2. Subsection (1) applies to a person involved in performing or assisting with the performance of a contract for the carriage of ballot papers only if the person is aware of that fact or, because of indications on the box, parcel, or packet in which the ballot papers are contained, ought to be aware of the fact.
3. Whenever ballot papers are delivered to a Returning Officer by or on behalf of the printer who has printed the ballot papers,—
  - a. the Returning Officer must give or send the printer a receipt specifying the total number of ballot papers received by the Returning Officer; and
  - b. the printer must see that all copies of ballot papers other than those delivered to the Returning Officer are immediately destroyed.
4. Every person commits an offence and is liable on conviction to a fine of \$2,000 who fails to comply with a requirement imposed on the person by this section.

### 196A. Unlawful possession of ballot paper

1. Every person is liable on conviction to a fine not exceeding \$2,000 who, without authority under this Act or regulations made under this Act, obtains possession of any ballot paper.
2. Every person commits an offence and is liable on conviction to a fine not exceeding \$2,000 who retains any ballot paper in his or her possession after leaving a polling place.

## Subpart 25: Offences at elections

### 197. Interfering with or influencing voters

1. Every person commits an offence and shall be liable on conviction to a fine not exceeding \$20,000 who at an election—
  - a. in any way interferes with any elector, either in the polling place or while the elector is on the way to the polling place with the intention of influencing the elector or advising the elector as to the elector's vote:
  - b. at any time on polling day before the close of the poll in or in view or hearing of any public place holds or takes part in any demonstration or procession having direct or indirect reference to the poll by any means whatsoever:
  - c. at any time on polling day before the close of the poll makes any statement having direct or indirect reference to the poll by means of any loudspeaker or public address apparatus or cinematograph or television apparatus:

provided that this paragraph shall not restrict the publication by radio or television broadcast made by a broadcaster within the meaning of section 2 of the Broadcasting Act 1989 of—

- i. any advertisement placed by the Electoral Commission or a Returning Officer; or
  - ii. any non-partisan advertisement broadcast, as a community service, by a broadcaster within the meaning of section 2 of the Broadcasting Act 1989; or
  - iii. any news in relation to an election:
- d. at any time before the close of the poll, conducts in relation to the election a public opinion poll of persons voting before polling day:
  - e. at any time on polling day before the close of the poll, conducts a public opinion poll in relation to the election:
  - f. at any time on polling day before the close of the poll, or at any time on any of the 3 days immediately preceding polling day, prints or distributes or delivers to any person anything being or purporting to be in imitation of any ballot paper to be used at the poll and having thereon the names of the candidates or the parties or any of them, together with any direction or indication as to the candidate or party for whom or for which any person should or should not vote, or in any way containing any such direction or indication, or having thereon any matter likely to influence any vote:
  - g. at any time on polling day before the close of the poll exhibits in or in view of any public place, or publishes, or distributes, or broadcasts,—

- i. any statement advising or intended or likely to influence any elector as to the candidate or party for whom the elector should or should not vote; or
- ii. any statement advising or intended or likely to influence any elector to abstain from voting; or
- iii. any party name, emblem, slogan, or logo; or
- iv. any ribbons, streamers, rosettes, or items of a similar nature in party colours:

provided that this paragraph shall not apply to any statement, name, emblem, slogan, or logo in a newspaper published before 6 pm on the day before polling day:

provided also that where any statement, name, emblem, slogan, or logo which does not relate specifically to the election campaign and which is so exhibited before polling day in a fixed position and in relation to the New Zealand or regional or campaign headquarters (not being mobile headquarters) of a political party, it shall not be an offence to leave the statement, name, emblem, slogan, or logo so exhibited on polling day:

provided further that this paragraph shall not restrict the publication of any party name in any news which relates to an election and which is published in a newspaper or other periodical or in a radio or television broadcast made by a broadcaster within the meaning of section 2 of the Broadcasting Act 1989:

provided further that this paragraph shall not apply to ribbons, streamers, rosettes, or items of a similar nature, which are worn or displayed by any person (not being an electoral official) on his or her person or on any vehicle in party colours or to a party lapel badge worn by any person (not being an electoral official):

- h. at any time on polling day before the close of the poll prints or distributes or delivers to any person any card or paper (whether or not it is an imitation ballot paper) having thereon the names of the candidates or the parties or any of them:
- i. exhibits or leaves in any polling place any card or paper having thereon any direction or indication as to how any person should vote or as to the method of voting:
- j. subject to any regulations made under this Act, at any time on polling day before the close of the poll, within, or at the entrance to, or in the vicinity of, any polling place,—
  - i. gives or offers to give any person any written or oral information derived from a main or supplementary roll as to any name or number on the main roll or any supplementary roll being used at the election:

- ii. permits or offers to permit any person to examine any copy of the main roll or any supplementary roll being used at the election.
- 2. It shall be a defence to a prosecution for an offence against subsection (1)(g) that relates to the exhibition in or in view of a public place of a statement, name, emblem, slogan, or logo, if the defendant proves that—
  - a. the exhibition was inadvertent; and
  - b. the defendant caused the exhibition to cease as soon as the defendant was notified by a Returning Officer or a manager of the polling place that the exhibition was taking place.
- 2A. It is a defence to a prosecution for an offence against paragraph (g) of subsection (1) that relates to the publication on an Internet web site of a statement or other material specified in that paragraph, if the defendant proves that—
  - a. the statement or material was placed on the web site before polling day; and
  - b. the defendant did not operate or permit the operation of systems that cause the statement or material on the web site to be made available, on polling day, to persons other than persons who voluntarily access the web site; and
  - c. the defendant did not, on polling day, distribute, broadcast, or exhibit in or in view of a public place, or publish, or at any time cause to be published, in an issue of a newspaper or magazine that is first issued on polling day any material promoting or advertising the web site.
- 3. Nothing in this section shall apply to any official statement or announcement made or exhibited under the authority of this Act.

## **198. Power to remove statements, names, emblems, slogans, or logos**

- 1. The Returning Officer may at any time on polling day before the close of the poll cause to be removed or obliterated—
  - a. any statement advising or intended or likely to influence any elector as to the candidate or party for whom the elector should or should not vote; or
  - b. any statement advising or intended or likely to influence any elector to abstain from voting; or
  - c. any party name, emblem, slogan, or logo,— which is exhibited in or in view of any public place.
- 2. Nothing in subsection (1)(c) shall apply to ribbons, streamers, rosettes, or items of a similar nature which are worn or displayed by any person (whether on his or her person or on any vehicle) in his or her party's colours or to a party lapel badge worn by any person.

3. Nothing in subsection (1) shall apply to a statement, party name, emblem, slogan, or logo which does not relate specifically to the election campaign and which was so exhibited before polling day in a fixed position and in relation to the New Zealand or regional or campaign headquarters (not being mobile headquarters) of a political party.

## **199. Recovery of expenses**

All expenses incurred by the Returning Officer in carrying out the power conferred by section 198(1) may be recovered by the Returning Officer from the persons by whom or by whose direction the statement, name, emblem, slogan, or logo was exhibited, as a debt due by them jointly and severally to the Crown.

## **199A. Publishing false statements to influence voters**

Every person is guilty of a corrupt practice who, with the intention of influencing the vote of any elector, at any time on polling day before the close of the poll, or at any time on any of the 2 days immediately preceding polling day, publishes, distributes, broadcasts, or exhibits, or causes to be published, distributed, broadcast, or exhibited, in or in view of any public place a statement of fact that the person knows is false in a material particular.

## **200. Erasing and altering official mark on ballot paper**

Every person shall be liable on conviction to a fine not exceeding \$2,000 who erases, obliterates, or alters any official mark, stamp, or writing on any ballot paper, or places thereon any writing, print, or other matter which might lead persons to believe that it was put thereon by any official or person duly authorised in that behalf.

## **201. Offences in respect of ballot papers and ballot boxes**

1. Every person commits an offence against this section who—
  - a. forges, or counterfeits, or fraudulently defaces, or fraudulently destroys any ballot paper, or the official mark on any ballot paper:
  - b. without due authority supplies any ballot paper to any person:
  - c. fraudulently puts into any ballot box any paper other than the ballot paper that he or she is authorised by law to put therein:
  - d. fraudulently takes out of a polling place any ballot paper:
  - e. without due authority destroys, takes, opens, or otherwise interferes with any ballot box, or box or packet or parcel of ballot papers, then in use for the purposes of an election, or in course of transmission by post or otherwise, or thereafter whenever the same may be kept as a record of the election.

2. Every person who commits an offence against this section shall be liable on conviction,—
  - a. if a Returning Officer or a polling place official in attendance at a polling place, 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 attempts to commit any offence against this section shall be liable on conviction to imprisonment for a term not exceeding one-half of the longest term to which a person committing the offence may be sentenced.
4. Every person who commits an offence against this section or who attempts to commit an offence against this section is guilty of a corrupt practice.

## 202. Property to be stated as being in Returning Officer

In any prosecution for an offence in relation to any ballot boxes, ballot papers, or marking instruments at an election, the property in the boxes, ballot papers, and instruments may be stated as being in the Returning Officer.

## 203. Infringement of secrecy

1. Every electoral official, polling place official, scrutineer, or other person appointed for the purposes of this Act shall use or disclose information acquired by him or her in that capacity only in accordance with his or her official duty or his or her duty as a scrutineer, as the case may require.
2. No person, except for some purpose authorised by law, shall—
  - a. interfere with or attempt to interfere with a voter when marking his or her vote:
  - b. attempt to obtain in a polling place information as to the candidate for whom or the party for which a voter in the polling place is about to vote or has voted:
  - c. communicate at any time to any person any information obtained in a polling place as to the candidate for whom or the party for which any voter at the polling place is about to vote or has voted, or as to the consecutive number on the ballot paper given to any voter at the polling place.
3. Every person in attendance at the counting of the votes shall maintain and aid in maintaining the secrecy of the voting, and shall not communicate any information obtained at the counting as to the candidate for whom or the party for which any vote is given in any particular ballot paper.
4. No person shall directly or indirectly induce any voter to display his or her ballot paper after he or she has marked it, so as to make known to any person the name of any candidate for or against whom he or she has voted or the name of the party for which he or she has voted.

## 204. Infringement of secrecy constitutes corrupt practice

Every person who commits an offence against section 203 is guilty of a corrupt practice.

## Part 6AA: Election advertising

### Subpart 0: Interpretation provisions

#### 204A. Interpretation

In this Part, 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
- contact details for a person means that person's—
  - a. address; and
  - b. telephone numbers; and
  - c. email address (if any)
- election advertisement has the meaning given to it by section 3A
- promoter means a person who initiates or instigates an election advertisement that—
  - a. is published; or
  - b. is to be published
- register means the register of registered promoters established and maintained under section 204R
- registered promoter—
  - a. means a promoter who is registered under section 204N; and
  - b. includes a promoter who at any time in the regulated period has been registered under section 204N



- unregistered promoter means a promoter who is not—
  - a. a registered promoter; or
  - b. a constituency candidate; or
  - c. a list candidate; or
  - d. a party; or
  - e. a person involved in the administration of—
    - i. the affairs of a candidate in relation to the candidate's election campaign; or
    - ii. the affairs of a party.

## **Subpart 1: General rules governing election advertisements**

### **204B. Persons who may promote election advertisements**

1. A person is entitled to promote an election advertisement if the person is—
  - a. a party secretary:
  - b. a candidate:
  - c. a registered promoter:
  - d. an unregistered promoter who does not incur advertising expenses exceeding \$12,500 (or such other amount as is prescribed by the Governor-General by Order in Council under section 266A) in relation to election advertisements published during the regulated period.
2. The amount in subsection (1)(d) is inclusive of goods and services tax.
3. Every person who wilfully promotes an election advertisement without being entitled to do so under subsection (1) is guilty of an illegal practice.

### **204C. Apportionment of advertising expenses for publication of election advertisement promoted by unregistered promoter both before and during regulated period**

1. This section applies if an election advertisement that is promoted by an unregistered promoter—
  - a. is published both before the commencement of the regulated period and during the regulated period; or

- b. is published before the commencement of the regulated period and continues to be published during the regulated period.
- 2. If this section applies,—
  - a. the election advertisement is deemed to have been published during the regulated period; but
  - b. the advertising expenses for the publication of the election advertisement must be apportioned so that only a fair proportion of the expenses is attributed to being incurred during the regulated period.
- 3. Only the advertising expenses attributed to being incurred during the regulated period determined in accordance with subsection (2) are advertising expenses for the purposes of section 204B(1)(d).

### **204D. Offence to avoid limit set out in section 204B(1)(d)**

1. An unregistered promoter may not enter into an agreement, or enter into an arrangement or understanding, with any other person for the purpose of circumventing the maximum amount prescribed in section 204B(1)(d).
2. A body corporate or unincorporated may not encourage its members to take any action for the purpose of circumventing the maximum amount prescribed in section 204B(1)(d).
3. No person may incorporate or form 2 or more bodies corporate or unincorporated for the purpose of circumventing the maximum amount prescribed in section 204B(1)(d).
4. Every person who wilfully contravenes subsection (1), (2), or (3) is guilty of an illegal practice.

### **204E. Obligation to retain records necessary to verify promoter's advertising expenses**

1. This section applies to a promoter who—
  - a. is an unregistered promoter:
  - b. at any time during the regulated period has been an unregistered promoter.
2. A promoter to whom this section applies must take all reasonable steps to retain the records, documents, and accounts that are necessary to enable verification of the advertising expenses incurred as an unregistered promoter in relation to an election advertisement.
3. Subsection (2) applies until the close of the day that is 3 years after polling day for the election to which the advertisement relates.
4. Every promoter who fails, without reasonable excuse, to comply with subsection (2) commits an offence and is liable on conviction to a fine not exceeding \$40,000.

### **204F. Election advertisement to include promoter statement**

1. A person may publish or cause or permit to be published an election advertisement only if the advertisement includes a promoter statement.

2. A promoter statement referred to in subsection (1) must state the name and address of the promoter of the election advertisement.
3. If the promoter is a registered promoter, the name and address of the promoter stated in the promoter statement must be the same name and address of the promoter that appear in the register.
4. If the promoter is an unregistered promoter and is a body corporate or unincorporated, the promoter statement must also include the name of a member of the body who is the duly authorised representative of the promoter.
5. If the election advertisement is published in a visual form, the promoter statement must be clearly displayed in the advertisement.
6. If the election advertisement is published only in an audible form, the promoter statement when published must be no less audible than the other content of the advertisement.
7. A person who wilfully contravenes any of subsections (1) to (6) is guilty of an illegal practice.

### **204G. Publication of candidate advertisement promoting candidate**

1. A person may publish or cause or permit to be published a candidate advertisement that may reasonably be regarded as encouraging or persuading voters to vote for a constituency candidate only if the publication of the advertisement is authorised in writing by the candidate.
2. A person may publish or cause or permit to be published an election advertisement comprising 2 or more candidate advertisements of the kind described in subsection (1) only if the publication of the advertisement is authorised in writing by each of the candidates.
3. A person who wilfully contravenes subsection (1) or (2) is guilty of an illegal practice.

### **204H. Publication of party advertisement promoting party**

1. A person may publish or cause or permit to be published a party advertisement that may reasonably be regarded as encouraging or persuading voters to vote for a party only if the publication of the advertisement is authorised in writing by the party secretary.
2. A person who wilfully contravenes subsection (1) is guilty of an illegal practice.

### **204I. Electoral Commission to provide advice on application of definition of election advertisement**

1. Any person (a requestor) may request the Electoral Commission to provide advice on whether, in the opinion of the Electoral Commission, an advertisement constitutes an election advertisement.
2. A request made under subsection (1) must be accompanied by the advertisement in the form required by the Electoral Commission.
3. On receipt of a request under subsection (1), the Electoral Commission must, as soon as is reasonably practicable, provide an opinion to the requestor.
4. During the period specified in subsection (6), the Electoral Commission must treat the following documents as confidential:
  - a. an advertisement received under subsection (2):

- b. any supporting material made available by the requestor to the Electoral Commission:
  - c. advice given by the Electoral Commission to a requestor under subsection (3).
5. Notwithstanding subsection (4), the Electoral Commission may, upon request or on its own initiative, make available to the New Zealand Police copies of the documents referred to in that subsection to assist with the investigation or prosecution of any offence or suspected offence relating to an election.
  6. The period specified for the purposes of subsection (4) is, in relation to a document, the period that—
    - a. begins on the day the Electoral Commission receives the document; and
    - b. ends on the day after the day for the return of the writ for the election to which the advertisement relates.
  7. Subsection (4) overrides the Official Information Act 1982 and the Privacy Act 1993.

## 204J. Duty of Electoral Commission to report suspected offences

1. If the Electoral Commission believes that any person has committed an offence specified in this subpart, the Electoral Commission 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 offence is so inconsequential that there is no public interest in reporting those facts to the New Zealand Police.

## Subpart 2: Registered promoters

### 204K. Promoters eligible to be registered

A promoter (including a corporation sole, a body corporate, and an unincorporated body) is eligible to be a registered promoter if the promoter is not—

- a. a constituency candidate:
- b. a list candidate:
- c. a party:
- d. an overseas person as defined in section 207K:
- e. a person involved in the administration of—
  - i. the affairs of a candidate in relation to the candidate's election campaign; or

- ii. the affairs of a party.

## 204L. Application for registration

1. An application to be a registered promoter must be made to the Electoral Commission and made,—
  - a. if the promoter is an individual, by that individual; or
  - b. if the promoter is a company, by a person who is duly authorised by the board of directors to make the application; or
  - c. if the promoter is not an individual or a company, by the promoter's representative who is duly authorised by the promoter to make the application.
2. An application to be a registered promoter must be made in the form required by the Electoral Commission and set out—
  - a. the name and contact details of—
    - i. the promoter; and
    - ii. the person described in subsection (1)(b) or (c) who made the application, if the promoter is not an individual; and
  - b. the names of the persons occupying a position in the body that is comparable with that of a director of a company, if the promoter is not an individual or a company; and
  - c. the names of the trustees, if the promoter is a trust.
3. An application to be a registered promoter must be accompanied by evidence of the authority to make the application, if the application is made by a person described in subsection (1)(b) or (c).

## 204M. Grounds on which application for registration must be refused

The Electoral Commission must refuse an application by a promoter to be registered if—

- a. the application does not comply with section 204L; or
- b. the Electoral Commission is not satisfied that the promoter is eligible under section 204K to be registered; or
- c. the name of the promoter is—
  - i. indecent or offensive; or

- ii. likely to cause confusion or mislead electors.

## 204N. Electoral Commission's decision on application

1. If there are no grounds under section 204M to refuse an application by a promoter to be registered, the Electoral Commission must, as soon as is reasonably practicable after receiving the application,-
  - a. register the promoter; and
  - b. notify the person who made the application of the date of registration of the promoter.
2. If there are grounds under section 204M to refuse an application, the Electoral Commission must, as soon as is reasonably practicable after receiving the application,-
  - a. refuse the application; and
  - b. notify the person who made the application of the refusal and the reasons.

## 204O. Obligation to notify Electoral Commission of change in contact details

A registered promoter must give written notice to the Electoral Commission of any change in the information provided under section 204L(2) within 10 working days after the change.

## 204P. Cancellation of registration

1. The Electoral Commission must cancel the registration of a promoter if—
  - a. the Electoral Commission is satisfied that the promoter is not eligible to be registered; or
  - b. the promoter—
    - i. requests that it do so; and
    - ii. has not incurred expenses in relation to election advertisements that exceed the amount specified in section 204B(1)(d).
2. If the Electoral Commission cancels the registration of a promoter under subsection (1), the Electoral Commission must, as soon as is reasonably practicable, and in any case not later than 10 working days after the date of the cancellation, give the promoter written notice of—
  - a. the cancellation; and
  - b. the reason for the cancellation.

## 204Q. Expiry of registration

Unless earlier cancelled under section 204P, a promoter's registration expires on the close of polling day for the next election following the date of the promoter's registration.

## 204R. Establishment of register

1. The Electoral Commission must establish and maintain a register of registered promoters.
2. The Electoral Commission must enter in the register in respect of every registered promoter—
  - a. the name of the registered promoter; and
  - b. the address of the registered promoter; and
  - c. the names of the persons set out in the promoter's application, if any, provided under section 204L(2)(a)(ii), (b), and (c).
3. The Electoral Commission may enter in the register any other information that the Electoral Commission considers necessary or desirable for the purposes of the register.

## 204S. Purposes of register

The purposes of the register are—

- a. to enable members of the public to ascertain—
  - i. whether a person is a registered promoter and, if so, the address of that person; and
  - ii. whether an election advertisement is promoted by a registered promoter; and
- b. to assist with the enforcement of the provisions of this Part.

## 204T. Form of register

The register may be kept—

- a. as an electronic register (for example, on the Electoral Commission's Internet site); or
- b. in any other manner that the Electoral Commission thinks fit.

• Electoral commission

## 204U. Alterations to register

The Electoral Commission may at any time make any amendments to the register that are necessary to—

- a. reflect any changes in the information referred to in section 204O; or
- b. correct any error or omission on the part of the Electoral Commission or any person to whom the Electoral Commission has delegated its functions, duties, or powers.

• Electoral commission

## 204V. Register to be public

The Electoral Commission must—

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

## 204W. Search of register

A person may search the register for a purpose set out in section 204S.

## 204X. When search constitutes interference with privacy of individual

A search of the register for personal information that has not been carried out for a purpose specified in section 204S constitutes an action that is an interference with the privacy of an individual under section 66 of the Privacy Act 1993.

## Part 6A: Election expenses and donations

• Campaign financing

### Subpart 1: Election expenses of candidates

## 205. Interpretation and application

1. In this subpart, unless the context otherwise requires,—
  - advertising expenses has the meaning given to it by section 3E
  - candidate advertisement has the meaning given to it by section 3(1)
  - election advertisement has the meaning given to it by section 3A
  - election expenses, in relation to a candidate,—



- a. means the advertising expenses incurred in relation to a candidate advertisement that—
    - i. is published, or continues to be published, during the regulated period; and
    - ii. is promoted by—
      - A. the candidate; or
      - B. any person (including a registered promoter) authorised by the candidate; and
  - b. includes—
    - i. any election expense of an election advertisement that is apportioned to a candidate under section 205E or 205EA; and
    - ii. as required by section 40 of the Electoral Referendum Act 2010, any referendum expenses incurred in relation to an advertisement that comprises both—
      - A. a candidate advertisement; and
      - B. a referendum advertisement (within the meaning of section 31 of the Electoral Referendum Act 2010)
- party advertisement has the meaning given to it by section 3(1).
2. For the purposes of the definition of election expenses, it is immaterial whether an election expense is paid or incurred before, during, or after the regulated period.
  3. Nothing in sections 205K to 205R applies to a person who has not been nominated as a candidate for a seat in the House of Representatives.

## **205A. Persons who may incur election expenses in relation to candidate advertisement**

An election expense in relation to a candidate advertisement may only be incurred by—

- a. a candidate; or
- b. a party secretary in relation to an election advertisement described in section 205EA; or
- c. a promoter authorised by the candidate under section 204G.

## **205B. Offence to incur unauthorised election expense**

Every person is guilty of—

- a. a corrupt practice who wilfully contravenes section 205A; and
- b. an illegal practice who contravenes section 205A in any other case.

## **205C. Maximum amount of candidate's total election expenses**

1. The total election expenses of a candidate in respect of any regulated period must not exceed—
  - a. \$26,100 (or such other amount as is prescribed by the Governor-General by Order in Council under section 266A), in the case of a candidate at a general election; and
  - b. \$52,100 (or such other amount as is prescribed by the Governor-General by Order in Council under section 266A), in the case of a candidate at a by-election.
2. The amounts in subsection (1) are inclusive of goods and services tax.

## **205D. Apportionment of advertising expenses for publication of candidate advertisement both before and during regulated period**

1. This section applies if a candidate advertisement—
  - a. is published both before the commencement of the regulated period and during the regulated period; or
  - b. is published before the commencement of the regulated period and continues to be published during the regulated period.
2. If this section applies,—
  - a. the candidate advertisement is deemed to have been published during the regulated period; but
  - b. the advertising expenses for the publication of the candidate advertisement must be apportioned so that only a fair proportion of the expenses is attributed to being incurred during the regulated period.
3. Only the advertising expenses attributed to being incurred during the regulated period in accordance with subsection (2) are election expenses.

## **205E. Apportionment of election expenses of election advertisement between candidates**

1. This section applies if an election advertisement comprises 2 or more candidate advertisements.

2. If this section applies, the election expenses of the election advertisement must be apportioned among the candidates in proportion to the coverage the advertisement provides to each candidate.
3. For the purposes of this section,—
  - a. election expenses of the election advertisement means the total of the election expenses of all of the candidate advertisements comprised in the election advertisement; and
  - b. the coverage provided by an election advertisement must be calculated in such a manner as is appropriate in relation to the form of the advertisement.
4. Only the expenses apportioned to a candidate in accordance with this section are election expenses of that candidate.

### **205EA. Apportionment of election expenses of election advertisement between candidate and party**

1. This section applies if an election advertisement comprises both—
  - a. a candidate advertisement; and
  - b. a party advertisement.
2. If this section applies, the election expenses of the election advertisement must be apportioned between the candidate and the party in proportion to the coverage the advertisement provides to the candidate and to the party.
3. For the purposes of this section,—
  - a. election expenses of the election advertisement means the advertising expenses incurred in relation to both the candidate advertisement and the party advertisement; and
  - b. the coverage provided by an election advertisement must be calculated in such a manner as is appropriate in relation to the form of the election advertisement.
4. Only the expenses apportioned to the candidate in accordance with this section are election expenses of the candidate.

### **205F. Offence to pay election expenses in excess of prescribed maximum**

1. This section applies to any candidate or other 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 either of the maximum amounts prescribed by section 205C.
2. The candidate or other person is guilty of—
  - a. a corrupt practice if he or she knew the payment was in excess of the prescribed maximum amount; or

- b. an illegal practice in any other case, unless he or she proves that he or she took all reasonable steps to ensure that the election expenses did not exceed the prescribed maximum amount.
3. Every person who enters into an agreement or enters into an arrangement or understanding with any other person for the purpose of circumventing either of the maximum amounts prescribed in section 205C is guilty of a corrupt practice.

### **205G. Periods for claiming and paying candidate's election expenses**

1. A claim for any election expenses against a candidate is recoverable only if it is sent to the candidate within 20 working days after the day on which the declaration required by section 179(2) is made.
2. A claim that is sent to a candidate in accordance with subsection (1) must be paid within 40 working days after the day on which that declaration is made, and not otherwise.
3. A person who makes a payment in breach of this section is guilty of an illegal practice.
4. This section is subject to sections 205H and 205I.

### **205H. Procedure if claim disputed**

1. If a candidate, in the case of a claim for election expenses sent to a candidate within the period specified in section 205G(1), disputes the claim, or fails to pay the claim within the period of 40 working days specified in section 205G(2), then—
  - a. the claim is to be treated as a disputed claim; and
  - b. the claimant may, if he or she thinks fit, within 20 working days after the expiry of that period of 40 working days, bring an action for the disputed claim in any court of competent jurisdiction.
2. Any sum paid by the candidate in accordance with a judgment or order of the court in any such action is to be treated as paid within the period specified in section 205G(2).

### **205I. Leave to pay claim after time limitation**

1. On the application of a claimant or a candidate, a District Court may make an order granting leave to the candidate to pay—
  - a. a claim for election expenses sent after the period specified in section 205G(1); or
  - b. a claim not paid in the period specified in section 205G(2); or
  - c. a disputed claim in respect of which an action was not brought within the period specified in section 205H(1)(b).
2. Any sum paid by the candidate in accordance with an order made under subsection (1) is to be treated as having been paid within the period specified in section 205G(2).

## **205J. Invoice and receipt required for election expenses of \$50 or more**

Every payment made in respect of any election expenses of a candidate, other than a payment that is less than \$50, must be vouched by an invoice stating the particulars and by a receipt.

## **205K. Return of candidate's election expenses**

1. Within 70 working days after polling day, a candidate must file a return of election expenses with the Electoral Commission.
2. A return under subsection (1) must be in the form required by the Electoral Commission.

## **205L. Nil return**

If a candidate considers that there is no relevant information to disclose under section 205K, the candidate must file a nil return under that section.

## **205M. Return may be filed after time limitation if candidate outside New Zealand**

1. This section applies to a candidate who is outside New Zealand on the day on which the declaration required by section 179(2) is made (election result day).
2. The candidate must file a return of election expenses with the Electoral Commission within 85 working days after election result day.
3. A return filed by the candidate in accordance with subsection (2) is deemed to be filed within the time period specified in section 205K(1).

## **205N. Offences relating to return of candidate's election expenses**

1. A candidate commits an offence and is liable on conviction to a fine not exceeding \$40,000 who, without reasonable excuse, files a return of election expenses under section 205K during the period commencing on the day after the date on which the return is required to be filed and ending on the day that is 15 working days later (the late period).
  - 1A. A candidate is guilty of a corrupt practice who, without reasonable excuse,—
    - a. files a return of election expenses under section 205K after the late period; or
    - b. fails to file a return of election expenses under section 205K.
2. A candidate who files a return under section 205K that is false in any material particular is guilty of—
  - a. a corrupt practice if he or she filed the return knowing it to be false in any material particular; or
  - b. an illegal practice in any other case unless the candidate proves that—

- i. he or she had no intention to misstate or conceal the facts; and
  - ii. he or she took all reasonable steps in the circumstances to ensure that the information was accurate.
3. A person charged with an offence against subsection (2)(a) may be convicted of an offence against subsection (2)(b).

### **205O. Obligation to retain records necessary to verify return of candidate's election expenses**

1. A candidate must take all reasonable steps to ensure that all records, documents, and accounts that are reasonably necessary to enable a return under section 205K to be verified are retained until the expiry of the period within which a prosecution may be commenced under this Act in relation to the return or in relation to any matter to which the return relates.
2. A candidate who fails, without reasonable excuse, to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$40,000.

### **205P. Duty of Electoral Commission**

1. If the Electoral Commission believes that any person has committed an offence specified in this subpart, the Electoral Commission 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 offence is so inconsequential that there is no public interest in reporting those facts to the New Zealand Police.

### **205Q. Return of candidate's election expenses to be sent by Chief Electoral Officer to Electoral Commission**

[Repealed]

### **205R. Return of candidate's election expenses to be publicly available**

1. The Electoral Commission may publish, in any manner that the Electoral Commission considers appropriate, every return filed under section 205K.
2. During the public inspection period, the Electoral Commission must make available for public inspection a copy of every return filed under section 205K.
3. The Electoral Commission may make inspection under subsection (2) subject to the payment of any charges that may be made under the Official Information Act 1982.

### **205S. Unlawful use of public money not validated**

Nothing in this subpart validates any use of public money that would otherwise be unlawful.

## Subpart 2: Election expenses of parties

### 206. Interpretation

1. In this subpart,—

- advertising expenses has the meaning given to it by section 3E
- candidate advertisement has the meaning given to it by section 3(1)
- election advertisement has the meaning given to it by section 3A
- election expenses, in relation to a party,—
  - a. means the advertising expenses incurred in relation to a party advertisement that—
    - i. is published, or continues to be published, during the regulated period; and
    - ii. is promoted by—
      - A. the party secretary; or
      - B. any person (including a registered promoter) authorised by the party secretary; and
  - b. includes—
    - i. any election expense of an election advertisement that is apportioned to a party under section 206CB or 206CC; and
    - ii. as required by section 40 of the Electoral Referendum Act 2010, any referendum expenses incurred in relation to an advertisement that comprises both—
      - A. a party advertisement; and
      - B. a referendum advertisement (within the meaning of section 31 of the Electoral Referendum Act 2010); but
  - c. excludes—
    - i. the costs representing the time allocated to a party under section 73 or 76A of the Broadcasting Act 1989; and

- ii. the costs of broadcasting election programmes (as defined in section 69 of the Broadcasting Act 1989) that are paid by the Electoral Commission out of money allocated to the party under section 74A or 76A of the Broadcasting Act 1989
- party advertisement has the meaning given to it by section 3(1).
2. For the purposes of the definition of election expenses, it is immaterial whether an election expense is paid or incurred before, during, or after the regulated period.

## **206A. Persons who may incur election expenses in relation to party advertisement**

An election expense in relation to a party advertisement may only be incurred by—

- a. the party secretary; or
- b. a candidate in relation to an election advertisement described in section 206CC; or
- c. a promoter authorised by the party secretary under section 204H.

## **206B. Offence to incur unauthorised election expense**

Every person is guilty of—

- a. a corrupt practice who wilfully contravenes section 206A; and
- b. an illegal practice who contravenes section 206A in any other case.

## **206C. Maximum amount of party's total election expenses**

1. If a party is listed in the part of the ballot paper that relates to the party vote, the total election expenses of that party in respect of any regulated period must not exceed—
  - a. \$1,108,000 (or such other amount as is prescribed by the Governor-General by Order in Council under section 266A); and
  - b. \$26,100 (or such other amount as is prescribed by the Governor-General by Order in Council under section 266A) for each electoral district contested by a candidate for the party.
2. If a party is not listed in the part of the ballot paper that relates to the party vote, the total election expenses of that party in respect of any regulated period must not exceed \$26,100 for each electoral district contested by a candidate for the party.
3. The amounts in subsections (1) and (2) are inclusive of goods and services tax.



## **206CA. Apportionment of advertising expenses for publication of party advertisement both before and during regulated period**

1. This section applies if a party advertisement—
  - a. is published both before the commencement of the regulated period and during the regulated period; or
  - b. is published before the commencement of the regulated period and continues to be published during the regulated period.
2. If this section applies,—
  - a. the party advertisement is deemed to have been published during the regulated period; but
  - b. the advertising expenses for the publication of the party advertisement must be apportioned so that only a fair proportion of the expenses is attributed to being incurred during the regulated period.
3. Only the advertising expenses attributed to being incurred during the regulated period in accordance with subsection (2) are election expenses.

## **206CB. Apportionment of election expenses of election advertisement between parties**

1. This section applies if an election advertisement comprises 2 or more party advertisements.
2. If this section applies, the election expenses of the election advertisement must be apportioned among the parties in proportion to the coverage the advertisement provides to each party.
3. For the purposes of this section,—
  - a. election expenses of the election advertisement means the total of the election expenses of all of the party advertisements comprised in the election advertisement; and
  - b. the coverage provided by an election advertisement must be calculated in such a manner as is appropriate in relation to the form of the advertisement.
4. Only the expenses apportioned to a party in accordance with this section are election expenses of that party.

## **206CC. Apportionment of election expenses of election advertisement between party and candidate**

1. This section applies if an election advertisement comprises both—
  - a. a party advertisement; and
  - b. a candidate advertisement.

2. If this section applies, the election expenses of the election advertisement must be apportioned between the party and the candidate in proportion to the coverage the advertisement provides to the party and to the candidate.
3. For the purpose of this section,—
  - a. election expenses of the election advertisement means the advertising expenses incurred in relation to both the candidate advertisement and the party advertisement; and
  - b. the coverage provided by an election advertisement must be calculated in such a manner as is appropriate in relation to the form of the election advertisement.
4. Only the expenses apportioned to the party in accordance with this section are election expenses of the party.

### **206D. Offence to pay election expenses in excess of prescribed maximum**

1. This section applies to any 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 either of the maximum amounts prescribed by section 206C.
2. The person is guilty of—
  - a. a corrupt practice if he or she knew the payment was in excess of the prescribed maximum amount; or
  - b. an illegal practice in any other case, unless he or she proves that he or she took all reasonable steps to ensure that the election expenses did not exceed the prescribed maximum amount.
3. Every person who enters into an agreement or enters into an arrangement or understanding with any other person for the purpose of circumventing either of the maximum amounts prescribed in section 206C is guilty of a corrupt practice.

### **206E. Periods for claiming and paying party's election expenses**

1. A claim for any election expenses against a party is recoverable only if it is sent to the party secretary within 20 working days after the day on which the declaration required by section 193(5) is made.
2. A claim that is sent to the party secretary in accordance with subsection (1) must be paid within 40 working days after the day on which the declaration required by section 193(5) is made.
3. A person who makes a payment in breach of this section is guilty of an illegal practice.
4. This section is subject to sections 206F and 206G.

## 206F. Procedure if claim disputed

1. If a party, in the case of a claim for any election expenses sent to the party secretary within the period specified in section 206E(1), disputes the claim, or fails to pay the claim within the period of 40 working days specified in section 206E(2), then—
  - a. the claim is to be treated as a disputed claim; and
  - b. the claimant may, if he or she thinks fit, within 20 working days after the expiry of that period of 40 working days, bring an action for the disputed claim in any court of competent jurisdiction.
2. Any sum paid by the party in accordance with a judgment or order of the court in any such action is to be treated as paid within the period specified in section 206E(2).

## 206G. Leave to pay claim after time limitation

1. On the application of a claimant or a party, a District Court may make an order granting leave to a party to pay—
  - a. a claim for election expenses sent after the period specified in section 206E(1); or
  - b. a claim not paid in the period specified in section 206E(2); or
  - c. a disputed claim in respect of which an action was not brought within the period specified in section 206F(1)(b).
2. Any sum paid by the party in accordance with an order made under subsection (1) is to be treated as having been paid within the period specified in section 206E(2).

## 206H. Invoice and receipt required for election expenses of \$100 or more

Every payment made in respect of any election expenses of a party, other than a payment that is less than \$100, must be vouched by an invoice stating the particulars and by a receipt.

## 206I. Return of party's election expenses

1. Within 90 working days after polling day, a party secretary must file a return of the party's election expenses with the Electoral Commission.
2. The return must be—
  - a. in the form required by the Electoral Commission; and
  - b. accompanied by an auditor's report obtained under section 206L.

## 206J. Appointment of auditor for party

1. A party must appoint an auditor.

2. On the registration of a party under section 67, the person named in the party's application under section 63(2)(c)(v) as the person who is to be appointed as the party's auditor is to be taken to have been appointed under subsection (1).
3. A party must without delay appoint another auditor if the auditor appointed by the party under subsection (1) or taken to have been appointed under subsection (2)—
  - a. does not, for any reason, commence to hold office; or
  - b. ceases to hold office; or
  - c. becomes ineligible to hold office.
4. If at any time a party appoints a new auditor under subsection (3), the party must—
  - a. notify the Electoral Commission; and
  - b. send to the Electoral Commission—
    - i. the name, address, and contact details of the new auditor; and
    - ii. the new auditor's signed consent to the appointment.

## **206K. Persons eligible to be appointed as auditor**

A person is eligible to be appointed as an auditor under section 206J unless that person is—

- a. a constituency candidate; or
- b. a list candidate; or
- c. an employee or partner of a person referred to in paragraph (a) or (b); or
- d. an officer or employee of a party; or
- e. a body corporate; or
- f. a person who, by virtue of section 36(1) of the Financial Reporting Act 2013, may not be appointed or act as an auditor of an entity; or
- g. a Returning Officer.

## **206L. Auditor's report on return of party's election expenses**

1. A party secretary must, before the Electoral Commission receives the return required by section 206I, obtain from the auditor appointed under section 206J a report on the return.

2. The auditor must state in the report—
  - a. the position shown by the return in respect of the requirement that the party's total election expenses not exceed the maximum amount prescribed by section 206C; and
  - b. either—
    - i. whether, in the auditor's opinion, the position stated under paragraph (a) is correct; or
    - ii. that the auditor has been unable to form an opinion as to whether the position stated under paragraph (a) is correct.
3. The auditor must make any examinations that the auditor considers necessary.
4. The auditor must specify in the report any case in which—
  - a. the auditor has not received from the party secretary all the information that the auditor requires to carry out his or her duties; or
  - b. proper records of the party's election expenses have not, in the auditor's opinion, been kept by the party secretary.
5. The auditor—
  - a. must have access at all reasonable times to all records, documents, and accounts that relate to the party's election expenses and that are held by the party or the party secretary; and
  - b. may require the party secretary to provide any information and explanations that, in the auditor's opinion, may be necessary to enable the auditor to prepare the report.

## 206M. Nil return

If a party secretary considers that there is no relevant information to disclose under section 206I, the party secretary must file a nil return under that section.

## 206N. Offences relating to return of party's election expenses

1. A party secretary commits an offence and is liable on conviction to a fine not exceeding \$40,000 who, without reasonable excuse, files a return of election expenses under section 206I during the period commencing on the day after the date on which the return is required to be filed and ending on the day that is 15 working days later (the late period).
- 1A. A party secretary is guilty of a corrupt practice who, without reasonable excuse,—
  - a. files a return of election expenses under section 206I after the late period; or
  - b. fails to file a return of election expenses under section 206I.

2. A party secretary who files a return under section 206I that is false in any material particular is guilty of—
  - a. a corrupt practice if he or she filed the return knowing it to be false in any material particular; or
  - b. an illegal practice in any other case unless the party secretary proves that—
    - i. he or she had no intention to misstate or conceal the facts; and
    - ii. he or she took all reasonable steps in the circumstances to ensure that the information in the return was accurate.
3. A person charged with an offence against subsection (2)(a) may be convicted of an offence against subsection (2)(b).

### **206O. Obligation to retain records necessary to verify return of party's election expenses**

1. A party secretary must take all reasonable steps to ensure that all records, documents, and accounts that are reasonably necessary to enable a return under section 206I to be verified are retained until the expiry of the period within which a prosecution may be commenced under this Act in relation to the return or in relation to any matter to which the return relates.
2. A party secretary who fails, without reasonable excuse, to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$40,000.

### **206P. Duty of Electoral Commission**

1. If the Electoral Commission believes that any person has committed an offence specified in this subpart, the Electoral Commission 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 offence is so inconsequential that there is no public interest in reporting those facts to the New Zealand Police.

### **206Q. Return of party's election expenses to be publicly available**

1. The Electoral Commission may publish, in any manner that the Electoral Commission considers appropriate, every return and every accompanying auditor's report filed under section 206I.
2. During the public inspection period, the Electoral Commission must make available for public inspection a copy of every return and report referred to in subsection (1).
3. The Electoral Commission may make inspection under subsection (2) subject to the payment of any charges that may be made under the Official Information Act 1982.

### **206R. Unlawful use of public money not validated**

Nothing in this subpart validates any use of public money that would otherwise be unlawful.

## Subpart 2A: Election expenses of registered promoters

### 206S. Interpretation

1. In this subpart,—
  - advertising expenses has the meaning given to it by section 3E
  - election advertisement has the meaning given to it by section 3A
  - election expenses, in relation to a registered promoter,—
    - a. means the advertising expenses incurred in relation to an election advertisement that—
      - i. is published, or continues to be published, during the regulated period; and
      - ii. is promoted by the registered promoter; and
    - b. includes, as required by section 40 of the Electoral Referendum Act 2010, any referendum expenses incurred in relation to an advertisement that comprises both—
      - i. an election advertisement; and
      - ii. a referendum advertisement (within the meaning of section 31 of the Electoral Referendum Act 2010)
  - registered promoter has the meaning given to it by section 204A.
2. For the purposes of the definition of election expenses, it is immaterial whether an election expense is paid or incurred before, during, or after the regulated period.

### 206T. Persons who may incur election expenses in relation to election advertisement promoted by registered promoter

An election expense in relation to an election advertisement promoted by a registered promoter may only be incurred by—

- a. the registered promoter; or
- b. a person authorised by the registered promoter.

## **206U. Offence to incur unauthorised election expense**

Every person is guilty of—

- a. a corrupt practice who wilfully contravenes section 206T; and
- b. an illegal practice who contravenes section 206T in any other case.

## **206V. Maximum amount of registered promoter's total election expenses**

1. The total election expenses of a registered promoter in respect of any regulated period must not exceed \$313,000 (or such other amount as is prescribed by the Governor-General by Order in Council under section 266A).
2. The amount in subsection (1) is inclusive of goods and services tax.

## **206W. Apportionment of advertising expenses for publication of election advertisement promoted by registered promoter both before and during regulated period**

1. This section applies if an election advertisement that is promoted by a registered promoter—
  - a. is published both before the commencement of the regulated period and during the regulated period; or
  - b. is published before the commencement of the regulated period and continues to be published during the regulated period.
2. If this section applies,—
  - a. the election advertisement is deemed to have been published during the regulated period; but
  - b. the advertising expenses for the publication of the election advertisement must be apportioned so that only a fair proportion of the expenses is attributed to being incurred during the regulated period.
3. Only the advertising expenses attributed to being incurred during the regulated period in accordance with subsection (2) are election expenses.

## **206X. Offence to pay election expenses in excess of prescribed maximum**

1. This section applies to any registered promoter or other 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 section 206V.



2. The registered promoter or other person is guilty of—
  - a. a corrupt practice if he or she knew the payment was in excess of the prescribed maximum amount; or
  - b. an illegal practice in any other case, unless he or she proves that he or she took all reasonable steps to ensure that the election expenses did not exceed the prescribed maximum amount.
3. Every person who enters into an agreement or enters into an arrangement or understanding with any other person for the purpose of circumventing the maximum amount prescribed in section 206V is guilty of a corrupt practice.

### **206Y. Periods for claiming and paying registered promoter's election expenses**

1. A claim for any election expenses against a registered promoter is recoverable only if it is sent to the registered promoter within 20 working days after the day on which the declaration required by section 179(2) is made.
2. A claim that is sent to a registered promoter in accordance with subsection (1) must be paid within 40 working days after the day on which that declaration is made, and not otherwise.
3. A person who makes a payment in breach of this section is guilty of an illegal practice.
4. This section is subject to sections 206Z and 206ZA.

### **206Z. Procedure if claim disputed**

1. If a registered promoter, in the case of a claim for election expenses sent to a registered promoter within the period specified in section 206Y(1), disputes the claim or fails to pay the claim within the period of 40 working days specified in section 206Y(2), then—
  - a. the claim is to be treated as a disputed claim; and
  - b. the claimant may, if he or she thinks fit, within 20 working days after the expiry of that period of 40 working days, bring an action for the disputed claim in any court of competent jurisdiction.
2. Any sum paid by the registered promoter in accordance with a judgment or order of the court in any such action is to be treated as paid within the period specified in section 206Y(2).

### **206ZA. Leave to pay claim after time limitation**

1. On the application of a claimant or a registered promoter, a District Court may make an order granting leave to the registered promoter to pay—
  - a. a claim for election expenses sent after the period specified in section 206Y(1); or
  - b. a claim not paid in the period specified in section 206Y(2); or

- c. a disputed claim in respect of which an action was not brought within the period specified in section 206Z(1)(b).
2. Any sum paid by the registered promoter in accordance with an order made under subsection (1) is to be treated as having been paid within the period specified in section 206Y(2).

### **206ZB. Invoice and receipt required for election expenses of \$50 or more**

1. Every payment made in respect of any election expenses of a registered promoter must be vouched by an invoice stating the particulars, and by a receipt.
2. Subsection (1) does not apply to a payment less than \$50.

### **206ZC. Return of registered promoter's election expenses**

1. This section applies to a registered promoter whose total election expenses in respect of any regulated period exceed \$100,000 (inclusive of goods and services tax).
2. Within 70 working days after polling day, the registered promoter must file a return of election expenses with the Electoral Commission.
3. If the registered promoter is not an individual or a company, the return must be filed by the registered promoter's representative who is duly authorised to file the return.
4. A return filed under subsection (2) must be in the form required by the Electoral Commission.

### **206ZD. Electoral Commission may require auditor's report on return of registered promoter's election expenses**

1. If the Electoral Commission has reasonable grounds to believe that a return filed under section 206ZC may contain any false or misleading information, the Electoral Commission may require the registered promoter (at the registered promoter's expense) to obtain from an auditor a report on the return.
2. The auditor must state in the report—
  - a. the position shown by the return in respect of the requirement that the registered promoter's total election expenses must not exceed the maximum amount prescribed by section 206V; and
  - b. either—
    - i. whether, in the auditor's opinion, the position stated under paragraph (a) is correct; or
    - ii. that the auditor has been unable to form an opinion as to whether the position stated under paragraph (a) is correct.
3. The auditor must make any examinations that the auditor considers necessary.

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4. The auditor must specify in the report any case in which—
  - a. the auditor has not received from the registered promoter all the information that the auditor requires to carry out his or her duties; or
  - b. proper records of the registered promoter's election expenses have not, in the auditor's opinion, been kept by the registered promoter.
5. The auditor—
  - a. must have access at all reasonable times to all records, documents, and accounts that relate to the registered promoter's election expenses and that are held by the registered promoter; and
  - b. may require the registered promoter to provide any information and explanation that, in the auditor's opinion, may be necessary to enable the auditor to prepare the report.

## **206ZE. Offences relating to return of registered promoter's election expenses**

1. A registered promoter commits an offence and is liable on conviction to a fine not exceeding \$40,000 who, without reasonable excuse, files a return of election expenses under section 206ZC during the period commencing on the day after the date on which the return is required to be filed and ending on the day that is 15 working days later (the late period).
- 1A. A registered promoter is guilty of a corrupt practice who, without reasonable excuse,—
  - a. files a return of election expenses under section 206ZC after the late period; or
  - b. fails to file a return of election expenses under section 206ZC.
2. A registered promoter who files a return under section 206ZC that is false in any material particular is guilty of—
  - a. a corrupt practice if the registered promoter filed the return knowing it to be false in any material particular:
  - b. an illegal practice in any other case unless the registered promoter proves that—
    - i. he or she had no intention to misstate or conceal the facts; and
    - ii. he or she took all reasonable steps in the circumstances to ensure that the information was accurate.
3. If the registered promoter is not an individual or a company, the registered promoter's representative who files the return in accordance with section 206ZC(3) is liable under subsections (1) and (2).
4. Subsection (3) does not limit the liability of a registered promoter under subsection (1) or (2).

## 206ZF. Obligation to retain records necessary to verify return of registered promoter's election expenses

1. A registered promoter must take all reasonable steps to ensure that all records, documents, and accounts that are reasonably necessary to enable a return filed under section 206ZC to be verified are retained until the expiry of the period within which a prosecution may be commenced under this Act in relation to the return or in relation to any matter to which the return relates.
2. A registered promoter who fails, without reasonable excuse, to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$40,000.

## 206ZG. Duty of Electoral Commission

1. If the Electoral Commission believes that any person has committed an offence specified in this subpart, the Electoral Commission 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 offence is so inconsequential that there is no public interest in reporting those facts to the New Zealand Police.

## 206ZH. Return of registered promoter's election expenses to be publicly available

1. The Electoral Commission may publish, in any manner that the Electoral Commission considers appropriate, every return filed under section 206ZC.
2. During the public inspection period, the Electoral Commission must make available for public inspection a copy of every return filed under section 206ZC.
3. The Electoral Commission may make inspection under subsection (2) subject to the payment of any charges that may be made under the Official Information Act 1982.

## Subpart 3: General provisions relating to donations

### 207. Interpretation

1. In this subpart, unless the context otherwise requires, donation means—
  - a. a candidate donation; or
  - b. a party donation.
2. In this subpart and subparts 4 to 6 of this Part, unless the context otherwise requires,—
  - anonymous,—
    - a. in relation to a candidate donation, means a donation that is made in such a way that the candidate who receives the donation—
      - i. does not know the identity of the donor; and

- ii. could not, in the circumstances, reasonably be expected to know the identity of the donor:
  - b. in relation to a party donation, means a donation that is made in such a way that the party secretary who receives the donation—
    - i. does not know the identity of the donor; and
    - ii. could not, in the circumstances, reasonably be expected to know the identity of the donor
- candidate donation means a donation (whether of money or of the equivalent of money or of goods or services or of a combination of those things) that is made to a candidate, or to any person on the candidate's behalf, for use in the candidate's campaign for election and—
  - a. includes,—
    - i. where goods or services are provided to a candidate, or to any person on the candidate's behalf, under a contract or arrangement at a value less than their reasonable market value, the latter being a value that exceeds \$300, the amount of the difference between the former value and the reasonable market value of those goods or services; and
    - ii. where goods or services are provided by a candidate under a contract or arrangement at a value that is more than their reasonable market value, the amount of the difference between that value and the reasonable market value of those goods or services; and
    - iii. where credit is provided to a candidate on terms and conditions substantially more favourable than the commercial terms and conditions prevailing at the time for the same or similar credit, the value to the candidate of those more favourable terms and conditions; but
  - b. excludes,—
    - i. the labour of any person that is provided to a candidate free of charge by that person; and
    - ii. goods or services provided free of charge to a candidate, or to any person on the candidate's behalf, that have a reasonable market value of \$300 or less
- contribution means any thing (being money or the equivalent of money or goods or services or a combination of those things) that makes up a donation or is included in a donation or has been used to wholly or partly fund a donation, and that—

- a. was given—
    - i. to the donor; or
    - ii. to a person who was required or expected to pass on all or any of its amount or value to the donor, whether directly or indirectly (for example, through one or more intermediaries, trustees, or nominees); and
  - b. would have been a donation if it had been given directly to the candidate or party; and
  - c. was given in the knowledge or expectation (whether by reference to a trust, agreement, or understanding) that it would be wholly or partly applied to make up, or to be included in, or to fund, a donation
- contributor means a person who makes a contribution and who immediately before making the contribution—
    - a. beneficially holds any money, or the equivalent of money, or any goods that make up the contribution or are included in the contribution; or
    - b. provides any services that make up the contribution or are included in the contribution or pays for those services out of money that the person beneficially holds
  - donation funded from contributions means a donation that is made up of, includes, or is wholly or partly funded from 1 or more contributions
  - donor means a person who makes a donation
  - party donation means a donation (whether of money or of the equivalent of money or of goods or services or of a combination of those things) that is made to a party, or to any person or body of persons on behalf of the party who are involved in the administration of the affairs of the party, and—
    - a. includes,—
      - i. where goods or services are provided to a party, or to any person on the party's behalf, under a contract or arrangement at a value less than their reasonable market value, the latter being a value that exceeds \$1,500, the amount of the difference between the former value and the reasonable market value of those goods or services; and
      - ii. where goods or services are provided by a party under a contract or arrangement at a value that is more than their reasonable market value, the amount of the difference between that value and the reasonable market value of those goods or services; and

- iii. where credit is provided to a party on terms and conditions substantially more favourable than the commercial terms and conditions prevailing at the time for the same or similar credit, the value to the party of those more favourable terms and conditions; but
  - b. excludes—
    - i. the labour of any person that is provided to a party free of charge by that person; and
    - ii. goods or services provided free of charge to a party, or to any person on the party's behalf, that have a reasonable market value of \$1,500 or less; and
    - iii. any candidate donation that is included in a return made by a candidate under section 209
- receive, in relation to a donation, means to get a donation that has been given or sent by—
  - a. the donor directly; or
  - b. the donor indirectly, via a transmitter
- transmitter means a person to whom a donor gives or sends a donation for transmittal to a candidate or party.
- 3. For the purposes of sections 207B, 207C, 207E, 207G, 207I, and 210C,—
  - a. donation does not include a donation protected from disclosure (as defined in section 208); and
  - b. party donation does not include a donation protected from disclosure (as defined in section 208).

## **207A. Donations and contributions include GST**

All references to an amount or value of a donation or contribution are inclusive of any goods and services tax incurred by the donor or contributor in respect of the goods or service donated or contributed.

## **207B. Donations to be transmitted to candidate or party secretary**

1. Every person to whom a candidate donation is given or sent must, within 10 working days after receiving the donation, transmit the donation to the candidate.

2. Every person to whom a party donation is given or sent must, within 10 working days after receiving the donation, either—
  - a. transmit the donation to the party secretary; or
  - b. deposit the donation into a bank account nominated by the party secretary.

### **207C. Contributors to be identified**

1. This section applies to a donation (other than an anonymous donation) that is funded from contributions.
2. If this section applies to a donation, the donor must, at the time of making the donation, disclose—
  - a. the fact that the donation is funded from contributions; and
  - b. the following information about any contribution that, either on its own or when aggregated with other contributions made by or on behalf of the same contributor to the donation, exceeds \$1,500 in sum or value:
    - i. the name of the contributor; and
    - ii. the address of the contributor; and
    - iii. whether the contributor is an overseas person within the meaning of section 207K; and
    - iv. the amount of the contribution or, in the case of aggregated contributions, the total amount of the aggregated contributions; and
  - c. the total of all of the amounts disclosed under paragraph (b)(iv) in relation to the donation; and
  - d. the total of all of the other contributions made in relation to the donation.
3. [Repealed]
4. A candidate must give back to the donor the entire amount of the donation, or its entire value, if the candidate knows, or has reasonable grounds to believe, that the donor has failed to comply with subsection (2) in any respect.
5. A party secretary must give back to the donor the entire amount of the donation, or its entire value, if the party secretary knows, or has reasonable grounds to believe, that the donor has failed to comply with subsection (2) in any respect.
6. For the purposes of sections 209 and 210, any amount given back by a candidate under subsection (4), or by a party secretary under subsection (5), is taken not to have been received by the candidate or the party secretary, as the case may be.

### **207D. Offence relating to contravention of section 207C**

A donor who fails to comply with section 207C with the intention of concealing the identity of any or all of the contributors commits an offence and is liable on conviction to a fine not exceeding \$40,000.



## **207E. Identity of donor to be disclosed by transmitter, if known**

1. When a transmitter transmits a donation to a candidate or party secretary on behalf of the donor, the transmitter must disclose to the candidate or party secretary—
  - a. the fact that the donation is transmitted on behalf of the donor; and
  - b. the name and address of the donor; and
  - c. whether section 207C applies to the donation and, if so, all information disclosed by the donor under subsections (2) and (3) of that section.
2. Where a transmitter does not disclose, or is unable to disclose, the information required by subsection (1), then the donation must be treated as an anonymous donation.

## **207F. Offence relating to contravention of section 207E**

A transmitter who fails to comply with section 207E with the intention of concealing the identity of the donor or any or all of the contributors commits an offence and is liable on conviction to a fine not exceeding \$40,000.

## **207G. Disclosure of identity of donor**

1. If any person involved in the administration of the affairs of a candidate in relation to his or her election campaign knows the identity of the donor of an anonymous candidate donation exceeding \$1,500, the person must disclose the identity of the donor to the candidate.
2. If a candidate, list candidate, or any person involved in the administration of the affairs of a party knows the identity of the donor of an anonymous party donation exceeding \$1,500, the candidate, list candidate, or person must disclose the identity of the donor to the party secretary.

## **207H. Offence relating to contravention of section 207G**

A person who fails to comply with section 207G with the intention of concealing the identity of the donor commits an offence and is liable on conviction to a fine not exceeding \$40,000.

## **207I. Anonymous donation may not exceed \$1,500**

1. If an anonymous candidate donation exceeding \$1,500 is received by a candidate, the candidate must, within 20 working days of receipt of the donation, pay to the Electoral Commission the amount of the donation, or its value, less \$1,500.
2. If an anonymous party donation exceeding \$1,500 is received by a party secretary, the party secretary must, within 20 working days of receipt of the donation, pay to the Electoral Commission the amount of the donation, or its value, less \$1,500.
3. All amounts received by the Electoral Commission under this section must be paid into a Crown Bank Account.

## 207J. Offence relating to contravention of section 207I

1. A person who enters into an agreement, arrangement, or understanding with any other person that has the effect of circumventing section 207I(1) or (2) is guilty of—
  - a. a corrupt practice if the circumvention is wilful; or
  - b. an illegal practice in any other case.
2. A candidate or party secretary who contravenes section 207I is guilty of an illegal practice.

## 207K. Overseas donation or contribution may not exceed \$1,500

1. For the purposes of this section, overseas person means—
  - a. an individual who—
    - i. resides outside New Zealand; and
    - ii. is not a New Zealand citizen or registered as an elector; or
  - b. a body corporate incorporated outside New Zealand; or
  - c. an unincorporated body that has its head office or principal place of business outside New Zealand.
2. If a candidate receives from an overseas person a donation that either on its own or when aggregated with all other donations made by or on behalf of the same overseas person for use in the same campaign exceeds \$1,500, the candidate must, within 20 working days of receipt of the donation,—
  - a. return to the overseas person the total amount donated by the overseas person, or its value, less \$1,500; or
  - b. if this is not possible, pay the total amount donated by the overseas person, or its value, less \$1,500 to the Electoral Commission.
- 2A. If a party secretary receives from an overseas person a donation that either on its own or when aggregated with all other donations made by or on behalf of the same overseas person during the same year ending 31 December exceeds \$1,500, the party secretary must, within 20 working days of receipt of the donation,—
  - a. return to the overseas person the total amount donated by the overseas person, or its value, less \$1,500; or
  - b. if this is not possible, pay the total amount donated by the overseas person, or its value, less \$1,500 to the Electoral Commission.

3. If a candidate or party secretary receives, from a donor who is not an overseas person (as defined in subsection (1)), a donation funded from contributions that includes any contribution exceeding \$1,500 made by or on behalf of an overseas person or any contributions made by or on behalf of the same overseas person that when aggregated exceed \$1,500, the candidate or party secretary must, within 20 working days after notification of that fact under section 207C,—
  - a. give back to the donor the amount of the donation, or its value; or
  - b. if this is not possible, pay the amount of the donation, or its value, to the Electoral Commission.
4. All amounts received by the Electoral Commission under subsection (2) or (3) must be paid into a Crown Bank Account.

### **207L. Offence relating to contravention of section 207K**

1. A person who enters into an agreement, arrangement, or understanding with any other person that has the effect of circumventing section 207K(2) or (3) is guilty of—
  - a. a corrupt practice if the circumvention is wilful; or
  - b. an illegal practice in any other case.
2. A candidate or party secretary who contravenes section 207K(2) or (3) is guilty of an illegal practice.

### **207LA. Offence relating to splitting party donation or contribution to party donation**

1. A person is guilty of a corrupt practice who directs or procures, or is actively involved in directing or procuring, 2 or more bodies corporate to split between the bodies corporate a party donation in order to conceal the total amount of the donation and avoid the donation's inclusion by the party secretary in the return of party donations under section 210(1)(a).
2. A person is guilty of a corrupt practice who directs or procures, or is actively involved in directing or procuring, 2 or more bodies corporate to split between the bodies corporate a contribution to a party donation in order to conceal the total amount of the contribution and avoid the contribution's inclusion by the party secretary in the return of party donations under section 210(1)(b).

### **207M. Records of candidate donations**

1. A candidate must keep proper records of all candidate donations received by him or her.
2. A candidate who fails, without reasonable excuse, to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$40,000.

### **207N. Records of party donations**

1. A party secretary must keep proper records of all party donations received by him or her.

2. A party secretary who fails, without reasonable excuse, to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$40,000.

## 207O. Duty of Electoral Commission in relation to donations

1. If the Electoral Commission believes that any person has committed an offence against this subpart or subparts 4 to 6 of this Part, the Electoral Commission 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 offence is so inconsequential that there is no public interest in reporting those facts to the New Zealand Police.

## 207P. Duty of Electoral Commission in relation to donations

[Repealed]

## Subpart 4: Donations protected from disclosure

### 208. Interpretation

In this subpart, unless the context otherwise requires,—

- authorised person has the meaning given to it by section 208F(3)
- donation protected from disclosure means a donation made under section 208A(2) in accordance with section 208A(3).

### 208A. Method of making donation protected from disclosure

1. This section applies to any person who intends to make a donation in excess of \$1,500 to a party while preventing the disclosure of the person's identity to—
  - a. the party concerned; and
  - b. the public generally.
2. A person to whom this section applies may send a donation in excess of \$1,500 by way of a cheque, cash, or a bank draft to the Electoral Commission.
3. A donation under subsection (2) must be accompanied by a statement identifying—
  - a. the name of the party that is to receive the donation; and
  - b. the full name and address of the donor; and
  - c. if the donation made by the donor includes or comprises contributions from others, the name and address of every person who has contributed in excess of \$1,500.

4. The Electoral Commission may request the donor to provide any further information the Commission considers necessary to confirm the identity of the donor or other details provided by the donor, and the donor must take all reasonable steps to comply with such a request as soon as is practicable.

## **208B. Limit on maximum amount of donations protected from disclosure**

1. The maximum amount that a party may be paid in donations made to the Electoral Commission for the benefit of that party during a specified period is 10% (excluding any interest paid under section 208E(2)) of the maximum amount of election expenses allowed under section 206C(1) to be incurred by a party that is listed in the part of the ballot paper that relates to the party vote and that has a candidate contesting every electoral district.
2. The maximum amount that a party may be paid in donations made to the Electoral Commission for the benefit of the party from the same donor during any specified period is 15% (excluding any interest paid under section 208E(2)) of the amount that may be paid to that party under subsection (1).
3. For the purposes of this section,—
  - a. a specified period is—
    - i. the period beginning on 9 November 2008 and ending with the close of the day before polling day for the next general election after that date; and
    - ii. any subsequent period between polling day for one general election and polling day for the following general election:
  - b. to avoid doubt, if there is a change in the name of a donor or party, the donor or party must be treated as the same donor or party (as the case may be) as the donor or party was prior to the change of name.

## **208C. Duty of Electoral Commission to provide advice on actual figures under section 208B**

The Electoral Commission—

- a. must, as soon as practicable after the commencement of this Act, publish on its Internet site, and by any other means the Commission considers appropriate, guidance specifying the relevant figures that constitute the maximum amounts referred to in section 208B(1) and (2); and
- b. may alter that guidance from time to time to reflect any changes in the relevant figures.

• Electoral commission

## 208D. Duties of Electoral Commission on receipt of donation

1. The Electoral Commission, on receiving a donation under section 208A(2), must pay it to the secretary of the party for whom it is intended, unless—
  - a. the requirements of section 208A(3) or (4) have not been complied with; or
  - b. payment of the donation would contravene a maximum amount referred to in section 208B.
2. If subsection (1)(a) applies, the Electoral Commission must,—
  - a. if the name and contact details of the donor are known or can be readily ascertained, return the donation to the donor:
  - b. in any other case, pay the donation into a Crown Bank Account.
3. If subsection (1)(b) applies, the Electoral Commission must,—
  - a. if the name and contact details of the donor are known or can be readily ascertained, return any portion of the donation that exceeds a maximum limit set out in section 208B to the donor:
  - b. in any other case, pay any portion of the donation that exceeds a maximum limit set out in section 208B into a Crown Bank Account.

## 208E. Timing of payment to parties

1. The Electoral Commission must pay all outstanding amounts due to a party under section 208D(1)—
  - a. weekly, during the period between writ day and the return of the writ, at any general election:
  - b. monthly, at any other time.
2. If any interest is earned on a donation received under section 208A(2) for a party, that interest, so far as it can reasonably be calculated, must be added to—
  - a. any sum paid by the Electoral Commission to the secretary of that party; or
  - b. any sum returned by the Electoral Commission to the donor; or
  - c. any sum paid by the Electoral Commission into a Crown Bank Account.

## 208F. Offence of prohibited disclosure

1. No person may disclose the name or other identifying details of a donor or contributor in respect of a donation made, or proposed to be made, under section 208A(2) in a manner that indicates or suggests that the person has made, or proposes to make, such a donation or contribution, to—
  - a. any party secretary or person involved in the administration of the affairs of the party for whom the donation is intended; or
  - b. any other person (other than an authorised person).
2. Every person who contravenes subsection (1) without reasonable excuse is guilty of an illegal practice.
3. In this section, authorised person means—
  - a. a member or employee or other person engaged by the Electoral Commission:
  - b. a donor or contributor and any officer, employee, relative, adviser, or agent of the donor or contributor:
  - c. any other person to whom the identifying details must be supplied to enable the donation to be made (for example, an employee of a bank who processes a cheque by which the donation is made):
  - d. any person to whom the identifying details must be supplied to comply with 1 or more of the Inland Revenue Acts (within the meaning of section 3(1) of the Tax Administration Act 1994):
  - e. the Auditor-General:
  - f. any other person entitled to the information in question in accordance with any search warrant, summons, or any process under rules of court, or in the course of any proceedings.
4. Except as provided in this section, if there is any inconsistency between subsection (1) and any other enactment, subsection (1) prevails.

## 208G. Duty of Electoral Commission to report

1. The Electoral Commission must, in the manner required by subsection (2), report on—
  - a. the total amounts received in donations under section 208A(2):
  - b. the amounts paid to a party secretary under section 208D(1) during the period being reported on:
  - c. the amount returned to donors under section 208D(2)(a) or (3)(a) during the period being reported on:

- d. the amount paid into a Crown Bank Account under section 208D(2)(b) or (3)(b) during the period being reported on.
2. The Electoral Commission must report on the matters set out in subsection (1)—
  - a. in each annual report, in relation to the financial year to which the report relates; and
  - b. quarterly, by publication on the Commission's Internet site and by any other means the Commission considers appropriate, in respect of the preceding 3-month period.

## Subpart 5: Disclosure of candidates' donations

### 209. Return of candidate donations

1. A candidate must, at the same time as filing a return of election expenses under section 205K, file with the Electoral Commission a return setting out—
  - a. the details specified in subsection (2) in respect of every candidate donation (other than a donation of the kind referred to in paragraphs (c) and (d)) received by him or her that, either on its own or when aggregated with all other donations made by or on behalf of the same donor for use in the same campaign, exceeds \$1,500 in sum or value; and
  - b. whether section 207C applies to any donation and, if so, and to the extent known or ascertainable from the information supplied under that section, the details specified in subsection (3) in respect of every contribution that, either on its own or when aggregated with other contributions made by or on behalf of the same contributor to the donation, exceeds \$1,500 in sum or value; and
  - c. the details specified in subsection (4) in respect of every anonymous candidate donation received by him or her exceeding \$1,500; and
  - d. the details specified in subsection (5) in respect of every candidate donation received by him or her from an overseas person that, either on its own or when aggregated with all other donations made by or on behalf of the same overseas person for use in the same campaign, exceeds \$1,500; and
  - e. the details specified in subsection (5A) in respect of every contribution to a candidate donation received by him or her from an overseas person that, either on its own or when aggregated with other contributions made by the same overseas person to the donation, exceeds \$1,500.
2. The details referred to in subsection (1)(a) are—
  - a. the name of the donor; and
  - b. the address of the donor; and



- c. the amount of the donation or, in the case of aggregated donations, the total amount of the donations; and
    - d. the date the donation was received or, in the case of aggregated donations, the date that each donation was received.
  3. The details referred to in subsection (1)(b) are—
    - a. the name of the contributor; and
    - b. the address of the contributor; and
    - c. the amount of the contribution or, in the case of aggregated contributions, the total amount of the aggregated contributions; and
    - d. the date on which the donation funded from contributions was made.
  4. The details referred to in subsection (1)(c) are—
    - a. the date the donation was received; and
    - b. the amount of the donation; and
    - c. the amount paid to the Electoral Commission under section 207I(1), and the date that payment was made.
  5. The details referred to in subsection (1)(d) are—
    - a. the name of the overseas person; and
    - b. the address of the overseas person; and
    - c. the amount of the donation or, in the case of aggregated donations, the total amount of the donations; and
    - d. the date the donation was received or, in the case of aggregated donations, the date each donation was received; and
    - e. the amount returned to an overseas person or paid to the Electoral Commission under section 207K(2), and the date of that return or payment, as the case may be.
  - 5A. The details referred to in subsection (1)(e) are—
    - a. the name of the overseas person; and
    - b. the address of the overseas person; and
    - c. the amount of the contribution or, in the case of aggregated contributions, the total amount of the aggregated contributions; and

- d. the date on which the related donation funded from the contribution was made; and
  - e. the amount returned to the donor or paid to the Electoral Commission under section 207K(3), and the date of that return or payment, as the case may be.
6. Every return filed under subsection (1) must be in the form required by the Electoral Commission.

### **209A. Nil return**

If a candidate considers that there is no relevant information to disclose under section 209, the candidate must file a nil return under that section.

### **209B. Offences relating to return of candidate donations**

1. A candidate commits an offence and is liable on conviction to a fine not exceeding \$40,000 who, without reasonable excuse, files a return of candidate donations under section 209 during the period commencing on the day after the date on which the return is required to be filed and ending on the day that is 15 working days later (the late period).
- 1A. A candidate is guilty of a corrupt practice who, without reasonable excuse,—
  - a. files a return of candidate donations under section 209 after the late period; or
  - b. fails to file a return of candidate donations under section 209.
2. A candidate who files a return under section 209 that is false in any material particular is guilty of—
  - a. a corrupt practice if he or she filed the return knowing it to be false in any material particular; or
  - b. an illegal practice in any other case unless the candidate proves that—
    - i. he or she had no intention to misstate or conceal the facts; and
    - ii. he or she took all reasonable steps in the circumstances to ensure that the information in the return was accurate.

### **209C. Obligation to retain records necessary to verify return of candidate donations**

1. A candidate must take all reasonable steps to ensure that all records, documents, and accounts that are necessary to enable a return under section 209 to be verified are retained until the expiry of the period within which a prosecution may be commenced under this Act in relation to the return or in relation to any matter to which the return relates.
2. A candidate who fails, without reasonable excuse, to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$40,000.

## 209D. Return of candidate donations to be sent by Chief Electoral Officer to Electoral Commission

[Repealed]

## 209E. Return of candidate donations to be publicly available

1. The Electoral Commission may publish, in any manner that the Electoral Commission considers appropriate, every return filed under section 209.
2. [Repealed]
3. During the public inspection period, the Electoral Commission must make available for public inspection a copy of every return filed under section 209.
4. The Electoral Commission may make inspection under subsection (3) subject to the payment of any charges that may be made under the Official Information Act 1982.

## Subpart 6: Disclosure of parties' donations

### 210. Annual return of party donations

1. A party secretary must file with the Electoral Commission, for each year, a return of party donations setting out—
  - a. the details specified in subsection (2) for every party donation (other than a donation of the kind referred to in paragraphs (c) to (e)) received by him or her that, either on its own or when aggregated with all other donations made by or on behalf of the same donor during the year, exceeds \$15,000 in sum or value; and
  - b. whether section 207C applies to any donation and, if so, and to the extent known or ascertainable from the information supplied under that section, the details specified in subsection (3) in respect of every contribution that, either on its own or when aggregated with other contributions made by or on behalf of the same contributor to the donation, or to other donations during the year, exceeds \$15,000 in sum or value; and
  - c. the details specified in subsection (4) in respect of every anonymous party donation received by him or her exceeding \$1,500; and
  - d. the details specified in subsection (5) in respect of every party donation received by him or her from an overseas person that, either on its own or when aggregated with all other donations made by or on behalf of the same overseas person during the year, exceeds \$1,500; and
  - da. the details specified in subsection (5A) in respect of every contribution to a party donation received by him or her from an overseas person that, either on its own or when aggregated with other contributions made by the same overseas person to the donation, exceeds \$1,500; and

- e. the details specified in subsection (6) in respect of every payment of donations received from the Electoral Commission under section 208D; and
  - f. the details specified in subsection (6A) in respect of all other party donations received by him or her.
2. The details referred to in subsection (1)(a) are—
    - a. the name of the donor; and
    - b. the address of the donor; and
    - c. the amount of the donation or, in the case of aggregated donations, the total amount of the donations; and
    - d. the date the donation was received or, in the case of aggregated donations, the date that each donation was received.
  3. The details referred to in subsection (1)(b) are—
    - a. the name of the contributor; and
    - b. the address of the contributor; and
    - c. the amount of the contribution or, in the case of aggregated contributions, the total amount of the aggregated contributions; and
    - d. the date on which each related donation funded from contributions was made.
  4. The details referred to in subsection (1)(c) are—
    - a. the date the donation was received; and
    - b. the amount of the donation; and
    - c. the amount paid to the Electoral Commission under section 207(2), and the date that payment was made.
  5. The details referred to in subsection (1)(d) are—
    - a. the name of the overseas person; and
    - b. the address of the overseas person; and
    - c. the amount of the donation or, in the case of aggregated donations, the total amount of the donations; and
    - d. the date the donation was received or, in the case of aggregated donations, the date each donation was received; and

- e. the amount returned to an overseas person or paid to the Electoral Commission under section 207K(2A), and the date of that return or payment, as the case may be.
- 5A. The details referred to in subsection (1)(da) are—
- a. the name of the overseas person; and
  - b. the address of the overseas person; and
  - c. the amount of the contribution or, in the case of aggregated contributions, the total amount of the aggregated contributions; and
  - d. the date on which the related donation funded from the contribution was made; and
  - e. the amount returned to the donor or paid to the Electoral Commission under section 207K(3), and the date of that return or payment, as the case may be.
6. The details referred to in subsection (1)(e) are—
- a. the date the payment was received; and
  - b. the amount of the payment; and
  - c. the amount of interest included in the payment.
- 6A. The details referred to in subsection (1)(f) are—
- a. the number of anonymous party donations received of an amount not exceeding \$1,500, and the total amount of all such donations:
  - b. the number of overseas party donations received of an amount not exceeding \$1,500, and the total amount of all such donations:
  - c. the number of all party donations received of an amount exceeding \$1,500 but not exceeding \$5,000, and the total amount of all such donations:
  - d. the number of all party donations received of an amount exceeding \$5,000 but not exceeding \$15,000, and the total amount of all such donations.
7. A return must—
- a. be filed by 30 April of the following year; and
  - b. be in the form required by the Electoral Commission; and
  - c. be accompanied by an auditor's report obtained under section 210A.

8. Despite anything in subsection (1), if a party secretary is required to file under that subsection a return of party donations that relates to the year in which the party became registered, that return is to relate to the period beginning with the date of registration of the party and ending with 31 December of that year.
9. In this section, year means the period of 12 months starting on 1 January and ending with the close of 31 December.

### **210A. Auditor's report on annual return of party donations**

1. A party secretary must, before the Electoral Commission receives the return required by section 210, obtain from the auditor appointed under section 206J a report on the return.
2. The auditor must state in the report whether, in the auditor's opinion, the return fairly reflects the party donations received by the party secretary.
3. The auditor must make any examinations that the auditor considers necessary.
4. The auditor must specify in the report any case in which—
  - a. the return does not, in the auditor's opinion, fairly reflect the party donations received by the party secretary:
  - b. the auditor has not received from the party secretary all the information that the auditor requires to carry out his or her duties:
  - c. proper records of party donations have not, in the auditor's opinion, been kept by the party secretary.
5. The auditor—
  - a. must have access at all reasonable times to all records, documents, and accounts that relate to the party donations and that are held by the party or the party secretary; and
  - b. may require the party secretary to provide any information and explanations that, in the auditor's opinion, may be necessary to enable the auditor to prepare the report.

### **210B. Nil return**

If a party secretary considers that there is no relevant information to disclose under section 210, the party secretary must file a nil return under that section.

### **210C. Return of party donation received from same donor exceeding \$30,000**

1. A party secretary must file with the Electoral Commission a return in respect of every party donation that exceeds \$30,000.
2. A party secretary must file with the Electoral Commission a return in respect of every party donation that—
  - a. the party secretary knows is from a donor who in the 12 months immediately preceding the date of receipt of the donation (the last 12 months) has made 1 or more previous donations; and

- b. when aggregated with all previous donations received from the donor in the last 12 months exceeds \$30,000.
3. If a return is made under subsection (2), the donations disclosed in that return must be disregarded when applying this section in relation to a party donation that is made after that return is filed.
4. A return filed under subsection (1) must be in the form required by the Electoral Commission and set out—
  - a. the name of the donor (if known); and
  - b. the address of the donor (if known); and
  - c. the amount of the donation; and
  - d. the date the donation was received; and
  - e. the following details in respect of every contribution to the donation made by or on behalf of the same contributor that exceeds \$30,000:
    - i. the name of the contributor; and
    - ii. the address of the contributor; and
    - iii. the amount of the contribution.
5. A return filed under subsection (2) must be in the form required by the Electoral Commission and set out—
  - a. the name of the donor; and
  - b. the address of the donor; and
  - c. the amount of the donation; and
  - d. the amounts of all previous donations; and
  - e. the date the donation was received; and
  - f. the dates all previous donations were received.
6. A return must be filed under subsection (1) or (2) within 10 working days of the donation being received by the party secretary.

## **210D. Offences relating to return of party donations**

1. A party secretary commits an offence and is liable on conviction to a fine not exceeding \$40,000 who, without reasonable excuse,—
  - a. files a return of party donations under section 210 during the late period:

- b. files a return of party donations under section 210C during the late period.
- 1A. A party secretary is guilty of a corrupt practice who, without reasonable excuse,—
- a. files a return of party donations under section 210 or 210C after the late period; or
  - b. fails to file a return of party donations under—
    - i. section 210;
    - ii. section 210C.
2. A party secretary who files a return under section 210 or 210C that is false in any material particular is guilty of—
- a. a corrupt practice if he or she filed the return knowing it to be false in any material particular; or
  - b. an illegal practice in any other case unless the party secretary proves that—
    - i. he or she had no intention to misstate or conceal the facts; and
    - ii. he or she took all reasonable steps in the circumstances to ensure that the information in the return was accurate.
3. In this section, late period, in relation to the filing of a return, means the period commencing on the day after the date on which the return is required to be filed and ending on the day that is 15 working days later.

### **210E. Obligation to retain records necessary to verify return of party donations**

1. A party secretary must take all reasonable steps to ensure that all records, documents, and accounts that are necessary to enable returns under sections 210 and 210C to be verified are retained until the expiry of the period within which a prosecution may be commenced under this Act in relation to the returns or in relation to any matter to which the returns relate.
2. A party secretary who fails, without reasonable excuse, to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$40,000.

### **210F. Return of party donations to be publicly available**

1. The Electoral Commission may publish, in any manner that the Electoral Commission considers appropriate, the following returns and reports:
  - a. a return filed under section 210; and
  - b. a report obtained under section 210A accompanying the return referred to in paragraph (a); and



- c. a return filed under section 210C.
2. During the public inspection period, the Electoral Commission must make available for public inspection a copy of every return and report referred to in subsection (1).
3. The Electoral Commission may make inspection under subsection (2) subject to the payment of any charges that may be made under the Official Information Act 1982.

## Part 6B: Loans

### 211. Application of this Part

This Part applies to loans entered into on behalf of parties.

#### Subpart 1: General provisions relating to loans

### 212. Interpretation

In this Part,—

- lender, in relation to a loan, means the person providing the loan
- loan—
  - a. means a written or an oral agreement or arrangement under which a lender lends money or agrees to lend money in the future at specified dates or on request or on the occurrence of a particular event; but
  - b. does not include any money lent by a registered bank at a commercial interest rate
- loan amount means—
  - a. the amount of money lent by the lender under the loan; or
  - b. where any money may be lent under the loan in the future, the maximum amount that may be owed at any one time; or
  - c. the total of the amounts in paragraphs (a) and (b), in any case where the lender has provided, and may in the future provide, money under the loan
- registered bank has the same meaning as in section 2(1) of the Reserve Bank of New Zealand Act 1989.

### 213. Party secretary may enter into loan on behalf of party

1. A party may enter into a loan only with the authorisation of the party secretary.
2. Only the party secretary may enter into a loan on behalf of the party.
3. If the party secretary enters into a loan that is not in writing, the party secretary must, as soon as is reasonably practicable, make a written record of the loan.
4. A loan entered into in contravention of this section is an illegal contract for the purposes of the Illegal Contracts Act 1970.

## 214. Offence to enter into unauthorised loan

A person is guilty of—

- a. a corrupt practice who wilfully contravenes section 213; and
- b. an illegal practice who contravenes section 213 in any other case.

### 214A. Offence to enter into arrangement to circumvent section 213, 214C, or 214F

A person who enters into an agreement, arrangement, or understanding with any other person for the purpose of circumventing section 213, or for the purpose of circumventing the disclosure required by section 214C or 214F, is guilty of an illegal practice.

### 214B. Records of loans

1. A party secretary must keep proper records of all loans entered into on behalf of the party.
2. A party secretary who fails, without reasonable excuse, to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$40,000.

## Subpart 2: Disclosure of loans

### 214C. Annual return of loans

1. A party secretary must file with the Electoral Commission, for each year, a return setting out—
  - a. the details specified in subsection (2) in respect of—
    - i. every loan entered into during the year that has a loan amount exceeding \$15,000; and
    - ii. every loan entered into in any previous year that—
      - A. has a loan amount exceeding \$15,000; and
      - B. at the close of 31 December of the year for which the return is filed, has an unpaid balance exceeding \$15,000; and
  - b. the details specified in subsection (3) in respect of every loan entered into during the year that has a loan amount not exceeding \$15,000, but which exceeds \$15,000 when aggregated with—
    - i. the loan amounts of all other loans provided by the same lender during the year; or

- ii. the unpaid balances of any loans provided by the same lender during any previous year; and
    - c. the details specified in subsection (4) in respect of all other loans entered into during the year that each have loan amounts of not less than \$1,500 and not more than \$15,000.
- 2. The details referred to in subsection (1)(a) are—
  - a. the name of the lender; and
  - b. the address of the lender; and
  - c. the loan amount; and
  - d. the date on which the loan was entered into; and
  - e. the repayment date for the loan, or a statement that there is no repayment date; and
  - f. the interest rate or rates; and
  - g. the unpaid balance of the loan amount, if any; and
  - h. the name and address of any guarantor of the loan; and
  - i. the details of any security given for the loan; and
  - j. whether there is any term of the loan agreement or arrangement that enables the lender to reduce or extinguish the loan amount or interest, or both, or grant any concession in respect of repayment of that amount or interest, or both.
- 3. The details referred to in subsection (1)(b) are—
  - a. the details specified in subsection (2); and
  - b. the total of the aggregated loan amount.
- 4. The details referred to in subsection (1)(c) are—
  - a. the number of loans; and
  - b. the total of the aggregated loan amounts.
- 5. A return must—
  - a. be filed by 30 April of the following year; and
  - b. be in a form required by the Electoral Commission; and

- c. be accompanied by an auditor's report obtained under section 214D.
6. In this section, year means the period of 12 months starting on 1 January and ending with the close of 31 December.
7. Despite anything in subsection (1), if a party secretary is required to file under that subsection a return of party loans that relates to the year in which the party became registered, that return is to relate to the period beginning with the date of registration of the party and ending with 31 December of that year.

## **214D. Auditor's report on annual return of loans**

1. A party secretary must, before the Electoral Commission receives the return required by section 214C, obtain from the auditor appointed under section 206J a report on the return.
2. The auditor must state in the report whether, in the auditor's opinion, the return fairly reflects the loans entered into by the party.
3. The auditor must make any examinations that the auditor considers necessary.
4. The auditor must specify in the report any case in which—
  - a. the return does not, in the auditor's opinion, fairly reflect the loans entered into by or on behalf of the party:
  - b. the auditor has not received from the party secretary all the information that the auditor requires to carry out his or her duties:
  - c. proper records of loans entered into by or on behalf of the party have not, in the auditor's opinion, been kept by the party secretary.
5. The auditor—
  - a. must have access at all reasonable times to all records, documents, and accounts that relate to the loans entered into by or on behalf of the party and that are held by the party or the party secretary; and
  - b. may require the party secretary to provide any information and explanation that, in the auditor's opinion, may be necessary to enable the auditor to prepare the report.

## **214E. Nil return**

If a party secretary considers that there is no relevant information to disclose under section 214C, the party secretary must file a nil return under that section.

## **214F. Return of loan provided by same lender exceeding \$30,000**

1. A party secretary must file with the Electoral Commission a return in respect of every loan entered into that has a loan amount exceeding \$30,000.

2. A party secretary must file with the Electoral Commission a return in respect of every loan entered into—
  - a. that is provided by a lender who, in the 12 months immediately preceding the date on which the loan was entered into (the last 12 months), has provided 1 or more other loans to the party (previous loans); and
  - b. that exceeds \$30,000 when the amount of the loan is aggregated with the loan amounts of all the previous loans.
3. If a return is made under subsection (2), the loans disclosed in that return must be disregarded when applying this section in relation to a loan that is entered into by the party after that return is filed.
4. A return filed under subsection (1) must be in the form required by the Electoral Commission and must set out—
  - a. the name of the lender; and
  - b. the address of the lender; and
  - c. the loan amount; and
  - d. the date on which the loan was entered into; and
  - e. the repayment date for the loan, or a statement that there is no repayment date; and
  - f. the interest rate or rates; and
  - g. the unpaid balance of the loan amount, if any; and
  - h. the name and address of any guarantor of the loan; and
  - i. the details of any security given for the loan; and
  - j. whether there is any term of the loan agreement or arrangement that enables the lender to reduce or extinguish the loan amount or interest, or both, or grant any concession in respect of repayment of that amount or interest, or both.
5. A return filed under subsection (2) must be in the form required by the Electoral Commission and must set out—
  - a. the details specified in subsection (4) in respect of—
    - i. the loan; and
    - ii. all previous loans; and
  - b. the total of the aggregated loan amount.

6. A return must be filed under subsection (1) or (2) within 10 working days of the loan being entered into by the party.

## 214G. Offences relating to return of party loans

1. A party secretary commits an offence and is liable on conviction to a fine not exceeding \$40,000 who, without reasonable excuse,—
  - a. files a return of party loans under section 214C during the late period:
  - b. files a return of party loans under section 214F during the late period.
2. A party secretary is guilty of a corrupt practice who, without reasonable excuse,—
  - a. files a return of party loans under section 214C or 214F after the late period; or
  - b. fails to file a return of party loans under—
    - i. section 214C;
    - ii. section 214F.
3. A party secretary who files a return under section 214C or 214F that is false in any material particular is guilty of—
  - a. a corrupt practice if he or she filed the return knowing it to be false in any material particular; or
  - b. an illegal practice in any other case unless the party secretary proves that—
    - i. he or she had no intention to misstate or conceal the facts; and
    - ii. he or she took all reasonable steps in the circumstances to ensure that the information in the return was accurate.
4. A party secretary charged with an offence against subsection (3)(a) may be convicted of an offence against subsection (3)(b).
5. In this section, late period, in relation to the filing of a return, means the period commencing on the day after the date on which the return is required to be filed and ending on the day that is 15 working days later.

## 214H. Duty of Electoral Commission

1. If the Electoral Commission believes that any person has committed an offence specified in this Part, the Electoral Commission 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 offence is so inconsequential that there is no public interest in reporting those facts to the New Zealand Police.

## 214I. Obligation to retain records necessary to verify return of party loans

1. A party secretary must take all reasonable steps to ensure that all records, documents, and accounts that are reasonably necessary to enable returns under sections 214C and 214F to be verified are retained until the expiry of the period within which a prosecution may be commenced under this Act in relation to the returns or in relation to any matter to which the returns relate.
2. A party secretary who fails, without reasonable excuse, to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$40,000.

## 214J. Return of party loans to be publicly available

1. The Electoral Commission may publish, in any manner that the Electoral Commission considers appropriate, the following returns and reports:
  - a. a return filed under section 214C; and
  - b. a report obtained under section 214D accompanying a return referred to in paragraph (a); and
  - c. a return filed under section 214F.
2. During the public inspection period, the Electoral Commission must make available for public inspection a copy of every return and report referred to in subsection (1).
3. The Electoral Commission may make inspection under subsection (2) subject to the payment of any charges that may be made under the Official Information Act 1982.

## Part 7: Corrupt and illegal practices

### Subpart 1: Corrupt practices

#### 215. Personation

1. Every person is guilty of a corrupt practice who commits, or aids or abets, counsels, or procures the commission of, the offence of personation.
2. Every person commits the offence of personation who—
  - a. votes as some other person, whether that person is living or dead or is a fictitious person; or
  - b. having voted at any election, votes again at the same election; or
  - c. having voted at an election in any district at a general election, votes at an election in another district at the same general election.
3. For the purposes of this section, a person shall be deemed to have voted if he or she has applied for a ballot paper for himself or herself, or has applied to vote as a special voter, or has marked a ballot paper for himself or herself, whether validly or not.

4. Where the Returning Officer believes that any person has committed an offence against this section, the Returning Officer shall report the facts on which that belief is based to the New Zealand Police.

## 216. Bribery

1. Every person is guilty of a corrupt practice who commits the offence of bribery.
2. Every person commits the offence of bribery who, directly or indirectly, by himself or herself or by any other person on his or her behalf—
  - a. gives any money or procures any office to or for any voter, or to or for any other person on behalf of any voter, or to or for any other person, in order to induce any voter to vote or refrain from voting; or
  - b. corruptly does any such act as aforesaid on account of any voter having voted or refrained from voting; or
  - c. makes any such gift or procurement as aforesaid to or for any person in order to induce that person to procure, or endeavour to procure, the return of any person or candidates at an election or the vote of any voter,—  
or who, upon or in consequence of any such gift or procurement as aforesaid, procures, or engages, promises, or endeavours to procure, the return of any person or candidates at any election or the vote of any voter.
3. For the purposes of this section,—
  - a. references to giving money shall include references to giving, lending, agreeing to give or lend, offering, promising, or promising to procure or endeavour to procure, any money or valuable consideration:
  - b. references to procuring any office shall include references to giving, procuring, agreeing to give or procure, offering, promising, or promising to procure or to endeavour to procure, any office, place, or employment.
4. Every person commits the offence of bribery who—
  - a. advances or pays or causes to be paid any money to or to the use of any other person with the intent that that money or any part thereof shall be expended in bribery at any election; or
  - b. knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election.
5. The foregoing provisions of this section shall not extend or be construed to extend to any money paid or agreed to be paid for or on account of any legal expenses incurred in good faith at or concerning an election.
6. A voter commits the offence of bribery if before or during an election he or she directly or indirectly, by himself or herself or by any other person on his or her behalf, receives, or agrees or contracts for, any money, gift, loan, or valuable consideration, office, place, or employment for himself or herself or for any other person for voting or agreeing to vote or for refraining or agreeing to refrain from voting.



7. Every person commits the offence of bribery if after an election he or she directly or indirectly, by himself or herself or by any other person on his or her behalf, receives any money or valuable consideration on account of any person having voted or refrained from voting or having induced any other person to vote or refrain from voting.
8. In this section the term voter includes any person who has or claims to have a right to vote.

## 217. Treating

1. Every person is guilty of a corrupt practice who commits the offence of treating.
2. Every person commits the offence of treating who corruptly, by himself or herself or by any other person on his or her behalf, either before, during, or after an election, directly or indirectly gives or provides, or pays wholly or in part the expense 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; or
  - b. for the purpose of procuring himself or herself to be elected; or
  - c. on account of that person or any other person having voted or refrained from voting, or being about to vote or refrain from voting.
3. Every person commits the offence of treating who, being the holder of a licence for the sale by retail of alcohol (within the meaning of section 5(1) of the Sale and Supply of Alcohol Act 2012), knowingly supplies any food, drink, entertainment, or provision—
  - a. to any person where the supply thereof is demanded for the purpose of treating, or for any corrupt or illegal practice; or
  - b. to any persons, whether electors or not, for the purpose of procuring the return of a candidate or candidates at an election, 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. Notwithstanding anything in this section, the provision of a light supper after any election meeting shall be deemed not to constitute the offence of treating.

## 218. Undue influence

1. Every person is guilty of a corrupt practice who commits the offence of undue influence.

2. Every person commits the offence of undue influence who—
  - a. directly or indirectly, by himself or herself or by any other person on his or her behalf, makes use of or threatens to make use of any force, violence, or restraint, or inflicts or threatens to inflict, by himself or herself or by any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person, in order to induce or compel that person to vote for or against a particular candidate or party or to vote or refrain from voting, or on account of that person having voted for or against a particular candidate or having voted or refrained from voting; or
  - b. by abduction, duress, or any fraudulent device or contrivance, impedes or prevents the free exercise of the franchise of an elector, or thereby compels, induces, or prevails upon an elector either to vote or to refrain from voting.

## Subpart 2: Illegal practices

### 219. Payments for exhibition of election notices

1. No payment or contract for payment may be made to any elector on account of the exhibition of, or the use of any house, land, building, or premises for the exhibition of, any address, poster, or notice that promotes or procures the election of a candidate or candidates at an election.
2. Subsection (1) does not apply if it is the ordinary business of an elector to exhibit for payment posters and advertisements and the payment or contract is made in the ordinary course of that business.
3. If any payment or contract for payment is knowingly made in contravention of this section before, during, or after an election, the person making the payment or contract and, if he or she knew it to be in contravention of this Act, any person receiving the payment or being a party to the contract is guilty of an illegal practice.

### 220. Providing money for illegal purposes

Where any person knowingly provides money for any purpose which is contrary to the provisions of this Act, or for any election expenses incurred in excess of the maximum amount allowed by this Act, or for repaying any money expended in any such payment or expenses, that person is guilty of an illegal practice.

### 221. Advertisements for candidates and political parties

[Repealed]

#### 221A. Electoral advertisements

1. Subject to subsection (2), no person shall publish or cause or permit to be published in any newspaper, periodical, poster, or handbill, or broadcast or cause or permit to be broadcast over any radio or television station, any advertisement relating to an election (not being an election advertisement as defined in section 3A) unless the advertisement contains a statement setting out the true name of the person for whom or at whose direction it is published and the address of that person's place of residence or business.

2. Subsection (1) shall not apply to any advertisement published or broadcast, or caused or permitted to be published or broadcast, by the Electoral Commission, or any other agency charged with responsibilities in relation to the conduct of any official publicity or information campaign to be conducted on behalf of the Government of New Zealand and relating to electoral matters or the conduct of any general election or by-election and which either contains a statement indicating that the advertisement has been authorised by that officer or agency, or contains a symbol indicating that the advertisement has been authorised by that officer or agency.
3. Every person is guilty of an illegal practice who wilfully contravenes any provision of subsection (1).
4. Nothing in this section shall restrict the publication of any news or comments relating to an election in a newspaper or other periodical or in a radio or television broadcast made by a broadcaster within the meaning of section 2 of the Broadcasting Act 1989.

## **221B. Display of advertisement of a specified kind**

1. During the period beginning 2 months before polling day and ending with the close of the day before polling day, the display of an advertisement of a specified kind is not subject to—
  - a. any prohibition or restriction imposed in any other enactment or bylaw, or imposed by any local authority, that applies in relation to the period when an advertisement of a specified kind may be displayed; or
  - b. any prohibition or restriction imposed in any bylaw, or imposed by any local authority, that applies in relation to the content or language used in an advertisement of a specified kind.
2. In this section, advertisement of a specified kind means an advertisement displayed in a public place or on private property that does not exceed 3 square metres in size and that—
  - a. encourages or persuades, or appears to encourage or persuade, voters to vote for a party registered under Part 4; or
  - b. is used, or appears to be used, to promote or procure the election of a candidate; but
  - c. does not include—
    - i. an advertisement published in any newspaper, periodical, or handbill, or in any poster less than 150 square centimetres in size; or
    - ii. an advertisement broadcast by any television station or by any electronic means of communication.
3. Nothing in this section limits or prevents the display before polling day of any advertisement relating to an election that complies with any prohibition or restriction imposed in any enactment or bylaw, or imposed by any local authority.

## 222. Procurement of voting by unqualified voters

Every person is guilty of an illegal practice who induces or procures to vote at any election any person whom he or she knows at the time to be disqualified or prohibited, whether under this Act or otherwise, from voting at that election.

### Subpart 3: General provisions

## 223. Cinematograph films

1. For the purposes of this Act, the exhibition of any cinematograph film shall not be deemed to constitute bribery or treating or an illegal practice, and any payment or contract for payment in respect of any such exhibition shall not be deemed to constitute an illegal practice notwithstanding that the film may be wholly or mainly an advertisement.
2. For the purposes of this section, the expression cinematograph film or film includes any screen advertisement of any description.

## 224. Punishment for corrupt or illegal practice

1. Every person who is guilty of any corrupt practice is liable on conviction to either or both of the following:
  - a. a term of imprisonment not exceeding 2 years:
  - b. a fine not exceeding—
    - i. \$100,000 in the case of a person who is a constituency candidate, party secretary, or registered promoter and who is convicted of any corrupt practice under Part 6A; or
    - ii. \$40,000 in any other case.
2. Every person who is guilty of any illegal practice is liable on conviction to a fine not exceeding—
  - a. \$40,000 in the case of a person who is a constituency candidate, party secretary, or registered promoter and who is convicted of any illegal practice under Part 6AA or 6A; or
  - b. \$40,000 in the case of a person who is an unregistered promoter and who is convicted of any illegal practice under section 204B or 204D; or
  - c. \$10,000 in any other case.
3. Subsection (1) does not apply in relation to a corrupt practice under—
  - a. section 201; or
  - b. section 43 of the Citizens Initiated Referenda Act 1993.

## 225. Persons charged with corrupt practice may be found guilty of illegal practice

Any person charged with a corrupt practice may, if the circumstances warrant that finding, be found guilty of an illegal practice; and any person charged with an illegal practice may be found guilty of that offence notwithstanding that the act constituting the offence amounted to a corrupt practice.

## 226. Time limit for prosecutions

1. Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, a prosecution under any of the following provisions must be commenced within 6 months of the date on which the return was required to be filed:
  - a. section 205N(1):
  - b. section 206N(1):
  - c. section 209B(1):
  - d. section 210D(1)(a):
  - e. section 214G(1)(a).
- 1A. Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, a prosecution under section 206ZE(1), 210D(1)(b), or 214G(1)(b) must be commenced—
  - a. within 6 months of the date on which the prosecutor is satisfied that there is sufficient evidence to warrant the commencement of the proceedings; but
  - b. not later than 3 years after the offence was committed.
2. Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, a prosecution against any person for a corrupt practice or an illegal practice must be commenced—
  - a. within 6 months of the date on which the prosecutor is satisfied that there is sufficient evidence to warrant the commencement of the proceedings; but
  - b. not later than 3 years after the corrupt practice or illegal practice was committed.

## 226A. Power to issue search warrants in respect of illegal practice

[Repealed]

## 227. Punishment for disqualified person voting

If any person, while his or her name is on the Corrupt Practices List for any district, votes or applies for a ballot paper or applies to vote as a special voter at any election in that or any other district, he or she shall, notwithstanding that his or her name may be on the main roll or any supplementary roll, be liable on conviction to a fine not exceeding \$4,000, and his or her vote shall be void.

## 228. Reversal of disqualification procured through perjury

Where the name of any person is entered on the Corrupt Practices List for any district by reason of any conviction or any report by the High Court, and any witness who gave evidence against that person in the proceedings resulting in that conviction or report is convicted of perjury in respect of that evidence, that person may apply to the High Court, and that court, if satisfied that the conviction or report so far as it relates to that person was based on perjury, may order that the name of that person be removed from the Corrupt Practices List.

## Part 8: Election petitions

### 229. Method of questioning election

1. No election and no return to the House of Representatives shall be questioned except by a petition complaining of an unlawful election or unlawful return (in this Act referred to as an election petition) presented in accordance with this Part.
2. A petition complaining of no return shall be deemed to be an election petition, and the High Court or the Court of Appeal may make such order thereon as the court thinks expedient for compelling a return to be made or may allow the petition to be heard as provided with respect to ordinary election petitions.
3. An election petition relating to the return of a member of Parliament representing an electoral district or the failure to present a return at an election for a member of Parliament representing an electoral district shall be presented to the High Court and determined in accordance with sections 230 to 257.
4. An election petition relating to the allocation of seats by the Electoral Commission under sections 191 to 193 may be presented to the Court of Appeal in accordance with sections 258 to 262.

### 230. Election petitions to High Court

1. An election petition to which section 229(3) applies may be presented to the High Court by 1 or more of the following persons:
  - a. a person who voted or had a right to vote at the election:
  - b. a person claiming to have had a right to be elected or returned at the election:
  - c. a person alleging himself or herself to have been a constituency candidate at the election.
2. The member whose election or return is complained of shall be the respondent to the petition, and, if the petition complains of the conduct of the Returning Officer or Registrar of Electors, he or she shall also be a respondent.

3. The petition shall be in such form and state such matters as are prescribed by rules of court, and be signed by the petitioner or all the petitioners if more than 1.
4. The petition shall be presented by filing it in the registry of the High Court nearest to the place where the election was held. The Registrar of the court shall forthwith send a copy of the petition to the Returning Officer.
5. The petition shall be served as nearly as may be in the manner in which a statement of claim is served, or in such other manner as may be prescribed by rules of court.

### **231. Time for presentation of election petition**

1. Subject to the provisions of this section, an election petition shall be presented within 28 days after the day on which the Electoral Commission has publicly notified the result of the poll.
2. If the petition questions the election or return upon an allegation of a corrupt practice and specifically alleges a payment of money or other reward to have been made by the member or on his or her account or with his or her knowledge and consent since the day of the said declaration in pursuance or furtherance of the alleged corrupt practice, it may be presented within 28 days after the date of the payment.
3. For the purposes of this section, an allegation that an election is avoided under section 238 shall be deemed to be an allegation of corrupt practices, notwithstanding that the offences alleged are or include offences other than corrupt practices.

### **232. Security for costs**

1. At the time of presenting an election petition or within 3 days after the expiration of the time limited for the presentation of the petition, the petitioner shall give security to the satisfaction of the Registrar of the court for all costs that may become payable by the petitioner to any witness summoned on the petitioner's behalf or to any respondent.
2. The security shall be an amount of \$1,000, and shall be given by recognisance to the Crown entered into by any number of sureties not exceeding 5 or by a deposit of money, or partly in one way and partly in the other.
3. If no security is given as required by this section, no further proceedings shall be taken on the petition.

### **233. More than 1 petition relating to same election**

Where more petitions than 1 are presented relating to the same election or return, all those petitions shall be dealt with as 1 petition.

### **234. Rules of court**

1. Rules of court may be made in the manner prescribed by the Judicature Act 1908 for the purposes of this Part.
2. All rules made under this section shall be laid before the House of Representatives not later than the 16th sitting day of the House of Representatives after the day on which they are made.

## Subpart 4: Trial of election petition

### 235. Court and place of trial

1. Every election petition to which section 229(3) applies shall be tried by the High Court, and the trial shall take place before 3 Judges of the court to be named by the Chief Justice.
2. If any such Judge, before the conclusion of the trial, becomes unable to act, the Chief Justice shall name another Judge to act in his or her place.
3. The place of trial shall be at the registry of the court where the petition is filed: provided that the High Court, on being satisfied that special circumstances exist rendering it desirable that the petition should be tried elsewhere, may appoint such other place for the trial as appears most convenient.

### 236. Trial of petition

1. An election petition to which section 229(3) applies shall be tried in open court without a jury, and notice of the time and place of trial shall be given not less than 14 days before the day of trial.
2. The court may in its discretion adjourn the trial from time to time, but the trial shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day on every lawful day until its conclusion.
3. The trial of an election petition shall be proceeded with notwithstanding that the respondent may have become disqualified as a member of Parliament, or that Parliament may have been prorogued.
4. Subject to this Act, the court shall have jurisdiction to inquire into and adjudicate on any matter relating to the petition in such manner as the court thinks fit, and, in particular, may at any time during the trial direct a recount or scrutiny of some or all of the votes given at the election, and shall disallow the vote of every person proved to have been guilty of any corrupt practice, or whose name has been wrongly placed or retained on the roll.
5. Notwithstanding subsection (4), the vote of any person who on polling day was entitled to be registered as an elector of the district shall not be disallowed on the ground that his or her name has been wrongly placed or retained on the roll.
6. Notwithstanding subsection (4), where an elector—
  - a. has been registered as an elector of the district by an error on the part of an official; and
  - b. has exercised his or her vote in respect of that district in good faith without notice of the error,— his or her vote shall not be disallowed by reason only of that error.
7. On the trial of an election petition, unless the court otherwise directs, any charge of a corrupt or illegal practice may be gone into, and evidence in relation thereto received before any proof has been given that any candidate was aware of or consenting to the corrupt or illegal practice.
8. On the trial of an election petition to which section 229(3) applies complaining of an unlawful election or return and claiming the seat for some person, the respondent may give evidence to prove that that person was not duly elected, in the same manner as if the respondent had presented a petition against the election of that person.



## **237. Avoidance of election of candidate guilty of corrupt practice**

Where a candidate who has been elected at any election is proved at the trial of an election petition to which section 229(3) applies to have been guilty of any corrupt practice at the election, his or her election shall be void.

## **238. Avoidance of election for general corruption**

1. Where it is reported by the High Court on the trial of an election petition that corrupt or illegal practices committed in relation to the election for the purpose of promoting or procuring the election of any constituency candidate or constituency candidates thereat have so extensively prevailed that they may be reasonably supposed to have affected the result, the constituency candidate's election, if the candidate has been elected and is a respondent, shall be void.
2. Except under this section, an election shall not be liable to be avoided by reason of the general prevalence of corrupt or illegal practices.

## **239. Votes to be struck off for corrupt practices**

Where, on the trial of an election petition to which section 229(3) applies claiming the seat for any person, a constituency candidate is reported by the High Court to have been proved guilty of bribery, treating, or undue influence in respect of any person who voted at the election, there shall, on a scrutiny, be struck off from the number of votes appearing to have been received by the candidate 1 vote for every person who voted at the election and is reported to have been proved to have been so bribed, treated, or unduly influenced.

## **240. Real justice to be observed**

On the trial of any election petition,—

- a. the court shall be guided by the substantial merits and justice of the case without regard to legal forms or technicalities:
- b. the court may admit such evidence as in its opinion may assist it to deal effectively with the case, notwithstanding that the evidence may not otherwise be admissible in the High Court.

## **241. Irregularities not to invalidate election**

No election shall be declared invalid by reason of—

- a. any failure to comply with the times prescribed for doing any act; or
- b. any omission or irregularity in filling out any form prescribed by this Act or by regulations made thereunder; or
- c. any want or defect in the appointment of any official or scrutineer; or
- d. any absence of, or mistake or omission or breach of duty by, any official, whether before, during, or after the polling—

if the court is satisfied that the election was so conducted as to be substantially in compliance with the law as to elections, and that the failure, omission, irregularity, want, defect, absence, mistake, or breach did not affect the result of the election.

## **242. Decision of court to be final**

All decisions of the High Court under this Part shall be final and conclusive and without appeal, and shall not be questioned in any way.

## **243. Certificate of court as to result of election**

At the conclusion of the trial of an election petition to which section 229(3) applies, the court shall determine whether the member whose election or return is complained of, or any and what other person, was duly elected or returned, or whether the election was void, and shall forthwith certify in writing the determination to the Speaker, and the determination so certified shall be final to all intents and purposes.

## **243A. Orders to be made by court after determination under section 243 if list seats allocated**

1. This section applies if, at the conclusion of the trial of an election petition,—
  - a. the court determines, under section 243, that the candidate who was duly elected was not declared elected under section 179(2) and the candidate who was declared elected under section 179(2) was not duly elected; and
  - b. an allocation of seats by the Electoral Commission under sections 191 to 193 has been made.
2. If this section applies, the court must—
  - a. make an order that any declaration of election made pursuant to section 193(5) is invalid so far as it relates to the election of any specified candidate and that the election of any specified candidate is void; and
  - b. order that the Electoral Commission repeat any or all of the procedures prescribed by sections 191 to 193 and make a further declaration under section 193(5); and
  - c. immediately certify in writing to the Speaker the orders made under paragraphs (a) and (b).
3. The orders certified under subsection (2)(c) are final for all purposes.

## **244. Report of court as to corrupt or illegal practices**

1. Where, in an election petition to which section 229(3) applies, any charge is made of any corrupt or illegal practice having been committed at the election, the court shall, in addition to giving a certificate and at the same time, report in writing to the Speaker as follows:
  - a. whether any corrupt or illegal practice has or has not been proved to have been committed by or with the knowledge and consent of any constituency candidate at the election, and the nature of the corrupt or illegal practice:



## 246. Signature and effect of certificate and report

1. The certificate and any report of the court at the conclusion of the trial of an election petition shall be signed by at least 2 of the Judges presiding at the trial.
2. On being informed by the Speaker of the certificate and any report of the court, the House of Representatives shall order the same to be entered in the Journals of the House, and shall give the necessary directions for confirming or altering the return, or for issuing a writ for a new election, or for carrying out the determination, as the circumstances may require.
3. Where the court makes a special report, the House may make such order in respect of that report as the House thinks proper.

## Subpart 5: Witnesses

### 247. Summons and examination of witnesses

1. Witnesses may be summoned and sworn on the trial of an election petition to which section 229(3) applies in the same manner, as nearly as circumstances admit, as in the trial of an ordinary action.
2. The High Court may by order require any person who appears to the court to have been concerned in the election to attend as a witness, and every person who refuses to obey any such order shall be guilty of contempt of court.
3. The court may examine any person so required to attend or any person in court, although he or she is not called or examined by any party to the petition.
4. After the examination of a witness as aforesaid by the court, he or she may be cross-examined by or on behalf of the petitioner and respondent, or either of them.

• Right to examine evidence/ witnesses

### 248. Certificate of indemnity to witness

1. A person called as a witness on the trial of an election petition to which section 229(3) applies shall not be excused from answering any question relating to any offence at or connected with the election on the ground that the answer thereto may incriminate or tend to incriminate himself or herself, or on the ground of privilege: provided that—
  - a. an answer by a person to a question put by or before the court shall not, except in the case of any criminal proceeding for perjury in respect of the evidence, be admissible in evidence against that person in any proceeding, civil or criminal:
  - b. a witness who answers truly all questions which he or she is required by the court to answer shall be entitled to receive a certificate of indemnity, stating that he or she has so answered.
2. Where a person has received a certificate of indemnity in relation to an election, and any legal proceeding is at any time instituted against that person for any offence committed by that person at or in connection with the election previously to the date of the certificate, the court having cognisance of the case shall on production of the certificate stay the proceeding, and may in its discretion award to the said person such costs as he or she has been put to in the proceeding.
3. Nothing in this section shall be deemed to relieve a person receiving a certificate of indemnity from any incapacity under this Act or from any proceedings to enforce any such incapacity (other than a criminal prosecution).

• Protection from self-incrimination

## 249. Expenses of witnesses

1. The reasonable expenses incurred by any person in appearing to give evidence at the trial of an election petition to which section 229(3) applies, according to the scale allowed to witnesses on the trial of civil actions, may be allowed to him or her by the court.
2. Any such expenses, if the witness was called and examined by the court, shall be deemed to be part of the expenses of the court, and in other cases shall be deemed to be costs of the petition.

## Subpart 6: Costs

### 250. Costs of petition

1. All costs of and incidental to the presentation of an election petition to which section 229(3) applies, and to the proceedings consequent thereon, except such as are by this Act otherwise provided for shall be defrayed by the parties to the petition in such manner and in such proportions as the High Court may determine; and, in particular, any costs which, in the opinion of the court, have been caused by vexatious conduct, unfounded allegations, or unfounded objections on the part either of the petitioner or of the respondent, and any needless expenses incurred or caused on the part of the petitioner or respondent, may be ordered to be defrayed by the parties by whom they were caused or incurred, whether those parties are or are not on the whole successful.
2. If a petitioner fails for 6 months after demand to pay to any person summoned as a witness on the petitioner's behalf, or to the respondent, any sum certified to be due to that person for costs, and the failure is within 1 year after the demand proved to the satisfaction of the High Court, every person who has under this Act entered into a recognisance relating to the petition shall be held to have made default in the recognisance, and it shall be dealt with in the manner provided by section 21 of the Crown Proceedings Act 1950.

### 251. Costs payable by persons proved guilty of corrupt or illegal practices

1. Where on the trial of an election petition to which section 229(3) applies it appears to the court that any person has been guilty of any corrupt or illegal practice, the court may, after giving that person an opportunity of making a statement to show why the order should not be made, order the whole or any part of the costs of or incidental to any proceedings before the court in relation to that offence or to that person to be paid by that person to such other person or persons as the court thinks fit.
2. All costs so ordered to be paid may be recovered as a debt due by the person by whom they are ordered to be paid to the person or persons to whom they are ordered to be paid.

## Subpart 7: Withdrawal and abatement of petitions

### 252. Withdrawal of petition

1. A petitioner shall not withdraw an election petition to which section 229(3) applies without the leave of the High Court upon special application to be made in the prescribed manner.

2. No such application shall be made until the prescribed notice of the intention to make it has been given in the district to which the petition relates.
3. Where there are more petitioners than 1, an application to withdraw the petition shall not be made except with the consent of all the petitioners.
4. If a petition is withdrawn, the petitioner shall be liable to pay the costs of the respondent.

### **253. Substitution of new petitioner**

1. On the hearing of an application for leave to withdraw a petition, any person who might in the first instance have presented the petition may apply to the court to be substituted as a petitioner.
2. The court may, if it thinks fit, substitute any such applicant as petitioner, and may, if the proposed withdrawal is in the opinion of the court the result of any corrupt bargain or consideration, by order direct that the security given on behalf of the original petitioner shall remain as security for any costs incurred by the substituted petitioner, and that to the extent of the sum named in the security the original petitioner shall be liable to pay the costs of the substituted petitioner.
3. If the court does not so direct, security to the same amount as would be required in the case of a new petition, and subject to the like conditions, shall be given on behalf of the substituted petitioner within 3 days after the order of substitution.
4. Subject as aforesaid, a substituted petitioner shall as nearly as may be stand in the same position and be subject to the same liabilities as the original petitioner.

### **254. Report on withdrawal**

In every case of the withdrawal of an election petition to which section 229(3) applies, the High Court shall make a report to the Speaker stating whether in its opinion the withdrawal of the petition was the result of any corrupt arrangement or in consideration of the withdrawal of any other election petition and, if so, the circumstances attending the withdrawal.

### **255. Abatement of petition**

1. An election petition to which section 229(3) applies shall be abated by the death of a sole petitioner or of the survivor of several petitioners.
2. The abatement of a petition shall not affect the liability of the petitioner or any other person to the payment of costs previously incurred.
3. On the abatement of a petition, notice of the abatement shall be given in the prescribed manner; and, within 28 days after the notice is given, any person who might have been a petitioner in respect of the election may apply to the High Court in the prescribed manner to be substituted as a petitioner. On any such application the High Court may, if it thinks fit, substitute the applicant accordingly.
4. Security shall be given on behalf of a petitioner so substituted, as in the case of a new petition.

## Subpart 8: General provisions

### 256. Withdrawal and substitution of respondents before trial

1. If, before the trial of an election petition to which section 229(3) applies, a respondent other than the Returning Officer or a Registrar of Electors—
  - a. dies; or
  - b. gives the prescribed notice that he or she does not intend to oppose the petition; or
  - c. loses his or her seat by reason of the House of Representatives resolving that the seat is vacant,— notice thereof shall be given in the prescribed manner; and, within 28 days after the notice is given, any person who might have been a petitioner in respect of the election may apply to the High Court to be admitted as a respondent to oppose the petition, and shall be admitted accordingly, except that the number of persons so admitted shall not exceed 3.
2. A respondent who has given the prescribed notice that he or she does not intend to oppose the petition shall not be allowed to appear or act as a party against the petition in any proceedings thereon, and shall not sit or vote in the House of Representatives until that House has been informed of the report on the petition.
3. Where a respondent has given the prescribed notice as aforesaid, the court shall report that fact to the Speaker.

### 257. Submission of report to Attorney-General

Where the High Court reports that certain persons named have been proved at the trial of an election petition to have been guilty of any corrupt or illegal practice, the report shall be given to the Attorney-General.

### 258. Electoral petitions to Court of Appeal

1. An electoral petition relating to the allocation of seats under sections 191 to 193 may be presented to the Court of Appeal by a secretary of a political party whose party was listed in the part of the ballot paper that relates to the party vote.
2. The petition may seek a review of the procedures and methods used to allocate seats to political parties under sections 191 to 193, and the return of members of Parliament consequential upon that allocation.
3. The respondents shall be the other political parties named in the part of the ballot paper that relates to the party vote, and, if the conduct of the Electoral Commission is complained of, the Electoral Commission.
4. Subject to subsections (1) to (3), the petition shall be in such form and state such matters as are prescribed by rules of court, and be signed by the petitioner or all the petitioners if more than 1.
5. The petition shall be presented by filing it in the Registry of the Court of Appeal. The Registrar of the court shall forthwith send a copy of the petition to the Electoral Commission.

• Right of petition

• Right of petition

6. The petition shall be served as nearly as may be in the manner in which a statement of claim is served, or in such other manner as may be prescribed by rules of court.

## **259. Time for presentation of an election petition to Court of Appeal**

An election petition under section 258 shall be presented within 28 days of the date of the declaration made under section 193(5) by the Electoral Commission.

## **260. Matters excluded from challenge**

On the hearing of a petition presented pursuant to section 258, no decision shall be subject to challenge on the grounds—

- a. that the vote of any elector should have been disallowed because he or she was not qualified to vote in the electoral district in respect of which he or she cast his or her vote; or
- b. that the vote of any voter that was disallowed should have been allowed; or
- c. that a candidate or candidates, or the agent of any candidate, was engaged in a corrupt or illegal practice; or
- d. that corrupt or illegal practices prevailed at the election.

## **261. Provisions applied**

Where any petition is presented under section 258, the provisions of sections 232 to 235, subsections (1) to (3) and (8) of section 236, sections 240 to 242, sections 245 to 250, and section 252 (other than subsection (2)), shall apply, with any necessary modifications, as if references to the High Court were references to the Court of Appeal.

## **262. Certificate of court as to result of petitions**

At the conclusion of the trial of an election petition to which section 258 applies, the Court of Appeal shall—

- a. determine whether the procedures used to allocate seats to political parties under sections 191 to 193 were correct:
- b. determine whether the return of members of Parliament consequential upon the allocation under sections 191 to 193 is valid:
- c. make such orders as are necessary to correct any error or invalidity, including—
  - i. an order that any declaration of election made pursuant to section 193(5), so far as it relates to any candidate named in the order, is invalid and the election of that candidate void:



- ii. an order that any candidate not named in a declaration of election made pursuant to section 193(5) is elected as a member of Parliament:
  - iii. an order requiring the Electoral Commission to repeat any or all of the procedures prescribed by sections 191 to 193:
- d. forthwith certify in writing its determination to the Speaker and the determination so certified shall be final to all intents and purposes.

## Part 9: Miscellaneous provisions

### 263. Service of notices

1. Any notice under this Act may be served on any person by delivering it to that person, and may be delivered to that person either personally or by leaving it at his or her place of residence as stated on the roll or by posting it by registered letter addressed to him or her at that place of residence.
2. A notice so posted shall be deemed to have been served at the time when the registered letter would in the ordinary course of post be delivered.
3. Where any notice is sent by registered letter addressed to any person at his or her place of residence as stated on the roll, with a special request that the letter be returned to the sender at the expiration of 15 days if the person to whom the letter is addressed cannot be found, the return of the letter by a person registered as a postal operator under the Postal Services Act 1998 must be treated as sufficient proof that the person has quitted that place of residence.
4. Registered letter includes any service that—
  - a. provides a system of recorded delivery; and
  - b. is similar in nature to a registered post service provided by a person registered as a postal operator under the Postal Services Act 1998.

### 263A. Disclosure of immigration information for matching purposes

1. In this section,—
  - immigration information, in relation to any person, means—
    - a. information concerning—
      - i. any person who the chief executive of the responsible department believes is unlawfully in New Zealand; or
      - ii. any person who is lawfully in New Zealand but only by virtue of being the holder of a temporary entry class visa of whatever type; and
    - b. information that, in relation to any person described in paragraph (a)(i) or (ii), is as follows:

- i. the person's full name:
  - ii. any aliases known to be used by that person:
  - iii. the person's date of birth:
  - iv. the person's address (if known):
  - v. the expiry date of any visa held by the person
- responsible department means the department of State that is, with the authority of the Prime Minister, responsible for the administration of the Immigration Act 2009.
2. The purpose of this section is to facilitate the disclosure of information from the responsible department to the Electoral Commission for the purposes of—
    - a. verifying, for the purposes of this Act, that any person who is, or has applied to be, registered as an elector of an electoral district is qualified to be registered as an elector of that electoral district:
    - b. verifying that a person who is, or has applied to be, registered as an elector is a person who the chief executive of the responsible department believes to be either—
      - i. a person who is unlawfully in New Zealand; or
      - ii. a person who is lawfully in New Zealand but only by virtue of being the holder of a temporary entry class visa of whatever type.
  3. For the purposes of this section, any officer or employee or agent of the responsible department authorised in that behalf by the chief executive of that department may, at the request of the Electoral Commission, supply to the Electoral Commission any immigration information held by that department.
  4. If, in relation to any person, immigration information is supplied to the Electoral Commission pursuant to subsection (3), the Electoral Commission may cause a comparison of that information to be made with any information that is held by the Electoral Commission and that relates to that person.
  5. If the result of a comparison carried out pursuant to subsection (4) indicates that any person who has applied to be (but is not yet) registered as an elector, or who is on the electoral roll, is—
    - a. a person who the chief executive of the responsible department believes is unlawfully in New Zealand; or
    - b. a person who is lawfully in New Zealand but only by virtue of being the holder of a temporary entry class visa of whatever type,— the Electoral Commission must advise the Registrar of the electoral district in which that person is, or has applied to be, registered as an elector accordingly.

• Electoral commission

• Electoral commission

• Electoral commission

6. After receiving advice from the Electoral Commission under subsection (5) that, in relation to any person, either of the circumstances referred to in subsection (5) applies, the Registrar must,—
  - a. if the person has applied to be (but is not yet) registered as an elector for the district, follow the procedure specified in section 87; or
  - b. if the person is registered as an elector for the district and the name of the person is on the roll for the district, object under section 96 to the name of that person being on the roll for the district.

## **263B. Disclosure of personal information for enrolment purposes**

1. The purpose of this section is to facilitate the disclosure of information described in subsection (2) by a specified agency to the Electoral Commission only for the purposes of—
  - a. identifying persons who are qualified to apply to register as an elector but who have not yet registered; and
  - b. encouraging those persons identified to register as an elector; and
  - c. updating and ensuring the accuracy of the particulars of persons whose names are on the roll.
2. The information referred to in subsection (1) is the following information relating to any person of or over the age of 17 years:
  - a. the person's full name:
  - b. the person's date of birth:
  - c. the person's address of residence (if known):
  - d. the person's postal address (if known and if different from the address of residence in paragraph (c)):
  - e. the person's preferred honorific (if known):
  - f. the date at which the information in paragraphs (a) to (e) held by the agency was last provided to the agency.
3. For the purposes of this section, a specified agency means—
  - a. the department for the time being responsible for the administration of the Social Security Act 1964; and
  - b. the Registrar of Motor Vehicles; and
  - c. the New Zealand Transport Agency; and

- d. the Department of Internal Affairs.
4. For the purposes of this section, any officer or employee or agent of a specified agency, authorised by the chief executive of that agency, may from time to time, at the request of the Electoral Commission, supply to the Electoral Commission any of the information described in subsection (2) held by that agency,—
    - a. in the case of the department for the time being responsible for the administration of the Social Security Act 1964, in relation to any—
      - i. beneficiary; or
      - ii. student; or
      - iii. borrower (as that term is defined in section 4(1) of the Student Loan Scheme Act 2011):
    - b. in the case of the Registrar of Motor Vehicles, in relation to motor vehicle registration:
    - c. in the case of the New Zealand Transport Agency, in relation to driver licences:
    - d. in the case of the Department of Internal Affairs, in relation to any persons—
      - i. who obtain New Zealand citizenship under the Citizenship Act 1977; or
      - ii. by whom, or on whose behalf, an application is made under the Passports Act 1992 for the issue or renewal of a New Zealand passport.
  5. If, in relation to any person, information is supplied to the Electoral Commission under subsection (4), the Electoral Commission may cause a comparison of that information to be made with any information that is held by the Electoral Commission and that relates to that person.
  6. In this section, Registrar of Motor Vehicles has the same meaning as Registrar in section 233(1) of the Land Transport Act 1998.

## 264. Review by select committee

1. The House of Representatives shall, as soon as practicable after 1 April 2000, appoint a select committee to consider the following matters:
  - a. the effect of sections 35 and 36 on the operation of the electoral system:
  - b. the provisions of this Act dealing with Maori representation:
  - c. whether there should be a further referendum on changes to the electoral system.

• Legislative committees

• Referenda

2. The select committee appointed under subsection (1) shall report to the House of Representatives before 1 June 2002 and shall include in its report a statement indicating—
  - a. whether, in its view, there should be changes to sections 35 and 36; and
  - b. whether, in its view, there should be changes to the provisions of this Act dealing with Maori representation; and
  - c. whether in its view there should be a further referendum on changes to the electoral system, and, if so, the nature of the proposals to be put to voters and the timing of such a referendum.

• Referenda

## 265. Registrars of Electors exempt from court fees

Registrars of Electors shall be exempt from the payment of any court fees in respect of any proceedings under this Act.

## 266. Validation of irregularities

Where anything is omitted to be done or cannot be done at the time required by or under this Act, or is done before or after that time, or is otherwise irregularly done in matter of form, or sufficient provision is not made by or under this Act, the Governor-General may, by Order in Council published in the Gazette, at any time before or after the time within which the thing is required to be done, extend that time, or validate anything so done before or after the time required or so irregularly done in matter of form, or make other provision for the case as he or she thinks fit:

provided that this section shall not apply with respect to the presentation of an election petition or to the giving of security for costs in relation to an election petition.

### 266A. Expenditure limits to be adjusted each year by Order in Council

1. The Governor-General must, by Order in Council made on the recommendation of the Minister, in the manner provided in subsections (2) to (6), adjust the amounts specified in the following provisions:
  - a. section 204B(1)(d) (which relates to the maximum amount of advertising expenses that may be incurred by an unregistered promoter):
  - b. section 205C (which relates to the maximum amount of a candidate's election expenses):
  - c. section 206C (which relates to the maximum amount of a party's election expenses):
  - d. section 206V (which relates to the maximum amount of a registered promoter's election expenses).
2. The first Order in Council must—
  - a. come into force on 1 July 2011; and

• Head of state powers  
• Advisory bodies to the head of state

- b. adjust the amount referred to in section 206C(1)(a) to reflect the movement between the CPI for the quarter ending 30 September 2010 and the CPI for the quarter ending 31 March 2011.
- 3. Every subsequent Order in Council must—
  - a. come into force on every following 1 July; and
  - b. adjust the amounts referred to in subsection (1) to reflect the movement between the CPI for the quarter ending 31 March of the previous year and the CPI for the quarter ending 31 March of the current year.
- 4. If after adjustment in accordance with subsection (3)(b) any of the amounts specified in the following sections is not a whole number of hundred dollars, the adjusted amount must be rounded up to the next whole hundred dollars:
  - a. section 204B(1)(d):
  - b. section 205C(1)(a) and (b):
  - c. section 206C(1)(b) and (2).
- 5. If after adjustment in accordance with subsection (2)(b) or (3)(b) the amount specified in section 206C(1)(a) or 206V is not a whole number of thousand dollars, the adjusted amount must be rounded up to the next whole thousand dollars.
- 6. If an adjusted amount has been rounded up in accordance with subsection (4) or (5), the adjustment to that amount made the following year must be based on the adjusted amount as it was before it was rounded up.
- 6A. If in any year a regulated period for a general election or a by-election commences before 1 July and ends on or after that date,—
  - a. the adjustments to the amounts referred to in subsection (1) made by the Order in Council that commences on 1 July of that year do not apply in respect of that election or by-election; and
  - b. the adjustments to the amounts referred to in subsection (1) made by the Order in Council of the previous year apply to that election or by-election.
- 7. In this section CPI means the Consumers Price Index All Groups published by Statistics New Zealand.

## 267. 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. prescribing fees, or a scale of fees, for the supply of computer-compiled lists and electronic storage media by the Electoral Commission to any person under section 114, and for the giving of remote access by electronic means under that section:

• Head of state powers  
• Advisory bodies to the head of state

- c. prescribing criteria, in addition to those specified in section 111E(3)(a) to (d), of which the Minister of Justice and the Minister of Maori Affairs must be satisfied in relation to a particular person or body of persons before designating it under section 111E:
- ca. defining iwi organisation and other Maori organisation for the purposes of sections 111A to 111F:
- d. prescribing the time at which, and the manner in which, special voters may vote (whether at a polling place or not and whether in or outside New Zealand):
- e. prescribing conditions upon or subject to which special voters may vote:
- f. prescribing different methods of voting for different classes of special voters:
- g. prescribing offences in respect of the contravention of or non-compliance with any regulations made under this Act:
- h. prescribing penalties for offences against regulations made under this Act, not exceeding imprisonment for a term of 3 months or a fine of \$1,000 or both:
- i. 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.

## 267A. Regulations relating to advertisement of a specified kind

1. The Governor-General may from time to time, by Order in Council made on the recommendation of the Minister, make regulations regulating—
  - a. all or any of the following matters in relation to an advertisement of a specified kind:
    - i. design:
    - ii. layout:
    - iii. shape:
    - iv. colour:
  - b. the procedures to be followed by any person before displaying an advertisement of a specified kind.

2. Regulations made under subsection (1)(a)—
  - a. may be made only for the purpose of ensuring that an advertisement of a specified kind does not endanger the safety of road users; and
  - b. apply only during the period beginning 2 months before polling day and ending with the close of the day before polling day.
3. Regulations made under subsection (1) may—
  - a. impose different requirements for an advertisement of a specified kind depending on how it is published:
  - b. override or modify any other enactment and any bylaw or other instrument.
4. In this section, advertisement of a specified kind has the same meaning as in section 221B(2).
5. This section is subject to section 267B.

## **267B. Requirements before Minister can recommend that regulations be made**

1. The Minister may not recommend the making of any regulations under section 267A(1)(a) unless—
  - a. the Minister has consulted with the Minister who is for the time being responsible for the administration of the Land Transport Act 1998; and
  - b. the Minister is satisfied that the regulations do not restrict the rights of candidates and political parties any more than is reasonably necessary to ensure that an advertisement of a specified kind does not endanger the safety of road users; and
  - c. the recommendation is agreed by at least half of the parliamentary leaders of all political parties represented in Parliament; and
  - d. the members of Parliament of the political parties whose parliamentary leaders agree with the Minister's recommendation comprise at least 75% of all members of Parliament.
2. The Minister may not recommend the making of any regulations under section 267A(1)(b) unless—
  - a. the Minister has consulted with the Minister of Local Government; and
  - b. the recommendation is agreed by at least half of the parliamentary leaders of all political parties represented in Parliament; and
  - c. the members of Parliament of the political parties whose parliamentary leaders agree with the Minister's recommendation comprise at least 75% of all members of Parliament.



## 268. Restriction on amendment or repeal of certain provisions

1. This section applies to the following provisions (hereinafter referred to as reserved provisions), namely,—
  - a. section 17(1) of the Constitution Act 1986, relating to the term of Parliament:
  - b. section 28, relating to the Representation Commission:
  - c. section 35, and the definition of the term General electoral population in section 3(1), relating to the division of New Zealand into electoral districts after each census:
  - d. section 36, relating to the allowance for the adjustment of the quota:
  - e. section 74, and the definition of the term adult in section 3(1), and section 60(f), so far as those provisions prescribe 18 years as the minimum age for persons qualified to be registered as electors or to vote:
  - f. section 168, relating to the method of voting.
2. No reserved provision shall be repealed or amended unless the proposal for the amendment or repeal—
  - a. is passed by a majority of 75% of all the members of the House of Representatives; or
  - b. has been carried by a majority of the valid votes cast at a poll of the electors of the General and Maori electoral districts:

provided that this section shall not apply to the repeal of any reserved provision by a consolidating Act in which that provision is re-enacted without amendment and this section is re-enacted without amendment so as to apply to that provision as re-enacted.

### Subpart 1: Transitional provisions

## 269. Membership of Representation Commission

1. Every person who held office as a member of the Representation Commission under section 15(2)(e) or section 15(2)(f) or section 15(3)(b) of the Electoral Act 1956 immediately before the commencement of this section shall be deemed to have been appointed as a member of the Commission under section 28(2)(e) or section 28(2)(f) or section 28(3)(b) of this Act, as the case may require.
2. For the purpose of enabling the Representation Commission to divide New Zealand into electoral districts on the first occasion after this Act is passed, the Minister shall, as soon as is practicable after the commencement of this section, specify a period of 2 months during which any Maori may exercise the option given by section 76.

• Census

3. Following the report of the Electoral Commission under section 77(6), the Government Statistician shall prepare a report on the General electoral population and the Maori electoral population in accordance with the provisions of this Act, based on the results of the periodical census conducted in the year 1991, and the report of the Electoral Commission made pursuant to section 77(6), and shall report the results of the census and his or her calculation of the electoral populations to the Surveyor-General and to the other members of the Commission.
4. Upon the receipt of that report, the Surveyor-General shall prepare maps showing the distribution of the population and provisional boundaries for the General electoral districts and the Maori electoral districts and shall then call a meeting of the Commission.
5. The report so made by the Government Statistician, and the maps so prepared by the Surveyor-General, shall be sufficient evidence as to the General electoral population and the Maori electoral population of New Zealand or of the North Island or of the South Island or of any district.
6. In relation to the first occasion on which, after the commencement of this section, New Zealand is, under this Act, divided into electoral districts, section 35(3)(f)(i) shall not apply.

• Electoral districts

## **270. Electoral districts, electoral rolls, general elections, and by-elections**

1. Every General electoral district and every Maori electoral district in existence under the Electoral Act 1956 immediately before the commencement of this section shall remain in existence until such districts are replaced by new electoral districts in accordance with the provisions of sections 40 and 45.
2. Every electoral roll in force under the Electoral Act 1956 immediately before the commencement of this section shall continue in force until replaced by new electoral rolls in accordance with the provisions of sections 101 to 103.
3. For the purposes of any general election of members of Parliament conducted following a dissolution of Parliament that takes place before the gazetting of the notice required by section 40(1)(b) or section 45(9)(b) on the first occasion when the gazetting of such a notice is required to take place under the provisions of this Act, that general election shall be conducted in accordance with the provisions of the Electoral Act 1956, notwithstanding its repeal by the provisions of this Act.
4. For the purposes of any by-election that takes place before the first general election that is conducted in accordance with the provisions of this Act, the electoral district in respect of which that election is conducted shall be the relevant electoral district that was in existence immediately before the commencement of this section, and the provisions of this Act, including subsections (2) to (4) of section 102, shall apply accordingly and with any necessary modifications, in respect of the conduct of that election.
5. Any person who immediately before the commencement of this section held the position of—
  - a. Clerk of the Writs; or
  - b. Deputy Clerk of the Writs; or
  - c. Chief Electoral Officer; or
  - d. Deputy Chief Electoral Officer; or

- e. Returning Officer; or
- f. Deputy Chief Registrar of Electors; or
- g. Registrar of Electors—  
shall, without further appointment, be deemed, as from the commencement of this section, to have been duly appointed under this Act.

## **Subpart 2: Amendment to Constitution Act 1986**

### **271. Term of Parliament**

Amendment(s) incorporated in the Act(s).

## **Subpart 3: Amendment to Civil List Act 1979**

### **272. Questioned elections of members of Parliament**

Amendment(s) incorporated in the Act(s).

## **Subpart 4: Amendment to Remuneration Authority Act 1977**

### **273. Officers whose remuneration is to be determined by Remuneration Authority**

Amendment(s) incorporated in the Act(s).

## **Subpart 5: Amendments to Local Elections and Polls Act 1976**

[Repealed]

### **274. Residential electoral roll**

[Repealed]

### **275. Supply of information by Chief Registrar of Electors**

[Repealed]

### **276. Application for registration as parliamentary elector**

[Repealed]

### **277. Completion of roll**

[Repealed]

## **278. Amendments to roll**

[Repealed]

## **279. Roll for by-election or poll**

[Repealed]

## **280. Special voters**

[Repealed]

## **281. Election to fill extraordinary vacancy in local authority**

[Repealed]

## **Subpart 6: Amendment to Ombudsmen Act 1975**

[Repealed]

## **282. Organisations to which Ombudsmen Act 1975 applies**

[Repealed]

## **Subpart 7: Amendments to Public Finance Act 1989**

[Repealed]

## **283. Crown entities**

[Repealed]

## **Subpart 8: Repeals**

## **284. Repeals**

The enactments specified in Schedule 3 are hereby repealed.

## **Schedules 1-3**

[Schedules omitted due to length - full text available at [http://www.legislation.govt.nz/act/public/1993/0087/latest/whole.html?search=ts\\_act%40bill%40regulation%40deemedreg\\_electoral+act\\_reselel\\_25\\_a&p=1#DLM307519](http://www.legislation.govt.nz/act/public/1993/0087/latest/whole.html?search=ts_act%40bill%40regulation%40deemedreg_electoral+act_reselel_25_a&p=1#DLM307519)]

## Amendment Act 1: Electoral Amendment Act 2009

### 1. Title

This Act is the Electoral Amendment Act 2009.

### 2. Commencement

This Act comes into force on 1 March 2009.

### 3. Principal Act amended

This Act amends the Electoral Act 1993.

## Part 2: Repeal, consequential amendments, and transitional and savings provisions

### Subpart 2: Transitional and savings provisions

#### 17. Continuation of obligations and rights arising from election expenses in respect of 2008 general election

1. This section applies where, in respect of the 2008 general election, a person would, but for the repeal of the Electoral Finance Act 2007 by section 15 of this Act,—
  - a. be subject to a duty, liability, or restriction under any of the following provisions of the Electoral Finance Act 2007:
    - i. sections 82 and 85 to 92 (which relate to candidates' election expenses);
    - ii. sections 102 and 105 to 112 (which relate to parties' election expenses);
    - iii. sections 123 and 126 to 133 (which relate to third parties' election expenses); or
  - b. be entitled to seek relief under sections 83, 84, 103, 104, 124, and 125 of the Electoral Finance Act 2007 (which provide for the commencement of proceedings in respect of unpaid election expenses); or
  - c. be entitled to inspect a copy of a return under sections 92, 112, and 133 of the Electoral Finance Act 2007 (which provide for the publication and inspection of returns of election expenses filed for candidates, parties, and third parties).
2. The duty, liability, restriction, or entitlement must be complied with or recognised, as the case may be, and for that purpose the Electoral Finance Act 2007 continues in force as if it had not been repealed.

3. This section has effect despite section 15 of this Act.

## **18. Continuation of obligations and rights arising under the Electoral Finance Act 2007 in respect of donations**

1. This section applies where, in respect of a candidate donation, party donation, or third party donation made before the commencement of this Act, a person would, but for the repeal of the Electoral Finance Act 2007 by section 15 of this Act,—
  - a. be subject to a duty or liability under any of the following provisions of the Electoral Finance Act 2007:
    - i. sections 23 to 36 (which are general provisions relating to donations):
    - ii. sections 38 to 44 (which relate to donations protected from disclosure):
    - iii. sections 45 to 50 (which relate to the disclosure of candidate donations):
    - iv. sections 51 to 57 (which relate to the disclosure of party donations):
    - v. sections 58 to 62 (which relate to the disclosure of third party donations); or
  - b. be entitled to have a donation returned under either of the following provisions of the Electoral Finance Act 2007:
    - i. section 32 (which relates to the return of an overseas donation):
    - ii. section 41 (which relates to the return of a donation protected from disclosure); or
  - c. be entitled to inspect a copy of a return under sections 50, 57, and 62 of the Electoral Finance Act 2007 (which provide for the publication and inspection of returns of donations filed for candidates, parties, and third parties).
2. The duty, liability, or entitlement must be complied with or recognised, as the case may be, and for that purpose the Electoral Finance Act 2007 continues in force as if it had not been repealed.
3. This section has effect despite section 15 of this Act.

## **19. Annual return of party donations for year ending 31 December 2008**

1. A party secretary is not required by section 210 of the principal Act to file by 30 April 2009 an annual return of party donations for the year ending 31 December 2008.
2. Subsection (1) does not affect the obligations arising under section 51 of the Electoral Finance Act 2007 as continued by section 18 of this Act.

## **20. Annual return of party donations for year ending 31 December 2009**

1. A return of party donations filed by a party secretary under section 210 of the principal Act for the year ending 31 December 2009 must include in the details required by that section any party donation that—
  - a. was received by the party financial agent during the period beginning on 1 January 2009 and ending on 28 February 2009; and
  - b. would otherwise have been required to be included in a return under section 51 of the Electoral Finance Act 2007 as continued by section 18 of this Act.
2. Despite section 18 of this Act, a party financial agent is not required to file by 30 April 2010 an annual return of party donations under section 51 of the Electoral Finance Act 2007 for the year ending 31 December 2009.
3. In this section, party financial agent means the financial agent of a party appointed under section 7 of the Electoral Finance Act 2007.

## **21. Transitional provision relating to section 210C of principal Act**

Until 1 March 2010, section 210C(3) of the principal Act must be read as if the reference to subsection (2) of that section was a reference to subsection (2) of that section or section 54(2) of the Electoral Finance Act 2007.

## **22. Saving of section 19 of Interpretation Act 1999**

Sections 17 and 18 of this Act do not limit section 19 of the Interpretation Act 1999 (which enables the investigation and prosecution of offences committed under the Electoral Finance Act 2007 before it was repealed).

## **24. Expiry of section 23**

Section 23 expires on the close of 1 March 2011 and on the close of that date is repealed.

## **Amendment Act 2: Electoral (Administration) Amendment Act 2010**

### **1. Title**

This Act is the Electoral (Administration) Amendment Act 2010.

### **2. Commencement**

1. The following provisions come into force on 1 October 2010:
  - a. the provisions in subpart 2 of Part 1:
  - b. the provisions in subpart 2 of Part 2.

2. The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

### 3. Principal Act amended

This Act amends the Electoral Act 1993.

## Part 2: Consequential amendments and transitional provisions

### 15. Interpretation

In this Part, unless the context requires otherwise,—

- existing Chief Electoral Officer means the Chief Electoral Officer appointed under section 18 of the principal Act
- existing Electoral Commission means the Electoral Commission established by section 4 of the principal Act
- new Electoral Commission means the Electoral Commission established by section 4B of the principal Act as inserted by section 4 of this Act
- previous employer, in relation to a transferred employee, means the employer of that employee immediately before 1 October 2010
- transferred employee means a person who,—
  - a. immediately before 1 October 2010, was employed by the Ministry of Justice or the existing Electoral Commission; and
  - b. is transferred to the new Electoral Commission under section 20 or 23.

### Subpart 1: Provisions coming into force on day after Royal assent

### 16. New Electoral Commission may perform certain functions before 1 October 2010

Until the close of 30 September 2010, the new Electoral Commission may perform only those functions that are necessary or desirable to bring, or in connection with bringing, the principal Act as amended by this Act into operation.

### 17. Statement of intent

The existing Electoral Commission is not required to produce a statement of intent for the financial year commencing 1 July 2010.

### 18. References to Electoral Commission

1. Until the close of 30 September 2010, any reference to the Electoral Commission—
  - a. in sections 4B to 4J of the principal Act must be read as a reference to the Electoral Commission established by section 4B of the principal Act; and



- b. in the following enactments must be read as a reference to both the Electoral Commission established by section 4 of the principal Act and the Electoral Commission established by section 4B of the principal Act:
    - i. Schedule 1 of the Crown Entities Act 2004:
    - ii. Part 2 of Schedule 1 of the Ombudsmen Act 1975:
    - iii. Schedule 4 of the Remuneration Authority Act 1977; and
  - c. in any other enactment must be read as a reference to the Electoral Commission established by section 4 of the principal Act.
2. On and from 1 October 2010, any reference to the Electoral Commission in any enactment must be read as a reference to the Electoral Commission established by section 4B of the principal Act.

## 19. Assets and liabilities of existing Electoral Commission

On 1 October 2010, all assets, records, liabilities, and debts of the existing Electoral Commission vest in the new Electoral Commission.

## 20. Employees of existing Electoral Commission

1. On 1 October 2010, all employees of the existing Electoral Commission are transferred to the new Electoral Commission.
2. Subsection (1) does not apply to any employee who does not consent to being transferred.

## 21. References to Chief Electoral Officer

1. Until the close of 30 September 2010, any reference to the Chief Electoral Officer, other than a reference in section 4D of the principal Act, must be read as a reference to the Chief Electoral Officer appointed under section 18 of the principal Act.
2. On and from 1 October 2010,—
  - a. the references to the Chief Electoral Officer in sections 28(2)(c) and 33(4) of the principal Act must be read as references to the Chief Electoral Officer appointed under section 4D(1)(a) of the principal Act; and
  - b. any other reference to the Chief Electoral Officer in any enactment must be read as a reference to the Electoral Commission established by section 4B of the principal Act.

## 22. Assets and liabilities of Chief Electoral Office

1. The Secretary for Justice must identify all assets, records, liabilities, and debts of the Ministry of Justice that, immediately before 1 October 2010, are assets, records, liabilities, and debts used or incurred by the Chief Electoral Office of the Ministry of Justice.
2. On 1 October 2010, the assets, records, liabilities, and debts identified by the Secretary for Justice under subsection (1) vest in the new Electoral Commission.

## 23. Employees of Ministry of Justice

1. The Secretary for Justice must identify all permanent employees of the Ministry of Justice who, immediately before 1 October 2010, are appointed to positions within the Chief Electoral Office of the Ministry of Justice.
2. On 1 October 2010, the employees identified by the Secretary for Justice under subsection (1) are transferred to the new Electoral Commission.
3. Subsection (2) does not apply to—
  - a. the existing Chief Electoral Officer; or
  - b. any person appointed as Deputy Chief Electoral Officer under section 19 of the principal Act; or
  - c. any employee who does not consent to being transferred.

## 24. Terms and conditions of transferred employees

1. The employment of a transferred employee must be on terms and conditions no less favourable to the transferred employee than those applying to the employee immediately before 1 October 2010.
2. Subsection (1)—
  - a. continues to apply to the terms and conditions of employment of a transferred employee until those terms and conditions are varied by agreement between the transferred employee and the new Electoral Commission; but
  - b. does not apply to a transferred employee who receives any subsequent appointment with the new Electoral Commission.

## 25. Continuity of employment

1. Every transferred employee becomes an employee of the new Electoral Commission on 1 October 2010.
2. However, for the purposes of this Act and every enactment, law, determination, contract, and agreement relating to the employment of the transferred employee,—
  - a. the contract of employment of that employee is deemed to have been unbroken; and
  - b. that employee's period of service with his or her previous employer, and every other period of service of that employee that is recognised as continuous service by his or her previous employer, is deemed to have been a period of service with the new Electoral Commission.

• Electoral commission

## 26. Restriction of compensation for technical redundancy

1. An employee of the existing Electoral Commission or the Ministry of Justice is not entitled to receive any payment or other benefit from the existing Electoral Commission or the Ministry of Justice on the ground that his or her position with that employer has ceased to exist if—
  - a. the position ceases to exist as a result of amendments made by this Act; and
  - b. in connection with the transfer of employees under this Act,—
    - i. the transfer of the employee would result in substantially equivalent employment in the new Electoral Commission (whether or not the employee consents to the transfer); or
    - ii. the employee consents to a transfer that will result in other employment in the new Electoral Commission.
2. Substantially equivalent employment to the employee's employment with his or her previous employer is employment in the new Electoral Commission that is—
  - a. in substantially the same position; and
  - b. on terms and conditions of employment that are no less favourable than those that apply to the employee immediately before the offer of equivalent employment (including any service-related, redundancy, and superannuation conditions); and
  - c. on terms that treat the period of service with the previous employer (and any other service recognised by the previous employer as continuous service) as if it were continuous service with the new Electoral Commission.

• Electoral commission

## Subpart 2: Provisions coming into force on 1 October 2010

### 28. Existing Electoral Commission disestablished

1. The existing Electoral Commission is disestablished.
2. Any member of the existing Electoral Commission holding office under section 8(1)(a) or (b) of the principal Act (as in force immediately before its repeal by section 7 of this Act) ceases to hold office.
3. Any appointment of a member of the existing Electoral Commission made under section 8(1)(c) or (d) of the principal Act (as in force immediately before its repeal by section 7 of this Act) is revoked.
4. Any appointment of a deputy of a member of the existing Electoral Commission made under section 11A(2) of the principal Act (as in force immediately before its repeal by section 8 of this Act) is revoked.

### 29. Appointment of existing Chief Electoral Officer revoked

The appointment of the existing Chief Electoral Officer is revoked.

## 30. Enforcement of existing rights

1. This section applies to—
  - a. any matter or thing commenced under any enactment by the existing Electoral Commission or the existing Chief Electoral Officer and not completed by 1 October 2010; and
  - b. any proceedings commenced by or against the existing Electoral Commission, or by or against the Crown in respect of any act or omission of the existing Chief Electoral Officer, relating to an existing right, interest, title, immunity, or duty and not completed by 1 October 2010.
2. Any matter, thing, or proceedings to which this section applies may be continued, completed, or enforced by or against the new Electoral Commission.

## 31. Responsibility for reports and accounts of existing Electoral Commission from 1 July 2010

1. The new Electoral Commission must include in its annual report for the year ending 30 June 2011 the information in respect of the existing Electoral Commission for the period commencing 1 July 2010 and ending on 30 September 2010 that the existing Electoral Commission would have had to include in its annual report under section 151 of the Crown Entities Act 2004 had it continued in existence.
2. To avoid doubt, the new Electoral Commission may, if it so decides, present the information referred to in subsection (1) in a combined form for the whole of the financial year ended 30 June 2011.
3. For the purposes of subsection (1), section 45J(1) of the Public Finance Act 1989 does not apply to the existing Electoral Commission in respect of the period commencing 1 July 2010 and ending on 30 September 2010.

## Amendment Act 3: Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010

### 1. Title

This Act is the Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010.

### 2. Commencement

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

### 3. Principal Act amended

This Act amends the Electoral Act 1993.

## **6. Existing status under section 80(1)(d) of principal Act not affected**

To avoid doubt,—

- a. a person who is disqualified for registration as an elector by section 80(1)(d) of the principal Act immediately before the commencement of this Act continues to be disqualified for registration as an elector as if this Act had not been enacted; and
- b. a person who is not disqualified for registration as an elector by section 80(1)(d) of the principal Act immediately before the commencement of this Act is not disqualified for registration as an elector by that section (as substituted) immediately after the commencement of this Act on the ground of an existing sentence of imprisonment; and
- c. section 4 of this Act does not override section 17 of the Interpretation Act 1999.

## **Amendment Act 4: Electoral (Finance Reform and Advance Voting) Amendment Act 2010**

### **1. Title**

This Act is the Electoral (Finance Reform and Advance Voting) Amendment Act 2010.

### **2. Commencement**

This Act comes into force on 1 January 2011.

## **Part 2: Transitional provisions and consequential amendments to other enactments**

### **35. Provision relating to donations and contributions received before 1 January 2011**

For the avoidance of doubt,—

- a. any provision in this Act that amends the principal Act in respect of the amount of a donation or contribution does not apply to any donation or contribution received before 1 January 2011; and
- b. section 210(6A) of the principal Act (as inserted by section 27(7) of this Act) does not apply to any donation received before 1 January 2011.

## 36. Transitional elections

1. In this section, a transitional election is—
  - a. a general election in respect of which—
    - i. polling day is a date after the commencement day but before 31 March 2011; and
    - ii. the regulated period would, had this Act been in force, have commenced before the commencement day:
  - b. a by-election in respect of which the regulated period would, had this Act been in force, have commenced before the commencement day.
2. In the case of a transitional election, the provisions of the Electoral Act 1993 apply as if this Act had not been enacted.
3. In this section, commencement day means the day on which this Act comes into force.

## Amendment Act 5: Electoral (Administration) Amendment Act 2011

### 1. Title

This Act is the Electoral (Administration) Amendment Act 2011.

### 2. Commencement

1. The following come into force on 1 July 2012:
  - a. subpart 2 of Part 1:
  - b. subpart 2 of Part 2.
2. The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

### 3. Principal Act amended

This Act amends the Electoral Act 1993.

## Part 2: Consequential amendments and transitional provisions

### Subpart 1: Provisions coming into force on day after assent

#### Heading 1: Transitional provision approving electronic medium for online re-enrolment and updating

#### 38. Deemed approval of electronic medium called igovt logon service

1. In this section,—
  - igovt logon service means the government logon service developed by the Department of Internal Affairs and on the commencement of this section called the igovt logon service
  - online re-enrolment and updating provisions means sections 82(4A), 83A(3), and 90(2A) of the principal Act (as inserted by sections 8, 9, and 11 of this Act).
2. The igovt logon service must, if and insofar as the deemed approval by this section has not been amended, revoked, or replaced, be taken to be an electronic medium approved for the purposes of all of the online re-enrolment and updating provisions.
3. The Chief Registrar, or on or after 1 July 2012 the Electoral Commission, may in accordance with the online re-enrolment and updating provisions do either or both of the following:
  - a. amend, revoke, or revoke and replace some or all of the deemed approval by this section, and for the purposes of all of those provisions, of the igovt logon service:
  - b. approve for the purposes of all or any of those provisions 1 or more additional electronic media.
4. This section does not limit or affect the generality of the online re-enrolment and updating provisions.

#### Heading 2: Transitional provisions relating to abolition of Chief Registrar of Electors

#### 39. Office of Chief Registrar of Electors abolished

At the close of 30 June 2012,—

- a. the office of Chief Registrar of Electors under section 21(1) of the principal Act is abolished and ceases to be held by the incumbent; and

- b. the office of Deputy Chief Registrar of Electors under section 21(3) of the principal Act is abolished and ceases to be held by any person appointed to it; and
- c. all delegations (if any) under section 21(4) to (9) of the principal Act cease to have effect.

#### **40. No compensation for loss of office**

No person is entitled to compensation or any other payment or benefit in respect of—

- a. a person ceasing under section 39(a) or (b) to hold office as the Chief, or Deputy Chief, Registrar of Electors; or
- b. a delegation ceasing under section 39(c) to have effect.

#### **41. Crown-owned assets (other than intellectual property) and records that Chief Registrar controls or possesses**

1. The Secretary for Justice must identify all assets and records that, at the close of 30 June 2012, are Crown-owned assets or records controlled or possessed by or on behalf of the Chief Registrar of Electors.
2. Assets and records identified under subsection (1) (other than intellectual property) must be treated as having been vested in the Electoral Commission on 1 July 2012.

#### **42. Liabilities for expenses after 30 June 2012**

1. The Secretary for Justice must identify—
  - a. the expenses (incurred after 30 June 2012 arising from commitments before 18 August 2009) to be paid under section 44; and
  - b. the expenses (incurred after 30 June 2012 arising from commitments after 17 August 2009 and before 1 July 2012) to be paid under section 45.
2. Liabilities in respect of expenses identified under subsection (1)(a) must be treated as having been vested in the Electoral Commission on 1 July 2012.
3. Liabilities in respect of expenses identified under subsection (1)(b) must be treated as having been vested on 1 July 2012 in—
  - a. the Crown, if the Minister of Finance under section 45 approves them being paid by the Crown; or
  - b. the Electoral Commission, if the Minister of Finance under section 45 approves them being paid by the Electoral Commission.



### **43. Expenses before 1 July 2012 (whether from commitments before, on, or after 17 August 2009)**

Expenses incurred before 1 July 2012 by New Zealand Post Limited in the administration of Part 5 of the principal Act (regardless of whether those expenses arise from commitments New Zealand Post Limited entered into before, on, or after 17 August 2009) must, despite the repeal (by section 32 of this Act) of section 23 of the principal Act, be paid out of public money appropriated by Parliament.

### **44. Expenses after 30 June 2012 from commitments before 18 August 2009**

Expenses incurred after 30 June 2012 by New Zealand Post Limited in the administration of Part 5 of the principal Act and arising from commitments New Zealand Post Limited entered into before 18 August 2009 must be paid by the Electoral Commission out of public money appropriated by Parliament.

### **45. Expenses after 30 June 2012 from commitments after 17 August 2009 and before 1 July 2012**

Expenses incurred after 30 June 2012 by New Zealand Post Limited in the administration of Part 5 of the principal Act and arising from commitments New Zealand Post Limited entered into after 17 August 2009 and before 1 July 2012 may, with the approval of the Minister of Finance, be paid by the Crown or by the Electoral Commission (in either case) out of public money appropriated by Parliament.

### **46. Matters incomplete on 1 July 2012**

A matter or thing commenced under any enactment by the Chief Registrar of Electors and not completed before 1 July 2012 may be completed by the Electoral Commission.

### **47. Proceedings incomplete on 1 July 2012**

Proceedings relating to an existing right, interest, title, immunity, or duty, commenced by or against (or commenced by or against the Crown in respect of an act or omission of) the Chief Registrar of Electors, and not completed before 1 July 2012 may be completed by the Electoral Commission.

### **48. Transitional or savings regulations**

1. The Governor-General may, by Order in Council, make regulations providing for any transitional or savings matters concerning the coming into force of all or any of the provisions of this Act.
2. Regulations under this section must not be inconsistent with this Act.
3. Regulations under this section are regulations for the purposes of the Regulations (Disallowance) Act 1989 and the Acts and Regulations Publication Act 1989.

# Human Rights Act 1993

## Preamble

An Act to consolidate and amend the Race Relations Act 1971 and the Human Rights Commission Act 1977 and to provide better protection of human rights in New Zealand in general accordance with United Nations Covenants or Conventions on Human Rights

## 1. Short Title and commencement

1. This Act may be cited as the Human Rights Act 1993.
2. This Act shall come into force on 1 February 1994.

## 2. Interpretation

1. In this Act, unless the context otherwise requires,—
  - act includes an activity, condition, enactment, policy, practice, or requirement
  - actuary means—
    - a. a person who is a Fellow of the New Zealand Society of Actuaries Incorporated; or
    - b. a person whom the Commission or the Complaints Division, as the case may be, considers to have an equivalent professional qualification
  - Chief Commissioner means the Commissioner appointed as the Chief Human Rights Commissioner under section 8(1)(a)
  - Commission means the Human Rights Commission continued by section 4 and includes the Office of Human Rights Proceedings
  - Commissioner means a member of the Commission
  - Director of Human Rights Proceedings or Director means the Director of Human Rights Proceedings or alternate Director of Human Rights Proceedings appointed under section 20A
  - dispose, in sections 53 and 54, includes sell, assign, lease, let, sublease, sublet, license, or mortgage, and agree to dispose
  - dispute resolution meeting means a meeting of the kind referred to in section 77(2)(c)
  - dispute resolution services includes the provision of answers to questions by members of the public about discrimination and compliance with this Act

• International human rights treaties  
• Motives for writing constitution

• Human rights commission

- employer, in Part 2, includes—
  - a. the employer of an independent contractor; and
  - b. the person for whom work is done by contract workers under a contract between that person and the person who supplies those contract workers; and
  - c. the person for whom work is done by an unpaid worker
- employment agreement has the meaning given to that term by section 5 of the Employment Relations Act 2000
- employment contract has the meaning given to that term by section 2 of the Employment Contracts Act 1991
- Equal Employment Opportunities Commissioner means the Commissioner appointed as the Equal Employment Opportunities Commissioner under section 8(1)(c)
- general manager means the general manager of the Commission appointed by the Chief Commissioner under section 18; and includes any acting general manager of the Commission
- Human Rights Review Tribunal or Tribunal means the Tribunal continued by section 93
- Minister means the Minister of Justice
- Office of Human Rights Proceedings or Office means the office referred to in section 20
- prohibited ground of discrimination has the meaning given to it by section 21
- Race Relations Commissioner means the Commissioner appointed as the Race Relations Commissioner under section 8(1)(b)
- relative, in relation to any person, means any other person who—
  - a. is related to the person by blood, marriage, civil union, de facto relationship, affinity, or adoption; or
  - b. is wholly or mainly dependent on the person; or
  - c. is a member of the person's household

- residential accommodation, in sections 53 and 54, includes accommodation in a dwellinghouse, flat, hotel, motel, boardinghouse, or camping ground
  - superannuation scheme means any superannuation scheme, fund, or plan, or any provident fund, set up to confer, on its members or other persons, retirement or other benefits, such as accident, disability, sickness, or death benefits
  - trustees, in relation to a superannuation scheme, includes the person or persons appointed to administer a superannuation scheme constituted under an Act of Parliament of New Zealand.
2. Unless the context otherwise requires, every reference in this Act to a complaint alleging a breach of 1 or more Parts of this Act includes a complaint that appears to allege or concern such a breach (whether or not it refers to the relevant Part in question).
  3. Unless the context otherwise requires, every reference in this Act to a person against whom a complaint is made includes a body of any kind against whom a complaint is made.

### 3. Act to bind the Crown

This Act shall bind the Crown.

## Part 1: Human Rights Commission

### 4. Continuation of Human Rights Commission

1. There shall continue to be a Human Rights Commission, which shall be the same body as the Human Rights Commission established under section 4 of the Human Rights Commission Act 1977.
2. The Commission is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.
3. The Crown Entities Act 2004 applies to the Commission except to the extent that this Act expressly provides otherwise.
4. Despite anything in any other Act, the powers of the Commission under sections 16 and 17 of the Crown Entities Act 2004 may be exercised only—
  - a. by persons authorised by or under this Act or the Crown Entities Act 2004 to perform functions of the Commission, for the purposes of performing those functions; or
  - b. by the Director of Human Rights Proceedings, his or her alternate, or the staff of the Office of Human Rights Proceedings (acting in accordance with directions issued by the Director or his or her alternate), for the purposes of exercising or performing a function, power, or duty of the Director under this Act.

• Human rights commission

## Subpart 1: Functions and powers of Commission

### 5. Functions of Commission

1. The primary functions of the Commission are—
  - a. to advocate and promote respect for, and an understanding and appreciation of, human rights in New Zealand society; and
  - b. to encourage the maintenance and development of harmonious relations between individuals and among the diverse groups in New Zealand society.
2. The Commission has, in order to carry out its primary functions under subsection (1), the following functions:
  - a. to be an advocate for human rights and to promote and protect, by education and publicity, respect for, and observance of, human rights:
  - b. to encourage and co-ordinate programmes and activities in the field of human rights:
  - c. to make public statements in relation to any matter affecting human rights, including statements promoting an understanding of, and compliance with, this Act or the New Zealand Bill of Rights Act 1990 (for example, statements promoting understanding of measures to ensure equality, of indirect discrimination, or of institutions and procedures under this Act for dealing with complaints of unlawful discrimination):
  - d. to promote by research, education, and discussion a better understanding of the human rights dimensions of the Treaty of Waitangi and their relationship with domestic and international human rights law:
  - e. to prepare and publish, as the Commission considers appropriate, guidelines and voluntary codes of practice for the avoidance of acts or practices that may be inconsistent with, or contrary to, this Act:
  - f. to receive and invite representations from members of the public on any matter affecting human rights:
  - g. to consult and co-operate with other persons and bodies concerned with the protection of human rights:
  - h. to inquire generally into any matter, including any enactment or law, or any practice, or any procedure, whether governmental or non-governmental, if it appears to the Commission that the matter involves, or may involve, the infringement of human rights:
  - i. to appear in or bring proceedings, in accordance with section 6 or section 92B or section 92E or section 92H or section 97:

j. to apply to a court or tribunal, under rules of court or regulations specifying the tribunal's procedure, to be appointed as intervener or as counsel assisting the court or tribunal, or to take part in proceedings before the court or tribunal in another way permitted by those rules or regulations, if, in the Commission's opinion, taking part in the proceedings in that way will facilitate the performance of its functions stated in paragraph (a):

k. to report to the Prime Minister on—

i. any matter affecting human rights, including the desirability of legislative, administrative, or other action to give better protection to human rights and to ensure better compliance with standards laid down in international instruments on human rights:

ii. the desirability of New Zealand becoming bound by any international instrument on human rights:

iii. the implications of any proposed legislation (including subordinate legislation) or proposed policy of the Government that the Commission considers may affect human rights:

l. to make public statements in relation to any group of persons in, or who may be coming to, New Zealand who are or may be subject to hostility, or who have been or may be brought into contempt, on the basis that that group consists of persons against whom discrimination is unlawful under this Act:

m. to develop a national plan of action, in consultation with interested parties, for the promotion and protection of human rights in New Zealand:

n. [Repealed]

o. to exercise or perform any other functions, powers, and duties conferred or imposed on it by or under this Act or any other enactment.

3. The Commission may, in the public interest or in the interests of a person, department, or organisation, publish reports relating generally to the exercise of its functions under this Act or to a particular inquiry by it under this Act, whether or not the matters to be dealt with in a report of that kind have been the subject of a report to the Minister or the Prime Minister.

## 6. Powers relating to declaratory judgments

1. If at any time the Commission considers that it may be desirable to obtain a declaratory judgment or order of the High Court in accordance with the Declaratory Judgments Act 1908, the Commission may, despite anything to the contrary in that Act or any other enactment or rule of law, institute proceedings under that Act.

2. The Commission may exercise the right in subsection (1) only if it considers that the exercise of the right will facilitate the performance of its functions stated in section 5(2)(a).

3. Subsection (1) does not limit the ability of the Commission to appear in or bring proceedings under section 92B or section 92E or section 92H or section 97.

## Subpart 2: Activities in performance of Commission's functions

### 7. Commission determines general nature of activities

1. Subject to the role of the Minister in the process of setting and monitoring the strategic direction and targets of the Commission under Part 4 of the Crown Entities Act 2004, the members of the Commission acting together determine the strategic direction and the general nature of activities undertaken in the performance of the Commission's functions.
2. The Chief Commissioner is responsible to the Commission for ensuring that activities undertaken in the performance of the Commission's functions are not inconsistent with determinations of the Commission.

## Subpart 3: Membership of Commission

### 8. Membership of Commission

1. The Commission consists of the following Human Rights Commissioners:
  - a. a Commissioner appointed as the Chief Commissioner, whose office is a full-time one:
  - b. a Commissioner appointed as the Race Relations Commissioner, whose office is also a full-time one:
  - c. a Commissioner appointed as the Equal Employment Opportunities Commissioner, whose office is also a fulltime one:
  - d. no more than 5 other Commissioners, whose offices are each part-time ones.
2. The Commissioners are the board for the purposes of the Crown Entities Act 2004.
3. The Chief Commissioner holds office as chairperson of the board for the purposes of the Crown Entities Act 2004 for the same term as he or she is Chief Commissioner.
4. Clauses 1 to 5 of Schedule 5 of the Crown Entities Act 2004 do not apply to the Commission.

### 9. Alternate Commissioners

1. The Governor-General may, on the recommendation of the Minister, appoint as alternate Commissioners persons who may be designated as the alternate of a Commissioner by either the Minister under subsection (2) or the Chief Commissioner under subsection (3).
2. The Minister may designate a Commissioner or an alternate Commissioner to act as the Chief Commissioner—
  - a. during the period following the resignation of the Chief Commissioner and ending when the Chief Commissioner's successor comes into office; or

- b. during the Chief Commissioner's incapacity or in respect of a particular function or activity of the Commission, as the case may be, if—
  - i. the Minister is satisfied that the Chief Commissioner is incapacitated by illness, absence, or other sufficient cause from performing the duties of his or her office; or
  - ii. the Chief Commissioner considers it is not proper or desirable that he or she should participate in the function or activity.
- 3. The Chief Commissioner may designate an alternate Commissioner to act as a Commissioner during the period the Chief Commissioner is acting as Chief Commissioner, or during the period of the Commissioner's incapacity, or in respect of a particular function or activity of the Commission, as the case may be, if—
  - a. the Chief Commissioner is a Commissioner acting as the Chief Commissioner under a designation under subsection (2); or
  - b. the Chief Commissioner is satisfied that any other Commissioner is incapacitated by illness, absence, or other sufficient cause from performing the duties of his or her office; or
  - c. a Judge who is for the time being holding office as a Commissioner declines to participate in, or withdraws from participation in, the particular function or activity of the Commission under section 20C(2); or
  - d. any other Commissioner considers it is not proper or desirable that he or she should participate in the function or activity of the Commission.
- 4. An alternate Commissioner designated under subsection (2) or subsection (3) must, while the alternate Commissioner acts as Chief Commissioner or as a Commissioner, be taken to be the Chief Commissioner or the Commissioner in whose place the alternate Commissioner acts.
- 5. No designation of an alternate Commissioner, and no act done by an alternate Commissioner, and no act done by the Commission while any alternate Commissioner is acting, may in any proceedings be questioned on the ground that the occasion for the alternate Commissioner's designation had not arisen or had ceased.

## 10. Meetings of Commission

- 1. [Repealed]
- 2. The Race Relations Commissioner may, at any time, call a special meeting of the Commission.
- 3. Subsection (2) applies in addition to clause 7(2) of Schedule 5 of the Crown Entities Act 2004.
- 4. [Repealed]
- 5. [Repealed]
- 6. [Repealed]
- 7. [Repealed]
- 8. [Repealed]



## Subpart 4: Criteria for appointment

### 11. Criteria for appointment

1. In recommending persons for appointment as Commissioners or alternate Commissioners, the Minister must have regard to the need for Commissioners and alternate Commissioners appointed to have among them—
  - a. knowledge of, or experience in,—
    - i. different aspects of matters likely to come before the Commission:
    - ii. New Zealand law, or the law of another country, or international law, on human rights:
    - iii. the Treaty of Waitangi and rights of indigenous peoples:
    - iv. current economic, employment, or social issues:
    - v. cultural issues and the needs and aspirations (including life experiences) of different communities of interest and population groups in New Zealand society:
  - b. skills in, or experience in,—
    - i. advocacy or public education:
    - ii. business, commerce, economics, industry, or financial or personnel management:
    - iii. community affairs:
    - iv. public administration, or the law relating to public administration.
- 1A. Subsection (1) does not limit section 29 of the Crown Entities Act 2004.
2. Nothing in this section limits section 12 or section 13 or section 14.

### 12. Further criteria for appointment of Chief Commissioner

In recommending a person for appointment as Chief Commissioner, the Minister must have regard not only to the criteria stated in section 11 but also to the person's—

- a. ability to provide leadership in relation to the performance of the functions of the Commission (for example, being an advocate for, and promoting, by education and publicity, respect for and observance of human rights):
- b. ability to represent the Commission, and to create and maintain effective relationships between it and other persons or bodies:

- c. knowledge of New Zealand law, the law of other countries, and international law, on human rights, and of New Zealand's obligations under international instruments on human rights:
- d. appreciation of issues or trends in human rights arising in other countries or internationally, and of the relevance of those issues or trends for New Zealand:
- e. ability to perform the functions stated in section 15.

### **13. Further criteria for appointment of Race Relations Commissioner**

In recommending a person for appointment as Race Relations Commissioner, the Minister must have regard not only to the criteria stated in section 11 but also to the person's—

- a. understanding of current race relations in New Zealand, and of the origins and development of those relations:
- b. appreciation of issues or trends in race relations arising in other countries or internationally, and of the relevance of those issues or trends for New Zealand:
- c. ability to perform the functions stated in section 16.

### **14. Further criteria for appointment of Equal Employment Opportunities Commissioner**

In recommending a person for appointment as the Equal Employment Opportunities Commissioner, the Minister must have regard not only to the criteria stated in section 11 but also to the person's—

- a. understanding of principles relating to equal employment opportunities:
- b. appreciation of issues, trends, and developments in the promotion of equal employment opportunities in other countries and internationally, and the relevance of those issues, trends, or developments in New Zealand:
- c. ability to perform the functions stated in section 17.

## **Subpart 5: Functions of Commissioners**

### **15. Functions of Chief Commissioner**

1. The Chief Commissioner has the following functions:
  - a. to chair the Commission, and lead discussions of the Commission (except when the Commission has discussions on matters of race relations):

- b. to ensure that activities undertaken in the performance of the Commission's functions are consistent with the strategic direction and other determinations of the Commission under section 7:
  - c. to allocate spheres of responsibility among the Commissioners, and to determine the extent to which Commissioners engage in activities undertaken in the performance of the Commission's functions (except for those stated in section 7(6)), but in each case only after consultation with the Minister:
  - d. to act jointly with the Race Relations Commissioner on matters of race relations arising in the course of activities undertaken in the performance of the Commission's functions and to carry out the functions conferred on the Chief Commissioner by section 16(c) and (d):
  - e. to act jointly with the Equal Employment Opportunities Commissioner on matters concerning equal employment opportunities arising in the course of activities undertaken in the performance of the Commission's functions, and to carry out the functions conferred on the Chief Commissioner by section 17(g):
  - f. to supervise and liaise with the general manager on matters of administration in relation to the Commission and on the activities undertaken in the performance of the Commission's functions:
  - g. any other functions, powers, or duties conferred or imposed on him or her by or under this Act or any other enactment.
2. Subsection (1)(d) and (e) is subject to section 7(2).

## 16. Functions of Race Relations Commissioner

The Race Relations Commissioner has the following functions:

- a. to lead discussions of the Commission in relation to matters of race relations:
- b. to provide advice and leadership on matters of race relations arising in the course of activities undertaken in the performance of the Commission's functions, both when engaging in those activities and otherwise when consulted:
- c. to ensure, acting jointly with the Chief Commissioner, that activities undertaken in the performance of the Commission's functions in matters of race relations are consistent with the strategic direction and other determinations of the Commission under section 7:
- d. to supervise and liaise with the general manager, acting jointly with the Chief Commissioner, on the activities undertaken in the performance of the Commission's functions in matters of race relations:

- e. any other functions, powers, or duties conferred or imposed on him or her by or under this Act or any other enactment.

## 17. Functions of Equal Employment Opportunities Commissioner

The Equal Employment Opportunities Commissioner has the following functions:

- a. to lead discussions of the Commission about equal employment opportunities (including pay equity):
- b. to provide advice and leadership on equal employment opportunities arising in the course of activities undertaken in the performance of the Commission's functions, both when engaging in those activities and otherwise when consulted:
- c. to evaluate, through the use of benchmarks developed by the Commissioner, the role that legislation, guidelines, and voluntary codes of practice play in facilitating and promoting best practice in equal employment opportunities:
- d. to lead development of guidelines and voluntary codes of practice to facilitate and promote best practice in equal employment opportunities (including codes that identify related rights and obligations in legislation), in accordance with section 5(2)(e):
- e. to monitor and analyse progress in improving equal employment opportunities in New Zealand, and to report to the Minister on the results of that monitoring and analysis:
- f. to liaise with, and complement the work of, any trust or body that has as one of its purposes the promotion of equal employment opportunities (including pay equity):
- g. to ensure, acting jointly with the Chief Commissioner, that activities undertaken in the performance of the Commission's functions in matters of equal employment opportunities are consistent with the strategic direction and other determinations of the Commission under section 7:
- h. any other functions, powers, or duties conferred or imposed on him or her by or under this Act or any other enactment.

### Subpart 6: General manager and staff of Commission

## 18. General manager and staff of Commission

1. The general manager and staff of the Commission undertake activities required to perform the functions of the Commission in accordance with the strategic direction and other determinations of the Commission under section 7.

2. The general manager—
  - a. is responsible to the Chief Commissioner and reports to him or her; and
  - b. is appointed by the Chief Commissioner, in accordance with clause 1 of Schedule 1; and
  - c. is the chief executive of the Commission for the purposes of the Crown Entities Act 2004.
3. Employees of the Commission are responsible to the general manager and report to him or her.

## Subpart 7: Commissioners to act independently

### 19. Duty to act independently

Except as expressly provided otherwise in this or another Act, the Commission must act independently in performing its statutory functions and duties, and exercising its statutory powers, under—

- a. this Act; and
- b. any other Act that expressly provides for the functions, powers, or duties of the Commission (other than the Crown Entities Act 2004).

## Subpart 8: Office of Human Rights Proceedings

### 20. Office of Human Rights Proceedings

1. The Office of Human Rights Proceedings is part of the Commission and is headed by the Director of Human Rights Proceedings or his or her alternate.
2. The staff of the Office report to the Director or his or her alternate, and help him or her to exercise or perform the functions, powers, and duties of the Director under this Act.
3. In exercising or performing the functions, powers, and duties of the Director, the Director or his or her alternate and the staff of the Office must act independently from the Commission and Ministers of the Crown.
4. However, the Director or his or her alternate is responsible to the Chief Commissioner for the efficient, effective, and economical administration of the activities of the Office.

## Subpart 9: Director of Human Rights Proceedings

### 20A. Director of Human Rights Proceedings

1. The Director of Human Rights Proceedings is appointed by the Governor-General on the recommendation of the Minister.
2. The Governor-General may, on the recommendation of the Minister, appoint as alternate Director of Human Rights Proceedings a person designated for appointment as alternate Director by the Minister.

3. The Minister must not designate a person for appointment as alternate Director of Human Rights Proceedings unless—
  - a. the Minister is satisfied that the Director is incapacitated by illness, absence, or other sufficient cause from performing the duties of his or her office; or
  - b. the Director considers it is not proper or desirable that the Director should perform any particular duty of his or her office.

## 20B. Criteria and requirement for appointment

1. In recommending a person for appointment as Director of Human Rights Proceedings or as his or her alternate, the Minister must have regard not only to the person's attributes but also to the person's—
  - a. knowledge of, or experience in,—
    - i. the different aspects of matters likely to come before the Human Rights Review Tribunal:
    - ii. New Zealand law, or the law of another country, or international law, on human rights:
    - iii. current economic, employment, or other social issues:
  - b. skills in, or experience in, the practice of public law (including the conduct of litigation), and financial and personnel management:
  - c. ability to exercise or perform, and to ensure the Office of Human Rights Proceedings helps the person to exercise or perform, efficiently and effectively, the functions, powers, and duties of the Director under this Act.
2. Every person appointed as Director of Human Rights Proceedings or as his or her alternate must be a barrister or solicitor of the High Court of not less than 5 years' legal experience.

## Subpart 10: Appointment of Judge as Human Rights Commissioner

### 20C. Appointment of Judge as Human Rights Commissioner

1. The appointment of a Judge as a Commissioner or alternate Commissioner or service by a Judge as a Commissioner or alternate Commissioner does not affect his or her tenure of judicial office or his or her rank, title, status, precedence, salary, annual or other allowances, or other rights or privileges as a Judge (including those in relation to superannuation), and, for all purposes, his or her service as a Commissioner or alternate Commissioner must be taken to be service as a Judge.

2. A Judge who is for the time being holding office as a Commissioner may, at any time, decline to participate in, or withdraw from participation in, any particular function or activity of the Commission if the Judge considers it incompatible with his or her judicial office.

## Subpart 11: Provisions relating to office holders

### 20D. Office holders to whom sections 20E to 20G apply

1. Sections 20F and 20G each applies to a person (the office holder) who holds one of the following offices (the office):
  - a. [Repealed]
  - b. [Repealed]
  - c. Director of Human Rights Proceedings:
  - d. alternate Director of Human Rights Proceedings.
2. [Repealed]
3. [Repealed]

### 20E. Service in office

[Repealed]

### 20F. Term of office

The office holder—

- a. holds the office for the term (not longer than 5 years) the Governor-General, on the recommendation of the Minister, specifies in the person's appointment; and
- b. may, from time to time, be reappointed; and
- c. unless he or she sooner vacates or no longer holds or is removed from the office under section 20G, continues in it until his or her successor comes into it, even though the term for which he or she was appointed has expired.

### 20G. Vacation of office

The office holder—

- a. may resign from the office by delivering to the Minister a notice in writing to that effect and stating when the resignation takes effect:
- b. ceases to hold office if he or she dies:

- c. ceases to hold office if he or she is, under the Insolvency Act 2006, adjudged bankrupt:
- d. may, at any time, be removed from the office by the Governor-General for incapacity affecting performance of duty, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General.

## Subpart 12: Administrative provisions relating to Human Rights Commission and Office of Human Rights Proceedings

### 20H. Administrative provisions set out in Schedules 1 and 2

1. Schedule 1 applies in respect of the Commission.
2. Schedule 2 applies in respect of the Office.

## Part 1A: Discrimination by Government, related persons and bodies, or persons or bodies acting with legal authority

### 20I. Purpose of this Part

The purpose of this Part is to provide that, in general, an act or omission that is inconsistent with the right to freedom from discrimination affirmed by section 19 of the New Zealand Bill of Rights Act 1990 is in breach of this Part if the act or omission is that of a person or body referred to in section 3 of the New Zealand Bill of Rights Act 1990.

### 20J. Acts or omissions in relation to which this Part applies

1. This Part applies only in relation to an act or omission of a person or body referred to in section 3 of the New Zealand Bill of Rights Act 1990, namely—
  - a. the legislative, executive, or judicial branch of the Government of New Zealand; or
  - b. a person or body in the performance of any public function, power, or duty conferred or imposed on that person or body by or pursuant to law.
2. Despite subsection (1), this Part does not apply in relation to an act or omission that is unlawful under any of sections 22, 23, 61 to 63, and 66.
3. If this Part applies in relation to an act or omission, Part 2 does not apply to that act or omission.
4. Nothing in this Part affects the New Zealand Bill of Rights Act 1990.

### 20K. Purposes for which section 20L applies

Section 20L applies only for the purposes of—



- a. any inquiry undertaken by the Commission under section 5(2)(h):
- b. the assessment, consideration, mediation, or determination of a complaint under Part 3:
- c. any determination made by the Director under Part 3 concerning the provision of representation in proceedings before the Human Rights Review Tribunal:
- d. any determination made in proceedings before the Human Rights Review Tribunal or in any proceedings in any court on an appeal from a decision of that Tribunal:
- e. any determination made by any court or tribunal in proceedings brought under this Act by the Commission:
- f. any other process or proceedings commenced or conducted under Part 3:
- g. any related matter.

## 20L. Acts or omissions in breach of this Part

1. An act or omission in relation to which this Part applies (including an enactment) is in breach of this Part if it is inconsistent with section 19 of the New Zealand Bill of Rights Act 1990.
2. For the purposes of subsection (1), an act or omission is inconsistent with section 19 of the New Zealand Bill of Rights Act 1990 if the act or omission—
  - a. limits the right to freedom from discrimination affirmed by that section; and
  - b. is not, under section 5 of the New Zealand Bill of Rights Act 1990, a justified limitation on that right.
3. To avoid doubt, subsections (1) and (2) apply in relation to an act or omission even if it is authorised or required by an enactment.

## Part 2: Unlawful discrimination

### Subpart 1: Application of Part to persons and bodies referred to in section 3 of New Zealand Bill of Rights Act 1990

#### 21A. Application of this Part limited if section 3 of New Zealand Bill of Rights Act 1990 applies

1. The only provisions of this Part that apply to an act or omission of a person or body described in subsection (2) are—
  - a. sections 21 to 35 (which relate to discrimination in employment matters), 61 to 64 (which relate to racial disharmony, and social and racial harassment) and 66 (which relates to victimisation); and
  - b. sections 65 and 67 to 74, but only to the extent that those sections relate to conduct that is unlawful under any of the provisions referred to in paragraph (a).
2. The persons and bodies referred to in subsection (1) are the ones referred to in section 3 of the New Zealand Bill of Rights Act 1990, namely—
  - a. the legislative, executive, and judicial branches of the Government of New Zealand; and
  - b. every person or body in the performance of any public function, power, or duty conferred or imposed on that person or body by or pursuant to law.

### Subpart 2: Acts or omissions authorised or required by law

#### 21B. Relationship between this Part and other law

1. To avoid doubt, an act or omission of any person or body is not unlawful under this Part if that act or omission is authorised or required by an enactment or otherwise by law.
2. Nothing in this Part affects the New Zealand Bill of Rights Act 1990.

### Subpart 3: Prohibited grounds of discrimination

#### 21. Prohibited grounds of discrimination

1. For the purposes of this Act, the prohibited grounds of discrimination are—
  - a. sex, which includes pregnancy and childbirth:
  - b. marital status, which means being—
    - i. single; or

• Equality regardless of gender

- ii. married, in a civil union, or in a de facto relationship; or
- iii. the surviving spouse of a marriage or the surviving partner of a civil union or de facto relationship; or
- iv. separated from a spouse or civil union partner; or
- v. a party to a marriage or civil union that is now dissolved, or to a de facto relationship that is now ended:

• Equality regardless of religion

c. religious belief:

• Equality regardless of creed or belief  
• Equality regardless of religion

d. ethical belief, which means the lack of a religious belief, whether in respect of a particular religion or religions or all religions:

• Equality regardless of skin color

e. colour:

• Equality regardless of race

f. race:

• Equality regardless of nationality  
• Equality regardless of origin

g. ethnic or national origins, which includes nationality or citizenship:

• Equality for persons with disabilities

h. disability, which means—

i. physical disability or impairment:

ii. physical illness:

iii. psychiatric illness:

iv. intellectual or psychological disability or impairment:

v. any other loss or abnormality of psychological, physiological, or anatomical structure or function:

vi. reliance on a guide dog, wheelchair, or other remedial means:

vii. the presence in the body of organisms capable of causing illness:

• Equality regardless of age

i. age, which means,—

- i. for the purposes of sections 22 to 41 and section 70 and in relation to any different treatment based on age that occurs in the period beginning with 1 February 1994 and ending with the close of 31 January 1999, any age commencing with the age of 16 years and ending with the date on which persons of the age of the person whose age is in issue qualify for national superannuation under section 7 of the New Zealand Superannuation and Retirement Income Act 2001 (irrespective of whether or not the particular person qualifies for national superannuation at that age or any other age):
- ii. for the purposes of sections 22 to 41 and section 70 and in relation to any different treatment based on age that occurs on or after 1 February 1999, any age commencing with the age of 16 years:
- iii. for the purposes of any other provision of Part 2, any age commencing with the age of 16 years:

• Equality regardless of political party

- j. political opinion, which includes the lack of a particular political opinion or any political opinion:

• Equality regardless of financial status

- k. employment status, which means—

- i. being unemployed; or
- ii. being a recipient of a benefit under the Social Security Act 1964 or an entitlement under the Accident Compensation Act 2001:

• Equality regardless of social status

- l. family status, which means—

- i. having the responsibility for part-time care or full-time care of children or other dependants; or
- ii. having no responsibility for the care of children or other dependants; or
- iii. being married to, or being in a civil union or de facto relationship with, a particular person; or
- iv. being a relative of a particular person:

• Equality regardless of sexual orientation

- m. sexual orientation, which means a heterosexual, homosexual, lesbian, or bisexual orientation.

- 2. Each of the grounds specified in subsection (1) is a prohibited ground of discrimination, for the purposes of this Act, if—

- a. it pertains to a person or to a relative or associate of a person; and
- b. it either—

- i. currently exists or has in the past existed; or
- ii. is suspected or assumed or believed to exist or to have existed by the person alleged to have discriminated.

## Subpart 4: Discrimination in employment matters

### 22. Employment

1. Where an applicant for employment or an employee is qualified for work of any description, it shall be unlawful for an employer, or any person acting or purporting to act on behalf of an employer,—
  - a. to refuse or omit to employ the applicant on work of that description which is available; or
  - b. to offer or afford the applicant or the employee less favourable terms of employment, conditions of work, superannuation or other fringe benefits, and opportunities for training, promotion, and transfer than are made available to applicants or employees of the same or substantially similar capabilities employed in the same or substantially similar circumstances on work of that description; or
  - c. to terminate the employment of the employee, or subject the employee to any detriment, in circumstances in which the employment of other employees employed on work of that description would not be terminated, or in which other employees employed on work of that description would not be subjected to such detriment; or
  - d. to retire the employee, or to require or cause the employee to retire or resign,— by reason of any of the prohibited grounds of discrimination.
2. It shall be unlawful for any person concerned with procuring employment for other persons or procuring employees for any employer to treat any person seeking employment differently from other persons in the same or substantially similar circumstances by reason of any of the prohibited grounds of discrimination.

### 23. Particulars of applicants for employment

It shall be unlawful for any person to use or circulate any form of application for employment or to make any inquiry of or about any applicant for employment which indicates, or could reasonably be understood as indicating, an intention to commit a breach of section 22.

## Subpart 5: Exceptions in relation to employment matters

### 24. Exception in relation to crews of ships and aircraft

Nothing in section 22 shall apply to the employment or an application for employment of a person on a ship or aircraft, not being a New Zealand ship or aircraft, if the person employed or seeking employment was engaged or applied for it

outside New Zealand.

## 25. Exception in relation to work involving national security

1. Nothing in section 22 shall apply to any restrictions on the employment of any person on work involving the national security of New Zealand—
  - a. by reference to his or her—
    - i. religious or ethical belief; or
    - ii. political opinion; or
    - iii. disability, within the meaning of section 21(1)(h)(iii) or section 21(1)(h)(iv); or
    - iv. family status, within the meaning of section 21(1)(l)(iii) or section 21(1)(l)(iv); or
    - v. national origin; or
  - b. by reference to the national origin of any relative of that person.
2. It shall not be a breach of section 22 to decline to employ a person under the age of 20 years on work involving the national security of New Zealand where that work requires a secret or top secret security clearance.

## 26. Exception in relation to work performed outside New Zealand

Nothing in section 22 shall prevent different treatment based on sex, religious or ethical belief, or age if the duties of the position in respect of which that treatment is accorded—

- a. are to be performed wholly or mainly outside New Zealand; and
- b. are such that, because of the laws, customs, or practices of the country in which those duties are to be performed, they are ordinarily carried out only by a person who is of a particular sex or religious or ethical belief, or who is in a particular age group.

## 27. Exceptions in relation to authenticity and privacy

1. Nothing in section 22 shall prevent different treatment based on sex or age where, for reasons of authenticity, being of a particular sex or age is a genuine occupational qualification for the position or employment.
2. Nothing in section 22 shall prevent different treatment based on sex, religious or ethical belief, disability, age, political opinion, or sexual orientation where the position is one of domestic employment in a private household.

3. Nothing in section 22 shall prevent different treatment based on sex where—
  - a. the position needs to be held by one sex to preserve reasonable standards of privacy; or
  - b. the nature or location of the employment makes it impracticable for the employee to live elsewhere than in premises provided by the employer, and—
    - i. the only premises available (being premises in which more than 1 employee is required to sleep) are not equipped with separate sleeping accommodation for each sex; and
    - ii. it is not reasonable to expect the employer to equip those premises with separate accommodation, or to provide separate premises, for each sex.
4. Nothing in section 22 shall prevent different treatment based on sex, race, ethnic or national origins, or sexual orientation where the position is that of a counsellor on highly personal matters such as sexual matters or the prevention of violence.
5. Where, as a term or condition of employment, a position ordinarily obliges or qualifies the holder of that position to live in premises provided by the employer, the employer does not commit a breach of section 22 by omitting to apply that term or condition in respect of employees of a particular sex or marital status if in all the circumstances it is not reasonably practicable for the employer to do so.

## 28. Exceptions for purposes of religion

1. Nothing in section 22 shall prevent different treatment based on sex where the position is for the purposes of an organised religion and is limited to one sex so as to comply with the doctrines or rules or established customs of the religion.
2. Nothing in section 22 shall prevent different treatment based on religious or ethical belief where—
  - a. that treatment is accorded under section 65 of the Private Schools Conditional Integration Act 1975; or
  - b. the sole or principal duties of the position (not being a position to which section 65 of the Private Schools Conditional Integration Act 1975 applies)—
    - i. are, or are substantially the same as, those of a clergyman, priest, pastor, official, or teacher among adherents of that belief or otherwise involve the propagation of that belief; or
    - ii. are those of a teacher in a private school; or
    - iii. consist of acting as a social worker on behalf of an organisation whose members comprise solely or principally adherents of that belief.

3. Where a religious or ethical belief requires its adherents to follow a particular practice, an employer must accommodate the practice so long as any adjustment of the employer's activities required to accommodate the practice does not unreasonably disrupt the employer's activities.

## 29. Further exceptions in relation to disability

1. Nothing in section 22 shall prevent different treatment based on disability where—
  - a. the position is such that the person could perform the duties of the position satisfactorily only with the aid of special services or facilities and it is not reasonable to expect the employer to provide those services or facilities; or
  - b. the environment in which the duties of the position are to be performed or the nature of those duties, or of some of them, is such that the person could perform those duties only with a risk of harm to that person or to others, including the risk of infecting others with an illness, and it is not reasonable to take that risk.
2. Nothing in subsection (1)(b) shall apply if the employer could, without unreasonable disruption, take reasonable measures to reduce the risk to a normal level.
3. Nothing in section 22 shall apply to terms of employment or conditions of work that are set or varied after taking into account—
  - a. any special limitations that the disability of a person imposes on his or her capacity to carry out the work; and
  - b. any special services or facilities that are provided to enable or facilitate the carrying out of the work.

## 30. Further exceptions in relation to age

1. Nothing in section 22(1)(a) or section 22(1)(d) shall apply in relation to any position or employment where being of a particular age or in a particular age group is a genuine occupational qualification for that position or employment, whether for reasons of safety or for any other reason.
2. Nothing in section 22(1)(b) shall prevent payment of a person at a lower rate than another person employed in the same or substantially similar circumstances where the lower rate is paid on the basis that the first-mentioned person has not attained a particular age, not exceeding 20 years of age.
3. Nothing in section 22(1)(a) shall prevent preferential treatment based on age accorded to persons who are to be paid in accordance with subsection (2).

## 30A. Exception in relation to employment-related retirement benefits

1. Nothing in section 22(1)(b) prevents different treatment based on age with respect to, or in any way related to, the payment of a benefit to an employee on retirement if—
  - a. the employee's entitlement to that benefit (the retirement benefit), or the calculation of that retirement benefit, is determined in whole or in part (and



whether directly or indirectly) by the employee's age; and

- b. the retirement benefit is a term of a written employment contract that was in force on or before 1 February 1999; and
        - c. the employee was, on or before 1 February 1999, a party to that employment contract.
2. If a retirement benefit was a term of an employee's written employment contract on 1 February 1999, subsection (1) continues to apply in relation to the payment of that retirement benefit even if either or both of the following things occur after that date:
  - a. the employee and the employer enter into a new written employment contract or employment agreement under which the employee remains entitled to that retirement benefit:
  - b. a different person becomes the employee's employer as a result of a merger, takeover, restructuring, or reorganisation, but the employee remains entitled to that retirement benefit by virtue of any enactment or agreement.
3. This section does not limit section 149.

### **31. Exception in relation to employment of a political nature**

Nothing in section 22 shall prevent different treatment based on political opinion where the position is one as—

- a. a political adviser or secretary to a member of Parliament; or
- b. a political adviser to a member of a local authority; or
- c. a political adviser to a candidate seeking election to the House of Representatives or to a local authority within the meaning of the Local Electoral Act 2001; or
- d. a member of the staff of a political party.

### **32. Exception in relation to family status**

Nothing in section 22 shall prevent restrictions imposed by an employer—

- a. on the employment of any person who is married to, or in a civil union or in a de facto relationship with, or who is a relative of, another employee if—
  - i. there would be a reporting relationship between them; or
  - ii. there is a risk of collusion between them to the detriment of the employer; or

- b. on the employment of any person who is married to, or in a civil union or in a de facto relationship with, or who is a relative of, an employee of another employer if there is a risk of collusion between them to the detriment of that person's employer.

### 33. Armed forces

[Repealed]

### 34. Regular forces

1. Nothing in section 22(1)(c) or section 22(1)(d) shall prevent the Chief of Defence Force from instituting, under section 57A of the Defence Act 1990, the discharge or release of a member of the regular forces.
2. [Repealed]

### 35. General qualification on exceptions

No employer shall be entitled, by virtue of any of the exceptions in this Part, to accord to any person in respect of any position different treatment based on a prohibited ground of discrimination even though some of the duties of that position would fall within any of those exceptions if, with some adjustment of the activities of the employer (not being an adjustment involving unreasonable disruption of the activities of the employer), some other employee could carry out those particular duties.

## Subpart 6: Discrimination in partnerships

### 36. Partnerships

1. It shall be unlawful for a firm, or for persons jointly promoting the formation of a firm,—
  - a. to refuse or to omit to offer a person admission to the firm as a partner; or
  - b. to offer or afford a person less favourable terms and conditions as a partner than are made available to other members or prospective members of the firm,— by reason of any of the prohibited grounds of discrimination.
2. It shall be unlawful for a firm—
  - a. to deny any partner increased status in the firm or an increased share in the capital or profits of the firm; or
  - b. to expel any partner from the firm or to subject any partner to any other detriment,—  
by reason of any of the prohibited grounds of discrimination.

- 2A. It is unlawful for a firm, or for persons jointly promoting the formation of a firm, to fail to provide special services or facilities that could reasonably be provided by the firm, or those persons, in the circumstances and that, if provided, would enable a person with a disability—
- a. to be accepted as a partner and remain in partnership; or
  - b. to be offered the same terms and conditions as a partner (including terms and conditions as to status in the firm or entitlements to shares in capital or profits) that are made available to other members or prospective members of the firm.
3. Nothing in this section prevents the fixing of reasonable terms and conditions in relation to a partner or prospective partner, who by reason of disability or age—
- a. has a restricted capacity to participate or continue to participate in the partnership, that cannot be restored to normal by the provision of any special services or facilities required to be provided under subsection (2A); or
  - b. requires special conditions if he or she is to participate or continue to participate in the partnership, even if any special services or facilities required to be provided under subsection (2A) are provided.
4. Nothing in this section applies in respect of a person with a disability, if the disability of the person is such that—
- a. there would be a risk of harm to that person or others, including the risk of infecting others with an illness if that person were to accept or remain in partnership or be given the same terms and conditions as a partner (including terms and conditions as to status in the firm or entitlement to shares in capital or profits) that were made available to other members or prospective members of the firm; and
  - b. it is not reasonable to take that risk.
5. Subsection (4) does not apply if the firm, or persons jointly promoting the formation of a firm, could, without unreasonable disruption, take reasonable measures to reduce the risk to a normal level.

## **Subpart 7: Discrimination by industrial and professional associations, qualifying bodies, and vocational training bodies**

### **37. Organisations of employees or employers and professional and trade associations**

1. It shall be unlawful for an organisation to which this section applies, or for any person acting or purporting to act on behalf of any such organisation,—
  - a. to refuse or omit to accept any person for membership; or

- b. to offer any person less favourable terms of membership and less favourable access to any benefits, facilities, or services, including the right to stand for election and hold office in the organisation, than would otherwise be made available; or
  - c. to deprive a person of membership, or suspend him or her, in circumstances in which other persons would not be deprived of membership or suspended,— by reason of any of the prohibited grounds of discrimination.
- 1A.** It is unlawful for an organisation to which this section applies, or for any person acting or purporting to act on behalf of any such organisation, to fail to provide special services or facilities that could reasonably be provided by the organisation in the circumstances and that, if provided, would enable a person with a disability to—
- a. be accepted and remain in membership; or
  - b. be given equal access to benefits, facilities, or services provided by the organisation (including the right to stand for election and hold office).
- 2.** Nothing in this section shall prevent an organisation to which this section applies from charging different fees to persons in different age groups.
- 2A.** Nothing in this section applies in respect of a person with a disability, if the disability of the person is such that—
- a. there would be a risk of harm to that person or others, including the risk of infecting others with an illness if that person were to accept or remain in membership or be given equal access to benefits, facilities, or services provided by the organisation (including the right to stand for election and hold office); and
  - b. it is not reasonable to take that risk.
- 2B.** Subsection (2A) does not apply if the organisation could, without unreasonable disruption, take reasonable measures to reduce the risk to a normal level.
- 3.** This section applies to an organisation of employees, an organisation of employers, or any other organisation that exists for the purposes of members who carry on a particular profession, trade, or calling.

### **38. Qualifying bodies**

- 1.** It shall be unlawful for an authority or body empowered to confer an approval, authorisation, or qualification that is needed for, or facilitates, engagement in a profession, trade, or calling, or any person acting or purporting to act on behalf of any such authority or body,—
- a. to refuse or omit to confer that approval, authorisation, or qualification on a person; or
  - b. to confer that approval, authorisation, or qualification on less favourable terms and conditions than would otherwise be made available; or

- c. to withdraw that approval, authorisation, or qualification or vary the terms on which it is held, in circumstances in which it would not otherwise be withdrawn or varied,—  
by reason of any of the prohibited grounds of discrimination.
2. For the purposes of this section confer includes renew or extend.

### **39. Exceptions in relation to qualifying bodies**

1. Nothing in section 38 shall apply where the authorisation or qualification is needed for, or facilitates engagement in, a profession or calling for the purposes of an organised religion and is limited to one sex or to persons of that religious belief so as to comply with the doctrines or rules or established customs of that religion.
2. Nothing in section 38 shall prevent different treatment based on disability where—
  - a. the person seeking or holding the approval, authorisation, or qualification is not, by reason of that person's disability, able to perform the duties required of a person who holds the approval, authorisation, or qualification; or
  - b. the environment in which the duties required of a person who holds the approval, authorisation, or qualification are to be performed or the nature of those duties, or of some of them, are such that, if that approval, authorisation, or qualification were granted to or retained by the person with a disability, there would be a risk of harm to that person or others, including the risk of infecting others with an illness, and it is not reasonable to take that risk; or
  - c. conditions placed on the granting of the approval, authorisation, or qualification to any person or on the retention of the approval, authorisation, or qualification by any person are reasonably related to the disability of that person.
- 2A. For the purposes of applying subsection (2)(a) and (b), an authority or body referred to in section 38 must,—
  - a. in the case of subsection (2)(a), take account of whether a disabled person could perform the required duties if he or she was provided with special services or facilities that could reasonably be provided by an employer or by any other relevant person:
  - b. in the case of subsection (2)(b), take account of whether the risk of harm referred to in that paragraph could be reduced to a normal level, without unreasonable disruption to an employer or to any other relevant person.
3. Nothing in section 38 shall apply where—
  - a. the authority or body imposes a reasonable and appropriate minimum age under which the approval, authorisation, or qualification will not be conferred; or

- b. the authority or body imposes reasonable and appropriate terms and conditions on the grant or retention of the approval, authorisation, or qualification by reason of the age of the person seeking or holding it.

## 40. Vocational training bodies

It shall be unlawful for any organisation or association which has as its function or one of its principal functions the provision of training, or facilities or opportunities for training (including facilities or opportunities by way of financial grants), that would help to fit a person for any employment, or for any person acting or purporting to act on behalf of any such organisation or association,—

- a. to refuse or omit to provide training, or facilities or opportunities for training; or
- b. to provide training, or facilities or opportunities for training, on less favourable terms and conditions than would otherwise be made available; or
- c. to terminate training, or facilities or opportunities for training,—

by reason of any of the prohibited grounds of discrimination.

## 41. Exceptions in relation to vocational training bodies

1. Nothing in section 40 shall prevent an organisation or association from affording persons preferential access to facilities for training that would help to fit them for employment where it appears to that organisation or association that those persons are in special need of training by reason of the period for which they have not been engaged in regular full-time employment.
2. Subject to subsection (3), nothing in section 40 shall apply where a person's disability is such that there would be a risk of harm to that person or to others, including the risk of infecting others with an illness, if that person were to be provided with training, or facilities or opportunities for training, and it is not reasonable to take that risk.
3. Nothing in subsection (2) shall apply if the organisation or association providing training, or facilities or opportunities for training, could, without unreasonable disruption, take reasonable measures to reduce the risk to a normal level.
4. Nothing in section 40 shall prevent an organisation or association from providing training, or facilities or opportunities for training (including facilities or opportunities by way of financial grants), only for persons above a particular age or in a particular age group.
5. Nothing in section 40 shall prevent the making of financial grants by an organisation or association only to persons above a particular age or in a particular age group.
6. Nothing in section 40 shall prevent an organisation or association from charging different fees to persons in different age groups.
7. Nothing in section 40 makes it unlawful to fail to provide special services or facilities designed for a specified purpose if those special services or facilities cannot reasonably be provided in the circumstances.
8. In subsection (7), a specified purpose means 1 or more of the following purposes:
  - a. to enable a person with a disability to undergo and remain in training; or

- b. to provide a person with a disability with facilities or opportunities for training; or
- c. to provide a person with a disability with facilities or opportunities for training on no less favourable terms and conditions than would otherwise be made available.

## **Subpart 8: Discrimination in access to places, vehicles, and facilities**

### **42. Access by the public to places, vehicles, and facilities**

1. It shall be unlawful for any person—
  - a. to refuse to allow any other person access to or use of any place or vehicle which members of the public are entitled or allowed to enter or use; or
  - b. to refuse any other person the use of any facilities in that place or vehicle which are available to members of the public; or
  - c. to require any other person to leave or cease to use that place or vehicle or those facilities,— by reason of any of the prohibited grounds of discrimination.
2. In this section the term vehicle includes a vessel, an aircraft, or a hovercraft.

### **43. Exceptions in relation to access by the public to places, vehicles, and facilities**

1. Section 42 shall not prevent the maintenance of separate facilities for each sex on the ground of public decency or public safety.
2. Nothing in section 42 requires any person to provide for any person, by reason of the disability of that person, special services or special facilities to enable any such person to gain access to or use any place or vehicle when it would not be reasonable to require the provision of such special services or facilities.
3. Nothing in subsection (2) limits section 118 of the Building Act 2004.
4. Subject to subsection (5), nothing in section 42 shall apply where the disability of a person is such that there would be a risk of harm to that person or to others, including the risk of infecting others with an illness, if that person were to have access to or use of any place or vehicle and it is not reasonable to take that risk.
5. Subsection (4) shall not apply if the person in charge of the place, vehicle, or facility could, without unreasonable disruption, take reasonable measures to reduce the risk to a normal level.

## Subpart 9: Discrimination in provision of goods and services

### 44. Provision of goods and services

1. It shall be unlawful for any person who supplies goods, facilities, or services to the public or to any section of the public—
  - a. to refuse or fail on demand to provide any other person with those goods, facilities, or services; or
  - b. to treat any other person less favourably in connection with the provision of those goods, facilities, or services than would otherwise be the case,— by reason of any of the prohibited grounds of discrimination.
2. For the purposes of subsection (1), but without limiting the meaning of the terms goods, facilities, and services in that subsection, the term facilities includes facilities by way of banking or insurance or for grants, loans, credit, or finance.
3. Where any club, or any branch or affiliate of any club, that grants privileges to members of any other club, branch, or affiliate refuses or fails on demand to provide those privileges to any of those members, or treats any of those members less favourably in connection with the provision of those privileges than would otherwise be the case, by reason of any of the prohibited grounds of discrimination, that club, branch, or affiliate shall be deemed to have committed a breach of this section.
4. Subject to subsection (3), nothing in this section shall apply to access to membership of a club or to the provision of services or facilities to members of a club.

### 45. Exception in relation to courses and counselling

Nothing in section 44 shall prevent the holding of courses, or the provision of counselling, restricted to persons of a particular sex, race, ethnic or national origin, or sexual orientation where highly personal matters, such as sexual matters or the prevention of violence, are involved.

### 46. Exception in relation to public decency or safety

Section 44 shall not apply to the maintenance or provision of separate facilities or services for each sex on the ground of public decency or public safety.

### 47. Exception in relation to skill

Where the nature of a skill varies according to whether it is exercised in relation to men or women, a person does not commit a breach of section 44 by exercising the skill in relation to one sex only, in accordance with that person's normal practice.



## 48. Exception in relation to insurance

1. It shall not be a breach of section 44 to offer or provide annuities, life insurance policies, accident insurance policies, or other policies of insurance, whether for individual persons or groups of persons, on different terms or conditions for each sex or for persons with a disability or for persons of different ages if the different treatment—
  - a. is based on—
    - i. actuarial or statistical data, upon which it is reasonable to rely, relating to life-expectancy, accidents, or sickness; or
    - ii. where no such data is available in respect of persons with a disability, reputable medical or actuarial advice or opinion, upon which it is reasonable to rely, whether or not contained in an underwriting manual; and
  - b. is reasonable having regard to the applicability of the data or advice or opinion, and of any other relevant factors, to the particular circumstances.
2. In assessing, for the purposes of this section, whether it is reasonable to rely on any data or advice or opinion, and whether different treatment is reasonable, the Commission or the Complaints Division may—
  - a. require justification to be provided for reliance on the data or advice or opinion and for the different treatment; and
  - b. request the views of an actuary on the justification for the reliance and for the different treatment.

## 49. Exception in relation to sport

1. Subject to subsection (2), nothing in section 44 shall prevent the exclusion of persons of one sex from participation in any competitive sporting activity in which the strength, stamina, or physique of competitors is relevant.
2. Subsection (1) does not apply in relation to the exclusion of persons from participation in—
  - a. the coaching of persons engaged in any sporting activity; or
  - b. the umpiring or refereeing of any sporting activity; or
  - c. the administration of any sporting activity; or
  - d. sporting activities by persons who have not attained the age of 12 years.
3. It shall not be a breach of section 44 to exclude any person from any competitive sporting event or activity if that person's disability is such that there would be a risk of harm to that person or to others, including the risk of infecting others with an illness, if that person were to take part in that competitive sporting event or activity and it is not reasonable to take that risk.

4. It shall not be a breach of section 44 to conduct competitive sporting events or activities in which only persons with a particular disability or age qualification may take part.

## **50. Exception in relation to travel services**

It shall not be a breach of section 44 to provide group travel services which are expressed to be solely for the benefit of persons in a particular age group.

## **51. Exception in relation to reduced charges**

It shall not be a breach of section 44 to provide goods, services, or facilities at a reduced fee, charge, or rate on the ground of age, disability, or employment status, whether or not there are conditions applicable to the reduced fee, charge, or rate.

## **52. Exception in relation to disability**

It shall not be a breach of section 44 for a person who supplies facilities or services—

- a. to refuse to provide those facilities or services to any person if—
  - i. that person's disability requires those facilities or services to be provided in a special manner; and
  - ii. the person who supplies the facilities or services cannot reasonably be expected to provide them in that special manner; or
- b. to provide those facilities or services to any person on terms that are more onerous than those on which they are made available to other persons, if—
  - i. that person's disability requires those facilities or services to be provided in a special manner; and
  - ii. the person who supplies the facilities or services cannot reasonably be expected to provide them without requiring more onerous terms.

## **Subpart 10: Discrimination in provision of land, housing, and other accommodation**

### **53. Land, housing, and other accommodation**

1. It shall be unlawful for any person, on his or her own behalf or on behalf or purported behalf of any principal,—
  - a. to refuse or fail to dispose of any estate or interest in land or any residential or business accommodation to any other person; or
  - b. to dispose of such an estate or interest or such accommodation to any person on less favourable terms and conditions than are or would be offered to other persons; or

- c. to treat any person who is seeking to acquire or has acquired such an estate or interest or such accommodation differently from other persons in the same circumstances; or
  - d. to deny any person, directly or indirectly, the right to occupy any land or any residential or business accommodation; or
  - e. to terminate any estate or interest in land or the right of any person to occupy any land or any residential or business accommodation,— by reason of any of the prohibited grounds of discrimination.
2. It shall be unlawful for any person, on his or her own behalf or on behalf or purported behalf of any principal, to impose or seek to impose on any other person any term or condition which limits, by reference to any of the prohibited grounds of discrimination, the persons or class of persons who may be the licensees or invitees of the occupier of any land or any residential or business accommodation.

## **54. Exception in relation to shared residential accommodation**

Nothing in section 53 shall apply to residential accommodation which is to be shared with the person disposing of the accommodation, or on whose behalf it is disposed of.

## **55. Exception in relation to hostels, institutions, etc**

Nothing in section 53 shall apply to accommodation in any hostel or in any establishment (such as a hospital, club, school, university, religious institution, or retirement village), or in any part of a hostel or any such establishment, where accommodation is provided only for persons of the same sex, marital status, or religious or ethical belief, or for persons with a particular disability, or for persons in a particular age group.

## **56. Further exception in relation to disability**

1. Subject to subsection (2), nothing in section 53 shall apply, in relation to any accommodation, if the disability of the person is such that there would be a risk of harm to that person or others, including the risk of infecting others with an illness, if that person were to live in that accommodation and it is not reasonable to take that risk.
2. Subsection (1) shall not apply if the person in charge of the accommodation could, without unreasonable disruption, take reasonable measures to reduce the risk to a normal level.
3. Nothing in section 53 makes it unlawful to fail to provide special services or facilities designed to make accommodation suitable for occupation by a person with a disability, if those special services or facilities cannot reasonably be provided in the circumstances.

## Subpart 11: Discrimination in access to educational establishments

### 57. Educational establishments

1. It shall be unlawful for an educational establishment, or the authority responsible for the control of an educational establishment, or any person concerned in the management of an educational establishment or in teaching at an educational establishment,—
  - a. to refuse or fail to admit a person as a pupil or student; or
  - b. to admit a person as a pupil or a student on less favourable terms and conditions than would otherwise be made available; or
  - c. to deny or restrict access to any benefits or services provided by the establishment; or
  - d. to exclude a person as a pupil or a student or subject him or her to any other detriment,—  
by reason of any of the prohibited grounds of discrimination.
2. In this section educational establishment includes an establishment offering any form of training or instruction and an educational establishment under the control of an organisation or association referred to in section 40.

### 58. Exceptions in relation to establishments for particular groups

1. An educational establishment maintained wholly or principally for students of one sex, race, or religious belief, or for students with a particular disability, or for students in a particular age group, or the authority responsible for the control of any such establishment, does not commit a breach of section 57 by refusing to admit students of a different sex, race, or religious belief, or students not having that disability or not being in that age group.
2. Nothing in section 57 shall prevent an organisation or association from affording persons preferential access to facilities for training that would help to fit them for employment where it appears to that organisation or association that those persons are in special need of training by reason of the period for which they have not been engaged in regular full-time employment.
3. Nothing in section 57 shall prevent an organisation or association from providing training, or facilities or opportunities for training (including facilities or opportunities by way of financial grants), only for persons above a particular age or in a particular age group.
4. Nothing in section 57 shall prevent the making of financial grants by an organisation or association only to persons above a particular age or in a particular age group.
5. Nothing in section 57 shall prevent an organisation or association from charging different fees to persons in different age groups.

## 59. Exception in relation to courses and counselling

Nothing in section 57 shall prevent the holding or provision, at any educational establishment, of courses or counselling restricted to persons of a particular sex, race, ethnic or national origin, or sexual orientation, where highly personal matters, such as sexual matters or the prevention of violence, are involved.

## 60. Further exceptions in relation to disability

1. Nothing in section 57 applies to a person whose disability is such that that person requires special services or facilities that in the circumstances cannot reasonably be made available (being services or facilities that are required to enable the person to participate in the educational programme of an establishment referred to in that section or to enable the person to derive substantial benefits from that programme).
2. Subject to subsection (3), nothing in section 57 shall apply where the person's disability is such that there would be a risk of harm to that person or to others, including the risk of infecting others with an illness, if that person were to be admitted to an educational establishment and it is not reasonable to take that risk.
3. Nothing in subsection (2) shall apply if the person in charge of the educational establishment could, without unreasonable disruption, take reasonable measures to reduce the risk to a normal level.

## Subpart 11: Other forms of discrimination

### 61. Racial disharmony

1. It shall be unlawful for any person—
  - a. to publish or distribute written matter which is threatening, abusive, or insulting, or to broadcast by means of radio or television words which are threatening, abusive, or insulting; or
  - b. to use in any public place as defined in section 2(1) of the Summary Offences Act 1981, or within the hearing of persons in any such public place, or at any meeting to which the public are invited or have access, words which are threatening, abusive, or insulting; or
  - c. to use in any place words which are threatening, abusive, or insulting if the person using the words knew or ought to have known that the words were reasonably likely to be published in a newspaper, magazine, or periodical or broadcast by means of radio or television,—
 

being matter or words likely to excite hostility against or bring into contempt any group of persons in or who may be coming to New Zealand on the ground of the colour, race, or ethnic or national origins of that group of persons.
2. It shall not be a breach of subsection (1) to publish in a newspaper, magazine, or periodical or broadcast by means of radio or television a report relating to the publication or distribution of matter by any person or the broadcast or use of words by any person, if the report of the matter or words accurately conveys the intention of the person who published or distributed the matter or broadcast or used the words.

• Radio  
• Television

• Radio  
• Television

3. For the purposes of this section,— newspaper means a paper containing public news or observations on public news, or consisting wholly or mainly of advertisements, being a newspaper that is published periodically at intervals not exceeding 3 months publishes or distributes means publishes or distributes to the public at large or to any member or members of the public written matter includes any writing, sign, visible representation, or sound recording.

## 62. Sexual harassment

1. It shall be unlawful for any person (in the course of that person's involvement in any of the areas to which this subsection is applied by subsection (3)) to make a request of any other person for sexual intercourse, sexual contact, or other form of sexual activity which contains an implied or overt promise of preferential treatment or an implied or overt threat of detrimental treatment.
2. It shall be unlawful for any person (in the course of that person's involvement in any of the areas to which this subsection is applied by subsection (3)) by the use of language (whether written or spoken) of a sexual nature, or of visual material of a sexual nature, or by physical behaviour of a sexual nature, to subject any other person to behaviour that—
  - a. is unwelcome or offensive to that person (whether or not that is conveyed to the first-mentioned person); and
  - b. is either repeated, or of such a significant nature, that it has a detrimental effect on that person in respect of any of the areas to which this subsection is applied by subsection (3).
3. The areas to which subsections (1) and (2) apply are—
  - a. the making of an application for employment:
  - b. employment, which term includes unpaid work:
  - c. participation in, or the making of an application for participation in, a partnership:
  - d. membership, or the making of an application for membership, of an industrial union or professional or trade association:
  - e. access to any approval, authorisation, or qualification:
  - f. vocational training, or the making of an application for vocational training:
  - g. access to places, vehicles, and facilities:
  - h. access to goods and services:
  - i. access to land, housing, or other accommodation:
  - j. education.
4. Where a person complains of sexual harassment, no account shall be taken of any evidence of the person's sexual experience or reputation.

## 63. Racial harassment

1. It shall be unlawful for any person to use language (whether written or spoken), or visual material, or physical behaviour that—
  - a. expresses hostility against, or brings into contempt or ridicule, any other person on the ground of the colour, race, or ethnic or national origins of that person; and
  - b. is hurtful or offensive to that other person (whether or not that is conveyed to the first-mentioned person); and
  - c. is either repeated, or of such a significant nature, that it has a detrimental effect on that other person in respect of any of the areas to which this subsection is applied by subsection (2).
2. The areas to which subsection (1) applies are—
  - a. the making of an application for employment:
  - b. employment, which term includes unpaid work:
  - c. participation in, or the making of an application for participation in, a partnership:
  - d. membership, or the making of an application for membership, of an industrial union or professional or trade association:
  - e. access to any approval, authorisation, or qualification:
  - f. vocational training, or the making of an application for vocational training:
  - g. access to places, vehicles, and facilities:
  - h. access to goods and services:
  - i. access to land, housing, or other accommodation:
  - j. education.

## 64. Choice of procedures

[Repealed]

## 65. Indirect discrimination

Where any conduct, practice, requirement, or condition that is not apparently in contravention of any provision of this Part has the effect of treating a person or group of persons differently on 1 of the prohibited grounds of discrimination in a situation where such treatment would be unlawful under any provision of this Part other than this section, that conduct, practice, condition, or requirement shall be unlawful under that provision unless the person whose conduct or practice is in issue, or who imposes the condition or requirement, establishes good reason for it.

## 66. Victimisation

1. It shall be unlawful for any person to treat or to threaten to treat any other person less favourably than he or she would treat other persons in the same or substantially similar circumstances—
  - a. on the ground that that person, or any relative or associate of that person,—
    - i. intends to make use of his or her rights under this Act or to make a disclosure under the Protected Disclosures Act 2000; or
    - ii. has made use of his or her rights, or promoted the rights of some other person, under this Act, or has made a disclosure, or has encouraged disclosure by some other person, under the Protected Disclosures Act 2000; or
    - iii. has given information or evidence in relation to any complaint, investigation, or proceeding under this Act or arising out of a disclosure under the Protected Disclosures Act 2000; or
    - iv. has declined to do an act that would contravene this Act; or
    - v. has otherwise done anything under or by reference to this Act; or
  - b. on the ground that he or she knows that that person, or any relative or associate of that person, intends to do any of the things mentioned in subparagraphs (i) to (v) of paragraph (a) or that he or she suspects that that person, or any relative or associate of that person, has done, or intends to do, any of those things.
2. Subsection (1) shall not apply where a person is treated less favourably because he or she has knowingly made a false allegation or otherwise acted in bad faith.

## 67. Advertisements

1. It shall be unlawful for any person to publish or display, or to cause or allow to be published or displayed, any advertisement or notice which indicates, or could reasonably be understood as indicating, an intention to commit a breach of any of the provisions of this Part.
2. For the purposes of subsection (1), use of a job description with a gender connotation (such as postman or stewardess) shall be taken to indicate an intention to discriminate, unless the advertisement contains an indication to the contrary.



## 68. Liability of employer and principals

1. Subject to subsection (3), anything done or omitted by a person as the employee of another person shall, for the purposes of this Part, be treated as done or omitted by that other person as well as by the first-mentioned person, whether or not it was done with that other person's knowledge or approval.
2. Anything done or omitted by a person as the agent of another person shall, for the purposes of this Part, be treated as done or omitted by that other person as well as by the first-mentioned person, unless it is done or omitted without that other person's express or implied authority, precedent or subsequent.
3. In proceedings under this Act against any person in respect of an act alleged to have been done by an employee of that person, it shall be a defence for that person to prove that he or she took such steps as were reasonably practicable to prevent the employee from doing that act, or from doing as an employee of that person acts of that description.

## 69. Further provision in relation to sexual or racial harassment in employment

1. Where—
  - a. a request of the kind described in section 62(1) is made to an employee; or
  - b. an employee is subjected to behaviour of the kind described in section 62(2) or section 63—

by a person who is a customer or a client of the employee's employer, the employee may make a complaint in writing about that request or behaviour to the employer's employer.
2. The employer, on receiving a complaint under subsection (1),—
  - a. shall inquire into the facts; and
  - b. if satisfied that such a request was made or that such behaviour took place,— shall take whatever steps are practicable to prevent any repetition of such a request or of such behaviour.
3. Where any person, being a person in relation to whom an employee has made a complaint under subsection (1),—
  - a. either—
    - i. makes to that employee after the complaint a request of the kind described in section 62(1); or
    - ii. subjects that employee after the complaint to behaviour of the kind described in section 62(2) or section 63; and
  - b. the employer of that employee has not taken whatever steps are practicable to prevent the repetition of such a request or such behaviour,—

that employer shall be deemed to have committed a breach of this Act and the provisions of this Act shall apply accordingly.

## Subpart 12: Special provisions relating to superannuation schemes

### 70. Superannuation schemes

1. Subject to subsection (3), nothing in section 22 or section 44 relating to different treatment on the ground of age or disability shall apply to any condition in, or requirement of, a superannuation scheme in existence at the commencement of this Act in relation to a person who was a member of the scheme at the commencement of this Act or who becomes a member of the scheme before 1 January 1996.
2. It shall continue to be lawful for the provisions of a superannuation scheme to provide—
  - a. different benefits for members of each sex on the basis of the same contributions; or
  - b. the same benefits for members of each sex on the basis of different contributions,— if the different treatment—
  - c. is based on actuarial or statistical data, upon which it is reasonable to rely, relating to life-expectancy, accidents, or sickness; and
  - d. is reasonable having regard to the applicability of the data, and of any other relevant factors, to the particular circumstances.
3. It shall continue to be unlawful to require an applicant for membership of a superannuation scheme to have attained a minimum age.
4. Nothing in section 22 or section 44 shall prevent the provisions of a superannuation scheme from—
  - a. providing or requiring different contributions for members; or
  - b. providing benefits for members that differ in nature or amount,— by reason of the disability or age of those members, if the different treatment—
  - c. is based on—
    - i. actuarial or statistical data, upon which it is reasonable to rely, relating to life-expectancy, accidents, or sickness; or
    - ii. where no such data is available in respect of persons with a disability, reputable medical or actuarial advice or opinion, upon which it is reasonable to rely, whether or not contained in an underwriting manual; and
  - d. is reasonable having regard to the applicability of the data or advice or opinion, and of any other relevant factors, to the particular circumstances.

5. Nothing in section 22 or section 44 shall prevent the provisions of a superannuation scheme, or the trustees of the scheme, from—
  - a. requiring an applicant for membership of the scheme to be under a specified maximum age; or
  - b. permitting a member of the scheme to elect to make increased or reduced contributions to the scheme either temporarily or indefinitely; or
  - c. specifying an age of eligibility for each type of benefit provided for members of the scheme; or
  - d. subject to section 9C of the Superannuation Schemes Act 1989, requiring persons who become members of the scheme on or after 1 January 1995 to leave the scheme on reaching the age at which persons of that age ordinarily qualify for national superannuation under section 7 of the New Zealand Superannuation and Retirement Income Act 2001; or
  - e. providing benefits on the death or disability of members of the scheme that decrease in value as the age of members increases; or
  - f. providing benefits for members of the scheme that differ in nature and amount according to the member's period of membership (including any period deemed by the trustees of the scheme to be membership) of the scheme and of any scheme replaced by that scheme, and, in the case of a superannuation scheme provided by an employer, of any scheme to which the employer has paid contributions on behalf of the employee.
6. In assessing for the purposes of this section whether it is reasonable to rely on any data or advice or opinion and whether different treatment is reasonable, the Commission or the Complaints Division may—
  - a. require justification to be provided for reliance on the data or advice or opinion and for the different treatment; and
  - b. request the views of an actuary on the justification for the reliance and for the different treatment.

## 71. Reports on superannuation schemes

The Commission shall from time to time, after consultation with the FMA, report to the Minister on whether discrimination on the prohibited grounds has been eliminated from superannuation schemes.

## 72. Power to vary trust deeds

1. Notwithstanding any Act or rule of law or the provisions of the instrument or conditions governing any superannuation scheme, the trustees of the scheme may make such amendments to that instrument or those conditions as are necessary or desirable to give effect to the provisions of sections 22, 44, and 70.
2. Every amendment to the provisions of an instrument or conditions governing any superannuation scheme made under subsection (1) on or after the commencement of the Human Rights Amendment Act 1994 must be made by deed.

## Subpart 13: Other matters

### 73. Measures to ensure equality

1. Anything done or omitted which would otherwise constitute a breach of any of the provisions of this Part shall not constitute such a breach if—
  - a. it is done or omitted in good faith for the purpose of assisting or advancing persons or groups of persons, being in each case persons against whom discrimination is unlawful by virtue of this Part; and
  - b. those persons or groups need or may reasonably be supposed to need assistance or advancement in order to achieve an equal place with other members of the community.
2. Nothing in this Part—
  - a. limits the power of the Crown to establish or arrange work or training schemes or employment assistance measures, eligibility for which may, in whole or in part, be determined by a person's age, employment status, or family status; or
  - b. makes it unlawful for any person to recruit or refer any other person who is of a particular age or of a particular employment status or of a particular family status for any work or training scheme or employment assistance measure that is established or arranged by the Crown, the eligibility for which may, in whole or in part, be determined by a person's age, employment status, or family status.

### 74. Measures relating to pregnancy, childbirth, or family responsibilities

For the avoidance of doubt it is hereby declared that preferential treatment granted by reason of—

- a. a woman's pregnancy or childbirth; or
- b. a person's responsibility for part-time care or full-time care of children or other dependants— shall not constitute a breach of this Part.

## Part 3: Resolution of disputes about compliance with Part 1A and Part 2

### 75. Object of this Part

The object of this Part is to establish procedures that—

- a. facilitate the provision of information to members of the public who have questions about discrimination; and

- b. recognise that disputes about compliance with Part 1A or Part 2 are more likely to be successfully resolved if those disputes can be resolved promptly by the parties themselves; and
- c. recognise that, if disputes about compliance with Part 1A or Part 2 are to be resolved promptly, expert problem-solving support, information, and assistance needs to be available to the parties to those disputes; and
- d. recognise that the procedures for dispute resolution under this Part need to be flexible; and
- e. recognise that judicial intervention at the lowest level needs to be that of a specialist decision-making body that is not inhibited by strict procedural requirements; and
- f. recognise that difficult issues of law may need to be determined by higher courts.

## 76. Functions of Commission under this Part

1. The primary functions of the Commission under this Part are—
  - a. to provide information to members of the public who have questions about discrimination; and
  - b. to facilitate the resolution of disputes about compliance with Part 1A or Part 2, by the parties concerned, in the most efficient, informal, and cost-effective manner possible.
2. The Commission has, in order to carry out its function under subsection (1)(b), the following functions:
  - a. to receive and assess a complaint alleging that there has been a breach of Part 1A or Part 2, or both:
  - b. to gather information in relation to a complaint of that kind (including one referred back to it by the Director under section 90(1)(b), or the Tribunal under section 92D) for the purposes of paragraphs (c) and (d):
  - c. to offer services designed to facilitate resolution of the complaint, including information, expert problem-solving support, mediation, and other assistance:
  - d. to take action or further action under this Part in relation to the complaint, if the complainant or aggrieved person wishes to proceed with it, unless section 80(2) or (3) applies:
  - e. to provide information gathered in relation to a complaint to the parties concerned.

• Human rights commission

• Constitutionality of legislation

• Human rights commission

## 77. Dispute resolution services

1. The Commission must provide dispute resolution services for the purposes of carrying out its functions under section 76.
2. Services provided under this section may include—
  - a. the provision of general information about discrimination and legal obligations in relation to discrimination:
  - b. the provision of information about what services are available for persons who have disputes about compliance with Part 1A or Part 2:
  - c. the provision of a venue for, and a mediator at, any dispute resolution meeting that—
    - i. is designed to enable each party to discuss and seek to resolve any complaint, without prejudice to his or her position; and
    - ii. is convened at the request, or with the agreement of, the parties or, if section 84(4) applies, by the Commission:
  - d. other services (of a type that can address a variety of circumstances) that assist persons to resolve, promptly and effectively, their disputes about compliance with Part 1A or Part 2.

• Human rights commission

## 78. Method of providing services

Services provided under section 77 may be provided in any manner, including—

- a. by a telephone, facsimile, internet, or email service (whether as a means of explaining where information can be found or as a means of actually providing the information or of otherwise seeking to resolve the problem); or
- b. by publishing pamphlets, brochures, booklets, or codes; or
- c. by specialists who—
  - i. respond to requests or themselves identify how, where, and when their services can best support the object of this Part; or
  - ii. provide their services in the manner, and at the time and place that is, most likely to resolve the problem or dispute in question; or
  - iii. provide their services in all of the ways described in this paragraph.

• Human rights commission

## 79. How complaints received to be treated

1. This section applies if the Commission receives, under section 76(2)(a), a complaint alleging that there has been a breach of Part 1A or Part 2 or both Parts.

2. If the complaint or part of it concerns an enactment, or an act or omission that is authorised or required by an enactment, the complaint or relevant part of it must be treated only as a complaint that the enactment is in breach of Part 1A.
3. Despite every other provision of this section, if the complaint or part of it concerns a judgment or other order of a court, or an act or omission of a court affecting the conduct of any proceedings, the Commission must take no further action in relation to the complaint or relevant part of it.
4. If the complaint or part of it concerns an act or omission by a person or body referred to in section 3 of the New Zealand Bill of Rights Act 1990, and neither subsection (2) nor subsection (3) applies, the complaint or relevant part of it—
  - a. must be treated only as a complaint that there is a breach of Part 1A, unless the act or omission complained of involves conduct that—
    - i. is unlawful under any of sections 22, 23, 61 to 63, and 66; or
    - ii. is unlawful under any of sections 65 and 67 to 74, but only to the extent that those sections relate to conduct that is unlawful under any provision referred to in subparagraph (i):
  - b. must be treated only as a complaint that there has been a breach of the relevant provision or provisions of Part 2 if the act or omission complained of involves conduct that is unlawful under any of sections 22, 23, 61 to 63, and 66.
5. If the complaint or relevant part of it concerns a breach of Part 2, and none of subsections (2) to (4) applies to the complaint or relevant part of it, the complaint or relevant part of it must be treated only as a complaint that there has been a breach of the relevant provision or provisions of Part 2.
6. Nothing in this section prevents the Commission from involving any person that it considers appropriate in information gathering and the resolution of disputes.

## 79A. Choice of procedures

1. If the circumstances giving rise to a complaint under Part 2 are such that an employee would also be entitled to pursue a personal grievance under the Employment Relations Act 2000, the employee may take one, but not both, of the following steps:
  - a. the employee may make in relation to those circumstances a complaint under this Act:
  - b. the employee may, if the grievance is not otherwise resolved, apply to the Employment Relations Authority for the resolution of the grievance under the Employment Relations Act 2000.
2. To avoid doubt, a complaint referred to in subsection (1) includes, but is not limited to, a complaint about sexual harassment or racial harassment.
3. For the purposes of subsection (1)(a), an employee makes a complaint when proceedings about that complaint are commenced by the complainant or the Commission.
4. If an employee makes a complaint under subsection (1)(a), the employee may not exercise or continue to exercise any rights relating to the subject matter of the complaint that the employee may have under the Employment Relations Act 2000.

5. If an employee applies to the Employment Relations Authority for a resolution of the grievance under subsection (1)(b), the employee may not exercise or continue to exercise any rights relating to the subject matter of the grievance that the employee may have under this Act.

## 80. Taking action or further action in relation to complaint

1. The Commission may only take action or further action under this Part in relation to a complaint if the complainant or person alleged to be aggrieved (if not the complainant) informs the Commission that he or she wishes to proceed with the complaint.
2. The Commission may decline to take action or further action under this Part in relation to a complaint if the complaint relates to a matter of which the complainant or the person alleged to be aggrieved (if not the complainant) has had knowledge for more than 12 months before the complaint is received by the Commission.
3. The Commission may also decline to take action or further action under this Part in relation to a complaint if, in the Commission's opinion,—
  - a. the subject matter of the complaint is trivial; or
  - b. the complaint is frivolous or vexatious or is not made in good faith; or
  - c. having regard to all the circumstances of the case, it is unnecessary to take further action in relation to the complaint; or
  - d. there is in all the circumstances an adequate remedy or right of appeal, other than the right to petition Parliament or to make a complaint to the Ombudsman, that it would be reasonable for the complainant or the person alleged to be aggrieved (if not the complainant) to exercise.
4. If the Commission decides to take no action or no further action in relation to a complaint, it must inform the complainant or the person alleged to be aggrieved (if not the complainant) and the person against whom the complaint is made—
  - a. of that decision; and
  - b. of the reasons for that decision; and
  - c. of his or her right, under section 92B, to bring proceedings before the Human Rights Review Tribunal.

## 81. Commission to inform parties of process

1. Before gathering information about a complaint, the Commission must comply with subsections (2) and (4).
2. The Commission must inform the following persons of the Commission's intention to gather information under section 82, and provide them with general information about the matters stated in subsection (3):
  - a. the complainant (if any); and
  - b. any person alleged to be aggrieved (if not the complainant); and



- c. the person against whom the complaint is made; and
  - d. if the complaint alleges a breach of Part 1A, or alleges a breach of Part 2 by a person or body referred to in section 3 of the New Zealand Bill of Rights Act 1990, the Attorney-General:
  - e. any other person or body that the Commission considers relevant.
3. The matters referred to in subsection (2) are—
- a. rights and obligations under this Act; and
  - b. processes that apply to complaints under this Act; and
  - c. other services that may help the parties to a complaint secure a settlement of the matter.
4. The Commission must also inform the person against whom the complaint was made and, if subsection (2)(d) applies, the Attorney-General—
- a. of the details of the complaint (if any); and
  - b. of the right of that person and, if subsection (2)(d) applies, of the Attorney-General to submit to the Commission, within a reasonable time, information in response to the complaint.
5. A requirement under this section to inform a person is satisfied if all reasonable efforts have been made to inform the person.

## 82. Information gathering and disclosure by Commission

1. When the Commission gathers information about a complaint under section 76(2)(b) for the purposes of section 76(2)(c) or (d)—
- a. that process must be conducted in private:
  - b. the Commission may hear or obtain information from any persons it thinks fit:
  - c. except as provided in section 81(4)(b), no person is entitled as of right to be heard by the Commission.
2. The Commission must make all reasonable efforts to give all parties concerned all relevant information gathered (if any) by it in relation to a complaint promptly after the information is gathered.

## 83. Settlement

1. This section applies if at any time it appears to the Commission from a complaint (including one referred back to the Commission by the Director, under section 90(1)(b), or the Tribunal, under section 92D), or from information gathered in relation to the complaint (including any response made under section 81(4)(b)), that it may be possible to reach a settlement.

2. The Commission must use its best endeavours to assist the parties to secure a settlement.
3. In this section, settlement—
  - a. means the agreement of the parties concerned on actions that settle the matter, which may include the payment of compensation or the tendering of an apology; and
  - b. includes a satisfactory assurance by the person to whom the complaint relates against the repetition of the conduct that was the subject matter of the complaint or against further conduct of a similar kind.

## 84. Reference of complaint to Director or from Director or Tribunal

1. The complainant, aggrieved person, or party seeking to enforce a settlement may refer a complaint to the Director so that he or she may decide, under section 90(1)(a) or (c), whether to represent that person in proceedings before the Human Rights Tribunal.
2. The Commission must promptly inform all parties concerned of every reference of a complaint back to the Commission, whether the reference back is one by the Director, under section 90(1)(b), or one by the Tribunal, under section 92D.
3. A requirement under this section to inform a person is satisfied if all reasonable efforts have been made to inform the person.
4. If a complaint is referred back to the Commission by the Director, under section 90(1)(b), or by the Tribunal, under section 92D, the Commission may, without limiting its other powers, require the parties to attend a dispute resolution meeting or other form of mediation designed to facilitate resolution of the complaint.

## 85. Confidentiality of information disclosed at dispute resolution meeting

1. Except with the consent of the parties or the relevant party, persons referred to in subsection (2) must keep confidential—
  - a. a statement, admission, or document created or made for the purposes of a dispute resolution meeting; and
  - b. information that is disclosed orally for the purposes of, and in the course of, a dispute resolution meeting.
2. Subsection (1) applies to every person who—
  - a. is a mediator for a dispute resolution meeting; or
  - b. attends a dispute resolution meeting; or
  - c. is a person employed or engaged by the Commission; or
  - d. is a person who assists either a mediator at a dispute resolution meeting or a person who attends a dispute resolution meeting.

## 86. Evidence as to dispute resolution meeting

1. No mediator at a dispute resolution meeting may give evidence in any proceedings, whether under this Act or any other Act, about—
  - a. the meeting; or
  - b. anything related to the meeting that comes to his or her knowledge for the purposes of, or in the course of, the meeting.
2. No evidence is admissible in any court, or before any person acting judicially, of any statement, admission, document, or information that, under section 85(1), is required to be kept confidential.

## 87. Certain information not to be made available

Any statement, admission, document, or information disclosed or made to the mediator at a dispute resolution meeting for the purposes of the dispute resolution meeting must not be made available under the Official Information Act 1982 or the Local Government Official Information and Meetings Act 1987 by a person to whom section 85(1) applies, except with the consent of the parties or the relevant party.

## 88. Limits on effect of section 80(1) or sections 85 to 87

Nothing in section 80(1) or sections 85 to 87—

- a. prevents the discovery or affects the admissibility of any evidence (being evidence that is otherwise discoverable or admissible and that existed independently of the mediation process) just because the evidence was presented for the purposes of, or in the course of, a dispute resolution meeting; or
- b. prevents the gathering of information by the Commission for research or educational purposes so long as the parties and the specific matters in issue between them are not identifiable; or
- c. prevents the disclosure by any person employed or engaged by the Commission to any other person employed or engaged by the Commission of matters that need to be disclosed for the purposes of giving effect to this Act; or
- d. prevents the disclosure of information by any person, if that person has reasonable grounds to believe that disclosure is necessary to prevent, or minimise the danger of, injury to any person or damage to any property.

## 89. Enforcement of terms of settlement agreed by parties

A settlement between parties to a complaint may be enforced by proceedings before the Tribunal brought under section 92B(4)—

- a. by the complainant (if any) or the aggrieved person (if not the complainant); or

- b. by the person against whom the complaint was made.

## 90. Functions of Director of Human Rights Proceedings under this Part

1. The Director's functions under this Part include, in relation to a complaint,—
  - a. deciding, in accordance with sections 91(1) and 92, whether, and to what extent, to provide representation for a party who requests the Director to provide representation in proceedings before the Tribunal or in related proceedings seeking to enforce a settlement reached on a previous occasion (including a settlement secured at a dispute resolution meeting), and providing representation for the party accordingly:
  - b. deciding, in accordance with section 91(2), whether to refer the complaint back to the Commission:
  - c. deciding, in accordance with sections 91(3) and 92, whether, and to what extent, to provide representation for a complainant, aggrieved person (if not the complainant), or group of persons who requests, or who request, the Director to provide representation in proceedings before the Tribunal or in related proceedings against the person against whom the complaint was made or the Attorney-General, and providing representation for the complainant, aggrieved person, or group of persons, accordingly.
2. The Director's functions under this Part include, in relation to a request from the Commission to provide representation in proceedings brought under section 92B, section 92E, or section 97 or in proceedings in which the Commission is entitled to appear and be heard under section 92H, deciding, in accordance with sections 91(3) and 92, whether, and to what extent, to provide representation for the Commission in proceedings before the Tribunal or in related proceedings.
3. In this section and sections 92 and 92C, related proceedings, in relation to proceedings before the Tribunal, means proceedings of any of the following descriptions:
  - a. an appeal to the High Court against a decision of the Tribunal:
  - b. proceedings in the High Court arising out of—
    - i. the statement of a case under section 122; or
    - ii. the removal of proceedings or a matter at issue in them under section 122A:
  - c. an appeal to the Court of Appeal against a decision of the High Court made in proceedings described in paragraph (a) or paragraph (b):
  - d. an appeal to the Supreme Court against—
    - i. a decision of the High Court made in proceedings described in paragraph (a) or paragraph (b); or

- ii. a decision of the Court of Appeal made in proceedings described in paragraph (c).

## 91. Requirements for Director's decisions under section 90

1. The Director may make a decision under section 90(1)(a) if it appears to him or her that a party has failed to observe the terms of a settlement reached on a previous occasion.
2. The Director may make a decision under section 90(1)(b) if—
  - a. it appears to the Director that the complaint may yet be able to be resolved by the parties and the Commission (for example, by mediation); or
  - b. it is unclear to the Director, from information available to him or her, in relation to the complaint, whether a party has failed to observe the terms of a settlement reached on a previous occasion.
3. The Director may make a decision under section 90(1)(c) or (2) if it appears to him or her that a settlement has not been reached and that no action or further action by the Commission is likely to facilitate a settlement.

## 92. Matters Director to have regard to in deciding whether to provide representation in proceedings before Tribunal or in related proceedings

1. In deciding under section 90(1)(a) or (c) or section 90(2) whether, and to what extent, to provide representation for a complainant, aggrieved person, group of persons, party to a settlement of a complaint, or the Commission, the Director—
  - a. must have regard to the matters stated in subsection (2):
  - b. may have regard to any other matter that the Director considers relevant.
2. The matters referred to in subsection (1)(a) are—
  - a. whether the complaint raises a significant question of law:
  - b. whether resolution of the complaint would affect a large number of people (for example, because the proceedings would be brought by or affect a large group of persons):
  - c. the level of harm involved in the matters that are the subject of the complaint:
  - d. whether the proceedings in question are likely to be successful:
  - e. whether the remedies available through proceedings of that kind are likely to suit the particular case:
  - f. whether there is likely to be any conflict of interest in the provision by the Director of representation to any person described in subsection (1):

- g. whether the provision of representation is an effective use of resources:
- h. whether or not it would be in the public interest to provide representation.

## 92A. Director to notify and report on decisions on representation

1. Promptly after making a decision under section 90(1)(a) or (c), the Director must notify the complainant, aggrieved person, group of persons, or party seeking to enforce a settlement reached on a previous occasion—
  - a. of the terms of the decision; and
  - b. if the Director has decided not to provide representation for the complainant, aggrieved person, class of persons, or party seeking to enforce a settlement, of the reasons for the decision.
2. Promptly after making a decision under section 90(2), the Director must notify the Commission—
  - a. of the terms of the decision; and
  - b. of the reasons for the decision.
3. If the Director decides to provide representation to the Commission in proceedings in which the Commission is entitled to be heard under section 92H, but subsequently concludes that there is, or may be, a conflict of interest in the provision, or continued provision, of legal representation by the Director to both the complainant and the Commission, the Director must—
  - a. cease to provide representation to the Commission; and
  - b. promptly advise the Commission of the Director's decision.
4. The Director must report to the Minister, at least once each year and without referring to identifiable individuals concerned, on the Director's decisions under section 90(1)(a) and (c), and, as soon as practicable, the Minister must present a copy of the report to the House of Representatives.

### Subpart 1: Proceedings

## 92B. Civil proceedings arising from complaints

1. If a complaint referred to in section 76(2)(a) has been made, the complainant, the person aggrieved (if not the complainant), or the Commission may bring civil proceedings before the Human Rights Review Tribunal—
  - a. for a breach of Part 1A (other than a breach of Part 1A that is an enactment, or an act or omission authorised or required by an enactment or otherwise by law), against the person or persons alleged to be responsible for the breach:

- Constitutionality of legislation

b. for a breach of Part 1A that is an enactment, or an act or omission authorised or required by an enactment or otherwise by law, against the Attorney-General, or against a person or body referred to in section 3(b) of the New Zealand Bill of Rights Act 1990 alleged to be responsible for the breach:

c. for a breach of Part 2, against the person or persons alleged to be responsible for the breach.

- Human rights commission
- Constitutionality of legislation

2. If a complaint under section 76(2)(a) relates to a discriminatory practice alleged to be in breach of Part 1A or Part 2 and to affect a class of persons, proceedings under subsection (1) may be brought by the Commission on behalf of the class of persons affected.

3. A person against whom a complaint referred to in section 76(2)(a) has been made may bring civil proceedings before the Tribunal in relation to the complaint if no proceedings in relation to the complaint have been brought under subsection (1) by, or on behalf of, the complainant or person aggrieved or a class of persons.

4. If parties to a complaint under section 76(2)(a) have reached a settlement of the complaint (whether through mediation or otherwise) but one of them is failing to observe a term of the settlement, another of them may bring proceedings before the Tribunal to enforce the settlement.

5. The rights given by subsections (1), (3), and (4) are not limited or affected just because the Commission or a mediator at a dispute resolution meeting or the Director is taking any action in relation to the complaint concerned.

- Human rights commission
- Constitutionality of legislation

6. Despite subsection (2), the Commission may bring proceedings under subsection (1) only if—

a. the complainant or person aggrieved (if not the complainant) has not brought proceedings; and

b. the Commission has obtained the agreement of that person before bringing the proceedings; and

c. it considers that bringing the proceedings will facilitate the performance of its functions stated in section 5(2)(a).

7. Despite subsections (1) to (6), no proceedings may be brought under this section in respect of a complaint or relevant part of a complaint to which section 79(3) applies.

## 92BA. Lodging of applications

Proceedings before the Tribunal are to be commenced by the lodging of an application in the prescribed form.

## 92C. Representation in civil proceedings arising from complaints

1. A party to proceedings before the Tribunal or related proceedings may appear and be heard—

a. in person, or by a barrister or solicitor provided by the person; or

- b. by a barrister or solicitor provided by the Director if, and to the extent that, the Director has decided, under section 90(1)(a) or (c) or (2), to provide representation for the party in the proceedings.
- 2. The Tribunal may, on an application for the purpose by any person, give directions as to the representation, in proceedings before it, of a plaintiff of a kind referred to in section 92N(1) to (3) or of any other party to the proceedings who may be able to bring, take part in, or defend the proceedings, only through a representative.
- 3. The Office of Human Rights Proceedings must pay all costs of representation provided—
  - a. by the Director for a complainant, aggrieved person, group of persons, or party to a settlement of a complaint; and
  - b. in accordance with a decision of the Director under section 90(1)(a) or (c).
- 4. The Office of Human Rights Proceedings must pay any award of costs made against a person in proceedings for which representation is provided for that person by the Director.
- 5. Any award of costs made in favour of a person in proceedings for which representation is provided for that person by the Director must be paid to the Office of Human Rights Proceedings.
- 6. Nothing in this Act limits or affects the entitlement to legal aid (if any) of a party in respect of proceedings or intended proceedings (whether or not representation for the party in the proceedings may, or is to be, is being, or has been, provided in accordance with a decision of the Director under section 90(1)(a) or (c)).

## **92D. Tribunal may refer complaint back to Commission, or adjourn proceedings to seek resolution by settlement**

- 1. When proceedings under section 92B are brought, the Tribunal—
  - a. must (whether through a member or officer) first consider whether an attempt has been made to resolve the complaint (whether through mediation or otherwise); and
  - b. must refer the complaint under section 76(2)(a) to which the proceedings relate back to the Commission unless the Tribunal is satisfied that attempts at resolution, or further attempts at resolution, of the complaint by the parties and the Commission—
    - i. will not contribute constructively to resolving the complaint; or
    - ii. will not, in the circumstances, be in the public interest; or
    - iii. will undermine the urgent or interim nature of the proceedings.
- 2. The Tribunal may, at any time before, during, or after the hearing of proceedings, refer a complaint under section 76(2)(a) back to the Commission if it appears to the Tribunal, from what is known to it about the complaint, that the complaint may yet be able to be resolved by the parties and the Commission (for example, by mediation).

• Human rights commission

• Human rights commission



3. The Tribunal may, instead of exercising the power conferred by subsection (2), adjourn any proceedings relating to a complaint under section 76(2)(a) for a specified period if it appears to the Tribunal, from what is known about the complaint, that the complaint may yet be able to be resolved by the parties.

## 92E. Civil proceedings arising from inquiry by Commission

1. If the Commission considers that an inquiry by it under section 5(2)(h) has disclosed or may have disclosed a breach of a kind referred to in any of paragraphs (a) to (c), it may bring civil proceedings before the Tribunal,—
  - a. for a breach of Part 1A (other than a breach of Part 1A that is an enactment, or an act or omission authorised or required by an enactment or otherwise by law), against the person or persons alleged to be responsible for the breach:
  - b. for a breach of Part 1A that is an enactment, or an act or omission authorised or required by an enactment or otherwise by law, against the Attorney-General, or against a person or body referred to in section 3(b) of the New Zealand Bill of Rights Act 1990 alleged to be responsible for the breach:
  - c. for a breach of Part 2, against the person or persons alleged to be responsible for the breach.
2. The Commission may exercise the right in subsection (1) only if it considers that the exercise of the right will facilitate the performance of its functions stated in section 5(2)(a).
3. This section does not limit section 6 or section 92H or section 97.

## 92F. Proof of justified limits and exceptions

1. The onus of proving, in any proceedings under this Part, that an act or omission is, under section 5 of the New Zealand Bill of Rights Act 1990, a justified limit on the right to freedom from discrimination affirmed by section 19 of the New Zealand Bill of Rights Act 1990 lies on the defendant.
2. The onus of proving, in any proceedings under this Part, that conduct is, under any provision of Part 2, excepted from conduct that is unlawful under any provision of Part 2 lies on the defendant.

## 92G. Right of Attorney-General to appear in civil proceedings

1. The Attorney-General may appear and be heard, in person or by a barrister or solicitor,—
  - a. in proceedings before the Human Rights Review Tribunal alleging a breach of Part 1A, or alleging a breach of Part 2 by a person or body referred to in section 3 of the New Zealand Bill of Rights Act 1990:
  - b. in proceedings in any of the following courts in relation to proceedings of a kind referred to in paragraph (a) that are or have been before the Human Rights Review Tribunal:

- i. a District Court:
  - ii. the High Court:
  - iii. the Court of Appeal:
  - iv. the Supreme Court.
2. The right to appear and be heard given by subsection (1) may be exercised whether or not the Attorney-General is or was a party to the proceedings before the Human Rights Review Tribunal.
  3. If, under subsection (1), the Attorney-General appears in any proceedings of a kind described in that subsection, he or she has, unless those proceedings are by way of appeal, the right to adduce evidence and the right to cross-examine witnesses.

## 92H. Right of Commission to appear in civil proceedings

1. The Commission may appear and be heard, in person or by a barrister or solicitor,—
  - a. in proceedings before the Human Rights Review Tribunal; and
  - b. in proceedings in any of the following courts in relation to proceedings that are or have been before the Human Rights Review Tribunal:
    - i. a District Court:
    - ii. the High Court:
    - iii. the Court of Appeal:
    - iv. the Supreme Court.
2. The right to appear and be heard given by subsection (1) may be exercised—
  - a. whether or not the Commission is or was a party to the proceedings before the Human Rights Review Tribunal; but
  - b. only if the Commission considers that the exercise of the right will facilitate the performance of its functions stated in section 5(2)(a).
3. If, under subsection (1), the Commission appears in any proceedings of a kind described in that subsection, it has, unless those proceedings are by way of appeal, the right to adduce evidence and the right to cross-examine witnesses.
4. This section is not limited by section 92B or section 92E or section 97.

## Subpart 2: Remedies

### 92I. Remedies

1. This section is subject to sections 92J and 92K (which relate to the only remedy that may be granted by the Tribunal if it finds that an enactment is in breach of Part 1A).
2. In proceedings before the Human Rights Review Tribunal brought under section 92B(1) or (4) or section 92E, the plaintiff may seek any of the remedies described in subsection (3) that the plaintiff thinks fit.
3. If, in proceedings referred to in subsection (2), the Tribunal is satisfied on the balance of probabilities that the defendant has committed a breach of Part 1A or Part 2 or the terms of a settlement of a complaint, the Tribunal may grant 1 or more of the following remedies:
  - a. a declaration that the defendant has committed a breach of Part 1A or Part 2 or the terms of a settlement of a complaint:
  - b. an order restraining the defendant from continuing or repeating the breach, or from engaging in, or causing or permitting others to engage in, conduct of the same kind as that constituting the breach, or conduct of any similar kind specified in the order:
  - c. damages in accordance with sections 92M to 92O:
  - d. an order that the defendant perform any acts specified in the order with a view to redressing any loss or damage suffered by the complainant or, as the case may be, the aggrieved person as a result of the breach:
  - e. a declaration that any contract entered into or performed in contravention of any provision of Part 1A or Part 2 is an illegal contract:
  - f. an order that the defendant undertake any specified training or any other programme, or implement any specified policy or programme, in order to assist or enable the defendant to comply with the provisions of this Act:
  - g. relief in accordance with the Illegal Contracts Act 1970 in respect of any such contract to which the defendant and the complainant or, as the case may be, the aggrieved person are parties:
  - h. any other relief the Tribunal thinks fit.
4. It is no defence to proceedings referred to in subsection (2) or subsection (5) that the breach was unintentional or without negligence on the part of the party against whom the complaint was made, but, subject to section 92P, the Tribunal must take the conduct of the parties into account in deciding what, if any, remedy to grant.
5. In proceedings before the Human Rights Review Tribunal brought, under section 92B(3), by the person against whom a complaint was made, that person may seek a declaration that he or she has not committed a breach of Part 1A or Part 2.

## 92J. Remedy for enactments in breach of Part 1A

1. If, in proceedings before the Human Rights Review Tribunal, the Tribunal finds that an enactment is in breach of Part 1A, the only remedy that the Tribunal may grant is the declaration referred to in subsection (2).
2. The declaration that may be granted by the Tribunal, if subsection (1) applies, is a declaration that the enactment that is the subject of the finding is inconsistent with the right to freedom from discrimination affirmed by section 19 of the New Zealand Bill of Rights Act 1990.
3. The Tribunal may not grant a declaration under subsection (2) unless that decision has the support of all or a majority of the members of the Tribunal.
4. Nothing in this section affects the New Zealand Bill of Rights Act 1990.

## 92K. Effect of declaration

1. A declaration under section 92J does not—
  - a. affect the validity, application, or enforcement of the enactment in respect of which it is given; or
  - b. prevent the continuation of the act, omission, policy, or activity that was the subject of the complaint.
2. If a declaration is made under section 92J and that declaration is not overturned on appeal or the time for lodging an appeal expires, the Minister for the time being responsible for the administration of the enactment must present to the House of Representatives—
  - a. a report bringing the declaration to the attention of the House of Representatives; and
  - b. a report containing advice on the Government's response to the declaration.
3. The Minister referred to in subsection (2) must carry out the duties imposed on the Minister by that subsection within 120 days of the date of disposal of all appeals against the granting of the declaration or, if no appeal is lodged, the date when the time for lodging an appeal expires.

## 92L. Costs

1. In any proceedings under section 92B or section 92E or section 97, the Tribunal may make any award as to costs that it thinks fit, whether or not it grants any other remedy.
2. Without limiting the matters that the Tribunal may consider in determining whether to make an award of costs under this section, the Tribunal may take into account whether, and to what extent, any party to the proceedings—
  - a. has participated in good faith in the process of information gathering by the Commission:
  - b. has facilitated or obstructed that information-gathering process:

- c. has acted in a manner that facilitated the resolution of the issues that were the subject of the proceedings.

## 92M. Damages

1. In any proceedings under section 92B(1) or (4) or section 92E, the Tribunal may award damages against the defendant for a breach of Part 1A or Part 2 or the terms of a settlement of a complaint in respect of any 1 or more of the following:
  - a. pecuniary loss suffered as a result of, and expenses reasonably incurred by the complainant or, as the case may be, the aggrieved person for the purpose of, the transaction or activity out of which the breach arose:
  - b. loss of any benefit, whether or not of a monetary kind, that the complainant or, as the case may be, the aggrieved person might reasonably have been expected to obtain but for the breach:
  - c. humiliation, loss of dignity, and injury to the feelings of the complainant or, as the case may be, the aggrieved person.
2. This section applies subject to sections 92J, 92N, and 92O and to subpart 1 of Part 2 of the Prisoners' and Victims' Claims Act 2005.

## 92N. Directions as to payment of damages in certain cases

1. If the plaintiff is a minor who is not married or in a civil union, the Tribunal may, in its discretion, direct the defendant to pay damages awarded under section 92M to Public Trust or to a person or trustee corporation acting as the manager of any property of the plaintiff.
2. If the plaintiff is a mentally disordered person within the meaning of section 2(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 whose property is not being managed under the Protection of Personal and Property Rights Act 1988, but who lacks, in the opinion of the Tribunal, the mental capacity to manage his or her own affairs in relation to his or her own property, the Tribunal may, in its discretion, direct the defendant to pay damages awarded under section 92M to Public Trust.
3. If the plaintiff is a person whose property is being managed under the Protection of Personal and Property Rights Act 1988, the Tribunal must ascertain whether the terms of the property order cover management of money received as damages and,—
  - a. if damages fall within the terms of the property order, the Tribunal must direct the defendant to pay damages awarded under section 92M to the person or trustee corporation acting as the property manager; or
  - b. if damages do not fall within the terms of the property order, the Tribunal may, in its discretion, direct the defendant to pay damages awarded under section 92M to Public Trust.
4. If money is paid to Public Trust under any of subsections (1) to (3),—
  - a. section 12 of the Minors' Contracts Act 1969 applies in the case of a minor who is not married or in a civil union; and

- b. sections 108D, 108F, and 108G of the Protection of Personal and Property Rights Act 1988 apply, with any necessary modifications, in the case of a person referred to in subsection (2) or subsection (3)(b); and
- c. section 108E of the Protection of Personal and Property Rights Act 1988 applies, with any necessary modifications, in the case of a person referred to in subsection (3)(a).

## **92O. Tribunal may defer or modify remedies for breach of Part 1A or Part 2 or terms of settlement**

1. If, in any proceedings under this Part, the Tribunal determines that an act or omission is in breach of Part 1A or Part 2 or the terms of a settlement of a complaint, it may, on the application of any party to the proceedings, take 1 or more of the actions stated in subsection (2).
2. The actions are,—
  - a. instead of, or as well as, awarding damages or granting any other remedy,—
    - i. to specify a period during which the defendant must remedy the breach; and
    - ii. to adjourn the proceedings to a specified date to enable further consideration of the remedies or further remedies (if any) to be granted:
  - b. to refuse to grant any remedy that has retrospective effect:
  - c. to refuse to grant any remedy in respect of an act or omission that occurred before the bringing of proceedings or the date of the determination of the Tribunal or any other date specified by the Tribunal:
  - d. to provide that any remedy granted has effect only prospectively or only from a date specified by the Tribunal:
  - e. to provide that the retrospective effect of any remedy is limited in a way specified by the Tribunal.

## **92P. Matters to be taken into account in exercising powers given by section 92O**

1. In determining whether to take 1 or more of the actions referred to in section 92O, the Tribunal must take account of the following matters:
  - a. whether or not the defendant in the proceedings has acted in good faith:
  - b. whether or not the interests of any person or body not represented in the proceedings would be adversely affected if 1 or more of the actions referred to in section 92O is, or is not, taken:

- c. whether or not the proceedings involve a significant issue that has not previously been considered by the Tribunal:
  - d. the social and financial implications of granting any remedy sought by the plaintiff:
  - e. the significance of the loss or harm suffered by any person as a result of the breach of Part 1A or Part 2 or the terms of a settlement of a complaint:
  - f. the public interest generally:
  - g. any other matter that the Tribunal considers relevant.
2. If the Tribunal finds that an act or omission is in breach of Part 1A or that an act or omission by a person or body referred to in section 3 of the New Zealand Bill of Rights Act 1990 is in breach of Part 2, in determining whether to take 1 or more of the actions referred to in section 92O, the Tribunal must, in addition to the matters specified in subsection (1), take account of—
    - a. the requirements of fair public administration; and
    - b. the obligation of the Government to balance competing demands for the expenditure of public money.

### **Subpart 3: Monetary limits on remedies Tribunal may grant**

#### **92Q. Monetary limits on remedies Tribunal may grant**

1. Proceedings under section 92B or section 92E may be brought before the Human Rights Review Tribunal irrespective of the amount of damages claimed or the value of the property in respect of which any remedy is sought.
2. However, except as provided in sections 92R to 92V, the Tribunal must not award any damages or grant any remedy in any proceedings of that kind if the making of that award or the granting of that remedy would, because of the monetary limits contained in sections 29 to 34 of the District Courts Act 1947, be beyond the jurisdiction of a District Court.
3. For the purposes of subsection (2), if civil proceedings under section 92B are brought on behalf of more than 1 complainant or, as the case may be, more than 1 aggrieved person, those proceedings must, for the purpose of applying any monetary limit under subsection (2), be treated as if each complainant or, as the case may be, each aggrieved person on whose behalf those proceedings are brought, were the plaintiff in a separate action against the defendant.

## Subpart 4: Granting of remedies by High Court on reference from Tribunal

### 92R. Tribunal to refer granting of remedies to High Court

The Human Rights Review Tribunal must refer the granting of a remedy in any proceedings under section 92B or section 92E to the High Court if the Tribunal is satisfied on the balance of probabilities that a defendant in the proceedings has committed a breach of Part 1A or Part 2 or the terms of a settlement of a complaint, but that—

- a. the granting of the appropriate remedy under section 92I would be outside the limits imposed by section 92Q; or
- b. that the granting of a remedy in those proceedings would be better dealt with by the High Court.

### 92S. Further provisions on reference to High Court

1. A reference under section 92R is made by sending, to the Registrar of the High Court nearest to where the proceedings were commenced, a report on the proceedings that—
  - a. sets out the Tribunal's finding with regard to the breach of Part 1A or Part 2 or the terms of a settlement of a complaint; and
  - b. includes, or is accompanied by, a statement of the considerations to which the Tribunal has had regard in making the reference to that court.
2. A copy of the report must be given or sent promptly to every party to the proceedings.
3. Except as provided in this Act, the procedure for a reference under section 92R is the same as the procedure prescribed by rules of court in respect of appeals, and those rules apply with all necessary modifications.

### 92T. High Court decides remedies on reference from Tribunal

1. This section applies where the granting of a remedy in any proceedings under section 92B or section 92E is referred to the High Court under section 92R.
2. The High Court may direct the Tribunal to amplify any report made under section 92S(1).
3. Every person who, under section 92S(2), is given or sent a copy of a report under section 92S(1) is entitled to be heard and to tender in the High Court evidence as to the remedy (if any) to be granted on the basis of the Tribunal's finding that the defendant has committed a breach of Part 1A or Part 2 or the terms of a settlement of a complaint.
4. However, no person referred to in subsection (3) may, on the reference under section 92R, challenge the finding of the Tribunal referred to in subsection (3).
5. The High Court must decide, on the basis of the Tribunal's finding that the defendant has committed a breach of Part 1A or Part 2, whether 1 or more of the remedies set out in section 92I or the remedy set out in section 92J is to be granted.



## **92U. High Court's decision on remedies to be included in, and given effect to as part of, Tribunal's determination**

1. Every decision of the High Court under section 92T(5)—
  - a. must be remitted to the Tribunal for inclusion in its determination with regard to the proceedings; and
  - b. has effect as part of that determination despite the limits imposed by section 92Q.
2. Nothing in subsection (1)—
  - a. limits sections 123 to 125; or
  - b. prevents the making of an appeal in accordance with section 123 in respect of a determination of the Tribunal in which a decision of the High Court is included in accordance with subsection (1)(a).

## **Subpart 5: Abandonment or agreement to bring claim within Tribunal's jurisdiction**

### **92V. Abandonment to enable Tribunal to make award of damages**

1. This section applies where the Tribunal would have jurisdiction in any proceedings under section 92B or section 92E to make an award of damages in accordance with section 92M if the amount of the award were within the limit for the time being fixed by section 29(1) of the District Courts Act 1947 (as applied by section 92Q(2)).
2. The Tribunal may make an award within that limit if the plaintiff abandons the excess.
3. An award of damages in those proceedings in accordance with section 92M operates to discharge from liability in respect of the amount abandoned in that way any person against whom the proceedings are brought and the subsequent award is made.
4. This section overrides sections 92Q to 92U.

### **92W. Extension of jurisdiction by agreement between parties**

1. If, in any proceedings under section 92B or section 92E, only section 92Q prevents the Tribunal from granting any 1 or more of the remedies stated in section 92I, and the parties to the proceedings, by memorandum signed by them or their respective solicitors or agents, agree that the Tribunal is to have jurisdiction to grant any 1 or more of those remedies irrespective of section 92Q, the Tribunal has jurisdiction to grant 1 or more of those remedies accordingly.
2. This section overrides sections 92Q to 92U.

## Part 4: Human Rights Review Tribunal

### 93. Human Rights Review Tribunal

The Tribunal constituted by section 45 of the Human Rights Commission Act 1977 and, immediately before 1 January 2002 (being the date of the commencement of the Human Rights Amendment Act 2001), known as the Complaints Review Tribunal shall continue in being, and, on and after 1 January 2002, is called the Human Rights Review Tribunal.

#### Subpart 1: Functions and powers of Tribunal

### 94. Functions of Tribunal

The functions of the Tribunal shall be—

- a. to consider and adjudicate upon proceedings brought pursuant to sections 92B, 92E, 95, and 97:
- b. to exercise and perform such other functions, powers, and duties as are conferred or imposed on it by or under this Act or any other enactment.

### 95. Power to make interim order

1. In respect of any matter in which the Tribunal has jurisdiction under this Act to make any final determination, the Chairperson of the Tribunal shall have power to make an interim order if he or she is satisfied that it is necessary in the interests of justice to make the order to preserve the position of the parties pending a final determination of the proceedings.
2. An application for an interim order may be made,—
  - a. in the case of proceedings under section 92B(1), (2), (3), or (4), by the person or body bringing the proceedings; and
  - b. in the case of proceedings under section 92E, by the Commission.
3. A copy of the application shall be served on the defendant who shall be entitled to be heard before a decision on the application is made.

### 96. Review of interim orders

Where an interim order has been made, the defendant may, with the leave of the Tribunal and instead of appealing against the order, apply to the High Court to vary or rescind the order unless that order was made with the defendant's consent.

### 97. Power in respect of exception for genuine occupational qualification or genuine justification

1. The Tribunal may exercise the power referred to in subsection (2), but only—
  - a. in respect of a matter in which it has jurisdiction under this Act to make a final determination; and

- b. on an application by the Commission, a person or persons against whom a complaint under section 76(2)(a) has been made, or a person who is the subject of an inquiry under section 5(2)(h).
2. The power is to declare that an act, omission, practice, requirement, or condition that would otherwise be unlawful under Part 2 is not unlawful because it constitutes either or both—
- a. a genuine occupational qualification, in respect of sections 22 to 41:
  - b. a genuine justification, in respect of sections 42 to 60.

## Subpart 2: Constitution of Tribunal

### 98. Membership of Tribunal

The Tribunal shall consist of—

- a. a Chairperson; and
- b. 2 other persons appointed by the Chairperson for the purposes of each hearing from a panel maintained by the Minister under section 101.

### 99. Chairpersons of Tribunal

- 1. Every Chairperson of the Tribunal shall be appointed by the Governor-General on the recommendation of the Minister.
- 2. Where the Governor-General on the recommendation of the Minister considers it necessary, the Governor-General may appoint 2 persons to the office of Chairperson of the Tribunal.
- 3. Where there are 2 Chairpersons of the Tribunal, each Chairperson shall exercise principally those parts of the Tribunal's jurisdiction that are specified from time to time in his or her warrant of appointment but nothing shall prevent each Chairperson from exercising any other part of the Tribunal's jurisdiction.
- 4. Where a second Chairperson of the Tribunal is appointed, a new warrant of appointment may be issued to the existing Chairperson specifying the parts of the Tribunal's jurisdiction that the existing Chairperson is principally to exercise.
- 5. In this Part, a reference to the Chairperson or the Chairperson of the Tribunal shall be read as a reference to either Chairperson where there are 2 Chairpersons of the Tribunal.

#### 99A. Criteria and requirement for appointment of Chairpersons

- 1. In recommending a person for appointment as a Chairperson of the Tribunal, the Minister must have regard not only to the matters stated in section 101(2) but also to the person's—
  - a. experience in dispute resolution:
  - b. experience as a Chairperson and in other leadership roles:

- c. ability to perform the functions of a Chairperson of the Tribunal.
2. Every person appointed as a Chairperson of the Tribunal must be a barrister or solicitor of the High Court of not less than 5 years' practice.

## 100. Appointment and term of office

1. [Repealed]
2. Except as otherwise provided in section 103, every person appointed as a Chairperson of the Tribunal shall hold office for such term, not exceeding 5 years, as the Governor-General on the recommendation of the Minister shall specify in the instrument appointing that Chairperson.
3. Any person appointed as a Chairperson may hold that office concurrently with any other office held by him or her and may from time to time be reappointed.
4. Where the term for which a Chairperson has been appointed expires, that Chairperson, unless sooner vacating or removed from office under section 103, shall continue to hold office, by virtue of the appointment for the term that has expired, until—
  - a. that Chairperson is reappointed; or
  - b. a successor to that Chairperson is appointed; or
  - c. that Chairperson is informed in writing by the Minister that that Chairperson is not to be reappointed and that a successor to that Chairperson is not to be appointed.

## 101. Panel

1. The Minister shall maintain a panel of not more than 20 persons who may be appointed pursuant to section 98.
2. In considering the suitability of persons for inclusion on the panel, the Minister must have regard to the need for persons included on the panel to have between them knowledge of, or experience in,—
  - a. different aspects of matters likely to come before the Tribunal:
  - b. New Zealand law, or the law of another country, or international law, on human rights:
  - c. public administration, or the law relating to public administration:
  - d. current economic, employment, or social issues:
  - e. cultural issues and the needs and aspirations (including life experiences) of different communities of interest and population groups in New Zealand society.
- 2A. At least 3 members of the panel must be barristers or solicitors of the High Court of not less than 5 years' practice.

3. The name of a person shall be removed from the panel if—
  - a. the person dies or is, under the Insolvency Act 2006, adjudged bankrupt; or
  - b. the Minister directs that the name of the person be removed from the panel for disability affecting performance of duty, neglect of duty, or misconduct, proved to the satisfaction of the Minister; or
  - c. a period of 5 years has elapsed since the date on which the Minister last approved the entry of the person's name; or
  - d. the person requests by writing addressed to the Minister that his or her name be removed.
4. Where subsection (3)(c) or subsection (3)(d) applies, the name of the person shall not be removed from the panel until any hearings in respect of which that person was appointed to the Tribunal have concluded.

## 102. Deputy Chairperson

1. In any case in which a Chairperson of the Tribunal becomes incapable of acting by reason of illness, absence, or other sufficient cause, or if a Chairperson deems it not proper or desirable that he or she should adjudicate on any specified matter, the Governor-General, on the recommendation of the Minister, may appoint a suitable person to be the deputy of that Chairperson to act for that Chairperson for the period or purpose stated in the appointment.
2. No person shall be appointed as a Deputy Chairperson unless he or she is eligible for appointment as a Chairperson.
3. Every Deputy Chairperson appointed under this section shall, while acting for a Chairperson, be deemed to be a Chairperson of the Tribunal.
4. No appointment of a Deputy Chairperson, and no act done by a Deputy Chairperson as such, and no act done by the Tribunal while he or she is acting as such, shall in any proceedings be questioned on the ground that the occasion for the appointment had not arisen or had ceased.

## 103. Vacation of office by Chairperson and Deputy Chairperson

1. A Chairperson and any Deputy Chairperson of the Tribunal may at any time resign his or her office by delivering a notice in writing to that effect to the Minister.
2. A Chairperson and any Deputy Chairperson of the Tribunal shall be deemed to have vacated his or her office if he or she dies or is, under the Insolvency Act 2006, adjudged bankrupt.
3. A Chairperson and any Deputy Chairperson of the Tribunal may at any time be removed from office by the Governor-General for disability affecting performance of duty, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General.

## Subpart 3: Procedure of Tribunal

### 104. Sittings of Tribunal

1. Sittings of the Tribunal shall be held at such times and places as the Tribunal or Chairperson from time to time appoints.
2. Any sitting may be adjourned from time to time and from place to place by the Tribunal or a Chairperson or by the Secretary to the Tribunal.
3. No sitting of the Tribunal shall take place unless all the members are present, but the decision of a majority of the members shall be the decision of the Tribunal.
4. A Chairperson shall preside at all sittings of the Tribunal.
5. Subject to the provisions of this Act and of any regulations made under this Act, the Tribunal may regulate its procedure in such manner as the Tribunal thinks fit and may prescribe or approve forms for the purposes of this Act.

### 105. Substantial merits

1. The Tribunal must act according to the substantial merits of the case, without regard to technicalities.
2. In exercising its powers and functions, the Tribunal must act—
  - a. in accordance with the principles of natural justice; and
  - b. in a manner that is fair and reasonable; and
  - c. according to equity and good conscience.

### 106. Evidence in proceedings before Tribunal

1. The Tribunal may—
  - a. call for evidence and information from the parties or any other person:
  - b. request or require the parties or any other person to attend the proceedings to give evidence:
  - c. fully examine any witness:
  - d. receive as evidence any statement, document, information, or matter that may, in its opinion, assist to deal effectively with the matter before it, whether or not it would be admissible in a court of law.
2. The Tribunal may take evidence on oath, and for that purpose any member or officer of the Tribunal may administer an oath.
3. The Tribunal may permit a person appearing as a witness before it to give evidence by tendering a written statement and, if the Tribunal thinks fit, verifying it by oath.
4. Subject to subsections (1) to (3), the Evidence Act 2006 shall apply to the Tribunal in the same manner as if the Tribunal were a court within the meaning of that Act.

## 107. Sittings to be held in public except in special circumstances

1. Except as provided by subsections (2) and (3), every hearing of the Tribunal shall be held in public.
2. The Tribunal may deliberate in private as to its decision in any matter or as to any question arising in the course of any proceedings before it.
3. Where the Tribunal is satisfied that it is desirable to do so, the Tribunal may, of its own motion or on the application of any party to the proceedings,—
  - a. order that any hearing held by it be heard in private, either as to the whole or any portion thereof:
  - b. make an order prohibiting the publication of any report or account of the evidence or other proceedings in any proceedings before it (whether heard in public or in private) either as to the whole or any portion thereof:
  - c. make an order prohibiting the publication of the whole or part of any books or documents produced at any hearing of the Tribunal.
4. Every person commits an offence and is liable on conviction to a fine not exceeding \$3,000 who acts in contravention of any order made by the Tribunal under subsection (3)(b) or subsection (3)(c).

## 108. Persons entitled to be heard

1. Any person who is a party to the proceedings before the Tribunal, and any person who satisfies the Tribunal that he or she has an interest in the proceedings greater than the public generally, may appear and may call evidence on any matter that should be taken into account in determining the proceedings.
2. If any person who is not a party to the proceedings before the Tribunal wishes to appear, the person must give notice to the Tribunal and to every party before appearing.
3. A person who has a right to appear or is allowed to appear before the Tribunal may appear in person or be represented by his or her counsel or agent.

## 108A. Tribunal to give notice of proceedings

The Tribunal must notify the Attorney-General promptly of the bringing of proceedings before the Tribunal alleging a breach of Part 1A, or alleging a breach of Part 2 by a person or body referred to in section 3 of the New Zealand Bill of Rights Act 1990, if the Attorney-General is not a party to the proceedings.

## 108B. Submissions in relation to remedies

1. Before the Tribunal grants any remedy under Part 3, it must give the parties to the proceedings and, if the remedy under consideration is a declaration under section 92J, the Attorney-General, an opportunity to make submissions on—
  - a. the implications of granting that remedy; and
  - b. the appropriateness of that remedy.
2. Subsection (1) does not limit any provision in Part 3 or section 108.

## 109. Witness summons

1. The Tribunal may, if it considers it necessary, of its own motion, or on the application of any party to the proceedings, issue a witness summons to any person requiring that person to attend before the Tribunal to give evidence at the hearing of the proceedings.
2. The witness summons shall state—
  - a. the place where the person is to attend; and
  - b. the date and time when the person is to attend; and
  - c. the papers, documents, records, or things which that person is required to bring and produce to the Tribunal; and
  - d. the entitlement to be tendered or paid a sum in respect of allowances and travelling expenses; and
  - e. the penalty for failing to attend.
3. The power to issue a witness summons may be exercised by the Tribunal or a Chairperson, or by any officer of the Tribunal purporting to act by the direction or with the authority of the Tribunal or a Chairperson.

## 110. Service of summons

1. A witness summons may be served—
  - a. by delivering it personally to the person summoned; or
  - b. by posting it by registered letter addressed to the person summoned at that person's usual place of residence.
2. The summons shall,—
  - a. where it is served under subsection (1)(a), be served at least 24 hours before the attendance of the witness is required; or
  - b. where it is served under subsection (1)(b), be served at least 10 days before the date on which the attendance of the witness is required.
3. If the summons is posted by registered letter, it shall be deemed for the purposes of subsection (2)(b) to have been served at the time when the letter would be delivered in the ordinary course of post.

## 111. Witnesses' allowances

1. Every witness attending before the Tribunal to give evidence pursuant to a summons shall be entitled to be paid witnesses' fees, allowances, and travelling expenses according to the scales for the time being prescribed by regulations made under the Criminal Procedure Act 2011, and those regulations shall apply accordingly.



2. On each occasion on which the Tribunal issues a summons under section 109(1), the Tribunal, or the person exercising the power of the Tribunal under subsection (3) of that section, shall fix an amount which, on the service of the summons, or at some other reasonable time before the date on which the witness is required to attend, shall be paid or tendered to the witness.
3. The amount fixed under subsection (2) shall be the estimated amount of the allowances and travelling expenses to which, in the opinion of the Tribunal or person, the witness will be entitled according to the prescribed scales if the witness attends at the time and place specified in the summons.
4. Where a party to the proceedings has requested the issue of the witness summons, the fees, allowances, and travelling expenses payable to the witness shall be paid by that party.
5. Where the Tribunal has of its own motion issued the witness summons, the Tribunal may direct that the amount of those fees, allowances, and travelling expenses—
  - a. form part of the costs of the proceedings; or
  - b. be paid from money appropriated by Parliament for the purpose.

## 112. Privileges and immunities

Witnesses and counsel appearing before the Tribunal shall have the same privileges and immunities as witnesses and counsel have in proceedings in a District Court.

## 113. Non-attendance or refusal to co-operate

1. Every person commits an offence who, after being summoned to attend to give evidence before the Tribunal or to produce to the Tribunal any papers, documents, records, or things, without sufficient cause,—
  - a. fails to attend in accordance with the summons; or
  - b. refuses to be sworn or to give evidence, or, having been sworn, refuses to answer any question that the person is lawfully required by the Tribunal or any member of it to answer concerning the proceedings; or
  - c. fails to produce any such paper, document, record, or thing.
2. Every person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding \$1,500.
3. No person summoned to attend before a Tribunal shall be convicted of an offence against subsection (1) unless there was tendered or paid to that person travelling expenses in accordance with section 111.

## 114. Power to commit for contempt

1. If any person—
  - a. assaults, threatens, or intimidates, or intentionally insults, the Tribunal or any member of it or any special adviser to or officer of the Tribunal, during a sitting of the Tribunal, or in going to, or returning from, any sitting; or



## 118. Members of Tribunal not personally liable

No member of the Tribunal shall be personally liable for any act done or omitted to be done by the Tribunal or any member thereof in good faith in pursuance or intended pursuance of the functions, duties, powers, or authorities of the Tribunal.

## 119. Fees of members of Tribunal

1. A member of the Tribunal is entitled—
  - a. to receive remuneration not within paragraph (b) for services as a member at a rate and of a kind determined by the Minister in accordance with the fees framework; and
  - b. in accordance with the fees framework, to be reimbursed for actual and reasonable travelling and other expenses incurred in carrying out his or her office as a member.
2. For the purposes of subsection (1), fees framework means the framework determined by the Government from time to time for the classification and remuneration of statutory and other bodies in which the Crown has an interest.

## 120. Services for Tribunal

1. The Ministry of Justice shall furnish such secretarial, recording, and clerical services as may be necessary to enable the Tribunal to discharge its functions.
2. The cost of any services provided by the Ministry of Justice pursuant to this section shall be paid from public money appropriated by Parliament for the purpose.

## 121. Enforcement

1. The following orders made by the Tribunal may, on registration of a certified copy in the District Court, be enforced in all respects as if they were an order of that court:
  - a. an order for the award of costs under section 92L; and
  - b. an order for the award of damages under section 92M; and
  - c. an interim order under section 95.
2. Every person commits an offence and is liable on conviction to a fine not exceeding \$5,000 who contravenes or refuses to comply with any other order of the Tribunal made under section 92I or an interim order of the Tribunal made under section 95.

## 122. Stating case for High Court

1. The Tribunal may, at any time, before or during the hearing or before delivering its decision, on the application of any party to the proceedings or of its own motion, state a case for the opinion of the High Court on any question of law arising in any proceedings before the Tribunal.

- 1A. If, in any proceedings before the Tribunal, the validity of any regulation is questioned, the Tribunal must, unless it considers that there is no arguable case in support of the contention that the regulation is invalid, either—
  - a. state a case for the opinion of the High Court on the relevant question or questions of law; or
  - b. if the leave of the High Court is obtained, order, under section 122A(1), that the proceedings before it or the relevant matter or matters at issue be removed to the High Court for determination.
2. The Tribunal shall give notice to the parties to the proceedings of the Tribunal's intention to state a case under this section, specifying the registry of the High Court in which the case is to be filed.
3. Except where the Tribunal intends to state the case of its own motion, the question shall be in the form of a special case drawn up by the parties to the proceedings, and, if the parties do not agree, to be settled by the Tribunal.
4. Where the Tribunal intends to state the case of its own motion, it shall itself state and sign a case setting forth the facts and questions of law arising for the determination of the High Court.
5. The High Court shall hear and determine any question submitted to it under this section, and shall remit the case with its opinion to the Tribunal.

## **122A. Removal to High Court of proceedings or issue**

1. The Tribunal may, with the leave of the High Court, order that proceedings before it under this Act, or a matter at issue in them, be removed to the High Court for determination.
2. The Tribunal may make an order under this section, with the leave of the High Court, before or during the hearing, and either on the application of a party to the proceedings or on its own initiative, but only if—
  - a. an important question of law is likely to arise in the proceedings or matter other than incidentally; or
  - b. the validity of any regulation is questioned in proceedings before the Tribunal (whether on the ground that it authorises or requires unjustifiable discrimination in circumstances where the statutory provision purportedly empowering the making of the regulation does not authorise the making of a regulation authorising or requiring unjustified discrimination, or otherwise); or
  - c. the nature and the urgency of the proceedings or matter mean that it is in the public interest that they or it be removed immediately to the High Court; or
  - d. the High Court already has before it other proceedings, or other matters, that are between the same parties and involve issues that are the same as, or similar or related to, those raised by the proceedings or matter; or
  - e. the Tribunal is of the opinion that, in all the circumstances, the High Court should determine the proceedings or matter.

3. Despite subsection (2), if the validity of any regulation is questioned in proceedings before the Tribunal and the leave of the High Court is obtained for the making of an order under this section, the Tribunal must make an order under this section.
4. If the Tribunal declines to remove proceedings, or a matter at issue in them, to the High Court (whether as a result of the refusal of the High Court to grant leave or otherwise), the party applying for the removal may seek the special leave of the High Court for an order of the High Court that the proceedings or matter be removed to the High Court and, in determining whether to grant an order of that kind, the High Court must apply the criteria stated in subsection (2)(a) to (d).
5. An order for removal to the High Court under this section may be made subject to any conditions the Tribunal or the High Court, as the case may be, thinks fit.
6. Nothing in this section limits section 122.

### **122B. Proceedings or issue removed to High Court**

1. If the Tribunal, acting under section 122A, orders the removal of proceedings, or a matter at issue in them, to the High Court, unless section 122A(2)(b) applies the High Court may, if it considers that the proceedings or matter ought instead to be determined by the Tribunal, order that the Tribunal determine the matter.
2. If the Tribunal, under section 122A, orders that proceedings, or a matter at issue in them, be removed to the High Court, and the High Court makes no order under subsection (1),—
  - a. the High Court must determine the proceedings or matter and may exercise any power that the Tribunal could have exercised in, or in relation to, the proceedings or matter; and
  - b. a party to the proceedings may, under section 124, appeal to the Court of Appeal against the determination of the High Court on a question of law arising in the proceedings.

### **123. Appeals to High Court**

1. Where any party is dissatisfied with any interim order made by the Chairperson under section 95, that party may appeal to the High Court against the whole or part of that order.
2. A party to a proceeding under section 92B or section 92E may appeal to the High Court against all or any part of a decision of the Tribunal—
  - a. dismissing the proceeding; or
  - b. granting 1 or more of the remedies described in section 92I; or
  - c. granting the remedy described in section 92J; or
  - d. refusing to grant the remedy described in section 92J; or
  - e. constituting a final determination of the Tribunal in the proceeding.

- 2A. For the purposes of subsection (2)(d), the Tribunal does not in a proceeding refuse to grant the remedy described in section 92J unless—
- a. a party to the proceeding expressly applies to the Tribunal for the remedy in relation to a particular enactment; and
  - b. the Tribunal does not grant the remedy in relation to that enactment.
3. Where any party is dissatisfied with any decision of the Tribunal making a declaration under section 97, that party may appeal to the High Court against the whole or any part of that decision.
4. Every appeal under this section shall be made by giving notice of appeal within 30 days after the date of the giving by the Tribunal in writing of the decision to which the appeal relates.
5. In determining any appeal under this section the High Court shall have the powers conferred on the Tribunal by sections 105 and 106, and those sections shall apply accordingly with such modifications as are necessary.
6. In its determination of any appeal, the court may—
- a. confirm, modify, or reverse the order or decision appealed against, or any part of that order or decision:
  - b. exercise any of the powers that could have been exercised by the Tribunal in the proceedings to which the appeal relates.
7. Notwithstanding anything in subsection (6), the court may in any case, instead of determining any appeal, refer to the Tribunal, in accordance with the rules of court, for further consideration by the Tribunal, the whole or any part of the matter to which the appeal relates.
8. Subject to the provisions of this Act, the procedure in respect of any such appeal shall be in accordance with the rules of court.
9. Notice of appeal shall not operate as a stay of proceedings in respect of the decision to which the appeal relates unless the Tribunal or the High Court so orders.

## 124. Appeal to Court of Appeal on a question of law

1. Any party to any proceedings before the High Court under this Act may, with the leave of the High Court, appeal to the Court of Appeal against any determination of the High Court on a question of law arising in those proceedings: provided that, if the High Court refuses to grant leave to appeal to the Court of Appeal, the Court of Appeal may grant special leave to appeal.
2. A party desiring to appeal to the Court of Appeal under this section shall, within 21 days after the determination of the High Court, or within such further time as that court may allow, give notice of his or her application for leave to appeal in such manner as may be directed by the rules of that court, and the High Court may grant leave accordingly if in the opinion of that court the question of law involved in the appeal is one which, by reason of its general or public importance or for any other reason, ought to be submitted to the Court of Appeal for decision.

3. Where the High Court refuses leave to any party to appeal to the Court of Appeal under this section, that party may, within 21 days after the refusal of the High Court or within such further time as the Court of Appeal may allow, apply to the Court of Appeal, in such manner as may be directed by the rules of that court, for special leave to appeal to that court, and the Court of Appeal may grant leave accordingly if, in the opinion of that court, the question of law involved in the appeal is one which, by reason of its general or public importance or for any other reason, ought to be submitted to the Court of Appeal for decision.
4. On any appeal to the Court of Appeal under this section, the Court of Appeal shall have the same power to adjudicate on the proceedings as the High Court had.
5. The same judgment must be entered in the High Court, and the same execution and other consequences and proceedings must follow on it, as if the decision of the Court of Appeal on an appeal under this section had been given in the High Court.
6. The decision of the Court of Appeal on any application to that court for leave to appeal shall be final.

## 125. Costs of appeal

The High Court shall have power to make such order as to the whole or any part of the costs of an appeal under section 123 as may seem just but every order for costs shall follow the outcome of the appeal unless the court otherwise orders.

## 126. Additional members of High Court for purposes of Act

1. For the purpose of the exercise by the High Court of its jurisdiction and powers—
  - a. under section 92T; or
  - b. under section 123 in respect of any appeal under section 123(2) or section 123(3) in which a question of fact is involved,—
 

there shall be 2 additional members of the court who shall be persons appointed by a Judge of the court for the purposes of the hearing or appeal from the panel maintained by the Minister under section 101.
2. Before entering upon the exercise of the duties of their office, the additional members shall take an oath before a Judge of the High Court that they will faithfully and impartially perform the duties of their office.
3. The presence of a Judge of the High Court and of at least 1 additional member shall be necessary to constitute a sitting of the court.
4. The decision of a majority (including the Judge, or, where more than 1 Judge sits, including a majority of the Judges) of the members present at a sitting of the court shall be the decision of the court. If the members present are equally divided in opinion, the decision of the Judge, or of a majority of the Judges, shall be the decision of the court.
5. If any question before the court cannot be decided in accordance with subsection (4), the question shall be referred to the Court of Appeal for decision in accordance with the practice and procedure of that court, which for the purpose shall have all the powers of the court under this Act. The decision of the Court of Appeal in any proceedings under this subsection shall be final and shall take effect and be entered as if it were a decision of the court under this Act.

6. An additional member is entitled—
  - a. to receive remuneration not within paragraph (b) for services as a member at a rate and of a kind determined by the Minister in accordance with the fees framework; and
  - b. in accordance with the fees framework, to be reimbursed for actual and reasonable travelling and other expenses incurred in carrying out his or her office as a member.
7. For the purposes of subsection (6), fees framework means the framework determined by the Government from time to time for the classification and remuneration of statutory and other bodies in which the Crown has an interest.

## Part 5: Powers in relation to inquiries

### 126A. Evidence order

1. Any District Court Judge who is satisfied, on an application made by the Commission in accordance with subsection (3), that any person can provide information, documents, or things, or give evidence, that will or may be relevant to a specified inquiry, may make an order—
  - a. requiring that person to produce to the Commission any information, or documents, or things specified in the order; or
  - b. requiring that person to give evidence to the Commission about matters that, in the opinion of the District Court Judge, are relevant to the inquiry.
2. If an order is made under subsection (1)(a), the District Court Judge may, as a condition of the order, require the Commission to reimburse the person who is the subject of the order for the actual and reasonable expenses incurred by that person in complying with the order or in producing any specified class of information, documents, or things.
3. An application by the Commission for an order under subsection (1) must be in writing and must—
  - a. set out the reasons why the order is sought; and
  - b. if an order is sought under subsection (1)(a), set out the information, documents, or things in respect of which the order is sought; and
  - c. explain why the information, documents, things, or evidence in question will or may be relevant to the inquiry.
4. In this section, specified inquiry means an inquiry by the Commission under section 5(2)(h) into the contravention or possible contravention by any person of New Zealand law relating to human rights.

### 127. Evidence

1. The Commission may, by notice in writing, require any person who is the subject of an order under section 126A(1)(a) to provide any information, and to produce any documents or things in the possession of or under the control of that person, that are specified in the order.



2. The Commission may summon before it, and examine on oath, any person who is subject to an order under section 126A(1)(b), in accordance with the terms of the order, and a Commissioner may for that purpose administer an oath to the person summoned.
3. Every such examination by a Commission shall be deemed to be a judicial proceeding within the meaning of section 108 of the Crimes Act 1961 (which relates to perjury).

## 128. Protection and privileges of witnesses, etc

1. Every person shall have the same privileges in relation to the giving of information to, the answering of questions put by, and the production of documents and things to, a Commission as witnesses have in any court.
2. No person shall be required to supply any information to or to answer any question put by a Commission in relation to any matter, or to produce to a Commission any document or paper or thing relating to any matter, in any case where compliance with that requirement would be in breach of an obligation of secrecy or non-disclosure imposed on that person by the provisions of any Act or regulations, other than the Official Information Act 1982.
3. No person shall be liable to prosecution for an offence against any enactment, other than section 143, by reason of that person's compliance with any requirement of a Commission under section 127.
4. Where the attendance of any person is required by a Commission under section 127, the person shall be entitled to the same fees, allowances, and expenses as if the person were a witness in a court and, for the purpose,—
  - a. the provisions of any regulations in that behalf under the Criminal Procedure Act 2011 shall apply accordingly; and
  - b. the Commission shall have the powers of a court under any such regulations to fix or disallow, in whole or in part, or to increase, any amounts payable under the regulations.

## 129. Disclosure of certain matters not to be required

1. Where—
  - a. the Prime Minister certifies that the giving of any information or the answering of any question or the production of any document or thing might prejudice the security, defence, or international relations of New Zealand (including New Zealand's relations with the government of any other country or with any international organisation); or
  - b. the Attorney-General certifies that the giving of any information or the answering of any question or the production of any document or thing—
    - i. might prejudice the prevention, investigation, or detection of offences; or
    - ii. might involve the disclosure of proceedings of Cabinet, or any committee of Cabinet, relating to matters of a secret or confidential nature, and such disclosure would be injurious to the public interest,—the Commission shall not require the information to be given, or, as the case may be, the document or thing to be produced.

2. Subject to the provisions of subsection (1), the rule of law which authorises or requires the withholding of any document, or the refusal to answer any question, on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest shall not apply in respect of any investigation by a Commission.

## 130. Proceedings privileged

1. Sections 120 to 126 of the Crown Entities Act 2004 apply except to the extent provided in subsections (2) and (2A) (which set out special rules relating to proceedings under section 131 (which relates to inciting racial disharmony)).
2. No proceedings under section 131 lie against any Commissioner or person engaged or employed in connection with the work of the Commission and the Director of Human Rights Proceedings (relevant person) for anything he or she may do or report or say in the course of the exercise or intended exercise of his or her duties under this Act, unless it is shown that he or she acted in bad faith.
- 2A. Sections 122 to 126 of the Crown Entities Act 2004 then apply as if the conduct for which a relevant person may be indemnified or insured under those sections included conduct that is covered by the immunity in subsection (2).
- 2B. No relevant person can be required to give evidence in any court, or in any proceedings of a judicial nature, in respect of anything coming to his or her knowledge in the exercise of his or her functions.
3. Nothing in subsection (2) applies in respect of proceedings for—
  - a. an offence against section 78 or section 78A(1) or section 105 or section 105A or section 105B of the Crimes Act 1961; or
  - b. the offence of attempting or conspiring to commit an offence against section 78 or section 78A(1) or section 105 or section 105A or section 105B of the Crimes Act 1961.
4. Anything said or any information supplied or any document or thing produced by any person in the course of any inquiry by, or proceedings before, the Commission or a Commissioner under this Act shall be privileged in the same manner as if the inquiry or proceedings were proceedings in a court.
5. For the purposes of clause 3 of Part 2 of Schedule 1 of the Defamation Act 1992, any report made by the Commission or a Commissioner under this Act shall be deemed to be an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand.

## Part 6: Inciting racial disharmony

### 131. Inciting racial disharmony

1. Every person commits an offence and is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$7,000 who, with intent to excite hostility or ill-will against, or bring into contempt or ridicule, any group of persons in New Zealand on the ground of the colour, race, or ethnic or national origins of that group of persons,—
  - a. publishes or distributes written matter which is threatening, abusive, or insulting, or broadcasts by means of radio or television words which are threatening, abusive, or insulting; or

- b. uses in any public place (as defined in section 2(1) of the Summary Offences Act 1981), or within the hearing of persons in any such public place, or at any meeting to which the public are invited or have access, words which are threatening, abusive, or insulting,— being matter or words likely to excite hostility or ill-will against, or bring into contempt or ridicule, any such group of persons in New Zealand on the ground of the colour, race, or ethnic or national origins of that group of persons.
2. For the purposes of this section, publishes or distributes and written matter have the meaning given to them in section 61.

## 132. No prosecution without Attorney-General's consent

No prosecution for an offence against section 131 shall be instituted without the consent of the Attorney-General.

## Part 7: Miscellaneous provisions

### 133. Licences and registration

1. Where any person is licensed or registered under any enactment to carry on any occupation or activity or where any premises or vehicle are registered or licensed for any purpose under any enactment, and where the person or other authority authorised to renew, revoke, cancel, or review any such licence or registration is satisfied—
  - a. that in the carrying on of the occupation or activity; or
  - b. that in the use of the premises or vehicle,—
 

there has been a breach of any of the provisions of Part 2, the person or authority, in addition to any other powers which that person or authority has, but subject to subsection (2), may refuse to renew or may revoke or cancel any such licence or registration, as the case may require, or may impose any other penalty authorised by the enactment, whether by way of censure, fine, or otherwise.
2. Any procedural requirements of the enactment, including any whereby a complaint is a prerequisite to the exercise by the person or authority of its powers under the enactment, shall be observed.
3. In any case in which any of the powers conferred by subsection (1) are exercised,—
  - a. the person or authority shall in giving its decision state that the decision is being made pursuant to subsection (1); and
  - b. any person who would have been entitled to appeal against that decision if it had been made on other grounds shall be entitled to appeal against the decision made pursuant to subsection (1).
4. In this section the term enactment means any provision of any Act, regulations, or bylaws.

## 134. Access by the public to places, vehicles, and facilities

1. Every person commits an offence who—
  - a. refuses to allow any other person access to or use of any place or vehicle which members of the public are entitled or allowed to enter or use; or
  - b. refuses any other person the use of any facilities in that place or vehicle which are available to members of the public; or
  - c. requires any other person to leave or to cease to use that place or vehicle or those facilities,—  
when that refusal or requirement is in breach of any of the provisions of Part 2.
2. Every person who commits an offence against this section is liable on conviction to a fine not exceeding \$3,000.
3. In this section the term vehicle includes a vessel, an aircraft, or a hovercraft.

## 135. No prosecution without Attorney-General's consent

No prosecution for an offence against section 134 shall be instituted without the consent of the Attorney-General.

## 136. Condition in restraint of marriage, civil union, or de facto relationship

A condition, whether oral or contained in a deed, will, or other instrument, which restrains or has the effect of restraining a person from marrying or entering into a civil union or de facto relationship shall be void if the person or class of person whom the person subject to the condition may or may not marry or enter into a civil union or de facto relationship with is identified or defined, expressly or by implication, by reference to the colour, race, or ethnic or national origins of the person or class of person.

## 137. Advisors to be officials

1. Every person engaged by the Commission in connection with its work is an official for the purposes of sections 105 and 105A of the Crimes Act 1961.
2. This section does not limit section 135 of the Crown Entities Act 2004.

## 138. No adverse statement

The Commission must not, in any report or statement made pursuant to this Act, make any comment that is adverse to any person unless that person has been given an opportunity to be heard.

## 139. Restriction on delegation

1. The Commission may not delegate the powers or functions in section 7 or section 76.
2. In other respects, section 73 of the Crown Entities Act 2004 applies.

## 140. Delegation of powers by certain Commissioners

1. The Chief Human Rights Commissioner or the Race Relations Commissioner may, in writing signed by him or her, delegate to an officer or employee of the Commission any of the Commissioner's functions or powers under this Act, except this power of delegation and the power to make a report under this Act.
2. A delegation under this section—
  - a. may be made to a specified person or to the holder for the time being of a specified office or to the holders of offices of a specified class; and
  - b. may be made subject to any restrictions or conditions the Commissioner thinks fit; and
  - c. may be made either generally or in relation to any particular case or class of cases; and
  - d. is revocable at will and, until revoked, continues in force according to its tenor.
3. If a function or power is delegated under this section, the performance or exercise of the function or power must not be inconsistent with determinations of the Commission under section 7.
4. If a function or power is delegated under this section and the Commissioner by whom it was made ceases to hold office, the delegation continues to have effect as if it were made by his or her successor.
5. A person purporting to exercise a function or power of a Commissioner by virtue of a delegation under this section must, when required to do so, produce evidence of the person's authority to exercise the power.
6. Sections 62 to 72 of the Crown Entities Act 2004 apply to a delegate under this section as if the delegate were a member and as if the disclosure must be made to the Commission and with other necessary modifications.
7. Sections 74 to 76 of the Crown Entities Act 2004 do not apply to a delegation under this section.

## 141. Annual report

[Repealed]

### 141A. Certain acts not to be questioned

1. No action of the Chief Commissioner or the Race Relations Commissioner that is required by this Act to be undertaken jointly with the other may be questioned in any proceedings on the ground that it was not undertaken jointly.
2. No action of the Chief Commissioner or the Equal Employment Opportunities Commissioner that is required by this Act to be undertaken jointly with the other may be questioned in any proceedings on the ground that it was not undertaken jointly.

## 142. Money to be appropriated by Parliament for purposes of this Act

[Repealed]

• Human rights commission

## 143. Offences

Every person commits an offence against this Act and is liable on conviction to a fine not exceeding \$3,000 who—

- a. without lawful justification or excuse, wilfully obstructs, hinders, or resists the Commission or a Commissioner or any other person in the exercise of its or his or her powers under this Act:
- b. without lawful justification or excuse, refuses or wilfully fails to comply with any lawful requirement of the Commission or a Commissioner or any other person under this Act:
- c. makes any false statement knowing it to be false or intentionally misleads or attempts to mislead the Commission or a Commissioner or any other person in the exercise of its or his or her powers under this Act.

• Human rights commission

## 144. Regulations

• Head of state powers  
• Advisory bodies to the head of state

1. The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:
  - a. prescribing the procedure to be followed under this Act in respect of complaints to and proceedings before the Commission or in respect of proceedings before the Tribunal:
  - b. prescribing forms for the purposes of this Act, and requiring the use of such forms:
  - c. providing for such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.
2. For the avoidance of doubt, it is hereby declared that the power conferred by subsection (1) to make regulations in respect of proceedings before the Tribunal includes power to make regulations in respect of proceedings in connection with the exercise or performance of any function, power, or duty conferred or imposed on the Tribunal by or under any other enactment.

## 145. Related amendments to other enactments

[Repealed]

## 146. Repeals

[Repealed]

## 147. Revocation

[Repealed]

## Subpart 1: Transitional provisions

### 148. Former office of Commissioner abolished

1. The office of Commissioner under section 7(1) of the principal Act (as it read immediately before the commencement of this section) is abolished.
2. No person is entitled to compensation for loss of office as a Commissioner under subsection (1).

### 148A. Certain former Commissioners to be transitional members of Commission

1. The person who, immediately before the commencement of this section, held office as Chief Commissioner under section 7(1)(a) (as it read immediately before the commencement of this section) is taken to have been appointed to the office of Chief Commissioner under section 8(1)(a) (as substituted by section 5 of the Human Rights Amendment Act 2001).
2. The person who, immediately before the commencement of this section, held office as the Race Relations Conciliator is taken to have been appointed to the office of Race Relations Commissioner under section 8(1)(b) (as substituted by section 5 of the Human Rights Amendment Act 2001).
3. Every person who, immediately before the commencement of this section, held office as Commissioner under section 7(1)(e) (as it read immediately before the commencement of this section) is taken to have been appointed to the office of Commissioner under section 8(1)(d) (as substituted by section 5 of the Human Rights Amendment Act 2001).
4. The Privacy Commissioner appointed under the Privacy Act 1993 and the Commissioner appointed to be Proceedings Commissioner under section 7(1)(d) (as it read before the commencement of the Human Rights Amendment Act 2001) cease to be Human Rights Commissioners on the commencement of this section.
5. Every person who is taken to have been appointed to the office of Commissioner under this section is appointed on the same terms and conditions and for the remainder of the term for which the person was appointed under section 7(1) (as it read immediately before the commencement of this section).

## Subpart 2: Race Relations Conciliator

### 148B. Assets and liabilities vest in Commission

On the commencement of this section, the assets and liabilities of the Race Relations Conciliator vest in the Commission.

### 148C. References to Race Relations Conciliator

1. From the commencement of this section, unless the context otherwise requires, every reference to the Race Relations Conciliator in any instrument, document, or notice is to be read as a reference to the Race Relations Commissioner.
2. Despite subsection (1), every reference to the Race Relations Conciliator in any contract or other instrument, document, or notice that creates, or is evidence of, an asset or liability, must be read as a reference to the Commission.

## 148D. Proceedings

Any proceedings to which the Race Relations Conciliator was a party or that he or she was considering bringing, before the commencement of this section, may be brought, continued, completed, and enforced by or against the Commission.

## 148E. Commission to arrange final audited accounts

The Commission must perform the duties that the Race Relations Conciliator would have had to perform under section 41 of the Public Finance Act 1989 if the Human Rights Amendment Act 2001 had not been enacted, for the period beginning on 1 July 2001 and ending with the close of 31 December 2001.

## 148F. All employees transferred to Commission

1. Every person employed by the Race Relations Conciliator immediately before the commencement of this section is, on and from that date, an employee of the Commission on the same terms and conditions that applied to the employee immediately before that date.
2. For the purposes of every enactment, law, contract, and agreement relating to the employment of the employee,—
  - a. the contract of employment of that employee is taken to be unbroken; and
  - b. the employee's period of service with the Race Relations Conciliator and every other period of service of that employee that is recognised by the Race Relations Conciliator as continuous service is taken to have been a period of service with the Commission.
3. A person to whom subsection (1) applies is not entitled to any compensation just because the person has ceased to be an employee of the Race Relations Conciliator.

## Subpart 3: Proceedings Commissioner

### 148G. Proceedings Commissioner

1. The person who, immediately before the commencement of this section, held office as the Proceedings Commissioner under section 7(1)(d) (as it read immediately before the commencement of this section) is taken to have been appointed to the office of Director of Human Rights Proceedings under section 20A (as substituted by section 5 of the Human Rights Amendment Act 2001).
2. The Director of Human Rights Proceedings is appointed on the same terms and conditions and for the remainder of the term for which he or she was appointed Proceedings Commissioner.

### 148H. References to Proceedings Commissioner

From the commencement of this section, unless the context otherwise requires, every reference to the Proceedings Commissioner in any instrument, document, or notice is to be read as a reference to the Director.



## **148I. Proceedings to which Proceedings Commissioner party**

1. Proceedings to which the Proceedings Commissioner was a party or that he or she was considering bringing, before the commencement of this section—
  - a. must be brought, continued, completed, and enforced by the Director; and
  - b. may be brought, continued, completed, and enforced against the Director.
2. Sections 86 to 92, 95, and 97 (as they read immediately before the commencement of this section) apply (with any necessary modifications) to any proceedings to which the Proceedings Commissioner was a party before the commencement of this section as if—
  - a. the Director were the Proceedings Commissioner; and
  - b. the Office of Human Rights Proceedings were the Commission; and
  - c. the Human Rights Review Tribunal were the Complaints Review Tribunal.

## **148J. Complaints referred to Proceedings Commissioner for decision as to proceedings**

1. Subsection (2) applies—
  - a. if a complaint is referred to the Proceedings Commissioner under section 75(g) (as it read immediately before the commencement of this section), but no proceedings have been instituted by the Proceedings Commissioner; or
  - b. if the Proceedings Commissioner was required to decide whether to institute proceedings against a party to a settlement under section 82(1)(c) (as it read immediately before the commencement of this section), but no proceedings were instituted by the Proceedings Commissioner before the commencement of this section.
2. If this subsection applies,—
  - a. if the Commissioner has not made a decision on whether to institute proceedings, the Director must decide, under section 90(1)(c), whether to provide representation in relation to the complaint:
  - b. if the Commissioner has made a decision to institute proceedings, the Director must provide representation for the complainant or aggrieved party (as the case may be) in the proceedings:
  - c. if the Commissioner has made a decision not to institute proceedings, that decision is deemed to have been made by the Director.

• Human rights commission

## 148K. Transfer of employees from Commission to Office

1. The Commission and the Office of Human Rights Proceedings may, after consulting the employee concerned, agree to the transfer of an employee from the Commission to the Office of Human Rights Proceedings on the same terms and conditions that applied to the employee immediately before the date of transfer.
2. For the purposes of every enactment, law, contract, and agreement relating to the employment of the employee,—
  - a. the contract of employment of that employee is taken to have been unbroken; and
  - b. the employee's period of service with the Commission, and every other period of service of that employee that is recognised by the Commission as continuous service, is taken to have been a period of service with the Office of Human Rights Proceedings.
3. An employee of the Commission who is transferred to the Office of Human Rights Proceedings under subsection (1) is not entitled to any compensation just because—
  - a. the position held by the employee with the Commission has ceased to exist; or
  - b. the person has ceased (as a result of the transfer) to be an employee of the Commission.

• Human rights commission

## Subpart 4: Complaints Division

### 148L. Complaints Division abolished

The Complaints Division of the Commission is abolished.

### 148M. Outstanding complaints to be dealt with by Commission under new procedure

1. A complaint lodged with the Complaints Division before the commencement of this Act must be dealt with by the Commission under Part 3 (as substituted by section 9 of the Human Rights Amendment Act 2001) as if the complaint were made to the Commission under section 76(2)(a).
2. For the purposes of subsection (1),—
  - a. if the Complaints Division has called a conciliation conference under section 80(1) (as it read immediately before the commencement of this section) but the conference has not taken place, the Commission must instead offer to convene a dispute resolution meeting; and
  - b. if section 79(2) applies to the complaint, the Commission must inform the Attorney-General of the details of the complaint as soon as practicable.

3. Despite subsection (1), if, in relation to a complaint, the Complaints Division has decided not to investigate the complaint further under section 76(1) or section 77(1)(a) (as they read immediately before the commencement of this section), the Commission must take no action or further action in relation to the complaint.

## **148N. Breaches of Part 1A**

No act or omission that occurred before 1 January 2002 is capable of being in breach of Part 1A unless—

- a. the act or omission continues on or after 1 January 2002; or
- b. in the case of an enactment, the enactment is in force on or after 1 January 2002.

## **148O. Complaints about breaches of Part 1A**

1. Despite section 76, the Commission is not under a duty to receive or assess any complaint alleging a breach of Part 1A that is made to the Commission before 1 April 2002.
2. The Commission is not under a duty to receive or assess any complaint alleging that an act or omission that occurred before 1 January 2002 and that ceased to continue or to be in force before 1 January 2002 is in breach of Part 1A.

## **Subpart 5: Savings**

### **149. Special provisions in relation to written employment contracts in force on 1 April 1992**

1. This section applies to every employment contract (whether a collective employment contract or an individual employment contract) that—
  - a. is in writing; and
  - b. was in force on 1 April 1992; and
  - c. specifies an age at which an employee is required to retire.
2. Where the parties to an employment contract to which this section applies agree in writing, at any time on or after 1 April 1992, to confirm or vary the age specified in the employment contract, the age, as so confirmed or varied, shall have effect notwithstanding section 22.
3. Where the parties to an employment contract to which this section applies have not agreed in writing to confirm or vary the age specified in the employment contract, section 22 shall apply in relation to that employment contract.
4. Where, as at 1 April 1992, the age at which an employer is required to retire, under a term of that employee's employment contract, was specified only in a document that sets out the employer's policy on the retirement ages of the employer's employees or any of them, this section shall not apply in relation to that employee's employment contract.

## 150. Charitable instruments

1. Nothing in this Act shall apply—
  - a. to any provision in an existing or future will, deed, or other instrument where that provision confers charitable benefits, or enables charitable benefits to be conferred, on persons against whom discrimination is unlawful by virtue of Part 2; or
  - b. to any act done in order to comply with any provision described in paragraph (a).
2. For the purposes of this section, charitable benefits means benefits for purposes that are charitable in accordance with the law of New Zealand.

## 151. Other enactments and actions not affected

[Repealed]

## 152. Expiry of section 151

[Repealed]

## 153. Savings

1. Nothing in this Act affects the right to bring any proceedings, whether civil or criminal, that may be brought other than under this Act, but, in assessing any damages to be awarded to or on behalf of any person under this Act or otherwise, a court must take account of any damages already awarded to or on behalf of that person in respect of the same cause of action.
2. Subject to the Illegal Contracts Act 1970, no proceedings, civil or criminal, shall lie against any person, except as provided by this Act, in respect of any act or omission which is unlawful by virtue only of any of the provisions of Part 2.
3. Nothing in this Act shall affect any enactment or rule of law, or any policy or administrative practice of the Government of New Zealand, that—
  - a. [Repealed]
  - b. distinguishes between New Zealand citizens and other persons, or between British subjects or Commonwealth citizens and aliens.
4. [Repealed]

## Schedule 1: Administrative provisions applying in respect of Commission

### 1. General manager: appointment, term of office, and conditions

1. The general manager—
  - a. is appointed by the Chief Human Rights Commissioner, after consultation with the Commission, under section 18, and his or her office is a full-time

one; and

- b. holds the office for the term (not longer than 5 years) and under the conditions specified in his or her appointment; and
  - c. may, from time to time, be reappointed; and
  - d. unless he or she sooner vacates or no longer holds or is removed from the office, continues in it until his or her successor comes into it, even though the term for which he or she was appointed has expired.
- 2. Subclause (1) is subject to section 117 of the Crown Entities Act 2004.
  - 3. In the case of absence from duty of the general manager (for any reason) or on the occurrence of a vacancy in that position (for any reason) and while the absence or vacancy continues, all or any of the powers and duties of the general manager may be exercised and performed by any other employee of the Commission for the time being directed by the Chief Commissioner (after consultation by the Chief Commissioner with the Commission) to exercise and perform them, whether the direction has been given before the absence or vacancy occurs or while it continues.
  - 4. No direction given under subclause (3) and no acts done by any employee of the Commission acting under that direction may in any proceedings be questioned on the ground that—
    - a. the occasion for the direction had not arisen or had ceased; or
    - b. that the employee has not been appointed to the position of general manager.

## 2. Staff

[Repealed]

## 3. Employment principles

[Repealed]

## 4. Appointment of experts

[Repealed]

## 5. Salaries and allowances

[Repealed]

## 6. Superannuation or retiring allowances

- 1. For the purpose of providing superannuation or retiring allowances for the Commissioners, the Commission may, out of the funds of the Commission, make payments to or subsidise any superannuation scheme that is registered under the Superannuation Schemes Act 1989.

2. Despite anything in this Act, any person who, immediately before being appointed as a Commissioner or the general manager or, as the case may be, becoming an employee of the Commission, is a contributor to the Government Superannuation Fund under Part 2 or Part 2A of the Government Superannuation Fund Act 1956 is deemed to be, for the purposes of the Government Superannuation Fund Act 1956, employed in the Government service so long as that person continues to hold office as a Commissioner or the general manager or, as the case may be, to be an employee of the Commission, and that Act applies to that person in all respects as if that person's service as a Commissioner or the general manager or, as the case may be, as an employee of that kind were Government service.
3. For the purpose of applying the Government Superannuation Fund Act 1956, in accordance with subclause (2), to a person who holds office as a Commissioner or the general manager or, as the case may be, is in the service of the Commission as an employee and (in any such case) is a contributor to the Government Superannuation Fund, controlling authority, in relation to the person, means the Commission.

## **7. Certain Acts do not apply to staff of Commission**

[Repealed]

## **8. Services for Commission**

[Repealed]

## **9. Funds of Commission**

[Repealed]

## **10. Bank accounts**

[Repealed]

## **11. Investment of money**

[Repealed]

## **12. Borrowing**

[Repealed]

## **13. Seal**

[Repealed]

## **14. Tax status**

[Repealed]

## **15. Crown entity**

[Repealed]

## 16. Auditor

[Repealed]

## Schedule 2: Administrative provisions applying in respect of Office of Human Rights Proceedings

### 1. Interpretation

In this schedule, unless the context otherwise requires,—

- Director means the Director of Human Rights Proceedings, or alternate Director of Human Rights Proceedings, appointed under section 20A
- functions include powers or duties
- Office means the Office of Human Rights Proceedings referred to in section 20.

### 2. Staff

1. The Director may, in accordance with this clause, appoint any employees (including acting or temporary or casual employees) that he or she considers necessary for the efficient carrying out of the functions of the Director.
2. Employees appointed under this clause are employed on any terms and conditions of employment the Director determines.
3. Subclause (2) is subject to section 116 of the Crown Entities Act 2004, except that the reference in section 116(1) to agreement by a Crown entity must be read as a reference to agreement by the Director.
4. [Repealed]

### 3. Employment principles

[Repealed]

### 4. Appointment of experts

1. The Director may, as and when the need arises, appoint any person (other than a Commissioner) who, in the Director's opinion, possesses expert knowledge or is otherwise able to assist in connection with the exercise or performance of the functions of the Director to make such inquiries or to conduct such research or to make such reports or to render such other services as may be necessary for the efficient exercise or performance by the Office of the functions of the Director.
2. The Office must pay persons appointed under this clause, for services rendered by them, fees or commission or both at such rates as the Director thinks fit, and may separately reimburse them for expenses reasonably incurred in rendering services for the Office.

### 5. Application of Crown Entities Act 2004 to Director

Sections 47 and 48 and 120 to 126 of the Crown Entities Act 2004 apply to the Director, with all necessary modifications, as if he or she were a member of the Commission.

## 6. Superannuation or retiring allowances

1. For the purpose of providing superannuation or retiring allowances for the Director, the Office may, out of the funds of the Office, make payments to or subsidise any superannuation scheme that is registered under the Superannuation Schemes Act 1989.
2. Despite anything in this Act, any person who, immediately before being appointed as the Director or, as the case may be, becoming an employee of the Office, is a contributor to the Government Superannuation Fund under Part 2 or Part 2A of the Government Superannuation Fund Act 1956 is deemed to be, for the purposes of the Government Superannuation Fund Act 1956, employed in the Government service so long as that person continues to hold office as the Director or, as the case may be, to be an employee of the Office, and that Act applies to that person in all respects as if that person's service as the Director or, as the case may be, as an employee of that kind were Government service.
3. For the purpose of applying the Government Superannuation Fund Act 1956, in accordance with subclause (2), to a person who holds office as the Director or, as the case may be, is in the service of the Office as an employee and (in any such case) is a contributor to the Government Superannuation Fund, controlling authority, in relation to the person, means the Office.

## 7. Certain Acts do not apply to staff of Office

[Repealed]

## 8. Services for Office

[Repealed]

## 9. Funds of Office

[Repealed]

## 10. Bank accounts

[Repealed]

## 11. Investment of money

[Repealed]

## 12. Address for service

The address for service of the Director and of the Office is the address of the main premises of the Office.

## Schedule 3: Enactments repealed

[Repealed]

## Amendment Act 1: Human Rights Amendment Act 1994

Public Act: 1994 No 138



Date of assent: 9 December 1994

Commencement: 9 December 1994

## 1. Short Title

This Act may be cited as the Human Rights Amendment Act 1994, and shall be read together with and deemed part of the Human Rights Act 1993 (hereinafter referred to as “the principal Act”).

## Subpart 1: Application of principal Act and Human Rights Commission Act 1977 to superannuation schemes

### 2. Application of principal Act to superannuation schemes providing benefits on account of marital status

1. Notwithstanding any rule of law, nothing in section 22 or section 44 or section 70 of the principal Act shall prevent, or be taken ever to have prevented, the provisions of a superannuation scheme, or the trustees of the scheme, from providing, on the death of a member of the scheme, a benefit for either—
  - a. the spouse of that member; or
  - b. the civil union partner or de facto partner of that member,—  
without providing a similar or corresponding or equivalent benefit on the death of other members of the scheme.
2. Subject to subsection (5), this section applies in respect of superannuation schemes established before or after the commencement of this Act.
3. This section applies notwithstanding any judgment, decision, or order of any court or tribunal given or made before or after the commencement of this Act in proceedings commenced before the commencement of this Act.
4. Nothing in section 153(1) of the principal Act limits or affects this section.
5. Nothing in this section applies to the provision of benefits under a superannuation scheme or by the trustees of a scheme in respect of any person who, at any time on or after 1 January 1996, becomes a member of the scheme unless,—
  - a. immediately before becoming a member, that person was a member of another superannuation scheme that provides or provided, or the trustees of which provide or provided, benefits of a kind referred to in paragraph (a) or paragraph (b) of subsection (1); and
  - b. that person became a member of the first-mentioned scheme as a result of a requirement, or the exercise of a right, to leave that other scheme by reason of any merger, takeover, or restructuring of, or reorganisation of the business of, that person’s employer.
6. Nothing in this section affects the validity of any amendment to the instrument or conditions governing a superannuation scheme made pursuant to section 72 of the principal Act before the commencement of this Act.

### **3. Application of principal Act to superannuation schemes providing benefits for children and dependants**

1. For the avoidance of doubt, it is hereby declared that nothing in section 22 or section 44 or section 70 of the principal Act shall prevent, or be taken ever to have prevented, the provisions of a superannuation scheme, or the trustees of the scheme, from providing, on the death of a member of the scheme, a benefit for a child or dependant of that member's family, including a child or dependant belonging to a particular class determined by reference to age, disability, or employment status without providing a similar or corresponding or equivalent benefit on the death of other members of the scheme.
2. This section applies in respect of superannuation schemes established before or after the commencement of this Act.
3. This section applies notwithstanding any judgment, decision, or order of any court or tribunal given or made before or after the commencement of this Act in proceedings commenced before the commencement of this Act.

### **4. Savings in respect of certain superannuation schemes**

1. For the avoidance of doubt, it is hereby declared that nothing in section 22 or section 44 of the principal Act relating to different treatment on the ground of sex or marital status shall apply, or be taken ever to have applied, to—
  - a. a superannuation scheme to which subsection (2) of section 88 of the Human Rights Commission Act 1977 applied, except in respect of a person who became a member of the scheme on or after 1 April 1980 or to whom amendments to the scheme were applied pursuant to subsection (4) of that section; or
  - b. a superannuation scheme established as an alternative to making amendments of the kind referred to in subsection (4) of section 88 of the Human Rights Commission Act 1977 to an existing scheme, except in respect of a person who became a member of the scheme by virtue of subsections (4) and (5) of that section.
2. For the avoidance of doubt, it is hereby further declared that where any superannuation scheme was amended for the purpose of ensuring that its operation did not involve a breach of section 15(1) or section 24(1) of the Human Rights Commission Act 1977, nothing in the principal Act, and nothing in those amendments, shall deprive, or be taken ever to have deprived, any person who joined the scheme before the date on which those amendments came into force of any right or option to retire at a particular age or on a particular date or to become entitled under the scheme to a pension or other benefit, unless that person relinquishes that right or option.

### **5. Application of Human Rights Commission Act 1977 to superannuation schemes**

1. Notwithstanding any rule of law, nothing in section 15(1) or section 24(1) or section 88 of the Human Rights Commission Act 1977 shall be taken ever to have prevented the provisions of a superannuation scheme, or the trustees of the scheme, from providing, on the death of a member of the scheme, a benefit for either—
  - a. the spouse of that member; or

- b. the civil union partner or de facto partner of that member,— without providing a similar or corresponding or equivalent benefit on the death of other members of the scheme.
2. This section applies notwithstanding any judgment, decision, or order of any court or tribunal given or made before or after the commencement of this Act in proceedings commenced before the commencement of this Act.
3. Nothing in section 153(1) of the principal Act limits or affects this section.
4. Nothing in this section affects the validity of any amendment to the instrument or conditions governing a superannuation scheme made pursuant to section 90 of the Human Rights Commission Act 1977.

## Supreme Court Act 2003

### 1. Title

This Act is the Supreme Court Act 2003.

### Part 1: Supreme Court of New Zealand

#### Subpart 1: Preliminary matters

### 2. Commencement

This Act comes into force on 1 January 2004.

### 3. Purpose

1. The purpose of this Act is—
  - a. to establish within New Zealand a new court of final appeal comprising New Zealand judges—
    - i. to recognise that New Zealand is an independent nation with its own history and traditions; and
    - ii. to enable important legal matters, including legal matters relating to the Treaty of Waitangi, to be resolved with an understanding of New Zealand conditions, history, and traditions; and
    - iii. to improve access to justice; and
  - b. to provide for the court's jurisdiction and related matters; and
  - c. to end appeals to the Judicial Committee of the Privy Council from decisions of New Zealand courts; and

• Motives for writing constitution

• Structure of the courts

- d. to make related amendments to certain enactments relating to courts or judicial proceedings.
2. Nothing in this Act affects New Zealand's continuing commitment to the rule of law and the sovereignty of Parliament.

## 4. Interpretation

In this Act, unless the context otherwise requires,—

- acting Judge means an acting Judge of the Supreme Court appointed under section 23(1)
- Chief Justice means the Chief Justice of New Zealand appointed under section 4(1) of the Judicature Act 1908
- civil proceeding—
  - a. means any proceeding that is not a criminal proceeding; and
  - b. includes a proceeding under the Bail Act 2000
- decision means a judgment, decree, order, direction, or determination
- District Court includes—
  - a. a Family Court and a Youth Court; and
  - b. a District Court sitting in its admiralty jurisdiction
- High Court includes the High Court sitting in its admiralty jurisdiction, or sitting as a permanent Prize Court under the jurisdiction conferred by section 8 of the Admiralty Act 1973
- interlocutory application—
  - a. means an application in a proceeding or intended proceeding for—
    - i. an order or a direction relating to a matter of procedure; or
    - ii. in the case of a civil proceeding, for some relief ancillary to the relief claimed in the pleading; and
  - b. includes an application for a new trial; and
  - c. includes an application to review a decision made on an interlocutory application
- New Zealand court means—
  - a. the Supreme Court, the Court of Appeal, the High Court, or a District Court; or
  - b. any of the following specialist courts: the Court Martial of New Zealand established under section 8 of the Court Martial Act 2007, the Court Martial Appeal Court constituted by the Court Martial Appeals Act 1953, the Employment Court, the Environment Court, the Maori Appellate Court, and the Maori Land Court

• Structure of the courts

• Establishment of military courts

- permanent Judge means a Judge of the Supreme Court who is not an acting Judge
- Privy Council means the Judicial Committee of the Privy Council
- Registrar means the Registrar of the Supreme Court appointed under section 36(1)
- Supreme Court and the Court mean the Supreme Court of New Zealand established by section 6
- 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. the day observed as anniversary day in Wellington; and
  - c. if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and
  - d. a day in the period commencing on 25 December in any year and ending with 15 January in the following year.

## 5. Act binds the Crown

This Act binds the Crown.

## Subpart 2: Establishment and jurisdiction of Supreme Court

### 6. Supreme Court established

This section establishes as the court of final appeal for New Zealand a court of record called the Supreme Court of New Zealand.

### 7. Appeals against decisions of Court of Appeal in civil proceedings

The Supreme Court can hear and determine an appeal by a party to a civil proceeding in the Court of Appeal against any decision made in the proceeding, unless—

- a. an enactment other than this Act makes provision to the effect that there is no right of appeal against the decision; or
- b. the decision is a refusal to give leave or special leave to appeal to the Court of Appeal.

• Supreme court powers

## 8. Appeals against decisions of High Court in civil proceedings

The Supreme Court can hear and determine an appeal by a party to a civil proceeding in the High Court against any decision made in the proceeding, unless—

- a. an enactment other than this Act makes provision to the effect that there is no right of appeal against the decision; or
- b. the decision is a refusal to give leave or special leave to appeal to the High Court or the Court of Appeal; or
- c. the decision was made on an interlocutory application.

• Supreme court powers

## 9. Appeals against decisions of other courts in civil proceedings

The Supreme Court can hear and determine an appeal against a decision made in a civil proceeding in a New Zealand court other than the Court of Appeal or the High Court to the extent only that an enactment other than this Act provides for the bringing of an appeal to the Supreme Court against the decision.

• Supreme court powers

## 10. Appeals against decisions in criminal proceedings

The Supreme Court can hear and determine appeals authorised by—

- a. Part 6 of the Criminal Procedure Act 2011; or
- b. section 10 or 10A of the Court Martial Appeals Act 1953.

## 11. Procedural requirements

Sections 7 to 10 are subject to—

- a. the provisions of this Act; and
- b. all applicable rules, orders, and directions for regulating the terms and conditions on which appeals may be allowed, made or given under this Act or the Judicature Act 1908.

## Subpart 3: Leave to appeal to Court

## 12. Appeals to be by leave

1. Appeals to the Supreme Court can be heard only with the Court's leave.
2. References in enactments other than this Act to the leave of the Supreme Court must be read subject to sections 13 and 14.

### 13. Criteria for leave to appeal

1. The Supreme Court must not give leave to appeal to it unless it is satisfied that it is necessary in the interests of justice for the Court to hear and determine the proposed appeal.
2. It is necessary in the interests of justice for the Supreme Court to hear and determine a proposed appeal if—
  - a. the appeal involves a matter of general or public importance; or
  - b. a substantial miscarriage of justice may have occurred, or may occur unless the appeal is heard; or
  - c. the appeal involves a matter of general commercial significance.
3. For the purposes of subsection (2), a significant issue relating to the Treaty of Waitangi is a matter of general or public importance.
4. The Supreme Court must not give leave to appeal to it against an order made by the Court of Appeal on an interlocutory application unless satisfied that it is necessary in the interests of justice for the Supreme Court to hear and determine the proposed appeal before the proceeding concerned is concluded.
5. Subsection (2) does not limit the generality of subsection (1); and subsection (3) does not limit the generality of subsection (2)(a).

### 14. No direct appeal from court other than Court of Appeal unless exceptional circumstances established

The Supreme Court must not give leave to appeal directly to it against a decision made, a conviction entered, or a sentence imposed, in a proceeding in a New Zealand court other than the Court of Appeal unless (in addition to being satisfied that it is necessary in the interests of justice for the Court to hear and determine the proposed appeal) it is satisfied that there are exceptional circumstances that justify taking the proposed appeal directly to the Supreme Court.

### 15. Applications for leave

1. The parties to an application for leave to appeal to the Supreme Court may make written submissions to the Court, and may include in the submissions—
  - a. additional relevant written material; and
  - b. responses to submissions made by any other party.
2. Neither the parties nor their representatives have a right to appear before the Court on the application; but the Court may if it thinks fit—
  - a. authorise the parties, their representatives, or both to appear;
  - b. exclude from any authority to appear a party who is an appellant in custody.
3. In determining the application, the Court must consider—
  - a. the written submissions before it; and

- b. if an oral hearing was held, the matters raised at the hearing.
- 4. The Court may consider the written submissions in any manner it thinks fit.

## 16. Court to state reasons for refusal to give leave

1. The Supreme Court must state its reasons for refusing to give leave to appeal to it.
2. The reasons may be stated briefly, and may be stated in general terms only.

## Subpart 4: Constitution of Court

### 17. Constitution of Court

1. The Supreme Court comprises—
  - a. the Chief Justice; and
  - b. not fewer than 4 nor more than 5 other Judges, appointed by the Governor-General as Judges of the Supreme Court.
2. The Supreme Court's jurisdiction is not affected by a vacancy in the number of its Judges.

### 18. Chief Justice, and seniority of Judges

1. The Chief Justice is the head of the New Zealand judiciary, and has seniority over the other Judges of the Supreme Court.
2. Other Judges of the Supreme Court appointed on different dates have seniority among themselves according to those dates.
3. Other Judges of the Supreme Court appointed on the same date have seniority among themselves as follows:
  - a. Judges who have been Judges of the Court of Appeal are senior to Judges who have not been Judges of the Court of Appeal:
  - b. Judges who have been Judges of the Court of Appeal have among themselves the seniority they would have if still Judges of the Court of Appeal:
  - c. Judges who have not been Judges of the Court of Appeal but have previously been Judges of the High Court have seniority among themselves according to their seniority as Judges of the High Court:
  - d. Judges who have not previously been Judges of the High Court but have previously held other judicial office in New Zealand are senior to Judges who have not previously held judicial office in New Zealand.
4. Judges of the Supreme Court are senior to the Judges of the Court of Appeal, and to the Judges of the High Court who are not Judges of the Supreme Court.
5. This section applies only to permanent Judges.



## 19. Acting Chief Justice

1. While the office of Chief Justice is vacant, or the Chief Justice is outside New Zealand, the senior Judge of the Supreme Court is authorised to act as Chief Justice.
2. If because of illness or a reason other than absence from New Zealand the Chief Justice is unable to perform the duties of that office, the Governor-General may authorise the senior Judge of the Supreme Court to act as Chief Justice until the Chief Justice resumes those duties.
3. While authorised to act as Chief Justice, the senior Judge of the Supreme Court can perform the duties of the Chief Justice, and exercise any power of the Chief Justice.
4. The fact that the senior Judge of the Supreme Court performs a duty of the Chief Justice or exercises a power of the Chief Justice is conclusive proof of his or her authority to do so. No action of the Judge, and no decision of the Court, may be questioned on the ground that the occasion for the Judge to perform the duty or exercise the power had not arisen or had ceased.
5. This section does not affect clause 12 of the Letters Patent constituting the Office of Governor-General of New Zealand 1983 (SR 1983/225).

## 20. Judges to be Judges of High Court

• Eligibility for supreme court judges

1. No person can be appointed as a Judge of the Supreme Court under section 17(1)(b) unless he or she—
  - a. was a Judge of the High Court (whether sitting in the High Court or the Court of Appeal) immediately before being appointed as a Judge of the Supreme Court; or
  - b. is appointed as a Judge of the High Court when appointed as a Judge of the Supreme Court.
2. Every permanent Judge of the Supreme Court—
  - a. continues to be a Judge of the High Court; and
  - b. may as a Judge of the Supreme Court exercise any of the powers of a Judge of the High Court.

## 21. Judges of other courts vacate office on appointment

1. A Judge of a New Zealand court other than the High Court vacates office as a Judge of that court when appointed as a Judge of the Supreme Court.
2. A Judge of the Supreme Court who has vacated office as a Judge of a New Zealand court under subsection (1) may nevertheless continue in office to determine, give judgment in, or otherwise complete, a proceeding heard by the Judge (either alone or with others) when he or she sat in that court.

• Supreme court term length

## 22. Term of office of Judges

A Judge of the Supreme Court holds office until he or she ceases to hold office as a permanent Judge of the High Court.

## 23. Acting Judges

• Head of state powers

1. The Governor-General may appoint as acting Judges of the Supreme Court retired Judges of the Supreme Court or the Court of Appeal who have not reached the age of 75 years.
2. Each acting Judge must be appointed for a stated term that—
  - a. is not more than the time until the Judge will reach the age of 75 years:
  - b. in any case, is not more than 24 months.
3. During the term of his or her appointment, an acting Judge may act as a Judge of the Supreme Court to the extent only that the Chief Justice authorises under subsection (4).
4. The Chief Justice may authorise an acting Judge to act as a member of the Supreme Court—
  - a. to hear and determine any proceedings within a stated period; or
  - b. to hear and determine stated proceedings.
5. The Chief Justice may authorise an acting Judge to act as a member of the Supreme Court only if satisfied that—
  - a. there is a vacancy in the Supreme Court; or
  - b. a Judge of the Supreme Court is for any reason unavailable to hear proceedings or particular proceedings.
6. An acting Judge is authorised when the Chief Justice gives the Attorney-General a certificate, signed by the Chief Justice and at least 2 other permanent Judges of the Supreme Court, to the effect that in their opinion it is necessary for the proper conduct of the Court's business for the acting Judge to be authorised to act as a member of the Supreme Court—
  - a. to hear and determine proceedings within the period concerned; or
  - b. to hear and determine the proceedings concerned.
7. An acting Judge has the jurisdiction, powers, protections, privileges, and immunities of a Judge of the Supreme Court and the High Court, but only in relation to acting as a member of the Supreme Court, under the authority of subsection (4), in the hearing and determination of a proceeding.
8. While acting as a member of the Supreme Court, under the authority of subsection (4), in the hearing and determination of a proceeding, but not otherwise, an acting Judge must be paid—
  - a. a salary at the rate for the time being payable to a Judge of the Supreme Court other than the Chief Justice; and
  - b. any applicable allowances, being travelling allowances or other incidental or minor allowances, determined by the Governor-General for acting Judges.

9. The fact that an acting Judge acts as a member of the Supreme Court is conclusive proof of the Judge's authority to do so. No action of the Judge, and no decision of the Court, may be questioned on the ground that the occasion for the Judge to act as a member of the Court had not arisen or had ceased.
10. An acting Judge may resign office by written notice to the Attorney-General.

## Subpart 5: Powers and judgment of Court

### 24. Appeals to proceed by rehearing

Appeals to the Supreme Court proceed by way of rehearing.

### 25. General powers

1. On an appeal in a proceeding that has been heard in a New Zealand court, the Supreme Court—
  - a. can make any order, or grant any relief, that could have been made or granted by that court; and
  - b. even if the proceeding has not been heard in the Court of Appeal, has all the powers the Court of Appeal would have if hearing the appeal.
2. In any proceeding, the Supreme Court can make any ancillary or interlocutory orders (including any orders as to costs) it thinks fit.

### 26. Power to remit proceedings

The Supreme Court can also remit a proceeding that began in a New Zealand court to any New Zealand court that has jurisdiction to deal with it.

### 27. Exercise of powers of Court

1. For the purposes of the hearing and determination of a proceeding, the Supreme Court comprises 5 Judges of the Court.
2. Any 2 or more permanent Judges of the Supreme Court can act as the Court—
  - a. to decide whether an oral hearing of an application for leave to appeal to the Court should be held, or the application should be determined just on the basis of written submissions:
  - b. to determine an application for leave to appeal to the Court.
3. The delivery of the judgment of the Supreme Court may be effected in any manner, and by any number of Judges, provided by rules made under section 51C of the Judicature Act 1908.
4. Subsection (1) is subject to sections 28(1) and 30(1).

## 28. Interlocutory orders and directions may be made and given by one Judge

1. In a proceeding before the Supreme Court, any permanent Judge of the Court may make any interlocutory orders and give any interlocutory directions the Judge thinks fit (other than an order or direction that determines the proceeding or disposes of a question or issue that is before the Court in the proceeding).
2. Any permanent Judge of the Supreme Court may review a decision of the Registrar made within the civil jurisdiction of the Court under a power conferred on the Registrar by a rule of Court, and may confirm, modify, or revoke that decision as the Judge thinks fit.
3. The Judges of the Supreme Court who together have jurisdiction to hear and determine a proceeding may—
  - a. discharge or vary an order or direction made or given under subsection (1); or
  - b. confirm, modify, or revoke a decision confirmed or modified under subsection (2).

## 29. Presiding Judge

1. The Chief Justice presides over the Supreme Court.
2. If the Chief Justice is absent, or the office of Chief Justice is vacant, the most senior available Judge of the Supreme Court presides over the Court.
3. The fact that a Judge of the Supreme Court other than the Chief Justice presides over the Court is conclusive proof of the Judge's authority to do so. No action of the Judge, and no judgment or decision of the Court, may be questioned on the ground that the occasion for the Judge to preside over the Court had not arisen or had ceased.

## 30. Procedure if Judges absent

1. Where, because of the death or unavailability of 1 or 2 of the Judges of the Supreme Court who are about to begin or have begun hearing a proceeding, only 3 or 4 of those Judges remain available to determine it,—
  - a. the remaining Judges must decide whether the proceeding must be adjourned or reheard, or may continue; and
  - b. if the remaining Judges decide that the proceeding may continue,—
    - i. they may act as the Supreme Court in relation to the proceeding, and can determine it and any interlocutory matters (including the question of costs); and
    - ii. the reference in section 31(1) to a majority of the Judges hearing the proceeding must be read as a reference to a majority of those remaining Judges.
2. If at the time appointed for a sitting of the Supreme Court 1 or more Judges are absent, the Judge or Judges present may adjourn or further adjourn the sitting to some other time.

3. If at the time appointed for a sitting of the Supreme Court all the Judges are absent, the Registrar must adjourn or further adjourn the sitting to some other time.

### **31. Judgment of Court**

1. The judgment of the Supreme Court must be in accordance with the opinion of a majority of the Judges hearing the proceeding concerned.
2. If the Judges are equally divided in opinion, the decision appealed from or under review is taken to be affirmed.

### **32. Decisions of Court may be enforced by High Court**

A judgment, decree, or order of the Supreme Court may be enforced by the High Court as if it had been given or made by the High Court.

## **Subpart 6: Administrative provisions**

### **33. Salaries and allowances of Judges**

1. There must be paid out of public money to the Judges of the Supreme Court other than the Chief Justice, without further appropriation than this section,—
  - a. salaries at a rate determined by the Remuneration Authority; and
  - b. any applicable allowances determined by the Remuneration Authority; and
  - c. any applicable additional allowances, being travelling allowances or other incidental or minor allowances, determined from time to time by the Governor-General.
2. A determination under subsection (1), or a provision of a determination under subsection (1), may be stated to come into force on—
  - a. the date on which the determination is made; or
  - b. any other date, whether before or after the date on which the determination is made.
3. If no date is stated for a determination or a provision of a determination, it comes into force on the date on which the determination is made.
4. Subsection (2) is subject to the Remuneration Authority Act 1977.
5. This section does not apply to acting Judges.

### **34. Fees to be paid into Crown Bank Account**

All fees received under this Act must be paid into a Crown Bank Account.

## 35. Contempt of Court

1. A person commits an offence who—
  - a. assaults, threatens, intimidates, or wilfully insults a Judge of the Supreme Court, the Registrar of the Court, a Deputy Registrar or officer of the Court, or a witness, during his or her sitting or attendance in Court, or in going to or returning from the Court; or
  - b. wilfully interrupts or obstructs the proceedings of the Supreme Court, or misbehaves in the Court; or
  - c. wilfully and without lawful excuse disobeys an order or direction of the Supreme Court in the course of the hearing of a proceeding.
2. A constable or officer of the Supreme Court, with or without the assistance of any other person, may, by order of a Judge of the Court, take into custody and detain until the rising of the Court a person who commits an offence against subsection (1).
3. The Supreme Court may sentence a person who commits an offence against subsection (1) to imprisonment for a period not exceeding 5 days, or to pay a fine not exceeding \$5,000, or both, for every offence.
4. The Supreme Court has the same power and authority as the High Court to punish any person for contempt of Court in any case to which subsection (1) does not apply.
5. Nothing in subsections (1) to (3) limits or affects the power and authority referred to in subsection (4).

## 36. Appointment of officers

1. A Registrar of the Supreme Court must be appointed under the State Sector Act 1988.
2. There may also be appointed under that Act Deputy Registrars of the Supreme Court, and any other officers required for the conduct of the Court's business.

## 37. Powers and duties of officers

The Registrar, Deputy Registrars, and other officers of the Supreme Court have the powers and duties prescribed by rules made under section 51C of the Judicature Act 1908.

## 38. Seal

1. The Supreme Court has a seal for sealing writs and other instruments or documents issued by the Registrar that must be sealed.
2. The Registrar has custody of the seal.

## 39. Regulations

1. The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
  - a. prescribing the matters for which fees are payable under this Act:

• Head of state powers  
• Advisory bodies to the head of state

- b. prescribing scales of fees for the purposes of this Act and for the purposes of proceedings before the Supreme Court:
- c. prescribing the fees, travelling allowances, and expenses payable to interpreters and to people giving evidence in proceedings before the Supreme Court:
- d. in order to promote access to justice, empowering the Registrar or a Deputy Registrar of the Supreme Court to waive, reduce, or postpone the payment of a fee required in connection with a proceeding or intended proceeding, or to refund, in whole or in part, such a fee that has already been paid, if satisfied on the basis of criteria prescribed under paragraph (e) that—
  - i. the person otherwise responsible for payment of the fee is unable to pay or absorb the fee in whole or in part; or
  - ii. unless 1 or more of those powers are exercised in respect of a proceeding that concerns a matter of genuine public interest, the proceeding is unlikely to be commenced or continued:
- e. prescribing, for the purposes of the exercise of a power under paragraph (d), the criteria—
  - i. for assessing a person's ability to pay a fee; and
  - ii. for identifying proceedings that concern matters of genuine public interest:
- f. empowering the Registrar or a Deputy Registrar of the Supreme Court to postpone the payment of a fee pending the determination of—
  - i. an application for the exercise of a power specified in paragraph (d); or
  - ii. an application for review under section 40:
- g. providing for the postponement under the regulations of the payment of a fee, including (without limitation) providing—
  - i. for the recovery of the fee after the expiry of the period of postponement; and
  - ii. for restrictions to apply (after the expiry of the period of postponement and for so long as the fee remains unpaid) on the steps that may be taken in the proceeding in respect of which the fee is payable:





## **Part 2: Amendments, repeals, transitional provisions, and savings**

### **Subpart 1: Substantive amendments to Judicature Act 1908**

#### **43. New sections 4A and 4B of Judicature Act 1908 inserted**

Amendment(s) incorporated in the Act(s).

#### **44. Constitution of the Court**

Amendment(s) incorporated in the Act(s).

#### **45. Technical advisers**

Amendment(s) incorporated in the Act(s).

### **Subpart 2: Substantive amendment to Te Ture Whenua Maori Act 1993**

#### **46. New sections 58A and 58B inserted**

Amendment(s) incorporated in the Act(s).

### **Subpart 3: Other substantive amendments**

#### **47. Other substantive amendments**

The enactments specified in Part 1 of Schedule 1 are amended in the manner indicated in that schedule.

### **Subpart 4: Consequential amendments and repeals**

#### **48. Consequential amendments and repeals**

1. The enactments specified in Part 2 of Schedule 1 or Part 1 of Schedule 3 are amended in the manner indicated in that schedule.
2. The enactments specified in Schedule 2 are repealed.
3. Amendment(s) incorporated in the regulations.
4. Amendment(s) incorporated in the order(s).
5. This section has effect as if, at the close of 31 December 2003, section 12 of the Judicature Amendment Act 1979 had ceased to apply to the Statutes Amendment Act 1947, the Law Practitioners (Victoria Reciprocity) Order 1937, and the enactments specified in Schedule 3.

## 49. Imperial enactments ceasing to have effect in New Zealand

On 1 January 2004, the following Imperial enactments cease to have effect as part of the law of New Zealand:

- a. the Imperial enactments listed in Part 1 of Schedule 4:
- b. the Imperial subordinate legislation listed in Part 2 of Schedule 4.

### Subpart 5: Transitional and savings

## 50. Privy Council may still determine appeals in certain existing proceedings

1. The Privy Council may hear and determine, or continue to hear and determine,—
  - a. an appeal against a final judgment of the Court of Appeal made before 1 January 2004, or made after 31 December 2003 in a proceeding whose hearing was completed before 1 January 2004, where—
    - i. the matter in dispute on the appeal amounts to or is of the value of \$5,000 or upwards; or
    - ii. the appeal involves, directly or indirectly, some claim or question to or respecting property or some civil right amounting to or of the value of \$5,000 or upwards; or
  - b. an appeal arising out of a successful application to a New Zealand court (whether made before, on, or after 1 January 2004) for leave to appeal to the Privy Council against a decision of the Court of Appeal—
    - i. made before 1 January 2004; or
    - ii. made after 31 December 2003 in a proceeding whose hearing was completed before 1 January 2004; or
  - c. an appeal arising out of a successful application to the Privy Council (whether made before, on, or after 1 January 2004) for special leave to appeal to it against a decision of the Court of Appeal—
    - i. made before 1 January 2004; or
    - ii. made after 31 December 2003 in a proceeding whose hearing was completed before 1 January 2004.
2. Subsection (1) does not apply to an appeal if—
  - a. the Privy Council has not begun hearing the appeal; and

- b. all parties agree in writing that an application should be made to the Supreme Court for leave to appeal to the Supreme Court against the decision concerned.

## **51. Limitation on right to appeal to Supreme Court in certain existing proceedings**

1. This subsection applies to a decision if—
  - a. it was made by any New Zealand court before 1 January 2004; or
  - b. it was made by the Court of Appeal after 31 December 2003 in a proceeding whose hearing was completed before 1 January 2004.
2. There is no right to appeal to the Supreme Court against a decision to which subsection (1) applies if—
  - a. the Privy Council has already heard or begun hearing an appeal against it; or
  - b. a New Zealand court has declined to give leave to appeal to the Privy Council against it and the Privy Council has not later given special leave to appeal against it; or
  - c. the Privy Council has declined to give special leave to appeal against it; or
  - d. all the parties to the proceeding in which it was made have not agreed in writing that an application should be made to the Supreme Court for leave to appeal to the Supreme Court against it.
3. Subsection (2) overrides sections 7 to 10.

## **52. Transitional effect of sections 42 and 49**

1. The following applications must be determined as if sections 42 and 49 had not been enacted:
  - a. all applications to a New Zealand court (whether made before, on, or after 1 January 2004) for leave to appeal to the Privy Council against—
    - i. a decision of a New Zealand court made before 1 January 2004; or
    - ii. a decision of the Court of Appeal delivered after 31 December 2003 in a proceeding whose hearing was completed before 1 January 2004:
  - b. all applications to the Privy Council (whether made before, on, or after 1 January 2004) for special leave to appeal to it against—
    - i. a decision of a New Zealand court made before 1 January 2004; or

- ii. a decision of the Court of Appeal delivered after 31 December 2003 in a proceeding whose hearing was completed before 1 January 2004.
2. All appeals that, by virtue of section 50(1), the Privy Council may hear and determine, or continue to hear and determine, must be heard and determined as if—
  - a. sections 42 and 49 had not been enacted; and
  - b. the reference in section 112(1) of the Credit Contracts and Consumer Finance Act 2003 to the Supreme Court included a reference to the Privy Council.

### **53. Transitional arrangements for leave applications**

1. In subsection (2), leave application means an application to the Supreme Court for leave to appeal to the Supreme Court.
2. Until the commencement of the first rules made under section 51C of the Judicature Act 1908 (or under that section and section 409 of the Crimes Act 1961) containing provisions regulating the making of leave applications,—
  - a. the rules for the time being in force under that section (or those sections), with all necessary modifications, apply to leave applications as if they were applications for leave to appeal to the Court of Appeal against a decision of the High Court; but
  - b. the Chief Justice may issue practice directions—
    - i. modifying the application of those rules to leave applications; or
    - ii. providing for any matter (relating to leave applications) that those rules do not provide for.
3. Until the appointment of the first Registrar of the Supreme Court, the Registrar and every Deputy Registrar or officer of the Court of Appeal is also the Registrar or a Deputy Registrar or officer of the Supreme Court.
4. Until the establishment of the first Supreme Court Registry, the Court of Appeal Registry is also the Supreme Court Registry.

### **54. No new rights of appeal against decisions made before 1 January 2004**

1. A person does not have a right to appeal to a particular New Zealand court or the Privy Council on any grounds against a decision made before 1 January 2004 unless, when the decision was made, the person had the right to appeal against the decision to that court on those grounds.
2. Subsection (1) does not limit or affect the right of any person to appeal to a New Zealand court on any grounds against a decision made—
  - a. on or after 1 January 2004; but
  - b. on appeal against a decision—

- i. made before 1 January 2004; or
- ii. made at any time on appeal against a decision made before 1 January 2004.

## **55. Hearings not to begin before 1 July 2004**

1. The Supreme Court cannot begin hearing appeals until after 30 June 2004.
2. Before 1 July 2004, the Supreme Court can take any steps preliminary to hearing appeals, including considering and determining applications for leave to appeal to it, and interlocutory matters.

## **Schedules 1-4**

[Schedules omitted due to length - full text available online at <http://www.legislation.govt.nz/act/public/2003/0053/latest/whole.html#DLM214531>]

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