

Departmental Disclosure Statement

Referendums Framework Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Justice.

The Ministry of Justice certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

17 July 2019

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Part One: General Policy Statement

This Bill provides a single set of legislative provisions to govern the conduct of referendums held alongside the 2020 general election. The Bill is a generic Bill, which focuses on the mechanics of a referendum. A referendum may be conducted under this Bill only if it is

- declared by an Order in Council to be a referendum for the purposes of the Bill; or
- declared by another enactment to be a referendum for the purposes of the Bill.

The Bill is time-limited and applies only to referendums held at the next general election following enactment.

Conduct of referendums

The Bill largely reproduces the same legislative framework for the conduct of referendums as will apply to the conduct of the general election. This includes provisions concerning the following:

- electoral officers and polling places:
- eligibility to vote in a referendum:
- the form of the referendum voting paper:
- counting and declaring votes:
- offences and penalties:
- petitioning the outcome of a referendum.

By aligning the legislative provisions for referendums and the general election as far as is practicable, the Electoral Commission will be able to use much of its existing electoral infrastructure and resources to conduct the referendums. This approach also minimises confusion for voters, electoral staff, and other stakeholders participating in the referendum, for example, political parties and campaign groups.

Referendum advertising

The Bill also replicates the regulatory regime that applies to third-party promoters in respect of election advertisements, to apply to any promoters of referendum advertisements.

These rules aim to provide an appropriate balance between freedom of expression and transparency, and include:

- promoter (campaigner) statements, including name and address, on all referendum advertisements:
- promoters to register if they intend to spend over a certain threshold on referendum advertising:
- promoters to disclose their expenses if they spend over a certain threshold on referendum advertising:
- a limit on the amount that can be spent on referendum advertising:
- expenditure on dual advertisements (covering the election and referendum(s)) to count towards both election and referendum advertising thresholds and limits.

Promoter statements will be required on all referendum advertisements following promulgation of an Order in Council or enactment of legislation declaring a referendum to be a referendum for the purposes of the Bill.

The remaining rules will apply during the regulated period. This period is the same as the regulated period for election advertising, that is, the 3-month period immediately before to the

election. The limits and thresholds applying to referendum advertising are the same as those that will apply to third-party promoters in respect of election advertising.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p><i>Report of the Electoral Commission on the 2011 General Election and Referendum</i>, Electoral Commission, April 2012. Provided in accordance with section 8(1) of the Electoral Act 1993. www.elections.org.nz/sites/default/files/bulk-upload/documents/Report_of_the_EC_on_the_2011General_Election_1_November_2012</p> <p><i>Report of the Electoral Commission on the First and Second Referendums on the New Zealand Flag</i>, Electoral Commission, 26 May 2016. www.elections.org.nz/sites/default/files/plain-page/attachments/report_of_the_electoral_commission_on_the_first_and_second_flag_referendums_on_the_nz_flag</p> <p><i>Regulatory Impact Statement: Regulation of New Zealand Flag Referendum Advertising</i>, Ministry of Justice, 12 March 2015. treasury.govt.nz/publications/risa/regulatory-impact-statement-regulation-flag-referendum-advertising</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>A Regulatory Impact Statement (RIS) was not required for most of the proposals, which have no or minor impacts on businesses, individuals or not-for-profit entities.</p> <p>A regulatory impact statement <i>Referendum Advertising at the 2020 General Election</i> was prepared on 13 June 2019.</p> <p>This will be published at: www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/regulatory-impact-statements; and www.treasury.govt.nz/publications/informationreleases/ris</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
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<p>The Regulatory Impact Statements did not meet the threshold for receiving an independent opinion on quality from the Regulatory Impact Analysis Team based in the Treasury.</p> <p>The Regulatory Impact Statement was assessed internally by the Ministry of Justice Regulatory Impact Assessment Quality Assurance Panel. It was determined to partially meet the quality assurance criteria.</p>	
<p>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</p>	<p>NO</p>

Extent of impact analysis available

<p>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</p>	<p>NO</p>
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<p>2.5. For the policy to be given effect by this Bill, is there analysis available on:</p>	
<p>(a) the size of the potential costs and benefits?</p>	<p>YES</p>
<p>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</p>	<p>NO</p>
<p>The Regulatory Impact Statement contains discussions of the costs and benefits of the policy proposals.</p>	

<p>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</p>	
<p>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</p>	<p>YES</p>
<p>(b) the nature and level of regulator effort put into encouraging or securing compliance?</p>	<p>YES</p>
<p>The Regulatory Impact Statement contains discussions of the potential impact of compliance or non-compliance with applicable obligations related to referendum advertising, and the nature and level of the Electoral Commission's effort put into encouraging or securing compliance on the costs and benefits of the policy proposal.</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

The Ministry of Justice analysed the Bill and did not identify any obligations that conflict with the policies contained in the Bill.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The Ministry of Justice analysed the Bill and did not identify any inconsistency with the rights and interests of Māori protected by the Treaty of Waitangi.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

Advice has been provided to the Attorney-General by the Crown Law Office. This advice will be available on the Ministry's website at <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/>

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

YES

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

YES

Clause 33 provides that the offences and penalties provided for in sections 196, 196A, 197 to 204, 215 to 220, 221A, 221B, 222 and 223 to 225 of the Electoral Act 1993 in relation to the conduct of the poll for a general election apply in respect of the referendum, to the extent that they are relevant with necessary modifications.

Subpart 5 of Part 3 provides for the same offences and penalties in respect of referendum advertisements as are provided in the Electoral Act 1993 in relation to election advertisements.

The purpose of these offences is to deter behaviour that might undermine the integrity of the voting process, so it is appropriate that the offences and penalties are consistent between the referendums and the election.

Clause 28 provides that a minimum of 200 electors will be able to petition the High Court to challenge the conduct or result of a referendum.

3.4.1. Was the Ministry of Justice consulted about these provisions?	NO
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Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
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External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
The Electoral Commission was consulted on the policy and the draft Bill.	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO
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Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	YES
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO
As noted at box 3.4, the Bill extends the existing offence and penalty provisions in the Electoral Act 1993 to apply also to the referendum(s). Some of these existing provisions are absolute liability offences.	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	YES
The Bill includes a regulation-making power to enable specific exemptions to be made to the definition of referendum advertising in the Bill, prior to the start of the regulated period. This is because the Bill provides a generic framework for regulating referendum advertising. The regulation making power will enable exemptions to be provided for certain types of advertising activity or content, if considered necessary in relation to a specific referendum.	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
The Bill, like the Electoral Act 1993, contains standard regulation-making powers to ensure the Act can be given full effect. These include regulations: <ul style="list-style-type: none">• to validate any irregularities in relation to a referendum• to prescribe forms required for any matter in relation to a referendum (if any)• for any other matters necessary for administration or for giving full effect to the Bill.	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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