

Head of State Referenda Bill

Member's Bill

Explanatory note

This bill provides for the holding of 2 referenda on proposals to reconsider the matter of New Zealand's head of State.

The first referendum is taken on proposals to determine the matter of New Zealand's head of State. If one of the three proposals receives a majority vote, that proposal will be implemented. If a majority of votes in this referendum are for the proposal to retain the present head of State, there will be no further referendum. If not, the two options receiving the highest number of votes will be subject to a final, binding referendum.

Keith Locke

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Contents: Printer take in from text

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Head of State Referenda Act **2001**.

2 Commencement

- (1) Except as provided in **subsections (2) to (4)**, this Act comes into force on the day after the date on which it receives the Royal assent.
- (2) **Part 2** comes into force on the day on which the Returning Officer makes, in accordance with **section 21(3)**, a declaration that a proposal favouring reconsideration of the head of State is carried, following a referendum carried out under **Part 1**.
- (3) Subject to **section 21(3)**, **Part 3** and **Schedule 1** come into force on the day on which the Clerk of the House of Representatives makes, in accordance with **section 38**, a declaration that a proposal favouring a head of State appointed by the House of Representatives is carried, following a referendum carried out under **Part 2**.
- (4) **Part 4**, and **Schedules 1, 5, 6, 7, 8 and 9** of this Act come into force on the day on which the Returning Officer makes, in accordance with section 49 of the Referenda (Postal Voting) Act 2000, a declaration that the proposal favouring election of the head of State is carried, following a referendum carried out under **Part 2**.

3 Purpose

The purpose of this Act is to—

- (a) provide for the holding, in conjunction with the general election, of a referendum on whether to continue with the Sovereign as New Zealand's head of State or whether to change to either a head of State appointed by a vote of at least 75% of the House of Representatives, or a head of State directly elected by the people; and
- (b) subject to **paragraph (a)**, provide for the holding of a further referendum on the two options that gain the most votes in the first referendum.

4 Interpretation

In this Act, unless the context otherwise requires,—

candidate means any person who has been nominated as a candidate for the election of head of state

election means an election of a candidate for head of State

elector means a person registered as an elector of an electoral district

electoral district or **electorate** means a General electoral district or a Maori electoral district constituted under sections 35 and 269 of the Electoral Act 1993

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

Meek's method of counting votes is the method of counting votes described in **Schedule 6**

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

Sovereign means—

- (a) the Sovereign in right of New Zealand;
- (b) the Governor-General appointed by the Sovereign as the Sovereign's representative in New Zealand

5 Act to bind the Crown

This Act binds the Crown.

Part 1

Referendum on whether to reconsider the nature of head of State

First referendum

6 Referendum on the nature of head of State

- (1) On the polling day appointed for the general election immediately following the commencement of this Act, a referendum of the electors of each district must be taken on proposals to either continue with the Sovereign as head of State, or to change to either a head of State appointed by a vote of at least 75% of the House of Representatives, or a head of State directly elected by the people.
- (2) For the purposes of this Act, the referendum required by **subsection (1)** is referred to as the **first referendum**.
- (3) The proposals concerning New Zealand's head of State that are the subject of the first referendum are to be submitted in the voting paper in **Schedule 2**.

General provisions

7 Application of Electoral Act 1993

- (1) Subject to the provisions of this Act and of any regulations made under this Act, the provisions of the Electoral Act 1993 and of any regulations made under that Act, as far as they are applicable and with any necessary modifications, apply as if the first referendum conducted under **section 6** were an electoral poll.
- (2) The provisions of the Electoral Act 1993 and of any regulations made under that Act, unless the context otherwise requires, apply for the purposes of the first referendum as if all references to the ballot paper were references to the voting paper.
- (3) No writ is issued under the Electoral Act 1993 for the conduct of the first referendum.

8 Provisions subject to which first referendum to be taken

For the purposes of conducting the first referendum,—

- (a) the Returning Officer of the electoral district must be the Returning Officer, and the Deputy Returning Officers appointed by the Returning Officer for the taking of the electoral poll must be the Deputy Returning Officers, for the taking of the first referendum;
- (b) the polling place officials, interpreters, and ushers appointed for the taking of the electoral poll must, by virtue of being so appointed, be, in addition, polling place officials, interpreters and ushers for the taking of the first referendum:

- (c) the polling places in each electoral district for the taking of the electoral poll must be the same as those used for the taking of the first referendum.

Scrutineers

9 Nomination of scrutineers by electors in favour of proposal

- (1) Any 10 or more electors who are in favour of any of the proposals,—
for the purposes of the first referendum, described under the heading “Head of State reconsideration” in **Schedule 2**,—
may by nomination paper under their hands nominate any 2 specified persons to appoint 1 scrutineer to act at each polling place in the district in the interests of all electors who are in favour of that proposal.
- (2) The nomination paper must be in **form 1** in **Schedule 3**.

10 Nomination paper to be lodged with Returning Officer

The nomination paper must be lodged with the Returning Officer of the electoral district not later than the twelfth day before the date fixed for the holding of the first referendum or before polling day, and must be open to public inspection.

11 Returning Officer to select fit persons to appoint scrutineers

- (1) On a day to be publicly notified by the Returning Officer for the electoral district, but not earlier than the tenth day nor later than the fifth day before the day set for the holding of the first referendum or before polling day, the Returning Officer must publicly consider all the nomination papers lodged.
- (2) The Returning Officer must, after hearing all objections, select 2 fit persons to appoint one scrutineer to act at each polling booth in the interests of all electors, and the persons so selected may appoint accordingly.

12 Selection to be in writing

The selection of scrutineers under **section 11(2)** must be signed by the Returning Officer and must be in **form 2** in **Schedule 3**.

13 Appointments of scrutineer to be in writing

The appointment of scrutineers under **section 11(2)** must be in each case be signed by the persons selected, and must be in **form 3** in **Schedule 3**.

14 Powers and rights of scrutineers

- (1) Every scrutineer who is appointed has, for the purposes of the first referendum, all the powers and rights of a scrutineer under the Electoral Act 1993, and must make a declaration in form 1 in the Second Schedule of the Electoral Act 1993 (which form must be used with all necessary modifications).
- (2) Without limiting **subsection (1)**, a scrutineer—
- (a) may be present at the office of the Registrar of Electors when the Registrar of Electors is performing his or her duties under section 172 of the Electoral Act 1993 (as applied by this Act) in relation to declarations in respect of special votes, but not more than one such scrutineer per proposal may be present at the office of the Registrar of Electors at any time; and
- (b) may be present at the scrutiny of the rolls conducted by the Returning Officer under section 175 of the Electoral Act 1993 (as applied by this Act), but only one such scrutineer per proposal, or such greater number as is permitted by the Returning Officer, may be present at the scrutiny of the rolls at any time.

15 Remuneration of scrutineers

The remuneration (if any) of the scrutineers must not be paid out of money appropriated by Parliament for the purpose of conducting the first referendum.

The ballot

16 Method of voting

Every voter at the first referendum must vote by marking the voting paper with a tick within the circle immediately after the proposal for which the voter wishes to vote.

17 Spoilt ballot papers

Section 169 of the Electoral Act 1993 has effect for the purposes of the first referendum as if there were substituted, for the words “not having deposited his or her ballot paper in the ballot box”, the words “not having deposited any part of the voter’s voting paper in the ballot box”.

18 Counting of votes

- (1) The Returning Officer must reject as informal—
 - (a) any voting paper or piece of voting paper that does not bear the official mark if there is reasonable cause to believe that it was not issued to a voter by any Deputy Returning Officer or a poll clerk authorised by a Deputy Returning Officer to issue ordinary voting papers; and
 - (b) a voting paper or piece of a voting paper that does not clearly indicate the proposal for which the voter desired to vote.
- (2) No voting paper or piece of a voting paper may be rejected as informal only by reason 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 referendum.

Declaration of result by Returning Officer

19 Declaration of result of first referendum

- (1) Where all the voting papers for the first referendum have been dealt with in accordance with section 178 of the Electoral Act 1993 (as applied by this Act), the Returning Officer, having ascertained the total number of votes recorded for each proposal described in the voting paper under the heading “Head of State reconsideration”, must declare the result of the referendum in the electoral district by giving public notice of the total number of votes recorded for each proposal.
- (2) Section 179 of the Electoral Act 1993 does not apply in relation to the first referendum.

Recount

20 Application to District Court Judge for recount

If any result of the binding referendum is disputed on the ground that the public declaration by the Returning Officer in accordance with **section 20(1)** was incorrect, the following provisions apply:

- (a) any 6 electors may, within 3 working days after the public declaration, apply to a District Court Judge for a recount of the votes;
- (b) every application must be accompanied by a deposit of \$200 (which deposit is inclusive of goods and services tax):

- (c) the District Court Judge must cause a recount of the votes to be commenced within 3 working days of receiving the application, and must give notice in writing to the applicants and to any scrutineers appointed under **section 12** of the time and place at which the recount will be made:
- (d) sections 180, 182, and 184 of the Electoral Act 1993, so far as they are applicable and with the necessary modifications, apply to the recount.

Declaration of result by Chief Electoral Officer

21 Declaration of result of first referendum

- (1) After the Returning Officer has made a public declaration in accordance with **section 19(1)**, and after the time for an application for a recount has elapsed, the Returning Officer must send to the Chief Electoral Officer a statement of—
 - (a) the total number of valid votes cast in respect of the voting paper; and
 - (b) the number of valid votes recorded for each proposal in the voting paper.
- (2) On receipt of the statements from all Returning Officers the Chief Electoral Officer must ascertain the total number of valid votes cast for each of the head of State proposals.
- (3) If a majority of the valid votes cast favour any one of the proposals, that proposal is carried.
- (4) After ascertaining the results of the referendum in accordance with the provisions of this section, the Chief Electoral Officer must declare, by notice in the *Gazette*,—
 - (a) the results of the referendum; and
 - (b) which proposal is carried.

Petitions

22 Sections of Electoral Act 1993 applied

Sections 235 to 262 of the Electoral Act 1993, with any necessary modifications, apply to a petition for an inquiry under **section 23** of this Act.

23 Petition for inquiry

- (1) Where any 50 electors in an electoral district are dissatisfied with the result of the first referendum in their district, they may, within 20 working days after the Returning Officer has made a public declaration in accordance with either **section 21(1)**, file a petition in the High Court for an inquiry as to the conduct of the referendum or of any person connected with it.
- (2) If the petition complains of the conduct of a Returning Officer or Registrar of Electors, the person complained of must be a respondent to the petition.
- (3) The petition must allege the specific grounds on which the complaint is founded, and no other grounds than those stated may be investigated, except by leave of the Court and upon reasonable notice being given, which leave may be given upon such terms and conditions as the Court considers just.
- (4) Evidence may be given that the total number of votes cast for any proposal was higher or lower than that given in the public declaration made under **section 20(1)**.
- (5) A petition must be in **Schedule 4** and must be filed in the registry of the High Court nearest to the place where the referendum was held. The Registrar of the Court must send a copy of the petition to the Returning Officer.
- (6) The petition must 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.

24 Determination of Court as to result

At the conclusion of the trial of a petition for an inquiry, the Court must determine whether, because of some irregularity that in its opinion materially affected the result of the referendum, the referendum is void, or whether the number of votes declared for the proposal contained in the public declaration made under **section 20(1)** was wrong.

25 Fresh referendum

- (1) Where a referendum is determined by the Court to be void under **section 24**, the Court must notify the Returning Officer and a fresh referendum must be taken not less than 30 working days after the date of the notification.
- (2) Any fresh referendum must be taken in the same manner as the previous referendum, using the same roll of electors.

Miscellaneous provisions

26 Interfering with or influencing voters

- (1) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$5,000 who, at the first referendum,—
 - (a) in any way interferes with any elector, either in the polling booth or while the elector is on the way to the polling booth, with the intention of influencing the elector or advising the elector as to the elector's vote:
 - (b) at any time on the day on which the referendum is held before the close of the poll 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 referendum, by any means whatsoever:
 - (c) subject to **subsection (2)**, at any time on the day on which the referendum is held before the close of the poll, makes any statement having direct or indirect reference to the referendum, by means of any loudspeaker or public address apparatus or cinematograph or television apparatus:
 - (d) at any time before the close of the poll, conducts in relation to the referendum a public opinion poll of persons voting before the day on which the referendum is held:
 - (e) at any time on the day on which the referendum is held before the close of the poll, conducts a public opinion poll in relation to the referendum:
 - (f) at any time on the day on which the referendum is held before the close of the poll, or at any time on any of the 3 days immediately preceding that day, prints or distributes or delivers to any person any thing being or purporting to be in imitation of the voting paper to be used at the poll, together with any direction or indication as to the proposal for which the elector should or should not vote, or in any way containing any such direction or indication, or containing any matter likely to influence any vote:
 - (g) subject to **subsection (3)**, at any time on the day on which the referendum is held 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 proposal for which 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 name, emblem, slogan, or logo identified with any proposal to which the referendum relates or with any proponent of any such proposal; or

- (iv) any ribbons, streamers, rosettes, or items of a similar nature in colours that are identified with any proposal to which the referendum relates or with any proponent of any such proposal:
 - (h) at any time on the day on which the referendum is held 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 voting paper) containing the proposals to which the referendum relates or any of them:
 - (i) exhibits or leaves in any polling booth any card or paper containing 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 the day on which the referendum is held 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) Nothing in **subsection (1)(c)** restricts the publication by radio or television broadcast made by a broadcaster within the meaning of section 2 of the Broadcasting Act 1989 of—
- (a) any advertisement placed by the Chief Electoral Officer or a Returning Officer; or
 - (b) any non-partisan advertisement broadcast, as a community service, by a broadcaster within the meaning of section 2 of the Broadcasting Act 1989; or
 - (c) any news in relation to the referendum.
- (3) Nothing in **subsection (1)(g)** applies to—
- (a) any statement, name, emblem, slogan, or logo in a newspaper published before 6pm on the day before the day on which the referendum is held:
 - (b) any statement, name, emblem, slogan, or logo which does not relate specifically to the referendum and which is exhibited before the day on which the referendum is held in a fixed position and in relation to the New Zealand or regional or campaign headquarters (not being mobile headquarters) of a proponent of a proposal to which the referendum relates on the day on which the referendum is held:
 - (c) the publication of the name of any proponent of a proposal to which the referendum related in any news which relates to the referendum 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:
 - (d) ribbons, streamers, rosettes, or items of a similar nature, that are worn or displayed by any person (not being an electoral official) on his or her person or on any vehicle in colours that are identified with any proposal to which the referendum relates or with any proponent of any such proposal or to a lapel badge worn by any person (not being an electoral official).
- (4) It is 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 Deputy Returning Officer that the exhibition was taking place.

- (5) Nothing in this section applies to any official statement or announcement made or exhibited under the authority of this Act or the Electoral Act 1993.
- (6) Section 197 of the Electoral Act 1993 does not apply in relation to the first referendum.

27 Power to remove statements, names, emblems, slogans, or logos

- (1) The Returning Officer may at any time on the day on which the referendum is held 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 proposal 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 name, emblem, slogan, or logo identified with any proposal to which the first referendum relates or any proponent of any such proposal,—
which is exhibited in or in view of any public place.
- (2) Nothing in **subsection (1)(c)** applies 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 colours that are identified with any proposal or option to which the referendum relates or with any proponent of any such proposal or option or to a lapel badge worn by any person.
- (3) Nothing in **subsection (1)** applies to a statement, name, emblem, slogan, or logo which does not relate specifically to the referendum and which was exhibited before the day on which the referendum is held in a fixed position and in relation to the New Zealand or regional or campaign headquarters (not being mobile headquarters) of a proponent of a proposal or option to which the referendum relates.
- (4) All expenses incurred by the Returning Officer in carrying out the power conferred by **subsection (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.
- (5) Section 198 of the Electoral Act 1993 does not apply in relation to the referendum.

28 Offences

Every person commits an offence and is liable on summary conviction to a fine not exceeding \$2,000 who, at the first referendum,—

- (a) except in accordance with any regulations made under the Electoral Act 1993 or this Act in relation to special voters, obtains possession of or has in his or her possession any voting paper other than the one given to him or her by the Returning Officer or Deputy Returning Officer for the purpose of recording his or her vote, or retains any voting paper in his or in her possession after leaving the polling booth; or
- (b) does or omits to do an act (other than an act to which **section 26** of this Act applies) that if done or omitted to be done at an electoral poll would be an offence under the Electoral Act 1993.

29 Regulations

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

- (a) applying, with or without modifications, for the purposes of this Act, any of the following provisions:
 - (i) the provisions of section 174 to 177, and of sections 187 to 190 of the Electoral Act 1993:

- (ii) the provisions of any regulations made under the Electoral Act 1993:
- (iii) prescribing forms for the purposes of this Act:
- (b) 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) at the first referendum:
- (c) prescribing conditions upon or subject to which special voters may vote at the first referendum:
- (d) prescribing, for the purposes of the first referendum, different methods of voting for different classes of special voters:
- (e) 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.

Part 2

Referendum for options for head of State

Second referendum

31 Second referendum on options for head of State

Subject to **section 21(3)**, within the 12-month period immediately following the first referendum, a further referendum (the **second referendum**) must be taken on the two options for head of State that polled the most votes in the first referendum.

32 Wording of voting paper of second referendum

The wording of the voting paper to be put to electors in the second referendum is specified by the Governor-General by Order in Council. The voting paper must not be substantially dissimilar to the form in **Schedule 2**.

33 Referendum rolls for second referendum

The referendum roll used for the second referendum must be the same as that used for the first referendum, without any updating or modification.

34 Implementation of result of second referendum

- (1) If a majority of voters at the second referendum votes for the continuation of existing arrangements, those arrangements are continued for the time being.
- (2) If a majority of voters at the second referendum votes for either—
 - (a) a head of State appointed by resolution of 75% or more of members of the House of Representatives; or
 - (b) a head of State to be elected at the next following general election,—

the Governor-General becomes New Zealand's head of State and remains so until a replacement is appointed or elected.
- (3) A head of State appointed or elected under this Act may exercise all the powers and functions which were exercised by the Sovereign prior to the coming into force of this Act, in accordance with the constitutional conventions which applied to the exercise of those powers and functions.

35 Application of Referenda (Postal Voting) Act 2000

The provisions of the Referenda (Postal Voting) Act 2000, with any necessary modifications, apply for the purposes of the second referendum.

Consequential amendments and repeals

36 Consequential amendments and repeals

- (1) The Constitution Act 1986 is amended in the manner indicated in **Schedule 1**.
- (2) The Oaths and Declarations Act 1957 is amended in the manner indicated in **Schedule 1**.
- (3) The enactments in **Schedule 1** are amended in the manner set out in that schedule.
- (3) Every reference in any enactment to the Queen, the Sovereign, or the Governor-General is to be read as a reference to the head of State.
- (4) Every reference in any enactment to a Minister of the Crown is to be read as a reference to a Minister.

Part 3

Head of State appointment by resolution of House of Representatives

37 Resolution of House of Representatives for head of State

- (1) As soon as practicable after the declaration of the result of a referendum in favour of a head of State to be appointed by resolution of the House of Representatives, in accordance with **section 33(2)(a)**, every member nominating a person as head of State must give notice of a motion to be moved in respect of that person.
- (2) Notices given under **subsection (1)** must be voted on in the order in which they are lodged, on a day or days to be determined by the Speaker of the House of Representatives, following consultation with the political parties represented in Parliament.
- (3) The first nominee to receive 75% or more of votes cast by the House of Representatives is the appointed head of State.

38 Provision for further votes

- (1) Where no nomination for head of State receives 75% or more of votes cast, the nomination receiving the lowest percentage of the vote must be discarded, and the votes recast. This process must be repeated until a nomination receives 75% or more of the votes cast.
- (2) Any further votes under **subsection (1)** take place on a day and in an order to be determined by the Speaker of the House of Representatives, following consultation with the political parties represented in Parliament.

39 Declaration of final result

The Clerk of the House of Representatives must declare the final decision of the House of Representatives by notification in the *Gazette*.

40 Term of office of head of State

The head of State appointed by resolution of the House of Representatives under **section 36** holds office for a period not exceeding 5 years.

41 Reappointment of head of State

On the expiry of the term of office of the head of State, a subsequent head of State must be appointed by resolution of the House of Representatives in accordance with **section 36**.

Part 4
Election of head of State

Nomination of head of State

42 Nomination of candidate for election of head of State

- (1) As soon as possible, but not more than 6 months after the declaration of the result of the second referendum, in accordance with **section 38**, any 500 or more electors who wish to nominate a candidate for the election of head of State may nominate any 1 specified person as a candidate.
- (2) The nomination paper is set out in **Schedule 5**.
- (3) The nomination paper must be forwarded to the Chief Electoral Officer, and include original signatures and sufficient information for the Chief Electoral Officer to determine whether the signatories are electors.

43 Qualification for nomination

Every elector is qualified to be nominated as a candidate for the election of head of State.

44 Nomination paper to be lodged with Chief Electoral Officer

The nomination paper must be lodged with the Chief Electoral Officer not less than 30 days before the date fixed for the election of head of State.

The ballot

45 Application of Referenda (Postal Voting) Act 2000

The provisions of the Referenda (Postal Voting) Act 2000, with any necessary modifications, apply for the purposes of the election of head of State.

46 Method of voting

- (1) The head of State election must be conducted by the Single Transferable Voting electoral system (STV) using Meek's method of counting votes, in accordance with **Schedule 6**.
- (2) The voting paper is set out in **Schedule 7**.

47 Counting of votes

- (1) The Returning Officer must reject as informal—
 - (a) any voting paper that does not bear the official mark if there is reasonable cause to believe that it was not issued to a voter by any Deputy Returning Officer or a poll clerk authorised by a Deputy Returning Officer to issue ordinary voting papers; and
 - (b) a voting paper that does not clearly indicate the proposal for which the voter desired to vote.
- (2) No voting paper may be rejected as informal only by reason 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.
- (3) If the election of head of State has been taken with the general election poll, the manager of every polling place must ensure that the preliminary count of the party votes and the electorate votes, and the reporting of the result to the Returning

Officer take priority over the counting of the votes for the election of head of State. The counting of votes for the election of head of State takes priority over the counting of the votes of a referendum under any Act.

Declaration of result by Returning Officer

48 Declaration of result of election of head of State

- (1) Section 42 of the Referenda (Postal Voting) Act 2000 applies for the purposes of counting the votes under **section 47**, with any necessary modifications.
- (2) Where all the voting papers for the election of head of State have been dealt with in accordance with section 42 of the Referenda (Postal Voting) Act 2000, the Returning Officer must declare the result of the election by giving public notice of the total number of votes recorded for each candidate.
- (3) After ascertaining the results of the election in accordance with the provisions of this section, the Returning Officer must declare, by notice in the *Gazette*,—
 - (a) the results of the election; and
 - (b) the name of the elected head of State.

49 Term of office of head of State

The head of State elected by electors under **section 47** holds office for a period not exceeding 5 years.

50 Re-election of head of State

On expiry of the term of office of the head of State, a subsequent head of State must be elected by electors in accordance with the necessary provisions of the Referenda (Postal Voting) Act 2000.

Scrutineers

51 Nomination of scrutineers by electors in favour of proposal

- (1) Any 10 or more electors who are in favour of any of the nominated candidates for the purposes of the second referendum, described under the heading “Election of head of State” in **Schedule 7**,—

may by nomination paper under their hands nominated any 2 specified persons to appoint one scrutineer to observe the processing of voting papers in the interests of all electors who are in favour of that candidate.
- (2) The nomination paper must be in **form 1** in **Schedule 8**.

52 Nomination paper to be lodged with Returning Officer

The nomination paper must be lodged with the Returning Officer of the electoral district not later than the twelfth day before the date fixed for the holding for the second referendum or before polling day, as the case may be, and must be open to public inspection.

53 Returning Officer to select fit persons to appoint scrutineers

- (1) On a day to be publicly notified by the Returning Officer for the electoral district, but not earlier than the tenth day nor later than the fifth day before the day set for the holding of the second referendum or before polling day, as the case may be, the Returning Officer must publicly consider all the nomination papers lodged.

- (2) The Returning Officer must, after hearing all objections, select 2 fit persons to appoint one scrutineer to observe the processing of voting papers in the interests of all electors; and the persons so selected may appoint accordingly.

54 Selection to be in writing

The selection of scrutineers under **section 49(2)** must be signed by the Returning Officer and must be in **form 2** in **Schedule 8**.

55 Appointments of scrutineers to be in writing

The appointment of scrutineers under **section 49(2)** must in each case be signed by the persons selected, and must be in **form 3** in **Schedule 8**.

56 Powers and rights of scrutineers

Every scrutineer who is appointed has, for the purposes of the election of head of State, all the powers and rights of a scrutineer under the Electoral Act 1993, and must make a declaration in form 1 in the Second Schedule of the Electoral Act 1993 (which form must be used with all necessary modifications).

57 Remuneration of scrutineers not expenses of referendum

The remuneration (if any) of the scrutineer must not be paid out of money appropriated by Parliament for the purpose of conducting a head of State referendum.

Recount

58 Application to District Court Judge for recount

If the result of the election of head of State is disputed on the ground that the public declaration by the Returning Officer in accordance with **section 46(2)** was incorrect, the following provisions apply:

- (a) any 6 electors may, within 3 working days after the public declaration, apply to a District Court Judge for a recount of the votes:
- (b) every application must be accompanied by a deposit of \$200 (which deposit is inclusive of goods and services tax):
- (c) the District Court Judge must cause a recount of the votes to be commenced within 3 working days of receiving the application, and must give notice in writing to the applicants and to any scrutineers appointed under **section 49** of the time and place at which the recount will be made:
- (d) sections 180, 182, and 184 of the Electoral Act 1993, so far as they are applicable and with the necessary modifications, apply to the recount.

Petitions

59 Application of Electoral Act 1993

Sections 235 to 262 of the Electoral Act 1993, with any necessary modifications, apply to a petition for an inquiry under **section 56** of this Act.

60 Petition for inquiry

- (1) Where any 500 electors are dissatisfied with the result of the election of head of State, they may, within 20 working days after the Returning Officer has made a

public declaration in accordance with **section 46(2)**, file a petition in the High Court for an inquiry as to the conduct of the election or of any person connected with it.

- (2) If the petition complains of the conduct of a Returning Officer or Registrar of Electors, the person complained of must be a respondent to the petition.
- (3) The petition must allege the specific grounds on which the complaint is founded, and no other grounds than those stated may be investigated, except by leave of the Court and upon reasonable notice being given, which leave may be given upon such terms and conditions as the Court considers just.
- (4) Evidence may be given that the total number of votes cast for any head of State candidate was higher or lower than that given in the public declaration made under **section 46(2)**, as the case requires.
- (5) A petition must be in **Schedule 9** and must be filed in the registry of the High Court nearest to the place where the referendum was held. The Registrar of the Court must send a copy of the petition to the Returning Officer.
- (6) The petition must 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.

61 Determination of Court as to result

At the conclusion of the trial of a petition for an inquiry, the Court must determine whether, because of some irregularity that in its opinion materially affected the result of the election, the election is void, or whether the number of votes declared for the decision contained in the public declaration made under **section 46(2)** was wrong.

62 Fresh election

- (1) Where a head of State election is determined by the Court to be void under **section 57**, the Court must notify the Returning Officer and a fresh election must be taken not less than 30 working days after the date of the notification.
- (2) Any fresh election must be taken in the same manner as the previous election, using the same roll of electors.

Maximum amount of election expenses

63 Maximum amount of election expenses

- (1) Section 213 of the Electoral Act 1993 applies, with any necessary modifications, to the maximum amount of election expenditure for a head of State nominee, as if that nominee were a candidate for election for a seat in the House of Representatives.
- (3) Sections 214(a) and 214(b) of the Electoral Act 1993 apply, with any necessary modifications, to any group or organisation supporting the election of a candidate for the head of State election, as if that group or organisation were a political party, and the candidate were a candidate for election for a seat in the House of Representatives.

64 Transmission of copy of return to Chief Electoral Officer

Sections 211 and 212 of the Electoral Act 1993 apply as if a return by a constituency candidate were a return by a head of State candidate.

Publicity

65 Publicity for election of head of State

- (1) No person, group, or organisation may 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 used or appearing to be used to promote one of the candidates in the head of State election unless the advertisement contains a statement setting out the true name of the person, group, or organisation for whom or at whose direction it is published and the address of his or her or their place of residence or business.
- (2) Every person, group, or organisation commits an offence and is liable on summary conviction to a fine not exceeding \$5,000 who willingly contravenes **subsection (1)** of this section.
- (3) Nothing in this section may restrict the publication of any news or comments relating to the election of head of State 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.

Part 5 Offences

66 Application of Referenda (Postal Voting) Act 2000

Part 7 of the Referenda (Postal Voting) Act 2000 applies, with any necessary modifications, as if the election of head of State were a referendum held under the Referenda (Postal Voting) Act 2000.

Part 6 Treaty of Waitangi

67 Treaty of Waitangi

The rights conferred and obligations imposed by the Treaty of Waitangi continue as if this Act had not been passed.

Schedule 1
Consequential amendments to other enactments

s 35

Constitution Act 1986

Repeal Part 1 and substitute:

“2 Head of State

The person appointed or elected in accordance with the Head of State Referenda Act 2001 will be New Zealand’s head of State.”

Oaths and Declarations Act 1957

Omit from sections 17, 18, 20, and 21 the words “Her [*or His*] Majesty [*Specify the name of the reigning Sovereign, as thus: Queen Elizabeth the Second*], Her [*or His*] heirs and successors” and substitute the words “New Zealand”.

Schedule 2

VOTING PAPER

s 6(3)

Head of State reconsideration

Vote Here

TICK ONE PROPOSAL

I VOTE FOR THE SOVEREIGN TO CONTINUE
AS NEW ZEALAND'S HEAD OF STATE

I VOTE FOR A HEAD OF STATE TO BE APPOINTED
BY A VOTE OF AT LEAST 75% OF THE HOUSE OF
REPRESENTATIVES

I VOTE FOR A HEAD OF STATE TO BE DIRECTLY
ELECTED BY THE PEOPLE

Note: The two options receiving the highest number of votes are subject to a final binding ballot.

Form 1

Nomination of scrutineers for purposes of first referendum on options for head of State

1. For the purposes of the first referendum to be taken in the Electoral District on the..... day of.....2....., we, the undersigned electors of the district, hereby nominate [Full names, addresses and occupations of the 2 persons nominated] as fit persons to appoint one scrutineer to act at each polling booth in the interest of all electors who are in favour of the [Specify proposal].
2. In support of our nomination we hereby severally, each for himself or herself, solemnly and sincerely declare that we are, and we believe each of the persons nominated to be, honestly in favour of the proposal.

We severally make this solemn declaration conscientiously believing the same to be true, and by virtue of the Oaths and Declarations Act 1957.

Signature, Address, and Occupation

- 1.....
- 2.....
- 3.....
- 4.....
- 5.....
- 6.....
- 7.....
- 8.....
- 9.....
- 10.....

Severally declared by each of the [Number] declarants whose signatures are subscribed hereto, thisday of..... 2....., before me—

.....
JP [Solicitor, *or as the case may be*].

NOTE—Not less than 10 electors must sign

Schedule 3—continued

Form 2

s 12

Returning officer's selection for purposes of first referendum on options for head of State

Having considered the nominations duly lodged in this behalf, and having heard all objections thereto, I hereby select [Full names, addresses, and occupations of the 2 persons selected, etc, (as above)] as fit persons to appoint one scrutineer to act at each polling booth at the first referendum for theElectoral District on theday of2....., in the interest of all electors who are in favour of the [Specify proposal].

Dated atthis.....day of.....2.....

....., Returning Officer.

Schedule 3—continued

Part 3

s 13

Appointment of scrutineers for purposes of first referendum

To the Returning Officer

For the purposes of the first referendum for theElectoral District to be taken on theday of2.....we, the undersigned, being duly authorised in this behalf, hereby appoint the persons named in the Schedule hereto to act as scrutineers at the polling booths named in the Schedule, in the interest if all electors who are in favour of the [Specify proposal].

SCHEDULE

Scrutineer	Polling booth
[Full name, address, and occupation of the scrutineer]	[Name of polling booth]

Dated at.....this.....day of.....2.....

[Signatures of the 2 persons authorised to appoint].

Petition for inquiry as to result of first referendum on options for head of State

In the matter of the first referendum held in theElectoral District on theday of2.....

The petition of the undersigned electors of theElectoral District, namely, A.B, of.....,C.D, of.....,etc.

1. Your petitioners state that the first referendum was held on theday of 2....., and that the Returning Officer has given public notice that the total number of votes recorded for the proposal that [Specify] was [Specify].

2. And your petitioners say that [State the facts and grounds on which the petitioners rely].

Wherefore your petitioners pray that it may be determined that the total number of votes cast for the proposal was higher (or lower) than that given in the public notice [or that the referendum was void].

A B,
C D,
etc

Schedule 5

NOMINATION PAPER

s 41(2)

Nomination of candidate for head of State election

To the Chief Electoral Officer

ELECTION

This nomination of a head of State candidate is made in relation to the election of a head of State for New Zealand

THE PRINCIPAL NOMINATOR

Required

Surname	Given Names	Registered Address	Signature
----------------	--------------------	---------------------------	------------------

DETAILS OF PERSON NOMINATED AS CANDIDATE

Surname	Given Names	Registered Address	Signature
----------------	--------------------	---------------------------	------------------

CONSENT OF PERSON NOMINATED AS CANDIDATE

I, (name).....
being qualified to be a candidate, hereby consent to the above nomination.

The name that I wish to appear on the voting paper (being a name that is short enough to appear on the voting paper) is shown below

.....

My telephone contact number is:

.....

Signature of person nominated

.....Date / /

Schedule 5—continued

NOMINATION PAPER

s 41(2)

Nomination of candidate for head of State election

Members of applicant group

Name	Address	Electoral District	Signature
-------------	----------------	---------------------------	------------------

THIS FORM SHOULD ACCOMPANY FORM HOS. 1, WITH THE NAMES, SIGNATURES AND ADDRESSES OF AT LEAST 500 NOMINATORS.

HOS. 2

Schedule 6
Meek's method of counting votes

s 46(1)

Part A

General description of Single Transferable Voting system used for elections

1 Single Transferable Voting System

Every Single Transferable Voting system for elections has the following features:

- (a) voting by order of preference for the candidates:
- (b) a quota for election, calculated from the number of votes and the number of positions to be filled:
- (c) a first count of first preferences only, and the elections of any candidate who equals or exceeds the quota (except in the special case of a multi-way tie):
- (d) redistribution of surplus votes (above the quota) for any candidate in accordance with the voter's further preferences, and election of any candidate who then reaches the quota:
- (e) when no further distribution of surpluses is possible, the exclusion of the candidate who then has the fewest votes, and redistribution of those votes:
- (f) further counting, election, redistribution of surpluses, and exclusion, as necessary, until all positions for election are filled.

Part B

Features of Meek's method of counting votes

Features of Meek's method of counting votes that distinguish it from other methods of counting Single Transferable Votes

2 Vote transfer

Votes that are transferred to the next preference of the voter in the exact order indicated by the voter on the voting document unless the candidate has already been excluded.

3 Value of surpluses

The total value of a surplus or surpluses is shared in due proportion across both transferable and non-transferable voting documents.

4 Sharing of votes

If a candidate is elected later in the count, or an elected candidate received further votes, the surplus to be transferred is shared across all voting documents credited to that candidate in due proportions, not just across the voting documents that gave immediate rise to the surplus.

5 Recalculation of quota

As votes become non-transferable (because the number of preferences recorded in the voting document is exhausted), the quota is recalculated to reflect the smaller total of votes remaining active.

6 Need for computer technology

Because the procedure required to conduct a count using Meek's method of counting votes requires a candidate to be assigned a scaling factor (a **keep** value) representing

the proportion of each vote that will actually be credited to each candidate, the number of calculations involved requires the count to be conducted using computer technology rather than by means of a manual count.

General description of Meek's method of counting votes

7 Algorithm and article

Meek's method of counting votes requires the use of Algorithm 123 in the form described in an article in *The Computer Journal* (UK), Vol 30, No 3, 1987, pp 277-81 (the **article**). (A discussion of the mathematical equations that prove the existence and uniqueness of the method is set out in the article).

8 Authority for modifications

Algorithm 123 (in the form described in the article) and the formulas and procedures proposed in the article may, for the purposes of designing a computer program to implement Meek's method of counting votes, incorporate the following modifications:

- (a) the formula used for determining the quota for election quoted in paragraph 2.5 of the article, (ie, "total votes—total excess)/(number of seats plus 1)"), may be modified by adding the figure 0.000000001 to the product of that calculation (any remainder after the ninth decimal digit being disregarded). (The addition of one-billionth of a vote to the quota removes the unlikely possibility of a tie):
- (b) any other modification authorised by regulations made under this Act.

Duties of programmers and certifiers

9 Duties of programmers

Every person responsible for the design of a computer program intended to implement Meek's method of counting votes must take all reasonable steps to ensure that the program produces outcomes that are consistent with Algorithm 123 in the form described in the article and any authorised modifications.

10 Duties of certifiers

A computer program may not be used at any election or poll under this Act for the purpose of implementing Meek's method of counting votes unless a certifier appointed for the purpose by the Secretary for Local Government has first certified that the program produces outcomes that are consistent with Algorithm 123 (in the form described in the article) and any authorised modifications.

11 Technical description

- (1) For the purposes of assisting programmers and certifiers to perform the duties imposed by clauses 9 and 10, a technical description of the processes involved in the implementation of Algorithm 123 (in the form described in the article) and the preparation of computer programs (incorporating any or all of the modifications authorised under clause 8) may be prescribed by regulations made under this Act.
- (2) The description referred to in subclause (1) may include material in 1 or more computer languages or other code.

Part C

General description of process used to conduct count at election under system of Single Transferable Voting using Meek's method of counting votes

12 Purpose of Part C

- (1) The purpose of clauses 13 to 25 is to provide voters, local authorities, and electoral officials with a general explanation of the process used to conduct an election under the system of Single Transferable Voting using Meek's method of counting votes (incorporating the modification referred to in clause 8(a)).
- (2) Clauses 13 to 25 do not affect the interpretation or application of the other provisions of this Act or any regulations made under this Act.

13 Interpretation

In clauses 13 to 25, unless the context otherwise requires,—

non-transferable vote means a voting document on which no next preference for a non-excluded candidate is indicated or can be identified by the electoral officer

surplus means the number of votes that a candidate obtains at any stage of the counting of votes in excess of the quota

total surplus means the sum of all candidates' surpluses at any stage of the counting of votes.

Head of State vacancy

14 Election to fill head of State vacancy

- (1) Before commencing the official count, the electoral officer rejects as informal any voting document on which the voter's first preference is not able to be determined.
- (2) The number of valid voting documents is determined.
- (3) The **absolute majority of votes** is the number of votes sufficient to secure the election of any candidate for head of State. It is determined by dividing the total number of valid votes, excluding non-transferable votes, by 2. If the number is not a whole number, the quotient is rounded up to the next whole number.

15 First preference votes

- (1) The number of first preference votes recorded for each candidate is determined and recorded.
- (2) If any candidate obtains an absolute majority of votes, that candidate is treated as being elected and the count ceases.
- (3) If no candidate has an absolute majority of votes, the candidate who has the fewest votes is excluded and each voting document for that candidate, unless it is non-transferable, is counted to the candidate next in the order of the elector's preference.
- (4) This process is continued until 1 candidate has an absolute majority of votes.

16 Equal votes

If, on any count, 2 or more candidates have an equal number of votes and 1 of them has to be excluded, the electoral officer determines which candidate has the fewest votes the first time the candidate's totals were different and excludes the candidate with the lowest total votes.

17 Ties

If the candidates had an equal number of votes at all stages of the count, a random (or pseudo-random) process is used to choose which candidate is excluded.

Formulas

18 Quota

The quota is calculated (to 9 decimal digits after the point with any remainder being disregarded) in accordance with the following formula:

$$q = \frac{v}{n+1} + 0.000000001$$

where—

q is the quota

v is the total number of valid votes, less the number of non-transferable votes

n is the total number of members to be elected.

19 Keep value

- (1) When a candidate's votes exceed the quota, a new keep value is calculated in accordance with the following formula:

$$k = \frac{ck}{cv} \times q$$

where—

k is the candidate's new keep value

ck is the candidate's current keep value

q is the current quota

cv is the candidate's current votes.

- (2) In calculating the keep value under **subclause (1)**, both the multiplication and the division are taken to 9 decimal digits after the point and, in each case, rounded up if not exact.

20 General procedure

- (1) The number of valid voting documents is counted and the quota determined. The quota is adjusted downwards as voting documents become non-transferable.
- (2) At each stage in the count, each candidate has an associated keep value, which indicates the proportion of every vote, or part of a vote, received by that candidate that is kept by him or her.
- (3) Each candidate's keep value is initially set at 1.0, and that candidate retains the full value of all votes, or parts of votes, received. If any candidate withdraws, that candidate's keep value is set to 0.0.
- (4) If a candidate reaches the current quota for election, a new keep value is calculated, indicating the value of each vote or part of a vote retained by him or her.
- (5) A candidate is excluded at any stage of the count if the sum of his or her votes and the total surplus is less than the votes of any other non-excluded candidate.
- (6) If a candidate is excluded, his or her keep value is set to 0.0
- (7) Any candidate whose votes equal or exceed the current quota is elected.

Counting of votes

21 The first iteration

- (1) The votes credited to each candidate are set to 0.0
- (2) Non-transferable votes are set to 0.0

- (3) The first preferences for the candidates are tallied and the initial quota is determined.
- (4) Any candidate whose votes equal or exceed the current quota is elected.

22 Second and subsequent iterations

- (1) A new value of the quota is calculated to allow for any increases in non-transferable votes.
- (2) A new keep value for each elected candidate is calculated.
- (3) The votes are recounted using the latest keep values, which automatically perform the required redistributions, and increase the non-transferable votes, if relevant.
- (4) Any candidate whose vote now equals or exceeds the current quota is elected.
- (5) If the sum of the lowest candidate's votes and the total surplus is less than the votes of any other non-excluded candidate, or if the total surplus is less than 0.0001, the lowest candidate is excluded and his or her keep value reset to 0.0.
- (6) Iterations continue until the required number of members are elected.

23 Equal votes

If, on any count, 2 or more candidates have an equal number of votes and 1 of them has to be excluded, the electoral officer determines which candidate had the fewest votes the first time the candidate's totals were different and excludes the candidate with the lowest total votes.

24 Ties

If the candidates had an equal number of votes at all stages of the count, a random (or pseudo-random) process is used to choose which candidate is excluded.

Part D
Application to polls

- 25** Clauses 1 to 24 apply in relation to the counting of Single Transferable Votes cast in polls using Meek's method of counting votes, with any necessary modifications, as if every reference to a candidate were a reference to a proposal.

Schedule 7

VOTING PAPER

s 45

Election of head of State

Number candidates in order of preference

Number Here

*Start with a '1' for your
most preferred candidate*

*Rank as many or as few
of the candidates as you
wish*

ARNOLD, Kristina Wendy

CARPENTER, Karen

CARRINGTON, Alexis

DAY, Doris Alma

KHAN, Imran

PAIGE, Elaine Mary

Schedule 8

Form 1
Nomination paper

s 50

Nomination of scrutineers for purposes of election of head of State

1. For the purposes of the election of the head of State to be taken in theElectoral District on the day of 2....., we, the undersigned electors of the district, hereby nominate [Full names, addresses, and occupations of the 2 persons nominated] as fit persons to appoint one scrutineer to act at each polling booth in the interest of all electors who are in favour of [Specify candidate] as a candidate for the election of the head of State.
2. In support of our nomination we hereby severally, each for himself or herself, solemnly and sincerely declare that we are, and we believe each of the persons nominated to be, honestly in favour of the candidate.

We severally make this solemn declaration conscientiously believing in the same to be true, and by virtue of the Oaths and Declarations Act 1957.

Signature, Address, and Occupation

1.
2.
3.
4.
5.
6.
7.
8.
9.
10.

Severally declared by each of the [Number] declarants whose signatures are subscribed hereto, this day of 2....., before me—

.....
JP [Solicitor, or as the case may be].

NOTE—Not less than 10 electors must sign.

Schedule 8—continued

Form 2

s 53

Returning Officer's selection for purposes of election of head of State

Having considered the nominations duly lodged in this behalf, and having heard all objections thereto, I hereby select [Full names, addresses, and occupations of the 2 persons selected, etc, (as above)] as fit persons to appoint one scrutineer to act at each polling booth at the election of head of State for the Electoral District on the day of 2....., in the interest of all electors who are in favour of [Specify candidate].

Dated at this day of 2.....

....., Returning Officer.

Schedule 8—continued

Form 3

s 54

Appointment of scrutineers for purposes of election of head of State

To the Returning Officer

For the purposes of the election of head of State for the
Electoral District to be taken on the day of
2..... we, the undersigned, being duly authorised in this behalf, hereby
appoint the persons named in this Schedule hereto to act as scrutineers, in the
polling booths named in this Schedule, in the interest of all electors who are in
favour of [Specify candidate].

SCHEDULE

Scrutineer	Polling booth
[Full name, address, and occupation of the scrutineer]	[Name of polling booth]

Dated at this day of 2.....

[Signatures of the 2 persons
authorised to appoint].

Petition for inquiry as to result of election of head of State

In the matter of the election of head of State held in the
Electoral District on the day of 2.....
The petition of the undersigned electors of the Electoral
District, namely, A.B, of, C.D, of etc.

1. Your petitioners state that the election of head of State was held on the day of 2....., and that the Returning Officer has given public notice that the total number of votes recorded for the candidate [Specify] was [Specify].
2. And your petitioners say that [State the facts and grounds on which the petitioners rely].

Wherefore your petitioners pray that it may be determined that the total number of votes cast for the candidate was higher (or lower) than that given in the public notice [or that the election was void].

A B,
C, D
etc