

# Referendums Framework Bill

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Submission of the New Zealand Law Society Te Kāhui  
Ture o Aotearoa

15 April 2025

## 1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Referendums Framework Bill (**Bill**), which seeks to provide “a single set of legislative provisions to govern the conduct of referendums held alongside either the first or second general election following its enactment”.<sup>1</sup>
- 1.2 The Law Society supports the intention of the Bill to provide a general legislative framework for referenda which will be held in conjunction with the 2026 and 2029 general elections. A single set of rules will provide better clarity around relevant process and requirements, and enable the Electoral Commission to utilise existing electoral infrastructure and resources to conduct referenda.<sup>2</sup>
- 1.3 This submission has been prepared with input from the Law Society’s Public Law Committee.<sup>3</sup>
- 1.4 The Law Society does not wish to be heard in relation to this submission.

## 2 Public input into the wording of referenda

- 2.1 Clause 8(1)(a) of the Bill provides that a referendum may be conducted only if it is declared to be a referendum for the purposes of the Bill by Order in Council. Such Orders in Council must set out the wording of the question(s) to be put to electors, as well as the wording of the options for responding to the question(s).<sup>4</sup>
- 2.2 The effect of these provisions is that the precise wording of the referenda questions and options will be determined by Orders in Council, without any requirement for public engagement and input into how those questions and options are framed.
- 2.3 Meaningful engagement with electors is crucial in a direct democracy process such as a referendum, as voters are directly involved in deciding whether to bring a particular policy into effect. The wording of a referendum may also affect possible interest in the policy issue, voter turnout, as well as the outcome of the referendum.
- 2.4 Where primary legislation is used to specify the proposed wording of a referendum, the full legislative process applies, including the opportunity for the public to make submissions to a select committee, and in-depth scrutiny, debate and possibly amendment by Parliament itself. With citizens-initiated referenda, the Clerk of the House scrutinises and determines the final wording of the question to be put to voters after a public consultation process.<sup>5</sup>
- 2.5 By contrast, Orders in Council would be made under delegated authority by the Executive, and would not require the same scrutiny before they are made. While Orders in Council may be subject to Parliamentary scrutiny through the Regulations Review Committee, this happens after the event and only on specified grounds (such as not being

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<sup>1</sup> Explanatory Note of the Bill.

<sup>2</sup> As noted in the Explanatory Note of the Bill.

<sup>3</sup> See the Law Society’s website for more information about this committee:  
<https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/public-law-committee/>.

<sup>4</sup> Clause 8(1)(b) of the Bill.

<sup>5</sup> Citizens Initiated Referenda Act 1993, ss 7 and 11.

in accordance with the general objects and intentions of the empowering Act or trespassing unduly on personal rights and liberties).<sup>6</sup> These grounds may be difficult to apply to the technical issue of how a referendum question is worded.

- 2.6 In order to enable public scrutiny and input into the wording of a referendum, the Law Society suggests amending the Bill to provide that any Act which requires a referendum to be held must specify the proposed wording of the questions and options for that referendum. This amendment would enable public input into the wording of each referendum at the select committee stage of the legislative process.
- 2.7 Alternatively, the Bill could provide for a separate process which would allow the public to provide feedback on the proposed wording. Such a process could be modelled on the process provided in section 7 of the Citizens Initiated Referenda Act 1993.
- 2.8 A third option could be to amend the Bill to:
- (a) include a requirement for the Minister to refer a draft Order in Council to the Regulations Review Committee (**Committee**) for the Committee's consideration and comment to the Minister<sup>7</sup> (which would then enable the Committee to undertake public consultation on the wording); and
  - (b) require the Minister to have regard to the Committee's comments in finalising the Order.

### 3 Validation of anything not done at the time required

- 3.1 Clause 35(2)(b) of the Bill empowers the Governor-General to make Orders in Council to "validate anything not done at the time required" under clauses 14 to 17 and 20 to 26 of the Bill, or any regulations made under the Bill.
- 3.2 This provision appears to allow the Governor-General to validate something that is not done at all (either within or outside of timeframes prescribed in the Bill), including, for example, failure to:
- (a) prepare voting papers in the form approved by the Electoral Commission (clause 16);
  - (b) issue a referendum voting paper to a voter along with a ballot paper (clause 17(1));
  - (c) enclose all used referendum voting papers removed from general election ballot boxes, as well as unused referendum voting papers and spoilt referendum voting papers, in parcels endorsed under the Electoral Act 1993 (clause 21); and
  - (d) declare the result of a referendum by notice in the *Gazette* (clause 26).
- 3.3 We note the (now repealed) Referendums Framework Act 2019 did not include such a provision, and this new proposed power appears to be broader than the powers previously granted to the Governor-General under that Act (which only allowed for the

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<sup>6</sup> SO 327 of the Standing Orders.

<sup>7</sup> This could be done under SO 326(2) of the Standing Orders.

validation of something done in an irregular manner or form, or something done outside a prescribed timeframe).<sup>8</sup>

- 3.4 The Law Society queries whether it is appropriate to validate any failure to do something required by legislation via an Order in Council, particularly in light of the fact that such Orders in Council would not be subject to Parliamentary or public scrutiny before they are made (as discussed in section 2 of this submission).
- 3.5 We therefore invite the Select Committee to consider whether clause 35(2)(b) should be deleted (noting that subclauses (a), (c) and (d) of clause 35(2) will still allow the validation of anything done in an irregular manner or form, or outside of a prescribed timeframe).
- 3.6 If subclause (b) is to remain, we suggest amending the Bill to provide for a process to require Parliamentary and public scrutiny of Orders in Council before they are made. The options we have outlined at [2.6] to [2.8] above could also be used for this purpose.



Jesse Savage  
**Vice-President**

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<sup>8</sup> The powers granted under the 2019 Act (see section 35(2)(b) and (c) of the 2019 Act).