

**Hon Andrew Little**  
Minister of Justice

**Proactive release – Cabinet Paper: Provision of Public Information for the 2020 Referendums**

Date of issue: 3 December 2019

The following documents have been proactively released in accordance with Cabinet Office Circular CO (18) 4.

Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.

No.	Document	Comments
1	<b>Provision of public information for the 2020 referendums</b> <i>Cabinet paper</i> Office of the Minister of Justice 25 November 2019	Some information has been withheld in accordance with section 9(2)(f)(iv) of the OIA to protect the confidentiality of advice tendered by Ministers of the Crown and officials, and section 9(2)(i) of the OIA to enable Ministers of the Crown and officials to carry out, without prejudice or disadvantage, commercial activities. No public interest has been identified that would outweigh the reasons for withholding it.
2	<b>Provision of public information for the 2020 referendums</b> <i>Cabinet Minute: CAB-19-MIN-0624</i> Cabinet Office Meeting date: 25 November 2019	Some information has been withheld in accordance with section 9(2)(f)(iv) of the OIA to protect the confidentiality of advice tendered by Ministers of the Crown and officials. No public interest has been identified that would outweigh the reasons for withholding it.

Chair  
Cabinet

## PROVISION OF PUBLIC INFORMATION FOR THE 2020 REFERENDUMS

### Proposal

1. I seek Cabinet agreement for the proposed approach to the provision of public information for the two referendums due to be held in 2020. s9(2)(f)(iv)
2. This paper also seeks funding for the operational costs for the Electoral Commission to deliver the additional referendum on the End of Life Choice Act, s9(2)(f)(iv)

### Executive summary

*Effective public information will underpin public confidence in the referendums*

3. The Electoral Commission (the Commission) will inform voters that two referendums are happening, what the questions are, and how to participate. This information will largely be integrated with its publicity about enrolling and voting in the General Election in 2020.
4. The Ministry of Justice (Justice) will prepare explanatory information materials about the proposed cannabis legislation, in conjunction with the Ministry of Health (Health). This will include a one-page overview of the draft cannabis Bill and short information sheets.
5. A similar level of information will be needed for the referendum on the End of Life Choice (EOLC) Act. Justice will also prepare information materials on the EOLC Act, again working with Health. Both agencies are familiar with the EOLC Act through their roles as advisors to the Justice Committee.
6. These information materials will support voters in making an informed choice in each referendum. The explanatory materials will be available online, on a standalone Govt.NZ website, in a range of languages. A summary information sheet will also be included with the Commission's enrolment update and EasyVote card mail-outs to voters.
7. This explanatory information is necessary for the referendums to produce a fair outcome, that can be accepted by voters even if the outcomes are not what they voted for. It is important that any information being put into the public domain by the Government, particularly at election time, is, and is perceived to be, factual and impartial.
8. To be effective, voters need to know where they can access the information materials. Publicity will signpost voters towards the govt.nz website, and ensure they know that they can access information about both referendums from this site. Publicity will be placed across a range of media, including Māori media.

s9(2)(f)(iv)

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s9(2)(f)(iv)

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s9(2)(f)(iv)

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s9(2)(f)(iv)

## Part A: Public Information

### The Electoral Commission will publicise the referendums

13. The Commission's publicity will let voters know that the referendums are being held, what the questions are, and how to enrol and vote in the referendum. The public expect that information about enrolment and voting will come from the Commission.
14. Given the broad extent of the Commission's election-focused publicity and the anticipated media coverage of both the election and referendums in 2020, publicity about the referendums will be incorporated into the Commission's regular pre-election publicity around how to enrol and vote.

### Justice will develop explanatory materials about the referendums

*A range of explanatory materials will help voters understand the draft cannabis Bill*

15. Justice is developing the draft exposure Bill, which will set out the proposed cannabis regulatory regime. Alongside this draft Bill, Justice is preparing a 'guide to' the Bill, which will assist voters in the interpretation of the legislation. The guide will explain the key clauses in the Bill, and how they work together, and with existing legislation.
16. The draft Bill and guide will be relatively technical documents. More accessible introductory-level information will be needed for voters who may be considering the issue of the legalisation of cannabis for the first time. I propose to develop explanatory materials that outline the Bill's key features, to enable voters to understand the high-level choice before them. I expect these materials to include:
  - a one-page information sheet, which provides a brief summary of the draft Bill;
  - a four to five-page plain-language summary of its key aspects; and
  - a list of simple questions and answers about the draft Bill.

*Similar explanatory materials will be needed for the referendum on the End of Life Choice Act*

17. The End of Life Choice Bill passed its third reading on 13 November 2019. The commencement of this Act is subject to a majority vote in support, at a public referendum. This referendum will be conducted alongside the cannabis referendum at the 2020 General Election.
18. A referendum on the EOLC Act will require sufficient information to be provided to the public to support an informed vote. I propose that Justice prepare information materials on the EOLC Act. This will be in close consultation with Health, as the agency that will administer this Act, should it come into force. Both agencies are familiar with the Act through their roles as advisors to the Justice Committee on the Bill.
19. I expect there to be a general comparability in the approach being taken to the provision of information for both referendums. For example, the information materials for the EOLC Act will likely include a one-page information sheet with a brief summary of the Act, a four to five-page plain-language summary of its key aspects; and a list of simple questions and answers.

*The explanatory materials for the referendum will be separate, but hosted on the same website*

20. My preference is to keep the written information materials for each referendum separate, as this will ensure clear messaging for voters. The information materials prepared for the referendum on the EOLC Act will be separate from those prepared for the cannabis referendum; for example, there will be separate information sheets to provide a clear message about a single topic.
21. The govt.nz website being created for the 2020 referendums will host information about both referendums, but the specific content for each will be on separate pages. Cost efficiencies can be realised through hosting both sets of materials on a single website.

#### **Information about the referendums must be unbiased and non-partisan**

22. Information about the proposals to legalise cannabis, or the changes in the EOLC Act, is needed to enable voters make an informed choice in the referendums. There is a fine line between, on the one hand, ensuring voters have access to this information and on the other, ensuring that Government agencies are not, and are not perceived to be, overstepping the bounds of political neutrality. The States Service Commission (SSC)<sup>1</sup> stipulates clear limitations on the types of information that Government agencies can provide:

*“All agency material must remain strictly impartial and factual. Restraint is required around advertising and publicity that may create a perception of government funds being used for party political purposes. In particular, advertising or communications that could be regarded as encouraging voters to vote, or not vote, in a particular way are never acceptable.”*

23. For previous government-initiated referendums, this type of information was provided by independent panels (flags and superannuation), and the Electoral Commission (MMP). Government agencies have not directly provided information to support either a government-initiated or citizens-initiated referendum.

<sup>1</sup> *Guidance for the 2017 Election Period: State Servants, Political Parties, and Elections*, State Services Commission, 28 February 2017

24. As Justice is developing the draft cannabis Bill with Health, and both agencies also acted as advisors on the End of Life Choice Bill while it was at select committee, I consider that these agencies producing the explanatory materials is a reasonable extension of their current work, and within the SSC guidelines noted above.

*Discussion of merits, risks, costs and benefits of the two referendum proposals will occur through the media and in public debate*

25. As the information materials will be government funded, I am only comfortable providing material which is strictly factual and does not provide opinion or commentary. As such, the explanatory materials will focus on explaining what the draft cannabis Bill, or the EOLC Act do. They will not, for example, explore the merits or risks of either proposal.
26. The reason for this is that such issues could be perceived as speculative or supporting a particular position. Including more 'pros and cons'-type information will inevitably mean the materials will contain assumptions and value judgements that may be disputed by parties to the debate. I recognise that this places limitations on the scope of materials that public service agencies will provide.
27. This means that, for example, the information will not discuss the merits or risks of the proposed regulatory model for cannabis. Nor will they address matters that either fall outside the scope of the Bill or are yet to be determined. I expect that discussion on the merits of legalisation, and the broader aspects of cannabis use and the law will form part of the pre-referendum debate between various stakeholders, and the media.
28. The same approach will apply for the EOLC Act. The information will not discuss the merits or risks of the regime proposed under the Act, nor any matters of implementation that are still to be determined.
29. These types of discussion should not, and will not, be led by public servants. Government agencies and officials should not produce any materials that risk being seen as supporting one side or other of the debate.
30. The Prime Minister's Chief Science Advisor is producing a paper summarising the evidence base for the broader proposition of the legalisation of cannabis, and the proposed regulatory model. This is likely to incorporate social, health, economic and legal evidence. It will be publicly available as a further source of information in the lead up to the referendum.

### **Dealing with disinformation**

31. Given the nature of the issues being put to referendum, it is likely that some participants in the debate will express views that could be taken to, or clearly do, misrepresent the actual legislation being proposed. This kind of (mis)information could come from New Zealand or overseas, and it could be deliberately misleading or be based on (perhaps wilful) ignorance of the facts.
32. Freedom of expression is a fundamental human right, and this includes the freedom to express views that do not stand up to rational scrutiny. This applies in the leadup to a referendum just as much as in any other matter of public interest. In general, the best way to combat mistruths is by making the facts readily available. This is exactly what the proposed public information programme will seek to achieve.

33. The public information materials will be available to all voters and the media. They can be used to help people to come to their own views on any other information or claims made about the draft cannabis Bill or the EOLC Act.
34. Particular concern would arise, however, if it became apparent that the referendum debate was at risk of being hijacked by malicious disinformation, whether from domestic or overseas interest groups. Disinformation is false or misleading content that aims to achieve a strategic purpose. It can take many forms, such as purporting to be news, advertising or individual comments. Social media is a key vector for disinformation. Messages may appear to have grassroots support but actually be from paid participants or bots (this is known as “astroturfing”).
35. No government agency has the mandate or capability to proactively monitor social media to identify disinformation. The rules that operate now around electoral activity, broadcasting standards etc will apply in the normal way. For example:
- The Electoral Act states that the promoter of an item is the person that initiates or instigates it. For this reason, bots and astroturfing are covered by the rules, and failing to identify the instigator breaches these rules. The Electoral Commission is also looking to provide more information for voters about how to be alert to electoral misinformation and how to check sources, in the lead up to the 2020 election.
  - The Broadcasting Standards Authority (BSA) provides 'standards' for broadcasters when they broadcast programmes in New Zealand. For news, current affairs or factual programming these standards include accuracy and balance; broadcasters must make reasonable efforts to present competing viewpoints about important issues, and programmes should be accurate in relation to 'material points of fact' and should not mislead. The BSA determines complaints about programmes on television, radio, and on-line and on-demand content that has previously been broadcast and content that is live-streamed by a broadcaster. It also receives all complaints about all election programmes on television or radio.
  - The Advertising Standards Authority (ASA) considers complaints about the content of electoral advertising in digital media, including social media and websites. It defines advertising to include any message, the content of which is controlled by the advertiser, with the intent to influence the choice, opinion or behaviour of those to whom it is addressed. In the period prior to an election, the ASA fast-tracks complaints about election advertising. Advertisers are given 24 hours to comment and the adjudication takes place 24-48 hours later.
36. I accept, however, that these activities can be difficult to police. On the face of it, bots can look like individuals, and the personal political views of individuals, if published online, would not normally be classed as election advertising. Fake accounts are relatively easy to create, and the person behind the activity can be hard to identify. Further, ASA findings do not carry legal consequences, and compliance is voluntary.

**All information materials will be made easily accessible to all voters**

*Information materials will be available online from a dedicated GOVT.NZ website*

37. A stand-alone website will be created solely to host information about the cannabis and EOLCA referendums. It will use a 'govt.nz' suffix, and Justice, Health, the State Services Commission and the Electoral Commission's websites will provide links to this site.

38. An initial draft cannabis Bill is expected to be publicly available on this website from early December 2019. s9(2)(f)(iv) [REDACTED].
39. The EOLCA, and some basic information about the Act, is also expected to be made available on this website from early December. Additional information materials will be added over the next few months.
40. I have directed officials to complete a security risk assessment to put in place appropriate ICT security measures to secure the integrity of the hosting website. This will include the use of security certificates to authenticate the credentials of the site, so that users know that the data is from a trusted source.

*A limited amount of materials will be produced in hard-copy*

41. For people without internet or print access, a limited print run (~1,500) of the Bill and Guide, and the EOLCA, is planned s9(2)(f)(iv) [REDACTED]. Voters will be able to access hard copies at, for example, local Council offices, libraries, Citizens Advice Bureau, iwi/Māori organisations and similar locally based organisations, as well as by post, upon request.
42. In addition, Justice intends to include a brief information sheet about each referendum in the Electoral Commission's regular mail-out to encourage voters to enrol s9(2)(f)(iv) [REDACTED]. This reaches approximately 3.5m voters. Similar information sheets will also be included in the Commission's mail-out of Easy Vote Packs in the two/three weeks before the election.
43. Justice is intending to use contact centre services (i.e. an 0800 number) in the lead up to the referendums. s9(2)(i) [REDACTED]
44. s9(2)(i) [REDACTED] Justice plans s9(2)(i) [REDACTED] to direct voters towards the website where they can access more detailed information about the referendum, or to take contact details and post hard copy information materials to voters who cannot access the website.
45. Media queries, and more complex voter queries about the draft cannabis Bill or the EOLCA, will not be dealt with by the contact centre but will be forwarded to Justice staff.

*Materials will be provided in a variety of languages and accessible formats*

46. The explanatory materials will be available in all official languages (English, Te Reo Māori, and New Zealand sign language). They will also be available in e-readable and in large text formats online and meet plain-language guidelines. Justice will draw upon the expertise of the Office of Disability Issues and with the relevant disability organisations to develop information for voters who are legally blind or have impaired vision, in their preferred format.
47. In addition, I propose translation of the one-page information sheet for each referendum into the more commonly used languages in New Zealand, in an online version only. Based on the 2013 Stats NZ total population data, these translated languages will likely include Samoan, Tongan, Simplified Chinese, Traditional Chinese, Korean and Hindi. These languages were used by approximately 7% of the population in 2013.

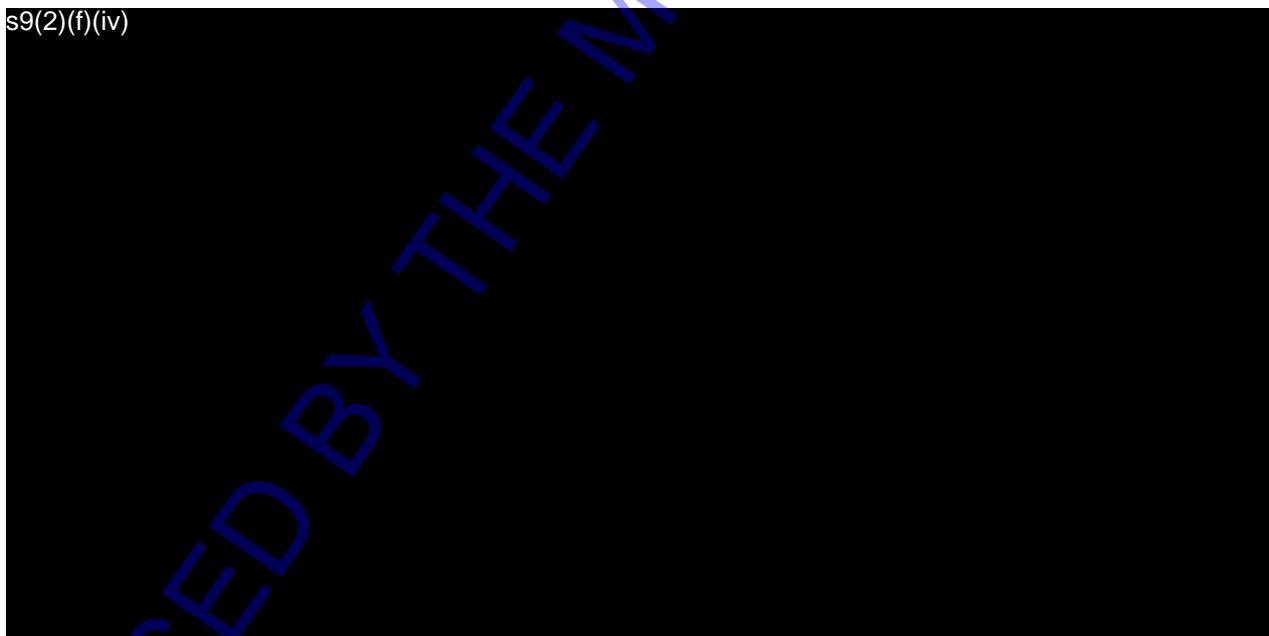
### Publicity will let voters know where to find information

48. To be effective, voters need to know where they can access the information materials. Publicity will let voters know how to access all the explanatory materials before casting their referendum votes. This publicity will not contain information about, for example, the contents of the draft exposure cannabis Bill or the EOLC Act, but simply signpost people towards the govt.nz website, and ensure that voters know that they can access information about both referendums from this site.
49. Publicity will be placed across a range of media, including Māori media. I anticipate that the signposting publicity will be focused in the two to three-month period immediately before the referendum.<sup>2</sup> This is the period when voters are more likely to be receptive to considering referendum-related materials. It also makes sense in terms of ensuring voters are sufficiently informed before the referendums.
50. Cost efficiencies can be realised if the publicity is not unique to each referendum, but signposts to the same website for both referendums. The advertising environment in the period prior to the election will be very heavily subscribed, which does increase costs. Officials will work with expert media buyers to identify the most appropriate mix of communication channels to maximise reach across the voting population, [REDACTED] s9(2)(f)(iv) [REDACTED].

### The provision of public information for the referendums will have financial implications

51. There will be additional costs for Justice to prepare this public information, as well as in ensuring the material is accessible (e.g. printing, translation).

s9(2)(f)(iv)



53. My preference is to keep the written information materials for each referendum separate, as this will ensure clear messaging for voters. For example, this includes separate inserts for inclusion in the Electoral Commission's mailouts, as the two referendums are on quite separate topics.
54. The costs reflect some efficiencies gained through using the Electoral Commission's existing communication channels where appropriate, such as its two mailouts. The EOLCA costing also reflects cost-efficiencies from leveraging the same

<sup>2</sup> This means the publicity will fall within the regulated period for referendum advertising.

communications infrastructure, such as a single website, staff and a single publicity campaign to signpost voters to the website for information on both referendums.

### Resourcing and oversight of the electoral work programme

55. In order to deliver an effective and well-run public information programme Justice requires specialist procurement advice, communications support, programme and contract management. s9(2)(f)(iv)

s9(2)(f)(iv)

56. s9(2)(f)(iv)

### Part B: Delivering the referendums

57. s9(2)(f)(iv)

58. Cabinet has previously noted that a further funding bid for the delivery of a referendum on the EOLCA would be submitted immediately upon confirmation that the referendum would be going ahead [CAB-19-MIN-0129, CBC-19-MIN-033]. Although much of the infrastructure for the EOLCA referendum can be leveraged from the cannabis referendum, there are some marginal costs of additional staff and larger voting spaces, to reflect the additional time voters will spend voting.

59. There are also marginal costs of including references to a second referendum in the Commission's enrolment campaign, expected to run in July 2020 and its 'get out the vote' campaign, which runs a few weeks before polling day.

s9(2)(f)(iv)

### Consultation

61. The Electoral Commission, the Ministry of Health, The Treasury, the Office of Disability Issues, the State Services Commission, Te Puni Kōkiri, the Ministry for Pacific Peoples, Office of Ethnic Communities and the Policy Advisory Group in the

s9(2)(f)(iv)

Department of the Prime Minister and Cabinet were consulted on aspects of earlier drafts of this paper.

s9(2)(f)(iv)



#### **Legislative Implications**

66. The proposals outlined in this paper do not have legislative implications.

#### **Impact Analysis**

67. Regulatory Impact Analysis requirements do not apply to the proposals in this paper.

#### **Human Rights**

68. The proposals in this paper support the objectives of the Human Rights Act 1993 and give meaningful effect to the right to vote in section 12 of the New Zealand Bill of Rights Act.

#### **Gender Implications**

69. These proposals do not have any differential impact on the basis of gender.

#### **Disability Implications**

70. The proposed approach to, and forecast costs of, include ensuring that information materials are accessible in a range of formats for voters with a wide range of communication needs.

#### **Publicity**

71. I do not propose to issue a media release on the decisions in this paper.

## Proactive Release

72. I intend that this Cabinet paper will be proactively released, with any necessary redactions, at an appropriate time, in accordance with the Government's proactive release policy.

## Recommendations

73. The Minister of Justice recommends that the Committee:

### *Referendums in 2020*

1. **note** that the Ministry of Justice is developing a proposed regulatory model for cannabis, alongside the Ministry of Health, which will include producing an exposure draft Bill, and a 'guide to' the Bill;
2. **note** that the commencement of the End of Life Choice Act, a member's Bill which passed its third reading on 13 November 2019, is contingent on a majority vote at a public referendum;
3. **note** that the Electoral Commission will conduct the cannabis referendum and the referendum on the End of Life Choice Act, alongside the 2020 General Election;
4. **note** that funding for the Electoral Commission to deliver the cannabis referendum was provided in Budget 2019 and that Cabinet has previously noted that a further funding request for the delivery of a referendum on the End of Life Choice Act would be submitted immediately upon confirmation that the referendum would be going ahead [CAB-19-MIN-0129, CBC-19-MIN-033];

### *Explanatory materials for the cannabis referendum*

5. **agree** that, in addition to the exposure draft cannabis Bill and Guide, Justice will prepare a range of explanatory materials which outline the draft cannabis Bill's key features, including, for example:
  - a one-page information sheet, which provides a summary of the draft Bill;
  - a four to five-page plain-language summary of key aspects of the draft Bill, and
  - a list of simple questions and answers about the draft cannabis Bill;

### *Explanatory materials for the referendum of the End of Life Choice Act*

6. **agree** that Justice will work with Health to prepare a range of information materials, similar to those listed in recommendation 5, which outline the key features of the End of Life Choice Act, to help inform voters in the referendum;

### *Development and dissemination of information materials*

7. **agree** that the information materials about both referendums will be made available online on a stand-alone website created to host information about any referendums held in 2020;

8. **agree** that the information materials will be made available in a wide range of accessible formats, including being available online in all three official languages, as well as in e-readable format, in large text, and in other formats suitable for voters who are legally blind or have impaired vision, and that the one-page information sheet will also be translated into several of the more commonly used languages in New Zealand;

*Signposting publicity*

9. **agree** to Justice utilising publicity, across a range of media, in the two to three-month period before the referendums, to ensure that voters know how to access explanatory information before casting their referendum votes;

s9(2)(f)(iv)



s9(2)(f)(iv)



Authorised for lodgement

Hon Andrew Little  
Minister of Justice

RELEASED BY THE MINISTER OF JUSTICE



# Cabinet

## Minute of Decision

*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

### Provision of Public Information for the 2020 Referendums

Portfolio                      Justice

On 25 November 2019, following reference from Cabinet Social Wellbeing Committee, Cabinet:

#### Referendums in 2020

- 1        **noted** that the Ministry of Justice is developing a proposed regulatory model for cannabis, alongside the Ministry of Health, which will include producing an exposure draft Bill, and a 'guide to' the Bill;
- 2        **noted** that the commencement of the End of Life Choice Act, a member's Bill which passed its third reading on 13 November 2019, is contingent on a majority vote at a public referendum;
- 3        **noted** that the Electoral Commission will conduct the cannabis referendum and the referendum on the End of Life Choice Act, alongside the 2020 General Election;
- 4        **noted** that funding for the Electoral Commission to deliver the cannabis referendum was provided in Budget 2019 and that Cabinet has previously noted that a further funding request for the delivery of a referendum on the End of Life Choice Act would be submitted immediately upon confirmation that the referendum would be going ahead [CAB-19-MIN-0129, CBC-19-MIN-033];

#### Explanatory materials for the cannabis referendum

- 5        **agreed** that, in addition to the exposure draft cannabis Bill and Guide, the Ministry of Justice will prepare a range of explanatory materials which outline the draft cannabis Bill's key features, including, for example:
  - 5.1        a one-page information sheet, which provides a summary of the draft Bill;
  - 5.2        a four to five-page plain-language summary of key aspects of the draft Bill, and
  - 5.3        a list of simple questions and answers about the draft cannabis Bill;

#### Explanatory materials for the referendum of the End of Life Choice Act

- 6        **agreed** that the Ministry of Justice will work with the Ministry of Health to prepare a range of information materials, similar to those listed in paragraph 5, which outline the key features of the End of Life Choice Act, to help inform voters in the referendum;

**Development and dissemination of information materials**

- 7 **agreed** that the information materials about both referendums will be made available online on a stand-alone website created to host information about any referendums held in 2020;
- 8 **agreed** that the information materials will be made available in a wide range of accessible formats, including being available online in all three official languages, as well as in e-readable format, in large text, and in other formats suitable for voters who are legally blind or have impaired vision, and that the one-page information sheet will also be translated into several of the more commonly used languages in New Zealand;

**Signposting publicity**

- 9 **agreed** to the Ministry of Justice utilising publicity, across a range of media, in the two to three-month period before the referendums, to ensure that voters know how to access explanatory information before casting their referendum votes;

s9(2)(f)(iv)



s9(2)(f)(iv)



Michael Webster  
Secretary of the Cabinet

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**Hard-copy distribution:**  
Prime Minister  
Deputy Prime Minister  
Minister of Justice