



ANALYSIS

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1995, No. 62

An Act to amend the Citizens Initiated Referenda Act 1993

[6 December 1995]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Citizens Initiated Referenda Amendment Act 1995, and shall be read together with and deemed part of the Citizens Initiated Referenda Act 1993 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the date on which this Act receives the Royal assent.

2. Interpretation—Section 2 of the principal Act is hereby amended by repealing the definition of the term “eligible elector”, and substituting the following definition:

“ ‘Eligible elector’, in relation to an indicative referendum petition, means an elector whose name appears on an electoral roll that is in force on the date on which the petition is delivered to the Clerk of the House of Representatives under section 15 (3) of this Act.”.

3. Requirements in relation to indicative referendum petition—The principal Act is hereby amended by repealing section 15, and substituting the following section:

“15. (1) Every signatory to an indicative referendum petition—

“(a) Shall, against his or her signature, state—

“(i) His or her full name; and

“(ii) His or her residential address; and

“(b) May, against his or her signature, state his or her date of birth.

“(2) Failure by a signatory to comply with any of the requirements of subsection (1) of this section shall not of itself prevent the signature of that signatory from being used for the purposes of determining the number of signatures that must be checked in accordance with section 19 of this Act.

“(3) The promoter shall deliver the indicative referendum petition to the Clerk of the House of Representatives within 12 months after the date of the publication in the *Gazette* of the notice required by section 13 (1) (b) of this Act.

“(4) Subject to section 20 of this Act, no pages or signatures shall be added to an indicative referendum petition after it has been delivered to the Clerk of the House of Representatives.

“(5) An indicative referendum petition shall lapse if it is not delivered to the Clerk of the House of Representatives within the time prescribed by subsection (3) of this section.”

4. Duties of Clerk of House of Representatives on receipt of indicative referendum petition—The principal Act is hereby amended by repealing section 16, and substituting the following section:

“16. (1) After receiving an indicative referendum petition pursuant to section 15 (3) of this Act, the Clerk of the House of Representatives shall disregard any signature that is not on a form supplied by the promoter and approved by the Clerk of the House of Representatives under section 14 (2) of this Act.

“(2) Where the Clerk of the House of Representatives finds that the total number of signatures on a petition delivered to him or her pursuant to section 15 (3) of this Act is less than the number of eligible electors required to sign a petition before it

can be certified correct under section 18 (1) of this Act, the petition shall lapse and the Clerk of the House of Representatives shall notify the promoter accordingly.

“(3) Signatures disregarded under subsection (1) of this section shall not be taken into account for the purpose of ascertaining—

“(a) The total number of signatures on a petition for the purposes of subsection (2) of this section; or

“(b) Whether the indicative referendum petition can be certified correct under section 18 of this Act.”

5. Duty of promoter in relation to defects in indicative referendum petition—The principal Act is hereby amended by repealing section 17.

6. New sections substituted—The principal Act is hereby amended by repealing sections 18 to 20, and substituting the following sections:

“18. Certification of indicative referendum petition—(1) Where the Clerk of the House of Representatives receives an indicative referendum petition that complies with section 14 (2) of this Act, the Clerk of the House of Representatives shall, within two months after the date on which he or she receives the indicative referendum petition, either—

“(a) Certify that the indicative referendum petition is correct and give that petition to the Speaker; or

“(b) Certify that the indicative referendum petition has lapsed and return that petition to the promoter of the petition.

“(2) Subject to the provisions of this Act, an indicative referendum petition shall be certified correct by the Clerk of the House of Representatives if he or she is satisfied, in accordance with section 19 of this Act, that the petition has, after the date on which the promoter received the written notice required by section 13 (1) (a) of this Act, been signed by not less than 10 percent of the eligible electors.

“19. Procedure in relation to certification—(1) For the purpose of ascertaining whether an indicative referendum petition has, after the date on which the promoter received the written notice required by section 13 (1) (a) of this Act, been signed by not less than 10 percent of the eligible electors, the Clerk of the House of Representatives shall, with the assistance of the Government Statistician,—

“(a) Calculate the number of signatures that must be checked for the purpose of providing a sample that can, with confidence, be regarded as providing an accurate estimate of the result that would be obtained if all of the signatures were checked; and

“(b) Take, from the signatures to the indicative referendum petition, the number of signatures calculated under paragraph (a) of this subsection.

“(2) The Clerk of the House of Representatives shall give to the Chief Registrar of Electors the signatures taken under subsection (1) (b) of this section.

“(3) The Chief Registrar of Electors shall check whether or not the signatories are eligible electors and shall give the result to the Clerk of the House of Representatives.

“(4) The Clerk of the House of Representatives shall, on receiving the result, determine, with the assistance of the Government Statistician, whether or not the indicative referendum petition has, after the date on which the promoter received the written notice required by section 13 (1) (a) of this Act, been signed by not less than 10 percent of the eligible electors.

“20. Power to resubmit rejected indicative referendum petition—(1) Notwithstanding that an indicative referendum petition has been delivered to the Clerk of the House of Representatives under section 15 (3) of this Act, the promoter of that petition may continue to collect signatures to that petition and those signatures may be added to that petition if it is resubmitted to the Clerk of the House of Representatives under subsection (2) of this section.

“(2) Where an indicative referendum petition has lapsed under section 16 or section 18 of this Act, the promoter of that petition may at any time within 2 months after the date on which the petition lapsed, resubmit that petition to the Clerk of the House of Representatives.

“(3) Where a petition that is resubmitted under subsection (2) of this section is not certified correct under section 18 of this Act, that petition shall lapse and may not be resubmitted pursuant to this section.”

7. Withdrawal of indicative referendum petition—The principal Act is hereby amended by inserting, after section 22, the following section:

“22A. (1) The promoter of an indicative referendum petition may withdraw that petition by delivering to the Clerk of the

House of Representatives, before the Clerk of the Writs has, under section 26 of this Act, issued writs for the holding of the indicative referendum, a notice in writing withdrawing that petition.

“(2) Where a promoter withdraws an indicative referendum petition in accordance with subsection (1) of this section, the indicative referendum shall not be held.

“(3) Where an indicative referendum is withdrawn under subsection (1) of this section, the Clerk of the House of Representatives shall, forthwith after the receipt by the Clerk of the House of Representatives of the notice of withdrawal,—

“(a) Notify the Clerk of the Writs of the receipt of that notice; and

“(b) Publish in the *Gazette* notice of the withdrawal of the indicative referendum.”

8. Application of Electoral Act 1993—Section 24 of the principal Act (as substituted by section 6 of the Citizens Initiated Referenda Amendment Act 1994) is hereby amended by repealing subsection (2), and substituting the following subsection:

“(2) Sections 4 to 15, 28 to 38, 41 to 45 (8), 46 to 59, 62 to 71, 113, 125 to 140, 143 to 146, 148 to 154, 157 (3), 160 (1), (2) and (6), 165 (1) (b), 168 (1) to (3), 170 (6), 174 (1) (e), 178 (8), 179 (4), 180 (1) to (5), 180 (7) (e), 181, 183, 185, 186, 191 to 193, 196 (g), 197 to 199, 203, 204, 206 to 214A, 221, 221A, 229 to 231, 236 (3), 236 (8), 237 to 239, 243 to 246, 256 (1) (c), 256 (2), 256 (3), 258 to 262, 264, 267, 268, and 269 to 284 of the Electoral Act 1993 shall not apply to an indicative referendum.”

9. Notice of issue of writs—The principal Act is hereby amended by inserting, after section 26, the following section:

“26A. The Clerk of the Writs shall forthwith on signing a writ for an indicative referendum to be held in any district cause a notice of the issue of the writ to be sent to—

“(a) The Registrar of Electors for the district; and

“(b) The Clerk of the House of Representatives; and

“(c) The promoter of the indicative referendum petition seeking the holding of that indicative referendum.”

10. Electoral rolls—(1) The principal Act is hereby amended by repealing section 27 (as amended by section 7 of the Citizens Initiated Referenda Amendment Act 1994), and substituting the following section:

“27. (1) Subject to the provisions of this Act and to any regulations made under this Act, the electoral rolls for the purpose of the indicative referendum shall,—

“(a) Where the citizens initiated indicative referendum is held before the first general election has been held under the Electoral Act 1993, be deemed to be the lists compiled pursuant to section 101 (1) of that Act; and

“(b) Where the citizens initiated indicative referendum is held on or after polling day for the first general election held under the Electoral Act 1993, be deemed to be the electoral rolls for the time being in force under the Electoral Act 1993.

“(2) For the purposes of the indicative referendum,—

“(a) A person shall, subject to subsection (3) of this section, be deemed not to be registered as an elector if that person became registered by reason of an application for registration as an elector under the Electoral Act 1993 received by the Registrar of the electoral district in respect of which the person became registered on or after the day appointed for the taking of the indicative referendum; and

“(b) Section 88 (2) of the Electoral Act 1993 shall, with such modifications as may be necessary, apply for the purposes of determining whether an application for registration was received on or after the day appointed for the taking of the indicative referendum.

“(3) Where any person applies for registration as an elector of a district after a writ has been issued for the holding of the indicative referendum and before the day appointed for the taking of the indicative referendum,—

“(a) The Registrar shall, if the registrar is satisfied that that person is qualified to be registered, forthwith enter the name of that person on the electoral roll; and

“(b) The Registrar shall not be required to enter the name of that person on the main roll or any supplementary roll or composite roll used at the indicative referendum; and

“(c) That person may, at the indicative referendum, vote only by way of a special vote.”

(2) Section 7 of the Citizens Initiated Referenda Amendment Act 1994 is hereby consequentially repealed.

11. New sections inserted—The principal Act is hereby amended by inserting, after section 40, the following sections:

“40A. Infringement of secrecy—(1) Every official, clerk, scrutineer, interpreter, or other person appointed for the purposes of this Act shall use or disclose information acquired by him or her in that capacity only in accordance with his or her official duty or his or her duty as a scrutineer, as the case may require.

“(2) No person, except for some purpose authorised by law, shall—

“(a) Interfere with or attempt to interfere with a voter when marking his or her vote:

“(b) Attempt to obtain in a polling booth information as to the answer for which any voter in a booth is about to vote or has voted:

“(c) Communicate at any time to any person any information obtained in a polling booth as to the answer for which any voter at the booth is about to vote or has voted, or as to the consecutive number on the voting paper given to any voter at the booth.

“(3) Every person in attendance at the counting of the votes shall maintain and aid in maintaining the secrecy of the voting, and shall not communicate any information obtained at the counting as to the answer for which any vote is given in any particular voting paper.

“(4) No person shall directly or indirectly induce any voter to display his or her voting paper or any piece of his or her voting paper after he or she has marked it, so as to make known to any person the answer for which he or she has voted.

“40B. Infringement of secrecy constitutes corrupt practice—Every person is guilty of a corrupt practice within the meaning of the Electoral Act 1993 who wilfully contravenes any provision of section 40A of this Act.”

12. Publicity for indicative referendum—Section 41 of the principal Act is hereby amended by repealing subsection (3), and substituting the following subsection:

“(3) Every person is guilty of an illegal practice within the meaning of the Electoral Act 1993 who wilfully contravenes subsection (1) of this section.”

13. Limits on expenditure—Section 42 of the principal Act is hereby amended by omitting the expression “\$100,000”, and substituting the expression “\$20,000”.

14. Returns in relation to advertisements—The principal Act is hereby amended by repealing section 43, and substituting the following section:

“43. (1) Every person for whom or at whose direction an advertisement in relation to an indicative referendum petition or an advertisement promoting one of the answers to the precise question to be put to voters in an indicative referendum is published or broadcast must, within the time specified in subsection (2) of this section, as the case may require, make a return to the Chief Electoral Officer, which return shall list where every such advertisement was published or broadcast and shall state its cost.

“(2) The return required by subsection (1) of this section shall be filed—

“(a) Where the petition finally lapses under this Act, within one month after the date on which the petition finally lapses; or

“(b) Where the result of the indicative referendum is notified in the *Gazette* under section 40 (2) (a) of this Act, within one month after the date on which the result is so notified.

“(3) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$20,000 who fails, without reasonable excuse, to comply with subsection (1) of this section.

“(4) Every person who makes, under subsection (1) of this section, a return that is false in any material particular—

“(a) Is, if the person makes the return knowing that the return is false in a material particular, guilty of a corrupt practice and is liable on conviction on indictment to imprisonment for a term not exceeding one year or to a fine not exceeding \$20,000, or to both; and

“(b) Is, in any other case, guilty of an illegal practice, and is liable on conviction on indictment to a fine not exceeding \$20,000, unless the person proves:

“(i) That he or she had no intention to mis-state or conceal the facts; and

“(ii) That he or she took all reasonable steps in the circumstances to ensure that the information in the return was accurate.

“(5) Every person charged with an offence against subsection (4) (a) of this section may be convicted of an offence against subsection (4) (b) of this section.”

15. New sections substituted—The principal Act is hereby amended by repealing sections 44 to 46, and substituting the following sections:

“44. Duty of Chief Electoral Officer—(1) It shall be the duty of the Chief Electoral Officer to see that the provisions of sections 41 to 43 of this Act are faithfully complied with.

“(2) Where the Chief Electoral Officer believes that any person has committed an offence against any of the provisions of sections 41 to 43 of this Act, the Chief Electoral Officer shall report the facts on which that belief is based to the Police.

“45. Return to be open for public inspection—(1) Every return under section 43 of this Act—

“(a) Shall be kept by the Chief Electoral Officer in his or her office, or at some other convenient place to be appointed by the Minister of Justice, for a period of 5 years after it has been received by the Chief Electoral Officer; and

“(b) Shall, during the period that it is kept under paragraph (a) of this subsection, be open to inspection by any person on payment of such charges (if any) as may be made under the Official Information Act 1982.

“(2) At the end of the period specified in subsection (1) of this section, the Chief Electoral Officer shall cause the return to be destroyed.”

16. New sections inserted—The principal Act is hereby amended by inserting, after section 53, the following sections:

“53A. Bribery of promoter—(1) Every person is guilty of a corrupt practice within the meaning of the Electoral Act 1993 who commits the offence of bribery of a promoter.

“(2) Every person commits the offence of bribery of a promoter who, directly or indirectly, by himself or herself or by any other person on his or her behalf—

“(a) Gives any money or procures any office to or for a promoter, or to or for any other person on behalf of a promoter, or to or for any other person, in order to induce a promoter to withdraw an indicative referendum petition; or

“(b) Corruptly does any such act as aforesaid on account of a promoter having withdrawn an indicative referendum petition; or

“(c) Makes any such gift or procurement as aforesaid to or for any person in order to induce that person to

procure, or endeavour to procure, the withdrawal of an indicative referendum petition,—
 or who, upon or in consequence of any such gift or procurement as aforesaid, procures, or engages, promises, or endeavours to procure, the withdrawal of an indicative referendum petition.

“(3) For the purposes of this section,—

“(a) References to giving money shall include references to giving, lending, agreeing to give or lend, offering, promising, or promising to procure or endeavour to procure, any money or valuable consideration:

“(b) References to procuring any office shall include references to giving, procuring, agreeing to give or procure, offering, promising, or promising to procure or to endeavour to procure, any office, place, or employment.

“(4) Every person commits the offence of bribery who—

“(a) Advances or pays or causes to be paid any money to or to the use of any other person with the intent that the money or any part thereof shall be expended in bribery of a promoter; or

“(b) Knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery of a promoter.

“(5) The foregoing provisions of this section shall not extend or be construed to extend to any money paid or agreed to be paid for or on account of any legal expenses incurred in good faith in relation to an indicative referendum petition.

“(6) A promoter commits the offence of bribery of a promoter if, before or during an indicative referendum petition, he or she directly or indirectly, by himself or herself or by any other person on his or her behalf, receives, or agrees or contracts for, any money, gift, loan, or valuable consideration, office, place, or employment for himself or herself or for any other person for withdrawing an indicative referendum petition or agreeing to withdraw an indicative referendum petition.

“(7) Every person commits the offence of bribery of a promoter if, after the withdrawal of an indicative referendum petition, he or she directly or indirectly, by himself or herself or by any other person on his or her behalf, receives any money or valuable consideration on account of a promoter having withdrawn an indicative referendum petition or having induced a promoter to withdraw an indicative referendum petition.

“(8) Nothing in this section shall be construed to extend to any actions taken by a person in good faith in resolving or attempting to resolve the issues raised by an indicative referendum petition.

“53B. **Undue influence of promoter**—Every person is guilty of a corrupt practice within the meaning of the Electoral Act 1993 who—

“(a) Directly or indirectly, by himself or herself or by any other person on his or her behalf, makes use of or threatens to make use of any force, violence, or restraint, or inflicts or threatens to inflict, by himself or herself or by any other person, any temporal or spiritual injury, damage, harm, or loss upon or against a promoter, in order to induce or compel that promoter to withdraw an indicative referendum petition, or on account of that promoter having refrained from withdrawing an indicative referendum petition; or

“(b) By abduction, duress, or any fraudulent device or contrivance, impedes or prevents the free exercise of decision by a promoter to withdraw an indicative referendum petition, or thereby compels, induces, or prevails upon a promoter to withdraw an indicative referendum petition.”

17. Offences—(1) The principal Act is hereby amended by repealing section 54 (as amended by section 14 of the Citizens Initiated Referenda Amendment Act 1994), and substituting the following section:

“54. (1) Every person commits an offence who, at an indicative 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 her possession after leaving the polling booth; or

“(b) Does or omits to do an act (other than an act to which section 52 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.

“(2) Every person who commits an offence against subsection (1)(a) of this section shall be liable on summary conviction to a fine not exceeding \$2,000.

“(3) Every person who commits an offence against subsection (1)(b) of this section shall be liable on summary conviction to the same penalty as that for which he or she would have been liable if he or she had committed the offence under the Electoral Act 1993.”

(2) Section 14 of the Citizens Initiated Referenda Amendment Act 1994 is hereby consequentially repealed.

This Act is administered in the Ministry of Justice.
