



ANALYSIS

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1998, No. 95

**An Act to amend the Local Elections and Polls Act 1976 to allow for the processing of voting papers before the close of voting in an election or poll conducted by postal vote**  
[31 August 1998]

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

**1. Short Title and commencement**—(1) This Act may be cited as the Local Elections and Polls (Processing of Voting Papers Before Close of Voting) Amendment Act 1998, and is part of the Local Elections and Polls Act 1976 (“the principal Act”).

(2) This Act comes into force on the day after the date on which it receives the Royal assent.

**2. Method of conducting election or poll in certain cases**—(1) Section 3A (1) of the principal Act is amended by inserting, after the expression “section 66 (1)”, the expression “or section 66 (1A) and section 73A”.

(2) Section 3A (2)(b) of the principal Act is amended by inserting, after the expression “section 66 (1)”, the expression “or section 66 (1A)”.

**3. Disclosing voting or state of election**—The principal Act is amended by repealing section 63, and substituting the following section:

“63. (1) Every person commits an offence who—

“(a) Makes known for what candidate any voter has voted; or

“(b) Before the close of voting, makes known the state of the election or gives or pretends to give any information by which the state of the election may be known.

“(2) A person who commits an offence against subsection (1) is liable to a fine—

“(a) Not exceeding \$5,000, for—

“(i) A person required to make a declaration in form 1 in the First Schedule in relation to the election; or

“(ii) A Justice of the Peace appointed under section 73E (1):

“(b) Not exceeding \$2,000, for any other person.”

**4. Local authority may hold election or poll by postal vote**—Section 66 of the principal Act is amended by inserting, after subsection (1), the following subsection:

“(1A) A local authority that makes such a determination may also determine, by a resolution that is publicly notified after it is made, that the voting papers in the election or poll are to be processed in the 84 hours before the close of voting.”

**5. New sections inserted**—The principal Act is amended by inserting, after section 73, the following sections:

**“73A. General duty of Returning Officer in relation to processing before close of voting**—(1) When a local authority has made a determination under section 66 (1A), the Returning Officer must ensure that voting papers received before the close of voting are processed under sections 73B to 73E.

“(2) Subsection (1) does not require the Returning Officer to ensure the taking of any particular step in section 73B (4) in relation to a voting paper in the 84 hours before the close of voting, if the Returning Officer decides, on reasonable grounds,

that it is not efficient to take that step in relation to that voting paper in that period.

“(3) Any step in section 73B (4) that, in relation to a voting paper, is started but not completed at the close of voting must be completed after the close of voting under the applicable paragraph in that subsection.

“(4) If the processing of a voting paper under section 73B is not completed at the close of voting, the processing of the voting paper must be completed after the close of voting under whichever of subsections (2) to (6) of section 77 are then applicable to it.

“**73B. Procedure for processing before close of voting**—(1) In order to implement a determination under section 66 (1A), the Returning Officer must—

“(a) Exercise the discretion in section 74 (2) in favour of commencing a scrutiny of the roll in relation to any unopened envelope appearing to contain a voting paper; and

“(b) Ensure that the steps in subsection (4) are taken in relation to that envelope and voting paper.

“(2) The following provisions apply to a scrutiny of the roll to which subsection (1) (a) applies:

“(a) It may be commenced at any time before the close of voting, but must be completed before any step in subsection (4) is taken in relation to that envelope and voting paper:

“(b) It must be conducted in accordance with section 74 (1A) and (3):

“(c) After it is completed, the unopened envelope must be put into a ballot box provided under section 75 (1).

“(3) Every step taken under subsection (4)—

“(a) Must be taken in the 84 hours before the close of voting:

“(b) Must be taken by the Returning Officer or a member of staff authorised by the Returning Officer.

“(4) The steps referred to in subsections (1) to (3) are to—

“(a) Open any ballot box referred to in subsection (2) (c) and take the envelope from it:

“(b) Open the envelope:

“(c) Take any voting paper from the envelope:

“(d) Set the envelope aside:

“(e) Comply with anything in subsections (3A) to (6) of section 77 that is then applicable to the envelope or the voting paper:

“(f) If the total numbers of votes are to be ascertained electronically after the close of voting, record electronically the vote on the voting paper:

“(g) Put any voting paper to which this section applies into a ballot box provided under section 75 (1).

“(5) If the total numbers of votes are to be ascertained manually after the close of voting, a vote on a voting paper to which this section applies must not be recorded, either manually or electronically, before the close of voting.

“73C. **Security at processing before close of voting—**

(1) The Returning Officer must take all practicable measures to ensure that, in the period between the starting of the steps in section 73B (4) and the close of voting,—

“(a) The secrecy of voting is preserved; and

“(b) No person—

“(i) Can find out, partly or wholly, the number of votes cast for any candidate; or

“(ii) Finds out, partly or wholly, the number of votes cast for any candidate; or

“(iii) Can access any record made under section 73B (4) (f); or

“(iv) Accesses any record made under section 73B (4) (f).

“(2) The Returning Officer must keep every ballot box referred to in section 73B (2) (c) or (4) (g) in the manner specified in section 75 (2).

“(3) The Returning Officer may open any such ballot box, and may take a voting paper from it, for a purpose connected with the scrutiny of the roll. As soon as practicable after doing so, the Returning Officer must return the voting paper to a ballot box provided under section 75 (1).

“(4) The Returning Officer must take all practicable measures to ensure that no person, other than the Returning Officer acting under subsection (3), opens any such ballot box before the close of voting.

“(5) The Returning Officer must take all practicable measures to ensure that—

“(a) The steps in section 73B (4) are taken at the office of the Returning Officer or in premises authorised by the Returning Officer; and

“(b) When the office of the Returning Officer or any other premises are being used for the taking of the steps in section 73B (4), a sign is placed outside the office

or premises stating that entry is prohibited without the Returning Officer's express authorisation; and

“(c) No person enters the office of the Returning Officer or the other premises when the sign is in place, unless—

“(i) He or she is a scrutineer to whom section 73D (2) applies; or

“(ii) He or she has the Returning Officer's express authorisation to enter.

**“73D. Scrutineers' presence at processing before close of voting—**(1) No scrutineer may be present when any step in section 73B (4) is being taken in the 84 hours before the close of voting.

“(2) Any scrutineer to whom section 74 (3) applies may be present when—

“(a) A scrutiny to which section 73B (1) (a) applies is being conducted; or

“(b) Any step in section 73B (4) started in the 84 hours before the close of voting is being completed after the close of voting.

**“73E. Justices of the Peace to observe processing before close of voting—**(1) The Returning Officer must appoint at least 1 Justice of the Peace, and may appoint as many additional Justices as the Returning Officer considers necessary, to observe the processing of voting papers under sections 73B to 73D.

“(2) To be eligible for appointment, a Justice must—

“(a) Be nominated by a member of the Royal Federation of New Zealand Justices' Associations (Inc); and

“(b) Indicate to the Returning Officer that the Justice is not—

“(i) A member or employee of a local authority; or

“(ii) A candidate at the election or any other election conducted by the Returning Officer simultaneously with it; or

“(iii) A person who has nominated a candidate at the election or any other election conducted by the Returning Officer simultaneously with it; and

“(c) Indicate to the Returning Officer that the Justice consents to observe the processing of voting papers under sections 73B to 73D.

“(3) At least 1 Justice appointed under subsection (1) must be present when any step in section 73B (4) is being taken in the 84 hours before the close of voting or is being completed after the close of voting.

“(4) Every Justice appointed under subsection (1) must give a certificate to the Returning Officer stating whether or not the Justice is satisfied that sections 73B to 73D were complied with while the Justice was observing the processing of voting papers.

“(5) A Justice who gives a certificate stating that he or she is not satisfied that sections 73B to 73D were complied with must attach a report to the certificate setting out any way in which the sections were not complied with.

“**73F. Procedure after close of voting for voting papers processed before close**—After the close of voting, section 77 (1) and (7) to (10) apply, with all necessary modifications, to voting papers that have been processed under sections 73A (4) to 73E.

“**73G. When processing before close of voting not authorised**—When a local authority has not made a determination under section 66 (1A),—

“(a) Sections 73B to 73F do not apply to a voting paper received before the close of voting; and

“(b) Sections 74, 75, and 77 do apply to such a voting paper.”

**6. Consequential amendments**—(1) Section 77 (8) of the principal Act is amended by omitting the expression “section 63 (b) of this Act”, and substituting the expression “section 63 (1) (b)”.

(2) The Third Schedule of the principal Act is amended by omitting, from the item relating to section 63, the expression “paragraph (b)”, and substituting the expression “subsection (1) (b)”.