

LOCAL ELECTIONS AND POLLS (PROCESSING OF VOTES ON RECEIPT) AMENDMENT BILL

EXPLANATORY NOTE

General Policy Statement

The purpose of this Bill is to provide local authorities with the option of processing local authority election postal votes on receipt, before the close of polling.

Processing of postal votes on receipt would provide significant savings for local authorities because handling of voting papers would be reduced and fewer people would be required to process voting papers than is currently the case. Some local authorities could save over \$100,000 per election and estimated savings range from \$2-4 million nationally.

A key concern with processing of votes on receipt is the protection of the secrecy of voting during the polling period so that voting trends are not disclosed to influence the final result. The security of the voting process is provided for in the Bill by—

- the appointment of disinterested Justices of the Peace, by local authority Returning Officers, to supervise the processing of votes on receipt. An official count involving candidate scrutineers would still follow the close of polling
- a requirement that votes processed manually not be recorded or totalled until the close of voting, and that votes processed electronically not be totalled until the close of voting
- the creation of a new penalty for electoral officials for the offence of disclosing the state of the election before the close of polling and an increase in the penalty for the offence for any other person. Officials are liable to a maximum fine of \$5,000 and other persons are liable to a maximum fine of \$2,000.

It is intended that the Bill be passed by the end of August 1998 to allow local authorities the option of processing postal votes on receipt in time for the upcoming local authority elections in October 1998.

Clause by Clause Description

Clause 1 deals with the Short Title and commencement. The Bill amends the Local Elections and Polls Act 1976 and comes into force on the day after the day on which the Governor-General assents to it.

Clause 2 imposes a new penalty on electoral officials, and increases the penalty for others, for the offence of disclosing the state of the election before the close of voting.

Clause 3 adds new definitions of “electronic”, “master roll”, and “scrutiny of the roll” to section 65, and spells out how Part III, which deals with the holding of elections and polls by postal vote, applies to polls.

Clause 4 repeals sections 66 and 67, and substitutes *new sections 66, 67, and 67A*. The new sections—

- provide for a local authority to determine that the votes in an election or poll to be held by postal vote are to be processed on receipt
- point to the sections in the Act that apply when the votes in an election or poll held by postal vote are processed on receipt
- point to the sections in the Act that apply when the votes in an election or poll held by postal vote are processed after the close of voting.

Clause 5 requires the Returning Officer to include, with the voting paper, notification of a determination by a local authority that votes will be processed on receipt.

Clause 6 inserts *new sections 73A to 73O*.

New section 73A relocates the existing section 76, which allows the Returning Officer to announce the number of voting papers sent and received.

New sections 73B to 73N describe the procedures that the Returning Officer follows when processing votes on receipt. The procedures differ according to whether the Returning Officer processes votes manually or electronically. The Returning Officer must arrange for Justices of the Peace to observe the processing (*new section 73K*).

New section 73O indicates that existing sections 74, 75, and 77 continue to apply when the votes in an election or poll held by postal vote are processed after the close of voting.

Clause 7 repeals section 76, which is re-enacted in *new section 73A*.

Clause 8 amends section 78, on the scrutiny of the roll, to make changes consequential on the provisions for processing votes on receipt.

Clause 9 inserts new sections dealing with scrutineers at elections and polls in which the votes are processed on receipt. Scrutineers may not be present when the votes are processed (*new section 73L*), but they may be present at the official count.

Clauses 10 and 11 deal with consequential amendments and repeals.

Hon Maurice Williamson

LOCAL ELECTIONS AND POLLS (PROCESSING OF VOTES ON RECEIPT) AMENDMENT

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A BILL INTITULED

An Act to amend the Local Elections and Polls Act 1976 to allow for the processing on receipt of votes cast in an election or poll conducted by postal vote

5 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 Votes on Receipt) 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. 5

2. 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— 10

“(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— 15

“(a) Not exceeding \$5,000, for a person required to make a declaration in form 1 in the First Schedule in relation to the election:

“(b) Not exceeding \$2,000, for any other person.” 20

3. Interpretation—(1) Section 65 of the principal Act is amended by repealing the definition of the term “election”, and substituting the following definitions:

“‘Election’ means an election conducted by postal vote because of a determination under **section 66 (1)**: 25

“‘Electronic’ includes mechanical:

“‘Master roll’ means the copy of the roll used by the Returning Officer to conduct a scrutiny of the roll:

“‘Scrutiny of the roll’ means the procedure in which the Returning Officer— 30

“(a) Ascertains, from any envelope delivered to him or her and from any record of special votes exercised, the name of each elector who appears to have voted; and

“(b) Makes a mark on the master roll, by the elector’s name and number, to indicate that the voting paper dispatched to that elector has been returned.” 35

(2) Section 65 of the principal Act is amended by adding the following subsection: 40

“(2) **Sections 67A to 78**, and the Third Schedule, apply to a poll conducted by postal vote in the same way as they apply to an election conducted by postal vote, but with all necessary modifications.”

5 **4. New sections substituted**—The principal Act is amended by repealing sections 66 and 67, and substituting the following sections:

10 **“66. Determinations about postal voting and processing of votes on receipt**—(1) A local authority may determine, by resolution, that a postal vote is to be conducted on—

 “(a) A specified election for a member or members of itself;
 or

 “(b) A poll that it is to take on an issue.

15 “(2) A local authority that makes such a determination may also determine, by resolution, that the votes in the election or poll are to be processed on receipt.

20 **“67. Conduct of election or poll**—(1) If a local authority makes a determination under **section 66 (1)**, the Returning Officer must conduct the election or poll by postal vote.

 “(2) An election or poll conducted by postal vote is conducted in accordance with Part II, but Part II is subject to this Part.

25 “(3) If a local authority makes a determination under **section 66 (2)**, the Returning Officer must process the votes in the election or poll under **sections 73B to 73N**.

 “(4) If a local authority does not make a determination under **section 66 (2)**, the Returning Officer must process the votes in the election or poll under **sections 73O, 74, 75, and 77**.

30 **“67A. Modification of other provisions of this Act**—

 (1) For the purposes of an election conducted by postal vote, this Act has effect as if it had been amended in the manner indicated in the Third Schedule.

35 “(2) For the purposes of an election conducted by postal vote when the local authority has made a determination under **section 66 (2)**,—

 “(a) Section 27 does not apply, and **sections 73L and 78A** apply instead; and

40 “(b) Section 97 does not apply, and **sections 73L and 78B** apply instead.

 “(3) For the purposes of an election conducted by postal vote when the local authority has not made a determination under

section 66 (2), section 97 has effect as if the place where the preliminary count of the votes is to take place were a polling booth within the meaning of that section.”

5. Issue of voting papers—Section 68 of the principal Act is amended by inserting, after subsection (4), the following subsection: 5

“(4A) If the local authority has made a determination under **section 66 (2)**, the Returning Officer must include notification of the determination with the voting paper.”

6. New sections and cross-headings inserted—The principal Act is amended by inserting, after section 73, the following sections and cross-headings: 10

“**73A. Returning Officer may announce number of voting papers sent and returned**—The Returning Officer may from time to time, on any day up to and including the day before the date of the election, publicly announce— 15

“(a) The total number of persons to whom voting papers have been sent; and

“(b) The number of envelopes containing voting papers delivered to the Returning Officer. 20

“Processing of Votes on Receipt

“**73B. Application of sections 73C to 73N**—When a local authority has made a determination under **section 66 (2)**, the Returning Officer must process a voting paper, delivered to him or her before the close of voting, under **sections 73C to 73N**. 25

“**73C. Manual or electronic processing**—The Returning Officer may process the voting paper by such manual or electronic means as he or she thinks fit.

“**73D. General duties of Returning Officer**—Whether the Returning Officer uses a manual or electronic means to process the voting paper, the Returning Officer must process the voting paper— 30

“(a) As soon as practicable after it is delivered; and

“(b) In a manner that preserves the secrecy of the vote.

“**73E. Specific duties if manual means used**—(1) If the Returning Officer uses a manual means to process the voting paper, he or she must— 35

“(a) If possible, conduct a scrutiny of the roll; and

“(b) Open the envelope; and

“(c) If possible, extract the voting paper or voting papers from it; and

“(d) Decide whether or not the vote or votes cast by the elector should be allowed.

5 “(2) The Returning Officer must ensure that the manual means used provide for the action described in **subsection (1) (a)** to be performed by a different person from the person who performs the action described in **subsection (1) (d)**.

10 “**73F. Specific duties if electronic means used**—(1) If the Returning Officer uses an electronic means to process the voting paper, he or she must—

 “(a) If possible, conduct a scrutiny of the roll; and

 “(b) Open the envelope; and

15 “(c) If possible, extract the voting paper or voting papers from it; and

 “(d) If the Returning Officer is satisfied that the vote or votes cast by the elector should be allowed, record the vote or votes.

20 “(2) The Returning Officer must ensure that the electronic means used prevent the result of voting being calculated, partially or finally, before the close of voting.

 “**73G. Envelope not containing voting paper**—(1) If the Returning Officer finds that an envelope does not contain any voting papers, he or she must set the envelope aside.

25 “(2) If the Returning Officer has already conducted a scrutiny of the roll using the envelope, he or she must cancel the mark on the master roll.

 “(3) The Returning Officer must not take the envelope into account in the scrutiny of the roll under section 78.

30 “**73H. Voting paper for election in which elector not entitled to vote**—(1) If the Returning Officer finds that 1 or more voting papers contained in an envelope are in respect of an election or elections at which it appears the elector is not entitled to vote, he or she must replace all the voting papers in

35 the envelope.

40 “(2) The Returning Officer must then take the steps he or she considers necessary to ascertain whether any additional voting paper included in the envelope is that of some other elector, taking care to ensure that the voting papers contained in the envelope are so covered that the votes recorded on them are not seen by any person present.

“(3) If the Returning Officer is satisfied that the vote or votes on an additional voting paper should be allowed, he or she must record the vote or votes.

“(4) The Returning Officer must set aside the additional voting paper and the envelope in which it was contained. 5

“(5) The Returning Officer must include the additional voting paper in the official count.

“73I. **Informal and invalid votes**—(1) A voting paper that does not clearly indicate the candidate or candidates for whom the voter desired to vote is informal. 10

“(2) If a voting paper is informal for the reason set out in **subsection (1)**, the Returning Officer must set it aside.

“(3) If a voting paper is invalid, the Returning Officer must record the vote as invalid, record the reason for its invalidity, and set it aside. 15

“73J. **Protection of secrecy during processing of votes on receipt**—(1) The Returning Officer must ensure that—

“(a) The processing of voting papers is conducted at the office of the Returning Officer or in premises authorised by the Returning Officer; and 20

“(b) When the office of the Returning Officer or any other premises are being used for the processing of voting papers, a sign is placed outside the office or premises stating that this is the case and that entry is prohibited without the express authorisation of the Returning Officer; and 25

“(c) No person, without the express authorisation of the Returning Officer, enters the office of the Returning Officer or the other premises when the sign is in place. 30

“(2) The Returning Officer must provide in his or her office—

“(a) 1 or more locked ballot boxes; or

“(b) In the case of a local government area that is subdivided for electoral purposes, 1 or more locked ballot boxes for each subdivision of the local government area in which an election is conducted. 35

“(3) After processing envelopes and voting papers under **sections 73D to 73I**, the Returning Officer must put the envelopes and voting papers in the ballot box or, as the case requires, in the ballot box bearing the name of the subdivision to which the envelopes or voting papers relate. 40

“(4) The Returning Officer must keep any ballot box containing voting papers and envelopes in a locked and fireproof room, or in a fireproof container in a locked room, except during ordinary office hours.

5 “(5) No one is permitted to open any such ballot box until after the close of voting.

“**73K. Supervision during processing of votes on receipt**—(1) The Returning Officer must appoint as many Justices of the Peace as the Returning Officer considers
10 necessary to observe the processing of votes under **sections 73c to 73N**.

“(2) Before being appointed under **subsection (1)**, a Justice of the Peace must indicate to the Returning Officer that the Justice—

15 “(a) Is not—

“(i) A member of the local authority; or

“(ii) A candidate at the election; or

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

“(iv) Qualified to vote in the election; and

“(b) Consents to observe the processing of votes.

“(3) Every Justice of the Peace appointed under **subsection (1)** must give a certificate to the Returning Officer after the
25 announcement of the provisional result stating that, to the best of the knowledge of the Justice, **sections 73c to 73N** were observed.

“**73L. Scrutineers not to be present at processing of votes on receipt**—The Returning Officer must not permit any scrutineer to be present when votes are being processed
30 under **sections 73c to 73N**.

“**73M. Provisional result**—(1) After the close of voting, the Returning Officer must,—

“(a) If the Returning Officer used a manual means to process the votes, record the votes and then ascertain the
35 total number of votes recorded for each candidate at the election:

“(b) If the Returning Officer used an electronic means to process the votes, ascertain the total number of votes recorded for each candidate at the election.

40 “(2) After 7 pm on the date of the election, the Returning Officer—

“(a) Must provisionally announce the total number of votes recorded for each candidate at the election; and

“(b) May include in that total the number of special votes received by the candidate and allowed by the Returning Officer up to the time of the announcement.

“**73N. Parcelling up of voting papers**—(1) From time to time before the close of voting, the Returning Officer must make up into separate parcels— 5

“(a) All the counterfoils of voting papers that have been used at the election or all the records that have been made under section 25A in respect of voting papers that have been used at the election; and 10

“(b) All spoilt voting papers; and

“(c) All the unused voting papers—

“(i) With their counterfoils attached; or

“(ii) With the records made under section 25A in relation to them. 15

“(2) After the close of voting, and after ascertaining the total number of votes recorded for each candidate at the election, the Returning Officer must—

“(a) Make parcels of the used voting papers; and 20

“(b) Make separate parcels of envelopes or voting papers set aside; and

“(c) Seal each parcel; and

“(d) Endorse each parcel with—

“(i) A description of its contents; and 25

“(ii) The name of the local government area; and

“(iii) If applicable, the name of the subdivision; and

“(iv) The date of the polling; and

“(e) Sign each endorsement. 30

“(3) Any Justices of the Peace appointed under **section 73K** who are present and who consent to sign the endorsements must sign the endorsements.

“(4) The Returning Officer must take all reasonable steps to ensure the safe custody of all returned voting papers until they have been sent to the Registrar of the District Court under section 45. 35

“Processing of Votes after Close of Voting

“**73O. Application of sections 74, 75, and 77**—When a local authority has not made a determination under **section 66 (2)**, the Returning Officer must process a voting paper, delivered to 40

him or her before the close of voting, under sections 74, 75, and 77.”

5 **7. Returning Officer may announce number of voting papers sent and returned**—Section 76 of the principal Act is repealed.

8. Scrutiny of the roll—(1) Section 78 of the principal Act is amended by repealing subsections (1) and (1A), and substituting the following subsections:

10 “(1) The Returning Officer must complete or conduct a scrutiny of the roll after the completion of the preliminary count of the votes under **section 73M (1)** or section 77.

 “(1A) The Returning Officer may conduct the scrutiny of the roll by such manual or electronic means as he or she thinks fit.

15 “(1B) If an envelope addressed to the Returning Officer under section 68 cannot be used for the purposes of the scrutiny of the roll because the matters specified in section 68 (2) have been erased from or obliterated on the envelope, the Returning Officer—

20 “(a) Must take such steps as he or she considers necessary to identify the elector who appears to have voted; and

 “(b) Must mark the master roll in respect of the elector.

25 “(1C) If sections 27 and 97 apply (see **section 67A (2)**), scrutineers may be present at the scrutiny of the roll and, if sections 27 and 97 do not apply, Justices of the Peace appointed under **section 73K** may be present at the scrutiny of the roll.”

 (2) Section 78 (2) of the principal Act is amended by inserting, after the word “scrutineers”, the words “, or, as the case may require, such Justices of the Peace,”.

30 **9. New sections inserted**—The principal Act is amended by inserting, after section 78, the following sections:

35 **“78A. Scrutineers for candidates at official count if votes processed on receipt**—(1) When a local authority has made a determination under **section 66 (2) (a)**, each candidate in the election may appoint 1 or more scrutineers to be present at the official count under section 42.

 “(2) A candidate appointing a scrutineer must do so in a document signed by the candidate.

 “(3) A candidate may not appoint as a scrutineer a person who is—

40 “(a) A member of the local authority; or

 “(b) A candidate at the election; or

“(c) A candidate at any other election conducted by the Returning Officer simultaneously with the election.

“78B. **Scrutineers for or against proposal at official count if votes processed on receipt**—(1) When a local authority has made a determination under **section 66 (2) (b)**, electors who are in favour of a proposal in the poll, and electors who are opposed to the proposal, may nominate 1 or more scrutineers to be present at the official count under section 42. 5

“(2) Any 20 of the electors who are in favour of the proposal may nominate 1 or more scrutineers. 10

“(3) Any 20 of the electors who are opposed to the proposal may nominate 1 or more scrutineers.

“(4) Every person who makes a nomination under **subsection (2) or subsection (3)** must—

“(a) Sign the nomination; and 15

“(b) State the person’s name and address against the signature, with sufficient particularity to enable him or her to be identified as an elector of the local authority.

“(5) A nomination must be delivered to the Returning Officer not less than 7 clear days before the poll. 20

“(6) If only 1 person is nominated as a scrutineer under **subsection (2) or subsection (3)**, that person is the scrutineer for or against the proposal.

“(7) If more than 1 person is nominated as a scrutineer under **subsection (2) or subsection (3)**, the Returning Officer must select 1 or more scrutineers from the persons nominated and must notify the selection to all the persons nominated, and the persons selected are the scrutineers for or against the proposal. 25

“78c. **Duties and rights of scrutineers**—(1) This section applies to every scrutineer to whom **section 78A or section 78B** applies. 30

“(2) Before being allowed to act, each scrutineer must make a declaration in form 1 in the First Schedule before the Returning Officer. 35

“(3) One scrutineer for a candidate, 1 scrutineer for those in favour of a proposal, and 1 scrutineer for those opposed to a proposal may be present at the official count at any one time.

“(4) A scrutineer may at any time during the official count leave and re-enter the place where the official count is being done. 40

“(5) Nothing in this Act renders it unlawful for a scrutineer to communicate to any person information as to the names of persons who have voted.”

5 **10. Consequential amendments**—(1) Section 3A (1) of the principal Act is amended by omitting the expression “66 (1)”, and substituting the expression “67 (1)”.

 (2) 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)**”.

10 (3) 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)**”.

15 **11. Consequential repeal**—Section 19 of the Local Elections and Polls Amendment Act 1988 is repealed.