



## ANALYSIS

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1989, No. 11

An Act to amend the Electoral Act 1966

(5 May 1989)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same, as follows:

1. Short Title - This Act may be cited as the Electoral Amendment Act 1989 and shall be read with and deemed part of the Electoral Act 1966 (herein referred to as "the principal Act").

2. Objection by an elector - Section 14 of the principal Act is amended by -

- (a) inserting after the heading "Objection by an elector" the word "(1)"; and
- (b) adding after paragraph (c) the following subsection -

"(2) Every objector upon request shall be entitled to receive from the Registrar in charge a copy of the application for registration of the person objected to together with any reply which the person objected to may have filed with the Registrar in charge, in relation to an objection".

3. Time limit for objections - Section 16 of the principal Act is amended by deleting the words "3 clear days" and substituting the words "7 clear days".

4. Scrutineers - The principal Act is amended by repealing section 41 and substituting the following section -

"41. Scrutineers - (1) Each candidate may by writing under his hand, appoint not more than two scrutineers for each polling booth at any election.

(2) Where a candidate appoints more than one scrutineer for any polling booth, not more than one scrutineer for that candidate shall be present in the polling booth at any time.

(3) Any scrutineer may at any time during the hours of polling leave and re-enter the polling booth for which he is appointed.

(4) Notwithstanding any provision of this Act it shall be lawful for a scrutineer to communicate to any person information as to the names of persons who have voted.

5. Blind and disabled voters - Subsection (2) of section 50 of the principal Act is amended, by deleting the words "if he so desires" and substituting the words "in the presence of scrutineers".

6. Interferences with or influencing voters - Subsection (1) of section 65 of the principal Act is amended by deleting subparagraph (i) of paragraph (h).

7. Voting by postal vote - The principal Act is amended by repealing section 73A and substituting the following section -

"73A. Voting by postal vote - (1) Subject to the designation of polling areas pursuant to section 73B, a registered elector of the Overseas Constituency may vote at any election held in that constituency by postal vote as provided in this Part.

(2) As soon as practicable after the closing of the rolls compiled pursuant to section 10 and section 20 for the Overseas Constituency, the Returning Officer in charge shall, in the case of electors not having their address within a polling area designated pursuant to section 73B, forward by post to each elector at the address shown against the elector's name on the roll or at his usual postal address if, to the knowledge of the Returning Officer, that address is different from the address shown on the roll and is not within a designated polling area -

(a) A postal voting paper; and

(b) An envelope marked "Postal Vote"; and

(c) An envelope stamped and addressed to the Returning officer.

(3) Every envelope addressed to the Returning Officer shall bear on its face the consecutive number of the voting paper and the number of the elector's name on the roll.

(4) Before forwarding any postal voting paper to any elector, the Returning Officer -

- (a) Shall, unless a consecutive number has been printed on the voting paper and on the counterfoil, enter on both the counterfoil and the top right-hand corner of the back of the voting paper a number (called a consecutive number) beginning with the number 1 in the case of the first voting paper forwarded by him to an elector of the constituency; and on all voting papers forwarded by him to electors of the constituency the numbers shall be consecutive so that no two voting papers forwarded to electors shall bear the same number; and
- (b) Shall then firmly fix a piece of gummed paper over the consecutive number of the voting paper so as to conceal it effectively or take such other steps as he considers necessary for the effective concealing of the consecutive number; and
- (c) Shall on the counterfoil of the voting paper also write his initials and the number appearing on the roll against the name of the elector to whom the voting paper is to be forwarded; and
- (d) Shall on both counterfoil and the voting paper place his official mark; and
- (e) Shall indicate on a copy of the roll, by appropriate words, abbreviations, or marks, against the number and name of the elector on the roll, the fact that a postal voting paper has been forwarded to the elector together with the date that it was forwarded.

(5) The copy of the roll used for postal voting shall be separate from any other roll used at the election."

8. Right of elector to vote as ordinary voter - The principal Act is amended by repealing section 73B and substituting the following section -

"73B. Electors to vote as ordinary voters in designated polling areas - (1) Notwithstanding anything in section 73A, the Chief Electoral Officer may designate any area of the Overseas Constituency as a polling area and, if so designated, shall appoint under section 36 a place or places within such area as a polling place or places at which electors, having their address within that area, may vote as ordinary voters and at which electors of a constituency in the Cook Islands who are in the Overseas Constituency on polling day may vote as special voters.

(2) Every area so designated shall be defined as to its outer boundaries and notified in the Cook Islands Gazette and publicly notified in a manner that informs electors having their address within that area -

- (a) That they shall not be entitled to vote by postal vote, but that they may vote by ordinary vote; and
- (b) Of the place or places at which they may cast an ordinary vote.

(3) Notwithstanding the discretion provided the Chief Electoral Officer to designate an area of the Overseas Constituency as a polling area pursuant to subsection (1), the area defined by Order in Executive Council and referred to in this Act as the Auckland Polling Area, shall be a polling area as if so designated by the Chief Electoral Officer pursuant to subsection (1).

(4) There shall be appointed under section 36, not less than 2 places within the Auckland Polling Area as places at which electors, having their address within that area, may vote as ordinary voters.

(5) Every polling place appointed in accordance with this section shall be so appointed having regard to the number of electors within the proximity of the place to be appointed and shall wherever possible be located at the most central point to those electors.

(6) The Returning Officer shall provide voting papers in form 8 for use by voters of the Overseas Constituency voting at a polling place appointed under section 36 in accordance with this section.

(7) Every polling place appointed in accordance with this section shall be open for voting at 9 o'clock in the forenoon of the day in the place where the polling booth is situated that corresponds to election day in the Cook Islands, and shall close at 6 o'clock in the afternoon of the same day."

(8) Except as may be provided in this section all the provisions of this Act relating to ordinary voting (including section 50) shall as far as they are applicable and with such modifications as may be necessary, apply to ordinary voting in a polling area.

9. Method of voting - (1) Subsection (2) of section 73D of the principal Act is amended by -

- (a) Deleting the words "of an elector of the Overseas Constituency" and substituting the words "of a person, other than a person who is an elector or a person having an interest in the outcome of the election"; and
- (b) Deleting the words "by an elector of that constituency" and substituting the words "by a person not being an elector or person having an interest in the outcome of the election".

(2) Section 73D is further amended by adding after subsection (2) the following subsection -

"(3) Every elector and every person who has an interest in the outcome of the election, who interferes or influences an elector in the exercise of his vote, whether by way of delivering to that elector his voting paper or returning that elector's voting paper to the Returning Officer, or otherwise, commits an offence and upon conviction shall be liable to a fine not exceeding \$200 or to imprisonment for a term not exceeding 1 month or to both such fine and imprisonment."

10. Return of voting papers to Returning Officer - (1) The principal Act is amended by repealing section 73E and substituting the following section -

"73E. Return of voting papers to Returning Officer

- (1) After the vote of an elector has been exercised as provided in section 73D, the elector shall enclose the voting paper in the envelope marked "Postal Vote" and then shall enclose that envelope containing the voting paper in the envelope addressed to the Returning Officer and shall personally by hand or by post deliver that envelope to the Returning Officer at the address shown on the envelope referred to in section 73A(2)(c).

(2) Subject to section 73G, upon receipt of an envelope addressed to him, the Returning Officer shall, in the presence of scrutineers as shall have been notified by the Returning Officer and may be present -

- (a) Record on the envelope addressed to him, -
  - (i) the date of receipt by him of that envelope; and
  - (ii) whether it was delivered by hand or by post; and
  - (iii) the name of the person from whom it was received if delivered by hand.
- (b) Draw a line in ink through the number and name of the elector on the roll as evidence that the elector has exercised a postal vote and the date of receipt of that postal vote;
- (c) Open the envelope addressed to him and extract therefrom the envelope marked "Postal Vote" containing the voting paper; and
- (d) Place in the ballot box referred to in section 73H the envelope marked "Postal Vote" containing the voting paper; and
- (e) Retain the envelope addressed to him in a locked and fireproof room or a fire proof container in a locked room."

(3) For the purposes of section 41, the office of the Returning Officer shall, for the purposes of receiving postal votes by him, be deemed to be a polling booth.

11. Voting papers to be returned before close of voting - The principal Act is amended by repealing section 73F and substituting the following section -

"73F. Voting papers to be returned before close of voting - No postal voting paper shall be valid unless it is received by the Returning Officer before the close of voting, being the hour of 6 o'clock in the afternoon of the day in New Zealand that corresponds to polling day in the Cook Islands."

12. Electors of polling areas may vote in advance - The principal Act is amended by inserting after section 73G the following new section -

"73GA. Electors of polling areas may vote in advance - (1) Any registered elector of the Overseas Constituency whose address as shown on the roll, is within a polling area designated pursuant to section 73B(1) and who will be within the Overseas Constituency on polling day but will not be in that polling area on polling day may vote in advance of polling day as provided herein.

(2) Application for leave to vote in advance may be made to the Returning Officer at any time during office hours after nomination day and not later than 4.00 pm on the day immediately preceeding the day fixed for the taking of the poll.

(3) Every applicant shall sign and deliver to the Returning Officer in charge a declaration in form 12 (with such modifications as may be necessary) and the Returning Officer, if satisfied that the application is made in good faith, shall in the presence of scrutineers issue to the applicant -

(a) A voting paper; and

(b) An envelope marked "Vote in Advance of Poll" and addressed to the Returning Officer in charge.

(4) Before giving the voting paper to the applicant, the Returning Officer shall proceed as provided in section 47 hereof:

Provided that he shall also enter the date of voting in advance on the counterfoil and the top right-hand corner of the voting paper, and also against the name of the applicant on the roll.

(5) The applicant shall then alone and secretly on the voting paper indicate the candidate for whom he desires to vote, place the voting paper duly folded in the envelope, and deliver the envelope, after sealing it, to the Returning Officer.

(6) The Returning Officer shall hold for production on polling day the sealed envelope, together with the declaration form on which the consecutive number shall be entered, and shall be personally responsible for their safe custody.

(7) On polling day the Returning Officer shall open all envelopes so held by him, extract therefrom any voting papers, and deposit the voting papers, without unfolding them, in the ballot box.

(8) Any person who, with intent to offer to vote more than once at the same election, after having applied for a certificate enabling him to vote as a special voter pursuant to section 52 hereof, applies for leave to vote in advance of polling day pursuant to this section or, after having voted in advance of polling day, pursuant to this section, applies for a certificate as a special voter, commits an offence and is liable to imprisonment for a term not exceeding three months."

13. Time for holding inquiry - Section 76 of the principal Act is amended by -

- (a) omitting the words "within 14 days" and substituting the words "as soon as practicable"; and
- (b) omitting the words "or, in the case of an election in the Overseas Constituency, within 21 days after the filing of the petition."

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This Act is administered by the Chief Electoral Officer.