

# House of Representatives

# Supplementary Order Paper

**Tuesday, 23 July 2019**

## **End of Life Choice Bill**

### *Proposed amendments*

Jenny Marcroft, in Committee, to move the following amendments:

#### *Clause 2*

Replace *clause 2* (page 2, lines 4 to 6) with:

#### **2 Commencement**

- (1) **Part 5** comes into force on the day after the date on which this Act receives the Royal assent.
- (2) If the majority of the total number of valid votes cast in the referendum under **Part 5** are “Yes” votes, the rest of this Act comes into force 12 months after date on which the official result of the referendum is declared under **section 44**.
- (3) If the majority of the total number of valid votes cast in the referendum under **Part 5** are not “Yes” votes, the rest of this Act expires and is repealed on the close of the day that is 6 months after the date on which the result of the referendum is declared under **section 44**.

#### *New Part 5*

After *clause 28*, (page 19, line 26) insert:

## Part 5

### Binding referendum

#### 29 Purpose of this Part

The purpose of this Part is to make provision for a binding referendum on the question of whether this Act should become law in New Zealand.

#### 30 Interpretation

(1) In this Part, unless the context otherwise requires,—

**address** means,—

- (a) in relation to an individual,—
  - (i) the full street address of the place where that individual usually lives; or
  - (ii) the full street address of any other place where that individual can usually be contacted between the hours of 9 am and 5 pm on any working day:
- (b) in relation to a body corporate or unincorporated body,—
  - (i) the full street address of the body's principal place of business; or
  - (ii) the full street address of the body's head office

**agency** means any department or instrument of the Executive Government of New Zealand, or any branch or division of any of those departments or instruments

**close of the voting period for the referendum** means 7 pm on the day appointed for the polling to take place for the first general election after the commencement of this Part

**district** means a General electoral district or a Maori electoral district constituted under the Electoral Act 1993

**elector** means a person whose is qualified to vote at the general election

**Electoral Commission** means the Electoral Commission established by section 4B of the Electoral Act 1993

**general election** means the first general election that takes place after the commencement of this Part

**Minister** means the Minister of the Crown who is, with the authority of the Prime Minister, for the time being responsible for the administration of this Act

**option** means either of the 2 options on the referendum voting paper required by **section 31**

**panel** means any panel appointed by the Minister to conduct, on behalf of the New Zealand Government, a publicity campaign or other activity in relation to a referendum or referendums

**promoter** means a person who initiates or instigates a referendum advertisement

**question** means the question on the referendum voting paper required by **section 31**

**referendum** means the binding referendum provided for in **section 31**

**referendum advertisement** has the meaning given in **section 55**

**referendum material** means material that is prepared by a panel and presented to electors for the purpose of informing them about each of the options

**referendum voting paper** has the meaning given in **section 35**

- (2) The terms **ballot box**, **ballot paper**, **poll**, and **polling** in relation to the general election, mean the same in this Part as they do in the Electoral Act 1993.

## Subpart 1—Binding referendum on the End of Life Choice Act 2019

### **31 Binding referendum on day of general election**

- (1) On the day appointed for the polling to take place for the first general election after the commencement of this Part, a referendum of electors must be held on the question specified in **subsection (2)**.
- (2) The question to be asked on the referendum voting paper must be *Should the End of Life Choice Act 2019 become law in New Zealand?*
- (3) The options on the referendum voting paper must be “Yes” and “No”.

Compare: 2010 No 139 s 8

### **32 Application of the Electoral Act 1993**

- (1) The provisions of the Electoral Act 1993 and of any regulations made under that Act apply, as far as they are applicable and with any necessary modifications, to the referendum as if it were the poll held for the general election, unless the provision is excluded or modified, expressly or impliedly, by a provision in, or made under this Part.

- (2) **Subsection (1)** is subject to the provisions of this Act and of any regulations made under it.

Compare: 2010 No 139 s 9

### *Conduct of referendum*

#### **33 Manager, returning officer, polling place officials, and polling places**

- (1) The returning officer for a district, the manager of a polling place, and other officials appointed under the Electoral Act 1993 for the general election are the returning officer, the manager, and officials for the purposes of the referendum.
- (2) The polling places appointed under section 155 of the Electoral Act 1993 for each district for the purposes of the general election are the polling places for the referendum.

Compare: 2010 No 139 s 10

#### **34 Who may vote**

- (1) The persons who are qualified to vote at the referendum are those qualified under section 60 of the Electoral Act 1993 to vote at the general election.
- (2) The electoral rolls for the purpose of the referendum are the electoral rolls that are in force under the Electoral Act 1993.

Compare: 2010 No 139 s 11

#### **35 Form of voting paper**

The voting paper used in the referendum (**referendum voting paper**) under this Part must be in the prescribed form and must—

- (a) have a heading that—
- (i) begins with the words “REFERENDUM ON”; and
  - (ii) states the subject of the referendum; and
- (b) have an explanatory note that—
- (i) has the heading “Explanation”; and
  - (ii) explains—
    - (A) the purpose of the voting paper; and
    - (B) the effect of the referendum; and
  - (iii) specifies—
    - (A) the referendum material, if any, accompanying the voting paper that summarises the subject of the referendum; and

- (B) the title and date of government publications, if any, intended to provide electors with a full description of the subject of the referendum; and
- (c) set out the question and options worded as specified in **section 31**; and
- (d) set out instructions on how to vote and how to return the voting paper; and
- (e) provide a space for electors to indicate the option for which they wish to vote; and
- (f) set out the following numbers:
  - (i) the elector's roll identifier number, which must be unique to that elector;
  - (ii) the elector's electorate code;
  - (iii) the voting paper's number, which must be a number in a consecutive sequence that starts at 1.

Compare: 2000 No 48 s 7(1)

### **36 Issue of referendum voting paper**

- (1) When a ballot paper is issued to a person qualified to vote at the general election, the issuing officer must also issue a referendum voting paper to that person.
- (2) Section 167(3)(b) and (c) of the Electoral Act 1993 does not apply in respect of a referendum voting paper.

Compare: 2010 No 139 s 12

### **37 Method of voting**

A person voting in the referendum must mark the referendum voting paper with a tick in the circle immediately beside the option that the person wishes to vote for.

Compare: 2010 No 139 s 13

*Certain provisions of Electoral Act 1993 not to apply*

### **38 Provisions of Electoral Act 1993 not to apply to count of referendum votes**

The following provisions of the Electoral Act 1993 do not apply to the counting of referendum votes:

- (a) sections 160, 172(4) to (7), and 174F (which relate to the appointment and functions of scrutineers); and
- (b) sections 174 and 174B (which provide for a preliminary count of votes cast in polling places); and

- (c) section 176 (which provides for marked copies of the rolls to be compared).

Compare: 2010 No 139 s 14

*Counting of early votes*

**39 Time at which preliminary count of early votes must begin**

Despite section 174C(5)(a) of the Electoral Act 1993, if the conditions stated in section 174D(2) of that Act apply, each returning officer must, as soon as practicable after 2 pm on polling day, commence the preliminary count of early votes,—

- (a) in the case of the general election, in accordance with the requirements of section 174C(1) to (4) and (6) of the Electoral Act 1993; and
- (b) in the case of the referendum, in accordance with the requirements of **section 41**, with any necessary modifications.

Compare: 2010 No 139 s 15

*Procedure after close of poll*

**40 Referendum voting papers sent to returning officer before being counted**

As soon as practicable after the close of the poll, the manager of a polling place must—

- (a) unseal the ballot boxes; and
- (b) separate the referendum voting papers from the ballot papers for the general election; and
- (c) enclose the used referendum voting papers and counterfoils, unused referendum voting papers, and spoilt referendum voting papers in parcels endorsed as required for ballot papers under section 174A(1)(b) of the Electoral Act 1993; and
- (d) send those parcels to the returning officer.

Compare: 2010 No 139 s 16

**41 Returning officer to count referendum votes for district**

As soon as practicable after the parcels of referendum voting papers are received by a returning officer, the returning officer must, in the presence of a Justice of the Peace, ascertain the number of—

- (a) valid votes cast for each of the options on the referendum voting paper; and
- (b) informal votes for that paper.

Compare: 2010 No 139 s 17

**42 Return of results of count to Electoral Commission**

Each returning officer must, as soon as practicable after completing the count of the referendum votes, return the results of the count to the Electoral Commission.

Compare: 2010 No 139 s 18

*Determination and declaration of result of referendum*

**43 Determination of results by Electoral Commission**

As soon as practicable after receiving the results of the count from each returning officer, the Electoral Commission must ascertain, from the results of the count returned by each returning officer under **section 42**,—

- (a) the total number of valid votes for all districts combined for each option on the referendum voting paper; and
- (b) the total number of informal votes for that paper.

Compare: 2010 No 139 s 19

**44 Declaration of official result of referendum**

(1) The Electoral Commission must declare the result of the referendum by notice in the *Gazette*, giving—

- (a) the total number of valid votes cast for each option on the referendum voting paper—
  - (i) for all districts combined; and
  - (ii) for each district separately; and
- (b) the total number of informal votes for the referendum voting paper.

(2) The notice required under **subsection (1)** must be published on or before the latest day appointed under section 139(1) of the Electoral Act 1993 for the return of the writ for the general election.

Compare: 2010 No 139 s 20

**Subpart 2—Inquiry into conduct of referendum**

*Parties to inquiry*

**45 Who may make application**

(1) Any group of electors may apply to the High Court for an inquiry into the conduct of the referendum or of any person connected with it on the grounds that the group is dissatisfied with the conduct of the referendum or of any person connected with the conduct of the referendum, and that that conduct could have altered the outcome of the referendum.

- (2) A group may make an application only if it has at least 200 members.

Compare: 2015 No 66 s 41

**46 Who may be respondents**

The person complained of is a respondent to the application if the person is—

- (a) the Returning Officer; or
- (b) an electoral official under the Electoral Act 1993; or
- (c) the Electoral Commission; or
- (d) an employee of New Zealand Post Limited; or
- (e) a person acting under a delegation from a Returning Officer under section 20C of the Electoral Act 1993.

Compare: 2015 No 66 s 42

**47 Group of electors may oppose application**

- (1) Any group of electors may file notice of its intention to oppose an application, if there is only 1, or to oppose specified applications, if there are more than 1.
- (2) A group may file such a notice only if it has at least 24 members.
- (3) The notice must—
  - (a) be in the prescribed form; and
  - (b) be filed at least 3 working days before the day fixed for the start of the hearing.
- (4) A group filing a notice in accordance with this section becomes a respondent to the application or applications.

Compare: 2015 No 66 s 43

*Making of application*

**48 Making of application**

- (1) An applicant makes its application by filing the application in the High Court in Wellington.
- (2) The application must—
  - (a) be in the prescribed form or a similar form; and
  - (b) state the specific grounds on which the applicant is dissatisfied with the conduct of the referendum or of any person connected with it; and
  - (c) be made within 20 working days after the Electoral Commission has declared the result of the referendum under **section 44**.

- (3) The Registrar of the court must send a copy of the application to the Electoral Commission as soon as practicable after it is filed.

Compare: 2015 No 66 s 44

**49 Application to be served on respondents**

- (1) An application must be served on a group that becomes a respondent under **section 47(4)** as soon as practicable after that group files its notice.

- (2) An application that asks for an inquiry into the conduct of a person connected with the referendum must be served on the person complained of as soon as practicable after it is made.

- (3) An application must be served in a manner as close as possible to that in which a statement of claim is served.

Compare: 2015 No 66 s 45

*Hearing of application*

**50 More than 1 application relating to same referendum**

Where 2 or more applications are filed that relate to the same referendum, all those applications must be dealt with as 1 application.

Compare: 2015 No 66 s 46

**51 Matters to be inquired into at hearing**

- (1) At the hearing, the court has jurisdiction to inquire into and adjudicate on any matter relating to the application in any manner that the court thinks fit.

- (2) The court may, on any terms and conditions it considers just, give leave for grounds other than those stated in the application to be inquired into.

- (3) Evidence may be given to prove that the total number of valid votes recorded for each of the options on the referendum voting paper was other than that declared, without any application having to state that as a ground of dissatisfaction or the court having to give leave for the ground to be inquired into.

- (4) The provisions of the Electoral Act 1993 specified in **subsection (5)**, as far as they are applicable and with the necessary modifications, apply to a hearing of an application for an inquiry under this subpart or an incidental matter.

- (5) The provisions of the Electoral Act 1993 referred to in **subsection (4)** are sections 232, 235, 236(1), (2), and (4) to (7), 240, 241, 247 to 255, 256(1)(a) and (b), and 257.

Compare: 2015 No 66 s 47

*Court's decision***52 Decision of court as to result of referendum**

At the end of a hearing, the court must—

- (a) determine the total number of valid votes recorded for each option; or
- (b) determine whether the referendum is void because of some irregularity that in the court's opinion materially affected the outcome of the referendum.

Compare: 2015 No 66 s 48

**53 Fresh referendum**

- (1) If the court declares a referendum void under **section 52(b)**, a fresh referendum must be held in the manner specified by this Act.
- (2) The Registrar of the court must notify the Electoral Commission that the referendum has been declared void.
- (3) The voting period for the fresh referendum must commence at the start of the 21st day before the day appointed for the close of the voting period under **subsection (4)**.
- (4) The voting period for a fresh referendum closes at 7 pm on a day to be appointed by the Electoral Commission by notice in the *Gazette*, which day must be no later than 51 days after the date on which the Electoral Commission is notified under **subsection (2)**.
- (5) At the fresh referendum, the same roll of electors must be used as was used at the voided referendum.

Compare: 2015 No 66 s 49

## Subpart 3—Advertising

**54 Application of this subpart**

This subpart applies, instead of Parts 6AA and 6A of the Electoral Act 1993, to referendum advertisements unless otherwise expressly provided in this Part.

**55 Meaning of referendum advertisement**

- (1) In this subpart, **referendum advertisement** means an advertisement in any medium that—
  - (a) may reasonably be regarded as encouraging or persuading electors—
    - (i) to vote in a particular way in a referendum; or
    - (ii) not to vote in a particular way in a referendum; and

- (b) is published, at any time from the date of the commencement of this Part until the close of the voting period for the referendum.
- (2) However, none of the following is a referendum advertisement:
- (a) an advertisement that—
- (i) is published, or caused or permitted to be published, by a panel, an agency, or the Electoral Commission; and
- (ii) relates to electoral matters or the conduct or subject matter of the referendum; and
- (iii) contains—
- (A) a statement indicating that the advertisement has been authorised by the panel, agency, or Electoral Commission, as the case may be; or
- (B) a symbol indicating that the advertisement has been authorised by the panel, agency, or Electoral Commission, as the case may be:
- (b) the editorial content of—
- (i) a periodical:
- (ii) a radio or television programme:
- (iii) a publication on a news media Internet site:
- (c) any transmission (whether live or not) of proceedings in the House of Representatives:
- (d) any publication on the Internet, or other electronic medium, of personal political views by an individual who does not make or receive a payment in respect of the publication of those views.
- (3) In this section,—
- periodical** means a newspaper, magazine, or journal that—
- (a) was established for purposes unrelated to the conduct of the referendum; and
- (b) since its establishment—
- (i) has been published at regular intervals; and
- (ii) has been generally available to members of the public
- Compare: 2015 No 66 s 63; 1993 No 87 s 3A
- 56 Referendum advertisement to include promoter statement**
- (1) A person may publish or cause or permit to be published a referendum advertisement only if the advertisement includes a promoter statement.

- (2) A promoter statement must state the name and address of the promoter of the referendum advertisement.
- (3) If the promoter is a body corporate or unincorporated, the promoter statement must, in addition to the name and address of the body provided under **subsection (2)**, include the name of a member of the body who is the duly authorised representative of the promoter.
- (4) If the referendum advertisement is in a visual form, the promoter statement must clearly appear in the advertisement.
- (5) If the referendum advertisement is broadcast on the radio, the promoter statement when stated must be no less audible than the other content of the advertisement.

Compare: 2015 No 66 s 64

#### **57 Failure to include promoter statement in referendum advertisement**

Every person who, in contravention of **section 56**, fails to include a promoter statement in a referendum advertisement is guilty of an offence and is liable on conviction to a fine not exceeding \$40,000.

Compare: 2015 No 66 s 65

#### **58 Duty of Electoral Commission**

- (1) If the Electoral Commission believes that any person has committed an offence under **section 57**, it must report the facts on which that belief is based to the New Zealand Police.
- (2) **Subsection (1)** does not apply if the Electoral Commission considers that the effect of the offence is so inconsequential that there is no public interest in reporting those facts to the New Zealand Police.

Compare: 2015 No 66 s 66

#### **59 Regulated periods for purposes of Parliamentary Service Act 2000**

For the purposes of the Parliamentary Service Act 2000,—

- (a) the regulated period for the referendum—
  - (i) begins on the date on which this Part commences; and
  - (ii) ends with the close of the day before polling day; and

Compare: 2015 No 66 s 67

### Subpart 4—Other matters

#### **60 Offences under Electoral Act 1993 apply**

The offences and penalties provided for in the Electoral Act 1993 in relation to the conduct of the poll for a general election apply in

respect of the referendum, to the extent that they are relevant, with the following modifications:

- (a) references to the poll for an election are to be read as references to the poll taken for the referendum; and
- (b) references to a ballot paper are to be read as references to a referendum voting paper; and
- (c) references to a candidate or a political party are to be read as references to an option for the question on the referendum voting paper, or to a proponent of an option, as the case may require; and
- (d) references to party colours and party lapel badges are to be read as references to colours or badges identified with an option to which the referendum relates; and
- (e) references to an election campaign are to be read as including references to a campaign in respect of 1 or more options for the question on the referendum voting paper; and
- (f) references to the Electoral Act 1993 are to be read as references to this Act.

Compare: 2010 No 139 s 27

#### **61 Time limit for prosecutions**

A prosecution under this Part must be commenced—

- (a) within 6 months of the date on which the prosecutor is satisfied that there is sufficient evidence to warrant the commencement of proceedings; but
- (b) no later than 3 years after the alleged offence was committed.

Compare: 2010 No 139 s 28

#### **62 Regulations**

The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:

- (a) prescribing forms for the purposes of this Act;
- (b) applying, with or without modifications, for the purposes of this act, any other provisions of the Electoral Act 1993 and any regulations made under that Act;
- (c) providing for such other matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.

Compare: 2015 No 66 s 68

**63 Validation of irregularities**

- (1) In the circumstances described in **subsection (2)**, the Governor-General may, by Order in Council, do any of the things described in **subsection (3)**.
- (2) The circumstances are—
  - (a) if anything is omitted to be done at the time required by or under this Act; or
  - (b) if anything cannot be done at the time required by or under this Act; or
  - (c) if anything is done before or after the time required by or under this Act; or
  - (d) if anything is otherwise irregularly done in matter of form; or
  - (e) if sufficient provision for something that needs to be done is not made by or under this Act.
- (3) The things are—
  - (a) at any time before or after the time within which the thing is required to be done, to extend that time; or
  - (b) to validate anything done before or after the time required; or
  - (c) to validate anything irregularly done in matter of form; or
  - (d) to make such other provision for the case as the Governor-General thinks fit.

Compare: 2015 No 66 s 69

**Explanatory note**

This Supplementary Order Paper amends the End of Life Choice Bill by providing for the conduct of a binding referendum before this bill may come into force.