

BENJAMIN GOSCHZIK

G676 GOSCHZIK, B. You're the voice.

**YOU'RE THE VOICE – TRY AND UNDERSTAND IT:  
SOME PRACTICAL PROBLEMS OF THE  
CITIZENS INITIATED REFERENDA ACT**

**LLM RESEARCH PAPER  
MASTERS LEGAL WRITING (LAWS 582)**

**LAW FACULTY  
VICTORIA UNIVERSITY OF WELLINGTON**

2002

AW

S741  
UW  
66  
676  
02



# Victoria

UNIVERSITY OF WELLINGTON

*Te Whare Wānanga  
o te Ūpoko o te Ika a Māui*



LIBRARY

## TABLE OF CONTENTS

<b>I INTRODUCTION</b>	1
<b>II REFERENDUMS AND DEMOCRACY</b>	2
<b>A Democracy</b>	2
<b>B Direct Democracy</b>	4
1 Arguments for and against direct democracy	5
2 Different forms of referendums in general	7
3 Different forms of referendums in New Zealand	8
<b>C Conclusion</b>	11
<b>III HISTORICAL BACKGROUND</b>	11
<b>A History of Referendums in New Zealand</b>	12
<b>B History of the CIR Act</b>	15
<b>IV THE PROCESS OF CIRS</b>	20
<b>A Starting a Referendum</b>	20
<b>B Determination of Question</b>	21
<b>C Collecting Signatures</b>	22
<b>D Scrutiny of Petition</b>	23
<b>E Holding a Referendum</b>	24
<b>V PRACTICAL PROBLEMS</b>	24
<b>A The Role of the Clerk of the House</b>	25
1 The role of the Clerk: the legislative debate	25
2 The duties of the Clerk	27

3	<i>The process in other countries</i>	28
4	<i>Problems and alternatives</i>	30
5	<i>Conclusion</i>	34
<b>B</b>	<b><i>The Referendum Question</i></b>	34
1	<i>Only one of two answers</i>	34
	(a) Yes or no?	35
	(b) Questions that anticipate their answer	36
	(c) Two or more issues in one question	37
	(d) Simple and simplistic	38
2	<i>The government response or "What's that you say...?"</i>	40
3	<i>The measurement of effects on voters</i>	41
	(a) Voter turnout	41
	(b) Comprehension	42
4	<i>Information</i>	44
<b>C</b>	<b><i>Subject-matter Restrictions</i></b>	45
<b>VI</b>	<b>CONCLUSION</b>	48
	<b>APPENDIX I – GOVERNMENT-INITIATED REFERENDUMS</b>	50
	<b>APPENDIX II – THE REFERENDUM PROCESS</b>	51
	<b>APPENDIX III – CIR PETITIONS</b>	52
	<b>APPENDIX IV – READABILITY OF REFERENDUM PETITIONS</b>	59
	<b>APPENDIX V – TURNOUT COMPARISON</b>	67
	<b>BIBLIOGRAPHY</b>	68

## ABSTRACT

The following paper is concerned with a comprehensive examination of New Zealand's Citizens Initiated Referenda Act 1993. Chapter II informs the reader about how referendums in general and in New Zealand fit into the context of democracy or direct democracy, respectively. It will be shown that New Zealand experienced a raft of local and national referendums in its history. Chapter III then provides an overview of the history of referendums in New Zealand and a history of the Citizens Initiated Referenda Act 1993. In Chapter IV, the actual process of citizens-initiated referendums under the Act will be explained.

Chapter V elaborates on some practical problems of the Citizens Initiated Referenda Act 1993. First, the role of the Clerk of the House of Representatives in the CIR process will be scrutinised. I argue that the instruments the Clerk was provided with to perform the task of determining referendum questions is less than sufficient. Secondly, difficulties resulting from referendum questions as such will be examined. On the basis of actual CIR questions, I contend that some problems are referendum-inherent and some can be ascribed to flaws in the legislation. Thirdly, subject-matter restrictions on referendum questions will be analysed. I take the view that there are three groups of questions that should be excluded beforehand.

The text of this paper (excluding contents page, footnotes, bibliography and annexures) comprises approximately 12,400 words.

## **YOU'RE THE VOICE – TRY AND UNDERSTAND IT: SOME PRACTICAL PROBLEMS OF THE CITIZENS INITIATED REFERENDA ACT**

### **I INTRODUCTION**

New Zealand is unique. Surely many reasons are conceivable to support this flattering appraisal. However, the introductory statement relates in this context to a comparatively new feature of New Zealand's political system, the Citizens Initiated Referenda Act 1993 (CIR Act). Its long title divulges that this Act:<sup>1</sup>

provide[s] for the holding, on specific questions, of citizens initiated referenda, the results of which referenda will indicate the views held by the people of New Zealand on specific questions but will not be binding on the New Zealand Government.

Many countries in the world have experience with direct democracy. Indeed, since 1945, the only democracies that have not held a national vote on a specific issue are Costa Rica, Germany, India, Israel, Japan, the Netherlands, Mexico and the USA.<sup>2</sup> However, where other governments are required to act on the wishes of their voters, New Zealand is unique in having *non-binding* citizens-initiated referendums (CIRs).<sup>3</sup>

This paper has two parts. In Part One, CIRs will be examined from a theoretical perspective. It will be shown how CIRs fit into the context of democracy as such, how this system developed in New Zealand and how it works. Part Two then provides an analysis of the practical difficulties resulting from the introduction of the CIR Act, such as the role of the Clerk of the House, the inherent problems of referendum questions and subject-matter restrictions.

---

<sup>1</sup> Citizens Initiated Referenda Act 1993, Long Title.

<sup>2</sup> Helena Catt *Democracy in Practice* (Routledge, New York, 1999) 57.

<sup>3</sup> The plural of the term referendum proves to be contentious among the scholars. Some use the latin version "referenda" (including the CIR Act itself) and some employ the anglo-saxon version "referendums". In this paper, the term "referendums" has been used, as it is arguably common parlance and etymologically more respectable; see David Butler and Austin Ranney (eds) *Referendums: A Comparative Study of Practice and Theory* (American Enterprise Institute for Public Policy Research Press, Washington, D.C., 1978) 4-5; Jack H Nagel *Participation* (Prentice-Hall, Englewood Cliffs, N.J., 1987) 90.

## II REFERENDUMS AND DEMOCRACY

### A Democracy

CIRs are a form of direct democracy. Direct democracy, in turn, is a form of democracy. This causal chain, which will be elaborated on in the following chapters, demonstrates the close link between an analysis of the CIR Act and the debate about democracy in general. Therefore, in order to understand the issues, it is important to have an overview of what democracy actually is and of its major forms and functions.

The term democracy is derived from Greek (“demos” means people and “kratos” means rule, authority or power) and translates as the “power of the people”. It is a form of government in which the people are sovereign. A rather simple definition, declared by Abraham Lincoln, describes democracy as “government of the people, by the people and for the people”.<sup>4</sup> A more elaborate description may be that “in a democracy important public decisions on questions of law and policy depend, directly or indirectly, upon public opinion formally expressed by citizens of the community, the vast bulk of whom have equal political rights”.<sup>5</sup> In general terms, a democracy is a form of government in which the people have the right to control their own destiny. They have the “ultimate authority”<sup>6</sup> and the right to make or at least influence decisions that affect their everyday lives.

Democracy had its beginnings in certain of the city-states of ancient Greece. Greek democracy, however, was a brief historical episode, followed by a gap of 2,000 years in its practice.<sup>7</sup> There was a time, less than a century ago, when “democrat” was a term of abuse. Today its connotations are honorable, as democracy is now widely seen as the best method to use for government.<sup>8</sup>

---

<sup>4</sup> Cited in Catt, above, 4; Arend Lijphard *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries* (Yale University Press, New Haven, 1999) 1.

<sup>5</sup> Albert Weale *Democracy* (St. Martin's Press, New York, 1999) 14.

<sup>6</sup> *The Encyclopedia Americana* (International ed, Grolier, Danbury, Conn., 1985) vol 8, Corot to Desdemona, 684.

<sup>7</sup> *The New Encyclopaedia Britannica* (15 ed, Encyclopaedia Britannica, Chicago, 1988) vol 4, 5.

<sup>8</sup> Helena Catt *Democracy in Practice* (Routledge, New York, 1999) 4; *The Encyclopedia Americana*, above, 684.

Democracy has different manifestations, depending upon the ways in which people can exercise and indeed influence the government. Across every continent democracy is desired, but there is little agreement on exactly how to achieve it. Each country has its own set of procedures, each claiming to be democratic but based on a distinctive attitude towards how to achieve democracy.<sup>9</sup> New Zealand implemented CIRs in 1993. The speeches in Parliament during the introduction of the Bill revealed that this happened with the intention to improve democracy.<sup>10</sup> Thus, there is a variety of forms and modifications that democratic governments can take. The major categorisations will be outlined in the following.

Arend Lijphard divided democracy into majoritarian and consensual forms, examined from the perspective of how decisions in a democracy are *evaluated*. Whereas in a majoritarian system achieving a majority of the people's votes is the decisive factor, in a consensual system the aim is consensus or as many people as possible. The latter system accepts majority rule only as a minimum requirement, but seeks to maximise the size of these majorities.<sup>11</sup> However, since unanimity among human beings about matters of great and topical concern is impossible, the majority principle, insofar as it truly respects the existence of human rights, is the only one that makes democracy a viable system.<sup>12</sup>

Most commonly, democracy is classified according to how and by who decisions are *made*. One can distinguish between direct and indirect democracies. In direct democracy, political decisions are exercised directly by the whole body of citizens who thus choose the content of public policy.<sup>13</sup> Mostly, the citizens decide on specific questions that are posed for them in a referendum. Participatory democracy is a form of direct democracy where the people rule by collectively discussing issues and agreeing on the best solution for the group.<sup>14</sup> This form of democracy was applied in the ancient city-states of Greece in which the whole body formed the legislature, a system only made possible by the small populations

---

<sup>9</sup> Catt, above, 4.

<sup>10</sup> D A M Graham, Minister of Justice (10 March 1992) 522 NZPD 6724; Christine Fletcher (10 March 1992) 522 NZPD 6713; Murray McCully (10 March 1992) 522 NZPD 6709.

<sup>11</sup> Arend Lijphard *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries* (Yale University Press, New Haven, 1999) 2.

<sup>12</sup> *The Encyclopedia Americana* (International ed, Grolier, Danbury, Conn., 1985) vol 8, Corot to Desdemona, 685.

<sup>13</sup> Albert Weale *Democracy* (St. Martin's Press, New York, 1999) 24.

<sup>14</sup> Helena Catt *Democracy in Practice* (Routledge, New York, 1999) 13: Catt, however, puts participatory democracy in a category of its own.



of these states.<sup>15</sup> The counterpart to direct democracy is indirect democracy or representative democracy, a form of democracy, in which a few are elected to make decisions for the group. The use of elected representatives instead of having all people meeting together can be attributed to the reality of large populations.<sup>16</sup> To ensure leadership accountability, it is essential to provide both a free and fair electoral system and a wide range of checks and balances by means of a framework of constitutional restraints designed to guarantee all citizens the enjoyment of certain individual or collective rights.<sup>17</sup> This variation of representative democracy is often called liberal or constitutional democracy.<sup>18</sup>

### **B Direct Democracy**

As discussed above, the major forms of democracy are representative and direct democracy. However, there are also distinctions within the direct democracy category. As its long title states, the CIR Act allows citizens to answer specific questions to indicate their view. The referendums held under this Act are thus a means of direct democracy.

Direct democracy in contrast to representative democracy seems to be the only term that is agreed upon in the literature. The classification of the different forms of direct democracy and especially its marking is widely divergent.<sup>19</sup> Walker, for example, states that "the main line of classification is between the initiative on the one hand and the referendum on the other" and goes on to add that "the initiative itself obviously involves the holding of a referendum".<sup>20</sup> Some

<sup>15</sup> *The New Encyclopaedia Britannica* (15 ed, Encyclopaedia Britannica, Chicago, 1988) vol 4, 5.

<sup>16</sup> Catt, above, 14.

<sup>17</sup> Robert A Dahl *On Democracy* (Yale University Press, New Haven, 1998) 14; *The New Encyclopaedia Britannica*, above, 5.

<sup>18</sup> *The New Encyclopaedia Britannica*, above, 5; Catt, above, 13.

<sup>19</sup> See Catt, above, 57: "The literature varies in the use of specific terms ... ."; Bonnie Laxton-Blinkhorn *Half Hearted Democracy: A Critical Examination of the Operation of Citizens Initiated Referenda in New Zealand* (MPP Thesis, University of Auckland, 1996) 12: "Many writers use these definitions very loosely ... ." and "Confusion can be exacerbated by the incorporation of the various sub-categories of Initiatives and Referenda ... ."; Jack H Nagel *Participation* (Prentice-Hall, Englewood Cliffs, N.J., 1987) 90-3.

<sup>20</sup> Geoffrey de Q Walker *Initiative and Referendum: The People's Law* (Centre for Independent Studies Press, St. Leonards, NSW, 1987) 11; Lijphard places Referendums and Initiatives in the same category whereas Butler and Ranney distinguish between Initiative and Referendums: David Butler and Austin Ranney (eds) *Referendums: A Comparative Study of Practice and Theory* (American Enterprise Institute for Public Policy Research Press, Washington, DC, 1978) 6; Arend Lijphard *Democracies: Patterns of Majoritarian and Consensus Government in*

of this uncertainty is also country-related, as the Swiss "facultative", for instance, is the same as the U.S. "referendum".<sup>21</sup> The literature also often uses "initiative and referendum" seemingly in a tautological way.<sup>22</sup> However, whereas "direct democracy" is a term to distinguish direct from representative democracy, the expression "referendum" can be used as a generic term for the technical or procedural mechanism that allows voters to decide directly on an issue. A referendum can therefore be regarded as the practical instrument of direct democracy and occurs itself in various manifestations.

The following chapter briefly considers the arguments for and against direct democracy and describes the diverse forms of referendums, both in general and regarding the experience with different forms of referendums in New Zealand.

### *1 Arguments for and against direct democracy*

Arguments against and in favour of the two kinds of democracy exist in profusion. Some of the most important arguments will be outlined briefly.

Among arguments in favour of direct democracy, legitimacy arguments loom large.<sup>23</sup> It is contended that direct democracy increases the legitimacy of the legal and/or political system, because laws instituted as a result of referendums are more clearly and directly derived from the popular expression of the people's will.<sup>24</sup> The best way to ensure that government reigns on behalf of a sovereign people, it is argued, is to allow the majority of the people to make their own decisions on particular topics.<sup>25</sup> This, in turn, will promote government responsiveness and accountability, as officials cannot ignore the voter's voice

---

*Twenty-One Countries* (Yale University Press, New Haven, 1984) 199; see also Laxton-Blinkhorn, above, 11.

<sup>21</sup> See Catt, above, 57-8 (Table 4.2).

<sup>22</sup> Walker, above, 10; Royal Commission on the Electoral System *Report of the Royal Commission on the Electoral System: Towards a Better Democracy* (Government Printer, Wellington, 1986) 168; see also Laxton-Blinkhorn, above, 12: "Referenda and Initiatives are often spoken about in the same breath ...".

<sup>23</sup> John Parkinson *Who Knows Best: the Creation of the Citizens-Initiated Referendum in New Zealand* <<http://socpol.anu.edu.au/~parkinson/nzcir.pdf>> (last accessed 22 September 2002).

<sup>24</sup> Walker, above, 50.

<sup>25</sup> Royal Commission on the Electoral System, above, 172.

with impunity.<sup>26</sup> By allowing for greater participation, it is believed that voter apathy and alienation can be overcome, thereby bringing the government closer to the people.<sup>27</sup> Furthermore, people can place subjects on the political agenda that are, in their opinion, not adequately discussed.<sup>28</sup> Among some advocates arguments against direct democracy are claimed as arguments against democracy itself. Accordingly, Bogdanor states that "in the last resort, the arguments against the referendum are also arguments against democracy, while acceptance of the referendum is but a logical consequence of accepting a democratic form of government".<sup>29</sup> Budge indirectly queries the system of representative democracy by questioning why ordinary people should be allowed to choose governments by means of regular elections, if one does not grant them the capability to make important direct decisions on particular issues.<sup>30</sup>

However, for every claim put forward on behalf of direct democracy, there is an equally powerful criticism. It is argued that referendums as the means of direct democracy could undermine the effectiveness of an elected government, because popular decisions lessen the responsibility of its members.<sup>31</sup> Moreover, referendums as a majoritarian instrument are believed to jeopardise minority rights if majorities at the ballot box are less sensitive than elected representatives to the rights of minorities.<sup>32</sup> The pivotal reasoning is the reputed lack of competence or even indifference among the voters to decide on complex policy and constitutional questions.<sup>33</sup> This last argument is closely connected with genuine practical difficulties such as how to frame the question, the provision of information or a low voter turnout. The main emphasis of this paper is to examine

---

<sup>26</sup> Thomas E Cronin *Direct Democracy: The Politics of Initiative, Referendum and Recall* (Harvard University Press, Cambridge, MA, 1989) 10.

<sup>27</sup> Cronin, above, 11.

<sup>28</sup> Craig Joseph Press *The Case for Binding Citizens Initiated Referenda in New Zealand* (MPP Research Paper, Victoria University of Wellington, 2000) 10.

<sup>29</sup> Vernon Bogdanor *The people and the Party System: the Referendum and Electoral Reform in British Politics* (Cambridge University Press, New York, 1981) 93.

<sup>30</sup> Ian Budge *The New Challenge of Direct Democracy* (Polity Press, Cambridge, UK, 1996) 2-3.

<sup>31</sup> Royal Commission on the Electoral System *Report of the Royal Commission on the Electoral System: Towards a Better Democracy* (Government Printer, Wellington, 1986) 173; Janet McLean "Making More (or Less) of Binding Referenda and Citizens-Initiated Referenda" in Colin James (ed) *Building the Constitution* (Victoria University Press, Wellington, 2000) 364, 367.

<sup>32</sup> Thomas E Cronin *Direct Democracy: The Politics of Initiative, Referendum and Recall* (Harvard University Press, Cambridge, MA, 1989) 212.

<sup>33</sup> Geoffrey de Q Walker *Initiative and Referendum: The People's Law* (Centre for Independent Studies Press, St. Leonards, NSW, 1987) 68.

these practical problems on the basis of the Citizens Initiated Referenda Act 1993 in New Zealand.

## 2 *Different forms of referendums in general*

In this paper on CIRs, referendums are categorised according to the triggering momentum.<sup>34</sup> That being the case, one can distinguish between constitutional referendums (if a constitutional provision is the causal factor), government-initiated referendums (if the government is the driving force which puts an issue to the voters) and citizens-initiated referendums (if the populace gives the impetus).<sup>35</sup>

If the constitution requires that any intended change to the constitution be approved by referendum, one speaks of a constitutional referendum. Parliament may enact a standing provision that certain constitutional amendments are to be enacted only if they are supported by a majority of voters in a referendum. The democratic case for such a requirement rests on the argument that the sovereign people should be entitled to decide on their own fundamental set of values.<sup>36</sup>

Issues that have been put to the voters by government are termed government-initiated referendums. Harris notes that only non-constitutional matters can be subject of government-initiated referendums<sup>37</sup>, as the separate category for constitutional referendums embraces all constitutional matters. However, it is quite possible that a government may sponsor a referendum on a constitutional issue. To be consistent with the above given classifying factor (the triggering momentum), constitutional matters that have been put to the voters by government are arguably also part of government-initiated referendums. The

---

<sup>34</sup> See Paul Harris "Democracy and Referendums" in Alan Simpson (ed) *Referendums: Constitutional and Political Perspectives* (Victoria University Press, Wellington, 1992) 47, 48-62; McLean, above, 364-5.

<sup>35</sup> Sometimes constitutional referendums are incorporated into government-initiated referendums: see McLean, above, 364-5.

<sup>36</sup> Harris, above, 49.

<sup>37</sup> Harris, above, 54-5.

outcome of referendums that have been sponsored by government can be either legally binding or non-binding.<sup>38</sup>

The third form of referendums is citizens-initiated referendums. In general terms, this process allows electors to propose and then vote on their own legislation. CIRs can occur in various forms which enable electors to:

- directly approve or reject particular laws that have passed through Parliament but have not yet taken effect,
- to petition for a referendum which is not binding on the government,
- to compel the repeal or enactment of a law; or
- to recall public officials and elected representatives.

The designation of these types of CIRs differs widely for no apparent reason.<sup>39</sup> The Royal Commission on the Electoral System states, however, that referendums demanded by a certain number of voters are known as an "initiative".<sup>40</sup> Although other forms of referendums are also *initiated* by either the Government or the Constitution and in spite of partially dissenting terminology in the literature,<sup>41</sup> the common parlance supports this assertion. In this paper, therefore, the term "initiative" is used synonymously with CIRs.

### 3 *Different forms of referendums in New Zealand*

The government has always been capable of referring particular issues to the electorate and over the years it has occasionally done so to test public opinion.

<sup>38</sup> Mark W Gobbi "We, the Sovereign: Clarifying the Call for Direct Democracy in New Zealand" in Alan Simpson (ed) *Referendums: Constitutional and Political Perspectives* (Victoria University Press, Wellington, 1992) 156, 159.

<sup>39</sup> For example, Press, following Butler and Ranney, calls the introduction and the repeal of a law *statutory initiative* or *citizens referendum*, respectively; Walker and Gobbi call these forms *legislative initiative* (according to Press a legislative initiative is sponsored by government), *legislative referendum* or *popular referendum*: see Craig Joseph Press *The Case for Binding Citizens Initiated Referenda in New Zealand* (MPP Research Paper, Victoria University of Wellington, 2000) 3; David Butler and Austin Ranney (eds) *Referendums: A Comparative Study of Practice and Theory* (American Enterprise Institute for Public Policy Research Press, Washington, DC, 1978) 23-4.; Geoffrey de Q Walker *Initiative and Referendum: The People's Law* (Centre for Independent Studies Press, St. Leonards, NSW, 1987) 12; Gobbi, above, 159.

<sup>40</sup> Royal Commission on the Electoral System *Report of the Royal Commission on the Electoral System: Towards a Better Democracy* (Government Printer, Wellington, 1986) 167; Helena Catt *Democracy in Practice* (Routledge, New York, 1999) 60.

<sup>41</sup> See Part II B Direct Democracy; see also notes 19, 20.

The subsequent chapter discusses the historical background of these government-initiated referendums. Apart from the liquor licensing polls and the referendum on the electoral system in 1993, however, these referendums were indicative only. Before a government-initiated referendum can be held, the government must pass special legislation to authorise the holding of a referendum, including the particular question to be asked.<sup>42</sup> The subjects of the government-sponsored referendums that have so far been held have been constitutional issues and contentious moral issues, such as liquor licensing or gambling. In the latter cases, the referendum can be seen as a modified version of the parliamentary "free" or "conscience vote", when party discipline is not applied.<sup>43</sup>

The New Zealand legal and political system operates on the basis that Parliament has supreme lawmaking powers that cannot be challenged. Furthermore, New Zealand's constitutional arrangements are not found in a single written document, known as a Constitution. These fundamental features of the constitutional system make constitutional referendums rather difficult. A constitutional referendum which enacts a Constitution is an exercise of popular sovereignty and contradicts therefore with the notion of parliamentary sovereignty that prevails in New Zealand.<sup>44</sup> An unwritten or not fully entrenched constitution, moreover, is readily susceptible to hastily change, instigated by popular vote. Furthermore, the lack of a Constitution poses the problem that New Zealand courts do not have the power to declare unconstitutional referendum results null and void. A Constitution, however, could confer this power on the courts, as happened in California.<sup>45</sup> At least regarding binding constitutional referendums

---

<sup>42</sup> Paul Harris "Democracy and Referendums" in Alan Simpson (ed) *Referendums: Constitutional and Political Perspectives* (Victoria University Press, Wellington, 1992) 47, 57; Helena Catt "Citizens' Initiated Referenda" in Raymond Miller (ed) *New Zealand Government and Politics* (Oxford University Press, Auckland, 2001) 386, 387.

<sup>43</sup> Richard Mulgan *Politics in New Zealand* (2 ed, Auckland University Press, Auckland, 1997) 283; Helena Catt, Paul Harris and Nigel S Roberts *Voter's Choice: Electoral Change in New Zealand?* (Dunmore Press, Palmerston North, NZ, 1992) 138.

<sup>44</sup> F M Brookfield "Referendums: Legal and Constitutional Aspects" in Alan Simpson (ed) *Referendums: Constitutional and Political Perspectives* (Victoria University Press, Wellington, 1992) 7, 20; Bonnie Laxton-Blinkhorn *Half Hearted Democracy: A Critical Examination of the Operation of Citizens Initiated Referenda in New Zealand* (MPP Thesis, University of Auckland, 1996) 36.

<sup>45</sup> D A M Graham (14 September 1993) 538 NZPD 17952.

scholars therefore consider it "essential to ensure that there are appropriate constitutional safeguards".<sup>46</sup>

With the introduction of the Electoral Act 1956 and its successor, the Electoral Act 1993, New Zealand's constitution was provided with a standing statutory provision for constitutional referendums.<sup>47</sup> Under section 268 of the Electoral Act, certain sections of the Electoral Act and the Constitution Act 1986 are singly entrenched, which means that these provisions can only be amended or repealed unless it is passed by a majority of 75 percent of all the members of the House of Representatives or has been carried by a majority of the valid votes cast at a referendum.<sup>48</sup> The 1990 referendum on the parliamentary term was based on these provisions.<sup>49</sup>

Since the introduction of the CIR Act, New Zealand has also experience with the third category of referendums, those triggered by a certain number of citizens. The Government of New Zealand chose an indicative, i.e. non-binding, version only. In the following chapters, the historical background, the process of CIRs based on the CIR Act as well as practical problems will be discussed in detail. The concept of direct democracy informs the arguments of CIR advocates and vice versa.<sup>50</sup> The core aims of the CIR Act, as emerged from the speeches made in Parliament during its passage were to:

- increase popular participation in the decision-making process;<sup>51</sup>
  - help ensure that the will of the people prevails, rather than that of their elected representatives, thus making government more responsive to public opinion;<sup>52</sup>
- and

---

<sup>46</sup> J H Wallace "Commentary on 'Referendums: Legal and Constitutional Aspects' " in Alan Simpson (ed) *Referendums: Constitutional and Political Perspectives* (Victoria University Press, Wellington, 1992) 26, 28-30.

<sup>47</sup> Brookfield, above, 13-6.

<sup>48</sup> Electoral Act 1993, s 268 (2) (a), (b); Section 268, however, is not itself entrenched (no double entrenchment) and can therefore be amended or repealed by single majority of the Members of Parliament.

<sup>49</sup> Electoral Act 1956, s 189 (1) (a) in connection with Constitution Act 1986, s 17 (1); see Paul Harris "Democracy and Referendums" in Alan Simpson (ed) *Referendums: Constitutional and Political Perspectives* (Victoria University Press, Wellington, 1992) 47, 50; Helena Catt, Paul Harris and Nigel S Roberts *Voter's Choice: Electoral Change in New Zealand?* (Dunmore Press, Palmerston North, NZ, 1992) 131-2.

<sup>50</sup> Craig Joseph Press *The Case for Binding Citizens Initiated Referenda in New Zealand* (MPP Research Paper, Victoria University of Wellington, 2000) 5.

<sup>51</sup> D A M Graham (10 March 1992) 522 NZPD 6703.

<sup>52</sup> Graham, above, 6705.

- provide an alternative channel for the public to place issues on the political agenda as an attempt to diminish the political disillusionment of the populace.<sup>53</sup>

### **C Conclusion**

Arend Lijphard asserted that there are many ways of successfully running a democracy, but although the principles are clear, the details remain to be filled in.<sup>54</sup> The New Zealand Government decided in 1993 that CIRs are such a detail, accompanied by the hope to improve and strengthen the democratic system. In theory, CIRs are certainly a means to achieve this aim. However, if they are also a feasible objective will be analysed in the chapter on practical problems of the CIR Act.

### **III HISTORICAL BACKGROUND**

Notions of direct governance go back at least as far as ancient Athens, the assemblies of the Saxon tribes and the plebiscite in the Roman Republic.<sup>55</sup> Optional referendums or plebiscites were also occasionally held in medieval Europe, whilst various forms of direct popular governance have been in use in Swiss cantons since the twelfth and thirteenth centuries.<sup>56</sup> In the mid-seventeenth century the first modern direct democratic elements emerged in England and the United States.<sup>57</sup> Since 1840, New Zealanders have repeatedly restructured their governmental system in various forms,<sup>58</sup> including the inauguration of referendums. The historical roots of direct democracy in New Zealand are subject of the following chapter.

<sup>53</sup> D A M Graham (14 September 1993) 538 NZPD 17963.

<sup>54</sup> Arend Lijphard *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries* (Yale University Press, New Haven, 1984) 4.

<sup>55</sup> Thomas E Cronin *Direct Democracy: The Politics of Initiative, Referendum and Recall* (Harvard University Press, Cambridge, MA, 1989) 41.

<sup>56</sup> Cronin, above, 41.

<sup>57</sup> Cronin, above, 41.

<sup>58</sup> Mark W Gobbi "We, The Sovereign: Clarifying the Call for Direct Democracy in New Zealand" in Alan Simpson (ed) *Referendums: Constitutional and Political Perspectives* (Victoria University Press, Wellington, 1992) 156.



## A *History of Referendums in New Zealand*

New Zealand has a long history of involving its citizens in the decision-making processes of government.<sup>59</sup> Local option polls on the control of liquor licensing were first held alongside general elections in 1894. In each district electors could choose between prohibition, reduction in the number of licences or continuance. Once a district had gone "dry", the choice would be between prohibition or restoration.<sup>60</sup> From 1919, in all "wet" districts the local option was dropped and a national referendum on liquor sale and distribution was instituted. The voters were asked to decide between "national continuance", "state control" or "national prohibition". This triennial referendum was continued to be held at every general election until 1987.<sup>61</sup> Local option licensing referendums, however, are still held in conjunction with each general election in the five remaining "dry" districts of Eden, Grey Lynn, Roskill, Tawa and Wellington East.<sup>62</sup>

The statement that, prior to the CIR Act, all referendums in New Zealand had been instigated by the Government<sup>63</sup> is only true for the national level. On the local level, citizens were able to initiate polls regarding the change of the rating system and to trigger a popular vote regarding the amalgamation of local authorities from 1886 to 1988.<sup>64</sup> Besides these polls, non-binding referendums may be directed by any local authority according to Section 121 of the Local Elections and Polls Act<sup>65</sup> and have indeed been held on various occasions.<sup>66</sup> In

<sup>59</sup> Colin James and Alan McRobie *Turning Point: The 1993 Election and Beyond* (Bridget Williams Books, Wellington, 1993) 318.

<sup>60</sup> G A Wood *Governing New Zealand* (Longman Paul, Auckland, 1988) 131: "Sixty per cent were required to carry prohibition and after that, sixty per cent to end prohibition." (restoration).

<sup>61</sup> The last national liquor licensing referendum took place at the general election 1987. The actual abolition provided for the Sale of Liquor Act of 1989: see Geoffrey Palmer and Matthew Palmer *Bridled Power: New Zealand Government under MMP* (3 ed, Oxford University Press, Auckland, 1997) 202; The Working Party on Liquor had recommended in 1986 that all licensing polls be abolished and the Royal Commission on the Electoral System had agreed: *Report of the Royal Commission on the Electoral System: Towards a Better Democracy* (Government Printer, Wellington, 1986) 168.

<sup>62</sup> See Sale of Liquor Act 1989, ss 249-253.

<sup>63</sup> Stephen Church *Crime and Punishment: The Referenda to Reform the Criminal Justice System and Reduce the Size of Parliament* in Jonathan Boston and others (eds) *Left turn: The New Zealand General Election of 1999* (Victoria University Press, Wellington, 2000) 184.

<sup>64</sup> See for more details G A Wood *Governing New Zealand* (Longman Paul, Auckland, 1988) 130; *Report of the Royal Commission on the Electoral System: Towards a Better Democracy* (Government Printer, Wellington, 1986) 168.

<sup>65</sup> The Local Elections and Polls Act 1976, s 121.

<sup>66</sup> See Kenneth A Palmer *Local Government Law in New Zealand* (2 ed, Law Book, Sydney, NSW, 1993) 153-4.

1992 and 1994, respectively, the Tauranga District Council and the Hamilton City Council even initiated of their own volition the right of citizens to compel a referendum to be conducted.<sup>67</sup> Against this background, it would be interesting to examine if lessons can be learned from the local level that can be applied to the national level. Alas, there seems to be no relevant literature regarding this question<sup>68</sup> and in the debate over the introduction of the CIR Bill, no speaker drew conclusions from any experience on the local level.

By the time most local polls were abolished, the scope of national referendums had already been widened.<sup>69</sup> Until the present day, apart from the national liquor licensing polls, nine nation-wide referendums on both moral and constitutional topics have been put to the voters.<sup>70</sup> In 1949, a "vintage year for referendums",<sup>71</sup> three government-initiated and indicative issues were referred to the electors. In March 1949 the proposal whether to extend closing time for public (licensed) hotels from 6 pm to 10 pm was defeated,<sup>72</sup> whereas the proposal whether to legalise off-course betting on horse races was carried.<sup>73</sup> The third issue, in August 1949, asked for peace-time conscription and was also answered in the affirmative by the voters.<sup>74</sup>

As was stated above, an entrenching provision was included in the Electoral Act from 1956. Section 189 of the Electoral Act stipulates that the term of parliament can only be amended or repealed if the proposal for the amendment or repeal has been passed by a majority of 75 percent of all the Members of Parliament or has been carried by a majority of the valid votes cast at a poll of the electors. Consequently, the 1967 question on whether the term of parliament should be extended from three to four years has been put to the people in terms of

<sup>67</sup> Graham Bush *Local Government & Politics in New Zealand* (2 ed, Auckland University Press, Auckland, 1995) 292.

<sup>68</sup> Relevant literature regarding public participation on the local level hardly mentions referendums or polls: see Murray F Douglas *Public Participation in New Zealand Local Government* (MPP Research Paper, Victoria University of Wellington, 1986); Warrawoot Thiensirisak *Citizen Participation in New Zealand Local Government* (MA Thesis, Victoria University of Wellington, 1990).

<sup>69</sup> G A Wood *Governing New Zealand* (Longman Paul, Auckland, 1988) 130; *Report of the Royal Commission on the Electoral System: Towards a Better Democracy* (Government Printer, Wellington, 1986) 132.

<sup>70</sup> See Appendix I for more details.

<sup>71</sup> Colin James and Alan McRobie *Turning Point: The 1993 Election and Beyond* (Bridget Williams Books, Wellington, 1993) 318.

<sup>72</sup> Defeated by 75.5 % of the valid votes cast; see Appendix I for details.

<sup>73</sup> Carried by 68.0 % of the valid votes cast; see Appendix I for details.

<sup>74</sup> Carried by 77.9 % of the valid votes cast; see Appendix I for details.

Section 189 of the Electoral Act 1956. The electors voted to retain the three-year term.<sup>75</sup> Also in 1967, voters had to decide again if they wanted hotel licensing hours to be extended. This time the proposal was carried by the majority of the electors.<sup>76</sup>

The referendum questions proved to be repetitive. In 1990, the proposal whether to extend the parliamentary term to four years was on the agenda again. However, on this question the voters did not change their mind. Once more they decided to retain the three-year term.<sup>77</sup>

In 1992, New Zealanders were asked to vote on two questions. First, they had to decide whether they wanted to retain the existing first-past-the-post electoral system or change to a proportional representation system<sup>78</sup> and secondly, if a majority of voters supported change, which one of four different voting systems they would prefer.<sup>79</sup> This referendum was only indicative. As a majority favoured change, a third and binding referendum was held alongside the 1993 general election to determine the particular type of electoral system to be adopted. The voters gave their sanction to the Mixed-Member Proportional system.<sup>80</sup> The most recent of the nine government-initiated referendums since 1949 took place in 1997 when the government asked in an indicative postal ballot whether to introduce compulsory superannuation savings. The proposal was defeated by the overwhelming majority of electors.<sup>81</sup>

It became apparent that New Zealand experienced a multitude of different referendums in the past century. Hundreds of local referendums,<sup>82</sup> 31 triennial liquor licensing polls and nine government-initiated referendums on both moral and constitutional issues have been held. New Zealanders, therefore, were not completely unprepared for having their say before the introduction of the CIR Act 1993.

---

<sup>75</sup> Defeated by 68.1 % of the valid votes cast; see Appendix I for details.

<sup>76</sup> Carried by 64.4 % of the valid votes cast; see Appendix I for details.

<sup>77</sup> Defeated by 69.3 % of the valid votes cast; see Appendix I for details.

<sup>78</sup> 84.7 % of valid votes cast in support of change; see Appendix I for details.

<sup>79</sup> 70.5 % of valid votes cast in support of Mixed-Member Proportional system (MMP); see Appendix I for details; see also Colin James and Alan McRobie *Turning Point: The 1993 Election and Beyond* (Bridget Williams Books, Wellington, 1993) 318-9.

<sup>80</sup> 53.86 % of valid votes cast in support of Mixed-Member Proportional system (MMP); see Appendix I for details.

<sup>81</sup> Defeated by 91.8 % of the valid votes cast; see Appendix I for details.

<sup>82</sup> G A Wood *Governing New Zealand* (Longman Paul, Auckland, 1988) 130.

## B History of the CIR Act

Shortly before the end of the legislative term, on 28 September 1993, the CIR Act was passed by Parliament. The right of citizens to initiate a referendum on any self-chosen issue, if needs be against the will of the government, had been introduced. This part considers the historical development of the CIR Act 1993.

In 1893, a Referendum Bill was first introduced to Parliament. Although this Bill only provided for non-binding government-controlled referendums, it involved the country in a similar debate about whether direct democracy should be part of the established constitutional framework as in California and Switzerland at the same time.<sup>83</sup> The arguments in favour of the Referendum Bill, brought forward by MP Eugene Joseph O'Connor in the first hearing in Parliament, were similar to those advanced in the debate about the introduction of the CIR Act. It was argued that the Referendum Bill would increase the power of the electors, the lawful sovereign, to exercise a direct check upon the legislation.<sup>84</sup> O'Connor also sensed that the people of New Zealand were dissatisfied with the proceedings in the legislature.<sup>85</sup> He therefore believed that giving the electors a more direct voice in the legislation would counteract this displeasure within the population at the state of representative democracy.<sup>86</sup> However, the majority of the Members of the House disapproved this proposal and decided against a second hearing. The Referendum Bill was reintroduced several times in modified versions and the parliamentary debate simmered for a few years until it eventually petered out in 1906.<sup>87</sup> The discussion was only interrupted until the Social Democratic Party introduced the Popular Initiative and Referendum Bill in 1918 and 1919 and resuscitated the political dialogue again. However, this second attempt also failed to win approval in Parliament and the issue of CIRs was withdrawn from the political agenda for the time being. Representative democracy

<sup>83</sup> Mark W Gobbi *The Quest for Legitimacy: a Comparative Constitutional Study of the Origin and Role of Direct Democracy in Switzerland, California, and New Zealand* (LLM Thesis, Victoria University of Wellington, 1994) 200.

<sup>84</sup> Eugene Joseph O'Connor (10 August 1893) 80 NZPD 564-5.

<sup>85</sup> O'Connor, above, 567.

<sup>86</sup> O'Connor, above, 564-5.

<sup>87</sup> Mark W Gobbi *The Quest for Legitimacy: a Comparative Constitutional Study of the Origin and Role of Direct Democracy in Switzerland, California, and New Zealand* (LLM Thesis, Victoria University of Wellington, 1994) 202 with further evidence; Craig Joseph Press *The Case for Binding Citizens Initiated Referenda in New Zealand* (MPP Research Paper, Victoria University of Wellington, 2000) 13.

in New Zealand had not acquired the same nefarious reputation as it had for instance in Switzerland or California.<sup>88</sup> The political system of New Zealand, a classical Westminster democracy, worked for many years fairly satisfactory. Election manifestos and the decisions of the winning party were matching most of the time. As set out above, some important questions have been put to the voters directly. Considerable demands of the citizens for additional direct influence had not been raised. Eventually, in 1984, the direct democracy debate resurfaced when the Democrats introduced the Popular Initiatives Bill, which would have enabled a 100,000 electors to trigger a non-binding referendum.<sup>89</sup> The Private Member's Bill did not pass Parliament, but the political discourse on direct democracy was back on the political agenda.

The observation that the demand for greater participation usually increases with a growth in the level of distrust of legislative bodies and the suspicion that privileged interests exert far greater influence on politicians than do the electors<sup>90</sup> proved to be true for New Zealand in the following years. The public perception of political behaviour changed with the downswing of the economy, instigated by the politics of the Fourth Labour Government (1984-1990). The latter moved rapidly after being elected to dismantle the welfare state, ostensibly because it was no longer sustainable.<sup>91</sup> Their policies led to high levels of unemployment and contributed to the New Zealand stock market crash in October 1987, leading in turn to a sense of disillusionment, alienation or political apathy among the population.<sup>92</sup> These sentiments were echoed by various interest groups and politicians who supported the adoption of a system of CIRs.<sup>93</sup>

The Democrats<sup>94</sup> were the first to restart the debate about CIRs on a political level by introducing their Popular Initiatives Bill in 1983. The Bill was deferred pending the findings of the Royal Commission on the Electoral System, which was established by the Labour Government in 1985. The Commission was, among other tasks, instructed to review "to what extent referenda should be used to

---

<sup>88</sup> Gobbi, above, 203-4.

<sup>89</sup> Gobbi, above, 206-7; D A M Graham, Minister of Justice (14 September 1993) 538 NZPD 17953.

<sup>90</sup> Thomas E Cronin *Direct Democracy: The Politics of Initiative, Referendum and Recall* (Harvard University Press, Cambridge, MA, 1989) 10.

<sup>91</sup> Gobbi, above, 198.

<sup>92</sup> Gobbi, above, 198-9.

<sup>93</sup> Craig Joseph Press *The Case for Binding Citizens Initiated Referenda in New Zealand* (MPP Research Paper, Victoria University of Wellington, 2000) 14.

<sup>94</sup> The party was originally called Social Credit Party. It changed its name into New Zealand Democratic Party (NZDP) in 1985: see Gobbi, above 205.

determine controversial issues, the appropriateness of provisions governing the conduct of referenda, and whether referenda should be legislatively binding".<sup>95</sup> The Royal Commission did not conclude in favour of referendums, called them "blunt and crude devices"<sup>96</sup> and recommended that legislation allowing the public to initiate referenda not be enacted.<sup>97</sup> However, the advocates of CIR had already marshalled and, supported by the growing dissatisfaction with the unresponsive style of politicians, their demands fell on sympathetic ears, not only in public but also on the political stage. Lobby groups such as the group Freedom and Individual Responsibility (FAIR), the One New Zealand Foundation, Voter's Voice, New Zealand Citizens Movement or Coalition of Concerned Citizens<sup>98</sup> sprang up like mushrooms and disseminated their attitude towards direct democracy throughout the country.

Eventually, the activities of these groups caught the attention of political entrepreneurs within the National Party, above all party member Merv Rusk, who launched the matter on an influential political platform. High pressure inside National Party by means of persistent campaigning and supported by National Reform, a lobby group within the party, induced National to include a promise to introduce non-binding direct democracy legislation in its 1990 election manifesto.<sup>99</sup> The National Party won the 1990 general election and the legislative process was instigated immediately. However, it took another two years until the CIR Bill was eventually introduced to Parliament. The first reading of the Bill in Parliament on 10 March 1992 was very controversial. The speakers for the National Government emphasised especially that the Bill contributed to the improvement and consolidation of New Zealand's democratic tradition.<sup>100</sup> The then Minister of Justice recalled that New Zealand's political system with a

---

<sup>95</sup> Royal Commission on the Electoral System *Report of the Royal Commission on the Electoral System: Towards a Better Democracy* (Government Printer, Wellington, 1986) 167.

<sup>96</sup> Royal Commission on the Electoral System, above, 175.

<sup>97</sup> Royal Commission on the Electoral System, above, 176.

<sup>98</sup> See for details Mark W Gobbi *The Quest for Legitimacy: a Comparative Constitutional Study of the Origin and Role of Direct Democracy in Switzerland, California, and New Zealand* (LLM Thesis, Victoria University of Wellington, 1994) 212-20.

<sup>99</sup> Gabriela Wehrle "The Firefighters' Referendum - Should Questions Arising from Industrial Disputes be Excluded from Referenda Held under the Citizens Initiated Referenda Act 1993?" (1997) 27 VUWLR 273, 275; Helena Catt "The Other Democratic Experiment: New Zealand's Experience with Citizens' Initiated Referendum" (1996) 48 Political Science 29, 30.

<sup>100</sup> D A M Graham (10 March 1992) 522 NZPD 6724; Christine Fletcher (10 March 1992) 522 NZPD 6713; Murray McCully (10 March 1992) 522 NZPD 6709.

unicameral Parliament vests very wide powers in the Government.<sup>101</sup> He therefore believed that "it is desirable for the people to have their voice heard, and the Bill provides a mechanism for that to occur".<sup>102</sup> Furthermore, the Bill would also allow the electorate for some checks and balances on the powerful Government "that the public believes has largely gone out of control".<sup>103</sup>

The discussion also touched on the important question as to whether elected representatives have the right to govern without interference or comment from the electorate during the electoral term. Labour MP David Lange declared that "the Government should be allowed to govern until such time as it ... is turfed out at a general election".<sup>104</sup> The Minister of Justice rejected this view and replied that the Government remains responsive to the people after the election and that the Bill helps "ensure that to the greatest extent possible it is the will of the people that prevails, rather than that of their elected representatives".<sup>105</sup>

The second and third reading on 14 September 1993 were rather less contentious regarding fundamental principles of democracy. Noteworthy is, however, that the Minister of Justice regarded it as a core aim that the Bill gives the people "an opportunity to raise an issue that they believe to be important"<sup>106</sup> and thus providing a means for the electorate to place issues on the political agenda. During the second and third reading in Parliament, the speakers mainly focussed on practical problems such as the designated role of the Clerk of the House of Representatives.<sup>107</sup> The CIR Bill eventually passed into law in September 1993.

The comparatively long time from the instigation of the legislative process in 1990 until the coming into law in 1993 is not only attributable to practical

---

<sup>101</sup> See also Arend Lijphard *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries* (Yale University Press, New Haven, 1984) 19.

<sup>102</sup> Graham, above, 6703.

<sup>103</sup> Christine Fletcher (10 March 1992) 522 NZPD 6713; Murray McCully (10 March 1992) 522 NZPD 6709.

<sup>104</sup> David Lange (10 March 1992) 522 NZPD 6706: following Burke's theory of representation; see for a discussion Mark W Gobbi *The Quest for Legitimacy: a Comparative Constitutional Study of the Origin and Role of Direct Democracy in Switzerland, California, and New Zealand* (LLM Thesis, Victoria University of Wellington, 1994) 36-7, 267-8; see for the doctrine of ministerial responsibility F M Brookfield "Referendums: Legal and Constitutional Aspects" in Alan Simpson (ed) *Referendums: Constitutional and Political Perspectives* (Victoria University Press, Wellington, 1992) 7, 10-1.

<sup>105</sup> D A M Graham (10 March 1992) 522 NZPD 6723, 6705.

<sup>106</sup> D A M Graham (14 September 1993) 538 NZPD 17963.

<sup>107</sup> David Caygill (14 September 1993) 538 NZPD 17956; Robert Anderson (14 September 1993) 538 NZPD 17957; Graham, above, 17962-3; this problem will be examined in a subsequent chapter.

difficulties, but rather to the hope of influential political circles, both within the Labour and National Party, that the demand for direct democratic elements would diminish and the CIR Bill would seep away in the legislative process.<sup>108</sup> This hope proved to be deceptive, however. The 1987 stock market crash, the anger in the population about too many undelivered election promises and the public perception of unresponsive politicians created the breeding ground on which demands of lobby and interest groups for CIRs could thrive. Thus, the CIR Act came into force on 1 February 1994.

It is arguable that the introduction of the CIR Act resulted from partisan-driven factors rather than from pure enthusiasm for direct democracy.<sup>109</sup> A political minority prevailed, supported by various populist interest groups and buoyed by a deep feeling of dissatisfaction with the political system among the populace. On the whole, New Zealand politics has actually been characterised by a high degree of popular responsiveness through the party system, frequent elections with high participation rates and other factors.<sup>110</sup> However, a number of ill-fated policies led to an opposite perception and public confidence in elected representatives sank to an all-time low.<sup>111</sup> Furthermore, the public perception of the CIR debate was clouded by the swirl of electoral reform that coincided with the passage of the CIR Act.<sup>112</sup> Consequently, the CIR Act came into force almost unnoticed by media and population.<sup>113</sup> The factors that led to the introduction of the CIR Act were after all rather unsavoury. Nonetheless, whether the content of the Act has proved to be successful will be examined within the framework of this paper.

<sup>108</sup> Mark W Gobbi *The Quest for Legitimacy: a Comparative Constitutional Study of the Origin and Role of Direct Democracy in Switzerland, California, and New Zealand* (LLM Thesis, Victoria University of Wellington, 1994) 298.

<sup>109</sup> Stephen Church *Crime and Punishment: The Referenda to Reform the Criminal Justice System and Reduce the Size of Parliament* in Jonathan Boston and others (eds) *Left turn: The New Zealand General Election of 1999* (Victoria University Press, Wellington, 2000) 186; John Parkinson *Who Knows Best: the Creation of the Citizens-Initiated Referendum in New Zealand* <<http://socpol.anu.edu.au/~parkinson/nzcir.pdf>> (last accessed 22 September 2002) 8.

<sup>110</sup> Janet McLean "Making More (or Less) of Binding Referenda and Citizens-Initiated Referenda" in Colin James (ed) *Building the Constitution* (Victoria University Press, Wellington, 2000) 365.

<sup>111</sup> By October 1990, only 4.3 per cent of voters had confidence in the New Zealand Parliament: Heylen "Full Trust and Confidence" Polls quoted in Keith Jackson "Commentary on "Referendums: Legal and Constitutional Aspects" Parliamentary Sovereignty" in Alan Simpson (ed) *Referendums: Constitutional and Political Perspectives* (Department of Politics, Victoria University of Wellington, 1992) 33, 39.

<sup>112</sup> See Caroline Morris "Citizens' Referenda: Time to Review?" (2002) March NZLJ 44.

<sup>113</sup> Craig Joseph Press *The Case for Binding Citizens Initiated Referenda in New Zealand* (MPP Research Paper, Victoria University of Wellington, 2000) 17.



#### IV THE PROCESS OF CIRS

The procedure of the CIR Act is indispensable a knowledge if one seeks to analyse its practical difficulties. In the following, therefore, the course of CIRS according to the CIR Act will be discussed.<sup>114</sup>

The CIR Act 1993 invites the holding of indicative referenda. The word "petition" is very often used in the relevant literature and even in the official publications. This points to the, at least partial, similarities between the ancient right of citizens to sign a petition to the Parliament and the process of CIR. On that account, it is important to make clear that the Act acknowledges the differences between a citizens-initiated petition under the Act with its own statutory consequences and the normal process of parliamentary petition.<sup>115</sup> Nothing in the Act affects in any way the right of any person to petition the House of Representatives or other bodies.<sup>116</sup>

The official leaflet of the Ministry of Justice regarding the CIR process subdivides the latter in six different stages: the starting, the question, the signature collection, the checking of signatures, the actual referendum and the announcement of the results.<sup>117</sup> As the last stage is commonplace, most secondary literature describes the process justifiably in five different phases.<sup>118</sup> This five-stage-model will be outlined in the following.

##### A *Starting a Referendum*

A referendum petition cannot simply be circulated by a citizen without the involvement of Parliament. People wishing to initiate a referendum are necessarily involved in a process of vetting and submissions.<sup>119</sup> To start the

<sup>114</sup> See also Appendix II for a diagram of the process.

<sup>115</sup> Standing Orders of the House of Representatives 1996, SOs 348-359; Philip A Joseph *Constitutional and Administrative Law in New Zealand* (2 ed, Brookers, Wellington, 2001) 186.

<sup>116</sup> Citizens Initiated Referenda Act, s 59.

<sup>117</sup> Ministry of Justice *Pamphlet on the Citizens Initiated Referenda Act 1993* <[http://www.justice.govt.nz/pubs/other/pamphlets/2001/citizens\\_referenda.pdf](http://www.justice.govt.nz/pubs/other/pamphlets/2001/citizens_referenda.pdf)> (last accessed 22 September 2002).

<sup>118</sup> Joseph, above, 186-7; David McGee *Parliamentary Practice in New Zealand* (2 ed, Government Printer, Wellington, 1994) 447-51.

<sup>119</sup> Joseph, above, 186; McGee, above, 447.

process, the petitioner, either a natural person or a legal person, has to submit a written proposal asking an indicative referendum to be held to the Clerk of the House of Representatives.<sup>120</sup> Every referendum petition has to contain the suggested wording and shall specify the question that the petitioners propose be put to the voters.<sup>121</sup> Furthermore, the proposer has to provide a draft of the petition collection form<sup>122</sup> accompanied by payment of the prescribed fee of NZ\$ 500.<sup>123</sup>

If satisfied that the proposal complies with the requirements of the Act, the Clerk of the House publishes the receipt of the proposal, including the proposed wording of the question, in the New Zealand Gazette and in such newspapers that he or she considers necessary.<sup>124</sup> This will usually be newspapers circulating in the main centres.<sup>125</sup> The publication is meant to ask the public for comments on the proposed wording. At least 28 days must be allowed from publication of the notice in the Gazette for persons to make comments on the question.<sup>126</sup>

### **B Determination of Question**

The determination of the referendum question is crucial for the whole procedure and is probably the most important aspect of the entire Act.<sup>127</sup> The practical problems of fixing a suitable question are subject of the following chapter. The Act merely states that there can only be one question<sup>128</sup> and this shall be such as to convey clearly the purpose and effect of the indicative referendum and to ensure that only one of two answers may be given to the question,<sup>129</sup> that is to say it allows for only a "yes" or "no" answer. To achieve this aim, the Clerk must consult with the proposer and may consult with any other person or institution as the Clerk thinks fit.<sup>130</sup> Usually, the Clerk seeks advice from the

<sup>120</sup> Citizens Initiated Referenda Act, s 6 (1).

<sup>121</sup> Citizens Initiated Referenda Act, ss 5 and 6.

<sup>122</sup> Ministry of Justice *Pamphlet on the Citizens Initiated Referenda Act 1993*  
<[http://www.justice.govt.nz/pubs/other/pamphlets/2001/citizens\\_referenda.pdf](http://www.justice.govt.nz/pubs/other/pamphlets/2001/citizens_referenda.pdf)> (last accessed 22 September 2002).

<sup>123</sup> Citizens Initiated Referenda Regulations 1993, reg 2.

<sup>124</sup> Citizens Initiated Referenda Act, s 7 (1).

<sup>125</sup> David McGee *Parliamentary Practice in New Zealand* (2 ed, Government Printer, Wellington, 1994) 448.

<sup>126</sup> Citizens Initiated Referenda Act, s 7 (2) (b).

<sup>127</sup> Caroline Morris "Citizens' Referenda: Time to Review?" (2002) March NZLJ 44.

<sup>128</sup> Citizens Initiated Referenda Act, s 5 (2).

<sup>129</sup> Citizens Initiated Referenda Act, s 10 (1) (a), (b).

<sup>130</sup> Citizens Initiated Referenda Act, s 9.

Legislation Advisory Committee and the government departments most closely concerned.<sup>131</sup> Furthermore, the Clerk has to take into account the proposal, comments received on it and such other matters as he or she considers relevant.<sup>132</sup> The determination of the final question must be made within three months of receipt of the petition, unless it is withdrawn, the proposer dies, a referendum with like effect has been held within 60 months preceding the date on which the proposal is received or the petition is among the sparse subject-matter restrictions of Section 4 of the CIR Act.<sup>133</sup>

Once the precise question has been determined, this must be notified to the proposer and published in the usual means.<sup>134</sup> At last, the Clerk must as soon as practicable approve a form on which signatures are to be collected to the petition, followed once again by notification and publication.<sup>135</sup> This will, although not necessary, in practice often be done along with the notice advising of the determined question.<sup>136</sup>

### *C Collecting signatures*

As soon as the petitioner has received notification of both the precise question and the approved form, the petitioner may proceed to promote the petition and collect signatures. The promoter has twelve months to collect the signatures of ten per cent of eligible voters<sup>137</sup> (which in 2002 meant 256,779 people).<sup>138</sup> People signing the provided forms do not necessarily have to endorse the promoter's objectives. It is sufficient if they generally want a referendum on this question to be held.<sup>139</sup> According to the Act, the promoter is not allowed to spend more than NZ\$ 50,000 on advertising the petition or the referendum, respectively. This

<sup>131</sup> David McGee *Parliamentary Practice in New Zealand* (2 ed, Government Printer, Wellington, 1994) 448.

<sup>132</sup> Citizens Initiated Referenda Act, s 10 (2).

<sup>133</sup> Citizens Initiated Referenda Act, s 11 (2).

<sup>134</sup> Citizens Initiated Referenda Act, s 13 (1) (a) (i), (b).

<sup>135</sup> Citizens Initiated Referenda Act, s 13 (1) (a) (ii), (b).

<sup>136</sup> David McGee *Parliamentary Practice in New Zealand* (2 ed, Government Printer, Wellington, 1994) 449.

<sup>137</sup> Citizens Initiated Referenda Act, s 18 (2).

<sup>138</sup> Elections: How to vote – Useful Election Statistics

<<http://www.elections.govt.nz/votin/mresources-stats.html>> (last accessed 22 September 2002).

<sup>139</sup> Philip A Joseph *Constitutional and Administrative Law in New Zealand* (2 ed, Brookers, Wellington, 2001) 186; McGee, above, 449.

spending cap is meant to prevent too great a financial influence on the outcome of the referendum, which has proved to be a problem overseas.<sup>140</sup> To put this into practice, the promoter must make returns of expenditure within one month after the referendum results have been published.<sup>141</sup>

Having collected sufficient signatures, the promoter has to deliver the complete documents to the Clerk of the House of Representatives.<sup>142</sup>

#### **D Scrutiny of Petition**

It is then the duty of the Clerk of the House to ascertain whether the returned petition carries the required number of signatures or not. The Clerk has two months from the date of receiving the signatures to fulfill this task.<sup>143</sup> In this comparatively short time it is impossible to check all signatures. Therefore, the Clerk's office only checks a random sample of pages to assess the validity of signatures.<sup>144</sup> The proportion of valid to invalid signatures on the sample is then used to calculate the total number of valid signatures to the petition.<sup>145</sup> To be valid, all those who are signatories must be on the electoral roll and have signed only once.<sup>146</sup> If the required number of electors have signed the signature forms, the Clerk delivers the petition to the Speaker of the House of Representatives.<sup>147</sup> The Speaker, in turn, has to present it forthwith to the House.<sup>148</sup> If the returned petition was not signed by at least ten percent of the voters, the petition is certified as having lapsed and is returned to the promoter.<sup>149</sup> However, the promoter then has another two months to gather the missing number of signatures and resubmit it to the Clerk who also has another two months to scrutinise the number of valid

<sup>140</sup> Wolf Linder *Swiss Democracy: Possible Solutions to Conflict in Multicultural Societies* (2 ed, MacMillan, New York, 1998) 112-4, 144; David B Magleby *Direct Legislation: Voting on Ballot Propositions in the United States* (John Hopkins University Press, Baltimore, 1984) 147.

<sup>141</sup> Citizens Initiated Referenda Act, s 43.

<sup>142</sup> Citizens Initiated Referenda Act, s 15 (3).

<sup>143</sup> Citizens Initiated Referenda Act, s 18 (1).

<sup>144</sup> Helena Catt "Citizens' Initiated Referenda" in Raymond Miller *New Zealand Government and Politics* (Oxford University Press, Auckland, 2001) 386, 387.

<sup>145</sup> Philip A Joseph *Constitutional and Administrative Law in New Zealand* (2 ed, Brookers, Wellington, 2001) 187.

<sup>146</sup> Catt, above, 387.

<sup>147</sup> Citizens Initiated Referenda Act, s 18 (1) (a).

<sup>148</sup> Citizens Initiated Referenda Act, s 21.

<sup>149</sup> Citizens Initiated Referenda Act, s 18 (1) (b).

signatures.<sup>150</sup> If the latter exceeds the required threshold, the petition will be passed on the Speaker. Otherwise the referendum petition has finally lapsed.<sup>151</sup>

### *E Holding a Referendum*

The actual referendum is initiated by the Governor-General who appoints a date for the referendum to be held within one month after the certified petition was presented to the House.<sup>152</sup> The date so fixed must be within twelve months of the presentation to the House.<sup>153</sup> This time can be extended by a 75 percent majority resolution of the Members of the House to a maximum of 24 months.<sup>154</sup> The rules for the holding of the referendum itself correspond by and large to the machinery governing elections as many of the provisions of the Electoral Act 1993 are incorporated into the CIR Act. The Clerk of the Writs has to notify the formal result of the referendum in the Gazette and to the Minister of Justice who, in turn, informs the House of Representatives.<sup>155</sup>

## *V PRACTICAL PROBLEMS*

The Royal Commission on the Electoral System stated in their report from 1986 that "referenda can also have significant practical difficulties, which diminish their usefulness as a method of deciding important and complex questions of law and policy".<sup>156</sup> The following chapter is concerned with an examination of some of these practical problems.

---

<sup>150</sup> Citizens Initiated Referenda Act, s 20.

<sup>151</sup> See Appendix III for details of the five petitions that did not meet the required signature threshold.

<sup>152</sup> Citizens Initiated Referenda Act, s 22 (1), (2).

<sup>153</sup> Citizens Initiated Referenda Act, s 22 (3).

<sup>154</sup> Citizens Initiated Referenda Act, s 22 (4).

<sup>155</sup> Citizens Initiated Referenda Act, s 40.

<sup>156</sup> Royal Commission on the Electoral System *Report of the Royal Commission on the Electoral System: Towards a Better Democracy* (Government Printer, Wellington, 1986) 175.

## A *The Role of the Clerk of the House*

Caroline Morris observed that “the success or otherwise of Parliament’s goal of increasing citizens’ opportunities for democracy rests heavily on the person responsible for the determination” of the referendum question.<sup>157</sup> The person responsible for that task under the CIR Act is the Clerk of the House of Representatives.<sup>158</sup> The introduction of the CIR Bill was accompanied by a contentious debate about whether the Clerk is suitable to perform this task.

National MP Robert Anderson said during the second reading of the CIR Bill regarding the issue of the role of the Clerk that “no doubt we will hear further debate on that matter at another time”.<sup>159</sup> So far no such debate has been held. Does that imply that the determination procedure and the involvement of the Clerk proved to work satisfactorily? I argue that that is by no means the case. The practice of the subsequent years rather revealed several difficulties resulting from the Clerk’s engagement with the determination procedure. The following chapter outlines the reservations against the Clerk’s involvement during the Parliamentary debate, notes the problems as laid bare through practice, compares the system with that in other countries and analyses alternatives.

### 1 *The role of the Clerk: the legislative debate*

The introduction of CIRs was called for in the National Party’s election manifesto in 1990. The preceding deliberations of National’s Caucus Committee concluded with the final recommendation to establish a Commission consisting of a High Court Judge and the Clerk of the House to administer the referendum petitions.<sup>160</sup> Shortly after National won the election in 1990, the new Minister of Justice Douglas Graham provided the Department of Justice with details regarding the intended CIR Bill. However, the Department rejected the National Caucus

---

<sup>157</sup> Caroline Morris “Citizens’ Referenda: Time to Review?” (2002) March NZLJ 44; see also Paul Harris “Democracy and Referendums” in Alan Simpson (ed) *Referendums: Constitutional and Political Perspectives* (Victoria University Press, Wellington, 1992) 61.

<sup>158</sup> Citizens Initiated Referenda Act, s 11.

<sup>159</sup> Robert Anderson (14 September 1993) 538 NZPD 17957.

<sup>160</sup> Mark W Gobbi *The Quest for Legitimacy: a Comparative Constitutional Study of the Origin and Role of Direct Democracy in Switzerland, California, and New Zealand* (LLM Thesis, Victoria University of Wellington, 1994) 237, 241.

Committee's idea regarding the involvement of a High Court Judge in the Commission. The Department of Justice took the view that High Court Judges do normally not perform advisory and clerical functions and they they had neither the facilities nor the time to accomplish that task.<sup>161</sup> The Minister of Justice agreed with the Department's recommendations and the originally proposed Commission dwindled quietly to only one person, the Clerk of the House. The Clerk, however, strongly disapproved his involvement in the CIR process. His disquiet surfaced for the first time during the meeting of the Cabinet Legislation Committee on 5 December 1991, in which the Clerk argued that the House, not the Clerk, should determine the wording of referendum questions.<sup>162</sup> As a result of the Clerk's objections, the Minister of Justice asked him to present his concerns to the Electoral Law Select Committee.

In the meantime, the CIR Bill was introduced to Parliament. In the first reading, the Labour Opposition took up the issue of whether or not the Clerk of the House was the most suitable person to determine the wording of referenda questions, which "emerged as the most contentious issue of the Bill".<sup>163</sup> Several speakers referred to the inevitable politicisation of the Clerk and expressed their concern that the Clerk would be somewhat overtaxed by the additional "raft of obligations".<sup>164</sup>

In the following Electoral Law Select Committee hearing, the issue was on the agenda again. The Clerk had duly filed a submission to the Committee and refined his proposal that the responsibility be given to the Speaker of the House.<sup>165</sup> During the Select Committee deliberations the Clerk informally renewed his opposition and brought up the soon to be created Electoral Commission as a further alternative.<sup>166</sup> However, on 19 August 1993, the Select Committee rejected the Clerk's concerns. The Committee was confident that the Clerk could carry out the responsibility, stating at the same time that no one else could be found who was more suitable.<sup>167</sup> The Clerk, anything but satisfied with this decision, then lodged a formal request with the National Government to

---

<sup>161</sup> Gobbi, above, 259.

<sup>162</sup> Gobbi, above, 265.

<sup>163</sup> Bonnie Laxton-Blinkhorn *Half Hearted Democracy: A Critical Examination of the Operation of Citizens Initiated Referenda in New Zealand* (MPP Thesis, University of Auckland, 1996) 55.

<sup>164</sup> David Lange (10 March 1992) 522 NZPD 6707; David Caygill (10 March 1992) 522 NZPD 6712; Michael Cullen (10 March 1992) 522 NZPD 6722.

<sup>165</sup> Gobbi, above, 279.

<sup>166</sup> Gobbi, above, 294.

<sup>167</sup> Gobbi, above, 299.

amend the Bill.<sup>168</sup> Somewhat different from his proposals brought forward a few weeks before, he requested to give the responsibility to the Electoral Commission, not mentioning the Speaker of the House anymore. Despite the following private meeting between the Clerk, the Minister of Justice and the Leader of the House to discuss the matter, the Clerk was not able to impose his interests and no amendments were made.

The second and third reading of the CIR Bill demonstrated once more the significance of this issue. Gobbi observed that it was "the only point of contention [that remained] between the National Government and the Labour Opposition".<sup>169</sup> Again the speakers emphasised the jeopardised neutral position of the Clerk.<sup>170</sup> Labour MP David Caygill even moved an amendment to shift responsibility to the Speaker. However, his amendment failed and the task eventually remained with the Clerk.

## 2 *The duties of the Clerk*

The Clerk is the principal permanent officer of the House and head of administration in Parliament. He is appointed by the Governor-General on the recommendation of the Speaker of the House.<sup>171</sup> For the last years this task has been performed by David McGee. In particular, the Clerk notes all proceedings in the House and is responsible for all Parliamentary printing.<sup>172</sup> The Clerk is also involved in the legislative process inasmuch as he or she prepares and presents copies of Bills, which have been passed by the House to the Governor-General for the Royal assent.<sup>173</sup> Statutes and Standing Orders increase the Clerk's purview considerably. The Clerk is furthermore the principal officer of the Office of the Clerk. The latter is divided in several sub-offices, none of which is first and foremost responsible for the performance of the duties resulting from the CIR Act.

---

<sup>168</sup> Gobbi, above, 301.

<sup>169</sup> Gobbi, above, 304; substantiated by David Caygill (14 September 1993) 538 NZPD 17965: " ... this measure is being adopted with bipartisan support ... ".

<sup>170</sup> Caygill, above, 17956, 17964-5; Robert Anderson (14 September 1993) 538 NZPD 17957; Pete Hodgson (14 September 1993) 538 NZPD 17960.

<sup>171</sup> Clerk of the House of Representatives Act 1988, s 7.

<sup>172</sup> David McGee *Parliamentary Practice in New Zealand* (2 ed, Government Printer, Wellington, 1994) 43.

<sup>173</sup> McGee, above, 43.



On balance, the Clerk of the House is in charge of the administrative matters in Parliament, a traditionally apolitical role.<sup>174</sup>

With the introduction of the CIR Act, the Clerk was instantly confronted with a number of new challenges. The Clerk of the House is the institution that every person who proposes to promote an indicative referendum has to direct his or her petition and the prescribed fee to.<sup>175</sup> The Clerk then enters into preliminary negotiations with the promoter to clarify the petition if necessary.<sup>176</sup> The most important task is the determination of the precise question. The Clerk, for that purpose, consults the proposer, the Legislative Advisory Committee, any other person or institution that the Clerk thinks fit and evaluates any received submission on the proposal.<sup>177</sup> Although the Clerk may seek advice from other institutions,<sup>178</sup> the wording of the question and the negotiations involved often are a lengthy and taxing task.<sup>179</sup> The second major task for the Clerk of the House is the scrutiny of the petition. The Clerk must, within two months from the date receiving a petition, ascertain whether it has been signed by not less than ten percent of eligible electors.<sup>180</sup> This task has proved to be extremely labour-intensive in the "battery-hen" petition case, because the promoter doubted the methods of calculation, which led to extensive correspondence with the Government Statistician.<sup>181</sup>

### 3 *The process in other countries*

The introductory statement of this paper proclaimed that New Zealand is unique, because it adopted a system of non-binding CIRs. However, New Zealand is not the only country with initiatives as such. The "paradigmatic cases"<sup>182</sup> of

<sup>174</sup> McGee, above, 43; Caroline Morris "Citizens' Referenda: Time to Review?" (2002) March NZLJ 44, 45.

<sup>175</sup> Citizens Initiated Referenda Act 1993, s 6.

<sup>176</sup> Personal conversation with Carole Hicks, Office of the Clerk of the House of Representatives.

<sup>177</sup> McGee, above, 448.

<sup>178</sup> Citizens Initiated Referenda Act 1993, s 9.

<sup>179</sup> Personal conversation with Carole Hicks, Office of the Clerk of the House of Representatives.

<sup>180</sup> Citizens Initiated Referenda Act 1993, s 18.

<sup>181</sup> Records of the Office of the Clerk of the House of Representatives; personal conversation with Carole Hicks, Office of the Clerk of the House of Representatives.

<sup>182</sup> Craig Joseph Press *The Case for Binding Citizens Initiated Referenda in New Zealand* (MPP Research Paper, Victoria University of Wellington, 2000) 27.

CIRs worldwide are the systems of Switzerland and California, both of which were factors in the design of the New Zealand system.<sup>183</sup> Against the background of the above outlined New Zealand wording process, it is interesting to examine how other states cope with the difficulties of determining referendum questions.

In Switzerland the initiative must suggest a constitutional amendment. The wording of the proposed legislation is provided by the group that initiated the process and can take two different forms. An initiative can be formulated either as a precise amendment or in general terms and has to be submitted to the Federal Assembly.<sup>184</sup> The great majority of initiatives take the specifically-worded form, as this goes to the people at once. The Government, however, has the opportunity to submit a counterproposal of its own. In the case of an initiative formulated in general terms, the Federal Assembly can either agree or reject the general idea. If the Parliament agrees, it has to elaborate the question itself, which is then put to a popular vote. In case of rejection, the general idea must pass a preliminary referendum. If approved by the electorate, the legislature must draft an appropriate text and send it to the people again.<sup>185</sup>

In California, it is also the promoting group which has to provide all of the details of their new measure using proper legislative language. The proponents, however, may obtain assistance from the Legislative Counsel in drafting the proposed law. The draft must then be submitted to the Attorney-General. As the questions are often very long, with many provisions and clauses, the Attorney-General prepares a title and summary upon receipt of the request.<sup>186</sup>

Catt states that in these examples a similar process is followed to that in New Zealand.<sup>187</sup> However, there are major differences. In New Zealand, it is up to the

---

<sup>183</sup> Bonnie Laxton-Blinkhorn *Half Hearted Democracy: A Critical Examination of the Operation of Citizens Initiated Referenda in New Zealand* (MPP Thesis, University of Auckland, 1996) 23.

<sup>184</sup> Bundesverfassung der Schweizerischen Eidgenossenschaft (Federal Constitution of the Swiss Confederation), art 139 (2); Michael Gallagher and Pier Vincenzo Uleri (eds) *The Referendum Experience in Europe* (St. Martin's Press, New York, 1996) 189.

<sup>185</sup> See Kris W Kobach *The Referendum: Direct Democracy in Switzerland* (Dartmouth, Brookfield, 1993) 42-3; Gallagher and Uleri, above, 189.

<sup>186</sup> Helena Catt "The Other Democratic Experiment: New Zealand's Experience with Citizens' Initiated Referendum" (1996) 48 *Political Science* 29, 31; California Secretary of State: Ballot Initiatives 2001-2002 <[http://www.ss.ca.gov/elections/init\\_guide\\_01-02.pdf](http://www.ss.ca.gov/elections/init_guide_01-02.pdf)> (last accessed 22 September 2002).

<sup>187</sup> Helena Catt "Citizens' Initiated Referenda" in Raymond Miller (ed) *New Zealand Government and Politics* (Oxford University Press, Auckland, 2001) 389.

Parliament to draft specific legislation, not the proponents. Although the question, therefore, covers an issue only broadly and is not written in specific legislative language, the Clerk was given the responsibility to determine the wording of the question that is eventually put to the voters. This means that the Clerk's purview regarding the question wording process is much more extensive than those of the Federal Assembly in Switzerland and especially the Attorney-General in California. The Clerk therefore holds an unparalleled position in the CIR process. Problems resulting from this significant role will be addressed in the following chapter.

#### 4 *Problems and alternatives*

The difficulties resulting from the Clerk's involvement in the CIR process can be divided into those concerning the above mentioned fear of politicisation of the Clerk and those relating to the performance of the task as such. Into the bargain, the problem of the additional workload due to the number of new obligations cast on the Clerk must not be underestimated either.<sup>188</sup>

The neutrality of referendum questions in a democracy is essential. The wording must therefore be carried out by a neutral institution. The Clerk of the House is traditionally such a politically neutral body.<sup>189</sup> At the same time, however, the promoters of referendum petitions undoubtedly pursue political, i.e. interest-orientated, aims.<sup>190</sup> The wording process is consequently a political one and the person or body responsible carries an immanent suspicion of bias. While every institution concerned with the determination of a referendum question is naturally subject to these reservations, the politicisation of the Clerk of the House, a Parliamentary institution at the heart of democracy, is certainly alarming.

<sup>188</sup> See David Lange (10 March 1992) 522 NZPD 6707; the files of the Office of the Clerk reveal the large amount of correspondence, especially regarding the check of signatures; see for an example Bonnie Laxton-Blinkhorn *Half Hearted Democracy: A Critical Examination of the Operation of Citizens Initiated Referenda in New Zealand* (MPP Thesis, University of Auckland, 1996) 70.

<sup>189</sup> Caroline Morris "Citizens' Referenda: Time to Review?" (2002) March NZLJ 44, 45; Laxton-Blinkhorn, above, 55

<sup>190</sup> Pete Hodgson (14 September 1993) 538 NZPD 17960: "the wording of the question is an intensely political act", "neutral but political job"; Hodgson's opinion that the job should be done by a neutral but political person is, however, a contradiction in itself and therefore not comprehensible. A person or institution can be either political *or* neutral.

During the introductory debate of the CIR Bill, the awareness of this dilemma was ubiquitous. Labour MP Michael Cullen regarded the politicisation of the Clerk as a "very dangerous process in terms of the standing of Parliament".<sup>191</sup> As was shown above, this problem does not exist to that extent in Switzerland and California, where the proponents formulate the questions themselves, which means that no institution is exposed to any suspicion of bias. However, during the almost ten years of CIR experience the Clerk was never accused of being politically biased nor has the Office of the Clerk outwardly lost any of its politically neutral reputation. This must, on the other hand, not obscure the fact that the political involvement of the otherwise neutral Clerk has latent overtones of bias.

The second source of difficulties with regard to the Clerk of the House is the sparse criteria that the CIR Act provides for the institution determining the question. The CIR Act gives exactly three instructions. Section 5 (2) says that, first, the referendum must not relate to more than one question. Sections 10 (1) (a) and (b) provide that, secondly, the question has to convey clearly the purpose and effect of the referendum and, thirdly, must be such as to ensure that only one of two answers can be given. Another unwritten but undisputed criterion is that the wording must enable the referendum result to provide meaningful guidance to Government and Parliament.<sup>192</sup> Two petitions shall be quoted to demonstrate the inherent problems of this limited guidance.

The very first question as determined by the Clerk read "should the production of eggs from battery hens be prohibited within five years of the referendum?". The Clerk's determination omitted the promoters' inclusion of the phrase "inhumane practice of battery hen production". Nevertheless, the Egg Producers Federation of New Zealand as the affected organisation sought judicial review of the Clerk's decision, because it took the view that the Clerk still gave excessive weight to irrelevant factors, insufficient weight to relevant ones and indeed misinterpreted the Act. Although the High Court eventually decided in the Clerk's favour,<sup>193</sup> the inner conflict between neutrality, limited guidance and the

<sup>191</sup> Michael Cullen (10 March 1992) 522 NZPD 6722.

<sup>192</sup> See in *Egg Producers Federation v The Clerk of the House of Representatives* (20 June 1994) High Court Wellington CP 128/94 Eichelbaum CJ, 4.

<sup>193</sup> *Egg Producers Federation v The Clerk of the House of Representatives*, above.

need for corrections of problematical questions became obvious. Caroline Morris got to the heart of the dilemma when she queried how an institution is supposed to tread the fine line between refining the question to make it more easily understandable and being seen to be influencing the wording?<sup>194</sup>

Another problem became obvious in the referendum to reform the criminal justice system.<sup>195</sup> The question comprised in actuality several different ones. How did people vote if they supported one part but not the other parts? The problem of the question itself, which Church called the "most disquieting aspect of the referendum",<sup>196</sup> is subject of the following chapter, but this referendum also revealed the dilemma of the Clerk. Although the Clerk knew that initiatives must ask only one question and admit only one of two possible answers, he was not able to prevent the question from surviving in its final form. This was because the Clerk is not "required or indeed permitted to turn the proposal into something it does not purport to be".<sup>197</sup> This clearly refutes Parkinson's assertion that "the Clerk of the House has the final say",<sup>198</sup> which is by no means the case. The Clerk can only influence the wording within limits. The promoter, however, has always the final say. This illustrates vividly that the Clerk has little power to translate the already sparse criteria of the CIR Act into practice.

No lessons can be learned from the overseas experience in Switzerland and California, as the process with petitioners formulating initiatives in proper legislative language is too different from the New Zealand system to draw any beneficial conclusions. However, in the face of the above described difficulties, alterations that take all of these problems into account seem to be appropriate. Surprisingly, the Clerk was chosen to perform the CIR task despite his persistent

---

<sup>194</sup> Caroline Morris "Citizens' Referenda: Time to Review?" (2002) March NZLJ 44, 46.

<sup>195</sup> "Should there be a reform of our justice system placing greater emphasis on the needs of the victims, providing restitution and compensation for them and imposing minimum sentences and hard labour for all serious violent offences?"

<sup>196</sup> Stephen Church *Crime and Punishment: The Referenda to Reform the Criminal Justice System and Reduce the Size of Parliament* in Jonathan Boston and others (eds) *Left turn: The New Zealand General Election of 1999* (Victoria University Press, Wellington, 2000) 194.

<sup>197</sup> *Egg Producers Federation v The Clerk of the House of Representatives* (20 June 1994) High Court Wellington CP 128/94 Eichelbaum CJ; Philip A Joseph *Constitutional and Administrative Law in New Zealand* (2 ed, Brookers, Wellington, 2001) 188; in addition, Parkinson speculates that "the Clerk simply gave up fighting with a distrustful proponent": see John Parkinson *Who Knows Best: the Creation of the Citizens-Initiated Referendum in New Zealand* <<http://socpol.anu.edu.au/~parkinson/nzcir.pdf>> (last accessed 22 September 2002).

<sup>198</sup> Parkinson, above.

opposition. The reason for this was that no alternative solution could be found.<sup>199</sup> In the relevant literature, several institutions have been suggested to perform this task. The Speaker and the Electoral Commission also bear the suspicion of bias.<sup>200</sup> High Court Judges were also omitted due to their independent position and their lack of the required facilities.<sup>201</sup>

However, as long as the person in charge has no appropriate legislative guidance as to how to perform the task and, moreover, no power to protect the provisions of the CIR Act, the search of alternative institutions proves futile.<sup>202</sup> The revision of the Act should therefore be the first thing to do. Subsequently, the search for alternatives can be pursued in two directions. If one prefers the task to remain in Parliament,<sup>203</sup> a special Committee, consisting of experts of all parties, could be established. This was envisaged in the Popular Initiatives Bill from 1983,<sup>204</sup> a proposal that has unfortunately never been taken up again. A second opportunity would be to commission an external agency as an "independent third party",<sup>205</sup> which has both the necessary resources and the expert knowledge to cope with the task.<sup>206</sup> Into the bargain, it also seems to be sensible to split up the determination of the question and the evaluation of the signatures and allocate them to different appropriate institutions.

<sup>199</sup> Mark W Gobbi *The Quest for Legitimacy: a Comparative Constitutional Study of the Origin and Role of Direct Democracy in Switzerland, California, and New Zealand* (LLM Thesis, Victoria University of Wellington, 1994) 268, 299.

<sup>200</sup> Caroline Morris "Citizens' Referenda: Time to Review?" (2002) March NZLJ 44, 46.

<sup>201</sup> Gobbi, above, 259.

<sup>202</sup> See Morris, above, 46: "it does not remove the difficulties caused by the limited legislative guidance".

<sup>203</sup> As preferred by the Select Committee on August 17th, 1993, see Gobbi, above, 295.

<sup>204</sup> Gobbi, above, 206-7; the establishment of a Commission was also called for in the National Party's election manifesto, although this was supposed to consist of the Clerk and a High Court Judge only; the idea of a Commission or a Committee, respectively, quietly died when the Department of Justice ruled out the High Court Judge: see Gobbi, above, 259.

<sup>205</sup> Morris, above, 46.

<sup>206</sup> Several submissions filed to the Select Committee during the legislative process of the CIR Bill suggested to commission a quango (quasi-autonomous non-governmental organisation): see Gobbi, above, 288; see for another interesting approach also Janet McLean "Making More (or Less) of Binding Referenda and Citizens-Initiated Referenda" in Colin James (ed) *Building the Constitution* (Victoria University Press, Wellington, 2000) 367: "Closer supervision of the question ( ... perhaps, by the Attorney-General, or the Chair of the Electoral Commission) may do something to enhance the quality of the process."; see also Brent Edwards "Referendum Law Up for Review" (4 December 1995) *The Evening Post* Wellington 1: "The chairman of the Electoral Committee, National MP Tony Ryall ... said the law needed changing. Options could include an independent commissioner or committee to decide whether questions were suitable for a referendum."

## 5 Conclusion

During the second reading of the CIR Bill Pete Hodgson held the view that the wording of the question “requires the wisdom of Solomon, [and] it requires overt neutrality”.<sup>207</sup> The obligation to frame the question as neutrally as possible within the parameters of the original proposals is indeed an immensely difficult task. However, the instruments the Clerk was provided with to perform this task are less than sufficient. The CIR Act does not live up to the expectations expressed before the introduction of the Act that a “satisfactory procedure for setting and vetting the referendum questions” be essential.<sup>208</sup> In the face of this, it may be appropriate time to tackle these difficulties.

### **B The Referendum Question**

In theory there is no doubt that referendum questions have to be simple, clear and unambiguous.<sup>209</sup> As was previously shown, precise guidance for the institution in charge of determining the question is crucial. And yet the question remains if in practice it is possible to couch a proposition that meets the above mentioned theoretical requirements. The following chapter examines problems that are causally related with the referendum question, such as difficulties resulting from the question itself, ramifications for the Government and consequences for the voters.

#### *1 Only one of two answers*

According to Section 10 (1) (b) of the CIR Act only one of two answers, yes or no, may be given to the question. The appropriateness of this twofold choice is

---

<sup>207</sup> Pete Hodgson (14 September 1993) 538 NZPD 17960.

<sup>208</sup> J H Wallace “Commentary on 'Referendums: Legal and Constitutional Aspects' ” in Alan Simpson (ed) *Referendums: Constitutional and Political Perspectives* (Victoria University Press, Wellington, 1992) 30.

<sup>209</sup> Justice and Electoral Committee *Inquiry into the 1999 General Election* (2001) AJHR I.7C; Venice Commission *Guidelines for Constitutional Referendums at National Level* <[http://venice.coe.int/docs/2001/CDL-INF\(2001\)010-e.html](http://venice.coe.int/docs/2001/CDL-INF(2001)010-e.html)> (last accessed 22 September 2002).

undoubted, as everything else would mostly be impracticable.<sup>210</sup> Reading relevant literature, one can detect that a large number of problems arising from referendum questions are more or less distinctly connected with the requirement to answer yes or no.

(a) Yes or No?

When an initiative proposition is very complex, the voters may not be sure if it is a yes or a no vote that corresponds with their view.<sup>211</sup> In principle it can be said that a yes vote supports the petition of the promoter. If the voters are confused about whether they are voting to repeal or to enact something, a no vote is therefore mostly the safest option to maintain the status quo.<sup>212</sup> Consequently, surveys divulge that the more difficult it is to comprehend a proposition, the more often voters will vote no.<sup>213</sup> However, it is easy to imagine that additional confusion can occur when the promoters do not ask for a yes vote but rather hope for a no vote. Such was the case in the firefighters referendum in 1995, when the Professional Firefighters Union asked whether the number of firefighters should be reduced and sought a negative answer.<sup>214</sup>

---

<sup>210</sup> Helena Catt, Paul Harris and Nigel S Roberts *Voter's Choice: Electoral Change in New Zealand?* (Dunmore Press, Palmerston North, NZ, 1992) 134; Venice Commission *Guidelines for Constitutional Referendums at National Level* <[http://venice.coe.int/docs/2001/CDL-INF\(2001\)010-e.html](http://venice.coe.int/docs/2001/CDL-INF(2001)010-e.html)> (last accessed 22 September 2002); see for some exceptions of the twofold choice Helena Catt *Democracy in Practice* (Routledge, New York, 1999) 73; New Zealand experienced a multiple choice referendum on 19 September 1992, when the voters were asked which of four different voting systems they preferred; furthermore, the national liquor licensing polls asked the voters to decide between "national continuance", "state control" or "national prohibition".

<sup>211</sup> In California a survey on a certain ballot proposition revealed that 18 percent of the voters did not know what a yes vote meant: see David B Magleby *Direct Legislation: Voting on Ballot Propositions in the United States* (John Hopkins University Press, Baltimore, 1984) 143; see also Bob Edlin "A grand exercise in ballot-box absurdity" (8 December 1995) *The Independent Wellington* 10: "Far too many people who might have voted, had they been better enlightened, seem to have stayed away simply because they did not know what they would be endorsing if they answered 'yes' or 'no' on the ballot paper" (relating to the "firefighters" petition).

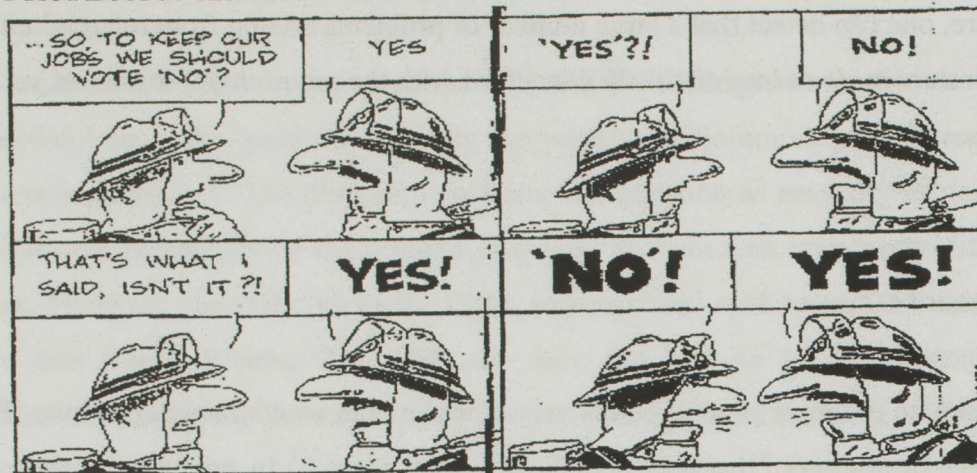
<sup>212</sup> An advertisement ran in a Salt Lake City campaign saying simply: "Confused? Many are. Play it safe - When in Doubt, Vote No!": see Magleby, above, 142.

<sup>213</sup> Jeffrey A Dubin and Gretchen A Kalsow "Participation in Direct Legislation: Evidence from the Voting Booth" (1997) 997 California Institute of Technology Social Science Working Paper 10, 13-4; Catt, above, 71.

<sup>214</sup> Helena Catt "The Other Democratic Experiment: New Zealand's Experience with Citizens' Initiated Referendum" (1996) 48 *Political Science* 29, 36; however, 87.8 percent voted no and there is no evidence of whether voters may have been confused by the reversed question; Professional Fire Fighters Union Cartoon (30 November 1995) *New Zealand Herald* Auckland.



PROFESSIONAL FIRE FIGHTERS UNION



(b) Questions that anticipate their answer

Another problem of referendum questions is that they are often couched in a way that anticipates an answer.<sup>215</sup> Voters then feel compelled by the formulation of the question to answer yes or at least find it hard to say no (for example “Should there be less crime on the streets?”). The same issue can be formulated so differently that both questions, although exactly opposite, would almost certainly produce an overwhelming answer in the opposite direction. These reservations have been expressed during the introduction debate of the CIR Bill by consulting the issue of abortion. The contradicting propositions “Are you in favour of giving statutory protection to the right to life of the unborn child?” and “Do you think women should have control over their own bodies?” would both almost certainly result in a distinct affirmative answer.<sup>216</sup> This demonstrates vividly to what extent the formulation of the question can influence the outcome. The previous CIR experience confirmed these reservations. In the case of the “battery hens” petition, the Clerk of the House was accused of having incorporated emotive and question-

<sup>215</sup> The literature uses a large number of expressions to describe this problem; see for examples Janet McLean “Making More (or Less) of Binding Referenda and Citizens-Initiated Referenda” in Colin James (ed) *Building the Constitution* (Victoria University Press, Wellington, 2000) 366: “leading questions”; Gabriela Wehrle “The Firefighters’ Referendum – Should Questions Arising from Industrial Disputes be Excluded from Referenda Held under the Citizens Initiated Referenda Act 1993?” (1997) 27 VUWLR 273, 288: “emotive”; Helena Catt, Paul Harris and Nigel S Roberts *Voter’s Choice: Electoral Change in New Zealand?* (Dunmore Press, Palmerston North, NZ, 1992) 139: “contentious”; Bonnie Laxton-Blinkhorn *Half Hearted Democracy: A Critical Examination of the Operation of Citizens Initiated Referenda in New Zealand* (MPP Thesis, University of Auckland, 1996) 87: “biased”.

<sup>216</sup> Michael Cullen (10 March 1992) 522 NZPD 6722; see also Jonathan Hunt (10 March 1992) 522 NZPD 6715-6; Catt, Harris and Roberts, above, 139.

begging language in referring to "battery hens".<sup>217</sup> Although the Court rejected this view, the Judge "readily accept[ed] that a question framed in emotive or prejudicial terms is unlikely to fulfil the section 10 requirement of clarity".<sup>218</sup> However, this did not exclude answer-anticipating questions from the agenda in the following. Doug Graham, the then Minister of Justice, said that Next Step's questions on health and education inherently biased the results. The proposition "Should all New Zealanders have access to comprehensive health services which are fully government funded and without user charges?" would certainly have provoked a different result than if the promoters had proposed a tax increase to finance the health services.<sup>219</sup> Another example was the "firefighters" petition, when the promoters asked if the number of firefighters should be reduced, which the overwhelming majority of voters disapproved. The Government took the view that "the public has been taken in by a rather large dose of emotional clap trap".<sup>220</sup>

The Clerk, as was previously described, lacks the power to prevent these questions from being raised, as the promoter has the final say. However, even if the Clerk had this power, the problem of loaded questions seems to be inherent to all referendum petitions.

(c) Two or more issues in one question

Section 5 (2) of the CIR Act unambiguously stipulates that referendum petitions may not relate to more than one question. However, the "criminal justice" petition revealed that "it is not self-evident that the question met even

<sup>217</sup> The Clerk had already turned down the originally proposed word "inhumane" (battery egg production) as this would otherwise "compromise the integrity of a referendum" being "emotive and prejudic[ing] a fair assessment of the merits of the question proposed": see Note in the files of the Office of the Clerk of the House of Representatives.

<sup>218</sup> *Egg Producers Federation v The Clerk of the House of Representatives* (20 June 1994) High Court Wellington CP 128/94 Eichelbaum CJ.

<sup>219</sup> Bonnie Laxton-Blinkhorn *Half Hearted Democracy: A Critical Examination of the Operation of Citizens Initiated Referenda in New Zealand* (MPP Thesis, University of Auckland, 1996) 87.

<sup>220</sup> Letter from the Minister of Internal Affairs to AV Hunter, 26 May 1995: cited in Gabriela Wehrle "The Firefighters' Referendum - Should Questions Arising from Industrial Disputes be Excluded from Referenda Held under the Citizens Initiated Referenda Act 1993?" (1997) 27 VUWLR 273, 288; see also "Referendum a \$10m Nonsense" (4 December 1995) *The Dominion* Wellington 8: "It can only be speculated what the result might have been if the public had been asked: 'Should the New Zealand Fire Service be as efficient and effective as possible?' or 'Do you favour reorganising the Fire Service to make firefighters more productive?'".

the[se] sparse statutory criteria".<sup>221</sup> The question rather comprised at least three different issues, to which the voters had to give only one yes or no answer. Voters were caught in the dilemma of how to respond if they agreed to emphasise the needs of the victims on the one hand, but disapproved the imposition of longer sentences or hard labour on the other hand. Church put it in a nutshell: "Even if voters found it difficult to agree with all aspects of the question, it was equally difficult to disagree with every aspect".<sup>222</sup>

In general, one can observe that referendum proposals are prone to confusing two or more issues,<sup>223</sup> which leads to bewildered and nonplussed voters who are faced with the problem that they have to vote yes or no on the whole proposition.

(d) Simple and simplistic

Framing the question in a way that allows only one of two answers theoretically rules out the consideration of complex issues.<sup>224</sup> Referendums are simplistic devices, which are not capable of dealing with intricate policies if they want to remain comprehensible.<sup>225</sup> As an example, many regarded the "firefighters" dispute as too complex to be put to the voters.<sup>226</sup>

<sup>221</sup> Janet McLean "Making More (or Less) of Binding Referenda and Citizens-Initiated Referenda" in Colin James (ed) *Building the Constitution* (Victoria University Press, Wellington, 2000) 366; "Criminal justice" petition: "Should there be reform of our justice system placing greater emphasis on the needs of victims, providing restitution and compensation for them and imposing minimum sentences and hard labour for all serious violent offences"; see for details Appendix III.

<sup>222</sup> Stephen Church *Crime and Punishment: The Referenda to Reform the Criminal Justice System and Reduce the Size of Parliament* in Jonathan Boston and others (eds) *Left turn: The New Zealand General Election of 1999* (Victoria University Press, Wellington, 2000) 194; see also "Acting on Referendums" (30 November 1999) *The Press* Christchurch 4; John Parkinson *Who Knows Best: the Creation of the Citizens-Initiated Referendum in New Zealand* <<http://socpol.anu.edu.au/~parkinson/nzcir.pdf>> (last accessed 22 September 2002); Craig Joseph Press *The Case for Binding Citizens Initiated Referenda in New Zealand* (MPP Research Paper, Victoria University of Wellington, 2000) 24; Caroline Morris "Citizens' Referenda: Time to Review?" (2002) March NZLJ 44, 45.

<sup>223</sup> Philip A Joseph *Constitutional and Administrative Law in New Zealand* (2 ed, Brookers, Wellington, 2001) 188.

<sup>224</sup> Michael Cullen (10 March 1992) 522 NZPD 6721.

<sup>225</sup> See Joseph, above, 188; Geoffrey Palmer and Matthew Palmer *Bridled Power: New Zealand Government under MMP* (3 ed, Oxford University Press, Auckland, 1997) 202; John Collinge "Keeping a Watch on Democracy by Use of Public Referendums" in Alan Simpson (ed) *Referendums: Constitutional and Political Perspectives* (Victoria University Press, Wellington, 1992) 79, 83; "Dialogue: No Power to the People in Citizens' Referendums" (15 February 2001) *New Zealand Herald* Auckland.

<sup>226</sup> "Referendum a \$10m Nonsense" (4 December 1995) *The Dominion* Wellington 8; Alison Tocker "Low Poll Turnout Sparks Rethink of Referendum Rules" (4 December 1995) *The*

However, in practice this rarely leads to the exclusion of complicated matters but rather to the attempt to simplify the question. This is an undertaking that often fails. Trying to take all different aspects of the issue into consideration, some questions are extremely long-winded.<sup>227</sup> Other questions contain vague and unclear words, making them difficult to understand and leading to confusion among the voters. The very first CIR petition, for example, caused a contentious debate about what "battery egg production" means.<sup>228</sup> The "criminal justice" petition generated a number of indefinite terms, such as "serious violent offences" or "hard labour".<sup>229</sup> Another question asked if Members of Parliament should be elected by "single transferable vote (STV)" with "constituency-based multi-member electorates".

Thirdly, often complex issues can not be compressed into black and white answers. There are often variations, options and conciliatory opinions that a simple yes or no question does not reflect appropriately.<sup>230</sup> Whereas voters have to make clear-cut decisions one way or the other, part of the role of parliament in contrast is to debate issues, to look at how one issue impacts on others and resolve matters by compromise.<sup>231</sup> Referendum decisions, therefore, lack the quality of parliamentary deliberation.<sup>232</sup>

---

*Dominion* Wellington 1; Brent Edwards "Referendum Law Up for Review" (4 December 1995) *The Evening Post* Wellington 1; Bob Edlin "A grand exercise in ballot-box absurdity" (8 December 1995) *The Independent* Wellington 10; D A M Graham, Minister of Justice (4 December 1995) Radio New Zealand Interview (Good Morning New Zealand); the Egg Producers Federation also argued in the "battery hens" petition that the issue was too complex to be reduced to a simple yes/no answer: see Bonnie Laxton-Blinkhorn *Half Hearted Democracy: A Critical Examination of the Operation of Citizens Initiated Referenda in New Zealand* (MPP Thesis, University of Auckland, 1996) 69.

<sup>227</sup> For example: „Should New Zealand adopt direct democracy by binding referendum whereby ideas for laws would be submitted and voted upon as of right by the public and, according to the result, submissions collected from the public and then assessed by opinion poll, resulting in draft law alternatives being prepared by independent groups, from which one opinion would be chosen by majority vote by the public; the resulting legislation to be binding?“.

<sup>228</sup> Note in the files of the Office of the Clerk of the House of Representatives: " ... it is not a term of art. There are legitimate differences in interpretation of what it might mean".

<sup>229</sup> See Caroline Morris "Citizens' Referenda: Time to Review?" (2002) *March NZLJ* 44, 45; John Parkinson *Who Knows Best: the Creation of the Citizens-Initiated Referendum in New Zealand* <<http://socpol.anu.edu.au/~parkinson/nzcir.pdf>> (last accessed 22 September 2002).

<sup>230</sup> Royal Commission on the Electoral System *Report of the Royal Commission on the Electoral System: Towards a Better Democracy* (Government Printer, Wellington, 1986) 175; Geoffrey Palmer and Matthew Palmer *Bridled Power: New Zealand Government under MMP* (3 ed, Oxford University Press, Auckland, 1997) 202.

<sup>231</sup> Helena Catt "Citizens' Initiated Referenda" in Raymond Miller (ed) *New Zealand Government and Politics* (Oxford University Press, Auckland, 2001) 391; Philip A Joseph *Constitutional and Administrative Law in New Zealand* (2 ed, Brookers, Wellington, 2001) 188; Royal Commission on the Electoral System, above, 175; Into the bargain, "meanwhile in all democratic countries specialists proliferated in the ministries, departments, and other executive and administrative

## 2 The government response or "What's that you say...?"

The long title of the CIR Act stipulates that CIRs under the Act are only indicative, thus not binding on the Government. However, it is believed that if the people appear to speak with a loud and united voice, the Government will find the result hard to overlook.<sup>233</sup> Three referendums have been held so far, but the Government did not react noticeably.<sup>234</sup> This lack of response can certainly lead to frustration among the voters.<sup>235</sup>

In the context of referendum questions, however, another problem becomes apparent. Some questions create problems for the Government in deciding how it should respond to the outcome of the referendum. Regarding multiple questions, such as the "criminal justice" petition, it is difficult for the Government, if it was inclined to react, to determine which part or parts of the question won the support of voters.<sup>236</sup> Does a yes vote signal agreement with the entire proposition or only with certain parts?<sup>237</sup> Furthermore, MPs will find it difficult to know which action to take if voters deliver a mixed mandate, i.e. if their party policy and the referendum result contradict.<sup>238</sup>

---

organisations": Robert A Dahl *Democracy and its Critics* (Yale University Press, New Haven, 1989) 336.

<sup>232</sup> Wolf Linder *Swiss Democracy: Possible Solutions to Conflict in Multicultural Societies* (2 ed, MacMillan, New York, 1998) 111.

<sup>233</sup> Richard Mulgan *Politics in New Zealand* (2 ed, Auckland University Press, Auckland, 1997) 285.

<sup>234</sup> See Gabriela Wehrle "The Firefighters' Referendum – Should Questions Arising from Industrial Disputes be Excluded from Referenda Held under the Citizens Initiated Referenda Act 1993?" (1997) 27 VUWLR 273, 290: "It is not clear whether the result has actually had any impact" (relating to the "firefighters" referendum).

<sup>235</sup> See for details Caroline Morris "Citizens' Referenda: Time to Review?" (2002) March NZLJ 44, 46.

<sup>236</sup> Stephen Church *Crime and Punishment: The Referenda to Reform the Criminal Justice System and Reduce the Size of Parliament* in Jonathan Boston and others (eds) *Left turn: The New Zealand General Election of 1999* (Victoria University Press, Wellington, 2000) 194.

<sup>237</sup> Morris, above, 45.

<sup>238</sup> See Helena Catt "Citizens' Initiated Referenda" in Raymond Miller (ed) *New Zealand Government and Politics* (Oxford University Press, Auckland, 2001) 391: "If in 1996 there had been a vote suggesting that 'there be a fully-funded tertiary education system, with no user charges', opinion polls suggest it would have passed. However, in 1996 voters also elected a National-led government whose policy was explicitly opposed to fully-funded tertiary education."; problems resulting from the fact that the Government is indeed not able to respond on the proposal will be addressed in the chapter on subject-matter restrictions.

### 3 *The measurement of effects on voters*

The impact of referendum questions on voters is difficult to determine. Surveys regarding the voter feelings, such as apathy or confusion, have not been conducted in New Zealand. However, the effects on voters can be measured by looking at turnout levels and by examining the CIR propositions regarding their understandability.

#### (a) Voter turnout

All three CIRs that have been held so far showed overwhelming support in favour of the promoter's petition.<sup>239</sup> However, the voter turnout is also very important, as a low turnout means a decision by only a small proportion of the population. Experience shows that referendums held alongside general elections will result in a significantly higher turnout.<sup>240</sup> Consequently, the "Members of Parliament" petition and the "criminal justice" petition, both held alongside the 1999 general election, attracted a high turnout of almost 83 percent. On the other hand, the "firefighters" petition drew only 28 percent of the total registered electors to the voting booth, the lowest turnout ever recorded for a referendum.<sup>241</sup> It is easily imaginable that there is a connection between the low voter turnout and a lack of interest among the voters. According to surveys, a connection is also discernible between a low turnout and the understandability of the proposition or, vice versa, the higher the voter's knowledge, the greater is the probability that he or she will vote.<sup>242</sup> This corresponds with the above made ascertainment that the

<sup>239</sup> "Firefighters" petition: 88 % no (no vote intended by the promoter); "Members of Parliament" petition: 81.5 % yes; "Criminal justice" petition: 91.7 % yes; see also Appendix III.

<sup>240</sup> Catt, above, 393; the seven government-initiated special polls in New Zealand attracted an average turnout of 61.9 %, whereas the two government-initiated referendums that have been held alongside general elections resulted in an average turnout of 83.8 % (see Appendix I).

<sup>241</sup> Gabriela Wehrle "The Firefighters' Referendum – Should Questions Arising from Industrial Disputes be Excluded from Referenda Held under the Citizens Initiated Referenda Act 1993?" (1997) 27 VUWLR 273, 289; see also Appendix V for a comparison of the turnout in general elections and in special polls in New Zealand and other countries.

<sup>242</sup> Michael Gallagher and Pier Vincenzo Uleri (eds) *The Referendum Experience in Europe* (St. Martin's Press, New York, 1996) 201; Jeffrey A Dubin and Gretchen A Kalsow "Participation in Direct Legislation: Evidence from the Voting Booth" (1997) 997 California Institute of Technology Social Science Working Paper 12-3.

“firefighters” dispute was very complex, however, there is no evidence for a connection between the complexity and the low turnout.

In terms of a low turnout, the decision to implement only indicative referendums appears to be sensible. If the referendum was binding, the question would clearly arise if the Government should be bound by a referendum result with a turnout of a meagre 28 percent.<sup>243</sup> Furthermore, as referendums are a majoritarian instrument, it is conceivable that initiatives are used against minorities.<sup>244</sup> On the other hand, it is also possible that a minority, taken the low voter turnout, imposes measures against a largely apathetic majority.<sup>245</sup>

A means to prevent a low turnout is to hold CIR referendums always alongside general elections.<sup>246</sup> However, critics express the concern that referendums at elections entangle the referendum issue and the major election issue and voters might get somewhat confused.<sup>247</sup> Other alternatives would be to make increasing use of postal votes<sup>248</sup>, phone polling<sup>249</sup> or the internet.<sup>250</sup>

#### (b) Comprehension

Determining the extent of the voter’s knowledge about the propositions they are deciding on is essential to an evaluation of the quality of mass participation in direct legislation. Within the context of the debate about direct democracy, scholars, supported by empirical studies, have often argued that policy choices

<sup>243</sup> Catt, above, 393: “In Italy, votes are only binding if over half of the people vote, but this is not the rule in either the United States or Switzerland”.

<sup>244</sup> Royal Commission on the Electoral System *Report of the Royal Commission on the Electoral System: Towards a Better Democracy* (Government Printer, Wellington, 1986) 175; Catt, above, 393.

<sup>245</sup> See Jack H Nagel *Participation* (Prentice-Hall, Englewood Cliffs, NJ, 1987) 92.

<sup>246</sup> Catt, above, 393: “In the United States a referendum vote must coincide with an election, but in Italy and Switzerland the two types of votes must be separate”.

<sup>247</sup> Royal Commission on the Electoral System, above, 175; Justice and Electoral Committee *Inquiry into the 1999 General Election* (2001) AJHR I.7 C 54-5.

<sup>248</sup> Referenda (Postal Voting) Act 2000, s 5 (b); the government-initiated referendum on the introduction of compulsory superannuation savings from 5-26 September 1997 was a postal ballot and reached a turnout of 80.34%.

<sup>249</sup> Bonnie Laxton-Blinkhorn *Half Hearted Democracy: A Critical Examination of the Operation of Citizens Initiated Referenda in New Zealand* (MPP Thesis, University of Auckland, 1996) 86; Jane Clifton “Referenda by phone” (18 August 1996) *Sunday Star Times* Auckland 10.

<sup>250</sup> Craig Joseph Press *The Case for Binding Citizens Initiated Referenda in New Zealand* (MPP Research Paper, Victoria University of Wellington, 2000) 10-1.

have become too complex for most people to understand.<sup>251</sup> Inequality in civic competence is a serious problem of democracy, particularly in its direct form. The capability of voters depends mainly on two factors: the level of education and the complexity of the text submitted to the vote.<sup>252</sup> In general, it has been observed that referendums as a means of direct democracy favour more educated citizens.<sup>253</sup>

A means to prove this ascertainment is to apply readability formulas on ballot propositions in order to assess their understandability. Readability formulas calculate the probable difficulty of any text by measuring the variables of vocabulary, sentence length, complexity and conceptual difficulty. Two standard readability formulas, the FOG Index and the Flesch Reading Ease Formula, have been applied to the CIR petitions in New Zealand to ascertain their comprehensibility.<sup>254</sup> The result, being naturally only a rough statistical approximation, clearly revealed the complexity of the CIR propositions. According to the FOG Index, the petitions have an average complexity degree of 17.4, indicating the number of years of education the reader needs to understand the text. The Flesch Reading Ease Formula resulted in a complexity degree of 27.12, with 100 being extremely easy and zero being extremely difficult. A score of 65 stands for plain English.<sup>255</sup> If the readability score is a proxy for the voter's ability to comprehend the proposition,<sup>256</sup> these results divulge that the above statement is correct. Referendums patently handicap less educated people. If voters do not understand propositions, they are likely to either give an uninformed vote or "drop off" completely, which, in turn, can result in skewed results or a low turnout, respectively.<sup>257</sup>

---

<sup>251</sup> See Robert A Dahl *Democracy and its Critics* (Yale University Press, New Haven, 1989) 337-40; Helena Catt *Democracy in Practice* (Routledge, New York, 1999) 14 with further evidence.

<sup>252</sup> Michael Gallagher and Pier Vincenzo Uleri (eds) *The Referendum Experience in Europe* (St. Martin's Press, New York, 1996) 198.

<sup>253</sup> Press, above, 29; David B Magleby *Direct Legislation: Voting on Ballot Propositions in the United States* (John Hopkins University Press, Baltimore, 1984) 141; Catt, above, 70.

<sup>254</sup> See for details Appendix IV.

<sup>255</sup> Readability formulas have already been applied to ballot propositions in some US states, showing a very similar result with a Flesch Reading Ease score of between 24.5 and 32.9: see Magleby, above, 119.

<sup>256</sup> Jeffrey A Dubin and Gretchen A Kalsow "Participation in Direct Legislation: Evidence from the Voting Booth" (1997) 997 California Institute of Technology Social Science Working Paper 9.

<sup>257</sup> Magleby, above, 111-9; Dubin and Kalsow, above, 14; Wolf Linder *Swiss Democracy: Possible Solutions to Conflict in Multicultural Societies* (2 ed, MacMillan, New York, 1998) 95, 111-2.



#### 4 Information

The complexity of referendum questions and the information policy governments are closely connected. The more complex and difficult propositions are, the more important is the public voter education.

Most countries that hold referendums provide basic information for the voters during the campaign period. A booklet, detailing each initiative, plus a short statement from each side, is sent to all voters in American states. In Switzerland, a Government-produced pamphlet is provided and each side is given free television time.<sup>258</sup> Despite these attempts to inform the voters, surveys demonstrate that only a minority of people actually reads this information, let alone understands it.<sup>259</sup> Consequently, voting studies in other countries have documented that people's knowledge about major public issues at stake was low even after an intensive campaign.<sup>260</sup>

Unlike American states and Switzerland, there is no statutory provision in the CIR Act, requiring the New Zealand Government to distribute some sort of information to the voters.<sup>261</sup> Justifiably, Wehrle considers this a flaw in the legislation. Despite the lack of a statutory obligation, some attempts have been made to provide information regarding the three referendums that have been held so far. However, these attempts proved to be half-hearted and insufficient. Although the Cabinet agreed that a pre-referendum pamphlet regarding the "firefighters" petition would be distributed to each household, nothing of that kind happened, because the parties could not agree on the information to be provided.<sup>262</sup> Prior to the 1999 referendums, the Chief Electoral Officer learned

<sup>258</sup> Helena Catt "The Other Democratic Experiment: New Zealand's Experience with Citizens' Initiated Referendum" (1996) 48 *Political Science* 29, 32; Michael Gallagher and Pier Vincenzo Uleri (eds) *The Referendum Experience in Europe* (St. Martin's Press, New York, 1996) 198.

<sup>259</sup> Gallagher and Uleri, above, 198; Dubin and Kalsow, above, 10.

<sup>260</sup> Magleby, above, 127; Linder, above, 111.

<sup>261</sup> Despite the strong request from both scholars and the public before the introduction of the CIR Act to implement appropriate arrangements concerning the provision of accurate information; see J H Wallace "Commentary on 'Referendums: Legal and Constitutional Aspects'" in Alan Simpson (ed) *Referendums: Constitutional and Political Perspectives* (Victoria University Press, Wellington, 1992) 30; Mark W Gobbi *The Quest for Legitimacy: a Comparative Constitutional Study of the Origin and Role of Direct Democracy in Switzerland, California, and New Zealand* (LLM Thesis, Victoria University of Wellington, 1994) 280: "... three submissions [to the Select Committee] suggested that the CIR Bill should contain provisions requiring the Government to supply ... balanced information.

<sup>262</sup> Gabriela Wehrle "The Firefighters' Referendum - Should Questions Arising from Industrial Disputes be Excluded from Referenda Held under the Citizens Initiated Referenda Act 1993?"

from the Crown Law Office that it cannot undertake public education on referendum questions, unless the referendum relates to an electoral matter.<sup>263</sup> This applied only to the "Members of Parliament" petition. Consequently, the Chief Electoral Office only produced a brochure regarding the "Members of Parliament" petition and no official information was available to voters about the CIR on "criminal justice". Moreover, due to the limited funding of the Office, the brochure was only distributed to those people who made inquiries about the referendum.<sup>264</sup>

In the face of this, Catt is certainly right when she implies that the voters were not sufficiently informed on the three CIRs.<sup>265</sup> The implementation of provisions requiring appropriate arrangements as to who is in charge and what kind of information has to be supplied in which way is therefore essential.

### **C Subject-matter Restrictions**

The CIR Act excludes issues that have been subject of a referendum held within five years prior to the receipt of the petition<sup>266</sup> and propositions that call for an inquiry into the way a previous referendum was conducted.<sup>267</sup> Apart from that, virtually any issue can be subject of CIRs in New Zealand. In the judicial scrutiny of the "battery hens" petition, the High Court thought this extraordinary.<sup>268</sup> However, it can be argued that even these sparse restrictions have not been observed, as three of the 34 petitions filed so far asked for the reduction of the number of MPs.<sup>269</sup>

During the CIR introduction debate, the Government clarified that it wanted the public to be able to voice its opinion on any topic.<sup>270</sup> However, subliminally

---

(1997) 27 VUWLR 273, 287; Craig Joseph Press *The Case for Binding Citizens Initiated Referenda in New Zealand* (MPP Research Paper, Victoria University of Wellington, 2000) 22.

<sup>263</sup> Justice and Electoral Committee *Inquiry into the 1999 General Election* (2001) AJHR I.7C 55.

<sup>264</sup> Justice and Electoral Committee, above, 55.

<sup>265</sup> Helena Catt "Citizens' Initiated Referenda" in Raymond Miller (ed) *New Zealand Government and Politics* (Oxford University Press, Auckland, 2001) 391.

<sup>266</sup> Citizens Initiated Referenda Act 1993, s 11 (2) (b).

<sup>267</sup> Citizens Initiated Referenda Act 1993, s 4.

<sup>268</sup> *Egg Producers Federation v The Clerk of the House of Representatives* (20 June 1994) High Court Wellington CP 128/94 Eichelbaum CJ 6.

<sup>269</sup> See Appendix III; see regarding repetitive questions in detail Caroline Morris "Citizens' Referenda: Time to Review?" (2002) March NZLJ 44, 46.

<sup>270</sup> D A M Graham (14 September 1993) 538 NZPD 17952.

there was the hope that only "sensible" and "suitable" questions on big moral or social issues such as capital punishment, euthanasia and homosexual law reform would be filed to the Clerk.<sup>271</sup> It was suggested that the 10 percent threshold, the cost factor and not least common sense and maturity of the voters would prevent irrational and unsuitable questions from being raised.<sup>272</sup> This appraisal proved to be wrong. By many and especially the Government, the "firefighters" issue was regarded as an industrial dispute, not appropriate to be decided on in a referendum.<sup>273</sup> In the public debate arising from this, politicians and media called the referendum questions that had been filed until then inadequate, "a bit loopy", "motherhood and apple pie" or just generally unsuitable.<sup>274</sup> Furthermore, the High Court readily supposed that vexatious, defamatory, indecent or scandalous questions might appear on the referendum agenda.<sup>275</sup> It seems that this problem is initiative-inherent, as it is largely impossible to define which types of issues are unsuitable and then exclude them beforehand.<sup>276</sup> The implementation of a general statutory subject-matter restriction, however, seems to be possible for three fields that can clearly be defined.

First, referendum petitions that contravene the constitution, e.g. violations of the Human Rights Act 1993, must not be put to the voters. Against that, the argument runs that New Zealand does not have a single-document Constitution and the courts do not have the power to render referendum results null and void.<sup>277</sup> Yet, New Zealand has a constitution and if the Parliament implements a

<sup>271</sup> Bonnie Laxton-Blinkhorn *Half Hearted Democracy: A Critical Examination of the Operation of Citizens Initiated Referenda in New Zealand* (MPP Thesis, University of Auckland, 1996) 81, 86.

<sup>272</sup> Christine Fletcher (10 March 1992) 522 NZPD 6714; *Egg Producers Federation v The Clerk of the House of Representatives* (20 June 1994) High Court Wellington CP 128/94 Eichelbaum CJ 6.

<sup>273</sup> See D A M Graham, Minister of Justice and Warren Cooper, Minister of Internal Affairs in Alison Tocker "Low Poll Turnout Sparks Rethink of Referendum Rules" (4 December 1995) *The Dominion* Wellington 1; in contrast Gabriela Wehrle "The Firefighters' Referendum – Should Questions Arising from Industrial Disputes be Excluded from Referenda Held under the Citizens Initiated Referenda Act 1993?" (1997) 27 VUWLR 273, 298-9.

<sup>274</sup> See D A M Graham and Warren Cooper, above, 1.

<sup>275</sup> *Egg Producers Federation v The Clerk of the House of Representatives*, above, 6.

<sup>276</sup> The Chairman of the Electoral Law Committee in 1995, National MP Tony Ryall, said that "options could include an independent commissioner or committee to decide whether questions were suitable for a referendum": see Brent Edwards "Referendum Law Up for Review" (4 December 1995) *The Evening Post* Wellington 1; without any statutory criteria, however, this seems to be an impossible task.

<sup>277</sup> D A M Graham (14 September 1993) 538 NZPD 17952; in Italy and California, the courts do have the right to declare referendum results unconstitutional, whereas courts in Switzerland do not have this right: see Kris W Kobach *The Referendum: Direct Democracy in Switzerland* (Dartmouth, Brookfield, 1993) 41; Michael Gallagher and Pier Vincenzo Uleri (eds) *The Referendum Experience in Europe* (St. Martin's Press, New York, 1996) 107.

subject-matter restriction on constitutional infringements, the courts clearly would have the power and even the obligation to ensure that this provision was not breached.

Secondly, issues that do not lie within Parliament's competence should also be excluded beforehand. Petitions, for example, that contravene international obligations can evidently not be acted on by the Government. It was observed that the demand for "hard labour" in the "criminal justice" petition probably did not comply with international standards.<sup>278</sup> The Swiss Constitution, therefore, stipulates that the Federal Assembly declares initiatives invalid, which violate regulations of international law.<sup>279</sup>

Thirdly, some issues should be restricted to Government either because of its superior knowledge or because it is a matter on which the public would not cast an unbiased vote. This would for instance include matters of defence and national security as well as tax- and budget matters.<sup>280</sup>

The Government saw these problems before the introduction of the CIR Bill and therefore chose to implement non-binding referendums only.<sup>281</sup> This certainly reduces the urgency of amendments of the CIR Act in the above mentioned way. However, the confidence of the populace in the political process and CIRs suffers, if the Government chooses not to act on the outcome of a referendum. It is therefore better to impose limits at the outset in order to reduce arguments and annoyance at a later time.

---

<sup>278</sup> Janet McLean "Making More (or Less) of Binding Referenda and Citizens-Initiated Referenda" in Colin James (ed) *Building the Constitution* (Victoria University Press, Wellington, 2000) 366-7; Mel Smith "Referendum Question Fails Scrutiny" (21 January 2000) *Evening Post* Wellington 7.

<sup>279</sup> Bundesverfassung der Schweizerischen Eidgenossenschaft (Federal Constitution of the Swiss Confederation), art 139 (3).

<sup>280</sup> This would have probably excluded the CIR petition from 30 November 1994: "Should New Zealand's defence expenditure be reduced to half its 1994/95 level by the year 2000 with the savings spent on health, education, conservation and the promotion of full employment?"

<sup>281</sup> D A M Graham, Minister of Justice (10 March 1992) 522 NZPD 6704, 6723; see for further reference Mark W Gobbi *The Quest for Legitimacy: a Comparative Constitutional Study of the Origin and Role of Direct Democracy in Switzerland, California, and New Zealand* (LLM Thesis, Victoria University of Wellington, 1994) 271.

## VI CONCLUSION

Two years after the introduction of the CIR Act, 20 proposals had already been filed. However, in the following six years only 14 more petitions have been delivered to the Office of the Clerk. This obvious decline of usage coincides with the facts that only three out of these 34 petitions have been successful in triggering a public vote and that the Government has not acted on one of those three referendums. CIRs were introduced in times of voter disenchantment as a means to re-establish public confidence and to control the Government. However, the statistics clearly reveal that an instrument that promises public influence without the compulsion to keep what it promised can neither re-establish confidence in politics nor can it control the Government. Justifiably, many have therefore called CIRs a large and expensive public opinion poll.<sup>282</sup> Yet, the conclusion must not be that CIRs should be binding. Neither does New Zealand's constitutional system have the necessary safeguards, nor does it allow that amount of popular sovereignty.

The examinations of this paper show that a number of things can be improved. The person or institution in charge of the referendum process needs clear criteria as to how to perform this task. Moreover, for several reasons it is questionable if the Clerk of the House is the appropriate institution to perform this task. Subject-matter restrictions should be implemented as extensive as possible to prevent clearly inappropriate questions from being put to the voters. Furthermore, the implementation of provisions concerning voter information is indispensable. As a means to increase the voter turnout, moreover, the intensification of the use of phone, internet or postal votes is highly desirable.

However, this paper also reveals that several problems are referendum-inherent. The increasing complexity of modern politics contrasts with the necessity to reduce referendum questions to a yes/no vote. Often, the complex issue subverts this necessity for simplicity, making the referendum questions long and extremely difficult. Due to educational inequalities among the populace, these

---

<sup>282</sup> Helena Catt, Paul Harris and Nigel S Roberts *Voter's Choice: Electoral Change in New Zealand?* (Dunmore Press, Palmerston North, NZ, 1992) 141; Janet McLean "Making More (or Less) of Binding Referenda and Citizens-Initiated Referenda" in Colin James (ed) *Building the Constitution* (Victoria University Press, Wellington, 2000) 366; Geoffrey Palmer and Matthew Palmer *Bridled Power: New Zealand Government under MMP* (3 ed, Oxford University Press, Auckland, 1997) 202.

questions favour the more educated voters and clearly overtax the less educated, leading in turn to skewed or uninformed votes. The outcome of referendum votes, moreover, depends to a great deal on the way a question is couched, placing considerable responsibility on the institution in charge.

CIRs were introduced with the claim to improve and strengthen democracy, but have done little to increase the role of the people in the legislative process. Apart from the flaws in the Act itself, which is in need of considerable reworking, it seems that referendums cannot compete with a Parliamentary process of deliberation and compromises.

Genetic Engineering is a matter of topical interest and arguably among the big moral issues that the Government had in mind when it introduced the CIR Act. However, the group GE Free NZ recently considered the collection of 250,000 signatures too onerous and argued that it was the Government's duty to hold a referendum on this topic.<sup>283</sup> This, and the fact that not a single petition has been lodged during the last year, does not bode well for the future of CIRs in New Zealand.

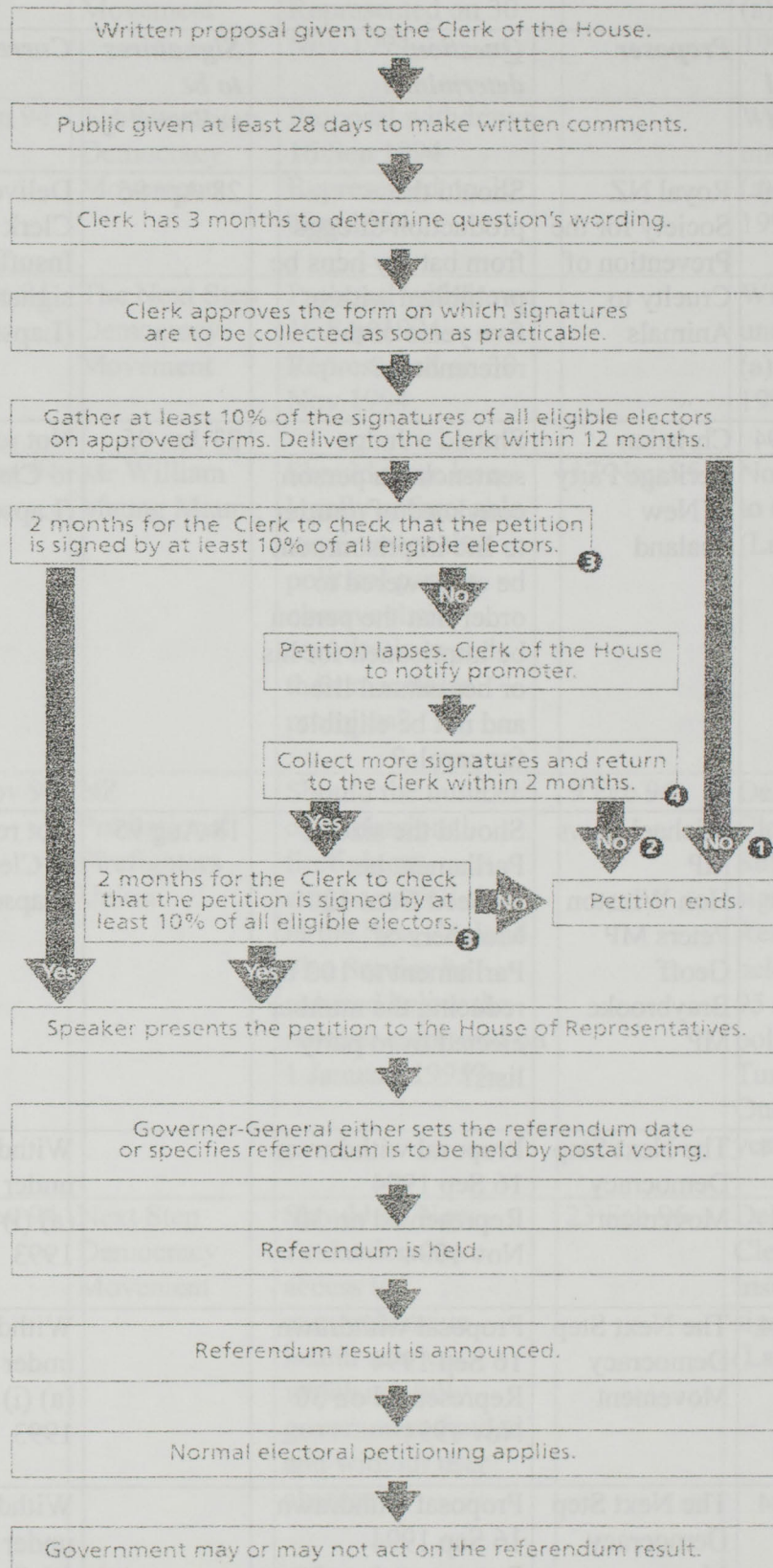
<sup>283</sup> "GE referendum crusade canned" (4 September 2002) *New Zealand Herald* Auckland.

**APPENDIX I – GOVERNMENT-INITIATED REFERENDUMS\***

<i>No.</i>	<i>Date</i>	<i>Carrying out</i>	<i>Issue</i>	<i>Effect</i>	<i>Turn-out in %</i>	<i>Outcome</i>
1	9 March 1949	Special poll	Extension of hotel licensing hours	Indicative	56.5	75.5 % opposed – 6 o'clock closing retained
2	9 March 1949	Special poll	Allow off-course betting on horse racing	Indicative	65.3	68.0 % in support of off-course betting
3	3 August 1949	Special poll	Introduce compulsory military training	Indicative	61.5	77.9 % in support of peace-time conscription
4	23 September 1967	Special poll	Extension of hotel licensing hours	Indicative	69.6	64.4 % in support of later closing time
5	23 September 1967	Special poll	Extend the parliamentary term to four years	Indicative	69.7	68.1 % opposed – three-year term retained
6	27 October 1990	General election	Extend the parliamentary term to four years	Indicative	82.4	69.3 % opposed – three-year term retained
7	19 September 1992	Special poll	Change the electoral system to some form of proportional representation	Indicative	55.2	84.7 % in support of change
		Special poll	Voting system options	Indicative	55.2	70.5 % in support of Mixed-Member Proportional system (MMP)
8	6 November 1993	General election	First-past-the-post or Mixed Member Proportional system	Binding	85.2	53.86 % in support of Mixed-Member Proportional system (MMP)
9	5-26 September 1997	Postal ballot	Introduction of compulsory superannuation savings	Indicative	80.34	91.8 % opposed the introduction

\* Excluding the liquor licensing polls and local referendums; Sources: Colin James and Alan McRobie *Turning Point: The 1993 Election and Beyond* (Bridget Williams Books, Wellington, 1993) 319-20; Craig Joseph Press *The Case for Binding Citizens Initiated Referenda in New Zealand* (MPP Research Paper, Victoria University of Wellington, 2000) 51-2.

**APPENDIX II – THE REFERENDUM PROCESS**



Source: Ministry of Justice *Pamphlet on the Citizens Initiated Referenda Act 1993*  
 <[http://www.justice.govt.nz/pubs/other/pamphlets/2001/citizens\\_referenda.pdf](http://www.justice.govt.nz/pubs/other/pamphlets/2001/citizens_referenda.pdf)> (last accessed 22 September 2002).



APPENDIX III - CIR PETITIONS

<i>No.</i>	<i>Date Proposal Received</i>	<i>Proposer</i>	<i>Question determined</i>	<i>Signatures to be collected by</i>	<i>Current status</i>
1	01 Feb 94	Royal NZ Society for the Prevention of Cruelty to Animals	Should the production of eggs from battery hens be prohibited within five years of the referendum?	28 Apr 95	Delivered to Clerk Insufficient signatures (Lapsed)
2	28 Mar 94	Christian Heritage Party of New Zealand	Should a Judge sentencing a person convicted of murder to life imprisonment be empowered to order that the person be imprisoned for his or her natural life and not be eligible for parole?	23 Jun 95	Not returned to Clerk (Lapsed)
3	25 May 94	Michael Laws MP Hon Winston Peters MP Geoff Braybrooke MP	Should the size of Parliament be reduced from 120 Members of Parliament to 100 by reducing the number elected from party lists?	18 Aug 95	Not returned to Clerk (Lapsed)
4	20 Jun 94	The Next Step Democracy Movement	Proposal withdrawn 16 Sep 1994 Represented on 30 Nov 1994		Withdrawn under s 11 (2) (a) (i) CIR Act 1993
5	20 Jun 94	The Next Step Democracy Movement	Proposal withdrawn 16 Sep 1994 Represented on 30 Nov 1994		Withdrawn under s 11 (2) (a) (i) CIR Act 1993
6	20 Jun 94	The Next Step Democracy Movement	Proposal withdrawn 16 Sep 1994 Represented on 30 Nov 1994		Withdrawn under s 11 (2) (a) (i) CIR Act 1993

7	20 Jun 94	The Next Step Democracy Movement	Proposal withdrawn 16 Sep 1994 Represented on 30 Nov 1994		Withdrawn under s 11 (2) (a) (i) CIR Act 1993
8	20 Jun 94	The Next Step Democracy Movement	Proposal withdrawn 16 Sep 1994 Represented on 30 Nov 1994		Withdrawn under s 11 (2) (a) (i) CIR Act 1993
9	20 Jun 94	The Next Step Democracy Movement	Proposal withdrawn 16 Sep 1994 Represented on 30 Nov 1994		Withdrawn under s 11 (2) (a) (i) CIR Act 1993
10	29 Aug 94	Mr William Maung Maung	Should there be a legally enforceable requirement that political parties observe their constitutions and their manifesto promises?	17 Nov 95	Not returned to Clerk (Lapsed)
11	11 Nov 94	NZ Professional Firefighters Union	Should the number of professional firefighters employed full-time in the New Zealand Fire Service be reduced below the number employed on 1 January 1995?	9 Feb 96	Delivered to Clerk Sufficient signatures Referendum held on 2 Dec 95 as a special poll Turnout 28 % Outcome 12 % yes
12	30 Nov 94	Next Step Democracy Movement	Should all New Zealanders have access to comprehensive health services which are fully government funded and without user charges?	23 Feb 96	Delivered to Clerk Insufficient signatures (Lapsed)

13	30 Nov 94	Next Step Democracy Movement	Should all New Zealanders have access to public education services, from early childhood to tertiary level, which are fully government funded and without user charges?	23 Feb 96	Delivered to Clerk Insufficient signatures (Lapsed)
14	30 Nov 94	Next Step Democracy Movement	Should full employment with wages and conditions that are fair and equitable be the primary goal of government economic policy?	23 Feb 96	Not returned to Clerk (Lapsed)
15	30 Nov 94	Next Step Democracy Movement	Should all New Zealanders on income support and benefits get an income based on what it actually costs to live?	23 Feb 96	Not returned to Clerk (Lapsed)
16	30 Nov 94	Next Step Democracy Movement	Should all increases in New Zealand's electricity demand be met from energy conservation and from the use of sources that are environmentally sustainable?	23 Feb 96	Not returned to Clerk (Lapsed)
17	30 Nov 94	Next Step Democracy Movement	Should New Zealand's defence expenditure be reduced to half its 1994/95 level by the year 2000 with the savings spent on health, education, conservation and the promotion of full employment?	23 Feb 96	Not returned to Clerk (Lapsed)

18	19 Dec 94	One New Zealand Foundation Inc.	Do you agree that the laws of New Zealand should not discriminate against or give preference to citizens or permanent residents of New Zealand on the basis of their ethnic origins?	23 Mar 96	Not returned to Clerk (Lapsed)
19	15 Sep 95	Voluntary Euthanasia Society (Auckland) Inc.	Should people aged 18 years and over who are terminally or incurably ill be permitted to have their lives ended if they request this, in a humane manner and in accordance with procedures to be established?	14 Dec 96	Withdrawn under s 7 Citizens Initiated Referenda Amendment Act 1995 (s 22A CIR Act 1993)
20	15 Apr 96	Jim Anderton MP	Should the forestry licenses to 188,000 hectares of Crown Forest land which are currently held by the Forestry Corporation of New Zealand Limited remain in State ownership (subject to the determination of any Treaty of Waitangi claims)?	13 Jun 97	Delivered to Clerk Insufficient signatures (Lapsed)
21	23 Jul 96	Nga Kaitiaki o Te Waonui a Taane o Aotearoa	Should all tree felling and clearing on any indigenous land (except in plantation forests and already protected conservation areas) be prohibited, unless such tree felling or clearing is in accordance with Maori customary usage?	31 Oct 97	Not returned to Clerk (Lapsed)

22	18 Mar 97	Mark Whyte PO Box 21086 Henderson Auckland	Should there be a written Constitution, taking precedence of the Treaty of Waitangi and all other sources of law, which guarantees the rights of all people without favour or discrimination?	19 Jun 98	Not returned to Clerk (Lapsed)
23	20 Jun 97	Margaret Robertson PO Box 17411 Karori Wellington	Should the size of the House of Representatives be reduced from 120 members to 99 members?	21 Aug 98	Delivered to Clerk; Sufficient signatures; Referendum held on 28 November 99 alongside general election; Turnout 82.8 % Outcome 81.5 % yes
24	03 Oct 97	Norm Withers 16 Kimberley St Christchurch	Should there be a reform of our justice system placing greater emphasis on the needs of the victims, providing restitution and compensation for them and imposing minimum sentences and hard labour for all serious violent offences?	15 Jan 99	Delivered to Clerk; Sufficient signatures; Referendum held on 28 November 99 alongside general election; Turnout 82.9 % Outcome 91.7 % yes
25	13 Oct 97	Cancer Society of NZ Inc. PO Box 12145 Wellington	Should the Government increase its annual spending on health services to at least 7 % of GDP, funding the increase, if necessary, from personal income tax?	11 Dec 98	Not returned to Clerk (Lapsed)

26	19 Feb 98	Frederick Richards 85 Scott St Blenheim	Should Members of Parliament be elected by single transferable vote (STV) with constituency-based multi-member electorates?	21 May 99	Delivered to Clerk Insufficient signatures (Lapsed)
27	21 Dec 98	Gavin Hugh Piercy PO Box 284 Invercargill	Should there be no further compulsory school closures until comprehensive criteria have been established by law for the Minister of Education to follow when deciding to close a school?	25 Mar 00	Not returned to Clerk (Lapsed)
28	06 May 99	Julie Waring PO Box 42009 Holmdale Wainuiomata Wellington	Should the Government be required to reduce the number of unemployed people to below 1 % of the labour force by the year 2004?	12 Aug 00	Not returned to Clerk (Lapsed)
29	29 Jun 99	The Free New Zealand Party Society Inc.	Should New Zealand adopt direct democracy by binding referendum whereby ideas for laws would be submitted and voted upon as of right by the public and, according to the result, submissions collected from the public and then assessed by opinion poll, resulting in draft law alternatives being prepared by independent groups, from which one opinion would be chosen by majority vote by the public;	14 Oct 00	Not returned to Clerk (Lapsed)

			the resulting legislation to be binding?		
30	29 Mar 00	Raymond Lorenzen 17 Cognac Place Henderson	Should Parliament enact legislation to ban the sale and distribution of tobacco?	6 Jul 01	Not returned to Clerk (Lapsed)
31	18 May 00	Tim Hawkins PO Box 521 Dunedin	Should the Shared Parenting Bill introduced by Dr Muriel Newman (which creates a presumption that parents who are separated or divorced will have equal rights to custody of their children) be passed by Parliament?	17 Aug 01	Not returned to Clerk (Lapsed)
32	19 Oct 00	Dennis Crisp	Proposed Wording: Do you believe that New Zealand should hold a binding referendum on whether we should replace MMP by a return to first-past-the-post elections?		Withdrawn under s 11 (2) (a) (i) CIR Act 1993
33	Jan 01	Stuart F E Marshall PO Box 331495 Takapuna	Should a binding referendum be held to decide the future voting system, based on a Parliament of 99 MPs?	20 Mar 02	Not returned to Clerk (Lapsed)
34	26 Jul 01	Ian Wishart The Constitution Trust of New Zealand PO Box 302188 North Harbour	Should New Zealand adopt a written Constitution expressly vesting sovereignty in the people and protecting fundamental human and civil rights?	17 Oct 02	Collecting signatures

Source: Office of the Clerk of the House of Representatives.

**APPENDIX IV – READABILITY OF REFERENDUM PETITIONS**

<b>No</b>	<b>Proposer</b>	<b>Question determined</b>	<b>Gunning's FOG Index</b>	<b>Flesch Reading Ease Formula</b>
1	Royal NZ Society for the Prevention of Cruelty to Animals	Should the production of eggs from battery hens be prohibited within five years of the referendum?	16.4	47.621
2	Christian Heritage Party of New Zealand	Should a Judge sentencing a person convicted of murder to life imprisonment be empowered to order that the person be imprisoned for his or her natural life and not be eligible for parole?	20.5	34.596
3	Michael Laws MP Hon Winston Peters MP Geoff Braybrooke MP	Should the size of Parliament be reduced from 120 Members of Parliament to 100 by reducing the number elected from party lists?	10.6	30.533
4	The Next Step Democracy Movement	Proposal withdrawn 16 Sep 1994		
5	The Next Step Democracy Movement	Proposal withdrawn 16 Sep 1994		
6	The Next Step Democracy Movement	Proposal withdrawn 16 Sep 1994		
7	The Next Step Democracy Movement	Proposal withdrawn 16 Sep 1994		
8	The Next Step Democracy Movement	Proposal withdrawn 16 Sep 1994		
9	The Next Step Democracy Movement	Proposal withdrawn 16 Sep 1994		



10	Mr William Maung Maung	Should there be a legally enforceable requirement that political parties observe their constitutions and their manifesto promises?	23.3	0.922
11	NZ Professional Firefighters Union	Should the number of professional firefighters employed full-time in the New Zealand Fire Service be reduced below the number employed on 1 January 1995?	14.6	16.659
12	Next Step Democracy Movement	Should all New Zealanders have access to comprehensive health services which are fully government funded and without user charges?	11.8	36.116
13	Next Step Democracy Movement	Should all New Zealanders have access to public education services, from early childhood to tertiary level, which are fully government funded and without user charges?	14.8	25.796
14	Next Step Democracy Movement	Should full employment with wages and conditions that are fair and equitable be the primary goal of government economic policy?	20	30.025
15	Next Step Democracy Movement	Should all New Zealanders on income support and benefits get an income based on what it actually costs to live?	12	59.635
16	Next Step Democracy Movement	Should all increases in New Zealand's electricity demand be met from energy conservation and from the use of sources that are environmentally sustainable?	19.6	17.674

17	Next Step Democracy Movement	Should New Zealand's defence expenditure be reduced to half its 1994/95 level by the year 2000 with the savings spent on health, education, conservation and the promotion of full employment?	18.7	15.645
18	One New Zealand Foundation Inc.	Do you agree that the laws of New Zealand should not discriminate against or give preference to citizens or permanent residents of New Zealand on the basis of their ethnic origins?	20.1	39.164
19	Voluntary Euthanasia Society (Auckland) Inc.	Should people aged 18 years and over who are terminally or incurably ill be permitted to have their lives ended if they request this, in a humane manner and in accordance with procedures to be established?	21.1	36.627
20	Jim Anderton MP	Should the forestry licenses to 188,000 hectares of Crown Forest land which are currently held by the Forestry Corporation of New Zealand Limited remain in State ownership (subject to the determination of any Treaty of Waitangi claims)?	23.4	4.31
21	Nga Kaitiaki o Te Waonui a Taane o Aotearoa	Should all tree felling and clearing on any indigenous land (except in plantation forests and already protected conservation areas) be prohibited, unless such tree felling or clearing is in accordance with Maori customary usage?	24.2	5.663

22	Mark Whyte PO Box 21086 Henderson Auckland	Should there be a written Constitution, taking precedence of the Treaty of Waitangi and all other sources of law, which guarantees the rights of all people without favour or discrimination?	17.3	32.565
23	Margaret Robertson PO Box 17411 Karori Wellington	Should the size of the House of Representatives be reduced from 120 members to 99 members?	6.4	37.469
24	Norm Withers 16 Kimberley St Christchurch	Should there be a reform of our justice system placing greater emphasis on the needs of the victims, providing restitution and compensation for them and imposing minimum sentences and hard labour for all serious violent offences?	23.3	17.169
25	Cancer Society of NZ Inc. PO Box 12145 Wellington	Should the Government increase its annual spending on health services to at least 7 % of GDP, funding the increase, if necessary, from personal income tax?	16.6	30.703
26	Frederick Richards 85 Scott St Blenheim	Should Members of Parliament be elected by single transferable vote (STV) with constituency-based multi-member electorates?	16.7	0 (-17.352)
27	Gavin Hugh Piercy PO Box 284 Invercargill	Should there be no further compulsory school closures until comprehensive criteria have been established by law for the Minister of Education to follow when deciding to close a school?	17.1	28,504

28	Julie Waring PO Box 42009 Holmdale Wainuiomata Wellington	Should the Government be required to reduce the number of unemployed people to below 1 % of the labour force by the year 2004?	12.9	44.577
29	The Free New Zealand Party Society Inc.	Should New Zealand adopt direct democracy by binding referendum whereby ideas for laws would be submitted and voted upon as of right by the public and, according to the result, submissions collected from the public and then assessed by opinion poll, resulting in draft law alternatives being prepared by independent groups, from which one opinion would be chosen by majority vote by the public; the resulting legislation to be binding?	34.9	0 (-10.573)
30	Raymond Lorenzen 17 Cognac Place Henderson	Should Parliament enact legislation to ban the sale and distribution of tobacco?	14.8	32.223
31	Tim Hawkins PO Box 521 Dunedin	Should the Shared Parenting Bill introduced by Dr Muriel Newman (which creates a presumption that parents who are separated or divorced will have equal rights to custody of their children) be passed by Parliament?	18.3	32.735
32	Dennis Crisp	Proposed Wording: Do you believe that New Zealand should hold a binding referendum on whether we should replace MMP by a return to first-past-the-post elections?	12.7	39.67
33	Stuart F E Marshall PO Box 331495 Takapuna	Should a binding referendum be held to decide the future voting system, based on a Parliament of 99 MPs?	9.7	45.422

34	Ian Wishart The Constitution Trust of New Zealand PO Box 302188 North Harbour	Should New Zealand adopt a written Constitution expressly vesting sovereignty in the people and protecting fundamental human and civil rights?	16	17.335
			Ø 17.4	Ø 27,12

## KEY

### A On Readability Formulas in General

Since the late 1940s, reading specialists have created several objective measurements of readability. The two most widely used scales are the Flesch Reading Ease Scale (Flesch, 1948) and the Gunning Fog Index (Gunning, 1968). The application of a formula usually involves the selection of a sample from a text, the counting of some easily identifiable characteristics, such as the average number of words per sentence or the proportion of polysyllabic words in the sample, and then performing a calculation to produce a score. This score indicates the difficulty of the sample of text. Some readability formulas produce estimates that represent grade levels (FOG Index), others range over a 100 point scale where higher numbers indicate greater readability (Flesch Reading Ease Formula). Readability itself can be defined as the correlation of reading and comprehensions skills on the one hand and the complexity of a text on the other hand or as

“the the sum total of all those elements within a given piece of printed material that affects the success which a group of readers have with it. The success is the extent to which they understand it, read it at optimum speed and find it interesting”.<sup>1</sup>

Most current research in readability concludes that, whatever “readability” really is, it cannot be contained within the narrow limits of sentence length and long words. Short, choppy sentences are often harder to follow than a smooth, longer sentence with adequate transitions. Long words (“democracy”) may often be easier to understand than short ones (“watt”). Familiarity with the subject matter and the ease of following organisational patterns (by prose signposts) may also be more important than more easily quantifiable properties. And passive constructions, negative

<sup>1</sup> John Gilliland *Readability* (University of London Press, London, 1972) 12-3.

constructions, long noun strings, and nominalisations interfere more with readability than do long words by themselves.

Nevertheless, readability formulas can be computerized and are becoming popular in business and industry. However, current readability formulas are simplistic. No computer program or readability scale can give a definitive analysis of the effectiveness of a piece of writing. The only reliable standard is the reaction of sophisticated readers and users. Any use of readability formulas should therefore be carefully circumscribed. They are best viewed as statistical approximations, which provide rough categorisations of difficulty, but which may easily fail to be valid in any specific context.

### ***B Gunning's FOG Index***

To calculate the FOG Index of a passage, do the following:

1. Count the number of words in the paragraph, W.
2. Count the number of sentences in the paragraph, S.
3. Count the number of hard words of three syllables or more, HW.
4. Apply the following formula:  $(W/S + HW/W \times 100) \times 0.4$

The Fog Index gives the number of years of education that your reader needs to understand the paragraph. For reference: 18 being university graduate level and beyond, 15 being first year at university, 11 being fifth form (year eleven), and 9 being third form (year nine) at school. The New York Times has an average Fog Index of 11-12, Time magazine about 11. Professional prose should never, or almost never, exceed the upper limit of 18. Technical documentation should aim for a Fog Index between 10 and 15. The Fog Index formula implies that short sentences written in plain English achieve a better score than long sentences written in complicated language.

A hard word is a word of 3 syllables or more, but not a word that is (1) a combination of short words (first-past-the-post); (2) a verb form that becomes polysyllabic by adding -ed, -es, or -ing (submitted), or (3) a proper name (Parliament, Government, New Zealand). This has been taken into consideration.

### C Flesch Reading Ease Formula

The approach to calculating the Flesch score is as follows:

1. Calculate the average sentence length, L.
2. Calculate the average number of syllables per word, N.
3. Calculate score (between 0-100%).

The Flesch Reading Ease Scale measures readability as follows:

100	Very easy to read.	Average sentence length is 12 words or less. No words of more than two syllables.
65	Plain English.	Average sentence length is 15 to 20 words. Average word has two syllables.
0	Extremely difficult to read.	Average sentence length is 37 words. Average word has more than two syllables.

The higher the score, the easier the text is to understand.

Sources: Alice Davison and Georgia M Green (eds) *Linguistic Complexity and Text Comprehension* (L Erlbaum Associates, Hillsdale, N.J., 1988) 5-21; George Roger Klare *The Measurement of Readability* (Iowa State University Press, Ames, 1963) 20-5; John Gilliland *Readability* (University of London Press, London, 1972) 12-3, 89-93; David B Magleby *Direct Legislation: Voting on Ballot Propositions in the United States* (John Hopkins University Press, Baltimore, 1984) 207-8.

**APPENDIX V – TURNOUT COMPARISON GENERAL ELECTION – SPECIAL POLLS**

<i>Country</i>	<i>Election/Special poll</i>	<i>Voter turnout</i>	<i>Difference general election – special poll</i>
New Zealand	Election 1993	83	55
	“Firefighters” referendum 1995	28	
	Election 1993	83	28
	Vote on electoral system 1992	55	
Ireland	Election 1982	74	19
	Vote on banning abortion 1983	55	
Switzerland	Election 10/1991	46	15
	Vote on transport funding and voting age 3/1991	31	
Britain	Election 1974	73	8
	Vote on staying in EEC 1975	65	
Sweden	Election 1995	86	4
	Vote on joining EU 1994	82	
Philippines	Election 5/1987	90	3
	Vote on new Constitution 6/1987	87	
Russia	Election 12/1993	50	-5
	Vote on draft Constitution 12/1993	55	
Burundi	Election 1993	91	-6
	Vote on new Constitution 1992	97	
Norway	Election 9/1994	76	-13
	Vote on joining EU 11/1994	89	

Source: Helena Catt *Democracy in Practice* (Routledge, New York, 1999) 70.



## BIBLIOGRAPHY

### A Texts

Albert Weale *Democracy* (St. Martin's Press, New York, 1999)

Alice Davison and Georgia M Green (eds) *Linguistic Complexity and Text Comprehension* (L Erlbaum Associates, Hillsdale, N.J., 1988)

Arend Lijphard *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries* (Yale University Press, New Haven, 1984)

Arend Lijphard *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries* (Yale University Press, New Haven, 1999)

Colin James and Alan McRobie *Turning Point: The 1993 Election and Beyond* (Bridget Williams Books, Wellington, 1993)

David B Magleby *Direct Legislation: Voting on Ballot Propositions in the United States* (John Hopkins University Press, Baltimore, 1984)

David Butler and Austin Ranney (eds) *Referendums: A Comparative Study of Practice and Theory* (American Enterprise Institute for Public Policy Research Press, Washington, D.C., 1978)

David McGee *Parliamentary Practice in New Zealand* (2 ed, Government Printer, Wellington, 1994)

F M Brookfield "Referendums: Legal and Constitutional Aspects" in Alan Simpson (ed) *Referendums: Constitutional and Political Perspectives* (Victoria University Press, Wellington, 1992)

G A Wood *Governing New Zealand* (Longman Paul, Auckland, 1988)

Geoffrey de Q Walker *Initiative and Referendum: The People's Law* (Centre for Independent Studies Press, St. Leonards, NSW, 1987)

Geoffrey Palmer and Matthew Palmer *Bridled Power: New Zealand Government under MMP* (3 ed, Oxford University Press, Auckland, 1997)

George Roger Klare *The Measurement of Readability* (Iowa State University Press, Ames, 1963)

Graham Bush *Local Government & Politics in New Zealand* (2 ed, Auckland University Press, Auckland, 1995)

Helena Catt "Citizens' Initiated Referenda" in Raymond Miller (ed) *New Zealand Government and Politics* (Oxford University Press, Auckland, 2001)

Helena Catt *Democracy in Practice* (Routledge, New York, 1999)

Helena Catt, Paul Harris and Nigel S Roberts *Voter's Choice: Electoral Change in New Zealand?* (Dunmore Press, Palmerston North, NZ, 1992)

Ian Budge *The New Challenge of Direct Democracy* (Polity Press, Cambridge, UK, 1996)

J H Wallace "Commentary on 'Referendums: Legal and Constitutional Aspects'" in Alan Simpson (ed) *Referendums: Constitutional and Political Perspectives* (Victoria University Press, Wellington, 1992)

Jack H Nagel *Participation* (Prentice-Hall, Englewood Cliffs, N.J., 1987)

Janet McLean "Making More (or Less) of Binding Referenda and Citizens-Initiated Referenda" in Colin James (ed) *Building the Constitution* (Victoria University Press, Wellington, 2000)

John Collinge "Keeping a Watch on Democracy by Use of Public Referendums" in Alan Simpson (ed) *Referendums: Constitutional and Political Perspectives* (Victoria University Press, Wellington, 1992) 79

John Gilliland *Readability* (University of London Press, London, 1972)

Keith Jackson "Commentary on "Referendums: Legal and Constitutional Aspects" Parliamentary Sovereignty" in Alan Simpson (ed) *Referendums: Constitutional and Political Perspectives* (Department of Politics, Victoria University of Wellington, 1992)

Kenneth A Palmer *Local Government Law in New Zealand* (2 ed, Law Book, Sydney, NSW, 1993)

Kris W Kobach *The Referendum: Direct Democracy in Switzerland* (Dartmouth, Brookfield, 1993)

Mark W Gobbi "We, the Sovereign: Clarifying the Call for Direct Democracy in New Zealand" in Alan Simpson (ed) *Referendums: Constitutional and Political Perspectives* (Victoria University Press, Wellington, 1992)

Michael Gallagher and Pier Vincenzo Uleri (eds) *The Referendum Experience in Europe* (St. Martin's Press, New York, 1996)

Paul Harris "Democracy and Referendums" in Alan Simpson (ed) *Referendums: Constitutional and Political Perspectives* (Victoria University Press, Wellington, 1992)

Philip A Joseph *Constitutional and Administrative Law in New Zealand* (2 ed, Brookers, Wellington, 2001)

Richard Mulgan *Politics in New Zealand* (2 ed, Auckland University Press, Auckland, 1997)

Robert A Dahl *Democracy and its Critics* (Yale University Press, New Haven, 1989)

Robert A Dahl *On Democracy* (Yale University Press, New Haven, 1998)

Stephen Church "Crime and Punishment: The Referenda to Reform the Criminal Justice System and Reduce the Size of Parliament" in Jonathan Boston and others (eds) *Left turn: The New Zealand General Election of 1999* (Victoria University Press, Wellington, 2000)

Thomas E Cronin *Direct Democracy: The Politics of Initiative, Referendum and Recall* (Harvard University Press, Cambridge, MA, 1989)

Vernon Bogdanor *The People and the Party System: the Referendum and Electoral Reform in British Politics* (Cambridge University Press, New York, 1981)

Wolf Linder *Swiss Democracy: Possible Solutions to Conflict in Multicultural Societies* (2 ed, MacMillan, New York, 1998)

### **B Journals**

Caroline Morris "Citizens' Referenda: Time to Review?" (2002) March NZLJ 44

Gabriela Wehrle "The Firefighters' Referendum – Should Questions Arising from Industrial Disputes be Excluded from Referenda Held under the Citizens Initiated Referenda Act 1993?" (1997) 27 VUWLR 273

Helena Catt "The Other Democratic Experiment: New Zealand's Experience with Citizens' Initiated Referendum" (1996) 48 Political Science 29

Jeffrey A Dubin and Gretchen A Kalsow "Participation in Direct Legislation: Evidence from the Voting Booth" (1997) 997 California Institute of Technology Social Science Working Paper

### **C Newspaper Articles**

"Acting on Referendums" (30 November 1999) *The Press* Christchurch 4

Alison Tocker "Low Poll Turnout Sparks Rethink of Referendum Rules" (4 December 1995) *The Dominion* Wellington 1

Bob Edlin "A grand exercise in ballot-box absurdity" (8 December 1995) *The Independent* Wellington 10

Brent Edwards "Referendum Law Up for Review" (4 December 1995) *The Evening Post* Wellington 1

"Dialogue: No Power to the People in Citizens' Referendums" (15 February 2001) *New Zealand Herald* Auckland

"GE referendum crusade canned" (4 September 2002) *New Zealand Herald* Auckland

Jane Clifton "Referenda by Phone" (18 August 1996) *Sunday Star Times* Auckland 10

Mel Smith "Referendum Question Fails Scrutiny" (21 January 2000) *Evening Post* Wellington 7

"Referendum a \$10m Nonsense" (4 December 1995) *The Dominion* Wellington 8

#### **D Internet Articles**

John Parkinson *Who Knows Best: the Creation of the Citizens-Initiated Referendum in New Zealand* <<http://socpol.anu.edu.au/~parkinson/nzcir.pdf>> (last accessed 13 August 2002)

Venice Commission *Guidelines for Constitutional Referendums at National Level* <[http://venice.coe.int/docs/2001/CDL-INF\(2001\)010-e.html](http://venice.coe.int/docs/2001/CDL-INF(2001)010-e.html)> (last accessed 13 August 2002)

#### **E Cases**

*Egg Producers Federation v The Clerk of the House of Representatives* (20 June 1994) High Court Wellington CP 128/94 Eichelbaum CJ

#### **F Research Papers and Theses**

Bonnie Laxton-Blinkhorn *Half Hearted Democracy: A Critical Examination of the Operation of Citizens Initiated Referenda in New Zealand* (MPP Thesis, University of Auckland, 1996)

Craig Joseph Press *The Case for Binding Citizens Initiated Referenda in New Zealand* (MPP Research Paper, Victoria University of Wellington, 2000)

Mark W Gobbi *The Quest for Legitimacy: a Comparative Constitutional Study of the Origin and Role of Direct Democracy in Switzerland, California, and New Zealand* (LLM Thesis, Victoria University of Wellington, 1994)

Murray F Douglas *Public Participation in New Zealand Local Government* (MPP Research Paper, Victoria University of Wellington, 1986)

Warrawo  
(MA The

l Government

AS741  
VUW  
A66  
G676  
2002

### **G Encyclopedias**

*The Encyclopedia Americana* (International ed, Grolier, Danbury, Conn., 1985)  
vol 8, Corot to Desdemona

*The New Encyclopaedia Britannica* (15 ed, Encyclopaedia Britannica, Chicago,  
1988) vol 4

### **H Reports, Inquiries and Publications**

Royal Commission on the Electoral System *Report of the Royal Commission on  
the Electoral System: Towards a Better Democracy* (Government Printer,  
Wellington, 1986)

Justice and Electoral Committee *Inquiry into the 1999 General Election* (2001)  
AJHR I.7 C

Ministry of Justice *Pamphlet on the Citizens Initiated Referenda Act 1993*  
<[http://www.justice.govt.nz/pubs/other/pamphlets/2001/citizens\\_referenda.pdf](http://www.justice.govt.nz/pubs/other/pamphlets/2001/citizens_referenda.pdf)>  
(last accessed 13 August 2002)

VICTORIA UNIVERSITY OF WELLINGTON LIBRARY



3 7212 00684033 2

AS741  
VUW  
A66  
G676  
2002

Warrawo (MA The	<b>LAW LIBRARY</b> A Fine According to Library Regulations is charged on Overdue Books	VICTORIA UNIVERSITY OF WELLINGTON  <b>LIBRARY</b>	l Government
<b>G Ency</b>  <i>The Ency</i> vol 8, Cor  <i>The New</i> 1988) vol			Conn., 1985)  ica, Chicago,
<b>H Repor</b>  Royal Con <i>the Electo</i> Wellington  Justice and AJHR I.7 C			Commission on ment Printer,  ction (2001)

Ministry of Justice *Pamphlet on the Citizens Initiated Referenda Act 1993*  
<[http://www.justice.govt.nz/pubs/other/pamphlets/2001/citizens\\_referenda.pdf](http://www.justice.govt.nz/pubs/other/pamphlets/2001/citizens_referenda.pdf)>  
(last accessed 13 August 2002)



AS741  
VUW  
A66  
G676  
2002

