

1994

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Chief Minister)

**Referendum (Machinery Provisions) Bill
1994**

**A BILL
FOR**

An Act relating to referendums

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

- 5 1. This Act may be cited as the *Referendum (Machinery Provisions) Act 1994*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

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(2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

5 (3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

Interpretation

3. (1) In this Act, unless the contrary intention appears—

10 “Commissioner” means the Electoral Commissioner appointed under the Electoral Act;

“concurrent referendum” means a referendum held on the same day as the polling day for an election;

15 “declaration vote”, in relation to a referendum, means a vote cast in accordance with Division 3 of Part X of the Electoral Act as applied by this Act;

“election” has the same meaning as in the Electoral Act;

“election ballot paper” means a ballot paper for an election;

“Electoral Act” means the *Electoral Act 1992*;

20 “enabling law” means a law that provides for a matter, including a proposed law, to be submitted to a referendum;

“entrenching law” means a law required to be submitted to a referendum under subsection 26 (2) of the *Australian Capital Territory (Self-Government) Act 1988* of the Commonwealth;

“referendum” means a referendum of electors;

25 “referendum ballot paper” means a ballot paper for a referendum;

“referendum day” means the day on which a poll for a referendum is required to be held;

“referendum law” means—

- 30 (a) an enabling law;
- (b) an entrenching law; or
- (c) a law required by an entrenching law to be submitted to a referendum;

“referendum option” means an option put, or to be put, to voters at a referendum;

“separate referendum” means a referendum held on a day other than the polling day for an election.

(2) Unless the contrary intention appears, expressions used in this Act have the same meaning as in the Electoral Act.

5 Interpretation of applied provisions of Electoral Act

4. (1) Unless the contrary intention appears, an expression used in the Electoral Act as applied by this Act has the same meaning as in that Act, so far as that meaning is applicable, with the necessary changes, in relation to a referendum.

10 (2) In the application of the Electoral Act, unless the contrary intention appears—

- 15 (a) a reference to a ballot paper (including the form of a ballot paper), a ballot box, or other thing shall be taken to be a reference to a ballot paper (including the form of a ballot paper), ballot box or corresponding thing in relation to a referendum;
- (b) a reference to an election shall be taken to be a reference to a referendum;
- 20 (c) a reference to an election period, or a pre-election period, shall be taken to be a reference to a referendum period, or a pre-referendum period, that corresponds with the relevant period specified in relation to an election;
- 25 (d) a reference to electoral matter shall be taken to be a reference to matter that is intended or is likely to affect voting in a referendum, and includes any matter that contains an express or implied reference to a referendum or to any of the matters on which electors are required to vote in a referendum;
- 30 (e) a reference to an electoral paper shall be taken to be a reference to any document, form or notice provided for, or required, under the Electoral Act, as applied by this Act, for the purposes of a referendum;
- (f) a reference to a poll shall be taken to be a reference to the taking of the votes of electors for the purposes of a referendum;
- (g) a reference to a polling day in relation to a referendum shall be taken to be a reference to a referendum day;
- 35 (h) a reference to a polling place or a scrutiny centre in relation to a referendum shall be taken to be a reference—
 - (i) in the case of a concurrent referendum—to the polling place or a scrutiny centre appointed for the election under section 119 of the Electoral Act; and

- (ii) in the case of a separate referendum—to a polling place or a scrutiny centre appointed for the referendum under section 119 of the Electoral Act, as applied by this Act;
- 5 (j) a reference to a pre-election period shall be taken to be a reference to a pre-referendum period that corresponds with the period specified in relation to an election;
- (k) a reference to a scrutineer shall be taken to be a reference to a scrutineer appointed for the purposes of a referendum; and
- 10 (m) a reference to “this Act” shall be read as a reference to the Electoral Act as applied by this Act.

Application

5. (1) A referendum for the purposes of a referendum law shall be held in accordance with this Act.

- 15 (2) This Act applies in relation to a referendum referred to in subsection (1) except to the extent that a referendum law provides otherwise.

Commission staff

- 20 6. (1) For the purposes of a referendum, sections 32 and 33 of the Electoral Act apply, so far as the same are applicable, with the necessary changes, in the same way as those provisions apply for the purposes of an election.

(2) In particular, a person appointed to be an officer under section 33 of the Electoral Act for the purposes of that Act shall be taken to be so appointed for the purposes of that Act as applied by this Act.

25 Timing of referendums

7. (1) Subject to subsection (2), a poll for a referendum shall be held on the polling day for the next ordinary election ascertained in accordance with the Electoral Act.

- 30 (2) If a referendum law provides for a referendum day other than a polling day referred to in subsection (1), then, unless the referendum law provides otherwise, the poll for the referendum shall be held on a Saturday fixed by the Executive by notice in the *Gazette* not being—

- 35 (a) a day that occurs between the commencement of a pre-election period and the expiration of the period of 36 days after the polling day for the relevant election; or
- (b) the day for—
- (i) an election of Senators;

(ii) a general election of members of the House of Representatives; or

(iii) a referendum held under a law of the Commonwealth;

5 unless the Minister arranges with the appropriate Minister of the Crown of the Commonwealth for the poll for the referendum to be held on that day.

Arguments for and against referendum options

8. (1) Where, within 30 days of the passage of a referendum law, the Commissioner receives—

10 (a) an authorised statement, consisting of not more than 2,000 words, of the arguments in favour of the matter to be submitted to referendum; or

(b) an authorised statement, consisting of not more than 2,000 words, of the arguments against the matter to be submitted to referendum;

15 the Commissioner shall, not later than 14 days before the relevant referendum day, cause each argument to be printed in a similar typeface and typestyle in a pamphlet containing the relevant arguments and to be posted, as nearly as practicable—

(c) to each elector; or

20 (d) to each household in the Territory.

(2) In subsection (1)—

“authorised statement” means—

25 (a) in the case of a statement referred to in paragraph (1) (a)—
a statement authorised by a majority of the members of the Assembly who voted in favour of the relevant referendum law; and

(b) in the case of a statement referred to in subsection (1) (b)—
a statement authorised by a majority of the members of the Assembly who voted against the relevant referendum law.

30 **Closure of rolls**

9. For the purposes of a referendum, the procedures for the closure of a roll of electors kept under the Electoral Act shall, subject to the necessary changes, be the same as the procedures for the closure of a roll of electors for the purposes of an election.

Arrangements for referendums

10. (1) The purpose of this section is to ensure that, as far as practicable, the arrangements that apply in relation to a referendum are the same as the arrangements for an election.

5 (2) For the purpose of this section, Division 3 of Part IX of the Electoral Act applies, so far as the same is applicable, with the necessary changes.

(3) In particular, that Division applies—

10 (a) subject to a referendum law providing for the appointment of scrutineers for the purposes of a referendum;

(b) in the case of a separate referendum, subject to —

(i) each MLA being entitled to appoint a scrutineer to represent the member during the voting for the referendum, or during the scrutiny for the referendum, or both; and

15 (ii) sections 122 and 123 of the Electoral Act being construed, with the necessary changes, for the purpose of giving effect to subparagraph (i); and

(c) in the case of a concurrent referendum, subject to—

20 (i) a person appointed as a scrutineer by a candidate for an election being taken to be appointed also for the purposes of the referendum;

(ii) places appointed to be polling places or scrutiny centres for the election being taken to be appointed also for the purposes of the referendum;

25 (iii) administrative arrangements made for the election, so far as the same are applicable, being taken to be made also for the purposes of the referendum; and

(iv) the same certified list of electors being used for the purposes of both the election and the referendum.

30 **Ballot papers**

11. (1) A referendum ballot paper—

(a) shall set out the referendum options;

(b) shall be in accordance with the form, if any, ascertained in accordance with the relevant referendum law;

35 (c) shall be printed in accordance with the requirements, if any, of the relevant referendum law; and

(d) shall bear an official mark in the approved form.

(2) The Commissioner may determine the colour of the paper on which referendum ballot papers are to be printed.

(3) If a referendum law does not make provision in relation to—

- 5 (a) the form of the referendum ballot paper; or
(b) the printing of the referendum ballot paper;

the form and printing of the referendum ballot paper shall be ascertained in accordance with the regulations.

10 (4) Where such regulations are in force, a reference in this Act to a referendum ballot paper shall be read as a reference to a referendum ballot paper in the form ascertained in accordance with the regulations except to the extent that such regulations are inconsistent with a referendum law.

Voting at a referendum

15 12. (1) The purpose of this section is to ensure that, as far as practicable, voting at a referendum is conducted in the same way as voting at an election.

(2) For the purpose of this section, Part X of the Electoral Act applies, so far as the same is applicable, with the necessary changes.

(3) In particular—

- 20 (a) the procedures for voting at a referendum shall be the same as the procedures for voting at elections, so far as such procedures are applicable;
- 25 (b) an elector shall record his or her vote on a referendum ballot paper by marking the ballot paper in accordance with the directions printed lawfully on it;
- 30 (c) an officer shall not issue a referendum ballot paper unless the particulars required under section 11 are printed or endorsed on the ballot paper;
- (d) a reference in paragraph 151 (1) (b) of the Electoral Act to how-to-vote cards made available by a candidate for the purposes of an election shall be taken to be a reference to additional matter made available for the purposes of a referendum in accordance with a referendum law or the regulations except to the extent that such regulations are inconsistent with a referendum law;
- 35 (e) section 129 and Division 6 of Part X of the Electoral Act only apply in relation to a separate referendum; and

- (f) Part X applies subject to the modifications set out in Part 1 of the Schedule.
- (4) For the purposes of a concurrent referendum—
- 5 (a) the same ballot boxes may be used for the election and the referendum;
- (b) subject to paragraph (c), a referendum ballot paper shall be issued to a voter at the same time as he or she is issued with an election ballot paper;
- 10 (c) a voter who, on surrendering a spoilt election ballot paper, is issued with another election ballot paper, need not be issued with a another referendum ballot paper;
- (d) a person who casts an ordinary vote for the election shall cast his or her vote for the referendum in the same way at the same time and place;
- 15 (e) a person who casts a declaration vote for the election shall cast his or her vote for the referendum in the same way;
- (f) the marked referendum ballot paper of a declaration voter shall be placed in the same envelope as the election ballot paper; and
- 20 (g) the referendum ballot paper of a declaration voter is to be admitted to further scrutiny for the referendum if, and only if, the election ballot paper is admitted to further scrutiny for the election.

Polling in Antarctica

- 25 13. (1) The purpose of this section is to ensure that, as far as practicable, polling in Antarctica for the purposes of a referendum is conducted in the same way as the polling of electors in Antarctica for the purposes of an election.

(2) For the purpose of this section, Part XI of the Electoral Act applies, so far as the same is applicable, with the necessary changes.

- 30 (3) In particular, the directions transmitted by the Commissioner to a returning officer for the preparation of referendum ballot papers shall ensure, so far as practicable, that such ballot papers are the same as ballot papers prepared in accordance with section 11.

Scrutiny

- 35 14. (1) The purpose of this section is to ensure that, as far as practicable, the result of polling at a referendum is ascertained by scrutiny in the same way as for an election.

(2) For the purpose of this section, Part XII of the Electoral Act applies, so far as the same is applicable, with the necessary changes.

(3) In particular—

- 5 (a) subject to a referendum law, the formality of a referendum ballot paper shall be determined in accordance with section 180 of the Electoral Act, so far as the same is applicable, with the necessary changes;
- 10 (b) without limiting the generality of paragraph (a), a reference in paragraphs 180 (2) (b) and (c) and (3) (a), subparagraphs 182 (3) (c) (ii) and (4) (a) (i) and 184 (1) (b) (i) of the Electoral Act to a first preference, or a preference, in relation to a candidate or a candidate square, as the case may be, shall be taken to be a reference to a vote in relation to a referendum option;
- 15 (c) a reference to a candidate in section 187 of the Electoral Act in relation to a request for a recount of referendum ballot papers shall be taken to be a reference to a person having authority to make such a request under a referendum law or the regulations except to the extent that such regulations are inconsistent with a referendum law; and
- 20 (d) Part XII applies subject to the modifications specified in Part 2 of the Schedule.

(4) Unless a referendum law otherwise provides, the result of a referendum shall be ascertained and notified in the following manner:

- 25 (a) the Commissioner shall arrange for all unrejected referendum ballot papers to be counted to ascertain—
 - (i) the number of votes in favour of each referendum option;
 - (ii) the number of votes opposed to each referendum option; and
 - (iii) the total number of informal ballot papers; and
- 30 (b) as soon as practicable after the count is concluded, the Commissioner shall by notice published in the *Gazette* set out the numbers so counted and declare the result of the referendum.

Financial disclosure

- 35 15. (1) The purpose of this section is to ensure that, as far as practicable, the provisions of Part XIV of the Electoral Act, as applied by this section, apply in relation to a referendum in the same way as those provisions apply in relation to an election.

(2) For the purpose of this section, Divisions 1, 4, 5, 7 and 8 of Part XIV apply, so far as the same are applicable, with the necessary changes.

(3) In particular—

- 5 (a) a reference in subsection 201 (1) of the Electoral Act to the disclosure period in relation to an election shall be taken to be a reference to the disclosure period, in relation to a referendum, commencing 37 days before the expiration of polling day for the referendum and ending on the expiration of 30 days after polling day for the referendum;
- 10 (b) a reference in Part XIV, as applied by this section, to the amount of a gift shall, where the amount is to be determined in accordance with regulations made for the purposes of section 202 of the Electoral Act, be taken to be a reference to the amount so determined; and
- 15 (c) that Part applies subject to the modifications set out in Part 3 of the Schedule.

Disputed referendums

20 16. (1) The purpose of this section is to ensure that, as far as practicable, the validity of a referendum may be disputed in the same way as the validity of an election may be disputed and not otherwise.

(2) For the purpose of this section, Part XVI of the Electoral Act applies, so far as the same is applicable, with the necessary changes.

(3) In particular—

- 25 (a) without limiting the generality of section 256 of the Electoral Act, as applied, the validity of a referendum shall be taken to be in dispute if the notice of the voting at the referendum, published under paragraph 14 (4) (b), is called into question; and
- (b) Part XVI applies subject to the modifications set out in Part 4 of the Schedule.
- 30 (4) A referendum is not invalidated merely because the Commissioner may not have strictly complied with section 8.

Offences

35 17. (1) The purpose of this section is to ensure that, as far as practicable, the provisions of the Electoral Act creating offences in relation to an election apply in the same way in relation to a referendum.

(2) For the purpose of this section, the provisions referred to in subsection (1) apply, so far as the same are applicable, with the necessary changes.

(3) In particular, Part XVII of the Electoral Act applies—

(a) as if a reference in section 304 of the Electoral Act to an association with a candidate or a political party were taken to be a reference to an association with any of the referendum options;

5 (b) as if a reference to electoral paper in section 308 of the Electoral Act were taken to be a reference to any document or form provided for by or under the Electoral Act, as applied by this Act, in relation to a referendum; and

(c) subject to the modification set out in Part 5 of the Schedule.

10 **Enforcement**

18. (1) The purpose of this section is to ensure that, as far as practicable, enforcement proceedings under Part XVIII of the Electoral Act in respect of a contravention of that Act in its application to elections apply, in the same way in respect of a contravention of that Act, as applied by this
15 Act, in its application to referendums.

(2) For the purpose of this section, Part XVIII of the Electoral Act applies, so far as the same is applicable, with the necessary changes.

(3) In particular, a reference in paragraphs 321 (1) (a) and 322 (1) (a) of the Electoral Act to a candidate in relation to an election shall be taken to be a reference to a person who, for the purposes of a referendum, is
20 ascertained in accordance with a referendum law or the regulations except to the extent that such regulations are inconsistent with a referendum law.

Miscellaneous

19. (1) The purpose of this section is to ensure that, as far as
25 practicable, the provisions of Part XIX of the Electoral Act apply in relation to a referendum in the same way as those provisions apply in relation to an election.

(2) For the purpose of this section, Part XIX of the Electoral Act applies, so far as the same is applicable, with the necessary changes.

30 (3) In particular, Part XIX applies subject to the modifications set out in Part 6 of the Schedule.

Regulations

20. (1) The Executive may make regulations for the purposes of this Act.

35 (2) Without limiting the generality of subsection (1), the regulations may make provision, not inconsistent with a referendum law, in relation to matters relevant to a particular referendum or to referendums generally, including—

- (a) the printing of ballot papers;
 - (b) the appointment of scrutineers;
 - (c) scrutiny procedures, including the formality of ballot papers; and
 - (d) persons entitled to dispute referendums.
- 5 (3) The regulations may prescribe penalties not exceeding—
- (a) if the offender is a natural person—\$1,000; or
 - (b) if the offender is a body corporate—\$5,000;
- for offences against the regulations.

SCHEDULE

Sections 12, 14, 15,
16, 17 and 19

MODIFICATIONS OF ELECTORAL ACT AS APPLIED IN RELATION TO REFERENDUMS

Part 1

Modifications of Part X—Voting

Section 130—

Omit the section, substitute the following section:

Multiple votes prohibited

“130. An elector shall not vote more than once at the same referendum.

Penalty: \$5,000 or imprisonment for 6 months, or both.”.

Section 132—

Omit the section.

Paragraph 134 (b)—

Omit “section 132”, substitute “the directions on it”.

Subparagraph 135 (4) (c) (i)—

Omit “section 132”, substitute “the directions on it”.

Section 155—

Omit the section.

SCHEDULE—continued

Part 2

Modifications of Part XII—The Scrutiny

Section 185—

Omit the section.

Section 189—

Omit the section.

Part 3

Modifications of Part XIV—Election Funding and Financial Disclosure

Section 200—

Omit the section.

Subsection 201 (2)—

Omit the subsection.

Section 217—

Omit the section.

Section 218—

Omit the section.

Section 219—

Omit the section.

Section 220—

Omit the section, substitute the following section:

Disclosure of gifts by person incurring certain expenditure

“220. (1) Where a person—

- (a) incurs expenditure for the purposes of a referendum during the disclosure period in relation to the referendum;
- (b) uses the whole or any part of 1 or more gifts received by the person at any time to enable the person to incur expenditure for the purposes of a referendum or to reimburse that person for incurring expenditure for the purposes of a referendum; and

SCHEDULE—continued

(c) the amount of each gift is equal to or exceeds \$1,000;

the person shall, before the expiration of 15 weeks after polling day for the referendum, give the Commissioner a return in the approved form in relation to that gift or gifts.

“(2) A return shall, in relation to each gift referred to in subsection (1), specify—

- (a) the amount of the gifts;
- (b) the date on which it was received; and
- (c) the defined details.

“(3) Subsection (1) does not apply to a person if the amount of expenditure incurred by the person for the purposes of a referendum during the disclosure period is less than \$1,000.

“(4) In this section, a reference to incurring of expenditure in relation to a referendum shall be read as a reference to incurring of expenditure in relation to—

- (a) publishing any matter that is intended or is likely to affect voting in a referendum (including publishing by radio or television);
- (b) otherwise publishing a view on an issue in a referendum; or
- (c) making a gift to a person on the understanding that the person or another person will apply, either directly or indirectly, the whole or a part of the gift in a manner referred to in paragraphs (a) and (b).

“(5) For the purposes of subsection (2), 2 or more gifts made by the same person to or for the benefit of a person to whom subsection (1) applies shall be taken to be a single gift.”.

Section 221—

Omit the section.

Section 222—

Omit the section, substitute the following section:

Anonymous gifts

“222. (1) A person shall not accept a gift made for the purposes of a referendum, being a gift the amount of which equals or exceeds \$200, unless—

- (a) the defined details in relation to the gift are known to the person accepting the gift; or

SCHEDULE—continued

- (b) the person making the gift informs the person accepting the gift of the defined details and, at the time when the gift is made, the person accepting it has no grounds for believing that the information provided is not true.

“(2) Subsection (1) applies to gifts received at any time.

“(3) The reference in subsection (1) to a gift made by a person includes a reference to a gift made on behalf of the members of an unincorporated association.

“(4) For the purposes of this section, 2 or more gifts made by the same person for the purposes of a referendum shall be deemed to be a single gift.

“(5) Where a person receives a gift in contravention of subsection (1), an amount equal to the amount of the gift is payable by that person to the Territory and may be recovered by the Territory as a debt due to the Territory by that person.”.

Subsection 223 (2)—

Omit the subsection, substitute the following subsection:

“(2) A reference in this Division to a participant in a referendum shall be read as a reference to a person by whom, or with the authority of whom, referendum expenditure in relation to a referendum is incurred.”.

Subsections 224 (1) and (2)—

Omit the subsections.

Subsection 224 (3)—

Omit the subsection, substitute the following subsection:

“(3) Where referendum expenditure in relation to a referendum was incurred by or with the authority of a person, the person shall, before the expiration of 15 weeks after polling day for the referendum, give the Commissioner a return, in writing, in an approved form, specifying details of the referendum expenditure.”.

Section 225—

Omit the section.

Section 227—

Omit the section.

Subsection 236 (3)—

Omit the subsection.

SCHEDULE—continued

Subsection 237 (1) (definition of “prescribed person”)—
Omit “, 221 (1)”.

Subsection 239 (2)—
Omit the subsection.

Subsection 239 (3)—
Omit the subsection, substitute the following subsection:

“(3) Where a person would, in the normal course of business or administration, transfer to another person a record referred to in subsection (1)—

- (a) the person shall be taken not to have contravened the subsection by so transferring the record; and
- (b) the person to whom the record is transferred shall retain the record for the period for which the person who transferred the record would have had to retain the record had the record not been transferred.”.

Subsection 241 (2)—
Omit the subsection.

Subsection 242 (3)—
Omit the subsection, substitute the following subsection:

“(3) A request may be made by the person who gave the return.”.

Part 4**Modifications of Part XVI—Disputed Elections, Eligibility and Vacancies**

Paragraph 263 (3) (a)—

Omit “electorate to which the relevant election application relates”, substitute “Territory”.

Subparagraph 263 (9) (d) (i)—

Omit “electorate to which the election application relates”, substitute “Territory”.

SCHEDULE—continued

Paragraphs 265 (b) and (c)—

Omit the paragraphs, substitute the following paragraphs:

- “(b) declare whether a particular vote was cast in favour of, or against, a particular referendum option;
- (c) declare whether a referendum ballot paper is informal; or”.

Subsection 266 (1)—

Omit “or (b)”.

Subsection 266 (2)—

Omit the subsection, substitute the following subsection:

“(2) The Court shall not make a declaration under paragraph 265 (a) on the ground of any illegal practice unless satisfied that—

- (a) the result of the referendum was, or was likely to have been, affected by the illegal practice; and
- (b) it is just to make the declaration.”.

Subsection 266 (3)—

Omit “(whether the Court makes a declaration under paragraph 265 (a) or (b) on that ground or not)”.

Subsection 275 (1)—

Omit “in accordance with section 101”, substitute “on a Saturday, specified by the Executive by notice in the *Gazette*, being not earlier than 36 days, nor later than 90 days, after the day on which the declaration was made.”.

Subsections 275 (2) and (3)—

Omit the subsections, substitute the following subsection:

“(2) Where a declaration is made by the Court under paragraph 265 (b) or (c) which has the effect of altering the result of a referendum, the Commissioner shall by notice published in the *Gazette* set out the effect of the declaration of the Court in relation to—

- (a) the number of votes in favour of each referendum option;
- (b) the number of votes opposed to each referendum option; and
- (c) the total number of informal ballot papers;

and declare the result of the referendum in accordance with the declaration of the Court.”.

SCHEDULE—continued**Subsection 275 (4)—**

Omit “(1), (2) or (3)”, substitute “(1) or (2)”.

Part 5**Modification of Part XVII—Electoral Offences****Subsection 289 (1)—**

Omit the subsection, substitute the following subsection:

“(1) A person shall not discriminate against another person on the ground of the making by the other person of a donation for the purposes of a referendum.

Penalty: \$5,000 or imprisonment for 6 months, or both.”.

Part 6**Modifications of Part XIX—Miscellaneous****Paragraph 335 (a)—**

Omit the paragraph, substitute the following paragraph:

“(a) the expiration of the period within which a referendum can be disputed; or”.

Section 341—

Omit the section.