



Australian Capital Territory

# **Referendum (Machinery Provisions) Act 1994**

**A1994-79**

**Republication No 5**

**Effective: 21 May 2008**

Republication date: 21 May 2008

Last amendment made by A2008-13

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Referendum (Machinery Provisions) Act 1994* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 21 May 2008. It also includes any amendment, repeal or expiry affecting the republished law to 21 May 2008.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

# Referendum (Machinery Provisions) Act 1994

## Contents

---

	Page
1 Name of Act	2
2 Dictionary	2
3 Notes	2
3A Terms used in Electoral Act	2
4 Interpretation of applied provisions of Electoral Act	2
5 Application	4
6 Commission staff	4
7 Timing of referendums	4
8 Arguments for and against referendum options	5
9 Closure of rolls	6
10 Arrangements for referendums	6
11 Ballot papers	7
12 Voting at a referendum	8
13 Polling in Antarctica	9

---

R5  
21/05/08

Referendum (Machinery Provisions) Act 1994  
Effective: 21/05/08

contents 1

## Contents

---

		Page
14	Scrutiny	10
15	Financial disclosure	11
16	Disputed referendums	12
17	Offences	12
18	Enforcement	13
19	Miscellaneous	13
20	Approved forms	14
21	Regulation-making power	14
<b>Schedule 1</b>	<b>Modifications of Electoral Act as applied in relation to referendums</b>	<b>15</b>
<b>Part 1.1</b>	<b>Modifications of part 10—voting</b>	<b>15</b>
<b>Part 1.2</b>	<b>Modifications of part 12—the scrutiny</b>	<b>17</b>
<b>Part 1.3</b>	<b>Modifications of part 14—election funding and financial disclosure</b>	<b>18</b>
<b>Part 1.4</b>	<b>Modifications of part 16—disputed elections, eligibility and vacancies</b>	<b>23</b>
<b>Part 1.5</b>	<b>Modification of part 17—electoral offences</b>	<b>25</b>
<b>Part 1.6</b>	<b>Modifications of part 19—miscellaneous</b>	<b>26</b>
<b>Dictionary</b>		<b>27</b>
<b>Endnotes</b>		
1	About the endnotes	29
2	Abbreviation key	29
3	Legislation history	30
4	Amendment history	31
5	Earlier republications	33



Australian Capital Territory

# Referendum (Machinery Provisions) Act 1994

---

An Act relating to referendums

---

**1 Name of Act**

This Act is the *Referendum (Machinery Provisions) Act 1994*.

**2 Dictionary**

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act.

*Note 2* A definition in the dictionary applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

**3 Notes**

A note included in this Act is explanatory and is not part of this Act.

*Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

**3A Terms used in Electoral Act**

A term used in the Electoral Act has the same meaning in this Act.

**4 Interpretation of applied provisions of Electoral Act**

- (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.
- (2) In the application of the Electoral Act, unless the contrary intention appears—
  - (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; and

- (b) a reference to an election shall be taken to be a reference to a referendum; and
- (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; and
- (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; and
- (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; and
- (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; and
- (g) a reference to a polling day in relation to a referendum shall be taken to be a reference to a referendum day; and
- (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 the Electoral Act, section 119; and
  - (ii) in the case of a separate referendum—to a polling place or a scrutiny centre appointed for the referendum under the Electoral Act, section 119 as applied by this Act; and
- (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; and

- (k) a reference to a scrutineer shall be taken to be a reference to a scrutineer appointed for the purposes of a referendum; and
- (m) a reference to *this Act* shall be read as a reference to the Electoral Act as applied by this Act.

## **5 Application**

- (1) A referendum for the purposes of a referendum law shall be held in accordance with this Act.
- (2) This Act applies in relation to a referendum referred to in subsection (1) except to the extent that a referendum law provides otherwise.

## **6 Commission staff**

- (1) For the purposes of a referendum, the Electoral Act, sections 32 and 33 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 the Electoral Act, section 33 for the purposes of that Act shall be taken to be so appointed for the purposes of that Act as applied by this Act.

## **7 Timing of referendums**

- (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.
- (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, in writing, not being—
  - (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; or
  - (ii) a general election of members of the House of Representatives; or
  - (iii) a referendum held under a law of the Commonwealth;  
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.

- (3) An instrument under subsection (2) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

## **8 Arguments for and against referendum options**

- (1) Where, within 30 days of the passage of a referendum law, the commissioner receives—
  - (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;

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
- (d) to each household in the Territory.

(2) In subsection (1):

*authorised statement* means—

- (a) in the case of a statement referred to in subsection (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.

## **9 Closure of rolls**

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.

## **10 Arrangements for referendums**

- (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.
- (2) For the purpose of this section, the Electoral Act, division 9.4 applies, so far as the same is applicable, with the necessary changes.
- (3) In particular, that division applies—
  - (a) subject to a referendum law providing for the appointment of scrutineers for the purposes of a referendum; and
  - (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

- (ii) the Electoral Act, sections 122 and 123 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—
  - (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; and
  - (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; and
  - (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.

## **11 Ballot papers**

- (1) A referendum ballot paper—
  - (a) shall set out the referendum options; and
  - (b) shall be in accordance with the form (if any) ascertained in accordance with the relevant referendum law; and
  - (c) shall be printed in accordance with the requirements (if any) of the relevant referendum law; and
  - (d) shall bear an official mark.

*Note* If a form is approved under s 20 (Approved forms) for an official mark, the form must be used.
- (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—

(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.

- (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.
- (5) For this section, a referendum ballot paper may be in electronic form.

## **12 Voting at a referendum**

- (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, the Electoral Act, part 10 applies, so far as the same is applicable, with the necessary changes.
- (3) In particular—
- (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; and
- (b) an elector shall record his or her vote on a referendum ballot paper by marking the ballot paper in accordance with the directions lawfully on it; and
- (c) an officer shall not issue a referendum ballot paper unless the particulars required under section 11 are contained on the ballot paper; and
- (d) The Electoral Act, section 129 and division 10.7 only apply in relation to a separate referendum; and

- (e) Part 10 applies subject to the modifications set out in schedule 1, part 1.1.
- (4) For the purposes of a concurrent referendum—
  - (a) the same ballot boxes may be used for the election and the referendum; and
  - (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; and
  - (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; and
  - (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; and
  - (e) a person who casts a declaration vote for the election shall cast his or her vote for the referendum in the same way; and
  - (f) the marked referendum ballot paper of a declaration voter shall be placed in the same envelope as the election ballot paper; and
  - (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.

### **13 Polling in Antarctica**

- (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, the Electoral Act, part 11 applies, so far as the same is applicable, with the necessary changes.

- (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.

## **14 Scrutiny**

- (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, the Electoral Act, part 12 applies, so far as the same is applicable, with the necessary changes.
- (3) In particular—
  - (a) subject to a referendum law, the formality of a referendum ballot paper shall be determined in accordance with the Electoral Act, section 180, so far as the same is applicable, with the necessary changes; and
  - (b) without limiting paragraph (a), a reference in the Electoral Act, sections 118A (5) (b), 180 (2) (b) and (c) and (3) (a), 182 (4) (c) (ii) and (5) (a) (i), 184 (1) (b) (i) and 184 (2) 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; and
  - (c) a reference to a candidate in the Electoral Act, section 187 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
  - (d) Part 12 applies subject to the modifications specified in schedule 1, part 1.2.

- (4) Unless a referendum law otherwise provides, the result of a referendum shall be ascertained and notified in the following manner:
- (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; and
    - (ii) the number of votes opposed to each referendum option; and
    - (iii) the total number of informal ballot papers;
  - (b) as soon as practicable after the count is concluded, the commissioner must prepare a notice setting out the numbers so counted and declaring the result of the referendum.
- (5) A notice under subsection (4) (b) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

## **15 Financial disclosure**

- (1) The purpose of this section is to ensure that, as far as practicable, the provisions of the Electoral Act, part 14, 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 14.1, 14.4, 14.5, 14.7 and 14.8 apply, so far as the same are applicable, with the necessary changes.
- (3) In particular—
- (a) a reference in the Electoral Act, section 201 (1) 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; and

- (b) a reference in part 14, 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 the Electoral Act, section 202 be taken to be a reference to the amount so determined; and
- (c) that part applies subject to the modifications set out in schedule 1, part 1.3.

## **16 Disputed referendums**

- (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, the Electoral Act, part 16 applies, so far as the same is applicable, with the necessary changes.
- (3) In particular—
  - (a) without limiting the Electoral Act, section 256 as applied, the validity of a referendum is taken to be in dispute if the notice of the voting at the referendum, prepared under section 14 (4) (b), is called into question; and
  - (b) Part 16 applies subject to the modifications set out in schedule 1, part 1.4.
- (4) A referendum is not invalidated merely because the commissioner may not have strictly complied with section 8.

## **17 Offences**

- (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, the Electoral Act, part 17 applies—
  - (a) as if a reference in the Electoral Act, section 304 to an association with a registered party or candidate were taken to be a reference to an association with any of the referendum options; and
  - (b) subject to the modification set out in schedule 1, part 1.5.

## **18 Enforcement**

- (1) The purpose of this section is to ensure that, as far as practicable, enforcement proceedings under the Electoral Act, part 18 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 Act, in its application to referendums.
- (2) For the purpose of this section, the Electoral Act, part 18 applies, so far as the same is applicable, with the necessary changes.
- (3) In particular, a reference in the Electoral Act, sections 321 (1) (a) and 322 (1) (a) 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 ascertained in accordance with a referendum law or the regulations except to the extent that such regulations are inconsistent with a referendum law.

## **19 Miscellaneous**

- (1) The purpose of this section is to ensure that, as far as practicable, the provisions of the Electoral Act, part 19 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, the Electoral Act, part 19 applies, so far as the same is applicable, with the necessary changes.
- (3) In particular, part 19 applies subject to the modifications set out in schedule 1, part 1.6.

## **20 Approved forms**

- (1) The commissioner may, in writing, approve forms for this Act.
- (2) If the commissioner approves a form for a particular purpose, the approved form must be used for that purpose.
- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

## **21 Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (2) 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 the following matters:
  - (a) the printing of ballot papers;
  - (b) the appointment of scrutineers;
  - (c) scrutiny procedures, including the formality of ballot papers;
  - (d) people entitled to dispute referendums.
- (3) The regulations may also prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.

---

## **Schedule 1      Modifications of Electoral Act as applied in relation to referendums**

(see ss 12, 14, 15, 16, 17 and 19)

### **Part 1.1              Modifications of part 10—voting**

#### **[1.1]      Section 130**

*substitute*

#### **130      Multiple votes prohibited**

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

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

#### **[1.2]      Section 132**

*omit*

#### **[1.3]      Section 134 (b)**

*omit*

section 132

*substitute*

the directions on it

**[1.4] Section 135 (4) (c) (i)**

*omit*

section 132

*substitute*

the directions on it

**[1.5] Section 155**

*omit*

## **Part 1.2**                      **Modifications of part 12—the scrutiny**

**[1.6]      Section 185**

*omit*

**[1.7]      Section 189**

*omit*

## Part 1.3                      Modifications of part 14— election funding and financial disclosure

**[1.8]            Section 200**

*omit*

**[1.9]            Section 201 (2)**

*omit*

**[1.10]          Section 217**

*omit*

**[1.13]          Section 220**

*substitute*

**220            Disclosure of gifts by person incurring certain  
expenditure**

- (1) Where a person—
- (a) incurs expenditure for the purposes of a referendum during the disclosure period in relation to the referendum; and
  - (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
  - (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 relation to that gift or gifts.

*Note*        If a form is approved under s 340A (Approved forms) for a return, the form must be used.

- 
- (2) A return shall, in relation to each gift referred to in subsection (1), specify—
- (a) the amount of the gifts; and
  - (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); or
  - (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.

**[1.14] Section 221**

*omit*

**[1.15] Section 221A**

*omit*

**[1.16] Section 222**

*substitute*

**222 Anonymous gifts**

- (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
  - (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.

**[1.17] Section 223, definition of *participant***

*substitute*

***participant***, in a referendum, means a person by whom, or with the authority of whom, referendum expenditure in relation to a referendum is incurred.

---

**[1.18] Section 224 (1), (2) and (3)**

*omit*

**[1.19] Section 224 (4)**

*substitute*

- (4) 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, specifying details of the referendum expenditure.

*Note* If a form is approved under s 340A (Approved forms) for a return, the form must be used.

**[1.20] Section 225**

*omit*

**[1.21] Section 227**

*omit*

**[1.23] Section 239 (2)**

*omit*

**[1.24] Section 239 (3)**

*substitute*

- (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.

**[1.25] Section 241 (2)**

*omit*

**[1.26] Section 242 (3)**

*substitute*

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

---

## **Part 1.4**                      **Modifications of part 16— disputed elections, eligibility and vacancies**

### **[1.27] Section 265 (b) and (c)**

*substitute*

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

### **[1.28] Section 266 (1)**

*omit*

or (b)

### **[1.29] Section 266 (2)**

*substitute*

- (2) The court shall not make a declaration under section 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.

### **[1.30] Section 266 (3)**

*omit*

(whether the court makes a declaration under section 265 (a) or (b) on that ground or not)

**[1.31] Section 275**

*substitute*

**275 Effect of declarations**

- (1) If the court declares a referendum void, another referendum must be held on a Saturday chosen in writing by the Executive.
- (2) The Executive may only choose a Saturday that is at least 36 days, and not later than 90 days, after the day the choice is made.
- (3) An instrument under subsection (1) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

- (4) If a declaration is made by the court under section 265 (b) or (c) that has the effect of altering the result of a referendum, the commissioner must prepare a written notice—
  - (a) setting out the effect of the declaration of the court in relation to—
    - (i) the number of votes in favour of each referendum option; and
    - (ii) the number of votes opposed to each referendum option; and
    - (iii) the total number of informal ballot papers; and
  - (b) declaring the result of the referendum in accordance with the declaration of the court.

- (5) A notice is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

- (6) A declaration by the court mentioned in subsection (1) or (4) takes effect at the end of the day the declaration is made.

## **Part 1.5**                      **Modification of part 17—electoral offences**

### **[1.32] Section 289 (1)**

*substitute*

- (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.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.



---

## Dictionary

(see s 2)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1 defines the following terms:

- ACT
- Commonwealth
- electoral commissioner
- the Territory.

***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.

***declaration vote***, in relation to a referendum, means a vote cast in accordance with the Electoral Act, division 10.3 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*.

***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 the *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), section 26 (2).

***printing***, for a referendum ballot paper, includes displaying an electronic referendum ballot paper.

***referendum*** means a referendum of electors.

***referendum ballot paper*** means a ballot paper for a referendum, and includes an electronic referendum ballot paper.

***referendum day*** means the day on which a poll for a referendum is required to be held.

***referendum law*** means—

- (a) an enabling law; or
- (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.

## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
cl = clause	pres = present
def = definition	prev = previous
dict = dictionary	(prev...) = previously
disallowed = disallowed by the Legislative Assembly	pt = part
div = division	r = rule/subrule
exp = expires/expired	reg = regulation/subregulation
Gaz = Gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

## Endnotes

3 Legislation history

---

### 3 Legislation history

#### **Referendum (Machinery Provisions) Act 1994 No 79**

notified 23 November 1994 (Gaz 1994 No S247)  
s 1, s 2 commenced 23 November 1994 (s 2 (1))  
remainder (ss 3-20) 16 December 1994 (s 2 (2) and Gaz 1994 No S295)

as amended by

#### **Electoral (Amendment) Act 1996 No 56 s 35**

notified 29 November 1996 (Gaz 1996 No S320)  
s 35 commenced 29 November 1996 (s 2)

#### **Statute Law Revision (Penalties) Act 1998 No 54 sch**

notified 27 November 1998 (Gaz 1998 No S207)  
s 1, s 2 commenced 27 November 1998 (s 2 (1))  
sch commenced 9 December 1998 (s 2 (2) and Gaz 1998 No 49)

#### **Electoral Amendment Act 2000 (No 2) No 76 pt 3**

notified 21 December 2000 (Gaz 2000 No S69)  
s 1, s 2 commenced 21 December 2000 (IA s 10B)  
pt 3 (ss 25-29) commenced 11 April 2001 (s 2 and Gaz 2001 No 14)

#### **Electoral Amendment Act 2001 No 36 sch 3**

notified 29 June 2001 (Gaz 2001 No S36)  
sch 3 commenced 29 June 2001 (s 2)

#### **Legislation (Consequential Amendments) Act 2001 No 44 pt 325**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 325 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

#### **Justice and Community Safety Legislation Amendment Act 2001 No 70 sch 1**

notified LR 14 September 2001  
s 1, s 2 commenced 14 September 2001 (LA s 75)  
amnds commenced 12 September 2001 (s 2 (3))

**Electoral Amendment Act 2004 A2004-26 s 42**

notified LR 21 May 2004  
 s 1, s 2 commenced 21 May 2004 (LA s 79 (1))  
 s 42 commenced 22 May 2004 (s 2)

**Statute Law Amendment Act 2007 A2007-3 sch 3 pt 3.84**

notified LR 22 March 2007  
 s 1, s 2 taken to have commenced 1 July 2006 (LA s 75 (2))  
 sch 3 pt 3.84 commenced 12 April 2007 (s 2 (1))

**Electoral Legislation Amendment Act 2008 A2008-13 sch 3**

notified LR 20 May 2008  
 s 1, s 2 commenced 20 May 2008 (LA s 75 (1))  
 sch 3 commenced 21 May 2008 (s 2)

**4 Amendment history****Name of Act**

s 1 sub A2007-3 amdt 3.439

**Dictionary**

s 2 om 2001 No 44 amdt 1.3588  
 ins A2007-3 amdt 3.441

**Notes**

s 3 defs reloc to dict A2007-3 amdt 3.440  
 sub A2007-3 amdt 3.441

**Terms used in Electoral Act**

s 3A ins A2007-3 amdt 3.441

**Timing of referendums**

s 7 am 2001 No 44 amdt 1.3589, amdt 1.3590

**Ballot papers**

s 11 am 2000 No 76 s 27; 2001 No 44 amdt 1.3591, amdt 1.3592

**Voting at a referendum**

s 12 am 2000 No 76 s 28; 2001 No 36 amdt 3.1, amdt 3.2

**Scrutiny**

s 14 am 2000 No 76 s 29; 2001 No 44 amdt 1.3593, amdt 1.3594

**Disputed referendums**

s 16 am 2001 No 44 amdt 1.3595

**Offences**

s 17 am 2001 No 36 amdt 3.3; 2001 No 70 amdt 1.70, amdt 1.71;  
 A2004-26 s 42

## Endnotes

4 Amendment history

---

### Approved forms

s 20 am 1998 No 54 sch  
sub 2001 No 44 amdt 1.3596

### Regulation-making power

s 21 ins 2001 No 44 amdt 1.3596

### Modifications of Electoral Act as applied in relation to referendums

sch pt 1.1 am 1998 No 54 sch  
sch pt 1.3 am 1996 No 56 s 35; 2001 No 44 amdts 1.3597-1.3600; 2001  
No 70 amdt 1.72, amdt 1.73; mods renum R3 LA; A2008-13  
amdt 3.1, amdt 3.2  
sch pt 1.4 am 2001 No 44 amdt 1.3601; 2001 No 70 amdt 1.73; mods  
renum R3 LA  
sch pt 1.5 am 1998 No 54 sch; mods renum R3 LA  
sch pt 1.6 mods renum R3 LA

### Dictionary

dict ins A2007-3 amdt 3.442  
def **commissioner** reloc from s 3 A2007-3 amdt 3.440  
def **concurrent referendum** reloc from s 3 A2007-3  
amdt 3.440  
def **declaration vote** reloc from s 3 A2007-3 amdt 3.440  
def **election** reloc from s 3 A2007-3 amdt 3.440  
def **election ballot paper** reloc from s 3 A2007-3 amdt 3.440  
def **Electoral Act** reloc from s 3 A2007-3 amdt 3.440  
def **enabling law** reloc from s 3 A2007-3 amdt 3.440  
def **entrenching law** reloc from s 3 A2007-3 amdt 3.440  
def **printing** ins 2000 No 76 s 26  
reloc from s 3 A2007-3 amdt 3.440  
def **referendum** reloc from s 3 A2007-3 amdt 3.440  
def **referendum ballot paper** am 2000 No 76 s 26  
reloc from s 3 A2007-3 amdt 3.440  
def **referendum day** reloc from s 3 A2007-3 amdt 3.440  
def **referendum law** reloc from s 3 A2007-3 amdt 3.440  
def **referendum option** reloc from s 3 A2007-3 amdt 3.440  
def **separate referendum** reloc from s 3 A2007-3 amdt 3.440

## 5 Earlier replications

Some earlier replications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised replication has been published in electronic pdf format on the ACT legislation register. A selection of authorised replications have also been published in printed format. These replications are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised replication are identical.

Replication No	Amendments to	Replication date
1	A2001-44	11 September 2001
2	A2001-70	26 September 2001
3	A2004-26	22 May 2004
4	A2007-3	12 April 2007

© Australian Capital Territory 2008