

2001

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Attorney-General)

## Referendum Bill 2001

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## Referendum Bill 2001

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### A Bill for

An Act to provide for a referendum to be held about issues relating to  
heroin dependency

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

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2001 118B

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Referendum Act 2001*.

4 **2 Commencement**

5 This Act commences on the day it is notified in the Gazette.

6 **3 Dictionary**

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

8 *Note 1* The dictionary at the end of this Act defines certain words and  
9 expressions used in this Act, and includes references (*signpost*  
10 *definitions*) to other words and expressions defined elsewhere in this  
11 Act.

12 For example, the signpost definition '*formal*, for a referendum ballot  
13 paper—see section 14 (When is a referendum ballot paper formal?).'  
14 means that the expression 'formal' (for a referendum ballot paper) is  
15 defined in s 14 and the definition applies to this Act.

16 *Note 2* A definition in the dictionary (including a signpost definition) applies to  
17 the entire Act unless the definition, or another provision of the Act,  
18 provides otherwise or the contrary intention otherwise appears (see  
19 *Legislation Act 2001*, s 155 and s 156 (1)).

20 **4 Application of Referendum (Machinery Provisions) Act**

21 (1) A word or expression used in the *Referendum (Machinery*  
22 *Provisions) Act 1994* has the same meaning in this Act.

23 (2) In the application of the *Referendum (Machinery Provisions) Act*  
24 *1994* to the referendum, a referendum question is taken to be a  
25 referendum option under that Act.

1   **5    Notes**

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

3       *Note*     See *Legislation Act 2001*, s 127 (1), (4) and (5) for the legal status of  
4               notes.

1     **Part 2**                     **Referendum**

2     **Division 2.1**           **Requirement for referendum,**  
3                               **referendum questions and**  
4                               **referendum ballot paper**

5     **6**       **Requirement for referendum**

6       A referendum must be held to put the referendum questions to  
7       electors.

8       *Note*     Under the *Referendum (Machinery Provisions) Act 1994*, s 7 (1), the  
9                 poll for the referendum must be held on the polling day for the next  
10                ordinary election ascertained in accordance with the Electoral Act.

11    **7**       **First referendum question**

12       The first referendum question is as follows:

13       Do you approve the running, in the ACT, of a trial of a supervised  
14       injecting room for people dependent on heroin?

15    **8**       **Second referendum question**

16       The second referendum question is as follows:

17       Do you approve the conducting of a clinical trial, in the ACT, for  
18       the controlled provision, under medical supervision, of heroin to  
19       people registered as dependent on heroin?

20    **9**       **Form of referendum ballot paper**

21       The referendum ballot paper must be printed in the form set out in  
22       schedule 1.

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1 **Division 2.2**                      **Arguments for and against**  
2    **referendum questions**

3 **10**      **Developing the arguments**

- 4        (1) An MLA who wants to participate in developing the arguments for a  
5                referendum question must, in writing, notify the Speaker of his or  
6                her wish to do so.
- 7        (2) An MLA who wants to participate in developing the arguments  
8                against a referendum question must, in writing, notify the Speaker  
9                of his or her wish to do so.
- 10       (3) A notice under subsection (1) or (2) must be given to the Speaker no  
11               later than 2 days after this Act commences.
- 12       (4) The Speaker must, as soon as practicable, prepare a written  
13               statement for each referendum question setting out the following:
- 14               (a) the name of each MLA who gave notice under subsection (1);  
15               (b) the name of each MLA who gave notice under subsection (2).
- 16       (5) The Speaker must, as soon as practicable—
- 17               (a) publish a copy of the statement for each referendum question  
18                        in the Gazette; and
- 19               (b) give a copy of the statement for each referendum question to  
20                        the commissioner.

21 **11**      **Publishing the arguments**

- 22       (1) This section applies if the commissioner receives the yes case, or the  
23               no case, for a referendum question within 14 days after the day this  
24               Act commences.
- 25       (2) The commissioner must print the yes case, and the no case, received  
26               under subsection (1) for each referendum question together in a  
27               pamphlet.
- 28       (3) In the pamphlet, each case mentioned in subsection (1) must be in  
29               the same typeface and typestyle.

- 1        (4) At least 14 days before the referendum, the commissioner must send  
2        the pamphlet, as nearly as practicable—  
3            (a) to each elector; or  
4            (b) to each household in the ACT.  
5        (5) In this section:  
6            *no case*, for a referendum question, means the written statement, of  
7            2000 words or less, that—  
8            (a) sets out the arguments against the referendum question; and  
9            (b) is authorised by at least a  $\frac{2}{3}$  majority of the MLAs who notify  
10          the Speaker under section 10 (2) (Developing the arguments).  
11          *yes case*, for a referendum question, means the written statement, of  
12          2000 words or less, that—  
13          (a) sets out the arguments for the referendum question; and  
14          (b) is authorised by at least a  $\frac{2}{3}$  majority of the MLAs who notify  
15          the Speaker under section 10 (1).

## **Division 2.3                      Scrutiny of referendum**

### **12        Scrutiny of referendum ballot papers—general**

18        For the scrutiny of the referendum, any writing added to a  
19        referendum ballot paper other than ‘yes’, ‘no’, a tick (‘✓’) or cross  
20        (‘x’) must be disregarded unless—

- 21            (a) it makes the elector’s intention unclear; or  
22            (b) it makes the ballot paper informal.

#### **Example for par (a)**

24        An elector writes ‘no’ in the box set out on the referendum ballot paper for the  
25        marking of the elector’s preference for 1 of the referendum questions, but also  
26        writes ‘dams’ next to the box. The elector’s intention for that referendum  
27        question is not clear, as the elector could be expressing the view ‘no dams’.



1 **13 When is a referendum ballot paper informal?**

2 For the scrutiny of the referendum, a referendum ballot paper is  
3 informal if a vote for or against a referendum question is not  
4 recorded in the appropriate place for any referendum question.

5 **14 When is a referendum ballot paper formal?**

6 For the scrutiny of the referendum, a referendum ballot paper is  
7 formal if—

8 (a) it is not informal; and

9 (b) it records a vote for or against at least one referendum  
10 question.

11 **15 Operation of Referendum (Machinery Provisions) Act,  
12 s 14 (1) to (3)**

13 To avoid any doubt, sections 12 to 14 are in addition to the  
14 *Referendum (Machinery Provisions) Act 1994*, section 14 (1) to (3).

15 *Note* The effect of s 15 is to make it clear that s 12 to 14 are not meant to  
16 displace the relevant provisions (including s 180) of the Electoral Act,  
17 as applied, with the 'necessary changes', by the *Referendum (Machinery  
18 Provisions) Act 1994*, s 14 (1) and (2), including the changes made by  
19 s 14 (3).

20 This means that, for example, a referendum ballot paper is also informal  
21 if it is not authentic or it has writing on it by which the elector can be  
22 identified (see Electoral Act, s 180 (2) (a)).

23 **16 When is a vote for a referendum question recorded?**

24 For the scrutiny of the referendum, a referendum ballot paper  
25 records a vote for a referendum question if 'yes' or a tick ('✓') is  
26 written at the appropriate place for the referendum question.

27 **17 When is a vote against a referendum question recorded?**

28 For the scrutiny of the referendum, a referendum ballot paper  
29 records a vote against a referendum question—

- 1            (a) if 'no' is written at the appropriate place for the referendum  
2                      question; or  
3            (b) if—  
4                      (i) a cross ('x') is written at the appropriate place for the  
5                                  referendum question; and  
6                      (ii) a tick ('✓') is written at the appropriate place for another  
7                                  referendum question.

8            **Example for par (b)**

9            An elector writes a tick in the box set out on the referendum ballot paper for the  
10           marking of the elector's preference for the first referendum question and writes a  
11           cross in the box for the second referendum question.

12           In this case, the vote for the first referendum question is recorded for the  
13           referendum question, and the vote for the second referendum question is recorded  
14           against that referendum question because the elector has used a tick and a cross.

15           **18      When is a vote for or against a referendum question not**  
16           **recorded?**

17           For the scrutiny of the referendum, a referendum ballot paper does  
18           not record a vote for or against a referendum question if—

- 19           (a) nothing is written at the appropriate place for the referendum  
20                      question; or  
21           (b) a cross ('x') is written at the appropriate place for the  
22                      referendum question, and a tick ('✓') is not written at the  
23                      appropriate place for another referendum question; or  
24           (c) there is writing added to the ballot paper other than 'yes', 'no',  
25                      a tick ('✓') or cross ('x') that makes the elector's intention  
26                      about the referendum question unclear.

27           **19      Scrutineers**

- 28           (1) A person who was an MLA at the start of the pre-election period  
29                      may appoint scrutineers for the referendum.  
30           (2) To avoid any doubt, this section is in addition to the *Referendum*  
31                      (*Machinery Provisions*) *Act 1994*, section 10 (3).

**20 Recount of referendum ballot papers—person authorised to make request**

For the *Referendum (Machinery Provisions) Act 1994*, section 14 (3) (c), a person who was an MLA at the start of the pre-election period is authorised to request a recount of referendum ballot papers.

**21 Result of referendum**

(1) To avoid any doubt, this section is in addition to the *Referendum (Machinery Provisions) Act 1994*, section 14 (1) to (3).

(2) The commissioner must arrange for all formal referendum ballot papers to be counted to work out—

(a) the number of votes recorded for each referendum question; and

(b) the number of votes recorded against each referendum question; and

(c) the number of times that a vote is not recorded for or against each referendum question.

(3) As soon as practicable after the count is finished, the commissioner must, in writing, declare the result of the referendum.

(4) A declaration must contain—

(a) the matters mentioned in subsection (2) (a) to (c); and

(b) the number of informal ballot papers.

(5) A declaration is a notifiable instrument.

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

**Division 2.4 Disputed referendum**

**22 Disputed referendum**

(1) In the application of the *Referendum (Machinery Provisions) Act 1994* in relation to a dispute about the referendum—

- 1            (a) the reference in the *Referendum (Machinery Provisions) Act*  
2                1994, section 16 (3) (a) to notice of the voting at a referendum  
3                is taken to be a reference to the declaration under section 21  
4                (Result of referendum) of this Act; and
- 5            (b) the reference in the *Referendum (Machinery Provisions) Act*  
6                1994, section 16 (4) to compliance with section 8 of that Act is  
7                taken to be a reference to compliance with section 11  
8                (Publishing the arguments) of this Act.
- 9            (2) The Electoral Act, section 265 as modified by the *Referendum*  
10                (*Machinery Provisions*) *Act 1994* has effect as if the court were also  
11                empowered to declare whether a particular vote was not recorded  
12                for or against a particular referendum question.
- 13            (3) The Electoral Act, section 275 as modified by the *Referendum*  
14                (*Machinery Provisions*) *Act 1994* has effect as if the notice  
15                mentioned in the section as modified were also required to set out  
16                the effect of the court's declaration in relation to the number of  
17                times that a vote was not recorded for or against each referendum  
18                question.

19            **23    People entitled to dispute referendum result**

- 20            (1) The following people are entitled to dispute the result of the  
21                referendum:
- 22                (a) a person who was an MLA at the start of the pre-election  
23                period;
- 24                (b) a person declared elected at the next ordinary election after this  
25                Act commences.
- 26            (2) To avoid any doubt, this section is in addition to the Electoral Act,  
27                section 257 (Persons entitled to dispute elections), as applied by the  
28                *Referendum (Machinery Provisions) Act 1994*, section 16 (2).

## Schedule 1      Referendum ballot paper

(see s 9)



Australian Capital Territory

### Referendum Ballot Paper

Write **YES** or **NO** in the boxes below  
in answer to the following questions

[      <sup>1</sup>      ]

Write **YES** or **NO**

*Note*      On the actual referendum ballot paper each referendum question  
will be set out, with a box next to each question.

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<sup>1</sup> Insert text of each referendum question.

## Dictionary

(see s 3)

***appropriate place***, on a referendum ballot paper, means in, or next to, the box set out on the ballot paper for marking the elector's preference for a referendum question.

***formal***, for a referendum ballot paper—see section 14 (When is a referendum ballot paper formal?).

***informal***, for a referendum ballot paper—see section 13 (When is a referendum ballot paper informal?).

***referendum ballot paper*** means the referendum ballot paper for the referendum.

***referendum question*** means a referendum question set out in division 2.1 (Requirement for referendum, referendum questions and referendum ballot paper).

***Speaker*** includes—

- (a) if there is a vacancy in the office of Speaker or the Speaker is absent from duty—the Deputy Speaker; and
- (b) if there is a vacancy in the offices of Speaker and Deputy Speaker or the Speaker and Deputy Speaker are absent from duty—the clerk of the Assembly.

*Note* ***Speaker*** is defined in the *Legislation Act 2001*, dict pt 1.

***start of the pre-election period*** means the first day of the pre-election period for the next ordinary election after this Act commences.

***the referendum*** means the referendum required by this Act.

***vote not recorded for or against a referendum question***—see section 18 (When is a vote for or against a referendum question not recorded?).

*vote recorded against a referendum question*—see section 17  
(When is a vote against a referendum question recorded?).

*vote recorded for a referendum question*—see section 16 (When is  
a vote for a referendum question recorded?).

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