

2001

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

REFERENDUM BILL 2001

EXPLANATORY MEMORANDUM

**Circulated by authority of
Bill Stefaniak, Attorney-General**

OUTLINE

This Bill provides for a referendum to be held concurrently with the 20 October 2001 Legislative Assembly election. The referendum would pose two questions:

- Do you approve the running, in the ACT, of a trial of a supervised injecting room for people dependent on heroin?
- Do you approve the conducting of a clinical trial, in the ACT, for the controlled provision, under medical supervision, of heroin to people registered as dependent on heroin?

The Bill also provides for:

- The form of the referendum ballot paper;
- Formality rules to be applied to the referendum ballot paper;
- A mechanism by which MLAs will be able to notify the Speaker of their wish to be eligible to contribute to either the "yes" case or the "no" case for each referendum question – the Speaker will be required to publish a notice setting out these details and to advise the Electoral Commissioner accordingly;
- The submission to the Electoral Commissioner of authorised statements in favour of and against each referendum question, with each statement required to be authorised by at least a two-third majority of the MLAs who indicated to the Speaker that they wished to be eligible to contribute to the particular case – these statements must be provided to the Electoral Commissioner within 14 days after the Act commences;
- The distribution to each elector in the ACT or to each household in the ACT of the authorised statements at least 14 days before polling day; and
- Other machinery matters, including provisions related to the appointment of scrutineers, eligibility to request recounts, publication of results of the referendum and defining people eligible to dispute the referendum result.

The *Referendum (Machinery Provisions) Act 1994* operates to provide for most of the machinery elements needed to provide for a referendum. Passage of this Bill would automatically apply the Referendum (Machinery Provisions) Act to the referendum. The only machinery elements contained in the Referendum Bill 2001 are those that are needed to expand upon or vary the provisions in the Referendum (Machinery Provisions) Act.

Financial Implications

The ACT Electoral Commission estimates the cost of the referendum will be around \$210,000. Funding for the referendum will be constrained within existing budget appropriations.

DETAILED EXPLANATION

Formal clauses

Clauses 1, 2 3, 4 and 5 are formal requirements. They refer to the short title of the Act, commencement, the dictionary and the meaning of certain words, expressions and notes. The Act is to commence on the day it is notified in the *Gazette*.

Requirement for referendum

Clause 6 provides that a referendum must be held to put the referendum questions listed in the Bill. The effect of this clause is to make this law an “enabling law” within the meaning of section 3 of the *Referendum (Machinery Provisions) Act 1994*. This in turn has the effect of applying the provisions of the Referendum (Machinery Provisions) Act to the referendum provided for by this Bill. Consequently, section 7 of the Referendum (Machinery Provisions) Act requires that a poll for the referendum must be held on the polling day for the next ordinary Legislative Assembly election conducted under the *Electoral Act 1992*.

First referendum question

Clause 7 provides for the text of the first referendum question.

Second referendum question

Clause 8 provides for the text of the second referendum question.

Form of referendum ballot paper

Clause 9 provides that the referendum ballot paper must be printed in the form set out in Schedule 1.

Developing the arguments

Clause 10 provides that Members of the Legislative Assembly will have until 2 days after commencement of the Act to notify the Speaker of their wish to be recorded as eligible to contribute to either the “yes” case or the “no” case for each referendum question. At the end of this period, the Speaker will be required to publish a notice setting out the names of the MLAs who have asked to be eligible to contribute to the various cases. The Speaker will also be required to provide this information to the Electoral Commissioner as soon as practicable.

Publishing the arguments

Clause 11 provides for the submission and distribution of authorised statements of arguments in favour and arguments against each referendum question.

In respect of each referendum question, a two-thirds majority of MLAs who notified the Speaker under the previous clause that they wished to be eligible to contribute to the “yes” case for the referendum question will be able to submit an authorised statement of 2000 words or less of arguments in favour of the referendum question.

In respect of each referendum question, a two-thirds majority of MLAs who notified the Speaker under the following clause that they wished to be eligible to contribute to the “no” case for the referendum question will be able to submit an authorised statement of 2000 words or less of arguments against the referendum question.

These authorised statements must be received by the Electoral Commissioner within 14 days after the day the Act commences.

The Electoral Commissioner must arrange to print each authorised statement together in a pamphlet. In the pamphlet, each argument must be presented in the same typeface and typestyle.

The Electoral Commissioner must then arrange to send the pamphlet to each elector or to each household in the ACT at least 14 days before polling day for the referendum.

Scrutiny of referendum ballot papers – general

Clause 12 is intended to clarify what marks on ballot papers are to be considered when deciding whether a ballot paper is formal or informal. The clause provides that any writing on a ballot paper other than ‘yes’, ‘no’, a tick or a cross must be disregarded unless it makes the elector’s intention unclear or it makes the ballot paper informal.

For example, if an elector wrote ‘stop dams’ in the corner of a ballot paper, those words would be ignored. However, if the elector wrote ‘no’ in the box next to a referendum question and ‘dams’ next to the box, the ‘no’ would be disregarded in this case as the elector’s intention is unclear, as the elector could be expressing the view ‘no dams’.

Ticks and crosses are given regard to in some circumstances as experience in other jurisdictions has indicated that some electors use ticks and crosses to indicate votes in favour of or against referendum questions.

This clause does not have the effect of causing writing by which an elector can be identified to be disregarded. Any such writing would render a ballot paper informal under section 180 of the Electoral Act as applied by section 14 of the Referendum (Machinery Provisions) Act.

When is a referendum ballot paper informal?

Clause 13 provides that a ballot paper is informal if it does not record a vote in favour of or against any of the referendum questions.

When is a referendum ballot paper formal?

Clause 14 provides that a ballot paper that has been properly included in a count of ballot papers is a formal vote if it is not otherwise informal and it records a vote in favour of or against at least one of the referendum questions.

Operation of Referendum (Machinery Provisions) Act, s 14(1) to (3)

Clause 15 provides that clauses 12-14 are to be read in conjunction with the relevant provisions in the Electoral Act as applied by section 14 of the Referendum (Machinery Provisions) Act, particularly those provisions that relate to formality and informality of ballot papers.

When is a vote for a referendum question recorded?

Clause 16 provides that a ballot paper records a vote in favour of a referendum question if 'yes' or a tick is written at the appropriate place for the question. A tick is treated as an affirmative vote as experience in other jurisdictions has indicated that some electors use ticks to indicate votes in favour of referendum questions.

When is a vote against a referendum question recorded?

Clause 17 provides that a ballot paper records a vote against a referendum question if 'no' is written at the appropriate place for the question.

Where a cross is shown next to one question and a tick is shown next to another question, the cross is to be taken as a 'no' and the tick is to be taken as a 'yes'. This interpretation is applied as experience in other jurisdictions has indicated that some electors use ticks and crosses together respectively to indicate votes in favour of referendum questions and to indicate votes against referendum questions.

When is a vote for or against a referendum question not recorded?

Clause 18 provides that a ballot paper is to be taken to not record a vote in favour of or against a referendum question if no valid words or marks are written at the appropriate place for the question. If a cross is shown without a tick, the cross is to be disregarded. This is because a cross marked without a tick is ambiguous and could indicate approval or disapproval.

This clause is intended to cover the case where a ballot paper is formal because there is a valid response to at least one referendum question, but there is not a valid response to one or two of the questions.

Scrutineers

Clause 19 provides that a person who was an MLA on the day on which the pre-election period commences (36 days before polling day) may appoint scrutineers for the purposes of the referendum. This provision is additional to section 10 of the Referendum (Machinery Provisions) Act, which provides that, where an election and a referendum are held concurrently, any scrutineers appointed for the purposes of the election are also taken to be appointed for the referendum.

Recount of referendum ballot papers – person authorised to make request

Clause 20 provides that a person who was an MLA on the day on which the pre-election period commences (36 days before polling day) is empowered to request a recount of referendum ballot papers.

Result of referendum

Clause 21 provides that the Electoral Commissioner is required to determine the result of the referendum and to publish a notifiable instrument setting out:

- the number of formal ballot papers in favour of each referendum question;
- the number of formal ballot papers against each referendum question;
- the number of formal ballot papers that do not show a vote either for or against each referendum question; and
- the number of informal ballot papers.

The Bill effectively defines a formal ballot paper as one that contains a valid vote for at least one of the questions on the ballot paper. Consequently it is possible for a formal ballot paper not to show a vote either for or against a particular referendum question, provided a valid vote is shown for at least one question.

Disputed referendum

Clause 22 provides for consequential changes to the application of the Referendum (Machinery Provisions) Act that are needed as a result of provisions referred to above.

People entitled to dispute referendum result

Clause 23 provides a person who was an MLA on the day on which the pre-election period commences (36 days before polling day) and a person who is declared elected at the next ordinary election is entitled to dispute the result of the referendum held under this Bill.

This provision does not alter the right of a person listed in section 257 of the Electoral Act to dispute a referendum result under that section as applied by section 16 of the Referendum (Machinery Provisions) Act.

Schedule 1

The Schedule sets out the form of the ballot paper to be used for the referendum.

Dictionary

The Dictionary sets out the meaning of various words and expressions used in the Bill.