

1998

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

COMMUNITY REFERENDUM BILL 1998

EXPLANATORY MEMORANDUM

**Circulated by authority of
Gary Humphries, Attorney-General**

OUTLINE

The purpose of this Bill is to provide a mechanism for electors of the Australian Capital Territory to initiate changes to the laws of the ACT to the extent permitted by the *Australian Capital Territory (Self-Government) Act 1988*

The steps set out in the Bill to enable electors to initiate and vote on legislation are as follows

Step 1 — establishment notice. A sponsoring committee (2-10 electors) is established for the purpose of initiating a request to make or change a law. The sponsoring committee registers its establishment notice with the Electoral Commissioner, including the names and addresses of the members of the committee, the name of the committee's contact officer and a description, in no more than 100 words, of what the legislative proposal is to achieve

Step 2 — registration of proposal. Once the sponsoring committee has submitted the names, addresses and signatures of 1,000 or more electors who support the proposal, the Electoral Commissioner registers the legislative proposal and publishes a notice in the *Gazette*

Step 3 — support by 5% or 10% of electors. After registration, the sponsoring committee has 6 months in which to gather the support of electors to have their legislative proposal submitted to the people for decision at a referendum. If the Electoral Commissioner is satisfied (after checking a random sample of signatures of electors) that more than 5% of the number of electors eligible to vote in the previous Legislative Assembly election have indicated support for the proposal being put to referendum, the Commissioner publishes a notice in the *Gazette* advising that the registered legislative proposal may be put to a referendum. If the Commissioner is satisfied that more than 10% of that number of electors has indicated support for the proposal, the Commissioner publishes a further notice in the *Gazette* advising that the registered legislative proposal has become a qualified legislative proposal (which may be put to a referendum at an earlier time — see step six).

Step 4 — development of proposed law. The sponsoring committee may then begin the task of developing legislation to give effect to the registered proposal. Officers of the Attorney-General's Department shall assist with this task. Once the proposed law is drafted, the sponsoring committee may apply to the Attorney-General for certification that the proposed law is consistent with the registered legislative proposal sponsored by the committee and is suitable for presentation to the Legislative Assembly

Step 5 — presentation of the proposed law to the Legislative Assembly. The sponsoring committee may give the proposed law and accompanying Attorney-General's certificate to the Legislative Assembly. If so the Speaker must lay the proposed law and certificate before the Assembly and request the Chief Minister to estimate the costs or savings of the proposal. The Assembly may decide to pass the same law, or enact its own law to give effect to the intentions of the proposed law in which case there is no need for a referendum. Alternatively, the Assembly may decide to refer the proposed law to a referendum. If the Assembly does nothing the proposed law goes to referendum anyway.

Step 6 — a referendum. In the usual case, once a proposed law giving effect to a legislative proposal is tabled in the Assembly, a referendum will be held in conjunction with the next general election of the Legislative Assembly, so long as that election is four months after the day the proposed law has been tabled in the Assembly. The day of the referendum is called a *community consultation day*. Referendums are to be conducted by the ACT Electoral Commission under the *Referendum (Machinery Provisions) Act 1994*. "For" and "Against" cases may be distributed to households as part of the referendum process.

However, where a proposal has become a qualified legislative proposal by gaining the approval of more than 10% of electors, and the Bill is tabled prior to 31 May in the first two years of the three year life of an Assembly, it will be put to referendum at a *special community consultation day* on the following third Saturday in October in that year. Should that occur, any other proposals that are eligible to be considered at the next ordinary community consultation day will also be put to referendum on the special community consultation day.

Step 7 — presentation of the referendum result to the Legislative Assembly. Where a referendum has been approved by a majority of formal voters, the Speaker shall be notify the Assembly of the result determined by the Electoral Commissioner. The Chief Minister may then move a motion in the Legislative Assembly that it enact the proposed law. Under the *Australian Capital Territory (Self-Government) Act 1988* the Legislative Assembly cannot be bound to pass a proposed law that has gained the approval of a majority of voters at a referendum.

FINANCIAL IMPLICATIONS

The cost of implementing this Bill will depend on the extent to which the community makes use of the facility to initiate referendums. The ACT Electoral Commission estimates that around \$40,000 will be required to purchase the necessary equipment and data to enable checking of signatures on petitions against electoral roll records. Around \$10,000 per proposal would be required to verify signatures on petitions for each legislative proposal submitted to the Electoral Commissioner. Where a referendum is to be held concurrently with an election, the Electoral Commission estimates that it would cost around \$180,000 above the cost of holding the election. Where a referendum was held on its own, about \$1 060,000 would be required. Each additional referendum question would cost around \$65 000 extra to administer.

DETAILED EXPLANATION

PART 1 — PRELIMINARY

Formal Clauses

Clauses 1 and 2 are formal requirements. They refer to the short title of the Bill and commencement. The Bill is to commence on the day on which it is notified in the *Gazette*.

Interpretation

Clause 3 defines various terms used generally in the Bill. The clause also provides that, unless the contrary intention appears, an expression used in the Bill has the same meaning as in the *Referendum Machinery Provisions Act 1994*. This reference in turn applies the definitions contained in the *Electoral Act 1992* to expressions used in the Bill.

Multiple proposals sponsored by the same committee

Clause 4 provides that where one sponsoring committee is responsible for lodging more than one legislative proposal, that sponsoring committee will be treated as a separate committee for each proposal lodged.

PART II — LEGISLATIVE PROPOSALS

Division 1 — Gaining Community Support

Establishment of sponsoring committee

Clause 5 provides for between 2 and 10 electors to form themselves into a “sponsoring committee”. The sponsoring committee is established when it lodges an establishment notice providing the details of its members and its legislative proposal with the Electoral Commissioner and the Electoral Commissioner accepts the lodgement by publishing a notice in the *Gazette*. Before accepting the lodgement, the Electoral Commissioner is required to ensure that the form meets the requirements of the Act and that the objectives of the legislative proposal are capable of being implemented by law in the Territory.

If the Electoral Commissioner refuses to accept lodgement of an establishment notice, that decision is reviewable under the review mechanism set out in the *Electoral Act 1992* (see clause 35).

Submission of initiating request

Clause 6 provides that the contact officer of the sponsoring committee may submit an initiating request to the Electoral Commissioner for registration of a legislative proposal. An initiating request is in effect a petition calling for registration of the legislative proposal.

Approval of initiating request

Clause 7 provides that a sponsoring committee has to gather the signatures of not less than 1,000 electors on an initiating request in support of its legislative proposal before the proposal can proceed further.

Under this clause, the Commissioner may approve an initiating request submitted under clause 6 if the request relates to the same legislative proposal referred to in the establishment notice lodged by the sponsoring committee, provided each page of the request contains the registered description of that proposal, the names and addresses of the members of the Committee, and the request includes the names, addresses, dates of birth and signatures of no less than 1000 electors.

The Commissioner is required to verify the signatures of at least 200 of those electors and must be satisfied that the proportion of signatories in the sample who are electors is such that, if it were applied to the number of signatories, not less than 1,000 would be electors. It is envisaged that the Electoral Commissioner would apply an appropriate statistical method to this process to ensure that there was a high probability (of the order of around 99%) that at least 1,000 electors had signed the initiating request.

If the Electoral Commissioner decides not to approve an initiating request, that decision is reviewable under the review mechanism set out in the *Electoral Act 1992* (see clause 35).

Registration of proposal

Clause 8 provides that, on approval of an initiating request, the Commissioner shall register the proposal and publish a notice in the *Gazette* in the form set out at Schedule 1.

Form of popular request

Clause 9 provides for submission of popular requests to the Commissioner seeking to put a legislative proposal to referendum. Popular requests are in effect petitions calling for the holding of a referendum on a legislative proposal. Popular requests must substantially be in accordance with the form at Schedule 2.

Submission of popular request

Clause 10 provides that a popular request must be submitted to the Commissioner within 6 months after notice of registration of the relevant legislative proposal in the *Gazette*. Popular requests received after that time are disregarded.

Requirements of popular request

Clause 11 provides for a process to determine whether a sufficient number of signatures has been received by the Electoral Commissioner on popular requests to require the holding of a referendum.

If the Commissioner is satisfied that not less than 5% of the number of electors eligible to vote at the last general election of the Legislative Assembly have signed popular requests in support of a legislative proposal, the proposal becomes a *registered legislative proposal*, which means that a referendum could be held on that proposal on the next available ordinary community consultation day. If the Commissioner is satisfied that not less than 10% of electors have signed popular requests, the legislative proposal becomes a *qualified legislative proposal*, which means that a referendum could be held on the next available special community consultation day.

In order to be satisfied that the specified numbers of electors have signed a popular request, the Commissioner is required to verify the signatures of a sample of at least 1000 of those electors. The Commissioner must be satisfied that the proportion of signatories in the sample who are electors is such that, if it were applied to the number of signatories, not less than the required number would be electors. It is envisaged that the Electoral Commissioner would apply an appropriate statistical model to this process to ensure that there was a high probability (of the order of around 99%) that the sample results indicated that at least the required number of electors had signed the initiating request.

If the Commissioner is not satisfied that the required number of signatures of electors have been submitted, the Commissioner shall cancel registration of the legislative proposal.

If the Electoral Commissioner decides to cancel registration of a legislative proposal, that decision is reviewable under the review mechanism set out in the *Electoral Act 1992* (see clause 35).

Cancellation of registration on cessation of committee

Clause 12 allows the Commissioner to cancel the registration of a proposal before a proposed law is given to the Speaker if he or she believes that the relevant sponsoring committee no longer exists. The Commissioner may be satisfied that the sponsoring committee has ceased to exist if he or she writes to the contact officer of the committee notifying his or her intention to cancel the registration and receives no response within a month or receives a response indicating that the committee has ceased to exist. This decision is reviewable under the review mechanism set out in the *Electorate Act 1992* (see clause 35).

Division 2 — Proposed laws

Preparation of proposed laws

Clause 13 provides for a sponsoring committee to prepare a proposed law once a popular request has become a registered legislative proposal. The Attorney-General must make available a public servant to assist with this.

Attorney-General's certificate

Clause 14 provides that a sponsoring committee may apply to the Attorney-General for a certificate stating that the proposed law is consistent with the registered legislative proposal and is in a form suitable for presentation to electors at a referendum.

The Attorney-General shall not issue this certificate unless satisfied that the proposed law is consistent with the registered legislative proposal and is in a form suitable for presentation to the Legislative Assembly.

Presentation to Assembly

Clause 15 provides that once the Attorney-General gives a certificate under the clause 14, the contact officer for the sponsoring committee may give the certificate and copy of proposed law to the Speaker. The Speaker will then present these to the Assembly on the next sitting day, advise the Commissioner and give him or her a copy of the certificate and proposed law, and give a copy of the proposed law to the Chief Minister requesting that costings be determined.

Failure to prepare proposed law

Clause 16 provides that where a proposed law has not been presented to the Assembly before the holding of a general election of the Assembly that occurs after the proposal became a registered legislative proposal, registration of the proposal is to be cancelled.

Amendments

Clause 17 allows the sponsoring committee to prepare, with the assistance of a public servant provided by the Attorney-General, amendments to a proposed law and for the Attorney-General to issue a replacement certificate for those amendments. The sponsoring committee may give the replacement certificate and a copy of amended proposed law to the Speaker.

As long as the amendment is received on or before the last day for amendments (the 31 May that occurs before the community consultation day on which the referendum is to be held), the Speaker will then present these to the Assembly on the next sitting day, advise the Commissioner and give him or her a copy of the certificate and proposed law, and give a copy of the proposed law to the Chief Minister requesting that costings be determined. The proposed law is amended when the Speaker lays the amendment before the Assembly.

Submission to referendum

Clause 18 provides that the Commissioner must (with the following proviso) put a proposed law presented to the Legislative Assembly to a referendum on the next available community consultation day that occurs after the expiration of four months after the proposed law has been presented to the Assembly. The Commissioner must not put a proposed law to a referendum if the Attorney-General advises that a law already exists that gives effect to the objects of the proposed law.

Assembly may refer proposed law to referendum

Clause 19 provides for the Assembly to decide, before passing a law other than a community initiated proposed law, to refer that proposed law to a referendum. Such a proposed law would then be treated as if it was a law arising from a registered legislative proposal and would be put to referendum at the next community consultation day occurring no earlier than four months after the law has been tabled in the Assembly.

Such a referendum would not be held if the Assembly rescinded the relevant resolution or if the Attorney-General advised the Electoral Commissioner that a law already exists that gives effect to the objects of the proposed law.

Chief Minister's estimates of costs

Clause 20 provides that, after receiving a copy of a proposed law from the Speaker, the Chief Minister shall prepare an estimate of the anticipated net costs or savings resulting from implementation of the proposed law over three financial years, together with a statement of the material assumptions made and the reasons for the conclusions reached. The Chief Minister is required to provide a copy of these estimates and statements to the Auditor-General.

Auditor-General's report

Clause 21 provides that after receiving a copy of an estimate and accompanying explanatory statement from the Chief Minister on the costs or savings of a proposed law, the Auditor-General shall prepare a report on the estimate and statement. That report is intended to be an independent assessment of the accuracy of the Chief Minister's estimate.

Publication of estimates and reports

Clause 22 provides that the Chief Minister shall publish in the *Gazette* the Chief Minister's estimate and accompanying explanatory statement on the costs or savings of a proposed law and the relevant Auditor-General's report.

Special community consultation days

Clause 23 provides that, where a proposed law has been registered as a qualified proposed law (that is, it has the support of not less than 10% of the number of electors enrolled to vote at the previous election) and that proposed law has been tabled on or before 31 May on any one year during the first two years of a term of an Assembly, a referendum would be held on a special community consultation day.

That day is to be the third Saturday in October in the year after the proposed law has been tabled in the Assembly, unless extraordinary circumstances intervene. Where a Commonwealth general election or Senate election is to be held on that day, the special community consultation day would be moved back to the first Saturday in December. Where an extraordinary election for the Assembly is called under sections 16 or 48 of the *Australian Capital Territory (Self-Government) Act 1988* before a scheduled community consultation day, the referendum would be held on the day called for the extraordinary election rather than the scheduled community consultation day.

PART III — REFERENDUMS

Arguments for and against proposals

Clause 24 allows for the preparation of for and against arguments to be prepared on the subject of a proposed law. Within 2 months after the laying of a proposed law before the Assembly, the sponsoring committee may prepare and submit a case of not more than 2,000 words in favour of the proposal to the Electoral Commissioner.

Similarly, within 2 months after a resolution of the Assembly to refer a proposed law to a referendum, a member of the Assembly may submit a case of not more than 2,000 words in favour of the proposal to the Electoral Commissioner. This case must be authorised by a majority of members who voted in favour of the resolution.

A member of the Assembly may also submit to the Electoral Commissioner a case of not more than 2,000 words against a proposal. The case against must be authorised by a majority of Assembly members who are against the proposed law or voted against the referral of the proposed law to a referendum.

The for and against cases would be distributed to ACT electors or ACT households under the terms of the *Referendum (Machinery Provisions) Act 1994* by the Electoral Commissioner.

Dissemination of Chief Minister's estimates

Clause 25 requires the Electoral Commissioner to post the financial estimates prepared by the Chief Minister and reported on by the Auditor-General to ACT electors or ACT households. In practice, these estimates would be included in the for and against arguments distributed by the Commissioner (if any).

Appointment of scrutineers

Clause 26 provides that the relevant sponsoring committee and a registered political party that was represented by at least one Member of the Legislative Assembly on the preceding 31 May may appoint scrutineers for the purposes of a referendum held under this Bill. This provision is in addition to the rights to appoint scrutineers included in the *Referendum (Machinery Provisions) Act*.

Form of ballot paper

Clause 27 provides that ballot papers to be used for referendums under this Bill shall be in the form included in Schedule 3. Where two or more referendums are held on the same day, the ballot papers for each referendum may be printed on the one piece of paper. Schedule 3 includes two alternative forms of the ballot paper to cater for the case where there is only one question on each ballot paper and the case where there are two or more questions on each ballot paper.

This clause further provides that the form of the ballot paper may be altered by regulations. This has the effect of allowing ballot paper design to be improved from time to time by regulations without the need for amending the parent Act, while at the same time ensuring that the "default" ballot paper set out in this Bill will operate in the absence of any regulations.

This clause also provides special rules for the formality of ballot papers in addition to those rules set out in the *Referendum (Machinery Provisions) Act*. Where a tick has been used to mark an elector's vote, it is to be taken to be a "yes". Where a cross has been used, that is treated as if it was an informal vote. Any writing on a ballot paper other than a "yes", "no" or a tick shall be disregarded unless it renders the elector's intention unclear.

Recounts

Clause 28 provides that a registered political party that was represented by at least one Member of the Legislative Assembly on the preceding 31 May a relevant sponsoring committee and a Member of the Legislative Assembly may request recounts of referendum ballot papers for the purposes of a referendum held under this Bill

Result of referendum

Clause 29 provides that a proposed law that has been put to a referendum is taken to have been approved if more than one-half of the formal votes cast at that referendum are in favour of it

Declaration of result of referendum

Clause 30 provides that, where two or more referendums are held on the same day where practicable the results of those referendums should be declared on the same day. This clause also provides that the Electoral Commissioner shall give a copy of the *Gazette* notice notifying the declaration of a referendum result (which is published in accordance with the Referendum (Machinery Provisions) Act) to the Speaker who is required to lay that notice before the Assembly

PART IV — ENACTMENT OF LAWS

Enactment of proposed law

Clause 31 provides that (after the expiry of the period allowed for disputing a referendum result and taking into account the outcome of any such dispute) where a proposed law has been approved at a referendum, the Chief Minister shall move that the Legislative Assembly enact the proposed law

If more than one proposed law has been approved on the same community consultation day, and two or more of the proposed laws are inconsistent with each other in whole or in part, the following steps may take place

- the Chief Minister shall move that the Assembly enact any law that is not inconsistent with any other law approved on the same day,
- the Chief Minister shall move that the Assembly enact the inconsistent law that was supported by the greater number of votes in favour,
- where the Chief Minister is satisfied that a proposed law supported by fewer votes in favour is wholly inconsistent with the most favoured proposed law, that less favoured proposed law shall not be presented to the Assembly.

- where the Chief Minister is satisfied that a proposed law supported by fewer votes in favour is partly inconsistent with the most favoured proposed law, but that the primary objects of the proposed law would still be achieved if the inconsistent parts were excised, the Chief Minister shall move that the Assembly enact the less favoured proposed law with the inconsistent parts excised from it

The clause contains greater detail to cater for the possibility of several inconsistent laws being approved on the same day

PART V — OFFENCES

Harassment

Clause 32 makes it an offence to intimidate or cause violence to a person for the purpose of inducing a person to sign or to refuse to sign an initiating request or a popular request

Misrepresenting sponsoring committee

Clause 33 makes it an offence to publish, or seek another person's signature to, a document that is or is represented to be an initiating request or a popular request, unless the name and address of each member of the sponsoring committee is set out in the document

Misrepresentation

Clause 34 is intended to penalise attempts to gather support or to stymie the gathering of support for legislative proposals through misrepresentation. This clause makes it an offence to falsely represent that a document is, or is part of, an initiating request or a popular request, for the purpose of obtaining another person's signature to a document

This clause makes it an offence to falsely represent the nature or main objects of a proposal for the purpose of inducing a person to sign an initiating request or a popular request. This clause also makes it an offence to falsely represent that a legislative proposal, or a form of words that resembles a legislative proposal, is a registered proposal

PART VI — ADMINISTRATIVE PROVISIONS

Division 1 — Review

Review of decisions

Clause 35 applies the review procedures contained in Part XV of the *Electoral Act 1992* to the following decisions of the Electoral Commissioner

- a decision to refuse to accept lodgement of an establishment notice under clause 5,
- a decision not to approve an initiating request under clause 7,

- a decision to cancel the registration of a legislative proposal under clause 11 and
- a decision to cancel the registration of a registered legislative proposal under clause 12

Part XV of the *Electoral Act 1992* provides that reviewable decisions of the Electoral Commissioner can be reviewed by the full Electoral Commission. Any such decisions of the Electoral Commission are reviewable by the Administrative Appeals Tribunal.

Division 2 — Sponsoring committees

Changes in membership

Clause 36 provides for the rules governing changes in membership of a sponsoring committee. A member ceases to be a member if they resign by writing to the contact officer, cease to be an elector or die. A sponsoring committee that consists of not more than nine members may agree to admit one other elector to membership. The contact officer must advise the Electoral Commissioner of any additions or deletions to the membership.

Procedures

Clause 37 provides for the sponsoring committee to determine its own procedures for operation.

Cessation of existence

Clause 38 sets out the circumstances in which a sponsoring committee ceases to exist. A sponsoring committee ceases to exist if it resolves to dissolve itself, or it has only one member, or if it has no members, or the registration of the relevant legislative proposal is cancelled. The person who was the contact officer of a sponsoring committee must notify the Commissioner if it ceases to exist for any of the first three above reasons.

Contact officer

Clause 39 provides that a sponsoring committee shall have a contact officer who must be a member of the committee and whose actions will be taken to have the committee's endorsement.

Vacancy in office of contact officer

Clause 40 allows a contact officer to resign, leave the committee or be removed by the committee. The committee must replace its contact officer within 14 days of a vacancy in the position.

Notice of contact officer's appointment or change of address

Clause 41 states that a person appointed as contact officer of a sponsoring committee must notify the Electoral Commissioner of a change of contact officer within one month by submitting a notice signed by a majority of the members of the committee. If a contact officer changes address, he or she must also notify the Commissioner within one month.

Division 3 — Register

Register

Clause 42 provides that the Electoral Commissioner must keep a register of registered legislative proposals and proposed laws that are to be put to referendum containing details about the terms of the proposal, the sponsoring committee and the date and number of the relevant *Gazettes*. Details of cancelled proposals must also be kept in the register. The register must also hold details of proposed laws that have been enacted by the Assembly and the results and statistics pertaining to referendums held under this Bill.

PART VII — MISCELLANEOUS

Substantial compliance with some time requirements sufficient

Clause 43 provides that, where the Speaker or the Chief Minister is required to discharge a duty on a specified day, and it is impracticable to discharge it on that day, the requirement is to be taken to be satisfied if the duty is discharged as soon as practicable.

Regulations

Clause 44 provides that the Executive may make regulations for the purposes of the Act.