

1994
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Ms Carnell)

Community Referendum Bill 1994

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1994
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Ms Carnell)

Community Referendum Bill 1994

**A BILL
FOR**

**An Act to enable the people of the Territory to
initiate and vote on legislative proposals**

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

PART I—PRELIMINARY

Short title

- 5 1. This Act may be cited as the *Community Referendum Act 1994*.

Commencement

2. This Act commences on the day on which it is notified in the *Gazette*.

Interpretation

- 10 3. In this Act, unless the contrary intention appears—

“approval vote”, in relation to a referendum, means a vote in favour of the enactment of the proposed law that is the subject of the referendum;

“approved form” means a form approved by the Commissioner;

5 “Auditor-General” means the Auditor-General under the *Audit Act 1989*;

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

“community consultation day” means—

10 (a) a day on which a general election of members of the Legislative Assembly is held; or

(b) a special community consultation day;

and, where polling is suspended and resumed under section 62, includes a day on which polling is resumed;

15 “contact officer”, in relation to a sponsoring committee, means the person appointed by the sponsoring committee under section 134 to be its contact officer;

“declaration vote” means a vote cast in accordance with Division 3 of Part IV;

20 “declaration voting papers”, in relation to a referendum, means—

(a) a declaration in the approved form to be completed by an elector;

(b) a ballot paper suitable for declaration voting at the referendum;

25 (c) a certificate in the approved form to be completed by a witness to the declaration; or

(d) an envelope in the approved form addressed to the Commissioner, on which appears a declaration referred to in paragraph (a);

30 “elector” means a person who is enrolled under the Electoral Act, or is to be taken under that Act to be enrolled, for an electorate in the Territory;

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

“initiating request” means a request submitted under section 6;

“legislative proposal” means a proposal for a law of the Territory in relation to any matter in respect of which the Assembly has power to make laws, other than a law—

- 5 (a) to appropriate public money of the Territory;
- (b) to provide that—
- (i) a specified amount of money;
- (ii) not more than a specified amount of money;
- (iii) not less than a specified amount of money;
- (iv) a specified proportion of an amount of money;
- 10 (v) not more than a specified proportion of an amount of money; or
- (vi) not less than a specified proportion of an amount of money;
- 15 being public money of the Territory, is to be spent for a specified purpose or program; or
- (c) that prohibits the expenditure of any public money of the Territory for a specified purpose or program;

“officer” means—

- 20 (a) a person appointed under section 27C of the Electoral Act to be an officer; or
- (b) a person exercising a power or performing a duty of an officer by virtue of an arrangement under section 330 of that Act;

25 and, in relation to a particular matter, means an officer performing a function in relation to that matter;

“polling place” means a place appointed as a polling place under section 24;

“popular request” means a request under section 9;

30 “pre-referendum period” means the period of 37 days ending on the expiration of the polling day for a referendum;

“public money of the Territory” means revenues, loans and other money received by the Territory;

“qualified legislative proposal” means a proposal that is a qualified proposal under section 11;

“referendum matter” means matter that—

- (a) is intended or likely to affect voting at a referendum; or
- (b) contains an express or implied reference to, or comment on—
 - (i) a referendum;
 - (ii) a legislative proposal; or
 - (iii) a proposed law that is to be put to a referendum;

and includes an express or implied reference to, or comment on, an issue or topic that is, or is claimed to be, relevant to a consideration or assessment of a legislative proposal or a proposed law that is to be put to a referendum;

“referendum period”, in relation to a referendum, means the period—

- (a) beginning on the first day of the pre-referendum period; and
- (b) ending when the result of the referendum is declared under section 85;

“Register” means the Register of Legislative Proposals and Proposed Laws kept under section 137;

“registered legislative proposal” means a legislative proposal registered under section 8, being a proposal the registration of which has not been cancelled;

“scrutineer” means a person appointed to be a scrutineer under section 28;

“scrutiny centre” means a place appointed as a scrutiny centre under section 24;

“Speaker” means the Speaker of the Legislative Assembly;

“special community consultation day” means a day that is a special community consultation day by virtue of section 21;

“sponsoring committee”, in relation to a legislative proposal or a proposed law that gives effect to the objects of a legislative proposal, means the committee that comes into existence in accordance with section 5.

Multiple proposals sponsored by the same committee

4. Where a group of electors becomes established under section 5 as a sponsoring committee in respect of a legislative proposal and, at the same or

5 a later time, the Commissioner accepts under that section the lodgment of a notice by or on behalf of that group in respect of another legislative proposal, the group of electors shall be taken, for the purposes of this Act, to be a separate sponsoring committee in respect of each legislative proposal.

PART II—LEGISLATIVE PROPOSALS

Division 1—Gaining community support

Establishment of sponsoring committee

10 5. (1) Not less than 2 or more than 10 electors proposing to present an initiating request may, by unanimous resolution, agree to form themselves into the sponsoring committee in respect of the legislative proposal that it is intended be the subject of the request.

15 (2) For the purposes of this Act a sponsoring committee comes into existence when the Commissioner accepts the lodgment, by or on behalf of a group of electors referred to in subsection (1), of a notice in the approved form that contains—

- 20 (a) a statement that the persons named in the notice have agreed to form themselves into a sponsoring committee for the purposes of this Act in respect of the legislative proposal described in the notice;
- (b) the names and addresses of those persons;
- (c) their signatures;
- (d) the name of the contact officer for the committee; and
- 25 (e) a description, in no more than 100 words, of the main objects sought to be achieved by the legislative proposal.
- (3) Where the Commissioner is satisfied that—
- (a) a document submitted for the purposes of subsection (2) complies with that subsection and refers to not more than 1 legislative proposal; and
- 30 (b) the objects sought to be achieved by the proposal are capable of implementation by legislation of the Territory;

he or she shall accept the lodgment of the document.

Submission of initiating request

35 6. A contact officer may, on behalf of the sponsoring committee by which he or she has been appointed, submit to the Commissioner a request that seeks registration of a legislative proposal described in the request.

Approval

7. (1) The Commissioner shall approve an initiating request if satisfied that—

- 5 (a) it relates to the legislative proposal referred to in the notice lodged under section 5 by the sponsoring committee on behalf of which the request has been lodged;
- (b) there is set out on each page of the document that constitutes the request—
- 10 (i) the description of the legislative proposal in the terms set out in the notice approved under section 5; and
- (ii) the name and address of each member of the sponsoring committee; and
- (c) it contains the names and addresses of not less than 1,000 electors who have signed the request.

15 (2) For the purposes of paragraph (1) (c), the Commissioner may be satisfied that not less than 1,000 signatories to an initiating request are electors if, having checked a sample of signatories chosen at random, being a sample of not less than 10 per cent of the number of signatories, the Commissioner is satisfied that—

- 20 (a) the sample is a fair sample; and
- (b) the proportion of the 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.

Registration of proposal

25 8. Upon approving an initiating request, the Commissioner shall—

- (a) register the legislative proposal in the terms set out in the request; and
- (b) publish in the *Gazette* a notice in accordance with Schedule 1.

Form of popular request

30 9. (1) A person may address to the Commissioner a request, in accordance with Schedule 2, that the people of the Territory be permitted to determine by referendum whether the law of the Territory should be altered in accordance with a registered legislative proposal specified in the popular request.

35 (2) A request that is not in accordance with Schedule 2 shall be disregarded for the purposes of this Division.

Submission of popular request

10. (1) A popular request shall be submitted within 6 months after the date of the publication in the *Gazette* of the notice of registration of the relevant registered legislative proposal under paragraph 8 (b).

- 5 (2) A popular request submitted after the expiry of the period referred to in subsection (1) shall be disregarded for the purposes of this Division.

Requirements of popular request

10 11. (1) If the Commissioner is satisfied that the popular requests received in respect of a registered legislative proposal bear the signatures of not less than—

- (a) the required number; and
- (b) if such be the case—twice the required number;

15 of electors whose names and addresses are set out in the popular requests, he or she shall, as soon as it is practicable to do so, publish in the *Gazette* a notice stating that—

- (c) the registered legislative proposal specified in the notice has been supported by the required number of electors or twice the required number of electors, as the case requires;
- 20 (d) a proposed law that gives effect to the objects of the registered legislative proposal may, in accordance with this Act, be put to a referendum; and
- (e) where the registered legislative proposal has been supported by twice the required number of electors—the proposal is a qualified legislative proposal.

25 (2) The Commissioner may be satisfied for the purposes of subsection (1) if, having checked a sample of signatories chosen at random, being a sample of not less than 10 per cent of the number of signatories, he or she is satisfied that—

- (a) the sample is a fair sample; and
- 30 (b) the proportion of the signatories in the sample who are electors is such that, if that proportion were applied to the number of signatories to the popular requests, the number of those signatories who are electors would be not less than the required number or twice the required number, as the case requires.

35 (3) The Commissioner shall notify in writing the contact officer of the relevant sponsoring committee of the publication of a notice under subsection (1).

(4) Where the popular requests received by the Commissioner in respect of a registered legislative proposal in accordance with this Division do not amount to the required number—

- 5 (a) the registration of the legislative proposal is, by force of this subsection, cancelled; and
- (b) the Commissioner shall publish in the *Gazette* notice of the cancellation and notify in writing the person who last held the office of contact officer of the relevant sponsoring committee of the publication.

10 (5) In this section—

“popular request” does not include a request that is required to be disregarded for the purposes of this Division;

15 “required number” means 5 per cent of the number of electors who were eligible to vote at the general election of members of the Legislative Assembly that was last held before the expiry of the period of 6 months referred to in section 10.

Cancellation of registration on cessation of committee

20 12. The Commissioner shall cancel the registration of a registered legislative proposal if, before a copy of a proposed law that gives effect to the objects of the proposal is given to the Speaker under subsection 15 (1), the Commissioner is satisfied that the relevant sponsoring committee has ceased to exist.

Division 2—Proposed laws

Preparation

25 13. (1) Where a notice in relation to a popular request has been published under section 11, the sponsoring committee in respect of the relevant registered legislative proposal may prepare a proposed law that gives effect to the objects of that proposal.

30 (2) On written application made by a sponsoring committee through its contact officer, the Attorney-General may make available to the committee the services of a public servant in order to enable the committee to prepare a proposed law.

Attorney-General's certificate

35 14. (1) Where a sponsoring committee has prepared a proposed law, its contact officer may apply in writing to the Attorney-General for a certificate that the proposed law is consistent with the registered legislative proposal sponsored by that committee and is suitable for presentation to the electors on a community consultation day.

(2) The Attorney-General shall not give a certificate under this section unless he or she is satisfied that the proposed law—

- (a) gives effect to the objects of the registered legislative proposal; and
- (b) is in a form that is suitable for presentation to the Legislative Assembly.

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Presentation to Assembly

15. (1) Where the Attorney-General gives a certificate under section 14, the contact officer of the sponsoring committee for the relevant proposed law may give the certificate and a copy of the proposed law to the Speaker.

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(2) The Speaker shall—

- (a) lay the certificate and the copy of the proposed law before the Legislative Assembly on the first sitting day after receiving them;
- (b) notify the Commissioner of the laying and give him or her a copy of the certificate and the proposed law; and

15

- (c) give a copy of the proposed law to the Auditor-General and request him or her to prepare and publish estimates of costs in accordance with section 20.

Failure to prepare proposed law

16. Where a copy of a proposed law that gives effect to the objects of a registered legislative proposal is not laid before the Legislative Assembly under subsection 15 (2) before the holding of the general election of members of the Assembly that next occurs after the publication of the notice under subsection 11 (1) that relates to the proposal, the registration of the proposal is, by force of this subsection, cancelled.

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Amendment

17. (1) A reference in this section to a proposed law shall be read as a reference to a proposed law a copy of which has been laid before the Legislative Assembly under subsection 15 (2).

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(2) A sponsoring committee may prepare an amendment to a proposed law.

30

(3) On written applications made by a sponsoring committee through its contact officer, the Attorney-General may make available to the committee the services of a public servant in order to enable the committee to prepare a proposed law.

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(4) Where a sponsoring committee has prepared an amendment to a proposed law, its contact officer may apply in writing to the Attorney-

General for a certificate under section 14 and, where such an application is made—

- (a) any certificate previously issued under that section in respect of the proposed law ceases to have effect; and
- 5 (b) that section applies in relation to the application as if the references in that section to the proposed law were references to the proposed law as affected by the amendment.

(5) Where the Speaker receives, on or before the last day for making amendments, from the contact officer of the relevant sponsoring committee, a copy of an amendment to a proposed law and the Attorney-General's certificate in relation to the proposed law as affected by the amendment, the Speaker shall—

- (a) lay the certificate and the copy of the amendment before the Legislative Assembly on the first sitting day after receiving them;
- 15 (b) notify the Commissioner of the laying and give him or her a copy of the certificate and the amendment; and
- (c) give a copy of the amendment to the Auditor-General and request him or her to prepare and publish estimates of costs in accordance with section 20 in relation to the proposed law as affected by the amendment.

(6) A proposed law is amended when a copy of the amendment is laid before the Legislative Assembly under subsection (5).

(7) Where a proposed law has been amended under this section—

- 25 (a) any reference in this Act to the proposed law shall be read as a reference to the proposed law as so amended; and
- (b) in any reprint or reproduction of such a proposed law, the proposed law shall be reprinted or reproduced as so amended.

(8) In this section—

30 "last day for making amendments", in relation to a proposed law, means the 31 October that last occurs before the community consultation day on which the referendum for the proposed law is to be held.

Submission to referendum

35 18. (1) Subject to subsection (2), the Commissioner shall submit a proposed law a copy of which has been laid before the Legislative Assembly under section 15 to a referendum of electors on the first community consultation day that occurs after the expiry of the period of 4 months after the laying.

(2) The Commissioner shall not submit a proposed law to referendum if, before the holding of the referendum, he or she receives from the Attorney-General written advice that the Legislative Assembly has enacted a law that gives effect to the objects of the proposed law.

5 **Assembly may refer proposed law to referendum**

19. (1) This section applies to a proposed law, other than a proposed law a copy of which has been laid before the Legislative Assembly under section 15.

10 (2) The Legislative Assembly may, before deciding whether or not to enact a proposed law to which this section applies, resolve to refer it to a referendum of electors.

(3) Where the Legislative Assembly passes a resolution in accordance with subsection (2), the Speaker shall—

15 (a) notify the Commissioner in writing of the decision and give him or her a copy of the proposed law; and

(b) give a copy of the proposed law to the Auditor-General and request him or her to prepare and publish estimates of costs in accordance with section 20.

20 (4) Subject to subsection (5), the Commissioner shall submit a proposed law that has been the subject of a resolution under subsection (2) to a referendum of electors on the first community consultation day that occurs after the expiry of the period of 4 months after the passing of the resolution.

25 (5) The Commissioner shall not submit a proposed law to which this section applies to a referendum if, before the holding of the referendum, the Legislative Assembly—

(a) rescinds the relevant resolution; or

(b) enacts the proposed law.

Auditor-General's estimates of costs

30 20. (1) As soon as it is practicable to do so after receiving from the Speaker a notification under paragraph 15 (2) (c) or 19 (3) (b), the Auditor-General shall prepare and publish in the *Gazette* an estimate in accordance with this section of the reasonable costs or savings to the Territory of the implementation of the proposed law.

35 (2) In this section, a reference to costs or savings shall be read as a reference to—

(a) the net costs or savings that are of capital or a capital nature; and

(b) the net annual operating costs or savings.

(3) In making an estimate under this section the Auditor-General shall—

5 (a) assume that the proposed law will commence on 1 July next following receipt of the notification from the Speaker; and

(b) estimate the costs of, or savings in, the implementation of the proposed law during the financial year commencing on that date and each of the 2 next following financial years.

10 (4) Where the Auditor-General deems it advisable to do so for the purpose of better informing the community, he or she may prepare and publish estimates in the form of a statement of the highest and lowest reasonably estimated amounts of a cost or a saving.

15 (5) The Auditor-General shall publish in the *Gazette* a statement of the material assumptions made in the calculation of estimates under this section and of the reasons for the conclusions reached.

Special community consultation days

20 21. (1) This section applies where, during the period of 12 months ending on 31 October in a calendar year, other than a pre-election year, a copy of a qualified proposed law has been laid before the Legislative Assembly under section 15.

(2) Subject to subsections (4) and (5), a special community consultation day is a day specified by the Commissioner under subsection (3).

25 (3) Where this section applies, the Commissioner shall, as soon after the end of the period referred to in subsection (1) as it is practicable to do so, by notice in the *Gazette*, specify the next following third Saturday in February to be a special community consultation day.

30 (4) Where, after the publication of a notice under subsection (3) but before the occurrence of the day specified in that notice, a notice is published in the *Commonwealth Gazette* specifying a day for the holding of an extraordinary election, the day specified under subsection (3) thereupon ceases to be a special community consultation day.

(5) Where—

(a) the Commissioner has published a notice under subsection (3);

35 (b) a writ is issued under Part XIII of the *Commonwealth Electoral Act 1918* of the Commonwealth for an election of Senators for the Territory or for a general election for the House of Representatives; and

(c) the date for the polling in respect of the election is the day specified in the notice published by the Commissioner;

5 by virtue of this section, that day ceases to be a special community consultation day and, in lieu thereof, the third day of April next following is specified as the next community consultation day.

(6) In this section—

“extraordinary election” means an election of members of the Legislative Assembly held under section 16 or 48 of the *Australian Capital Territory (Self-Government) Act 1988* of the Commonwealth;

10 “pre-election year” means the calendar year that occurs immediately before the year in which an ordinary election of the Legislative Assembly is required to be held under section 94 of the Electoral Act;

15 “qualified proposed law” means a proposed law that gives effect to the objects of a registered legislative proposal that is a qualified proposal for the purposes of section 11.

PART III—ARRANGEMENTS FOR REFERENDUMS

Division 1—Arguments for and against proposed laws

Preparation

20 22. (1) Within 2 months after the laying of a proposed law before the Legislative Assembly under subsection 15 (2), the sponsoring committee may prepare and, through its contact officer, give to the Commissioner, an argument in favour of the proposed law consisting of not more than 2,000 words.

25 (2) Within 2 months after a resolution by the Legislative Assembly under subsection 19 (2) to refer a proposed law to a referendum, a member of the Legislative Assembly may give to the Commissioner an argument in favour of the proposed law that consists of not more than 2,000 words and has been authorised by a majority of the members of the Assembly who
30 voted in favour of the resolution.

(3) Before the expiry of the period referred to in subsection (1) or (2), as the case requires, a member of the Legislative Assembly may give to the Commissioner an argument against the proposed law that consists of not more than 2,000 words and has been authorised by a majority of the
35 members of the Assembly who—

(a) in the case of a proposed law referred to in subsection (1)—are against the proposed law; or

(b) in the case of a proposed law referred to in subsection (2)—voted against the resolution to refer the law to a referendum.

5 (4) Where, after the receipt by the Commissioner of an argument in relation to a proposed law, the proposed law is amended in accordance with section 17, a revised argument may be given to the Commissioner in accordance with this section in relation to the proposed law as amended by the contact officer of the sponsoring committee or a member, as the case requires.

10 (5) Where the Commissioner receives a revised argument under subsection (4), the original argument shall be disregarded for the purposes of this Act.

Distribution

15 23. (1) The Commissioner shall, not later than 14 days before a community consultation day on which a referendum is to be held, cause to be printed and, as nearly as practicable, posted to each elector a pamphlet containing—

- (a) the arguments submitted under section 22; and
- (b) a copy of the proposed law.

20 (2) The Territory shall not expend money in respect of the presentation of the arguments in favour of or against a proposed law, except in relation to—

- 25 (a) the preparation, printing and distribution of the pamphlets referred to in subsection (1);
- (b) the preparation, printing and distribution of translations into other languages of material contained in those pamphlets;
- (c) the preparation and distribution of that material in a form suitable for the visually impaired;
- (d) the provision by the Electoral Commissioner of other information relating to, or to the effect of, the proposed law; or
- 30 (e) the salaries and allowances of—
 - (i) members of the Legislative Assembly;
 - (ii) members of the staff of members of the Legislative Assembly; or
 - (iii) public servants.

Division 2—Administrative arrangements

Polling places and scrutiny centres

24. (1) The Commissioner may, by notice in the *Gazette*—

- 5
- (a) appoint a specified place to be a polling place for a referendum on a community consultation day; and
 - (b) appoint a specified place to be a scrutiny centre during the referendum period for the purpose of the scrutiny at a referendum.

(2) During a pre-referendum period, the Commissioner—

- 10
- (a) shall publish in a daily newspaper printed and published in the Territory; and
 - (b) may publish by such other means as he or she determines;

a notice setting out particulars of each polling place for the referendum.

Administrative arrangements and polling places

15 25. The Commissioner shall make appropriate administrative arrangements for the conduct of each referendum and, in particular, shall ensure that each polling place is properly equipped with—

- (a) separate voting compartments constructed so as to screen voters from observation while marking ballot papers;
- (b) ballot boxes capable of being securely fastened; and
- 20 (c) ballot papers and other documents and stationery.

Rolls of electors

26. (1) Subject to this section, the roll of electors of the Territory kept under the Electoral Act is the roll of electors for the purposes of this Act.

25 (2) For the purposes of this Act, the roll of electors is closed—

- (a) during the period when it is to be taken to be closed under subsection 74 (1) of the Electoral Act; and
 - (b) during the period commencing at 6 p.m. on the 29th day before a special community consultation day and ending at the close of polling for any referendum held on that day.
- 30

(3) Section 74 of the Electoral Act applies in relation to the roll of electors for the purposes of this Act in the same manner as it applies to the roll for an electorate for the purposes of that Act.

Certified lists of electors

27. (1) As soon as possible after the roll of electors closes by virtue of paragraph 26 (2) (b), the Commissioner shall—

- (a) prepare a certified list of the electors; and
- 5 (b) give a copy to the officer in charge of each polling place.

(2) A certified list of electors prepared under this section shall be prepared in the same manner, and contain, in relation to each elector at the time the list is prepared, the same information, as if it were a certified list of electors prepared for the purposes of section 115 of the Electoral Act.

10 (3) The list of voters to be used in relation to a referendum shall be—

- (a) where the referendum is held on a special community consultation day—the certified list of electors prepared under this section; or
- (b) where the referendum is held on any other community consultation day—the certified list of voters prepared under section 115 of the Electoral Act for the purpose of the election to be held on that day.

15

Scrutineers—appointment

28. (1) Each of the following may appoint a scrutineer to represent it during the polling or scrutiny for a referendum, or both:

- 20 (a) a political party that, on the 31 October that last occurred before the community consultation day on which the referendum is held—
 - (i) was registered under the Electoral Act; and
 - (ii) was represented by at least 1 member in the Legislative Assembly;
- 25 (b) where a proposed law gives effect to the objects of a registered legislative proposal—the relevant sponsoring committee.

25

(2) An appointment shall be made by giving to the Commissioner—

- (a) written notice, signed by the secretary of the political party or the contact officer of the sponsoring committee, as the case requires, specifying the name and address of the scrutineer; and
- 30 (b) an undertaking in the approved form signed by the scrutineer.

30

Scrutineers—conduct

29. (1) Subject to subsection (2), a scrutineer representing a party or a committee during the polling for a referendum is entitled to be present in a polling place, and to enter or leave a polling place, when voters are allowed to vote at that place.

35

(2) At any time while voters are allowed to vote at a particular polling place, the number of scrutineers representing a particular party who are present at that place shall not exceed the number of officers responsible for issuing ballot papers at that place.

5 (3) Subject to subsection (4), a scrutineer representing a party during the scrutiny for a referendum is entitled to be present in a scrutiny centre, and to enter or leave a scrutiny centre, during the conduct of the scrutiny at the centre.

10 (4) At any time during the conduct of the scrutiny at a particular scrutiny centre, the number of scrutineers representing a particular party who are present at the centre shall not exceed the number of officers at the centre.

15 (5) A scrutineer at a polling place or scrutiny centre shall wear a badge, supplied by the Commissioner, that identifies the person as a scrutineer.

(6) A scrutineer shall not, without reasonable excuse, communicate with any person in a polling place except so far as is necessary in the performance of the scrutineer's functions.

Penalty: \$1,000.

20 (7) A scrutineer shall not, without reasonable excuse, interfere with or attempt to influence an elector at a polling place.

Penalty: \$5,000.

(8) For the purposes of paragraph 128 (4) (b), a scrutineer who contravenes this section is no longer entitled to be on the premises.

25 (9) In this section—

“party” means a political party or a sponsoring committee.

PART IV—VOTING

Division 1—General

Interpretation

30 30. In this Part—

“authorised witness” means—

35 (a) in Australia or an external Territory—an officer, an elector or a person who is enrolled on any roll kept under the *Commonwealth Electoral Act 1918* of the Commonwealth; or

- (b) in any other place—a person who is at least 18 years of age.

Entitlement to vote

5 **31. (1)** Subject to subsection (2), an elector is entitled to vote at a referendum.

(2) A person is not entitled to vote at a referendum unless he or she is at least 18 years of age on the day on which the poll for the referendum is held.

10 **(3)** The inclusion of the name of a person on a certified list of electors for a referendum is conclusive evidence of the person's right to vote at the referendum.

(4) In a roll or a certified list of electors, an omission of a given name, or an error in a name, does not disqualify an elector from voting.

15 **(5)** An elector whose surname has changed is not disqualified from voting under a former name entered for him or her on a roll or certified list of electors.

Compulsory voting

32. (1) An elector who is entitled to vote at a referendum shall not, without a valid and sufficient reason, fail to vote at the referendum.

20 Penalty: \$50.

(2) Subsection (1) does not apply to a person who is not required to vote at an election by virtue of subsection 123 (2) of the Electoral Act.

25 **(3)** Without limiting the generality of subsection (1), an elector shall be taken to have a valid and sufficient reason for failing to vote at a referendum if he or she believes it to be part of his or her religious duty to abstain from voting.

Multiple votes prohibited

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

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

30 **Procedures for voting**

34. (1) In order to vote at a referendum, an elector may—

(a) cast an ordinary vote on a community consultation day in accordance with Division 2;

35 (b) cast a declaration vote on or before a community consultation day in accordance with Division 3; or

- (c) if the elector is a patient in a hospital, a place that is a special hospital for the purposes of Division 4 or detained in a place that is a remand centre for the purposes of Division 4—cast an ordinary vote or a declaration vote in accordance with that Division.

- 5 (2) An elector who is entitled to vote at a referendum may cast a vote on a community consultation day at any polling place in the Territory, whether or not the polling place is in the electorate for which the elector is enrolled.

Division 2—Ordinary voting

10 **Claims to vote**

35. (1) Where a person attends before an officer at a polling place on a community consultation day and claims to vote at a referendum, the officer shall issue a ballot paper to the claimant if satisfied that the certified list of electors—

- 15 (a) specifies the claimant's name and an address for the claimant; and
 (b) has not been marked so as to indicate that a ballot paper has already been issued to the claimant.

(2) Despite subsection (1), an officer shall not issue a ballot paper to a person who indicates that he or she has already voted at the referendum.

- 20 (3) Immediately after issuing a ballot paper to a claimant, the officer shall record the issue on the certified list of electors.

Manner of voting

36. The voting at a referendum shall be by ballot and each elector shall indicate his or her vote—

- 25 (a) if the elector approves the proposed law—by writing the word “Yes” in the space provided on the ballot paper; or
 (b) if the elector does not approve the proposed law—by writing the word “No” in the space provided.

Form of ballot paper

- 30 37. (1) The ballot paper to be used in a referendum shall be in accordance with Schedule 3.

(2) Where 2 or more referendums are held on the same day, the ballot papers for each referendum may be printed on 1 piece of paper.

Voting to be in private

- 35 38. Subject to section 59, a person shall, on receipt of a ballot paper under section 35, without delay—

- (a) go to an unoccupied voting compartment at the polling place;
- (b) there, in private, mark his or her vote on the ballot paper in accordance with section 36;
- 5 (c) fold the ballot paper so as to conceal the vote and put it in a ballot box at the polling place; and
- (d) leave the polling place.

Division 3—Declaration voting

Declaration voting at polling places

10 **39. (1)** Where a person attends before an officer at a polling place on a community consultation day and claims to vote at a referendum, the officer shall issue declaration voting papers to the person if satisfied that—

- (a) the certified list of electors does not specify—
 - (i) the person's name; or
 - (ii) an address for the person; or
- 15 (b) the certified list of electors has been marked so as to indicate that a ballot paper has already been issued to the person but the person claims not to have voted already at the referendum.

20 **(2)** Despite subsection (1), an officer shall not issue declaration voting papers to a person who indicates that he or she has already voted at the referendum.

(3) The officer shall—

- (a) give the claimant a statement in writing in the approved form indicating the consequences of casting a declaration vote under this section; and
- 25 (b) record the name of the claimant.

(4) Subject to section 59, the following requirements apply to the casting of a declaration vote under this section:

- (a) the person shall complete and sign the declaration in the presence of the officer;
- 30 (b) the officer shall complete and sign the certificate as witness;
- (c) the person shall go to an unoccupied voting compartment at the polling place and there, in private—
 - (i) mark his or her vote on the ballot paper in accordance with section 36; and

- (ii) fold the ballot paper so as to conceal the vote;
- (d) the person shall return the folded ballot paper to the officer;
- (e) the officer shall, in the presence of the person, without unfolding the ballot paper, place it in the envelope on which the declaration referred to in paragraph (a) appears, fasten the envelope and place it in a ballot box at the polling place;
- (f) the person shall then leave the polling place.

Declaration voting before community consultation day etc.

40. (1) An authorised officer shall, on application by an eligible elector, give to the elector declaration voting papers.

(2) Declaration voting papers shall not be given to an elector earlier than the 19th day before a community consultation day before a referendum is held.

(3) An application for declaration voting papers for postal voting shall be—

- (a) in the approved form;
- (b) signed and dated by the applicant in the presence of an authorised witness;
- (c) signed and dated by the witness; and
- (d) given to the officer before 6 p.m. on the day before the community consultation day.

(4) Despite subsection (1), an officer shall not post declaration voting papers to an applicant if the application is received by the officer after the last mail clearance at the nearest post office on the last Thursday before the community consultation day.

(5) An application for declaration voting papers (other than for postal voting) shall be made by the applicant's personal attendance—

- (a) before an officer in the Territory before 6 p.m. on the day before the community consultation day; or
- (b) before an officer outside the Territory before the time that is 6 p.m. in the Territory on the community consultation day.

(6) Subject to section 59, the following requirements apply in relation to the casting of a postal vote under this section:

- (a) the elector shall show the unsigned declaration and certificate, and the unmarked ballot paper to an authorised witness;

- (b) the elector shall complete and sign the declaration in the presence of the witness;
 - (c) the witness shall complete and sign the certificate as witness;
 - 5 (d) the elector shall, in the presence of the witness but so that the witness cannot see the vote, mark his or her vote on the ballot paper, fold the ballot paper, place it in the envelope addressed to the Commissioner and fasten the envelope;
 - (e) the elector shall—
 - 10 (i) before polling day—post the envelope and contents to the Commissioner; or
 - (ii) on or before polling day—lodge the envelope and contents with the Commissioner or another officer.
- (7) Subsection 39 (4) applies to the casting of a declaration vote (other than a postal vote) under this section as if—
- 15 (a) it were a declaration vote under section 39; and
 - (b) a reference in that subsection to an unoccupied voting compartment were a reference to an unoccupied part of the place at which the elector attends before the officer concerned.
- (8) In this section—
- 20 “eligible elector” means an elector who is entitled to vote at a referendum and—
 - (a) who expects to be unable to attend at a polling place on a community consultation day; or
 - 25 (b) whose address is an address particulars of which are required to be suppressed from a roll extract by virtue of section 71 of the Electoral Act.

Record of issue of declaration voting papers

41. (1) An officer who issues declaration voting papers under section 40 shall—
- 30 (a) make a record of the time and date of issue; and
 - (b) if the officer is not the Commissioner—give the record to the Commissioner.
- (2) Where an application is made for a postal vote, the record shall be endorsed on the application.

Inspection of records

5 **42. (1)** Subject to subsection (2), the Commissioner shall make each record referred to in section 41, or a copy, available for public inspection at the office of the Commissioner within ordinary office hours during the period of 40 days commencing on the third day after a community consultation day.

10 **(2)** A document referred to in subsection (1) that is made available for public inspection shall not specify an address particulars of which are required to be suppressed from a roll extract by virtue of section 71 of the Electoral Act.

Receipt of declaration voting papers

43. (1) An officer who receives completed declaration voting papers in respect of a declaration vote cast under section 40 shall—

- 15 (a) endorse the time and date of receipt on the envelope; and
 (b) if the officer is not the Commissioner—give the papers to the Commissioner or an authorised officer.

(2) The Commissioner shall keep the papers in safe custody for the purposes of scrutiny under Part VI.

Issue of voting papers to registered declaration voters

20 **44.** As soon as practicable after the commencement of the pre-referendum period for a referendum, the Commissioner shall post to each elector who is, or is to be taken to be, a registered declaration voter for the purposes of the Electoral Act—

- 25 (a) an application form for declaration voting papers; or
 (b) if the elector is registered on the ground that he or she is so physically incapacitated as to be unable to sign his or her name—declaration voting papers for the referendum.

Correcting formal errors

45. If an officer is satisfied that—

- 30 (a) an application for declaration voting papers for postal voting; or
 (b) the declaration or certificate in completed declaration voting papers; contains a formal error, the officer may amend the application, declaration or certificate to correct the error.

Soliciting applications for postal declaration votes

35 **46. (1)** A person shall not, without reasonable excuse, do anything for the purpose of inducing a person—

- (a) to complete an application for declaration voting papers for postal voting; and
 - (b) to return the completed application to an address other than an address authorised for the purpose by the Commissioner.
- 5 (2) A person shall not, without reasonable excuse, do anything to induce a person to complete an application for declaration voting papers for postal voting, being an application in a form not approved for the purposes of paragraph 40 (3) (a).
- Penalty: \$3,000.
- 10 **Transmission of applications for postal declaration votes**
47. A person who accepts for transmission to the Commissioner a completed application for declaration voting papers for postal voting shall transmit the application to the Commissioner as soon as practicable.
- Penalty: \$1,000.
- 15 **Interference with declaration voting**
48. Except for the purpose of section 59, or at the request of the elector, a person shall not, without reasonable excuse—
- (a) communicate with an elector while he or she is casting a declaration vote;
 - (b) interfere with an elector's casting of a declaration vote;
 - (c) do anything to find out how an elector voted by declaration vote; or
 - (d) enable any other person to find out how an elector voted by declaration vote.
- 20
- 25 Penalty: \$3,000.
- Soliciting completed declaration votes**
49. A person shall not, without reasonable excuse, do anything for the purpose of inducing an elector to give to the person completed declaration voting papers.
- 30 Penalty: \$3,000.
- Transmission of completed declaration votes**
50. A person who accepts for transmission to the Commissioner completed declaration voting papers shall transmit them to the Commissioner as soon as practicable.
- 35 Penalty: \$1,000.

Opening envelopes containing declaration votes

51. Unless authorised by or under this Act, a person shall not, without reasonable excuse, open an envelope that appears to contain a completed declaration vote.

5 Penalty: \$500.

Division 4—Mobile polling

Interpretation

52. In this Division—

10 “registered medical practitioner” has the same meaning as in the *Medical Practitioners Act 1930*;

“remand centre” includes a police station or other place in which a person is held in lawful custody in respect of an offence;

“special hospital” means a hospital that—

- 15 (a) is not a polling place; and
(b) is declared by the Commissioner, by notice in the *Gazette*, to be a special hospital for the purposes of this Division;

“visiting officer” means an officer who makes a visit referred to in subsection 53 (1), (2) or (3).

Mobile polling—institutions

20 53. (1) The officer in charge of a polling place that is a hospital shall arrange for an officer to visit patients at the hospital (other than out-patients) between 8 a.m. and 6 p.m. on a community consultation day for the purpose of taking their votes.

25 (2) The Commissioner shall arrange for an officer to visit patients at a special hospital (other than out-patients) between 8 a.m. and 6 p.m.—

- (a) on a day that is not more than 5 days before a community consultation day; or
(b) on a community consultation day;

for the purpose of taking their votes.

30 (3) The Commissioner shall arrange for an officer to visit persons detained in a remand centre for the purpose of taking their votes.

(4) A visit referred to in subsection (3) shall be made at a time, and in accordance with any conditions, arranged by the Commissioner and the person in charge of the centre.

Functions of visiting officers

54. (1) When visiting under section 53, the visiting officer—
- (a) shall take a ballot box, ballot papers, the certified list of electors and anything else necessary to enable a person to vote; and
 - 5 (b) shall be accompanied by at least 1 other officer and any scrutineer who wishes to attend.
- (2) While a visiting officer is with a person in a room or other place for the purpose of taking the person's vote, this Act has effect, so far as practicable, as if—
- 10 (a) the room or place were a polling place; and
 - (b) the visiting officer were the officer in charge of the polling place.
- (3) A visit under section 53 to a patient in a hospital or special hospital shall not be made if the visiting officer is informed by a registered medical practitioner, or a member of the staff at the hospital, that the visit is
- 15 forbidden on medical grounds.
- (4) A visit under section 53 to a person detained in a remand centre shall not be made if the visiting officer is informed by the person in charge of the centre that the visit is forbidden on security grounds.

Failure to visit institution

- 20 55. A failure to make a visit under section 53 or to take votes in accordance with section 54 does not invalidate the result of a referendum.

Custody of ballot boxes and electoral papers

56. (1) After a visiting officer has completed all his or her visits under section 53, the officer shall, in the presence of any scrutineers—
- 25 (a) close and seal the ballot boxes containing ballot papers for ordinary voting or declaration voting;
 - (b) parcel and enclose in sealed wrapping all unused ballot papers; and
 - (c) parcel and enclose in sealed wrapping all other electoral papers used for the purposes of the visits.
- 30 (2) The visiting officer shall give the articles referred to in subsection (1) to the Commissioner, who shall keep them in safe custody for the purposes of scrutiny under Part VI.

Division 5—Miscellaneous**Arrangements at polling places**

- 35 57. At each polling place the polling shall be conducted as follows:

- 5
- (a) before any vote is taken the officer in charge shall exhibit each ballot box empty, and shall then securely fasten its cover;
 - (b) the poll shall open at 8 a.m. and shall not close until all electors present in the polling place at 6 p.m., and desiring to vote, have voted;
 - (c) no person shall be admitted to the polling place after 6 p.m. for the purpose of voting.

Particulars on ballot papers before issue

10 **58.** An officer shall not issue a ballot paper for the purposes of a referendum unless the ballot paper complies with section 37.

Assistance to voters

59. (1) An elector who is unable to vote may be assisted in voting if the elector would otherwise be unable to vote.

(2) An assistant shall be—

- 15
- (a) if the elector is a postal voter—a nominee of the elector or, if there is no such nominee, an authorised witness; or
 - (b) in any other case—a nominee of the elector or, if there is no such nominee, an officer.

20 **(3)** An assistant may enter a voting compartment for the purpose of assisting an elector to vote, but an assistant who is an officer shall not do so except in the presence of—

- (a) a scrutineer; or
- (b) if no scrutineer is present—another officer.

25 **(4)** Subject to subsection (3), an assistant may assist an elector in any of the following ways:

- 30
- (a) by acting as an interpreter;
 - (b) in the case of a declaration vote—by completing, or assisting the elector to complete, the declaration;
 - (c) by explaining the ballot paper and the requirements of this Act relating to its marking;
 - (d) by marking, or assisting the elector to mark, the ballot paper at the elector's direction;
 - (e) by folding the ballot paper and depositing it in a ballot box or declaration envelope, or with an officer, as required by this Act.

Spoilt ballot papers

60. (1) An officer shall issue another unused ballot paper to an elector who—

5 (a) satisfies the officer that a ballot paper previously issued to the elector has been inadvertently spoiled; and

(b) gives the spoilt ballot paper to the officer.

(2) An officer who receives a spoilt ballot paper shall—

(a) write "spoilt" on the back of it;

10 (b) place it in an envelope, seal the envelope and endorse it so as to indicate the type of spoilt ballot paper enclosed; and

(c) sign the endorsement.

(3) At the close of polling, the officer in charge shall enclose the envelope in a sealed parcel and give it to the Commissioner.

Custody of ballot boxes and electoral papers

15 61. (1) At the close of polling, the officer in charge of a polling place shall, in the presence of any scrutineers—

(a) close and seal the ballot boxes containing ballot papers for ordinary voting or declaration voting;

(b) parcel and enclose in sealed wrapping all unused ballot papers; and

20 (c) parcel and enclose in sealed wrapping all other electoral papers used at the polling place.

(2) The officer shall give the articles referred to in subsection (1) to the Commissioner, who shall keep them in safe custody for the purposes of scrutiny under Part VI.

25 (3) Paragraph (1) (a) does not apply to ballot boxes containing ballot papers for ordinary voting where the polling place is also a scrutiny centre and the procedures set out in section 78 are to be carried out in respect of those ballot boxes and ballot papers at that centre.

Suspension and adjournment of polling

30 62. (1) The Commissioner may suspend the polling at a polling place on a community consultation day if for any reason it is not practicable to proceed with it.

(2) Where—

(a) the polling is suspended; and

- (b) the Commissioner believes on reasonable grounds that it is not reasonably practicable for an elector affected by the suspension to cast a vote at another polling place;

5 the Commissioner shall arrange for the polling to resume as soon as practicable, but no later than 21 days after the day of the suspension, on a day specified by the Commissioner by notice in the *Gazette*.

(3) If it is impracticable to resume the polling at the same polling place, the notice shall specify the polling place at which polling may be resumed.

10 (4) On the resumption of polling, only an elector who was entitled to vote on the day on which the poll for the referendum was required to be held and who has not already voted is entitled to vote.

PART V—POLLING IN ANTARCTICA

Interpretation

15 63. (1) In this Part—

“Antarctica” means—

- (a) the Australian Antarctic Territory;
- (b) the Territory of Heard Island and McDonald Islands; or
- (c) Macquarie Island;

20 “assistant returning officer”, in relation to a station, means the assistant returning officer appointed under section 64 in relation to the station;

“research personnel” means personnel who are to be, or have been, engaged in work at a station;

25 “returning officer”, in relation to a station, means the returning officer appointed under section 64 in relation to the station;

“station” means—

- 30 (a) a research station in Antarctica that is operated by the Commonwealth and is declared by the Commissioner, in writing, to be a permanent research station; or
- (b) in relation to a particular referendum, a ship that is declared by the Commissioner, in writing, to be a station for the purposes of this Part in relation to the referendum;

“transmit” means transmit by facsimile, telex or other approved means.

(2) The Commissioner shall not declare a ship to be a station unless the Commissioner is satisfied that, on a community consultation day, the ship is likely to be at sea transporting research personnel to or from Antarctica.

5 Returning officer and assistant

64. (1) The Commissioner shall appoint, in writing, for each station—

- (a) a returning officer; and
- (b) an assistant returning officer.

10 (2) The person in charge of a station shall not be appointed under subsection (1) for the station.

Acting returning officer or assistant

15 65. (1) The person in charge of a station may appoint a person to act in the office of the returning officer or assistant returning officer for a station—

- (a) during a vacancy in the office, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the occupant of the office is absent from duty or from Antarctica or is, for any other reason, unable to perform the functions of the office.

20

(2) Anything done by or in relation to a person purporting to act under this section is not invalid on the ground that—

- (a) the occasion for the person's appointment had not arisen;
- (b) there is a defect or irregularity in connection with the person's appointment;
- (c) the person's appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

25

Application of Act to polling in Antarctica

30 66. Subject to this Part, this Act applies, so far as practicable, to the taking of a poll in Antarctica as if—

- (a) a reference in this Act to a polling place were a reference to the relevant station;
- (b) a reference in this Act to the officer in charge of a polling place were a reference to the returning officer; and

- (c) a reference in this Act to an officer were a reference to the assistant returning officer.

Antarctic electors

67. (1) An elector—

- 5 (a) who is, for the purposes of the *Commonwealth Electoral Act 1918* of the Commonwealth, an Antarctic elector; and
- (b) whose address, recorded on the Commonwealth roll when the elector became a person referred to in paragraph (a), was an address in the Territory;
- 10 is an Antarctic elector for the purposes of this Act.

(2) In this section—

“Commonwealth roll” means the roll of electors for the Territory required by section 81 of the *Commonwealth Electoral Act 1918* of the Commonwealth.

15 **Arrangements for polling in Antarctica**

68. (1) If the Commissioner is satisfied, before a community consultation day, that there will be on that day an Antarctic elector—

- (a) the Commissioner shall transmit to the returning officer at whose station the elector is based—
- 20 (i) an extract from the certified list of electors containing the particulars relating to the elector; and
- (ii) directions for the preparation by the officer of ballot papers for the referendum; and
- (b) the returning officer shall prepare ballot papers in accordance with the directions.
- 25

(2) The directions shall ensure, so far as practicable, that the ballot papers are the same as ballot papers prepared under Division 2 of Part IV for the referendum.

- (3) The Commissioner shall ensure that this section is complied with before the community consultation day, but failure to comply with it does not affect the validity of a referendum.
- 30

Conduct of polling

69. (1) The polling at a station shall be conducted as follows:

- (a) before any vote is taken, the returning officer shall exhibit a ballot box empty, and shall then securely fasten its cover;
- 35

- (b) subject to subsection (2), the poll shall be conducted during such hours on such days as the returning officer directs;
- (c) the returning officer or the assistant returning officer shall, at all times at which the poll is open, be present in that part of the station at which the polling is taking place.

(2) The polling at a station shall not continue beyond the time that is 6 p.m. in the Australian Capital Territory on the community consultation day on which the referendum is held.

Claims to vote

70. The returning officer or assistant returning officer for a station shall—
- (a) hand a ballot paper to each Antarctic elector who attends before the officer during the hours of polling and claims to vote at the referendum; and
 - (b) record the issue of the ballot paper to the elector.

Proceedings at close of poll

71. At the close of the poll, the returning officer shall, in the presence of the assistant returning officer—

- (a) open the ballot box;
- (b) transmit to the authorised officer—
 - (i) particulars of each elector who has voted at the station in the referendum;
 - (ii) unless subparagraph (iii) applies—particulars of the marking of each ballot paper; and
 - (iii) if the returning officer is unable to read or understand clearly the particulars referred to in subparagraph (ii)—a statement to explain that inability; and
- (c) prepare a statement in writing of the information transmitted.

Result of polling in Antarctica

72. (1) On receipt of the transmission under section 71, the authorised officer shall forthwith—
- (a) in respect of each ballot paper marked by an Antarctic elector—transcribe the particulars of the elector's marks onto a ballot paper;
 - (b) seal in an envelope the ballot paper onto which the particulars are transcribed;

- (c) sign the envelope and endorse it to the effect that it contains a ballot paper recording a vote by an Antarctic elector that is to be admitted to the scrutiny for the referendum; and
 - (d) send the envelope to the Commissioner.
- 5 (2) An authorised officer shall not mark a ballot paper under this section in a manner that is likely to enable it to be identified as representing the vote of an Antarctic elector.

Preservation of documents

- 10 73. (1) As soon as practicable after the close of the poll for a referendum, the returning officer for each station shall forward to the Commissioner—
- (a) a copy of the record of the issue of each ballot paper;
 - (b) a copy of the statement referred to in paragraph 71 (c); and
 - (c) the ballot papers used for voting at the station.
- 15 (2) The Commissioner shall keep the documents referred to in subsection (1) in safe custody for the purposes of scrutiny under Part VI.

PART VI—THE SCRUTINY

Interpretation

- 20 74. In this Part—
- “ordinary vote” means a vote other than a declaration vote;
 - “postal vote” means a declaration vote in respect of which the declaration voting papers are given to the elector concerned by virtue of—
- (a) an application under subsection 40 (3); or
 - 25 (b) section 44.

Scrutiny

75. (1) The result of the polling at a referendum shall be ascertained by scrutiny in accordance with this Part.
- 30 (2) All the proceedings at the scrutiny shall be open to the inspection of the scrutineers.
- (3) The Commissioner shall arrange for the following articles and documents to be dealt with at scrutiny centres for the purposes of this Part:
- (a) applications for postal votes in the election;

- (b) records of issued declaration voting papers;
- (c) completed declaration voting papers received by the Commissioner, the officer in charge of a polling place or another officer;
- 5 (d) ballot boxes containing ballot papers for ordinary voting or declaration voting;
- (e) envelopes containing ballot papers marked by Antarctic electors.

(4) The officer in charge of a scrutiny centre may adjourn the scrutiny at the centre from time to time.

10 **Preliminary scrutiny of declaration voting papers etc.**

76. (1) The Commissioner shall arrange for the conduct of such preliminary scrutinies as are necessary in relation to a poll until the following documents have been dealt with in accordance with this section:

- 15 (a) all completed declaration voting papers (including those used for postal voting) received by the Commissioner or another officer on or before polling day;
- (b) all completed declaration voting papers used for postal voting received by the Commissioner before the end of the sixth day after the close of the poll;
- 20 (c) any envelope referred to in paragraph 72 (1) (d) containing a ballot paper recording the vote of an Antarctic elector.

(2) A preliminary scrutiny shall not be conducted earlier than the fifth day before polling day.

25 (3) The Commissioner shall display a notice in a prominent place at his or her office specifying the date, time and place at which a preliminary scrutiny is to commence.

(4) The notice shall be so displayed no later than 4 p.m. on the day before the commencement of the preliminary scrutiny.

30 (5) A preliminary scrutiny shall be conducted in accordance with Schedule 4.

(6) Schedule 4 applies, so far as practicable, in relation to a vote cast by an Antarctic elector as if—

- (a) the vote were a declaration vote other than a postal vote;
- 35 (b) a declaration signed by the elector stating that he or she is an elector appeared on the envelope referred to in paragraph 72 (1) (d); and

(c) a reference in that Schedule to a set of declaration voting papers were a reference to that envelope.

(7) At a preliminary scrutiny, declaration voting papers shall not be rejected for further scrutiny because of a formal error.

5 (8) A preliminary scrutiny shall be taken to be part of the scrutiny in relation to an election.

Formality of ballot papers

10 77. (1) Except as provided by this section, a ballot paper is formal and effect shall be given to the elector's intention as far as that intention is clear.

(2) A ballot paper is informal if—

(a) in the opinion of the officer in charge of a scrutiny centre—

(i) it is not authentic; or

15 (ii) it has a mark or writing on it by which the elector can be identified; or

(b) in the case of a completed declaration vote ballot paper that has not been dealt with at a preliminary scrutiny under section 76—it is not enclosed in the appropriate envelope on which appears a declaration made by an elector.

20 (3) For the purposes of subparagraph (2) (a) (ii), where 2 or more ballot papers are printed on 1 piece of paper, a mark or writing that is on the piece of paper on which the ballot papers are printed shall be taken to be on each ballot paper.

(4) In determining whether a ballot paper is formal—

25 (a) writing in a place other than the place indicated by the instructions in the ballot paper shall be taken to be in the appropriate place if the voter's intention is clear; and

(b) subject to this section, any other writing shall be disregarded.

30 (5) Where it is necessary for the purposes of this Part, the Commissioner may determine the formality of a ballot paper and, for that purpose, may reverse any decision made by another officer.

First count—ordinary ballot papers

35 78. (1) As soon as practicable after the close of the poll for a referendum, the officer in charge of a scrutiny centre shall arrange for the procedures set out in this section to be carried out.

(2) Firstly, the officer in charge shall—

- (a) exhibit for inspection by any scrutineer each ballot box containing ballot papers recording ordinary votes; and
- (b) record the condition of the ballot box before opening it.
- (3) Secondly, the officer in charge shall arrange for an officer to—
 - 5 (a) open each ballot box; and
 - (b) in respect of the ballot papers—
 - (i) count all informal ballot papers, reject them from further scrutiny under this section, and place them in a separate parcel; and
 - 10 (ii) sort the unrejected ballot papers into separate parcels according to the vote marked on them and count the ballot papers in each parcel.
- (4) Thirdly, the officer in charge shall—
 - 15 (a) make out and sign a statement (countersigned by an officer and each scrutineer who wishes to do so) setting out—
 - (i) the number of unrejected ballot papers on which a vote for approval is recorded;
 - (ii) the number of unrejected ballot papers on which a vote against approval is recorded; and
 - 20 (iii) the number of informal ballot papers;
 - (b) transmit particulars of the numbers so recorded to the Commissioner, by telephone or other expeditious manner;
 - (c) seal up the parcels, endorse on each a description of the contents and permit each scrutineer who wishes to do so to countersign the endorsement; and
 - 25 (d) send the parcels to the Commissioner without delay, together with the statement referred to in paragraph (a).

First count—declaration ballot papers

- 30 **79.** As soon as practicable after declaration vote ballot papers have been admitted to a scrutiny under this section by virtue of Schedule 4, but not before the close of the poll for the referendum, the officer in charge of the relevant scrutiny centre shall arrange for the ballot papers to be dealt with in accordance with section 78 as if they were ordinary vote ballot papers.

Second count

- 35 **80. (1)** The Commissioner shall—

- 5 (a) arrange for an officer at a scrutiny centre to open the parcels referred to in paragraph 78 (4) (d) (including those to which that paragraph applies by virtue of section 79) and, so far as practicable, conduct a second scrutiny of the ballot papers in accordance with subsections 78 (3) and (4); and
- (b) from the result of the second scrutiny, ascertain—
- (i) the number of unrejected ballot papers; and
 - (ii) the number of informal ballot papers.

10 (2) For the purposes of subsection (1), the officer conducting the second scrutiny may reverse a decision made at the scrutiny under section 78.

Objections by scrutineers

15 81. (1) If a scrutineer objects to a ballot paper as being informal, the officer conducting the scrutiny shall mark the ballot paper “admitted” or “rejected” according to the officer’s decision to admit or reject the ballot paper.

(2) Subsection (1) shall not be taken to prevent the officer from rejecting a ballot paper as being informal where there is no objection by a scrutineer.

20 Recount of ballot papers

82. (1) The Commissioner may direct an officer to recount some or all of the ballot papers for a referendum at any time before the declaration of the result of the referendum.

(2) The officer conducting a recount—

- 25 (a) shall not deal with a ballot paper in a manner that is inconsistent with this Part; and
- (b) may reverse a decision made earlier in the scrutiny.

Reservation of disputed ballot papers

83. (1) The officer conducting a recount—

- 30 (a) may, if he or she thinks fit; and
- (b) shall, at the request of any scrutineer;

reserve any ballot paper for the decision of the Commissioner.

(2) The Commissioner shall decide whether any ballot paper so reserved is to be admitted or rejected.

Result of referendum

84. A proposed law that has been put to a referendum is approved if more than one-half of the valid votes cast at that referendum are approval votes.

5 Declaration of result of referendum

85. (1) As soon as practicable after the result of the poll for a referendum has been ascertained, the Commissioner shall—

(a) declare the result of the referendum; and

(b) notify the Speaker in writing of—

10

(i) the result;

(ii) the number of approval votes;

(iii) the number of votes that are not approval votes; and

(iv) the number of ballot papers rejected as informal.

15 (2) The declaration shall be made in public at the office of the Commissioner during ordinary office hours.

(3) Where 2 or more referendums are held on a community consultation day, the results of all the referendums shall be declared, so far as practicable, on the same day.

20 (4) The Speaker shall, on the first sitting day of the Legislative Assembly after receiving a notification under paragraph (1) (b), lay the notification before the Legislative Assembly.

(5) The Commissioner shall publish in the *Gazette* a copy of the notification under paragraph (1) (b).

25 (6) A copy of the notification published in the *Gazette* is conclusive evidence of the result of the referendum to which it relates.

PART VII—ENACTMENT OF LAWS**Enactment of proposed law**

30 86. (1) Subject to this section, where a proposed law has been approved at a referendum, the Chief Minister shall, on the next day of sitting after the laying of the relevant notification before the Legislative Assembly under subsection 85 (4), move in the Legislative Assembly that it enact the proposed law.

35 (2) Notwithstanding any provision of any other law or of its standing rules or orders, where the Chief Minister has moved a motion under subsection (1), the Legislative Assembly—

- (a) may not amend the proposed law; and
- (b) shall consider and vote on the motion of the day on which it is moved.

(3) Where—

- 5
- (a) more than 1 proposed law has been approved on the same community consultation day; and
 - (b) the Chief Minister is satisfied that 2 or more of those proposed laws are inconsistent with each other;

10 the Chief Minister shall only move under subsection (1) a motion relating to the proposed law that has been supported by the greatest or greater number of approval votes.

Assembly may not modify certain enactments for 12 months

87. (1) Where the Legislative Assembly enacts a law—

- 15
- (a) pursuant to a motion under section 86;
 - (b) that gives effect to the objects of a proposed law that has been laid before the Assembly under section 15 but has not been put to referendum; or
 - (c) that gives effect to the objects of a registered legislative proposal in respect of which no proposed law has been laid before the
- 20

the Assembly may not, for a period of 12 months commencing on the making of that law—

- (d) repeal that law; or
 - (e) amend that law, or any other law, in such a manner that any object of the law referred to in paragraph (a) or (b), or the proposal referred to in paragraph (c), as the case requires, ceases to be implemented according to its tenor.
- 25

(2) A law enacted in contravention of subsection (1) has no effect.

PART VIII—ENFORCEMENT PROCEEDINGS

30 **Restraining conduct**

88. (1) Where a person has engaged, is engaging, or proposes to engage, in conduct that constituted, constitutes, or would constitute, a contravention of this Act or another law of the Territory in its application to a referendum, the Supreme Court may, on the application of the

35 Commissioner and not otherwise, grant an injunction—

- (a) restraining the first-mentioned person from engaging in that conduct; and
 - (b) if, in the opinion of the Court, it is desirable to do so—requiring that person to do any act or thing.
- 5 (2) The Court may grant an injunction restraining a person from engaging in conduct of a particular kind—
- (a) if the Court is satisfied that the person has engaged in conduct of that kind, whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
 - 10 (b) if it appears to the Court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind, whether or not the person has previously engaged in conduct of that kind.

15 **Requiring acts or things to be done**

89. (1) Where a person, in contravention of this Act or another law of the Territory in its application to a referendum, has refused or failed, is refusing or failing, or proposes to refuse or fail, to do an act or thing, the Supreme Court may, on the application of the Commissioner and not otherwise, grant an injunction requiring the first-mentioned person to do the act or thing.

(2) The Court may grant an injunction requiring a person to do a particular act or thing—

- 25 (a) if the Court is satisfied that the person has refused or failed to do that act or thing, whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
- 30 (b) if it appears to the Court that, in the event that an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing, whether or not the person has previously refused or failed to do the act or thing.

Commissioner not required to give undertakings as to damages

90. Where the Commissioner makes an application for an injunction under this Division, the Court shall not require that, as a condition of granting the injunction, the Commissioner give any undertakings as to damages on his or her own behalf or on behalf of any other person.

Powers of the Court

91. Subject to this Division, the Supreme Court has the same powers (so far as they are applicable) in relation to injunctions under this Division as it has in relation to injunctions under its original jurisdiction.

5 **Investigation of complaints**

92. The Commissioner shall—

(a) investigate; or

(b) refer to the appropriate authority for investigation;

10 any complaint alleging a contravention of this Act, unless the Commissioner believes on reasonable grounds that the complaint is frivolous or vexatious.

PART IX—OFFENCES

Division 1—Initiating and popular requests

Harassment

15 93. A person shall not harass another person for the purpose of inducing the other person to sign an initiating request or a popular request.

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

Misrepresentation

20 94. (1) A person shall not, for the purpose of obtaining another person's signature to a document, falsely represent that the document is, or is part of, an initiating request or a popular request.

Penalty: \$5,000.

(2) A person shall not falsely represent that a legislative proposal, or a form of words that resembles a legislative proposal, is a registered proposal.

Penalty: \$5,000.

25 **Misrepresenting sponsoring committee**

30 95. A person shall not, without reasonable excuse, publish, or seek another person's signature to, a document that is represented to be, or be part of, an initiating request or a popular request, if there is not set out on the document the name and address of each member of the sponsoring committee.

Penalty: \$5,000.

Division 2—Bribery and improper influence**Bribery**

96. (1) A person shall not offer, solicit or accept a bribe.

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

5 **(2)** In this section—

“bribe” means a bribe for the purpose of—

- (a) influencing the vote of an elector;
- (b) otherwise influencing the course or result of a referendum;
or
- 10 (c) inducing a person not to apply, or to withdraw an application, to a court relating to any matter arising, or purporting to arise, from the operation of this Act;

but does not include a declaration of public policy or a promise of public action.

15 **Influencing of votes by officers**

97. In the performance of a function under this Act, an officer shall not, without reasonable excuse, do anything for the purpose of influencing the vote of another person.

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

20 **Influencing votes of hospital and nursing home patients**

98. The proprietor of a hospital or nursing home, or an employee or agent of such a proprietor, shall not, without reasonable excuse, do anything for the purpose of influencing the vote of a patient or resident of the hospital or nursing home.

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

Division 3—Protection of rights**Violence and intimidation**

99. A person shall not, by violence, intimidation or harassment, hinder or interfere with—

- 30 (a) the free exercise of a right under this Act; or
- (b) the free performance of a duty under this Act.

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

Discrimination on grounds of donations

5 **100. (1)** A person shall not discriminate against another person on the ground of the making by the other person of a donation intended to assist the expression of support for, or opposition to, a legislative proposal or a proposed law that is to be put to a referendum.

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

(2) In this section—

“discriminate against”, in relation to a person, means—

- 10
- (a) deny the person access to membership of a trade union, club or other body, whether incorporated or not;
 - (b) not allow the person to work or to continue to work;
 - (c) subject the person to any form of intimidation or coercion; or
 - (d) subject the person to any other detriment.

15 **Employees’ right to leave of absence for voting**

101. (1) Upon notification from an employee before a community consultation day, the employer shall allow the employee, without penalty or any disproportionate deduction of pay, to take any necessary leave (not exceeding 2 hours) for the purpose of voting.

20 Penalty: \$1,000.

(2) Subsection (1) does not apply if the absence of the employee from employment could—

- (a) endanger any person, animal or thing; or
- (b) cause substantial loss to any person.

25 **(3)** An employee shall not notify an employer under subsection (1) if he or she does not have a genuine intention of voting during the period of the leave to be granted for the purpose of voting.

Penalty: \$500.

Division 4—Campaigning offences

30 **Interpretation**

102. In this Division—

“address”, in relation to a person, means—

(a) if the person is acting for or on behalf of a political party—
an address of the party, not being a post office box; or

(b) in any case—

5

(i) the address of the person's principal place of
residence; or

(ii) an address of the person's place of business;

“disseminate”, in relation to referendum matter, means—

(a) in the case of printed matter—print, publish or distribute;
or

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(b) in the case of referendum matter in an electronic medium—
produce, broadcast or distribute;

“reportage or commentary”, in relation to a newspaper or periodical,
means everything in the newspaper or periodical except—

(a) advertisements; and

15

(b) letters to the editor.

Dissemination of referendum matter—authorisers and authors

103. (1) A person shall not disseminate printed referendum matter
on behalf of, or purportedly on behalf of, a sponsoring committee unless
there appears—

20

(a) at the end; and

(b) in the case of an item containing referendum matter taking up the
whole or part of each of 2 opposing pages of a newspaper or
periodical—at the foot of the item on the first page;

25

a statement that the issue or publication has been authorised by the
sponsoring committee and the name and address of the contact officer.

Penalty: \$1,000.

(2) A person shall not disseminate printed referendum matter, not
being matter referred to in subsection (1), unless the name and address of
the person who authorised the referendum matter, or its author, appear—

30

(a) at the end; and

(b) in the case of an item containing referendum matter taking up the
whole or part of each of 2 opposing pages of a newspaper or
periodical—at the foot of the item on the first page.

Penalty: \$1,000.

(3) Paragraphs (1) (b) and (2) (b) do not apply to an item containing referendum matter if it is apparent from the text or lay-out of the item that it extends across the 2 pages of the newspaper or periodical.

Dissemination of referendum matter—letters to the editor

5 **104. (1)** Subsection 103 (2) does not apply to the dissemination of a letter to the editor of a newspaper or periodical if—

- (a) the name of the author and the locality of the author's residence appear at the end; and
- 10 (b) the editor of the newspaper or periodical keeps a written record of the address of the author, as stated in the original of the letter sent to the editor or as otherwise ascertained by the editor.

(2) For the purposes of paragraph (1) (a), it is sufficient to identify the locality of an author's residence by reference to—

- (a) the suburb or town of, or nearest to, that residence; and
- 15 (b) in the case of a locality outside the Territory—the State, other Territory or country of that residence.

Dissemination of referendum matter—press reportage and commentary

20 **105.** Section 103 does not apply to referendum matter contained in reportage or commentary in an issue of a newspaper or periodical if the issue contains a statement to the effect that a person whose name and address appears in the statement has authorised the publication of all referendum matter contained in reportage or commentary in that issue.

Dissemination of referendum matter—campaign stationery

25 **106.** Section 103 does not apply to referendum matter on any of the following items, unless the item includes a representation of a ballot paper:

- (a) a car sticker, T-shirt, lapel button, lapel badge, pen, pencil or balloon;
- 30 (b) a letter or card on which the name and address of the sender appears;
- (c) an item included in a prescribed class of items.

“Advertorials”

107. (1) This section applies to an advertisement in a newspaper or periodical that—

- 35 (a) appears to be reportage or commentary; and
- (b) includes referendum matter.

(2) If this section applies to an advertisement, the proprietor of the newspaper or periodical shall cause the word "advertisement" to be printed as a headline to the advertisement, in letters not smaller than 10 point, on each page on which the advertisement appears.

5 Penalty: \$1,000.

Misleading or deceptive referendum matter

108. (1) A person shall not disseminate, or authorise to be disseminated, referendum matter that is likely to mislead or deceive an elector about the casting of a vote.

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

(2) It is a defence to a prosecution under subsection (1) if it is established that the defendant did not know, and could not reasonably be expected to have known, that the referendum matter was likely to mislead or deceive an elector about the casting of a vote.

15 Inducement to illegal voting—representations of ballot papers

109. A person shall not disseminate, or authorise to be disseminated, referendum matter including a representation of a ballot paper, or part of a ballot paper, likely to induce an elector to mark his or her vote otherwise than in accordance with the directions on the ballot paper.

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

Graffiti

110. (1) A person shall not, without reasonable excuse, mark any referendum matter directly on any defined place or object without the consent of—

- 25 (a) in the case of a place—the lessee or lawful occupier of the place; or
(b) in the case of an object—the owner or lawful possessor of the object.

Penalty: \$1,000.

30 (2) The Territory or a Territory authority shall not give consent for the purposes of subsection (1).

35 (3) In a prosecution for an offence under subsection (1) in relation to a defined place or object leased, occupied, owned or possessed by the Territory or a Territory authority, it is to be conclusively presumed that the Territory or the Territory authority, as the case requires, did not consent to any marking of referendum matter on the place or object.

(4) In this section—

“defined place or object” means a building, footpath, hoarding, roadway, vehicle, vessel or any public or private place (whether on land or water or in the air);

5 “lessee” has the same meaning as in Part V of the *Land (Planning and Environment) Act 1991*;

“mark” means write, draw or depict.

Disruption of referendum meetings

111. (1) A person shall not, without reasonable excuse, disrupt a referendum meeting.

10 Penalty: \$500.

(2) The chairperson of a referendum meeting may request a police officer to remove from the meeting any person who, in the opinion of the chairperson, is disrupting the meeting.

15 (3) Upon a request from the chairperson under subsection (2), a police officer may take reasonable action to remove from the meeting the person disrupting the meeting.

(4) A person who is the subject of a request referred to in subsection (2) shall not, without reasonable excuse, return to the meeting without the authority of the chairperson after leaving it or being removed from it.

20 Penalty: \$1,000.

(5) In this section—

“referendum meeting” means a lawful public meeting held during a pre-referendum period in association with the relevant referendum.

Prohibition of canvassing near polling places

25 112. (1) A person shall not, within a polling place or within 30 metres of the entrance to a polling place—

(a) do anything for the purpose of influencing the vote of another person in the referendum;

30 (b) do anything for the purpose of inducing an elector not to vote at the referendum; or

(c) exhibit a notice other than a notice authorised by the Commissioner for display there.

Penalty: \$500.

35 (2) Where a building used as a polling place is situated on grounds within an enclosure, the Commissioner may cause to be displayed

throughout the hours of polling, at each entrance to the grounds, a notice signed by him or her stating that those grounds are part of the polling place for the purposes of this section.

(3) In this section—

5 “polling place” includes—

- (a) a place where a declaration vote may be made before an officer;
- (b) the grounds surrounding a place referred to in paragraph (b), where a notice under subsection (2) is displayed at each entrance to those grounds; and
- 10 (c) a place where polling is taking place in accordance with Division 4 of Part IV.

Badges and emblems

15 **113.** An officer or scrutineer shall not wear or display in a polling place a badge or emblem that can reasonably be taken to show that the wearer supports or opposes a proposed law.

Penalty: \$1,000.

How-to-vote material in polling places

20 **114. (1)** A person shall not, except for the purpose of assisting another person to vote under section 59, exhibit or leave in a polling place any referendum matter.

Penalty: \$500.

(2) This section does not apply in relation to—

- (a) a visiting officer acting under section 54; or
- 25 (b) a notice authorised by the Commissioner for display in the polling place.

(3) In this section—

“polling place” includes—

- 30 (a) a place where a declaration vote may be made before an officer; and
- (b) a place where polling is taking place in accordance with Division 4 of Part IV.

Evidence of authorisation of referendum matter

115. In proceedings for an offence against this Division—

- 5 (a) referendum matter that includes a statement to the effect that it was authorised by a specified person is admissible as evidence that it was so authorised;
- (b) an issue of a newspaper or periodical that includes a statement to the effect that a specified person has authorised the publication of all referendum matter contained in reportage or commentary in that issue is admissible as evidence of that fact;
- 10 (c) referendum matter that includes a statement to the effect that it was disseminated by a specified person is admissible as evidence of the fact that it was disseminated by that person; and
- (d) referendum matter that includes a name purporting to be the author's name is admissible as evidence that the named person is the author.

Division 5—Voting fraud

15 **Voting fraud**

116. (1) A person shall not supply a ballot paper unless authorised to do so for the purposes of this Act.

Penalty: \$5,000.

(2) A person shall not obtain a ballot paper by fraudulent means.

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

(3) A person other than an elector shall not mark a ballot paper, unless expressly authorised by this Act.

Penalty: \$5,000.

25 (4) A person shall not fraudulently put a ballot paper, or any other paper, in a ballot box.

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

(5) A person shall not fraudulently take a ballot paper out of—

- 30 (a) a place where a declaration vote may be made before an officer;
- (b) a polling place; or
- (c) a scrutiny centre.

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

(6) A person shall not, without reasonable excuse, interfere with a ballot box, or a ballot paper, unless authorised to do so for the purposes of this Act.

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

5

Division 6—Referendum papers

Interpretation—referendum paper

117. In this Division—

“referendum paper” means a document or form provided for by or under this Act.

10 **Referendum papers—forgery**

118. (1) A person shall not forge a referendum paper.

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

(2) A person shall not, without reasonable excuse, possess an instrument designed or adapted particularly for forging a referendum paper.

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

(3) A person shall not, without reasonable excuse, possess a forged referendum paper, knowing it to be forged.

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

20 (4) A person shall not, without reasonable excuse, publish a referendum paper, knowing it to be forged.

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

(5) In this section—

“forgery”, in relation to a referendum paper, includes—

25 (a) the forgery of a signature on the referendum paper; and

(b) the marking of a referendum paper with a false signature;

“publication”, in relation to a referendum paper that is a ballot paper, includes the placing of the ballot paper in a ballot box.

Referendum papers—forfeiture

30 119. (1) Upon conviction of a person for an offence against section 118, any document or instrument in relation to which the offence was committed is forfeited to the Territory.

(2) A forfeited document or instrument may be destroyed or dealt with as prescribed.

Referendum papers—unauthorised possession

5 **120.** A person shall not, without reasonable excuse, except for the purposes of this Act—

- (a) possess a referendum paper; or
- (b) possess an instrument designed or adapted particularly for producing a referendum paper, or an official mark on a referendum paper.

10 Penalty: \$3,000.

Referendum papers—false or misleading statements

121. (1) A person shall not, in a referendum paper, make a statement that is false or misleading in a material particular.

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

15 **(2)** It is a defence to a prosecution for an offence under subsection (1) if it is established that the defendant did not know, and could not reasonably be expected to have known, that the relevant statement was false or misleading in a material particular.

Referendum papers—defacement, removal etc.

20 **122.** Unless authorised by or under this Act, a person shall not fraudulently deface, remove, mutilate or destroy a referendum paper.

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

Referendum papers—signatures

25 **123. (1)** Subject to subsection (2), if a person is required by this Act to sign a referendum paper, he or she shall sign it with his or her personal signature.

Penalty: \$1,000.

(2) Where a person is unable to sign his or her name in writing, the person is to be taken to have signed a referendum paper if—

- 30
- (a) the person makes a mark on the paper by way of signature; or
 - (b) another person signs the document in the presence and at the direction of the person.

Referendum papers—witnesses

124. (1) A person shall not witness the signature of a referendum paper unless—

- (a) the paper is signed by the signatory;
- 5 (b) he or she has seen the signatory sign the paper;
- (c) he or she is satisfied as to—
 - (i) the identity of the signatory; and
 - (ii) the truth of any statements made in the paper by the signatory; and
- 10 (d) he or she is able to sign his or her own name.

Penalty: \$1,000.

(2) For the purposes of paragraph (1) (c), a witness may satisfy himself or herself on the basis of—

- (a) personal knowledge of the signatory;
- 15 (b) inquiries made of the signatory; or
- (c) any other reasonable means.

(3) In this section—

20 “signatory”, in relation to a person witnessing the signature of a referendum paper, means the person whose signature or mark is witnessed or purported to be witnessed.

Division 7—Official functions**Unauthorised actions by officers**

125. An officer shall not, without reasonable excuse, contravene—

- (a) a provision of this Act for which no other penalty is provided; or
- 25 (b) a direction given to him or her under this Act.

Penalty: \$1,000.

Identification of voters and votes

126. (1) Except as authorised under this Act, an officer shall not make any mark on a ballot paper that is likely, directly or indirectly, to enable the person who votes on the ballot paper to be identified.

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

(2) Except as authorised under this Act, an officer or a scrutineer shall not, directly or indirectly, disclose any information acquired in the performance of his or her functions under this Act that is likely to enable it to be known how an identified voter has voted.

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

(3) In subsection (2)—

“officer” includes a person who has been, but is no longer, an officer;

“scrutineer” includes a person who has been, but is no longer, a scrutineer.

10 **Responses to official questions**

127. (1) A person shall not, in answer to an official question, make a statement that is false or misleading in a material particular.

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

15 (2) It is a defence to a prosecution for an offence under subsection (1) if it is established that the defendant did not know, and could not reasonably be expected to have known, that the relevant statement was false or misleading in a material particular.

(3) In this section—

20 “official question” means a question asked by an officer in the performance of his or her functions under this Act.

Control of behaviour at voting centres

128. (1) A person shall not, without reasonable excuse, disrupt an activity being carried out under this Act at a voting centre.

Penalty: \$1,000.

25 (2) A person at a voting centre shall not, without reasonable excuse, disobey a direction given by the officer in charge of the voting centre under this Act.

Penalty: \$1,000.

30 (3) A person shall not, without reasonable excuse, enter or remain at a voting centre without the permission, express or implied, of the officer in charge of the centre.

Penalty: \$1,000.

(4) Subsection (3) does not apply—

(a) to an officer;

- (b) to a scrutineer who is entitled to be on the premises under section 29; or
- (c) if the voting centre is a polling place—to a voter who enters the place for the purpose of voting and remains no longer than is necessary and reasonable for that purpose.
- 5 (5) A person who contravenes this section may be removed from the premises by a police officer or by an authorised officer.
- (6) In this section—
“voting centre” means—
- 10 (a) a place where a declaration vote may be made before an officer;
- (b) a polling place; or
- (c) a scrutiny centre.

PART X—ADMINISTRATIVE REVIEW

15 Notice of decisions

129. (1) Where the Commissioner makes a decision—

- (a) refusing to accept the lodgment of a notice under section 5;
- (b) refusing to approve an initiating request under section 7;
- (c) refusing to publish a notice in the *Gazette* under section 11; or
- 20 (d) cancelling the registration of a registered legislation proposal under section 12;

he or she shall, within 28 days of the date of the decision, cause notice in writing of the decision to be given to the contact officer of the relevant sponsoring committee or, in the case of a notice under paragraph (d), the person who was the last contact officer.

25

(2) A notice under subsection (1) shall—

- (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, an application may be made to the Australian Capital Territory Administrative Appeals Tribunal for a review of the decision; and
- 30 (b) except where subsection 26 (11) of that Act applies—include a statement to the effect that the person to whom the notice is given may request a statement pursuant to section 26 of that Act.

(3) The validity of a decision referred to in subsection (1) is not to be taken to be affected by a failure to comply with subsection (2).

Review by Tribunal

5 **130.** Application may be made to the Australian Capital Territory Administrative Appeals Tribunal for a review of a decision referred to in subsection 129 (1).

PART XI—PROCEDURAL PROVISIONS

Division 1—Sponsoring committees

Changes in membership

10 **131. (1)** A member of a sponsoring committee ceases to be a member if he or she—

- (a) resigns his or her membership by notice in writing delivered to the contact officer; or
- (b) ceases to be an elector.

15 **(2)** Where the membership of a sponsoring committee changes by virtue of the death of a member or by virtue of subsection (1), the contact officer shall, within 1 month after becoming aware of the fact, lodge with the Commissioner a written advice of the change in the approved form.

20 **(3)** A contact officer shall not, without reasonable excuse, fail to comply with subsection (2).

Penalty: \$1,000.

(4) A sponsoring committee that consists of not more than 9 members may agree to admit 1 other elector to membership.

25 **(5)** Where a sponsoring committee makes a decision under subsection (4), its contact officer shall lodge with the Commissioner a notice in the approved form that contains—

- (a) the name and address of the person who has agreed to be admitted to the committee; and
- (b) his or her signature.

30 **(6)** A person who has agreed to be admitted to the committee becomes a member upon the lodgment of the relevant notice under subsection (5).

(7) The performance of a function by a sponsoring committee is not affected by reason only that—

35 (a) a member of the committee had not been a member before or at the commencement of the performance of that function; or

- (b) a person who is not a member of the committee had been a member before or at the commencement of the performance of that function.

Procedures

- 5 **132.** Subject to this Act, the procedures of a sponsoring committee shall be as the committee determines.

Cessation of existence

- 133. (1)** A sponsoring committee ceases to exist if—

- (a) it resolves to dissolve itself;
10 (b) it has only 1 member;
(c) it has no members; or
(d) the registration of the relevant legislative proposal is cancelled.

- (2) Where a sponsoring committee ceases to exist by virtue of paragraph (1) (a), (b) or (c), the person who was the contact officer at the
15 time of the cessation shall notify the Commissioner in writing of the cessation of the existence of the committee within 1 month after the cessation.

Penalty: \$500.

Contact officer

- 20 **134. (1)** A sponsoring committee shall have a contact officer.

(2) A person is not eligible to be appointed contact officer for a sponsoring committee unless he or she is a member of the committee.

- (3) It shall be presumed, for the purposes of this Act, that any action
25 taken by a contact officer is taken with the authority of the relevant sponsoring committee.

Vacancy in office of contact officer

135. (1) A sponsoring committee may remove its contact officer from office.

- (2) The office of the contact officer of a sponsoring committee shall be
30 taken to be vacant if the contact officer—

- (a) is removed from office pursuant to subsection (1);
(b) resigns from office; or
(c) ceases to be a member of the committee.

(3) Where a vacancy occurs in the office of the contact officer, the sponsoring committee shall, within 14 days after the occurrence of the vacancy, appoint 1 of its members to fill it.

5 (4) If a sponsoring committee fails, without reasonable cause, to comply with subsection (3), each member of the committee is guilty of an offence punishable, on conviction, by a fine not exceeding \$200.

Notice of contact officer's appointment or change of address

10 136. (1) A person who is appointed to be the contact officer of a sponsoring committee after the occurrence of a vacancy in that office shall, not later than 1 month after being appointed, lodge with the Commissioner a notice in the approved form, advising—

- (a) of the reason for the occurrence of the vacancy; and
- (b) of his or her appointment to fill it.

15 (2) A contact officer who changes his or her address shall, before or within 1 month after the change, notify the Commissioner of the change in the approved form.

Penalty: \$100.

Division 2—Commissioner

Register

20 137. (1) The Commissioner shall keep, in such form as he or she deems fit, a register, called the Register of Legislative Proposals and Proposed Laws, of—

- (a) registered legislative proposals; and
- (b) proposed laws that are to be put to referendum.

25 (2) The Register shall contain the following particulars in relation to a registered legislative proposal:

- (a) the terms of the proposal;
- (b) the name and address of the contact officer and each other member of the sponsoring committee;
- 30 (c) the date and number of the *Gazette* in which the notice under paragraph 8 (b) is published;
- (d) where the sponsoring committee ceases to exist, the date and cause of the cessation.

(3) The Commissioner shall allocate to each registered legislative proposal a number, in a consecutive series commencing with the number 1, and shall enter that number in the Register.

5 (4) Where the Commissioner publishes a notice under subsection 11 (1), he or she shall enter in the Register—

- (a) the name and number of the relevant *Gazette*; and
- (b) where paragraph 11 (1) (e) applies—an annotation that the registered legislative proposal is a qualified proposal.

10 (5) Where the registration of a legislative proposal is cancelled, the Commissioner shall enter in the Register—

- (a) a notification to that effect;
- (b) the date of the cancellation; and
- (c) the cause of the cancellation.

15 (6) Upon receiving from the Speaker notification of the laying before the Legislative Assembly of a proposed law under section 15 or of the passing of a resolution in relation to a proposed law by the Assembly under section 19, the Commissioner shall make in the Register an annotation of—

- (a) the long and short titles of the proposed law;
- (b) the date of receipt of the notification from the Speaker;
- 20 (c) the date of the relevant certificate of the Attorney-General or of the passing of the relevant resolution of the Assembly, as the case requires; and
- (d) where the proposed law gives effect to a registered legislative proposal—such other information as is necessary to identify the
25 proposal.

(7) As soon as it is practicable to do so, the Commissioner shall enter in the Register, in relation to each proposed law—

- (a) the community consultation day on which the referendum is to be held;
- 30 (b) the result of the referendum; and
- (c) the number of approval votes and the number of votes that are not approval votes that have been cast.

35 (8) Upon receiving from the Speaker notification of the laying before the Legislative Assembly under section 17 of an amendment to a proposed law, the Commissioner shall make in the Register an annotation of—

(a) any changes to a title of the proposed law effected by the amendment; and

(b) the date of receipt of the notification from the Speaker.

5 (9) Where a proposed law is not submitted to referendum by reason of the operation of subsection 18 (2) or 19 (5), the Commissioner shall make in the Register an appropriate annotation.

(10) The Commissioner shall enter in the Register any prescribed particulars or matter.

Delegation

10 138. The Commissioner may, by instrument in writing, delegate to an officer all or any of his or her powers under this Act.

Extension of time for acts by officers

139. Where—

15 (a) an officer is required by this Act to do an act at a specified time or within a specified period; and

(b) an officer other than the Commissioner refuses or fails to do the act at that time or within that period;

the Commissioner may grant an extension of time, not exceeding 48 hours, within which the act may be done.

20 Forms—provision and assistance

140. (1) The Commissioner shall ensure that any form provided for, or required, by or under this Act, is kept at his or her office and is provided, on request, to a member of the public.

25 (2) It is the duty of the staff of the Electoral Commission to assist, on request, any member of the public in completing any such form.

Correcting delays, errors and omissions

30 141. The Commissioner may remedy, remove or supply any delay, error or omission in the preparation, printing, issue or transmission of any roll, certified list of electors or ballot papers by instrument published in the *Gazette* specifying the matter to be dealt with and the course of action to be followed, and that course (if followed) is to be taken to be valid and sufficient for the purpose of remedying, removing or supplying the defect, error or omission.

Voting statistics to be published

35 142. The Commissioner shall, as soon as practicable after a referendum is held, publish statistics in relation to voting in the referendum.

Collecting further statistical information

5 **143.** After the expiry of the period of 1 month after the publication of the notice under subsection 85 (6) or when all proceedings relating to the holding or conduct of a referendum have been disposed of, whichever last occurs, the Commissioner may use ballot papers, certified lists of electors, declaration voting papers and other referendum papers used in the referendum to collect statistical information.

Papers to be securely stored

10 **144.** The Commissioner shall ensure that all papers in his or her possession that were used in connection with a referendum are securely stored until—

- (a) the commencement of the pre-referendum period for the next community consultation day; or
- 15 (b) the documents are no longer required by the Commissioner for the purpose of performing a function under this Act;

whichever last occurs, after which time the Commissioner may direct that the papers be destroyed.

PART XII—MISCELLANEOUS**Evidentiary certificates**

20 **145. (1)** In a proceeding under this Act, a certificate signed by the Commissioner stating any of the following matters is evidence of the matter stated:

- (a) that on a specified day a person was, or was not, an elector;
- (b) that, in relation to a referendum, a person was or was not—
 - 25 (i) an eligible overseas elector;
 - (ii) an Antarctic elector; or
 - (iii) an elector serving a sentence of imprisonment outside the Territory;
- (c) that a referendum was duly held;
- 30 (d) that a person was, or was not, given a ballot paper for a referendum;
- (e) that a person voted, or failed to vote, in a referendum;
- (f) that on a specified day a person was, or was not, an officer;
- 35 (g) that on a specified day a person was, or was not, the delegate of the Commissioner.

(2) In subsection (1), a reference to a person or thing shall be read as a reference to a person or thing specified in the certificate.

Conduct of directors, servants and agents

5 146. (1) Where, for the purposes of this Act, it is necessary to establish the state of mind of a body corporate or a natural person in relation to particular conduct, it is sufficient to show—

- (a) that a director, servant or agent of the body, or a servant or agent of the person, had that state of mind; and
- 10 (b) that the conduct was engaged in by that director, servant or agent within the scope of his or her actual or apparent authority.

(2) A reference in subsection (1) to the state of mind of a body or person shall be read as including a reference to—

- (a) the knowledge, intention, opinion, belief or purpose of the body or person; and
- 15 (b) the reasons of the body or person for the knowledge, intention, opinion, belief or purpose.

20 (3) Any conduct engaged in on behalf of a body corporate or a natural person by a director, servant or agent of the body, or a servant or agent of the person, within the scope of his or her actual or apparent authority, is to be taken, for the purposes of this Act, to have been engaged in also by the body or person unless the body or person establishes that reasonable precautions were taken and due diligence was exercised to avoid the conduct.

(4) Where—

- 25 (a) a natural person is convicted of an offence against this Act; and
- (b) the person would not have been convicted of the offence if subsections (1) and (3) had not been enacted;

the person is not liable to be punished by imprisonment for that offence.

30 (5) A reference in this section to a director of a body corporate is to be read as including a reference to a member of a body corporate incorporated for a public purpose by a law of the Territory, the Commonwealth, a State or another Territory.

(6) A reference in this section to engaging in conduct is to be read as including a reference to failing or refusing to engage in conduct.

35 **Corporations—penalties**

147. Where a body corporate is convicted of an offence against this Act, the penalty that the Court may impose is a fine not exceeding 5 times

the maximum amount that, but for this section, the Court could impose as a pecuniary penalty for the offence.

Commissioner for Public Administration to provide assistance etc.

- 5 **148.** The Commissioner for Public Administration shall comply with any request by the Commissioner for information or assistance reasonably required for the purposes of this Act.

Regulations

- 10 **149. (1)** The Executive may make regulations for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the regulations may prescribe penalties not exceeding—

- (a) if the offender is a natural person—\$1,000; or
(b) if the offender is a body corporate—\$5,000;
- 15 for offences against the regulations.

SCHEDULE 1

Section 8

NOTICE OF REGISTRATION OF LEGISLATIVE PROPOSAL

Community Referendum Act 1994

I, (1) , Electoral Commissioner, hereby give notice that the following legislative proposal has been registered in pursuance of section 8 of the *Community Referendum Act 1994*:

Registered Legislative Proposal No. (2)

(3)

If, within 6 months after the date on which this notice is published in the *Gazette*, I receive a request signed by not less than 5 per cent of electors requesting that the registered legislative proposal set out above be put to a referendum, I shall, in accordance with the provisions of the *Community Referendum Act 1994*, arrange for a referendum to be held on a community consultation day.

(Signed)

Electoral Commissioner

Notes

- (1) *Insert name of Commissioner.*
- (2) *Insert registration number of legislative proposal.*
- (3) *Insert text of registered legislative proposal.*

SCHEDULE 2

Section 9

POPULAR REQUEST

Community Referendum Act 1994

I believe that at the next practicable community consultation day the people of the Australian Capital Territory should be permitted to determine whether registered legislative proposal No. (1), a copy which is set out below, should become part of the law of the Territory.

Registered legislative proposal:

(2)

The members of the sponsoring committee of this proposal are:

(3)

Name	Address	Signature of Elector
------	---------	-------------------------

(1) *Insert registration number of legislative proposal.*

(2) *Insert text of registered legislative proposal.*

(3) *Insert the name and address of each member of the sponsoring committee.*

SCHEDULE 3

Section 37

BALLOT PAPER FOR REFERENDUM

AUSTRALIAN CAPITAL TERRITORY

DIRECTIONS TO VOTER

It is proposed that the following proposed law be enacted as a law of the Australian Capital Territory:

[Here set out long title of the proposed law]

DO YOU APPROVE THIS PROPOSED LAW?

Write "Yes" or "No" in the space opposite.

SCHEDULE 4

Section 76

PRELIMINARY SCRUTINY OF DECLARATION VOTING PAPERS

1. In this Schedule—

“envelope” means an envelope on which there appears a declaration in the approved form made by an elector for the purpose of casting a declaration vote.

2. The officer in charge of a scrutiny centre shall arrange for a preliminary scrutiny at the centre to be conducted in accordance with this Schedule.

3. An officer shall record the condition of each ballot box containing completed declaration voting papers at the centre and remove the papers from the box.

4. An officer shall produce—

- (a) each set of declaration voting papers at the centre; and
- (b) each written application for a postal vote to which any of those papers relate;

that has not been dealt with at an earlier preliminary scrutiny.

5. An officer shall sort the declaration voting papers to which the preliminary scrutiny relates into the following groups:

- (a) 1 group containing papers to which clause 6 applies;
- (b) 1 group containing the remainder.

6. (1) This clause applies to a set of declaration voting papers if the officer is satisfied that—

- (a) the signature on the declaration is that of the elector;
- (b) the certificate by the witness is in accordance with section 39 or 40, whichever is appropriate;
- (c) in the case of a postal vote where the papers were posted to the Commissioner—the papers were so posted before the close of the poll; and
- (d) in the case of the vote of an Antarctic elector—the envelope referred to in paragraph 72 (1) (c) is endorsed and signed by an authorised officer in accordance with that section.

(2) For the purposes of paragraph (1) (b), where an officer referred to in subsection 39 (4) or that subsection as applied by subsection 40 (7) omits to sign the certificate (not being a certificate in respect of a postal vote), the

SCHEDULE 4—continued

certificate shall nevertheless be taken to be in accordance with section 39 or 40, as the case requires, if—

- (a) the issue of the relevant declaration voting papers was recorded under Division 3 of Part IV; and
- (b) the officer in charge is satisfied the papers were properly issued to the elector.

7. An officer shall sort the declaration voting papers to which clause 6 applies into the following groups:

- (a) 1 group containing envelopes on which appear declarations by electors;
- (b) 1 group containing the remainder.

8. An officer shall sort the remaining declaration voting papers referred to in paragraph 7 (b) into the following groups:

- (a) 1 group containing papers to which clause 9 applies;
- (b) 1 group containing the remainder.

9. (1) This clause applies to a set of declaration voting papers if the officer in charge is satisfied that—

- (a) the elector who signed the declaration was, when the roll closed for the election, entitled to be enrolled thereon; and
- (b) the omission of the elector's name from the roll resulted from an official error.

(2) For the purposes of paragraph (1) (b), where an elector's name has been duly removed from the roll, the removal shall be taken to have been an official error, unless the removal occurred before the roll closed for the purpose of a referendum on the last community consultation day before that to which the papers relate, in which case the removal shall not be taken to be an official error.

10. (1) An officer shall withdraw the ballot papers from the envelopes in the groups of declaration voting papers to which paragraph 7 (a) or clause 9 applies and, without unfolding or inspecting the ballot papers or allowing any other person to do so, admit them to scrutiny under section 79.

(2) Where 2 or more sets of papers to which paragraph 7 (a) or clause 9 applies are in the name of a particular elector—

- (a) the officer in charge shall determine which set shall be dealt with in accordance with subclause (1); and
- (b) the remaining set shall be set aside.

SCHEDULE 4—continued

(3) The officer in charge shall ensure that ballot papers referred to in subclause (1) are kept in a separate sealed ballot box until they are dealt with under section 79.

11. The officer in charge shall, in accordance with clauses 4 to 10 (inclusive), conduct a further scrutiny of the groups of remaining declaration voting papers to which paragraph 5 (b) or 8 (b) apply and, if there are any papers to which either paragraph applies after the further scrutiny, the officer in charge shall—

- (a) reject them from further scrutiny; and
- (b) seal them, together with any papers to which paragraph 10 (2) (b) applies, in a parcel endorsed with a description of the contents and the date.

12. The Commissioner shall give to each elector whose declaration voting papers are rejected under this Schedule written notice of the rejection setting out the reasons for the rejection.