

1995

**THE LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY**

REFERENDUM (MACHINERY PROVISIONS) ACT 1994
REFERENDUM (MACHINERY PROVISIONS) REGULATIONS

EXPLANATORY MEMORANDUM

Circulated by authority of

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Chief Minister

REFERENDUM (MACHINERY PROVISIONS) REGULATIONS

Explanatory Memorandum

The Referendum (Machinery Provisions) Regulations make machinery provisions for the conduct of the referendum to be held to give effect to the Proportional Representation (Hare-Clark) Entrenchment Bill 1994. The Regulations are made under section 20 of the *Referendum (Machinery Provisions) Act 1994*.

The Referendum (Machinery Provisions) Act provides generally for the conduct of referendums, but because of its general nature it relies on more detailed provisions specific to a particular referendum being specified either in the law requiring the referendum to be held or in the Regulations. In the absence of specific provisions in the Proportional Representation (Hare-Clark) Entrenchment Bill 1994, the following Regulations make provision for a range of measures necessary or convenient for the holding of the referendum.

These Regulations will only apply to the referendum due to be held on 18 February 1995.

Regulation 1 provides that these Regulations may be cited as the Referendum (Machinery Provisions) Regulations.

Regulation 2 provides that these Regulations are to commence on the day on which they are notified in the Gazette.

Regulation 3 defines the terms "referendum" and "the Act" for the purposes of these Regulations.

Regulation 4 provides that the ballot paper for the referendum will be in the form set out in the Schedule. The form of the ballot paper follows Commonwealth Constitutional referendum practice by asking electors to write "yes" or "no" in the box provided to indicate approval of or opposition to the referendum question.

Regulation 5(a) provides that a tick marked in or adjacent to the voting box on the ballot paper shall be taken as a formal "yes" vote. This follows Commonwealth Constitutional referendum practice where a tick is taken as an indication of approval. This is intended as a "safety net" for those voters who do not follow the instruction to write the word "yes" but whose intention is nevertheless clear.

Regulation 5(b) makes it clear that a cross marked on a referendum ballot paper shall not be taken to record a valid vote. This provision is also consistent with Commonwealth Constitutional referendum practice where a cross marked in isolation is taken to be ambiguous. Any ballot paper marked with a cross only will be treated as an informal vote.

Regulation 5(c) provides that any writing on a referendum ballot paper other than a "yes", "no" or a tick shall be disregarded unless it renders the elector's intention unclear. For example, if a voter writes "no dams" on the top of the ballot paper and writes "no" in the voting box, the vote would be taken to be a formal "no" vote. By contrast, if a voter writes "no" in the voting box and "dams" immediately after "no" it is not clear whether the voter intended to vote "no" or whether the voter was wishing to express the view that there should be no dams. In this case the ballot paper would be treated as informal. This approach is also consistent with Commonwealth Constitutional referendum practice.

Regulation 6 provides that referendum matter (such as how-to-vote cards) may be made available to voters by visiting Electoral Commission officers during mobile polling if provided by a person who was an MLA on 8 December 1994 or by a candidate in the election to be held on the same day. Under paragraph 151(1)(b) of the *Electoral Act 1992* visiting officers may make electoral matter, including how-to-vote cards, available to voters during mobile polling where provided by candidates. This Regulation makes equivalent provision for referendum matter. Each person who was an MLA on 8 December 1994 (the day the Proportional Representation (Hare-Clark) Entrenchment Bill 1994 was passed by the Legislative Assembly) is empowered to provide referendum matter under this Regulation on the basis that those persons were entitled to contribute to the arguments for or against the referendum. Each candidate is also empowered to provide referendum matter to allow candidates to submit joint election/referendum how-to-vote material.

Regulation 7 provides that a person who was an MLA on 8 December 1994 is authorised to request a recount of ballot papers in relation to the referendum. The Referendum (Machinery Provisions) Act does not otherwise authorise any class of person to request a recount. Each person who was an MLA on 8 December 1994 is given this right under this Regulation on the basis that those persons were entitled to contribute to the arguments for or against the referendum.

Regulation 8 provides that a person who was an MLA on 8 December 1994 may appoint one or more scrutineers in relation to the referendum. The Referendum (Machinery Provisions) Act also provides that any scrutineer appointed by a candidate for a concurrent referendum is automatically taken to be appointed for the referendum. Each person who was an MLA on 8 December 1994 is given this right under this Regulation on the basis that those persons were entitled to contribute to the arguments for or against the referendum.