

1994

AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

REFERENDUM (MACHINERY PROVISIONS) BILL 1994

EXPLANATORY MEMORANDUM

Circulated by authority of

Rosemary Follett, Chief Minister

OUTLINE

The Referendum (Machinery Provisions) Bill 1994 provides for the machinery conduct of referendums in the Australian Capital Territory.

Main features of the Bill

This Bill is intended to provide for general mechanisms for the conduct of referendums required to be held by other laws of the Assembly, called 'referendum laws'. The Bill relies on referendum laws to outline the essential details of each referendum such as the referendum question and the day on which the referendum is to be held. The purpose of the Bill is to provide for the default mechanisms that are to operate to the extent that they are not inconsistent with the referendum law. In this way the Bill will ensure that referendums are conducted in the same way as elections, so far as practicable, and avoids the need for specific referendum laws to address general machinery provisions. The Bill operates by applying the machinery provisions of the *Electoral Act 1992*, so far as they are relevant to referendums and by making modifications as appropriate.

Key features of the Bill (which are to operate unless a referendum law provides otherwise) include:

- Referendums are to be held on the same day as elections for the Assembly or on a day fixed by a referendum law;
- Voting is to be compulsory;
- Procedures set out in the *Electoral Act 1992* are to be followed so far as practicable, with suitable modifications made as specified in the Bill;
- Scrutineers may be appointed for a referendum;
- 'For' and 'Against' arguments may be supplied by Assembly members and disseminated by the Electoral Commission;
- Persons incurring referendum expenditure will be required to disclose expenditure and donations details;
- Offences set out in the *Electoral Act 1992* will apply with suitable modifications; and
- Referendum results will be able to be disputed before the Court of Disputed Elections.

FINANCIAL IMPLICATIONS

Passage of this legislation of itself will not involve additional expenditure by Government. Additional costs will be associated with the holding of referendums held under the provisions of this Bill. The cost will depend on the number and timing of referendums.

DETAILED EXPLANATION

Formal clauses

Clauses 1 and 2 are formal requirements. They refer to the short title and the commencement of the Bill. These clauses commence on the day the Act is notified in the *Gazette*. The remaining provisions commence on the day or days fixed by the Minister by notice in the *Gazette* or if no such day is fixed, at the end of 6 months after the day on which the Act is notified in the *Gazette*.

Interpretation

Clause 3 outlines definitions for various terms used generally in the Bill. Most definitions are self-explanatory, however the following definitions are noteworthy or are used extensively throughout the Bill:

'Commissioner' means the Electoral Commissioner;

'enabling law' means a law that provides for a matter, including a proposed law, to be submitted to a referendum;

'entrenching law' means a law required to be submitted to a referendum under subsection 26 (2) of the *Australian Capital territory (Self-Government) Act 1988* of the Commonwealth;

'referendum' means a referendum of electors to which this Act applies;

'referendum day' means the day on which the poll for a referendum is required to be held; and

'referendum law' means

- (a) an enabling law;
- (b) an entrenching law; or
- (c) a law required by an entrenching law to be submitted to a referendum.

This clause also allows for expressions used in this Act to have the same meaning as in the Electoral Act unless a contrary intention appears.

Interpretation of applied provisions of Electoral Act

Clause 4 provides that unless contrary intention appears, all provisions in the Electoral Act applied by this Bill are to apply as if a reference to an election was a reference to a referendum. This clause also outlines some expressions used in the Electoral Act and defines them with regard to referendums.

Application

Clause 5 provides that referendums are to be held in accordance with this Bill except where a referendum law provides otherwise. All provisions in the Bill, and all explanations given in this Explanatory Memorandum, are to be read in light of this clause.

Commission staff

Clause 6 allows for the staff of the Electoral Commission to be appointed for the purposes of a referendum and provides that any person appointed as an officer under the Electoral Act shall be taken to be appointed as an officer for referendum purposes.

Timing of referendums

Clause 7 provides that referendums may be held:

- either on the polling day of the next ordinary election; or
- in the case where a referendum law provides for a different day, on a Saturday fixed by the Executive by notice in the *Gazette*.

That day cannot occur:

- 36 days before or after the polling day for a general election for the ACT Legislative Assembly; or
- on a polling day for Senators, the House of Representative or a Commonwealth referendum unless appropriate arrangements are made with the Commonwealth for the referendum to be held on that day.

Arguments for and against referendum options

Clause 8 provides that electors are furnished with information about the referendum in the form of 'for' and 'against' arguments.

Unless otherwise provided by the enabling law, a referendum case in favour of a referendum question of not more than 2000 words is to be prepared and authorised by a majority of members of the Assembly who voted for the referendum question. A referendum case in opposition to a referendum question of not more than 2000 words is to be prepared and authorised by a majority of members of the Assembly who voted against the referendum question.

The Commissioner is then required to print the arguments for and against in a similar typeface and typestyle and at least 14 days before the referendum deliver a copy of the referendum cases to each household in the ACT or to each elector.

Closure of rolls

Clause 9 provides for the close of the roll for a referendum in the same manner as an election.

Arrangements for referendums

Clause 10 provides that as far as possible arrangements for elections apply for arrangements for referendums.

In particular this clause provides for appointment of scrutineers. In the case of a referendum held separately, each member of the Assembly will be entitled to appoint a scrutineer for the referendum. Where an election and referendum are held concurrently, each person appointed as a scrutineer by a candidate for the election is taken to be appointed as a scrutineer for the referendum.

Ballot papers

Clause 11 anticipates that each referendum law will set out the form of a referendum ballot paper, but allows for the form of a referendum ballot paper to be set out in regulations if necessary. One or more referendum questions can be set out on a ballot paper.

Voting at a referendum

Clause 12 provides that every elector enrolled on the roll for an electorate is entitled to vote at a referendum. Procedures for voting in the referendum, as far as applicable, will be the same for voting in an election. For a concurrent referendum the same ballot boxes and polling places will be used and referendum ballot papers will be issued at the same time and in the same way as election ballot papers.

This clause also provides that voting is to be compulsory, but operates so that, where a referendum is held on the same day as an election, proceedings against an elector who fails to vote will only be instituted with respect to the election.

Polling in Antarctica

Clause 13 allows that polling in Antarctica will, as far as practicable, be conducted for a referendum in the same way as polling in Antarctica is conducted for an election.

Scrutiny

Clause 14 ensures that, as far as practicable, the result of polling in a referendum is ascertained by scrutiny in the same way as for an election. The rules for formality of ballot papers are to be provided for by the enabling law.

Unless the enabling law otherwise provides, the Electoral Commissioner must count the number of votes in favour of or opposed to each question, and the number of informal votes. As soon as practicable after the count is concluded, the Electoral Commissioner must publish a notice in the Gazette setting out the numbers counted.

Financial disclosure

Clause 15 provides that, as far as practicable, the disclosure provisions of the Electoral Act will apply in relation to persons incurring expenditure on a referendum in the same way as those provisions apply to participants in elections.

This clause, taken together with the modifications in the Schedule, applies the disclosure provisions to persons who incur specified expenditure in relation to a referendum during the period from 37 days up to and including polling day and ending 30 days after polling day. Such persons must disclose details of expenditure of \$200 or over and details of donations received of \$1000 or over. A person shall not accept anonymous gifts equal to or greater than \$200 made for the purposes of a referendum.

Disputed referendums

Clause 16 provides that, as far as practicable, the validity of a referendum may be disputed in the same way as the validity of an election. A referendum cannot be invalidated if the Commissioner has not strictly complied with the requirement to provide electors with information about the referendum in the form of 'for' and 'against' arguments.

Offences

Clause 17 provides that as far as applicable, the provisions of the Electoral Act that relate to offences for elections will apply in the same way for referendums.

Enforcement

Clause 18 provides that, as far as applicable, enforcement proceedings under Part XVIII of the Electoral Act in respect of contravention of that Act in applying to elections applies in same way for referendums.

Miscellaneous

Clause 19 provides that as far as applicable the provisions of Part XIX of the Electoral Act apply to elections applies in same way for referendums.

Regulations

Clause 20 allows the Executive to make regulations relevant to a particular referendum or to referendums generally. These regulations may prescribe the printing of ballot papers, the appointment of scrutineers, scrutiny procedures and persons entitled to dispute referendums. The regulations may provide for the imposition of fines for offences against the regulations.

Schedule

The Schedule sets out modifications of the Electoral Act for referendum purposes. These modifications:

- substitute a new section 130 to prohibit an elector from voting more than once at the same referendum;
- omit section 132 which provides for the manner of recording a vote in an election and delete references to section 132 (the manner of recording a vote in an election is to be covered by a referendum law);

- omit section 155 which requires particulars to be printed on election ballot papers before issue (an equivalent provision has been made in clause 12(3)(e));
- omit sections 185 and 189 which deal with ascertaining the results of an election and declaration of the result of an election (an equivalent provision has been made in clause 14);
- amend Part XIV to modify the disclosure provisions to apply to persons who incur specified expenditure in relation to a referendum during the period from 37 days up to and including polling day and ending 30 days after polling day, in particular to:
 - substitute a new section 220 to provide that such a person must disclose details of donations received of \$1000 or over;
 - substitute a new section 222 to provide that any person shall not accept anonymous gifts equal to or greater than \$200 made for the purposes of a referendum; and
 - substitute a new section 224 to provide that such a person must disclose details of expenditure of \$200 or over;
- amend section 263 to substitute 'Territory' for references to electorates;
- amend sections 265 and 266 to give the Court of Disputed Elections the power to make appropriate directions where referendums are disputed;
- amend section 275 to provide for the timing of another referendum after a referendum is declared void by the Court and for the publishing of results following a ruling by the Court;
- substitute a new subsection 289(1) to provide that a person shall not discriminate against another person for making a donation for referendum purposes;
- amend section 335 to provide that referendum papers need only be kept until a referendum can no longer be questioned, and not for the life of an Assembly, as election papers are; and
- omit section 341 so that the regulation making power in the Electoral Act is not applied to referendums (clause 19 provides for regulations to be made for referendum purposes).