



Referendum (Machinery Provisions) Act 1984

No. 44 of 1984

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Referendum (Machinery Provisions) Act 1984

No. 44 of 1984

An Act relating to the submission to the electors of proposed laws for the alteration of the Constitution

[Assented to 25 June 1984]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Referendum (Machinery Provisions) Act 1984*.

Commencement

2. This Act shall come into operation on a day to be fixed by Proclamation.

Interpretation

3. (1) In this Act, unless the contrary intention appears—

“absent voter” means an elector voting or desiring to vote pursuant to section 46 other than at a polling place appointed for the Division for which he is enrolled;

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- “absent voting” means voting as an absent voter pursuant to section 46;
- “Antarctica” means the Australian Antarctic Territory and includes—
- (a) the Territory of Heard Island and McDonald Islands; and
 - (b) Macquarie Island;
- “Antarctic elector” means an elector who is entitled to vote at a referendum in accordance with Part V;
- “Antarctic Returning Officer”, in relation to a station, means the person appointed under section 247 of the *Commonwealth Electoral Act 1918* to be the Antarctic Returning Officer for that station, or a person acting as the Antarctic Returning Officer for that station;
- “approved” means approved by the Electoral Commission by notice published in the *Gazette*;
- “Assistant Antarctic Returning Officer”, in relation to a station, means the person appointed under section 247 of the *Commonwealth Electoral Act 1918* to be the Assistant Antarctic Returning Officer for that station, or a person acting as the Assistant Antarctic Returning Officer for that station;
- “Assistant Divisional Returning Officer” means an Assistant Divisional Returning Officer appointed under section 34 of the *Commonwealth Electoral Act 1918*;
- “Assistant Returning Officer” means a person appointed to be an Assistant Returning Officer under section 6 of this Act or, where the voting day for a referendum is the same as that fixed for the polling at an election, under section 33 of the *Commonwealth Electoral Act 1918*;
- “Australian Capital Territory” includes the Jervis Bay Territory;
- “Australian Electoral Officer” means an Australian Electoral Officer for a State or an Australian Electoral Officer for a Territory;
- “Australian Electoral Officer for a State” means an Australian Electoral Officer for a State referred to in section 20 of the *Commonwealth Electoral Act 1918*;
- “Australian Electoral Officer for a Territory” means an Australian Electoral Officer for a Territory appointed under section 5 of this Act or, where the voting day for a referendum is the same as that fixed for the polling at an election, under section 30 of the *Commonwealth Electoral Act 1918*;
- “authorized witness”, in relation to any act or thing done by a person for the purposes of voting at a referendum, means—
- (a) in a case to which paragraph (b) does not apply—an elector; or
 - (b) in the case of an act or thing done outside Australia—
 - (i) an elector;
 - (ii) an officer of the Defence Force or of the naval, military or air forces of a part of the Queen’s dominions;

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- (iii) a person employed in the Australian Public Service or in the Public Service of a State or Territory or of a part of the Queen's dominions;
- (iv) a justice of the peace for, or a minister of religion or medical practitioner resident in, a Territory or a part of the Queen's dominions; or
- (v) an Australian citizen;

"constable" means a member or a special member of the Australian Federal Police or a member of the Police Force of a State or Territory;

"Deputy Electoral Commissioner" means the Deputy Electoral Commissioner referred to in section 19 of the *Commonwealth Electoral Act 1918*;

"Division" means an Electoral Division created pursuant to the *Commonwealth Electoral Act 1918* for the election of a member of the House of Representatives;

"Divisional Returning Officer" means a Divisional Returning Officer referred to in section 32 of the *Commonwealth Electoral Act 1918*;

"election" means an election of a Member of the House of Representatives or an election of Senators for a State or Territory;

"elector" means a person whose name appears on a Roll as an elector;

"Electoral Commission" means the Australian Electoral Commission established by section 6 of the *Commonwealth Electoral Act 1918*;

"Electoral Commissioner" means the Electoral Commissioner referred to in section 18 of the *Commonwealth Electoral Act 1918*;

"electoral visitor" means an electoral visitor appointed under section 49;

"eligible overseas elector" means an elector who is entitled under the *Commonwealth Electoral Act 1918* to be treated as an eligible overseas elector for the purposes of that Act;

"hospital" includes a convalescent home or an institution similar to a hospital or to a convalescent home;

"itinerant elector" means an elector who is entitled under section 96 of the *Commonwealth Electoral Act 1918* to be treated as an itinerant elector for the purposes of that Act;

"mobile polling team leader" means a mobile polling team leader appointed under section 51;

"mobile polling team member" means a mobile polling team member appointed under section 51;

"Northern Territory" includes the Territory of Cocos (Keeling) Islands;

"officer" includes the Electoral Commissioner, the Deputy Electoral Commissioner, an Australian Electoral Officer for a State or Territory, a Divisional Returning Officer, an Assistant Returning Officer, an Assistant Divisional Returning Officer, an Antarctic Returning Officer, an Assistant Antarctic Returning Officer, a presiding officer, a substitute presiding officer, an electoral visitor, a mobile polling team leader, a mobile polling team member and a poll clerk;

“polling booth” means a building, structure, vehicle or enclosure, or a part of a building, structure, vehicle or enclosure, provided at a polling place for the purpose of taking votes at a referendum;

“polling place” means a place appointed as a polling place pursuant to paragraph 80 (1) (a) of the *Commonwealth Electoral Act 1918*;

“postal voting” means voting pursuant to Part IV;

“referendum” means the submission to the electors of a proposed law for the alteration of the Constitution;

“referendum period”, in relation to a referendum, means the period commencing on the day of the issue of the writ for the referendum and ending at the latest time on the voting day for the referendum at which an elector in Australia could enter a polling booth for the purpose of voting at the referendum;

“registered medical practitioner” means a person registered or licensed as a medical practitioner under the law of a State or Territory, being a law that provides for the registration or licensing of medical practitioners;

“Roll” means a roll of electors kept pursuant to the *Commonwealth Electoral Act 1918*;

“special hospital” means a special hospital within the meaning of section 49 and, where section 52 applies, includes a special hospital within the meaning of section 225 of the *Commonwealth Electoral Act 1918*;

“station” means a research station in Antarctica that is operated by the Commonwealth;

“substitute presiding officer” means a person whom a presiding officer appoints, pursuant to section 18, as a substitute to perform his duties during his temporary absence;

“Subdivision” means a Subdivision of a Division referred to in paragraph 79 (1) (a) of the *Commonwealth Electoral Act 1918*;

“Territory” means the Australian Capital Territory or the Northern Territory;

“voting day”, in relation to a referendum, means the day fixed for the taking of the votes for the purposes of the referendum.

(2) In this Act, unless the contrary intention appears—

(a) a reference to a Division shall be read as including a reference to the Northern Territory; and

(b) a reference to a Subdivision shall be read as including a reference to a District of that Territory.

(3) This Act extends to the Territory of Cocos (Keeling) Islands.

Electors entitled to vote at a referendum

4. (1) An elector is entitled to vote at a referendum where, if the referendum were an election, he would be entitled to vote at the election.

- (2) For the purposes of voting at a referendum—
- (a) claims for enrolment or transfer of enrolment pursuant to the *Commonwealth Electoral Act 1918* received during the period commencing at 6 o'clock in the afternoon of the day on which the Rolls for a referendum close and ending on the close of voting at the referendum shall not be considered until after the expiration of that period; and
 - (b) a name shall not be removed from a roll under sub-section 118 (1) of the *Commonwealth Electoral Act 1918* after the issue of the writ for a referendum and before the close of voting at the referendum.

Australian Electoral Officer for a Territory

5. (1) The Electoral Commission shall, for the purposes of each referendum, appoint an Australian Electoral Officer for each Territory and such an appointment shall terminate upon the completion of the referendum.

(2) The Electoral Commission may appoint a person to act as Australian Electoral Officer for a Territory during any period, or during all periods, when the Australian Electoral Officer for the Territory is absent from duty or from Australia or is, for any other reason, unable to perform the functions of his office.

(3) The appointment of a person to act as Australian Electoral Officer for a Territory ceases to have effect if he resigns the appointment by writing signed by him and delivered to the Electoral Commission.

(4) While a person is acting as Australian Electoral Officer for a Territory, he has, and may exercise, all the powers and shall perform all the functions of the Australian Electoral Officer for the Territory.

(5) The validity of anything done by or in relation to a person purporting to act under sub-section (1) shall not be called in question on the ground that the occasion for his appointment had not arisen, that there is a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had passed.

Assistant Returning Officers and Assistant Divisional Returning Officers

6. (1) The Electoral Commission may, for the purposes of a referendum, appoint a person to be an Assistant Returning Officer—

- (a) for a portion of a Division; or
- (b) at a place outside Australia,

and any such appointment shall terminate upon completion of the referendum.

(2) A person appointed under sub-section (1) to be an Assistant Returning Officer for a portion of a Division may, subject to the control of the relevant Divisional Returning Officer, perform the functions and exercise the powers of the Divisional Returning Officer (other than those relating to postal voting) in, or in relation to, that portion of the Division.

(3) A person appointed under sub-section (1) to be an Assistant Returning Officer at a place outside Australia may, subject to the control of the Electoral

Commissioner, perform such functions and exercise such powers as are conferred on him by this Act.

(4) An Assistant Divisional Returning Officer for a Subdivision may, subject to the directions of the Divisional Returning Officer for the Division in which the Subdivision is situated, perform the functions and exercise the powers of the Divisional Returning Officer in relation to that Subdivision.

PART II—WRIT FOR A REFERENDUM

Writ for a referendum

7. Whenever a proposed law for the alteration of the Constitution is to be submitted to the electors, the Governor-General may issue a writ for the submission of the proposed law to the electors.

Form of writ

8. (1) A writ issued under section 7 may be in accordance with Form A in Schedule 1 and shall appoint—

- (a) the day for the close of the Rolls;
- (b) the day, being a Saturday, for taking the votes of electors; and
- (c) the day for the return of the writ.

(2) The Governor-General shall cause to be attached to the writ a copy of the proposed law, or a copy of a statement setting out—

- (a) the text of the proposed law; and
- (b) the text of the particular provisions (if any) of the Constitution proposed to be textually altered by the proposed law, and the textual alterations proposed to be made therein.

(3) For the purposes of this Act, a writ shall be deemed to have been issued at 6 o'clock in the afternoon of the day on which the writ was issued.

Day for close of Rolls and voting day

9. (1) The day fixed for the close of the Rolls shall be 7 days after the issue of the writ.

(2) The day fixed for taking the votes of electors at a referendum shall be not less than 33 days and not more than 58 days after the issue of the writ.

Extension of time, &c.

10. (1) Notwithstanding any other provision of this Act, within 20 days before the day appointed pursuant to section 8 for the taking of votes at a referendum, but not later than 7 days before that day, the Governor-General may, by notice published in the *Gazette*, provide for the postponement of the day appointed for the taking of votes at the referendum to a later day specified in the notice.

(2) The Electoral Commission shall immediately give such other public notice of the postponement as it thinks necessary.

(3) Where the voting day for a referendum is the same as that fixed for the polling at an election and an extension of time for holding the election is

provided for pursuant to section 286 of the *Commonwealth Electoral Act 1918*, the voting day for the referendum shall be deemed to have been postponed under sub-section (1) of this section to the day on which the election is to be held pursuant to the extension of time.

(4) Notwithstanding any other provision of this Act, within 20 days before or after the day appointed pursuant to section 8 for the taking of votes at a referendum, the Governor-General may, by notice published in the *Gazette*, provide for the postponement of the day appointed under section 8 for the return of the writ.

(5) Any day provided for pursuant to this section in lieu of a day appointed pursuant to section 8 shall be deemed to be a day so appointed.

Distribution to electors of arguments for and against proposed law

11. (1) Where—

- (a) a proposed law for the alteration of the Constitution, being a proposed law passed by an absolute majority of both Houses of the Parliament, is to be submitted to the electors; and
- (b) within 4 weeks after the passage of that proposed law through both Houses of the Parliament, there is forwarded to the Electoral Commissioner—
 - (i) an argument in favour of the proposed law, consisting of not more than 2,000 words, authorized by a majority of those members of the Parliament who voted for the proposed law and desire to forward such an argument; or
 - (ii) an argument against the proposed law, consisting of not more than 2,000 words, authorized by a majority of those members of the Parliament who voted against the proposed law and desire to forward such an argument,

the Electoral Commissioner shall, unless the Minister informs the Electoral Commissioner that the referendum is not to be held, not later than 14 days before the voting day for the referendum, cause to be printed and to be posted to each elector, as nearly as practicable, a pamphlet containing the arguments together with a statement showing the textual alterations and additions proposed to be made to the Constitution.

(2) Where—

- (a) a proposed law for the alteration of the Constitution, being a proposed law passed by an absolute majority of one House of the Parliament only, is to be submitted to the electors; and
- (b) within 4 weeks after the second passage of that proposed law through that House of the Parliament, there is forwarded to the Electoral Commissioner—
 - (i) an argument in favour of the proposed law, consisting of not more than 2,000 words, authorized by a majority of those members of the Parliament who voted for the proposed law and desire to forward such an argument; or

- (ii) an argument against the proposed law, consisting of not more than 2,000 words, authorized by a majority of those members of the Parliament who voted against the proposed law and desire to forward such an argument,

the Electoral Commissioner shall, unless the Minister informs the Electoral Commissioner that the referendum is not to be held, not later than 14 days before the voting day for the referendum, cause to be printed and to be posted to each elector, as nearly as practicable, a pamphlet containing the arguments together with a statement showing the textual alterations and additions proposed to be made to the Constitution.

(3) When there are to be referendums upon more than one proposed law on the same day—

- (a) the arguments in relation to all the proposed laws shall be printed in one pamphlet;
- (b) the argument in favour of any proposed law may exceed 2,000 words if the arguments in favour of all the proposed laws do not average more than 2,000 words each and the argument against any proposed law may exceed 2,000 words if the arguments against all the proposed laws do not average more than 2,000 words each; and
- (c) there may be one statement setting out all the alterations and additions proposed to be made to the Constitution by all the proposed laws, with marginal notes identifying the proposed law by which each alteration or addition is proposed to be made.

(4) The Commonwealth shall not expend money in respect of the presentation of the argument in favour of, or the argument against, a proposed law except in relation to—

- (a) the preparation, printing and distribution of the pamphlets referred to in this section, or the preparation and distribution of translations into other languages of material contained in those pamphlets;
- (b) the provision by the Electoral Commission of other information relating to, or relating to the effect of, the proposed law; or
- (c) the salaries and allowances of members of the Parliament, of members of the staff of members of the Parliament or of persons who are officers or employees within the meaning of the *Public Service Act 1922*.

Governor-General to deal with writ

12. The Governor-General shall, immediately after the issue of a writ for a referendum—

- (a) cause a copy of the writ and a copy of the proposed law or of the statement (if any) attached to the writ to be forwarded to the Governors of the several States and to the Administrator of the Northern Territory; and
- (b) forward the original writ and a copy of the proposed law or of the statement (if any) attached to the writ to the Electoral Commissioner.

Action by Electoral Commissioner

13. The Electoral Commissioner shall, immediately after the receipt by him of a writ for a referendum—

- (a) advise each Australian Electoral Officer of the particulars of the writ; and
- (b) cause to be published in the *Gazette* a notice setting out the particulars of the writ and a copy of the proposed law or of the statement (if any) attached to the writ.

Action by Electoral Officers

14. (1) The Australian Electoral Officer for each State and Territory shall, immediately after receiving advice of the particulars of a writ for a referendum—

- (a) cause copies of a statement setting out the text of the proposed law and the text of the particular provisions (if any) of the Constitution proposed to be altered by the proposed law to be made available at offices of the Electoral Commission in that State or Territory and at such other places as the Electoral Commissioner directs;
- (b) cause to be inserted in at least 2 newspapers circulating in the State or Territory a notice setting out—
 - (i) the particulars of the writ;
 - (ii) a copy of the proposed law or of the statement (if any) attached to the writ; and
 - (iii) the places at which copies of the statement referred to in paragraph (a) are available; and
- (c) advise each Divisional Returning Officer in that State or Territory of the particulars of the writ.

(2) The Divisional Returning Officers of the States and the Territories shall, subject to this Act and to the directions of the Electoral Commissioner and the Australian Electoral Officers of their respective States and Territories, immediately after receiving advice of the particulars of a writ for a referendum, take all action that is necessary to be taken to carry the writ into effect.

PART III—VOTING AT A REFERENDUM

Division 1—General

Voting on same day throughout Australia

15. Subject to sections 42 and 43, the voting at a referendum shall be taken throughout Australia on the day appointed by the writ for the referendum for taking the votes of the electors.

Polling places

16. (1) The polling places appointed pursuant to paragraph 80 (1) (a) of the *Commonwealth Electoral Act 1918* shall in addition be polling places for the purposes of a referendum.

(2) The Electoral Commission shall, on at least one occasion after the issue of a writ for a referendum but before the day fixed for taking the votes at the referendum, if it is practicable to do so, in respect of each Division cause to be published in a newspaper circulating in that Division a notice—

- (a)** setting out all polling places in that Division; and
- (b)** setting out all places that were, at the time of the last referendum or at the time of the last election for which a poll was taken in that Division, whichever last occurred, polling places for that Division but that have been abolished since that time.

(3) Where the voting day for a referendum is the same as that fixed for the polling at an election, the publication by the Electoral Commission of a notice in respect of a Division under sub-section 80 (3) of the *Commonwealth Electoral Act 1918* shall be deemed to be a publication under sub-section (2) of this section.

Arrangements for voting

17. (1) Each Divisional Returning Officer shall, for the purposes of a referendum—

- (a)** provide and equip proper polling booths and provide ballot-boxes; and
- (b)** provide ballot-papers and all necessary certified lists of voters.

(2) The Electoral Commission shall, for the purposes of a referendum, appoint a presiding officer to preside at each polling place and all necessary assistant presiding officers and poll clerks, and such appointments shall terminate upon the completion of the referendum.

(3) In any emergency on the voting day for a referendum due to the absence of any assistant presiding officer or poll clerk, or to any unforeseen and continued pressure at the voting that cannot be met by the duly appointed officers, a presiding officer may appoint any person to act as assistant presiding officer or poll clerk, and a person so appointed shall, if the Electoral Commission afterwards ratifies the appointment, be deemed to have been duly appointed.

(4) A person who is under the age of 18 years shall not be appointed to be a presiding officer or an assistant presiding officer.

(5) An assistant presiding officer may, subject to the directions of the presiding officer, exercise all or any of the powers of the presiding officer, and shall, in respect of the exercise of those powers, be deemed to be the presiding officer.

Substitute for presiding officer

18. A presiding officer may appoint a substitute to perform his duties during his temporary absence, and the substitute may, while so acting, exercise all the powers of the presiding officer, and shall, in the exercise of those powers, be deemed to be the presiding officer.

Ballot-boxes

19. Each polling booth shall be provided with the necessary ballot-boxes.

Separate voting compartments

20. Polling booths shall have separate voting compartments, constructed so as to screen the voters from observation while they are marking their ballot-papers, and each voting compartment shall be furnished with a pencil for the use of voters.

No licensed premises to be used

21. (1) Subject to sub-section (2), no part of any premises licensed for the sale of intoxicating liquor shall be used for the purpose of any polling booth.

(2) Premises may be used for the purpose of a polling booth notwithstanding that the premises are, or any part of the premises is, licensed for the sale of intoxicating liquor if the Electoral Commissioner declares, by writing under his hand, that he is satisfied that no intoxicating liquor will be available for sale in any part of those premises during the hours of voting at a referendum.

Certified list of voters

22. (1) The list of voters to be used by a presiding officer at a polling place for the purposes of a referendum shall be the list of electors (including persons whose names have been added to the roll pursuant to a claim made under section 100 of the *Commonwealth Electoral Act 1918* and who will have attained 18 years of age on the voting day for the referendum) enrolled—

- (a) in the case of a polling place in a State—for the Division that includes the Subdivision for which the polling place is appointed; and
- (b) in the case of a polling place in a Territory—for the Division for which the polling place is appointed.

(2) The Divisional Returning Officer for the Division for which a polling place is appointed shall—

- (a) certify each list of voters; and
- (b) cause each list of voters to be delivered to the presiding officer at that polling place before the commencement of the voting.

Election and referendum on the same day

23. Where the voting day for a referendum is the same as that fixed for the polling at an election—

- (a) a person appointed to be an Australian Electoral Officer for a Territory or a presiding officer, assistant presiding officer, substitute presiding officer or poll clerk for the purposes of the polling at the election shall be deemed to be an Australian Electoral Officer for that Territory or a presiding officer, assistant presiding officer, substitute presiding officer or poll clerk, as the case may be, for the purposes of the referendum;
- (b) the same polling booths and ballot-boxes may be used for the purposes of both the election and the referendum, but if the same ballot-boxes are used, the ballot-papers for the referendum shall be of a different colour to the ballot-papers for the election; and
- (c) the same certified lists of voters may be used for the purposes of both the election and the referendum.

Manner of voting

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

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

Forms of ballot-paper

25. (1) Subject to this section, the ballot-papers to be used for the purposes of a referendum shall be in accordance with Form B in Schedule 1.

(2) Where 2 or more referendums are held on the same day, the ballot-papers for each referendum shall be printed on one piece of paper and shall be in accordance with Form C in Schedule 1.

(3) Where 2 or more ballot-papers are printed on one piece of paper as mentioned in sub-section (2)—

- (a) it is not necessary for the initials of an officer to appear more than once on the piece of paper;
- (b) the presence of any mark or writing on the piece of paper by which a voter can be identified invalidates all the ballot-papers and all the votes on the piece of paper; and
- (c) a ground of informality (other than the ground referred to in paragraph (b)) applies only to the particular ballot-paper and vote to which it relates, and does not affect the validity of any other ballot-paper or vote.

(4) The ballot-papers to be used for postal voting shall have the words “Postal Ballot-paper” or “Postal Ballot-papers” as a heading and shall contain

the following directions: "Fold the ballot-paper, place it in the envelope addressed to the Divisional Returning Officer and fasten the envelope".

(5) The ballot-papers to be used for absent voting shall have the words "Absent Vote Ballot-paper" or "Absent Vote Ballot-papers" as a heading and shall contain the following directions: "Fold the ballot-paper so that the vote [or votes] cannot be seen and return it to the Presiding Officer before whom you made your declaration".

Ballot-papers to be initialled

26. (1) Each presiding officer shall place his initials on the back of each ballot-paper before handing the ballot-paper to a person claiming to vote.

(2) Each presiding officer shall cause to be kept an exact account of all ballot-papers initialled by him.

Appointment of scrutineers

27. (1) The Governor-General, or a person authorized by him to act under this sub-section, may appoint one person to act as a scrutineer during voting at a referendum at each place in Australia where voting is being conducted.

(2) The Governor of a State, or a person authorized by him to act under this sub-section, may appoint one person to act as a scrutineer during the voting at a referendum at each place in that State where voting is being conducted.

(3) The Administrator of the Northern Territory, or a person authorized by him to act under this sub-section, may appoint one person to act as a scrutineer during the voting at a referendum at each place in the Northern Territory where voting is being conducted.

Provisions relating to scrutineers

28. (1) A scrutineer appointed under section 27 shall not—

- (a) interfere with or attempt to influence any elector within a polling booth; or
- (b) communicate with any person in a polling booth except so far as is necessary in the discharge of his functions.

Penalty: \$1,000 or imprisonment for 6 months, or both.

(2) A scrutineer appointed under section 27 shall not be prevented from entering or leaving a polling booth during the voting at a referendum.

(3) A scrutineer appointed under section 27 who commits any breach of this section, or who misconducts himself at a polling booth, or who fails at a polling booth to obey the lawful directions of the presiding officer at the polling booth, may be removed from the polling booth by any constable or by a person authorized by the presiding officer to remove him.

Voting at a referendum

29. (1) The voting at a referendum shall be conducted as follows:

- (a) before any vote is taken at a polling booth, the presiding officer at that polling booth shall exhibit each ballot-box that is to be used for the referendum empty, and shall then securely fasten its cover;
- (b) each polling booth shall open at 8 o'clock in the morning on the voting day and shall not close until all the electors who are present in the polling booth at 6 o'clock in the afternoon on the voting day and who desire to vote at the referendum have voted;
- (c) the doors of each polling booth shall be closed at 6 o'clock in the afternoon on the voting day and no person shall be admitted to the polling booth after that hour for the purpose of voting;
- (d) except where the scrutiny is to be proceeded with immediately after the close of voting at a polling booth, at the close of the voting each presiding officer at a polling booth shall, in the presence of the poll clerk and of any scrutineers appointed under section 27 who are at the polling booth, close, fasten, seal and take charge of each ballot-box used for the referendum and with the least possible delay forward the ballot-box for the purpose of scrutiny.

(2) A ballot-box used for a referendum shall not be opened except in accordance with this Act or, if the ballot-box has been used for both the referendum and an election, in accordance with this Act or the *Commonwealth Electoral Act 1918*.

Questions to be put to voter

30. (1) The presiding officer shall put the following questions to each person attending before him and claiming to vote at a referendum or referendums:

- (a) What is your full name?
- (b) Where do you live?
- (c) Have you voted before at this referendum? or Have you voted before at these referendums? (as the case requires).

(2) In addition to the questions put under sub-section (1), the presiding officer shall ask each person claiming to vote as an absent voter to identify the Division for which the person is enrolled.

(3) Where, in answer to the question specified in paragraph (1) (b) put to him by a presiding officer, a person (other than an absent voter, an eligible overseas elector or an itinerant elector) gives a place of living other than—

- (a) his place of living shown on the certified list; or
- (b) another place of living in the Division in respect of which he claims to vote,

the presiding officer shall ask the following question: At what other place or places have you lived during the last 3 months?

(4) If the answers to the questions specified in paragraphs (1) (a) and (b) that are given by a person claiming to vote at a referendum are not sufficient to distinguish that person from another person on the certified list, the presiding officer may, for the purpose of distinguishing the 2 persons, ask the person claiming to vote another question or other questions relating to matters shown on the certified list in relation to those persons.

(5) Subject to section 39, if a person claiming to vote at a referendum to whom questions are put under this section—

- (a) refuses to answer fully any question so put to him;
- (b) so answers the question specified in paragraph (1) (b) and the question specified in sub-section (3) as to indicate that he is not entitled to vote by reason of him not having, at any time during the 3 months immediately preceding voting day, had his real place of living in the Division in respect of which he claims to vote; or
- (c) answers a question specified in paragraph (1) (c) in the affirmative, his claim to vote shall be rejected.

(6) The reference in paragraph (5) (b) to the real place of living of a person shall be read as including a reference to a place from which the person is temporarily absent if the person has a fixed intention to return to that place for the purpose of continuing to live at that place.

Questions to be put to voter when election and referendum on the same day

31. (1) Where the voting day for a referendum is the same as that fixed for the polling at an election, the answers by a person claiming to vote at the referendum to the questions put to him pursuant to section 229 of the *Commonwealth Electoral Act 1918* for the purposes of the election may, if they are satisfactory as regards the election, be accepted as sufficient to enable the person to vote at the referendum.

(2) Where a presiding officer accepts, pursuant to sub-section (1), the answers by a person to the questions referred to in that sub-section as sufficient to enable the person to vote at a referendum, the presiding officer may, if he thinks fit, put to the person claiming to vote the following question, namely, Have you already voted, either here or elsewhere, at this referendum (or these referendums, as the case requires)?

(3) If a person claiming to vote at a referendum when the question referred to in sub-section (2) is put to him does not answer the question or answers that question in the affirmative, the person's claim to vote shall be rejected.

Errors not to forfeit vote

32. (1) The claim of a person to vote at a referendum shall not be rejected by reason only—

- (a) that the person's Christian or given name has been omitted from the Roll or from a certified list of voters; or

- (b) of the entry in the Roll or in a certified list of voters of a wrong Christian or given name, a wrong address or of a wrongly spelt surname,

if, in the opinion of the presiding officer, the person is sufficiently identified.

(2) The claim of a female elector to vote at a referendum shall not be rejected by reason only that she has changed her surname by reason of marriage and that that change has not been reflected in the Roll.

Right of elector to receive ballot-paper

33. (1) Subject to sections 38 and 39, the presiding officer or a poll clerk at each polling booth shall hand to each person claiming to vote at a referendum a ballot-paper duly initialled by the presiding officer if—

- (a) the name under which he claims to vote is on the certified list of voters used at the polling booth, and his answers to the questions referred to in sections 30 and 31 show that he is entitled to vote; or
- (b) he claims to vote pursuant to provisions of this Act relating to absent voting and he complies with those provisions.

(2) A presiding officer shall, at the request of a scrutineer appointed under section 27, note any objection by the scrutineer to the right of any person to vote at a referendum, and shall keep a record of all objections.

List of voters to be marked when ballot-paper issued

34. (1) If the name of a person claiming to vote at a referendum appears on the certified list of voters at the polling booth at which the person claims to vote, the presiding officer or a poll clerk at the polling booth shall, immediately after handing to the person a ballot-paper, place a mark against the person's name on the certified list of voters.

(2) The presiding officer at a polling place shall make a record of the name of each elector who votes at the polling place as an absent voter and of the Division for which the elector declares under sub-section 46 (1) that he is enrolled, and shall, at the close of the voting at the referendum, forward the record, duly certified by him, to the Assistant Returning Officer designated for the purposes of sub-section 46 (6) by the Divisional Returning Officer.

(3) Where the voting day for a referendum is the same as that fixed for the polling at an election, sub-section (1) of this section does not require the placing of more than one mark against a person's name on a certified list of voters, and a presiding officer shall be deemed to have complied with sub-section (2) of this section if he has complied with sub-section 232 (2) of the *Commonwealth Electoral Act 1918*.

Vote to be marked in private

35. Except as otherwise prescribed, a person voting at a polling booth at a referendum shall, upon receipt of a ballot-paper—

- (a) retire alone to an unoccupied voting compartment at the polling booth and mark, in private, his vote on the ballot-paper;

- (b) fold the ballot-paper so as to conceal his vote and place it in the ballot-box; and
- (c) leave the booth.

Assistance to certain voters

36. (1) If any voter satisfies the presiding officer at a polling booth that his sight is so impaired or that he is so illiterate or physically incapacitated that he is unable to vote without assistance, the presiding officer shall permit a person appointed by the voter to enter an unoccupied voting compartment of the booth with the voter, and mark, fold and deposit the voter's ballot-paper for him.

(2) If a voter referred to in sub-section (1) fails to appoint a person pursuant to sub-section (1), the presiding officer, in the presence of such scrutineers appointed under section 27 as are present, or, if there are no scrutineers appointed under that section present, in the presence of—

- (a) the poll clerk; or
 - (b) if the voter so desires, a person appointed by the voter,
- shall mark, fold and deposit the voter's ballot-paper for him.

(3) Without limiting the generality of sub-section (2), a voter to whom that sub-section applies may indicate to the presiding officer the manner in which the voter wishes the presiding officer to mark his ballot-paper for him by presenting to the presiding officer a statement in writing (which may be, or include, a how-to-vote card) that specifies the manner in which the ballot-paper is to be marked.

(4) Where sub-section (1) applies in relation to an absent voter, the presiding officer shall—

- (a) fill in the declaration referred to in sub-section 46 (1) with the required particulars as given by the voter;
- (b) read the declaration to the voter;
- (c) complete and attest the declaration; and
- (d) cause the declaration to be witnessed by a scrutineer or, if no scrutineer is present, by the poll clerk.

Vote of person whose name is not on Roll, &c.

37. (1) Where—

- (a) a person claims to vote at a referendum; and
- (b) the name of that person is not on, or cannot be found on, the certified list of voters for that Division,

the person may, subject to this Act and the regulations, cast a provisional vote under this section if he signs a declaration in an approved form on an envelope.

(2) Where a presiding officer informs a person referred to in paragraph (1) (a) that his name is not on, or cannot be found on, the certified list of voters for the Division for which he claims to be entitled to vote, the presiding officer shall hand the person a written statement in the approved form setting out his

rights under this section and the steps that would be taken if he voted under this section.

- (3) Where a person votes at a referendum under sub-section (1)—
- (a) he shall mark and fold his ballot-paper in the manner prescribed by this Act and return it so folded to the presiding officer at the polling booth at which the person claims to vote; and
 - (b) the presiding officer shall, in the presence of the person and of such scrutineers appointed under section 27 as are present, without unfolding the ballot-paper, enclose it in an envelope bearing the declaration of the person and addressed to the Divisional Returning Officer for the Division for which the person claims to be entitled to vote and shall fasten the envelope and deposit it in the ballot-box.

(4) Where an Assistant Returning Officer who is authorized to open ballot-boxes finds within a ballot-box opened by him an envelope of the kind referred to in paragraph (3) (b), he shall, without opening the envelope, forward it to the Divisional Returning Officer for the Division for which the voter has claimed to vote.

(5) Where a Divisional Returning Officer receives an envelope containing a ballot-paper of a voter who claimed to vote pursuant to sub-section (1), he shall—

- (a) before opening the envelope or permitting any other person to open the envelope, examine the declaration of the voter;
- (b) if the declaration is in order and the officer is satisfied, after making such inquiries as may be necessary, that the voter is a person who, at the time of voting, was entitled to be enrolled on the Roll for the Division for which he claimed to be entitled to vote and that his name was—
 - (i) on that Roll; or
 - (ii) was not on that Roll by reason only of an error or mistake by an officer,

deal with the ballot-paper in the manner prescribed by this Act in connection with the scrutiny of absent voters' ballot-papers; and

- (c) make such correction (if any) to the Roll as is necessary.

(6) Where, upon examining the declaration of a voter who claimed to vote pursuant to sub-section (1), the Divisional Returning Officer for a Division (in this sub-section referred to as the "relevant Division") is satisfied that—

- (a) the voter, at the time of voting, was not entitled to be enrolled on the Roll for the relevant Division;
- (b) the voter, at the time of voting, was enrolled on the Roll for another Division in the State or Territory that includes the relevant Division; and
- (c) if the voter were enrolled for the relevant Division, the ballot-paper contained in the envelope would be accepted under sub-section (5) for further scrutiny,

the Divisional Returning Officer shall deal with the ballot-paper in the manner prescribed by this Act in connection with the scrutiny of absent voters' ballot-papers.

(7) Where a Divisional Returning Officer decides, in accordance with sub-section (5), that a person who has cast a provisional vote under this section is not entitled to be enrolled for the Division for which he claims to be entitled to vote, the Divisional Returning Officer shall inform the person in writing that he is not so entitled.

Voter claiming to vote whose name on Roll has been marked

38. (1) Where—

- (a) a person claims to vote at a referendum; and
- (b) a mark has, pursuant to section 34, been placed against the name of the person on the certified list of voters used at the polling booth at which the person claims to vote,

the person may, subject to sections 30 and 31 and to the regulations, be permitted to vote at the referendum if he makes a declaration in an approved form before the presiding officer at the polling booth.

(2) The ballot-paper of a person claiming to vote pursuant to this section shall be dealt with as prescribed by the regulations, but such a ballot-paper shall not be scrutinized or counted unless the Divisional Returning Officer for the Division for which the person claims to vote is satisfied that the person is entitled to vote at the referendum.

(3) For the purposes of Part VI, dealing under this section with a ballot-paper used in a referendum shall be taken to be a part of the scrutiny in relation to the referendum.

Vote of person whose address is not shown on Roll

39. (1) Where an elector for a Division whose name appears, but whose address does not appear, on the Roll for the Division claims to vote and to be an elector to whom section 104 of the *Commonwealth Electoral Act 1918* applies, he may, subject to this Act and the regulations, be permitted to vote if he makes a declaration of address in an approved form on an envelope or, if the elector is an absent voter, on the envelope bearing the declaration made under sub-section 46 (1) of this Act, before the presiding officer at the polling place.

(2) Where an elector votes under this section, he shall mark and fold his ballot-paper in the manner prescribed in this Act and return it so folded to the presiding officer.

(3) The presiding officer shall thereupon, in the presence of the elector and of such scrutineers appointed under section 27 as are present, and without unfolding the ballot-paper, enclose it in an envelope bearing the declaration of the voter and addressed to the Divisional Returning Officer for the Division for which the elector is enrolled and shall forthwith securely fasten the envelope and deposit it in the ballot-box.

(4) The Assistant Returning Officer who is authorized under the provisions of this Act to open the ballot-box shall, without opening the envelope, forthwith transmit it to the Divisional Returning Officer for the Division for which the elector is enrolled.

(5) The Divisional Returning Officer, on receipt of the envelope containing the ballot-paper, shall, before opening the envelope or allowing any other person to do so, examine the declaration of the elector, and, if it is in order and he is satisfied that the address specified in the declaration is the address specified in a request under section 104 of the *Commonwealth Electoral Act 1918* by the elector (as affected by any change of address annotated on the request) shall deal with the ballot-paper in the manner prescribed by this Act in connection with the scrutiny of absent voters' ballot-papers.

(6) Where a ballot-paper is marked by an absent voter who makes a declaration of address under sub-section (1)—

- (a) sub-sections (2), (3), (4) and (5) do not apply; and
- (b) a Divisional Returning Officer for a Division who receives an envelope bearing such a declaration in relation to the Division shall examine the declaration and, if it is in order and he is satisfied that the address specified in the declaration is the address specified in a request by the elector under section 104 of the *Commonwealth Electoral Act 1918* (as affected by any change of address annotated on the request), deal with the ballot-paper in the manner prescribed by this Act in connection with the scrutiny of absent voters' ballot-papers.

Election and referendum on the same day

40. Where the voting day for a referendum is the same as that fixed for the polling at an election—

- (a) a declaration made for the purposes of the election under section 235 of the *Commonwealth Electoral Act 1918* shall be deemed to be a declaration made under sub-section 37 (1) of this Act;
- (b) a ballot-paper containing the vote of a person claiming to vote pursuant to section 37 of this Act may be enclosed in the same envelope as that in which the ballot-paper containing the vote of the person under section 235 of the *Commonwealth Electoral Act 1918* is enclosed;
- (c) a declaration made for the purposes of the election under section 236 of the *Commonwealth Electoral Act 1918* shall be deemed to be a declaration made under sub-section 38 (1) of this Act;
- (d) a ballot-paper containing the vote of a person claiming to vote pursuant to section 38 of this Act may be enclosed in the same envelope (if any) as that in which the ballot-paper containing the vote of the person under section 236 of the *Commonwealth Electoral Act 1918* is enclosed;

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- (e) a declaration made for the purposes of the election under section 237 of the *Commonwealth Electoral Act 1918* shall be deemed to be a declaration under sub-section 39 (1) of this Act; and
- (f) a ballot-paper containing the vote of a person claiming to vote under section 39 of this Act may be enclosed in the same envelope as that in which the ballot-paper containing the vote of the person under section 237 of the *Commonwealth Electoral Act 1918* is enclosed.

Spoilt ballot-papers

41. (1) If a person voting at a referendum, before depositing his ballot-paper in a ballot-box, satisfies the presiding officer at the polling booth at which the person is voting that the person has spoilt his ballot-paper by mistake or accident, the presiding officer shall provide the person with a new ballot-paper and shall cancel the spoilt ballot-paper and deal with it as prescribed.

(2) If a person voting at a referendum in a manner that will involve his ballot-paper being placed in an envelope satisfies the officer who issued him with a ballot-paper that, before the ballot-paper was placed in the relevant envelope, he spoilt the ballot-paper by mistake or accident, the officer shall provide the person with a new ballot-paper and shall cancel the spoilt ballot-paper and deal with it as prescribed.

Adjournment of voting

42. (1) The presiding officer at a polling booth may adjourn the voting at a referendum at that polling booth from day to day if the voting is interrupted by—

- (a) riot or open violence; or
- (b) storm, tempest, flood or an occurrence of a like kind.

(2) If from any cause any polling booth at a polling place is not opened on the voting day at a referendum the presiding officer at the polling booth may adjourn the voting for a period not exceeding 21 days, and shall forthwith give public notice of the adjournment.

Adjournment at both referendum and election

43. Where—

- (a) the voting day for a referendum is the same as that fixed for the polling at an election; and
- (b) the presiding officer at a polling booth adjourns the polling at the election to a particular day pursuant to section 241 or 242 of the *Commonwealth Electoral Act 1918*,

the presiding officer shall adjourn the voting at the referendum to the same day.

Adjourned voting

44. Where the voting at a referendum is adjourned at a polling place, only those electors—

- (a) who are enrolled for the Subdivision for which the polling place is appointed; or
- (b) who are, by virtue of section 37, entitled to vote as electors of that Subdivision,

and who have not already voted, are entitled to vote during the adjourned voting at that polling place.

Compulsory voting

45. (1) It is the duty of every elector to record his vote at a referendum.

(2) Each Divisional Returning Officer shall, after the close of voting at a referendum, being a referendum the voting day for which was not the same as that fixed for the polling at an election, prepare from the lists of names and descriptions of the electors enrolled for his Division a list of the names and descriptions of those electors—

- (a) against whose names a mark was not placed pursuant to section 34 during the voting at the referendum and who did not vote pursuant to section 37;
- (b) who did not vote at the referendum under the provisions of this Act relating to absent voting; and
- (c) who did not vote at the referendum under the provisions of this Act relating to postal voting,

and shall certify the list by statutory declaration.

(3) Within the prescribed period after the close of voting at a referendum, each Divisional Returning Officer shall send by post to each elector whose name appears on the list prepared by the Divisional Returning Officer pursuant to sub-section (2) a notice in the prescribed form—

- (a) notifying the elector that the elector appears to have failed to vote at the referendum and that it is an offence to fail to vote at a referendum without a valid and sufficient reason; and
- (b) requiring the elector to show cause, on the form set out at the foot of the notice and within the period specified in the notice (not being less than 21 days after the day on which the notice was posted), why proceedings for failing to vote at the referendum without a valid and sufficient reason should not be instituted against him.

(4) A Divisional Returning Officer is not required to send a notice to a person pursuant to sub-section (3) in relation to the failure of the person to vote at a referendum if the Divisional Returning Officer is satisfied that the person—

- (a) is dead;
- (b) was absent from Australia on the voting day for the referendum; or
- (c) was ineligible to vote at the referendum.

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(5) Each elector to whom a notice under sub-section (3) is sent shall, if he failed to vote at the referendum to which the notice relates, state on the form at the foot of the notice the reasons (if any) why proceedings for failing to vote at the referendum without a valid and sufficient reason should not be instituted against him, sign the form in the presence of an authorized witness and post it so as to ensure that the form will reach the appropriate Divisional Returning Officer not later than the day specified in the notice.

(6) If an elector to whom a notice under sub-section (3) is sent is unable, by reason of his absence from his place of living or physical incapacity, to fill in, sign and post the form at the foot of the notice within the time specified in the notice, any other elector who has personal knowledge of the relevant facts may, subject to the regulations, fill in, sign and post the form, duly witnessed, within that time and the filling in, signing and posting of the form by that other elector may be treated as compliance by the first-mentioned elector with the provisions of sub-section (5).

(7) Where a Divisional Returning Officer receives a form referred to in sub-section (5) or (6), he shall indorse on the list prepared pursuant to sub-section (2), opposite to the name of the elector to whom the form relates, his opinion as to whether or not the elector has, in the form, shown cause why proceedings for failing to vote at the referendum without a valid and sufficient reason should not be instituted against him.

(8) Where a Divisional Returning Officer is satisfied, upon receipt of a form referred to in sub-section (5) or (6), that an elector did not fail to vote at the referendum, he shall indorse on the list prepared in accordance with sub-section (2), opposite to the name of the elector, a statement to that effect.

(9) Where an elector who is required to send to a Divisional Returning Officer a form referred to in sub-section (5) or (6), fails to send the form properly filled in, signed and witnessed to the Divisional Returning Officer within the time specified in the notice, the Divisional Returning Officer shall indorse on the list prepared pursuant to sub-section (2) opposite to the name of the elector a notice of that failure.

(10) A list prepared and indorsed by a Divisional Returning Officer for the purposes of a referendum indicating—

- (a) the names of the electors—
 - (i) against whose name a mark was not placed pursuant to section 34 during the voting at the referendum and who did not vote pursuant to section 37;
 - (ii) who did not vote at the referendum under the provisions of this Act relating to absent voting; and
 - (iii) who did not vote at the referendum under the provisions of this Act relating to postal voting;
- (b) the names of the electors from whom or on whose behalf the officer received, within the time allowed in accordance with a notice sent to

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the person pursuant to sub-section (3), forms properly filled in and signed; and

(c) the names of the electors who failed to reply within that time, and any extract from that list certified by the officer under his hand shall, in all proceedings, be *prima facie* evidence—

(d) of the contents of such a list or extract;

(e) of the fact that the electors whose names appear on the list or extract did not vote at the referendum;

(f) that a notice under sub-section (3) was received by those electors; and

(g) that those electors did, or did not, as the case may be, comply with the requirements of such a notice within the time allowed in accordance with the notice.

(11) An elector who—

(a) fails to vote at a referendum without a valid and sufficient reason for the failure;

(b) after receipt of a notice under sub-section (3), fails to fill in, sign and post within the time specified in the notice the form at the foot of the notice; or

(c) makes a statement in the form referred to in paragraph (b) that is, to his knowledge, false or misleading in a material particular,

is guilty of an offence.

Penalty: \$50.

(12) Proceedings for an offence against this section shall not be instituted except by the Electoral Commissioner or an officer authorized in writing by the Electoral Commissioner to institute those proceedings.

(13) In this section, “elector” does not include—

(a) an Antarctic elector;

(b) an eligible overseas elector; or

(c) an itinerant elector.

Where electors may vote, and absent voting

46. (1) On the voting day for a referendum, an elector is entitled—

(a) to vote at any polling place appointed for the Division for which he is enrolled; or

(b) to vote as an absent voter, after making a declaration in an approved form, at any other polling place within the State or Territory for which he is enrolled at which a polling booth is open.

(2) Notwithstanding sub-section (1), where a hospital is a polling place, an elector is not entitled to vote at that polling place otherwise than under section 48 unless an appropriate person on the staff of the hospital has agreed to permit electors generally to vote at that polling place or unless the elector—

(a) is attending the hospital as a patient or as a genuine visitor of a patient;
or

(b) performs functions or duties in the hospital.

(3) A declaration made by an absent voter under sub-section (1) shall be printed on, or securely attached to, an envelope addressed to the Divisional Returning Officer for the Division for which the elector declares that he is enrolled.

(4) Where an elector votes as an absent voter, he shall mark and fold his ballot-paper in the manner prescribed by this Act and return it so folded to the presiding officer.

(5) The presiding officer shall thereupon, in the presence of the elector, and without unfolding the ballot-paper enclose it in the envelope referred to in sub-section (3) of this section and shall forthwith securely fasten the envelope and deposit it in the ballot-box.

(6) A presiding officer at a polling place shall forward to the appropriate Assistant Returning Officer designated for the purposes of this sub-section by the Divisional Returning Officer any ballot-box containing envelopes that bear declarations made by absent voters under sub-section (1) and contain the ballot-papers of absent voters, and the Assistant Returning Officer shall—

- (a) compare the particulars on the envelopes with the particulars appearing in the presiding officer's record made under sub-section 34 (2), note the number of envelopes and report any discrepancy to the Divisional Returning Officer;
- (b) place in a parcel all the envelopes bearing absent voters' declarations relating to a particular Division, indorse on the parcel the number of the envelopes, seal up the parcel and forthwith deliver it, or cause it to be delivered, to the Divisional Returning Officer for that Division or, with the approval of the Australian Electoral Officer for the State or Territory in which the Division is located, to another person to be dealt with as provided in sub-section (8); and
- (c) forward to the last-mentioned Divisional Returning Officer advice in writing of the total number of envelopes bearing absent voters' declarations enclosed in the parcel delivered or to be delivered to him.

(7) Each Divisional Returning Officer shall maintain—

- (a) a record of the particulars of the respective advices, and the number of envelopes bearing absent voters' declarations, received by him from each Assistant Returning Officer; and
- (b) one or more securely fastened ballot-boxes in which envelopes bearing absent voters' declarations received by him shall be placed forthwith.

(8) Where absent voters' ballot-papers or envelopes bearing declarations made by absent voters relating to a particular Division are, with the approval of the Australian Electoral Officer for the State or Territory in which the Division is located, delivered to a person other than the Divisional Returning Officer for that Division, that person shall, as soon as practicable, deliver them, or cause them to be delivered, to that Divisional Returning Officer.

(9) Where the voting day for a referendum is the same as that fixed for the polling at an election—

- (a) a declaration made for the purposes of the election under sub-section 222 (1) of the *Commonwealth Electoral Act 1918* shall be deemed to be a declaration made under sub-section (1) of this section;
- (b) the agreement of an appropriate person on the staff of a hospital under sub-section 222 (2) of the *Commonwealth Electoral Act 1918* shall be deemed to be agreement under sub-section (2) of this section; and
- (c) a ballot-paper containing the vote of a person voting as an absent voter under this section may be enclosed in the same envelope as that in which the ballot-paper containing the vote of that person voting as an absent voter under section 222 of the *Commonwealth Electoral Act 1918* is enclosed.

Division 2—Mobile booths

Interpretation

47. In sections 48, 49 and 50, “patient”, in relation to a hospital, does not include a person attending the hospital as an out-patient.

Mobile booths—hospitals that are polling places

48. (1) Where a hospital is a polling place, the presiding officer may make arrangements with an appropriate person, or appropriate persons, on the staff of the hospital for the votes of patients in the hospital or in part of the hospital to be taken under this section at a referendum.

(2) Subject to section 50, where—

- (a) arrangements are in force under sub-section (1) in relation to a hospital or part of a hospital;
- (b) a patient in the hospital or the part of the hospital, as the case may be, is an elector for the State or Territory in which the hospital is situated;
- (c) under the arrangements, the vote of the patient may be taken under this section; and
- (d) the patient wishes so to vote,

the presiding officer, accompanied by a poll clerk and such scrutineers appointed under section 27, if any, as wish to accompany him, shall, at a time between 8 o'clock in the morning and 6 o'clock in the afternoon on either voting day or a day to which the voting at the referendum is adjourned, take to the patient a ballot-box, a ballot-paper and such other things as are necessary to enable the vote of the patient to be taken, and this Act applies in relation to the taking of the vote of the patient as if, during the time when, for the purpose of enabling the vote of the patient to be taken, the presiding officer is in the same room, ward or other place as the patient, that room, ward or other place were a part of a polling booth at a polling place.

(3) A polling booth provided at a hospital shall be attended by an officer at all times when the presiding officer is absent from the booth for the purpose of enabling a patient in the hospital to vote under this section.

Mobile booths—certain other hospitals

49. (1) The Electoral Commission may, by notice published in the *Gazette*, declare the whole or a specified part of a hospital, not being a hospital that is a polling place, to be a special hospital for the purposes of taking votes under this section at a referendum.

(2) The Electoral Commission may appoint electoral visitors for the purposes of this section.

(3) An electoral visitor may make arrangements with an appropriate person, or appropriate persons, on the staff of a hospital (being a hospital the whole or part of which is a special hospital) for the votes of patients in the special hospital to be taken under this section.

(4) Subject to section 50, where—

- (a)** arrangements are in force under sub-section (3) in relation to a special hospital;
- (b)** a patient in the special hospital is an elector for the State or Territory in which the hospital is situated;
- (c)** under the arrangements, the vote of the patient may be taken under this section; and
- (d)** the patient wishes so to vote,

an electoral visitor, accompanied by a poll clerk and such scrutineers appointed under section 27, if any, as wish to accompany him, shall, subject to sub-section (5), take to the patient a ballot-box, a ballot-paper and such other things as are necessary to enable the vote of the patient to be taken, and this Act applies in relation to the taking of the vote of the patient as if, during the time when, for the purpose of enabling the vote of the patient to be taken, the electoral visitor is in the same room, ward or other place as the patient, that room, ward or other place were a part of a polling booth at a polling place.

(5) A visit or visits to a special hospital in accordance with sub-section (4) shall be made at such time or times between 8 o'clock in the morning and 6 o'clock in the afternoon, and on such day or days, being any of the 5 days preceding voting day, voting day, or a day to which the voting is adjourned, as are determined by the Electoral Commission in relation to the special hospital.

(6) At any time when an electoral visitor is visiting a special hospital for the purposes of this section, the special hospital shall, for the purposes of, and in connection with, the taking of votes under this section, be deemed to be a polling booth at a polling place and the electoral visitor shall, for those purposes, be deemed to be the presiding officer at that booth.

(7) Paragraph 29 (1) (a) does not apply to an electoral visitor after the first visit made by him for the purposes of this section.

(8) At the end of the last visit made by an electoral visitor for the purposes of this section, he shall, in the presence of a poll clerk and any scrutineers appointed under section 27 who may be in attendance, publicly close, fasten, seal and take charge of each ballot-box used by him for the purposes of this

section and, with the least possible delay, forward it for the purposes of scrutiny to the appropriate Assistant Returning Officer designated for the purposes of this sub-section by the Divisional Returning Officer.

Provisions related to sections 48 and 49

50. (1) Notwithstanding any arrangement in force under section 48 or 49, a visit under that section to a patient in a hospital shall not be made if the presiding officer or electoral visitor, as the case may be, is informed by a registered medical practitioner or a member of the staff of the hospital that such a visit is forbidden, on medical grounds, by a registered medical practitioner.

(2) Literature relating to a referendum may be supplied to the general office of a hospital to which section 48 or 49 applies, and any literature so supplied shall be made available on request to patients entitled to vote under that section.

(3) So far as is practicable, a vote under section 48 or 49 shall be taken as if it were taken under the other provisions of this Act (including the provisions relating to absent voting) and, in particular, in the application of this Act for the purposes of sub-section 48 (2) or 49 (4), this Act has effect as if—

- (a) a person who, with the approval of an appropriate person on the staff of the hospital, enters or remains in a room, ward or other place in the hospital at a time when, under that sub-section, it is to be treated as if it were a part of a polling booth were, for the purposes of section 135, doing so by permission of the presiding officer there present;
- (b) paragraph 35 (a) were omitted and the following paragraph were substituted:

“(a) mark his vote on the ballot-paper in a manner that ensures the secrecy of his vote;”;
- (c) paragraph 35 (c) were omitted; and
- (d) the words “enter an unoccupied compartment of the booth with the voter, and” were omitted from sub-section 36 (1).

(4) Sub-section 131 (1) applies in relation to a hospital that is a polling place and in relation to a special hospital within the meaning of section 49 as if—

- (a) the reference in that sub-section to voting day and to all days to which the voting is adjourned were a reference to the period commencing on the day of the issue of the writ for the referendum and ending at the expiration of voting day or, if the voting is adjourned, the expiration of the last day to which the voting is adjourned; and
- (b) the references in that sub-section to a polling booth were references to the hospital or special hospital, as the case may be.

(5) Where an elector has voted under section 48 or 49 at a referendum, any postal ballot-paper received by the Divisional Returning Officer that is, or that

purports to be, a postal ballot-paper of the elector shall not be admitted in the scrutiny in relation to the referendum.

(6) Where an arrangement is in force under section 48 or 49, the Divisional Returning Officer for the Division in which the hospital is situated shall, before 4 o'clock in the afternoon on—

- (a) in the case of an arrangement under section 48—the day before the voting day for the referendum for which the arrangement was made; or
- (b) in the case of an arrangement under section 49—the day before the day, or before the first day, on which votes are to be taken under that section,

give to the relevant scrutineers a notice in writing setting out—

- (c) in a case to which paragraph (a) applies—the hospital to which the arrangement relates and the time or times at which votes are proposed to be taken under section 48; or
- (d) in a case to which paragraph (b) applies—the hospital to which the arrangement relates and the day or days on which, and the time or times at which, votes are proposed to be taken under section 49.

(7) As far as is reasonably practicable, votes taken under section 48 or 49 shall be taken on the day or days and at the time or times specified in the relevant notice under sub-section (6), but any failure to take those votes in that manner does not invalidate the result of the referendum.

Mobile booths—remote Subdivisions

51. (1) In this section—

“leader” means a person appointed under this section to be the leader of a team;

“station” means a place at which a visit is being made by a team under this section;

“team” means a mobile polling team appointed under this section.

(2) The Electoral Commission may appoint persons to be members of mobile polling teams for the purposes of this section and, in respect of each team, a person to be the leader.

(3) In relation to a remote Subdivision declared under sub-section 79 (2) of the *Commonwealth Electoral Act 1918*, the following provisions of this section apply in addition to, and without derogation from, the application of any other provision of this Act.

(4) The Electoral Commission—

- (a) may, subject to sub-section (5), by notice published in the *Gazette* determine the places, days and times of visits to be made by a team for the purposes of this section; and
- (b) shall take such steps as it thinks fit to give public notice of those places, days and times.

(5) A day determined under sub-section (4) shall be any of the 12 days preceding voting day, voting day, or a day to which the voting is adjourned.

(6) A team shall make a visit or visits as determined under sub-section (4), but, if, for reasonable cause, the team is unable, or the leader considers it inappropriate, to make such a visit, the leader may substitute another place, day or time for the visit and, if he does so, shall—

- (a)** take such steps as he thinks fit to give public notice of the substituted place, day or time; and
- (b)** inform the appropriate Divisional Returning Officer.

(7) Any failure by a team to make a visit in accordance with this section does not invalidate the result of the referendum.

(8) At any time when a team is at a station for the purposes of taking votes under this section at a referendum—

- (a)** the team shall have ballot-boxes, ballot-papers and such other things as are necessary for the votes of electors to be taken at the station;
- (b)** every person at the station who is an elector for the State or Territory in which the station is situated is entitled to have his vote taken under this section;
- (c)** for purposes of, and in connection with, the taking of votes under this section—
 - (i)** the station shall be deemed to be a polling place;
 - (ii)** the building, structure, vehicle or enclosure used by the leader for the purposes of taking votes under this section shall be deemed to be a polling booth; and
 - (iii)** the leader shall be deemed to be the presiding officer at that polling booth;
- (d)** so far as is practicable, a vote under this section shall be taken as if it were taken under the other provisions of this Act (other than sections 48 and 49) including such of those provisions as relate to absent voting; and
- (e)** section 131 applies as if—
 - (i)** the reference in sub-section 131 (1) to voting day and to all days to which the voting is adjourned were a reference to the time of the visit; and
 - (ii)** the reference in sub-section 131 (2) to the hours on which the polling booth is open were a reference to that time.

(9) Paragraph 29 (1) (a) does not apply to a leader after the first visit made by him for the purposes of this section.

(10) At the end of the last visit made by a leader for the purposes of this section, he shall, in the presence of a member of his team and any scrutineers appointed under section 27 who may be in attendance, publicly close, fasten, seal and take charge of each ballot-box used by him for the purposes of this section and, with the least possible delay, forward it for the purposes of scrutiny

to the appropriate Assistant Returning Officer designated for the purposes of this sub-section by the Divisional Returning Officer.

(11) Where an elector has voted under this section at a referendum, any postal ballot-paper received by a Divisional Returning Officer that is, or that purports to be, a postal ballot-paper of the voter shall not be admitted in the scrutiny in relation to the referendum.

Election and referendum on same day

52. Where the voting day for a referendum is the same as that fixed for the polling at an election, any arrangements, declarations, appointments or determinations made under section 224, 225 or 227 of the *Commonwealth Electoral Act 1918* for the purposes of the election shall be deemed to have also been made under section 48, 49 or 51, as the case may be, of this Act for the purposes of the referendum.

PART IV—POSTAL VOTING

Interpretation

53. In this Part—

“postal voting officer” means—

- (a) an Assistant Divisional Returning Officer; or
- (b) an officer appointed under section 54;

“registered general postal voter” means an elector who is registered as a general postal voter pursuant to section 185 of the *Commonwealth Electoral Act 1918*.

Postal voting officers and appointed places

54. (1) The Electoral Commission may appoint a person to be a postal voting officer for the purposes of this Part.

(2) The Electoral Commission may, by notice published in the *Gazette*, declare a place to be an appointed place for the purpose of this Part.

Voting by post

55. An elector who—

- (a) throughout the hours of voting on the voting day for a referendum—
 - (i) will not be within the State or Territory in which he is enrolled;
 - (ii) will not be within 8 kilometres by the nearest practicable route of any polling booth open in the State or Territory for which he is enrolled;
 - (iii) will be travelling under conditions that will preclude him from voting at a polling booth in the State or Territory for which he is enrolled; or
 - (iv) will be a patient in a hospital (other than a special hospital) and be unable to vote at that hospital at a referendum;

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- (b) is seriously ill or infirm and by reason of the illness or infirmity will be precluded from attending any polling booth to vote at a referendum;
- (c) is, at a place other than a hospital, caring for a person who is seriously ill or infirm or approaching maternity and by reason of caring for the person will be precluded from attending at any polling booth to vote at a referendum;
- (d) will—
 - (i) throughout the hours of voting on the voting day for a referendum be a patient in a special hospital; and
 - (ii) be unable to have his vote taken at that hospital in accordance with section 49;
- (e) being a woman, will, by reason of approaching maternity, be precluded from attending any polling booth to vote at a referendum;
- (f) is, by reason of his membership of a religious order or his religious beliefs—
 - (i) precluded from attending any polling booth to vote at a referendum; or
 - (ii) precluded from voting throughout the hours of voting on the voting day for a referendum or throughout a greater part of those hours; or
- (g) is, by reason of—
 - (i) serving a sentence of imprisonment; or
 - (ii) being otherwise in lawful custody or detention,precluded from attending at any polling booth to vote at a referendum, may apply, either orally or in writing, for a postal vote certificate and a postal ballot-paper for the purposes of voting at the referendum.

Written application for postal vote certificate and postal ballot-paper

56. (1) A written application for a postal vote certificate and a postal ballot-paper in relation to a referendum may be in the approved form for the referendum and shall—

- (a) contain a declaration by the applicant that he is an elector who is entitled to apply for a postal vote certificate and postal ballot-paper;
- (b) be signed by the applicant in the presence of an authorized witness; and
- (c) be made, after the issue of a writ for the referendum to a Divisional Returning Officer or, if the applicant is outside Australia, to an Assistant Returning Officer at a place outside Australia.

(2) A written application in relation to a referendum shall be deemed not to have been duly made if it reaches the officer to whom it is made after 6 o'clock in the afternoon of the day immediately preceding the voting day for that referendum.

Oral application for postal vote certificate and postal ballot-paper

57. (1) An oral application for a postal vote certificate and a postal ballot-paper in relation to a referendum—

- (a) shall include the following statements:
 - (i) a statement of the grounds upon which the person making the application applies for a postal vote certificate and postal ballot-paper;
 - (ii) a statement specifying the Division for which he is enrolled;
 - (iii) a statement of such other particulars (if any) as are prescribed; and
- (b) shall be made after the issue of the writ for the referendum to—
 - (i) a Divisional Returning Officer at his office;
 - (ii) a postal voting officer at an appointed place on a day that is, and during hours that are, declared by the Electoral Commission, by notice published in the *Gazette*, to be an appointed day and appointed hours for the purposes of this section; or
 - (iii) an Assistant Returning Officer for a place outside Australia at his office at that place.

(2) An oral application shall be deemed not to have been duly made if it is made after the close of voting at the referendum.

Dispatch of electoral materials to registered postal voters

58. (1) A Divisional Returning Officer for a Division shall, as soon as practicable after the issue of the writ for a referendum, send an application form for a postal vote certificate and postal ballot-paper under section 56 to each elector who is, on that day, a registered general postal voter (other than a registered general postal voter to whom sub-section (2) applies) in the Division, together with an envelope addressed to the Divisional Returning Officer.

(2) A Divisional Returning Officer for a Division shall, as soon as practicable after the issue of the writ for a referendum, deliver or post to each elector who—

- (a) is, on that day, a registered general postal voter in that Division; and
- (b) became a registered general postal voter pursuant to a claim made under sub-section 98 (3) of the *Commonwealth Electoral Act 1918* or pursuant to an application made under paragraph 185 (1) (e) or (f) of that Act,

a postal vote certificate printed on an envelope addressed to the Divisional Returning Officer and a postal ballot-paper.

Election and referendum on the same day

59. Where the voting day for a referendum is the same as that fixed for the polling at an election—

- (a) a person appointed to be a postal voting officer for the purposes of Part XV of the *Commonwealth Electoral Act 1918* shall be deemed to be a postal voting officer for the purposes of this Part;
- (b) a place declared to be an appointed place for the purposes of Part XV of the *Commonwealth Electoral Act 1918* shall be deemed to be an appointed place for the purposes of this Part;
- (c) an application for a postal vote certificate and postal ballot-paper for the purposes of the election shall be deemed to include an application for a postal vote certificate and postal ballot-paper for the purposes of the referendum;
- (d) section 58 does not apply for the purposes of the referendum, but a person who is entitled to receive postal ballot-papers for the purposes of the election under section 186 of the *Commonwealth Electoral Act 1918* is also entitled to receive, in the same manner, a postal ballot-paper for the purposes of the referendum;
- (e) a postal vote certificate for the purposes of the election shall be deemed to have effect as a postal vote certificate for the purposes of the referendum;
- (f) any reference in the application or the certificate to the election shall be deemed to include a reference to the referendum; and
- (g) a postal ballot-paper containing the vote of an elector at the referendum may be enclosed in the same envelope as that in which the postal ballot-paper containing the vote of the elector at the election is enclosed.

Duty of witnesses

60. (1) A person shall not witness the signature of any elector to a written application for a postal vote certificate and postal ballot-paper unless—

- (a) he has satisfied himself as to the identity of the applicant; and
- (b) he knows that the statements contained in the application are true, or has satisfied himself by inquiry from the applicant or otherwise that the statements contained in the application are true.

Penalty: \$500.

(2) A person witnessing a written application for a postal vote certificate and postal ballot-paper shall sign his name in his own handwriting on the application in the space provided for the purpose, and shall add the date.

(3) Subject to sub-section (4), a person shall not visit any elector for the purpose of witnessing the signature of the elector to an application for a postal vote certificate and postal ballot-paper.

Penalty: \$1,000.

(4) Where an elector who has received an application form for a postal vote certificate and postal ballot-paper is, by reason of being incapacitated or seriously ill or by reason of approaching maternity, unable to appear before a witness, a person may, if previously requested to do so by the elector, visit the elector for the purpose of witnessing the signature of the elector to the application.

Issue of certificate and ballot-paper

61. (1) Subject to sub-section (2), the Divisional Returning Officer, postal voting officer or Assistant Returning Officer who receives an application for a postal vote certificate and postal ballot-paper for the purposes of voting at a referendum shall—

- (a) if—
 - (i) the application is a written application; and
 - (ii) he is satisfied that it is properly signed by the applicant and is properly witnessed,deliver or post to the applicant; or
- (b) if the application is an oral application—give to the applicant, a postal vote certificate printed on an envelope addressed to the Divisional Returning Officer for the Division in which the applicant declares he is enrolled, and a postal ballot-paper for the referendum.

(2) Where an application for a postal vote certificate and a postal ballot-paper is received after the last mail clearance at the nearest post office on the Thursday next preceding the voting day for a referendum, an officer (including a postal voting officer) shall not post to the applicant a postal vote certificate or a postal ballot-paper.

(3) A postal vote certificate delivered or posted under paragraph (1) (a) and a postal vote certificate given under paragraph (1) (b) shall be in the form prescribed for such a certificate.

Inspection of applications

62. (1) Where an application for a postal vote certificate and postal ballot-paper is received by the Divisional Returning Officer for the Division to which the application relates, the Divisional Returning Officer shall, upon the issue of a postal vote certificate and postal ballot-paper to the applicant—

- (a) in a case where the application is a written application—indorse the date of issue on the application; or
 - (b) in a case where the application is an oral application—make a record of the issue of the postal vote certificate and postal ballot-paper to the applicant, of the date of the issue and of the number of the postal vote certificate so issued.
- (2) Where an application for a postal vote certificate and postal ballot-paper is received by—
- (a) a Divisional Returning Officer for a Division other than the Division to which the application relates;

- (b) a postal voting officer; or
- (c) an Assistant Returning Officer at a place outside Australia,
the officer shall, upon the issue of a postal vote certificate and postal ballot-paper to the applicant—
- (d) in a case where the application is a written application—indorse the date of issue of the postal vote certificate and postal ballot-paper on the application and send the application to the Divisional Returning Officer for the Division to which it relates; or
- (e) in a case where the application is an oral application—give notice in writing to the Divisional Returning Officer for the Division to which the application relates of the issue of the postal vote certificate and postal ballot-paper to the applicant, of the date of the issue and of the number of the postal vote certificate so issued.

(3) All written applications for postal vote certificates and postal ballot-papers for the purposes of voting at a referendum, records made pursuant to paragraph (1) (b) and notices given pursuant to paragraph (2) (e) shall be open to public inspection during office hours from and including the third day after the voting day for the referendum until the referendum can no longer be questioned.

Numbering of applications and certificates

63. (1) Each officer (including a postal voting officer) who receives written applications for postal vote certificates and postal ballot-papers shall number the written applications received by him in consecutive order.

(2) Each officer (including a postal voting officer) who receives oral applications for postal vote certificates and postal ballot-papers shall make a record of and shall allocate a number to each oral application received by him.

(3) Where, pursuant to sub-section (1) or (2), an officer allocates a number to an application for a postal vote certificate and postal ballot-paper, the officer shall place a corresponding number on the postal vote certificate issued pursuant to the application.

(4) Where an officer (including a postal voting officer) issues a postal ballot-paper to an applicant, the officer shall place his initials on the back of each ballot-paper.

Divisional Returning Officer to note issue of postal vote certificates and postal ballot-papers

64. (1) The Divisional Returning Officer for a Division in respect of which postal vote certificates and postal ballot-papers are issued for the purposes of a referendum shall, if there is time conveniently to do so, note on the certified list of voters for that Division the names of all electors to whom postal vote certificates and postal ballot-papers have been issued.

(2) Where a postal vote certificate and postal ballot-paper is issued to an elector and the name of that elector is not noted on the relevant certified list of

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voters pursuant to sub-section (1), the Divisional Returning Officer for the Division for which the elector claims to vote shall take such steps as he considers reasonable to advise the presiding officers to whom that certified list of voters has been furnished of the issue of the postal vote certificate and postal ballot-paper.

(3) An elector to whom a postal vote certificate and postal ballot-paper have been issued for the purposes of voting at a referendum is not entitled to vote at the referendum at a polling booth unless he delivers to the presiding officer at the polling booth his postal vote certificate and postal ballot-paper for cancellation.

(4) Where the voting day for a referendum is the same as that fixed for the polling at an election, a Divisional Returning Officer who complies with sub-section 191 (1) or (2) of the *Commonwealth Electoral Act 1918* shall be deemed to have complied with sub-section (1) or (2), as the case may be, of this section.

Person claiming to vote whose name is noted on certified list, &c.

65. (1) Notwithstanding section 64, where—

- (a) a person claims to vote at a referendum at a polling booth;
- (b) the person's name has, pursuant to sub-section 64 (1), been noted on the certified list of voters used at the polling booth or the presiding officer at the polling booth has been notified, pursuant to sub-section 64 (2), that the person has received a postal vote certificate and postal ballot-paper; and
- (c) upon being requested to deliver to the presiding officer at the polling booth his postal vote certificate and postal ballot-paper for cancellation, the person states that he has not received a postal vote certificate or a postal ballot-paper,

the person may, subject to this Act and the regulations, be permitted to vote at the referendum if the person makes a declaration in an approved form before the presiding officer.

(2) The ballot-paper of an elector voting at a referendum pursuant to sub-section (1)—

- (a) shall not be scrutinized unless the Divisional Returning Officer for the Division for which the person is enrolled is satisfied that—
 - (i) the elector is entitled to vote at the referendum; and
 - (ii) the elector had not received a postal vote certificate or a postal ballot-paper; and
- (b) shall be dealt with as prescribed.

(3) Where a person votes at a referendum under this section, any postal ballot-paper received by the Divisional Returning Officer that is, or that purports to be, a postal ballot-paper of that person shall not be admitted in the scrutiny in relation to the referendum.

(4) For the purposes of Part VI, action taken under this section in relation to an election shall be taken to be part of the scrutiny in relation to the referendum.

(5) Where the voting day for a referendum is the same as that fixed for the polling at an election, a declaration that enables an elector to vote at the election pursuant to section 192 of the *Commonwealth Electoral Act 1918* is sufficient to enable the elector to vote at the referendum pursuant to sub-section (1) of this section.

Directions for postal voting

66. (1) Subject to sub-section (4), the following directions for regulating voting at a referendum by means of postal ballot-papers are to be substantially observed:

- (a) an elector shall exhibit his postal ballot-paper (unmarked) and his postal vote certificate to an authorized witness;
- (b) the elector, if he is not a registered general postal voter who became so registered pursuant to a claim made under sub-section 98 (3) of the *Commonwealth Electoral Act 1918* or pursuant to an application made pursuant to paragraph 185 (1) (e) or (f) of that Act, shall, in the presence of the authorized witness, sign his name on the postal vote certificate in the place provided for the signature of the voter;
- (c) the authorized witness shall sign his name in his own handwriting on the postal vote certificate in the place provided for the signature of the authorized witness, and shall add the title under which he acts as an authorized witness and the date;
- (d) the elector shall, in the presence of the authorized witness, but so that the authorized witness cannot see the vote, mark his vote on the ballot-paper, fold the ballot-paper, place it in the envelope addressed to the Divisional Returning Officer for the Division in respect of which the elector claims to vote and fasten the envelope;
- (e) the elector shall forthwith post or deliver the envelope, or cause it to be posted or delivered, to the Divisional Returning Officer;
- (f) if the elector's sight is so impaired, or the elector is otherwise so physically incapacitated or so illiterate, that he cannot vote without assistance—
 - (i) the elector may appoint a person to mark the elector's vote on the ballot-paper in the presence of the authorized witness; or
 - (ii) if no person is so appointed, the authorized witness shall, if requested to do so by the elector, mark the elector's vote on the ballot-paper,

and the person who marks the elector's vote on the ballot-paper shall fold the ballot-paper so that the vote cannot be seen, place it in the envelope addressed to the Divisional Returning Officer, fasten the envelope and hand it to the voter, who shall forthwith post or deliver it, or cause it to be posted or delivered, to the Divisional Returning Officer;

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- (g) the authorized witness shall not, otherwise than in accordance with paragraph (f), look at or make himself acquainted with the vote given by the elector, and, except as provided in paragraph (f) shall not suffer or permit any person (other than the elector) to see or become acquainted with the elector's vote, or to assist the elector to vote, or to interfere in any way with the elector in relation to his vote.

(2) Without limiting the generality of sub-paragraph (1) (f) (ii), an elector to whom that paragraph applies may indicate to the authorized witness the manner in which the elector wishes the authorized witness to mark his ballot-paper for him by presenting to the authorized witness a statement in writing (which may be, or include, a how-to-vote card) that specifies the manner in which the ballot-paper is to be marked.

(3) Notwithstanding anything contained in sub-section (1), where a postal ballot-paper of an elector, if it were posted or delivered prior to the close of the voting at the referendum for which the ballot-paper was issued as provided in paragraph (1) (e) or (f), would not reach the Divisional Returning Officer for the Division in respect of which the elector claims to vote before the end of the period of 10 days immediately succeeding the close of the voting at the referendum, the envelope in which the ballot-paper is enclosed may be addressed to and posted or delivered to any other Divisional Returning Officer or to an Assistant Returning Officer, or may be delivered on the voting day for the referendum to any presiding officer and, where such an envelope is received by an officer, the officer shall deal with it in the prescribed manner.

(4) In the case of a postal vote certificate and a postal ballot-paper delivered to an elector pursuant to an oral application—

- (a) the elector shall not post or deliver the envelope fastened in accordance with sub-section (1), or cause that envelope to be posted or delivered, to the Divisional Returning Officer but shall, on the fastening of the envelope, forthwith deliver the envelope to the officer who delivered the certificate to him;
- (b) subject to paragraph (a), sub-section (1) has effect subject to the regulations; and
- (c) sub-section (3) does not apply.

(5) Subject to the regulations, where an envelope is delivered to an officer in accordance with paragraph (4) (a), the officer shall deal with the envelope as if it were an envelope containing an absent voter's ballot-paper completed in accordance with section 46.

Duty of authorized witnesses

67. An authorized witness before whom an elector is voting by post at a referendum shall—

- (a) comply with section 66 in so far as it is required to be complied with on his part;
- (b) ensure that the directions in section 66 are complied with by the elector, and by every person present when the elector votes; and

- (c) refrain from disclosing any knowledge he may have of the vote of the elector.

Penalty: \$1,000.

Unlawful opening of envelope containing postal ballot-paper

68. Where a postal ballot-paper for a referendum has been placed in an envelope as mentioned in paragraph 66 (1) (d) or (f) and the envelope has been fastened as mentioned in that paragraph, a person other than the Divisional Returning Officer for the Division in respect of which the postal ballot-paper was issued or an officer acting under the directions of that Divisional Returning Officer shall not open the envelope.

Penalty: \$500.

Penalty for failure to post or deliver postal ballot-paper

69. A person to whom an application for a postal vote certificate and postal ballot-paper for a referendum or an envelope containing or purporting to contain a postal ballot-paper for a referendum is entrusted by a voter for the purpose of posting or delivery to a Divisional Returning Officer or an Assistant Returning Officer or delivery to a presiding officer, and who fails to post or deliver the application or envelope as soon as practicable after it is entrusted to him is guilty of an offence.

Penalty: \$1,000.

Penalty for inducing elector to hand over postal ballot-paper

70. A person shall not persuade or induce an elector to hand over to him a postal ballot-paper upon which a vote at a referendum has been recorded.

Penalty: \$1,000.

Duty of persons present when an elector votes by post

71. A person present when an elector is before an authorized witness for the purpose of voting by post at a referendum shall—

- (a) obey all directions of the authorized witness; and
- (b) except as provided in paragraph 66 (1) (f)—
 - (i) refrain from making any communication whatever to the elector in relation to his vote;
 - (ii) refrain from assisting the elector or in any manner interfering with him in relation to his vote; and
 - (iii) refrain from looking at the elector's vote or from doing anything whereby he may become acquainted with the elector's vote.

Penalty: \$1,000.

Preliminary scrutiny of postal ballot-papers

72. (1) After the close of the voting at a referendum, the Divisional Returning Officer shall conduct such preliminary scrutinies as he considers appropriate until all applications for postal vote certificates and postal

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ballot-papers have been produced, and all envelopes containing postal votes received up to the end of the period of 10 days immediately succeeding the close of the voting, and any envelopes received before the close of the voting by any other Divisional Returning Officer, Assistant Returning Officer or presiding officer pursuant to sub-section 66 (3), have been dealt with by the first-mentioned Divisional Returning Officer in accordance with this section.

(2) At each preliminary scrutiny the Divisional Returning Officer shall produce all applications for postal vote certificates and postal ballot-papers (other than, in the case of a second or subsequent preliminary scrutiny, those relating to envelopes containing postal votes dealt with at an earlier preliminary scrutiny), and shall produce unopened all envelopes containing postal votes received by him—

- (a) in the case of the first preliminary scrutiny—before the time of that scrutiny; or
 - (b) in the case of a subsequent preliminary scrutiny—after the immediately preceding preliminary scrutiny and before the time of that subsequent scrutiny,
- and shall—

- (c) compare the signature on each postal vote certificate with the signature on the corresponding application for the certificate, and allow any scrutineers appointed under section 89 who are present to inspect both signatures;
- (d) if, in relation to any postal vote certificate and postal ballot-paper, he is satisfied that—
 - (i) the signature on the certificate is that of the elector who signed the application for the certificate;
 - (ii) the signature on the certificate purports to be witnessed by an authorized witness;
 - (iii) the vote contained in the envelope bearing the certificate was recorded prior to the close of the voting at the referendum; and
 - (iv) the elector is enrolled for that Division,

accept the ballot-paper for further scrutiny, but, if he is not so satisfied, disallow the ballot-paper without opening the envelope in which it is contained;

- (e) withdraw each ballot-paper that has been accepted for further scrutiny from the envelope in which it is contained and, without inspecting or unfolding the ballot-paper or allowing any other person to do so, place it in a ballot-box set aside for ballot-papers of that kind;
- (f) make up in separate parcels and preserve—
 - (i) all envelopes bearing postal vote certificates, being envelopes relating to postal ballot-papers that have been accepted for further scrutiny; and
 - (ii) all unopened envelopes containing postal ballot-papers that have been disallowed; and

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- (g) proceed with the scrutiny of the postal ballot-papers that have been accepted for further scrutiny.

(3) Where a Divisional Returning Officer for a Division (in this sub-section referred to as the "relevant Division") who is dealing under sub-section (2) with an envelope is—

- (a) satisfied that the elector who signed the postal vote certificate printed on the envelope is not enrolled for the relevant Division;
- (b) satisfied that, if the elector were enrolled for the relevant Division, the ballot-paper for the referendum contained in the envelope would be accepted under sub-section (2) for further scrutiny; and
- (c) satisfied, after making such inquiry as may be necessary, that the elector was, at the time of voting, entitled to be enrolled on the Roll for the relevant Division and his name was not on that Roll by reason of an error or mistake by an officer,

the Divisional Returning Officer shall accept the ballot-paper for further scrutiny.

(4) Where—

- (a) the Divisional Returning Officer for a Division (in this sub-section referred to as the "relevant Division") is dealing under sub-section (2) with an envelope that purports to contain a ballot-paper for a referendum;
- (b) the Divisional Returning Officer is satisfied that the elector who signed the postal vote certificate printed on the envelope is not enrolled for the relevant Division;
- (c) sub-section (3) does not apply in relation to the envelope; and
- (d) the Divisional Returning Officer is satisfied that—
 - (i) the elector, at the time of voting, was enrolled on the Roll for another Division in the State or Territory that includes the relevant Division; and
 - (ii) if the elector were enrolled for the relevant Division, the ballot-paper contained in the envelope would be accepted under sub-section (2) for further scrutiny,

the Divisional Returning Officer shall accept the ballot-paper for further scrutiny.

(5) Where the Divisional Returning Officer proposes to conduct a preliminary scrutiny under this section, he shall, before 4 o'clock in the afternoon of the day before the day on which the scrutiny is to be conducted, cause to be prominently exhibited at his office a notice setting out the day on which, and the time or times at which, the scrutiny is to be conducted, and he shall, as far as is reasonably practicable, conduct the scrutiny accordingly.

(6) For the purposes of sub-paragraph (2) (d) (iii), where the envelope that contains a postal ballot-paper for a referendum bears a postmark that includes a date after the voting day for the referendum, the vote recorded on

the postal ballot-paper shall, except for the purposes of proceedings under Part VIII, be taken not to have been recorded prior to the close of the voting at the referendum.

(7) The regulations may modify the application of the preceding sub-sections of this section in respect of the scrutiny of—

- (a) postal ballot-papers that have been given to electors in accordance with oral applications under section 57;
- (b) postal ballot-papers that have been delivered or posted to electors who are enrolled pursuant to claims made under sub-section 98 (3) of the *Commonwealth Electoral Act 1918*; or
- (c) postal ballot-papers that have been delivered or posted to electors who are registered postal voters by virtue of an application made pursuant to paragraph 185 (1) (f) of the *Commonwealth Electoral Act 1918*.

(8) For the purposes of Part VI, the actions taken by a Divisional Returning Officer under sub-section (1), (2), (3) or (4) in relation to a referendum (including those sub-sections as modified in accordance with sub-section (7)) shall be taken to be part of the scrutiny in relation to the referendum.

Correction of errors

73. Where an officer who receives—

- (a) an application for a postal vote certificate and postal ballot-paper; or
- (b) a postal vote certificate,

is satisfied that the application or certificate has a formal defect or contains a formal error, he may amend the application or certificate, as the case may be, to the extent necessary to remove that defect or correct that error.

PART V—SPECIAL PROVISIONS RELATING TO VOTING IN ANTARCTICA AT A REFERENDUM

Interpretation

74. (1) In this Part, “transmit” includes transmit by radio-telephone or telex.

(2) An elector is entitled to vote at a referendum in accordance with this Part if he has, before the expiration of 11 days after the issue of the writ for the referendum or, where the voting day for the referendum is the same as that fixed for the polling at an election and the day fixed for the nomination for the election is later than 11 days after the issue of the writ for the election, the day fixed for the nomination for the election, given to a Divisional Returning Officer a notice under sub-section 249 (1) of the *Commonwealth Electoral Act 1918*.

Application of Part III to voting in Antarctica

75. (1) Except as provided by this Part, the provisions of Part III (other than sections 23, 24, 35, 36 and 41) do not apply to voting at a referendum in Antarctica.

(2) In the application, by virtue of this Part, of a provision of Part III to voting at a referendum in Antarctica—

- (a) a reference in that provision to the presiding officer in relation to a polling place shall be read as a reference to the Antarctic Returning Officer in relation to a station; and
- (b) a reference in that provision to the poll clerk in relation to a polling place shall be read as a reference to the Assistant Antarctic Returning Officer in relation to a station.

Arrangements for voting in Antarctica

76. (1) If there is an Antarctic elector on the Roll for a State, the Australian Electoral Officer for the State shall, before the voting day for a referendum, cause to be transmitted to the Antarctic Returning Officer at whose station the elector is based—

- (a) directions for the preparation by the Antarctic Returning Officer of ballot-papers for use in the referendum; and
- (b) the name of the elector and the particulars relating to the elector that are entered on the Roll for the State.

(2) Where information is transmitted by an Australian Electoral Officer to an Antarctic Returning Officer pursuant to this section, both the Australian Electoral Officer and the Antarctic Returning Officer shall, immediately after the transmission, cause a statement in writing of the information transmitted to be prepared.

(3) Section 25 applies in relation to ballot-papers prepared under this section.

Ballot-papers to be initialled

77. Section 26 applies to the voting at a referendum at a station in Antarctica as if references in that section to the presiding officer were references to the Antarctic Returning Officer for that station.

The voting at a referendum in Antarctica

78. (1) The voting at a referendum at a station in Antarctica shall be conducted as follows:

- (a) before any vote is taken, the Antarctic Returning Officer for the station shall exhibit the ballot-box empty, and shall then securely fasten its cover;
- (b) subject to sub-section (2), the voting shall be conducted during such hours on such days as the Antarctic Returning Officer directs;

- (c) the Antarctic Returning Officer or the Assistant Antarctic Returning Officer shall, at all times when voting is being conducted, be present in that part of the station at which the voting is taking place.

(2) The voting at a referendum at a station shall not continue beyond 6 o'clock in the afternoon by standard time in the Australian Capital Territory on the voting day for the referendum.

Entitlement of Antarctic electors to vote at referendum

79. An Antarctic elector whose name has been transmitted to the Antarctic Returning Officer for a station pursuant to paragraph 76 (1) (b) is entitled to vote at a referendum at the station during any period when voting at the referendum is being conducted at the station.

Questions to be put to voter

80. (1) The Antarctic Returning Officer for a station shall put the following questions to each person claiming to vote at a referendum at the station:

- (a) What is your full name?
 - (b) Have you voted before at this referendum? or Have you voted before at these referendums? (as the case requires).
- (2) If a person to whom questions are put under this section—
- (a) refuses to answer fully any question so put to him; or
 - (b) does not answer the question referred to in paragraph (1) (b) in the negative,

his claim to vote shall be rejected.

(3) Where the voting day for a referendum is the same as that fixed for the polling at an election, the answers by an Antarctic voter to the questions put to him pursuant to sub-section 255 (1) of the *Commonwealth Electoral Act 1918* for the purposes of the election may, if they are satisfactory as regards the election, be accepted as sufficient to enable the person to vote at the referendum.

Right of Antarctic elector to receive ballot-paper

81. The Antarctic Returning Officer or the Assistant Antarctic Returning Officer for a station shall give to each person claiming to vote at a referendum at the station a ballot-paper for the State for which the person is enrolled, duly initialled by the Antarctic Returning Officer, if the name under which he claims to vote has been transmitted to the Antarctic Returning Officer pursuant to paragraph 76 (1) (b) and the person's claim to vote is not rejected.

List of Antarctic electors to be marked

82. Immediately upon giving a ballot-paper to the person claiming to vote at a referendum, the Antarctic Returning Officer or the Assistant Antarctic Returning Officer shall record on the statement prepared by him under sub-section 76 (2) the fact that the ballot-paper has been given to that person.

Application of sections 35 and 36

83. Sections 35 and 36 apply to the polling at a station as if—

- (a) each reference in those sections to an unoccupied compartment of the booth were a reference to an unoccupied part of the station; and
- (b) paragraph 35 (c) were omitted.

Proceedings by Antarctic Returning Officer upon close of voting

84. At the close of the voting at a referendum, the Antarctic Returning Officer shall, in the presence of the Assistant Antarctic Returning Officer—

- (a) open the ballot-box;
- (b) transmit, or cause to be transmitted, to the Australian Electoral Officer for each State for which there is enrolled an Antarctic elector who has voted at the referendum at the station—
 - (i) particulars of each such elector who has so voted;
 - (ii) unless sub-paragraph (iii) applies—particulars of the marking of each ballot-paper; and
 - (iii) if the Antarctic Returning Officer is unable clearly to read or understand the particulars referred to in sub-paragraph (ii)—a statement to that effect together with such information relating to those particulars as the Antarctic Returning Officer thinks sufficient to explain that inability; and
- (c) cause a statement in writing of the information transmitted to be prepared.

Result of the polling in Antarctica

85. (1) Upon receipt of the particulars referred to in sub-paragraph 84 (b) (ii), an Australian Electoral Officer shall forthwith—

- (a) initial the back of a postal ballot-paper appropriate for the State for which the vote was cast;
- (b) cause those particulars to be transcribed onto the postal ballot-paper;
- (c) seal the postal ballot-paper in an envelope;
- (d) indorse the envelope with his signature; and
- (e) cause to be sent to the Divisional Returning Officer for the Division to which the elector is enrolled the envelope containing the postal ballot-paper.

(2) An officer shall not mark a postal ballot-paper under this section in a manner that is likely to enable the ballot-paper to be identified as representing the vote of an Antarctic elector.

(3) Upon receipt of information under sub-section (1), an Australian Electoral Officer shall, forthwith—

- (a) cause a statement in writing of that information to be prepared; and
- (b) cause to be sent to each Divisional Returning Officer for a Division particulars of the Antarctic electors (if any) enrolled for that Division who have voted at the referendum.

- (4) A reference in Part VI to scrutiny—
- (a) includes a reference to scrutiny of any act or thing done pursuant to paragraphs (1) (a) to (d) (inclusive); and
 - (b) does not include a reference to scrutiny of—
 - (i) any act or thing done in Antarctica; or
 - (ii) the transmission of any information to or from Antarctica.

Preservation of ballot-papers, &c.

86. (1) As soon as practicable after the close of the voting at a referendum, the Antarctic Returning Officer for each station shall forward to the Electoral Commission a copy of the statements prepared by him under sub-section 76 (2) and paragraph 84 (c) and the ballot-papers prepared by him and used for voting in Antarctica.

(2) The documents to which this sub-section applies that are used at or in connection with a referendum shall be preserved in accordance with directions of the Commission for the purposes of this sub-section until—

- (a) the referendum can no longer be questioned; or
- (b) the expiration of the period of 6 months commencing on the date of the return of the writ,

whichever last occurs.

(3) Sub-section (2) applies to the following documents:

- (a) the statements referred to in sub-section 76 (2), paragraph 84 (c) and paragraph 85 (3) (a);
- (b) the postal ballot-papers referred to in paragraph 85 (1) (b); and
- (c) the ballot-papers prepared by an Antarctic Returning Officer and used for voting in Antarctica.

Application of Part

87. This Part applies in relation to a Territory as if a reference in this Part to a State were a reference to a Territory.

Election and referendum on same day

88. Where the voting day for a referendum is the same as that fixed for the polling at an election—

- (a) any statement in writing relating to the referendum that is required to be prepared under this Part may be recorded on the piece of paper on which is recorded the corresponding statement under Part XVII of the *Commonwealth Electoral Act 1918*;
- (b) the same ballot-boxes may be used for voting in Antarctica for the purposes of both the election and the referendum; and
- (c) the same envelope may be used for the purposes of sending ballot-papers used for both the referendum and the election to a Divisional Returning Officer.

PART VI—SCRUTINY OF A REFERENDUM

Ascertainment of result of referendum

89. (1) The result of a referendum shall be ascertained by scrutiny.

(2) The Governor-General, or a person authorized by him to act under this sub-section, may appoint one person to act as a scrutineer during the scrutiny at each counting centre.

(3) The Governor of a State, or a person authorized by him to act under this sub-section, may appoint one person to act as a scrutineer during the scrutiny at each counting centre in that State.

(4) The Administrator of the Northern Territory, or a person authorized by him to act under this section, may appoint one person to act as a scrutineer during the scrutiny at each counting centre in the Northern Territory.

(5) In this section, “counting centre” means any premises at which a scrutiny or counting of ballot-papers for a referendum is to be, or is being, conducted.

Conduct of scrutiny

90. (1) The scrutiny of votes at a referendum shall be conducted in accordance with the following provisions:

- (a)** it shall commence as soon as practicable after the close of voting at the referendum;
- (b)** the scrutineers appointed under section 89 and any persons approved by the officer conducting the scrutiny may be present;
- (c)** the scrutineers may inspect all the proceedings at the scrutiny;
- (d)** the scrutiny may, if necessary, be adjourned from time to time until the counting of the votes is completed;
- (e)** each Assistant Returning Officer shall, in the presence of a presiding officer, an assistant presiding officer or a poll clerk, and of any scrutineers appointed under section 89 who are present, open all ballot-boxes received from polling places within that portion of the Division in which he exercises his powers;
- (f)** ballot-boxes not opened by an Assistant Returning Officer shall be opened by a Divisional Returning Officer.

(2) The scrutiny of absent voters’ ballot-papers shall commence as soon as practicable after the close of voting at the referendum, and shall be conducted by the Divisional Returning Officer, or by an Assistant Returning Officer directed to do so by the Divisional Returning Officer, in the presence of such scrutineers appointed under section 89 as choose to attend and any other persons approved by the Divisional Returning Officer.

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(3) Subject to sub-sections (4) and (5), the officer conducting the scrutiny in relation to a Division shall—

- (a) open all ballot-boxes in which envelopes containing absent voters' ballot-papers have been placed;
- (b) place in one parcel the envelopes bearing the declarations of persons who he is satisfied are enrolled for, and are entitled to vote in respect of, the Division, and—
 - (i) place a mark opposite the name of each such person on a certified copy of the Roll used by him for the purposes of the scrutiny;
 - (ii) without further examining the declaration of any voter or permitting any other person to do so, withdraw from each envelope in the parcel each ballot-paper contained in the envelope;
 - (iii) without inspecting or unfolding the ballot-paper or allowing any other person to do so, forthwith deposit the folded ballot-paper in a ballot-box for further scrutiny; and
 - (iv) seal up the parcel of envelopes and indorse on it a description of the contents, the name of the Division and the date; and
- (c) place in another parcel the envelopes bearing the declarations of persons who he is satisfied are not enrolled for, or are not entitled to vote in respect of, the Division, or whose declarations are not signed and attested or, in the case of absent voters voting under section 36, are not completed, attested and witnessed in accordance with paragraphs 36 (4) (c) and (d), seal up the parcel and indorse on it a description of the contents, the name of the Division and the date.

(4) Where an officer conducting the scrutiny in relation to a Division who is dealing under sub-section (3) with an envelope is—

- (a) satisfied that the elector who signed the declaration borne by the envelope is not enrolled for the Division;
- (b) satisfied that, if the elector were enrolled for the Division, the ballot-paper contained in the envelope would be accepted under sub-section (3) for further scrutiny; and
- (c) satisfied, after making such inquiry as may be necessary, that the elector was, at the time of voting, entitled to be enrolled on the Roll for the Division and his name was not on that Roll by reason of an error or mistake by an officer,

the officer shall accept the ballot-paper for further scrutiny.

(5) Where—

- (a) an officer conducting the scrutiny in relation to a Division (in this sub-section referred to as the “relevant Division”) is dealing under sub-section (3) with an envelope that purports to contain a ballot-paper for a referendum;

- (b) the officer is satisfied that the elector who signed the declaration borne by the envelope is not enrolled for the relevant Division;
- (c) sub-section (4) does not apply in relation to the envelope; and
- (d) the officer is satisfied that—
 - (i) the elector, at the time of voting, was enrolled on the Roll for another Division in the State or Territory that includes the relevant Division; and
 - (ii) if the elector were enrolled for the relevant Division, the ballot-paper contained in the envelope would be accepted under sub-section (3) for further scrutiny,

the officer shall accept the ballot-paper for further scrutiny.

(6) An absent voter's ballot-paper shall not be rejected at the preliminary scrutiny by reason only that the voter's declaration is not attested if, before the declaration of the poll, the Divisional Returning Officer for the Division in which the declaration was made certifies that the name of the elector appears on the record of absent voters made by the presiding officer under sub-section 34 (2).

(7) The further scrutiny referred to in sub-paragraph (3) (b) (iii) may be conducted notwithstanding that not all the envelopes containing absent voters' ballot-papers for the Division have been received.

(8) At the further scrutiny, the officer conducting the scrutiny shall—

- (a) open the ballot-box referred to in sub-paragraph (3) (b) (iii) and examine the ballot-papers it contains; and
- (b) reject all informal ballot-papers and place them in a parcel, place the unrejected ballot-papers in a separate parcel and seal up both parcels.

(9) The sealed parcels of ballot-papers referred to in sub-section (8) shall be opened only for the purposes of ascertaining the result of a referendum in the manner provided in section 91 or as otherwise provided in this Act, and shall be dealt with for the purposes of section 91 in the same manner as ballot-papers contained in a parcel transmitted to the Divisional Returning Officer by an Assistant Returning Officer.

Action at scrutiny

91. (1) At the scrutiny, the following things shall be done:

- (a) the ballot-papers shall be taken out of the ballot-boxes, examined and either allowed or rejected as informal;
- (b) the number of informal ballot-papers shall be recorded;
- (c) the votes on the formal ballot-papers shall be counted and a record of them taken;
- (d) when the counting is completed, all the ballot-papers shall be made up into separate sealed parcels for all the informal ballot-papers, all the ballot-papers containing a vote in favour of the proposed law, and all the ballot-papers containing a vote not in favour of the proposed law

respectively or, if more than one referendum was held on the same day, into such parcels as the Electoral Commissioner directs;

- (e) each Divisional Returning Officer shall, forthwith after completing the scrutiny of the ballot-papers taken from the ballot-boxes opened by him and making those ballot-papers into sealed parcels, prepare a statement showing, in relation to those ballot-papers—
 - (i) the number of votes given in favour of the proposed law;
 - (ii) the number of votes given not in favour of the proposed law; and
 - (iii) the number of ballot-papers rejected as informal;
- (f) each Assistant Returning Officer shall, forthwith after completing the scrutiny of the ballot-papers taken from the ballot-boxes opened by him, send to the relevant Divisional Returning Officer the sealed parcels of ballot-papers together with a statement showing, in relation to those ballot-papers—
 - (i) the number of votes given in favour of the proposed law;
 - (ii) the number of votes given not in favour of the proposed law; and
 - (iii) the number of ballot-papers rejected as informal.

(2) Ballot-papers used for absent voting pursuant to section 46 shall be dealt with as provided by this Act.

(3) Ballot-papers used for voting pursuant to Part IV shall be dealt with as provided by that Part and the regulations.

(4) Ballot-papers used for voting pursuant to sections 37, 38, 39 and 65 shall be dealt with as provided by those sections and the regulations.

Action on objection to ballot-papers

92. (1) If, at the scrutiny, a scrutineer appointed under section 89 objects to a ballot-paper as being informal, the officer conducting the scrutiny shall mark the ballot-paper “allowed” or “rejected” according to his decision to allow or reject the ballot-paper.

(2) Nothing in this section prevents an officer conducting the scrutiny from rejecting any ballot-paper as being informal although it is not objected to.

Informal ballot-papers

93. (1) A ballot-paper of a voter, other than an absent voter’s ballot-paper, a postal ballot-paper or a ballot-paper used for voting pursuant to section 37, 38, 39 or 65 is informal if—

- (a) subject to sub-section (3), it is not authenticated by the initials of a presiding officer or by an official mark as prescribed;
- (b) it has no vote marked on it;
- (c) it has more than one vote marked on it; or

(d) it has upon it any mark or writing (not authorized by this Act or by the regulations to be put upon it) by which, in the opinion of a Divisional Returning Officer, the voter can be identified.

(2) An absent voter's ballot-paper is informal if—

(a) it is not contained in the envelope bearing a declaration made by the voter under sub-section 46 (1);

(b) subject to sub-section (3), it is not authenticated by the initials of a presiding officer or by an official mark as prescribed;

(c) it has no vote marked on it;

(d) it has more than one vote marked on it; or

(e) it has upon it any mark or writing (not authorized by this Act or the regulations to be put upon it) by which, in the opinion of a Divisional Returning Officer, the voter can be identified.

(3) A ballot-paper to which paragraph (1) (a) or (2) (b) applies shall not be informal by virtue of that paragraph if the Divisional Returning Officer responsible for considering the question of the formality of the ballot-paper is satisfied that it is an authentic ballot-paper on which a voter has marked his vote.

(4) Paragraphs (1) (d) and (2) (e) do not apply to any mark or writing placed upon a ballot-paper by an officer, notwithstanding that the placing of the mark or writing upon the ballot-paper is a contravention of this Act.

(5) A ballot-paper used for voting pursuant to section 65 is informal only on the grounds prescribed by the regulations relating to voting pursuant to that section.

(6) A ballot-paper is not informal for any reason other than a reason specified in this section or, in the case of a postal ballot-paper or a ballot-paper used for voting pursuant to section 37, 38, 39 or 65, the grounds prescribed by the regulations.

(7) Except as authorized by this Act or the regulations, an officer shall not place upon any ballot-paper any mark or writing which would enable any person to identify the voter by whom it is used.

Penalty: \$1,000.

(8) Effect shall be given to a ballot-paper of a voter according to the voter's intention, so far as his intention is clear.

Return of result of submission by Divisional Returning Officers

94. The Divisional Returning Officer for each Division shall, immediately after the completion of the scrutiny in that Division, prepare a written statement certifying—

(a) the number of votes given in favour of the proposed law;

(b) the number of votes given not in favour of the proposed law; and

(c) the number of ballot-papers rejected as informal,

and shall send the statement to the Australian Electoral Officer for the State or Territory in which that Division is situated.

Recount

95. (1) At any time before preparing a statement pursuant to section 97, the Australian Electoral Officer for a State or Territory may, if he thinks fit, and shall, if directed to do so by the Electoral Commissioner, direct the Divisional Returning Officer for a Division of that State or that Territory to make a recount of the ballot-papers contained in any parcel relating to that Division.

(2) The Electoral Commissioner may, if requested to do so by the Governor-General, the Governor of a State or the Administrator of the Northern Territory, or of his own motion, direct a recount of any ballot-papers.

(3) The officer conducting a recount shall have the same powers as if the recount were the scrutiny, and may reverse any decision taken at the scrutiny as to the allowance or rejection of any ballot-paper.

Reservation of disputed ballot-papers

96. (1) At any recount of votes cast at a referendum, the officer conducting the recount may, and at the request of any scrutineer shall, reserve any ballot-paper for the decision of the relevant Australian Electoral Officer.

(2) The Australian Electoral Officer shall decide whether any ballot-paper reserved for his decision pursuant to this section is to be allowed and admitted or disallowed and rejected.

(3) In the event of the validity of a referendum being disputed, the High Court may consider any ballot-papers which were reserved for the decision of an officer referred to in sub-section (1) but shall not order a recount of the whole or any part of the ballot-papers in connection with the referendum unless it is satisfied that such a recount is justified.

PART VII—RETURN OF THE WRIT

Statement by Australian Electoral Officers

97. Each Australian Electoral Officer for a State or Territory shall—

- (a)** prepare a written statement showing, in relation to his State or Territory, as the case may be—
 - (i)** the number of votes given in favour of the proposed law;
 - (ii)** the number of votes given not in favour of the proposed law; and
 - (iii)** the number of ballot-papers rejected as informal;
- (b)** sign the statement; and
- (c)** send the statement to the Electoral Commissioner.

Return of the writ

98. (1) The Electoral Commissioner shall, immediately after he receives the statements sent to him pursuant to section 97—

- (a) indorse on the original writ a statement showing, in relation to each State, in relation to the Australian Capital Territory, in relation to the Northern Territory and in relation to the whole Commonwealth—
 - (i) the number of votes given in favour of the proposed law;
 - (ii) the number of votes given not in favour of the proposed law; and
 - (iii) the number of ballot-papers rejected as informal;
- (b) sign the statement; and
- (c) return the writ to the Governor-General.

(2) The Electoral Commissioner shall cause a copy of the statement referred to in paragraph (1) (a) to be published in the *Gazette*, and a copy of such a statement so published shall, subject to Part VIII, be conclusive evidence of the result of the referendum to which it relates.

Copies of statement to Governors of the States, &c.

99. The Electoral Commissioner shall forward copies of the statement indorsed on the writ to the Governors of the several States and to the Administrator of the Northern Territory.

PART VIII—DISPUTED RETURNS

Disputing validity of submission or return

100. The validity of any referendum or of any return or statement showing the voting at a referendum may be disputed by the Commonwealth, by any State or by the Northern Territory by petition addressed to the High Court.

Requisites of petition

101. A petition disputing the validity of a referendum or of a return or statement showing the voting at a referendum shall—

- (a) set out the facts relied on to invalidate the referendum, return or statement, as the case may be;
- (b) contain a request asking for the relief to which the petitioner claims to be entitled;
- (c) subject to sub-section 102 (2), be signed by the Attorney-General of the Commonwealth for and on behalf of the Commonwealth, the Attorney-General of a State for and on behalf of the State or the Attorney-General of the Northern Territory for and on behalf of the Northern Territory, as the case requires; and
- (d) be filed in the Registry of the High Court within 40 days after the publication in the *Gazette* of the statement by the Electoral Commissioner showing the result of the referendum.

Petition by Electoral Commission

102. (1) The Electoral Commission is entitled to file a petition disputing the validity of a referendum.

(2) A petition filed by the Electoral Commission shall be signed by the Electoral Commissioner for and on behalf of the Electoral Commission.

Jurisdiction and powers of High Court

103. (1) The High Court has jurisdiction with respect to matters arising under this Part.

(2) Following the hearing of a petition in relation to a referendum, the High Court may—

- (a)** declare the referendum to be void;
- (b)** uphold the petition in whole or in part; or
- (c)** dismiss the petition.

(3) The High Court may exercise all or any of its powers under this section on such grounds as the Court in its discretion thinks just and sufficient.

(4) Without limiting the generality of this section, the High Court may exercise its powers to declare a referendum void on the ground that contraventions of this Act or the regulations were engaged in in connection with the referendum.

Inquiries by High Court

104. (1) In hearing a matter arising under this Part, the High Court may inquire into the identity of persons, and whether or not the votes of persons were improperly admitted or rejected, but the High Court shall not inquire into the correctness of any Roll.

(2) Where the High Court makes inquiries in relation to ballot-papers marked in Antarctica pursuant to Part V, a statement of the particulars of the marking of the ballot-papers prepared by an Australian Electoral Officer under sub-section 85 (3) is, unless the High Court otherwise orders, conclusive evidence of the particulars stated.

Notice of petition

105. (1) Where a petition of the kind referred to in section 100 is filed by the Commonwealth, the Attorney-General of the Commonwealth shall notify the Attorney-General of the several States, the Attorney-General of the Northern Territory and the Electoral Commission of the filing of the petition.

(2) Where a petition of the kind referred to in section 100 is filed by a State, the Attorney-General of that State shall notify the Attorney-General of the Commonwealth, the Attorneys-General of the other States, the Attorney-General of the Northern Territory and the Electoral Commission of the filing of the petition.

(3) Where a petition of the kind referred to in section 100 is filed by the Northern Territory, the Attorney-General of the Northern Territory shall notify the Attorney-General of the Commonwealth, the Attorneys-General of the several States and the Electoral Commission of the filing of the petition.

(4) Where a petition of the kind referred to in section 102 is filed by the Electoral Commission, the Electoral Commissioner shall notify the Attorney-General of the Commonwealth, the Attorneys-General of the several States and the Attorney-General of the Northern Territory of the filing of the petition.

Joinder of parties

106. The High Court may, on the application of the Commonwealth, of any State, of the Northern Territory or of the Electoral Commission, order it to be joined as a party petitioning or responding as the case may be.

Procedure on petition

107. The procedure in relation to a petition disputing the validity of a referendum or of a return or statement shall, subject to this Act, be as prescribed by Rules of Court or, in default of Rules of Court, as directed by the High Court.

Immaterial errors not to invalidate referendum

108. (1) A referendum or a return or statement showing the voting at a referendum shall not be declared void on account of—

- (a) any delay in relation to—
 - (i) the taking of the votes of the electors; or
 - (ii) the making of any statement or return; or
- (b) the absence of any officer or any error of, or omission by, an officer, that did not affect the result of the referendum.

(2) Where any elector was, on account of the absence of any officer, or error of, or omission by, any officer, prevented from voting at a referendum, the High Court shall not, for the purpose of determining whether the absence, error or omission did or did not affect the result of the referendum, admit any evidence of the way in which the elector intended to vote.

Evidence that person not permitted to vote

109. On the trial of any petition the High Court shall not admit the evidence of any witness that he was not permitted to vote in a referendum during the hours of voting on the voting day for the referendum unless the witness satisfies the High Court—

- (a) that he claimed to vote at the referendum pursuant to the provision of this Act under which he was entitled or might be permitted to vote; and
- (b) that he complied with the requirements of this Act and the regulations relating to voting by electors in so far as he was permitted so to do.

PART IX—RETURNS BY BROADCASTERS, PUBLISHERS AND PRINTERS

Interpretation

110. In this Part—

“broadcast” includes televisé;

“broadcaster” means—

- (a) the Australian Broadcasting Corporation constituted under the *Australian Broadcasting Corporation Act 1983*;
- (b) the special broadcasting service established by Part IIIA of the *Broadcasting and Television Act 1942*;
- (c) the holder of a licence for—
 - (i) a commercial broadcasting station; or
 - (ii) a commercial television station,within the meaning of the *Broadcasting and Television Act 1942*; or
- (d) the holder of—
 - (i) a public broadcasting licence;
 - (ii) a public television licence;
 - (iii) a supplementary broadcasting licence; or
 - (iv) a supplementary television licence,within the meaning of the *Broadcasting and Television Act 1942*;

“journal” means a newspaper, magazine or other periodical, whether published for sale or for distribution without charge.

Returns by broadcasters

111. (1) Where a referendum has taken place, each broadcaster who, during the referendum period, broadcast an advertisement or advertisements relating to the referendum shall, before the expiration of 15 weeks after the voting day for the referendum, furnish to the Electoral Commission a return, in an approved form, setting out—

- (a) particulars of the station from which the advertisement or each of those advertisements was broadcast;
- (b) the name and address of the person with whose authority the advertisement or each of those advertisements was broadcast;
- (c) the date or dates on which, and the times between which, the advertisement or each of those advertisements was broadcast; and
- (d) a statement showing whether or not, on each occasion when that advertisement or each of those advertisements was broadcast, a charge was made by the broadcaster for the broadcasting of that advertisement or each of those advertisements and, where a charge was made, specifying the amount of the charge.

Referendum (Machinery Provisions) No. 44, 1984

(2) Where, in a return under sub-section (1), the amount of a charge is specified by a broadcaster in relation to an advertisement, the broadcaster shall, in the return, state whether or not the charge is a charge at less than normal commercial rates having regard to the length of the advertisement and the day or days on which, and the times between which, the advertisement was broadcast.

(3) Where, under the *Broadcasting and Television Act 1942*, a broadcaster furnishes to the Australian Broadcasting Tribunal constituted under that Act a return that contains the particulars that the broadcaster is required to furnish under this section in relation to a referendum, it is sufficient compliance with this section if the broadcaster furnishes to the Electoral Commission a copy of the return furnished to the Tribunal.

Returns by publishers

112. (1) Where a referendum has taken place, each publisher of a journal who, during the referendum period, published in the journal an advertisement or advertisements relating to the referendum shall, before the expiration of 15 weeks after the voting day in the referendum, furnish to the Electoral Commission a return, in an approved form, setting out—

- (a) particulars of the journal in which that advertisement or each of those advertisements was published;
- (b) the name and address of the person with whose authority the advertisement or each of those advertisements was published;
- (c) the date or dates on which that advertisement or each of those advertisements was published;
- (d) particulars of the page in the journal on which that advertisement or each of those advertisements was published and the space in the journal occupied by that advertisement or each of those advertisements; and
- (e) a statement showing whether or not a charge was made for the publication of that advertisement or each of those advertisements and, where a charge was made, specifying the amount of the charge.

(2) Where, in a return under sub-section (1), the amount of a charge is specified by a publisher in relation to an advertisement, the publisher shall, in the return, state whether or not the charge was a charge at less than normal commercial rates having regard to the space in the journal occupied by the advertisement and the nature of the journal.

(3) A publisher is not required to furnish a return under sub-section (1) in respect of a referendum if the total amount of the charge or charges made by him in respect of the publication of the advertisement or advertisements referred to in that sub-section and any other advertisement or advertisements relating to a referendum or referendums that took place on the same day as the first-mentioned referendum does not exceed \$1,000.

Returns by printers

113. (1) Where a referendum has taken place, each person who, during the referendum period, produced any printed advertisement, handbill, pamphlet or notice (other than an advertisement in a journal) relating to the referendum (in this sub-section referred to as the “referendum matter”) shall, before the expiration of 15 weeks after the voting day for the referendum, furnish to the Electoral Commission a return, in an approved form, setting out—

- (a) the name and address of the person with whose authority the referendum matter was produced;
- (b) the nature and quantity of the referendum matter that was produced;
- (c) the date or dates on which the referendum matter was produced; and
- (d) a statement showing whether or not, on each occasion when referendum matter was produced, a charge was made for the production of the referendum matter and, where a charge was made, specifying the amount of the charge.

(2) A person is not required to furnish a return under sub-section (1) in respect of a referendum if the total amount of the charge or charges made by him in respect of the production of referendum matter relating to that referendum or any other referendum or referendums that took place on the same day does not exceed \$1,000.

Combined returns

114. (1) Where—

- (a) the voting at 2 or more referendums took place on the same day; and
- (b) a person would, but for this sub-section, be required to furnish 2 or more returns under this Part relating to those referendums,

the person may, in lieu of furnishing those returns, furnish one return, in an approved form, setting out the particulars that he would have been required to set out in those returns.

(2) Where—

- (a) a return is furnished by a person pursuant to sub-section (1); and
- (b) a matter details of which are required to be set out in the return relates to more than one referendum,

it is sufficient compliance with this Part if the return sets out details of the matter without showing the extent to which the matter relates to any particular referendum.

(3) Where—

- (a) the voting day for a referendum is the same as that fixed for the polling at an election; and
- (b) a person would, but for this sub-section, be required to furnish a return under this Part and under Division 5 of Part XX of the *Commonwealth Electoral Act 1918* in relation to the same advertisement or matter,

it is sufficient compliance with this part if the person furnishes a return under Division 5 of Part XX of the *Commonwealth Electoral Act 1918* and includes in that return a statement to the effect that the advertisement or matter also related to a referendum.

Public may obtain copies of returns

115. (1) The Electoral Commission shall cause to be kept, at the principal office of the Electoral Commission in Canberra, in the capital city of each State and in Darwin a copy of each return furnished to the Electoral Commission under this Part.

(2) A person is entitled, without charge, to peruse a copy of a return referred to in sub-section (1) that is kept at an office of the Electoral Commission in accordance with that sub-section.

(3) A person is entitled, on payment of a fee determined by the Electoral Commission to cover the cost of copying, to obtain a copy of a return referred to in sub-section (1) that is kept at an office of the Electoral Commission in accordance with that sub-section.

PART X—OFFENCES

Officers and scrutineers to observe secrecy

116. A person who is, or has been, an officer or a scrutineer shall not, except for the purposes of Part V, either directly or indirectly, divulge or communicate any information with respect to the vote of an elector at a referendum acquired by him in the performance of his functions or in the exercise of his powers under this Act or the regulations in a manner that is likely to enable the identification of the elector.

Penalty: \$1,000 or imprisonment for 6 months, or both.

Officers not to contravene Act, &c.

117. A person who, being an officer, contravenes—

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

is guilty of an offence punishable on conviction by a fine not exceeding \$1,000.

Officers not to influence vote

118. (1) A person who, being an officer other than an Antarctic officer, does any act or thing for the purpose of influencing the vote of another person at a referendum, is guilty of an offence punishable on conviction by a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months, or both.

(2) A person who, being an Antarctic officer, during the referendum period in relation to a referendum, does any act or thing for the purpose of influencing the vote of another person is guilty of an offence punishable on conviction by a

fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months, or both.

(3) In this section, “Antarctic officer” means an Antarctic Returning Officer or an Assistant Antarctic Returning Officer.

Bribery

119. (1) A person shall not ask for, receive or obtain, or offer or agree to ask for, or receive or obtain, any property or benefit of any kind for himself or any other person, on an understanding that any vote of the first-mentioned person at a referendum will, in any manner, be influenced or affected.

Penalty: \$5,000 or imprisonment for 2 years, or both.

(2) A person shall not give or confer, or promise or offer to give or confer, any property or benefit of any kind to another person—

- (a) in order to influence the vote of any person at a referendum; or
- (b) in order to induce any person to support or oppose a proposed law for the alteration of the Constitution.

Penalty: \$5,000 or imprisonment for 2 years, or both.

(3) This section does not apply in relation to a declaration of public policy or a promise of public action.

Interference with political liberty

120. A person shall not hinder or interfere with the free exercise or performance, by any other person, of any political right or duty that is relevant to a referendum under this Act.

Penalty: \$1,000 or imprisonment for 6 months, or both.

Printing and publication of electoral advertisements, notices, &c.

121. (1) A person shall not print, publish or distribute or cause, permit or authorize to be printed, published or distributed an advertisement, handbill, pamphlet or notice relating to a referendum and intended or calculated to affect the result of the referendum unless—

- (a) the name and address (not being a post-office box) of the person who authorized the advertisement, handbill, pamphlet or notice appears at the end thereof; and
- (b) in the case of an advertisement, handbill, pamphlet or notice that is printed otherwise than in a newspaper—the name and place of business of the printer appears at the end thereof.

(2) A person who contravenes sub-section (1) is guilty of an offence punishable on conviction—

- (a) if the offender is a natural person—by a fine not exceeding \$1,000; or
- (b) if the offender is a body corporate—by a fine not exceeding \$5,000.

(3) Sub-section (1) does not apply in relation to—

- (a) a car sticker, T-shirt, lapel button, lapel badge, pen, pencil or balloon;
or
- (b) an article included in a prescribed class of articles.

(4) Nothing in paragraph (3) (a) shall be taken, by implication, to limit the generality of regulations that may be made by virtue of paragraph (3) (b).

Misleading or deceptive publications, &c.

122. (1) A person shall not, during the referendum period in relation to a referendum, print, publish or distribute, or cause, permit or authorize to be printed, published or distributed, any matter or thing that is likely to mislead or deceive an elector in relation to the casting of his vote at the referendum.

(2) A person shall not, during the referendum period in relation to a referendum, print, publish or distribute, or cause, permit or authorize to be printed, published or distributed, any advertisement relating to the referendum and intended or calculated to affect the result of the referendum, being an advertisement containing a statement—

- (a) that is untrue; and
- (b) that is, or is likely to be, misleading or deceptive.

(3) A person shall not, during the referendum period in relation to a referendum, print, publish or distribute, or cause, permit or authorize to be printed, published or distributed, an advertisement, handbill, pamphlet or notice that contains a representation or purported representation of a ballot-paper for use in that referendum that is likely to induce an elector to mark his vote otherwise than in accordance with the directions on the ballot-paper.

(4) A person who contravenes sub-section (1), (2) or (3) is guilty of an offence punishable on conviction—

- (a) if the offender is a natural person—by a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months, or both; or
- (b) if the offender is a body corporate—by a fine not exceeding \$5,000.

(5) In a prosecution of a person for an offence against sub-section (4) by virtue of a contravention of sub-section (1), it is a defence if the person proves that he did not know, and could not reasonably be expected to have known, that the matter or thing was likely to mislead an elector in relation to the casting of his vote.

(6) In the prosecution of a person for an offence against sub-section (4) by virtue of a contravention of sub-section (2), it is a defence if the person proves that he did not know, and could not reasonably be expected to have known, that the advertisement contained a statement of the kind referred to in sub-section (2).

(7) In this section, “publish” includes publish by radio or television.

False statements in relation to Rolls

123. A person who, on the voting day for a referendum, makes a statement to an elector, either orally or in writing, with respect to the enrolment of the elector that, to the knowledge of the first-mentioned person, is false or misleading in a material respect, is guilty of an offence punishable on conviction by a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months, or both.

Headings to advertisements

124. The proprietor of each newspaper shall cause the word “advertisement” to be printed as a headline in letters not smaller than 10 point to each article or item published in the newspaper, being an article or item—

- (a) that contains matter intended or calculated to affect the result of a referendum; and
- (b) the publication of which has been, or is to be, paid for in money or in kind.

Penalty—

- (a) if the offender is a natural person—\$500; or
- (b) if the offender is a body corporate—\$2,500.

Authors of reports, &c., to be identified

125. (1) A person shall not, during the referendum period in relation to a referendum, print, publish or distribute, or cause, permit or authorize to be printed, published or distributed, a newspaper, circular, pamphlet or dodger containing an article, report, letter or other matter commenting on any issue relating to the referendum unless the author’s name and address, or the authors’ names and addresses, as the case may be, are set out at the end of the article, report, letter or other matter or, where part only of the article, report, letter or matter appears in any issue of a newspaper, circular, pamphlet or dodger, at the end of that part.

Penalty—

- (a) if the offender is a natural person—\$500; or
 - (b) if the offender is a body corporate—\$2,500.
- (2)** This section does not apply to the publication in a newspaper of—
- (a) a leading article;
 - (b) an article which consists solely of a report of a meeting and does not contain any comment (other than comment by a speaker at the meeting) upon any issue relating to the referendum.
- (3)** In this section “address” does not include a post office box.

Cards in polling booth

126. (1) A person shall not, except for the purposes of section 36, wilfully display or leave at a polling booth a card or paper that contains a

recommendation as to how an elector should vote at a referendum or as to the method of voting at a referendum.

Penalty: \$500.

(2) Sub-section (1) does not apply to an instruction as to the method of voting at a referendum displayed at a polling booth by a person authorized to display such an instruction.

Signature to referendum paper

127. (1) Every paper which by this Act or the regulations has to be signed by any person shall be signed by that person with his personal signature.

(2) Where a person who is unable to sign his name in writing makes his mark as his signature to a referendum paper, the mark shall be deemed to be his personal signature, if it is identifiable as such, and is made in the presence of a witness who signs the referendum paper as such witness.

(3) Nothing in this section shall authorize any person to sign any referendum paper by a mark or otherwise than in his own handwriting in cases where the Act or the regulations require him to sign the referendum paper in his own handwriting.

(4) A person shall not make the signature of any other person on a referendum paper.

Penalty: \$1,000.

(5) Sub-section (4) does not affect the liability of any person to be proceeded against for forgery, but a person is not liable to be punished twice in respect of the same offence.

(6) In this section, “referendum paper” includes a prescribed form and an approved form.

Witnessing referendum papers

128. (1) A person shall not—

- (a) sign his name as witness on a blank referendum paper;
- (b) sign his name as witness on any referendum paper unless it has been signed by the person intended to sign it;
- (c) sign his name as witness on any referendum paper unless he has seen the person whose signature he is purporting to witness sign it; or
- (d) write on any referendum paper as his own name—
 - (i) the name of another person; or
 - (ii) a name that is not his own name.

Penalty: \$1,000.

(2) In sub-section (1), “referendum paper” means any document required to be filled in or signed under this Act or the regulations.

Marks on ballot-papers

129. Except as authorized by this Act, a person shall not make any mark on a ballot-paper that has been issued to another person.

Penalty: \$1,000 or imprisonment for 6 months, or both.

Other offences relating to ballot-papers, &c.

130. (1) A person shall not—

- (a) impersonate another person for the purpose of voting or for the purpose of securing a ballot-paper to which the first-mentioned person is not entitled;
- (b) fraudulently destroy or deface a ballot-paper or other document relating to a referendum;
- (c) fraudulently put any ballot-paper or other paper into a ballot-box;
- (d) fraudulently take any ballot-paper out of a polling booth or a place where the scrutiny is being conducted;
- (e) forge a ballot-paper or any other document required to be filled in under this Act or the regulations or utter a ballot-paper or such a document knowing it to be forged;
- (f) supply ballot-papers unless he is authorized to do so under this Act or the regulations;
- (g) unlawfully destroy, take, open or otherwise interfere with ballot-boxes or ballot-papers;
- (h) wilfully vote more than once at the same referendum; or
- (j) make a statement, or induce another person to make a statement, in any claim, application, return or declaration, or in an answer to a question, under this Act or the regulations that, to his knowledge, is false or misleading in a material respect.

Penalty: \$1,000 or imprisonment for 6 months, or both.

(2) A person shall not wilfully deface, mutilate, destroy or remove any notice, list or other documents displayed in any place by, or with the authority of, an officer.

Penalty for contravention of this sub-section: \$500.

Prohibition of certain behaviour near polling booth

131. (1) A person shall not, on the voting day for a referendum, or on a day to which the taking of votes of the electors at a referendum has been adjourned under section 42 or 43, at the entrance of, or in any place within 6 metres of the entrance of, a polling booth at which voting at the referendum is taking place—

- (a) induce an elector to vote in a particular way at the referendum;
- (b) induce an elector not to vote at the referendum; or
- (c) exhibit any notice or sign (other than an official notice or sign) that relates to the referendum.

Penalty: \$500.

(2) Where—

- (a) a building used as a polling booth at a referendum is situated in grounds within an enclosure; and
- (b) the relevant Divisional Returning Officer causes to be displayed at each entrance to those grounds throughout the hours on which the polling booth is open on the voting day for the referendum, or on any day to which the taking of the votes of the electors at the referendum has been adjourned under section 42 or 43, a notice signed by him stating that those grounds are, for the purposes of sub-section (1), part of the polling booth,

those grounds shall, for the purposes of sub-section (1), be deemed to be part of the polling booth.

Badges or emblems in polling booths

132. An officer or scrutineer who wears or displays in a polling booth on the voting day for a referendum any badge or emblem in support of or in opposition to a proposed law for the alteration of the Constitution is guilty of an offence.

Penalty: \$1,000.

Employers to allow employees leave of absence to vote

133. (1) If an employee who is an elector notifies his employer before the voting day for a referendum that he requires leave of absence to vote at the referendum, the employer shall, if the absence desired is necessary to enable the employee to vote at the referendum, allow him leave of absence without any penalty or disproportionate deduction of pay for such reasonable period, not exceeding 2 hours, as is necessary to enable the employee to vote at the referendum.

(2) An employee shall not obtain leave of absence under sub-section (1) unless he intends to use the leave of absence to vote at the referendum.

(3) Sub-section (1) does not apply to an employee whose absence might cause danger or substantial loss in respect of the employment in which he is engaged.

Penalty—

- (a) if the offender is a natural person—\$500; or
- (b) if the offender is a body corporate—\$2,500.

Misconduct at public meeting

134. (1) This section applies to any lawful public meeting held in relation to a referendum during the referendum period.

(2) Any person who, at any public meeting to which this section applies, acts in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting is held is guilty of an offence.

Penalty: \$500.

- (3) The chairman of a meeting to which this section applies—
- (a) may direct a person who, in the opinion of the chairman, is preventing the transaction of the business for which the meeting is being held, to leave the place in which the meeting is being held; and
 - (b) if the person fails or refuses to leave the place in which the meeting is being held, may direct a constable to remove the person from that place,

and the constable may thereupon take such steps as are necessary to remove the person.

- (4) A person who—
- (a) has left a place in which a meeting to which this section applies is being held in accordance with a direction given under paragraph (3) (a); or
 - (b) has been removed from a place in which a meeting to which this section applies is being held in accordance with a direction given under paragraph (3) (b),

shall not, without the permission of the chairman of the meeting, return to that place while the meeting is still in progress.

Penalty for a contravention of sub-section (4): \$1,000 or imprisonment for 6 months, or both.

Misconduct, &c., in polling booth

135. (1) A person shall not—

- (a) misconduct himself in a polling booth;
- (b) fail or refuse to obey, in a polling booth, the lawful directions of the presiding officer at the polling booth; or
- (c) not being a person who is—
 - (i) a presiding officer, an assistant presiding officer or a poll clerk;
 - (ii) a scrutineer who is entitled to be present in the polling booth; or
 - (iii) an elector who is voting or is about to vote,

enter or remain in a polling booth without the permission of the presiding officer at the polling booth.

Penalty: \$500.

- (2) A person who—
- (a) misconducts himself in a polling booth;
 - (b) fails or refuses to obey, in a polling booth, the lawful directions of the presiding officer at the polling booth; or
 - (c) not being a person referred to in sub-paragraph (1) (c) (i), (ii) or (iii), remains in a polling booth without the permission of the presiding officer at the polling booth,

may be removed from the polling booth by a constable or by a person authorized by the presiding officer to remove him.

(3) A person who has been removed from a polling booth pursuant to sub-section (2) and who re-enters the polling booth without the permission of the presiding officer at that polling booth is guilty of an offence punishable upon conviction by a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months, or both.

Failure to furnish returns

136. A person who fails to furnish a return that the person is required to furnish under section 111, 112 or 113 within the time required by that section is guilty of an offence.

Penalty: \$1,000.

PART XI—MISCELLANEOUS

Delegation by Electoral Commission

137. (1) The Electoral Commission may, by resolution, either generally or as otherwise provided by the resolution, delegate to the Electoral Commissioner, the Deputy Electoral Commissioner, an Australian Electoral Officer, an officer or a member of the staff of the Electoral Commission all or any of its powers under this Act, other than this power of delegation.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Electoral Commission.

(3) A delegation of a power under this section—

- (a) may be revoked by resolution of the Electoral Commission (whether or not constituted by the persons constituting the Electoral Commission at the time when the power was delegated);
- (b) does not prevent the exercise of the power by the Electoral Commission; and
- (c) continues in force notwithstanding a change in the membership of the Electoral Commission.

(4) Section 34A of the *Acts Interpretation Act 1901* applies in relation to a delegation under this section as if the Commission were a person.

(5) A certificate signed by the Chairman of the Electoral Commission stating any matter with respect to a delegation of a power under this section is *prima facie* evidence of that matter.

(6) A document purporting to be a certificate mentioned in sub-section (5) shall, unless the contrary is established, be deemed to be such a certificate and to have been duly given.

Delegation by Electoral Commissioner

138. (1) The Electoral Commissioner may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to the Deputy Electoral Commissioner or an Australian Electoral Officer for a

State or Territory all or any of his powers under this Act other than this power of delegation.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Electoral Commissioner.

(3) A delegation under this section does not prevent the exercise of a power by the Electoral Commissioner.

Injunctions

139. (1) Where a person has engaged, is engaging or is proposing to engage in any conduct that constituted, constitutes or would constitute a contravention of, or an offence against, this Act or any other law of the Commonwealth in its application to referendums, a prescribed court may, on the application of the Electoral Commission, grant an injunction restraining the first-mentioned person from engaging in the conduct and, if in the opinion of the court it is desirable to do so, requiring that person to do any act or thing.

(2) Where—

(a) a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and

(b) the refusal or failure was, is, or would be, a failure to comply with, or an offence against, this Act or any other law of the Commonwealth in its application to referendums,

a prescribed court may, on the application of the Electoral Commission, grant an injunction requiring the first-mentioned person to do that act or thing.

(3) Where an application is made to a prescribed court for an injunction under sub-section (1), the court may, if in the opinion of the court it is desirable to do so, before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in that sub-section pending the determination of the application.

(4) A prescribed court may discharge or vary an injunction granted under sub-section (1), (2) or (3).

(5) Where an application is made to a prescribed court for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the power of the court to grant the injunction may be exercised—

(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

(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 and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

(6) Where an application is made to a prescribed court for the grant of an injunction requiring a person to do a particular act or thing, the power of the court to grant the injunction may be exercised—

- (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
- (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 that act or thing and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.

(7) Where the Electoral Commission makes an application to a prescribed court for the grant of an injunction under this section, the court shall not require the Electoral Commission or any other person, as a condition of the granting of an interim injunction, to give any undertakings as to damages.

(8) A prescribed court (being a court of a State) is invested with federal jurisdiction and, to the extent that the Constitution permits, jurisdiction is conferred on a prescribed court (being a court of a Territory), with respect to all matters arising under this section.

(9) An appeal lies to the Federal Court of Australia from a judgment or order of a prescribed court exercising jurisdiction under this section.

(10) The powers conferred on a prescribed court under this section are in addition to, and not in derogation of, any other powers of the court, whether conferred by this Act or otherwise.

(11) In this section, “prescribed court” means the Supreme Court of a State or Territory.

Prosecution of offences

140. (1) Subject to sub-section (2), an offence against section 119 is an indictable offence.

(2) A court of summary jurisdiction may hear and determine proceedings in respect of an offence referred to in sub-section (1) if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.

(3) Where, in accordance with sub-section (2), a court of summary jurisdiction convicts a person of an offence against section 119, the penalty that the court may impose is a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months, or both.

Referendum papers received by post

141. Referendum papers posted for transmission to an elector by post and properly addressed shall, in the absence of proof to the contrary, be deemed to

have been duly received by the elector thereof at the times when, in the ordinary course of post, they should have been so received.

Preservation of ballot-papers, &c.

142. Ballot-papers, certified lists of voters and declarations used at or in connection with a referendum shall be preserved as prescribed until—

- (a) the referendum can no longer be questioned;
- (b) the expiration of the period of 6 months commencing on the day on which the statement by the Electoral Commissioner showing the result of the referendum is published in the *Gazette*; or
- (c) if such ballot-papers, certified lists of voters and declarations are required for the purposes of research by the Electoral Commission, they are no longer required by the Commission for research,

whichever is the later.

No referendum or vote of a State or Territory to be held on voting day

143. On the voting day for a referendum, no election or referendum or vote of the electors of any State or Territory or part of a State or Territory shall, without the authority of the Governor-General, be held or taken under a law of a State or Territory.

Regulations

144. The Governor-General may make regulations, not inconsistent with this Act, prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act,

and in particular, prescribing the procedure in relation to the imposition and recovery of penalties for offences against the compulsory voting provisions of this Act.

Repeal

145. (1) The Acts specified in Schedule 2 are repealed.

(2) Notwithstanding the repeal effected by sub-section (1), the regulations that were, immediately before the commencement of this Act, in force under the *Commonwealth Electoral Act 1918* and the *Referendum (Constitution Alteration) Act 1906* shall, in so far as those regulations relate to referendums, continue in force, to the extent to which they are consistent with this Act, as if—

- (a) those regulations had been made under that first-mentioned Act and under this Act;
- (b) a reference in those regulations to a State, in relation to a referendum, included a reference to the Australian Capital Territory and the Northern Territory;

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- (c) a reference in those regulations to the Australian Electoral Officer for a State, in relation to a referendum, included a reference to the Australian Electoral Officers for the Territories;
- (d) a reference in those regulations to a Division, in relation to a referendum, included a reference to an Electoral Division of the Australian Capital Territory and to the Northern Territory; and
- (e) a reference in those regulations to the *Referendum (Constitution Alteration) Act 1906* or to a particular provision of that Act were a reference to this Act or to the corresponding provision (if any) of this Act, as the case may be.

(3) Nothing in sub-section (2) prevents the making of regulations under this Act or under the *Commonwealth Electoral Act 1918* and under this Act to repeal or amend the regulations that are continued in force by that sub-section.

SCHEDULE 1

FORM A

Commonwealth of Australia

Writ for a referendum

To the Electoral Commissioner

I command you to cause a proposed law entitled [*here insert the title of the proposed law*] to be submitted, according to law, in each State and in the Australian Capital Territory and the Northern Territory, to the electors who are qualified to vote at referendums.

I appoint the following dates:

- 1. For the close of the Rolls: the day of 19 .
- 2. For taking the votes of the electors the day of 19 .
- 3. For the return of the writ: the day of 19 .

[*Here insert Governor-General's title and the date*]

Governor-General

By His Excellency's command

FORM B

Commonwealth of Australia

BALLOT-PAPER

[*Here insert name of State or Territory*]

Referendum on proposed Constitution alteration

DIRECTIONS TO VOTER

WRITE "YES" or "NO" in the space provided opposite the question set out below.

[*Here set out the title of the proposed law*]

DO YOU APPROVE THIS PROPOSED ALTERATION?

Referendum (Machinery Provisions) No. 44, 1984

FORM C

Commonwealth of Australia

BALLOT-PAPERS

[Here insert name of State or Territory]

Referendums on proposed Constitution alterations

DIRECTIONS TO VOTER

Write "YES" or "NO" in the space provided opposite each of the questions set out below.

1. *[Here set out the title of the first proposed law]*

DO YOU APPROVE THIS PROPOSED ALTERATION?

2. *[Here set out the title of the second proposed law]*

DO YOU APPROVE THIS PROPOSED ALTERATION?

SCHEDULE 2

Section 145

REPEALED ACTS

Referendum (Constitution Alteration) Act 1906
Referendum (Constitution Alteration) Act 1909
Referendum (Constitution Alteration) Act 1910
Referendum (Constitution Alteration) Act 1912
Referendum (Constitution Alteration) Act 1912 (No. 2)
Referendum (Constitution Alteration) Act 1915
Referendum (Constitution Alteration) Act 1919
Referendum (Constitution Alteration) Act 1926
Referendum (Constitution Alteration) Act 1928
Referendum (Constitution Alteration) Act 1936
Referendum (Constitution Alteration) Act 1965
Referendum (Constitution Alteration) Act (No. 2) 1965
Referendum (Constitution Alteration) Act Modification Act 1977