

TASMANIA

REFERENDUM PROCEDURES BILL 2004

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SCHEDULE 1 – ACT REPEALED

REFERENDUM PROCEDURES BILL 2004

(Brought in by the Minister for Justice and Industrial Relations, the Honourable Judith Louise Jackson)

A BILL FOR

An Act relating to the conduct of referendums

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

Short title

1. This Act may be cited as the *Referendum Procedures Act 2004*.

Commencement

2. This Act commences on the day on which the *Electoral Act 2004* commences.

Interpretation

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

“**ballot paper**” means a ballot paper prepared under section 16;

THIS BILL IS COGNATE WITH THE *ELECTORAL BILL 2004*

“informal ballot paper” means a ballot paper which is informal as specified in section 17;

“poll” means a poll for a referendum;

“referendum” means a referendum held in accordance with this Act;

“returning officer” means a returning officer appointed under the *Electoral Act 2004* in respect of an Assembly division;

“writ” means a writ for the holding of a referendum issued under section 5.

(2) Unless the contrary intention appears, an expression used in this Act has the same meaning as it has in the *Electoral Act 2004*.

Application of *Electoral Act 2004*

4. (1) Subject to this Act, the provisions of the *Electoral Act 2004* apply so far as they are applicable, with the necessary changes, to and in respect of a referendum as if it were an Assembly election.

(2) Without limiting subsection (1), for the purposes of the conduct of a referendum –

- (a) a reference to polling day in the *Electoral Act 2004* is to be construed as a reference to the day fixed by the writ for the conduct of the poll for a referendum; and
- (b) a reference to an election in the *Electoral Act 2004* is to be construed as a reference to a referendum; and
- (c) a reference to electoral matter in the *Electoral Act 2004* is to be construed as a reference to

corresponding matter in relation to a referendum; and

- (d) a reference to a ballot paper, ballot material, ballot box or other thing in the *Electoral Act 2004* is to be construed as a reference to a ballot paper, ballot material, ballot box or corresponding thing in relation to a referendum; and
- (e) a reference to disputing the validity of an election in the *Electoral Act 2004* is to be construed as a reference to disputing the validity of a referendum.

(3) For the purposes of a referendum –

- (a) the vote of an elector is to be marked on the ballot paper in the manner specified by this Act; and
- (b) a ballot paper is not to be rejected as informal except in accordance with this Act.

PART 2 – CONDUCT OF REFERENDUMS

Division 1 – Writs for holding referendums

Issue of writ

5. (1) If a referendum is authorised or required by or under an Act to be held in accordance with this Act, the Governor may, not less than 21 days after the Act which authorises or requires the referendum to be held receives the Royal Assent, issue a writ for the holding of the referendum.

(2) If a poll for a referendum pursuant to this Act is to be held on the same day as polling day for an Assembly general election, the date of issue of the writ for the referendum is to be the same as the date of issue of the writ for the election.

Contents of writ for referendum

6. (1) A writ for the holding of a referendum is to be in an approved form and –

- (a) specify each proposal to be submitted to the electors at the referendum; and
- (b) fix –
 - (i) the day for the conduct of the poll; and
 - (ii) the day on or before which the writ is to be returned to the Governor.

(2) If a proposal to be submitted to the electors at the referendum concerns the passing of a proposed law, a copy of the text of the proposed law is to be attached to the writ.

(3) For the purposes of this Act, the writ is taken to have been issued at 6 p.m. on the day on which it was issued.

Writ directed to Commissioner

7. A writ for the holding of a referendum is to be directed to the Commissioner.

Days fixed in writ

8. (1) The day fixed for the conduct of the poll is to be a day not less than 21 days and not more than 51 days after the day on which the writ was issued.

(2) The day fixed for the return of the writ is to be a day not later than 60 days after the day on which the writ was issued.

Duties of Commissioner on receipt of writ

9. The Commissioner, as soon as practicable after receiving a writ for the holding of a referendum, is to –

- (a) endorse on the writ the date on which it was received; and
- (b) publish, in each newspaper approved for the purpose, a notice of –
 - (i) the date on which the writ was received; and
 - (ii) each of the proposals specified in the writ; and

- (iii) the days fixed for the conduct of the poll and the return of the writ; and
- (c) forward a copy of the writ to each returning officer.

Extension of time

10. (1) If a writ for a referendum has been issued and not returned, and the Governor considers it appropriate, the Governor may by proclamation fix –

- (a) another day for the conduct of the poll either generally or in any Assembly division; or
- (b) another day on or before which the writ is to be returned to the Governor.

(2) Any days fixed by the Governor under subsection (1) are not subject to section 8.

(3) If the Governor issues a proclamation under subsection (1), the Commissioner, as soon as practicable, is to publish in each newspaper approved for the purpose a notice of that proclamation.

(4) Where –

- (a) the day fixed by the writ for the conduct of the poll for a referendum is the same as polling day for an Assembly general election; and
- (b) another day is fixed under section 72 of the *Electoral Act 2004* as polling day for that election in an Assembly division –

the day referred to in paragraph (b) is to be taken to be the day for the conduct of the poll for the referendum in that Assembly division.

Division 2 – Referendum proposals**Referendum proposals**

11. (1) The Governor may determine the following matters:

- (a) the wording of each proposal to be submitted to the electors at the referendum;
- (b) if more than one proposal is to be submitted to the electors at a referendum, the order in which the proposals are to be printed on the ballot papers for the referendum.

(2) The wording of a proposal referred to in subsection (1) is not to contain any argument in relation to the proposal.

Arguments in relation to proposals

12. (1) If a referendum is authorised or required by or under an Act to be held in accordance with this Act –

- (a) an argument in favour of each proposal to be submitted to the electors at the referendum is to be authorised by a majority of those members of Parliament who are in favour of the proposal and forwarded to the Commissioner; and
- (b) an argument against each proposal is to be authorised by a majority of those members of Parliament who are against the proposal and forwarded to the Commissioner.

(2) An argument referred to in subsection (1) is to –

- (a) be in an approved form, consisting of no more than 2 000 words; and
- (b) be forwarded to the Commissioner within 21 days after the day on which the Act which authorises or requires the referendum to be held receives the Royal Assent.

(3) The Commissioner is to cause the arguments for and against each proposal that is to be submitted to the electors at a referendum to be brought to the notice of electors before the day fixed for the conduct of the poll.

Division 3 – Entitlement to vote

Electors entitled to vote at referendum

13. A person is entitled to vote at a referendum if, had the referendum been an Assembly general election, the person would have been entitled to vote at that election.

Close of roll

14. The close of roll in relation to a referendum is 6 p.m. on the day of the issue of the writ for the holding of the referendum.

Division 4 – Voting and ballot papers

Manner of voting

15. (1) The voting at a referendum is to be by ballot.

(2) An elector is to record his or her vote at a referendum –

- (a) if the elector approves a proposal, by writing the word “Yes” in the box provided on the ballot paper in respect of the proposal; or
- (b) if the elector does not approve a proposal, by writing the word “No” in the box provided on the ballot paper in respect of the proposal.

(3) An elector is to write the word “Yes” or the word “No” in respect of each proposal printed on the ballot paper.

Preparation and printing of ballot papers

16. (1) Ballot papers for use at referendums are to be prepared and printed by the Commissioner in an approved form.

(2) The ballot paper is to set out the wording of each proposal, after the words “It is proposed”.

(3) The question, “Do you approve this proposal?”, is to be printed immediately below each proposal.

(4) A box is to be printed next to each question.

(5) Instructions on the ballot paper are to indicate that the elector is to write “YES” or “NO” in the box opposite each question.

Informal ballot papers

17. (1) A ballot paper is informal in respect of a proposal submitted to the electors at a referendum if –

- (a) the ballot paper is not authenticated by –
 - (i) the initials of an election official; or

- (ii) an approved mark; or
- (b) there is on the ballot paper a mark or writing which identifies the elector who marked that ballot paper; or
- (c) the word “Yes” or the word “No” is not written in the space provided on the ballot paper in respect of the proposal.

(2) A ballot paper which is informal in respect of a proposal submitted to the electors at a referendum may not be admitted at a scrutiny in relation to that proposal but may be admitted in relation to another proposal if the ballot paper is not informal in respect of that other proposal.

(3) A ballot paper is not to be treated as informal or rejected at the counting of votes if, in the opinion of the returning officer, the elector’s intention is clearly indicated on the ballot paper.

Division 5 – Proceedings after close of poll for referendum

Counting of ballot papers

18. Ballot papers are to be counted to determine, in respect of each proposal submitted to the electors at the referendum –

- (a) the number of ballot papers marked by electors approving the proposal; and
- (b) the number of ballot papers marked by electors not approving the proposal; and
- (c) the number of informal ballot papers.

Certificate of results

19. After the completion of the counting of votes in an Assembly division, the returning officer is to, in respect of each proposal printed on the ballot papers for the referendum –

- (a) complete and sign a certificate, in an approved form, setting out the results determined under section 18; and
- (b) forward that certificate to the Commissioner.

Declaration of results and return of writ

20. As soon as practicable after receiving the certificates forwarded under section 19, the Commissioner is to –

- (a) publicly declare in respect of each Assembly division and for the whole State –
 - (i) the number of ballot papers marked by electors approving the proposal; and
 - (ii) the number of ballot papers marked by electors not approving the proposal; and
 - (iii) the number of informal ballot papers; and
- (b) endorse on the writ details of the declaration made under paragraph (a); and
- (c) return the writ to the Governor; and
- (d) publish details of the declaration made under paragraph (a) in each newspaper approved for the purpose.

Custody of referendum material

21. (1) The Commission is responsible for the safe custody of all ballot papers, used declaration vote envelopes, used postal vote declaration envelopes and any other material as determined by the Commission until –

- (a) the expiration of the period during which any question relating to the referendum may be referred to the Supreme Court; or
- (b) if a question relating to the referendum is so referred to the Supreme Court, the date on which the question is determined or the referral is withdrawn.

(2) After the expiration of the period referred to in subsection (1)(a) or after the date referred to in subsection (1)(b), the Commission may cause the material referred to in subsection (1) to be destroyed.

Examination of referendum material

22. (1) The Commission may approve –

- (a) the opening of any sealed parcels containing ballot papers, used declaration vote envelopes, used postal vote declaration envelopes or other material; and
- (b) the examination of the contents of those parcels.

(2) An approval under subsection (1) is to state the purpose for which the approval is granted.

PART 3 – MISCELLANEOUS

Costs and expenses of referendum

23. The costs and expenses incurred in, or in connection with, the conduct of a referendum in accordance with this Act are a charge on the Consolidated Fund and are payable out of the Consolidated Fund without further appropriation than this section.

Regulations

24. (1) The Governor may make regulations for the purposes of this Act.

(2) Regulations made under this section may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.

(3) The regulations may authorise any matter to be from time to time determined, applied or regulated by the Commission or Commissioner.

Administration

25. Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Justice and Industrial Relations; and

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- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.

Act repealed

26. The Act specified in Schedule 1 is repealed.

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SCHEDULE 1 - ACT REPEALED

Section 26

Referendum Procedures Act 1994 (No. 34 of 1994)