



Referendum (Machinery Provisions) Amendment Act 1988

No. 77 of 1988

An Act to amend the *Referendum (Machinery Provisions) Act 1984*

[Assented to 24 June 1988]

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

Short title etc.

1. (1) This Act may be cited as the *Referendum (Machinery Provisions) Amendment Act 1988*.

(2) In this Act, "Principal Act" means the *Referendum (Machinery Provisions) Act 1984*.

Commencement

2. This Act commences on the day on which it receives the Royal Assent.

Interpretation

3. Section 3 of the Principal Act is amended:

(a) by inserting in subsection (1) the following definition:

 " 'declaration vote' means:

- (a) a vote cast under Part IV;
- (b) a vote cast under paragraph 46 (1) (b); or
- (c) a vote cast under section 37, 38, 39 or 65;"

(b) by adding at the end the following subsections:

“(4) In relation to a matter concerning an elector or any other matter arising under this Act, a provision of this Act that includes the expression ‘the Australian Electoral Officer’ without words relating the expression to a particular State or Territory shall be read as referring to the Australian Electoral Officer for the State or Territory for which the elector is enrolled or in which the matter arises, as the case requires.

“(5) In relation to a matter concerning an elector or any other matter arising under this Act, a provision of this Act that includes the expression ‘the Divisional Returning Officer’ without words relating the expression to a particular Division shall be read as referring to the Divisional Returning Officer for the Division for which the elector is enrolled or in which the matter arises, as the case requires.”.

4. After section 3 of the Principal Act the following sections are inserted:

Extraterritorial operation of Act

“3A. This Act extends to officers outside Australia.

Application to Crown

“3B. This Act binds the Crown in right of the Commonwealth, of each of the States and of the Northern Territory, but nothing in this Act renders the Crown liable to be prosecuted for an offence.”.

5. Section 10 of the Principal Act is repealed and the following section is substituted:

Extension of time

“10. (1) In spite of any other provision of this Act, the Governor-General may, before the voting day for a referendum, by notice published in the *Gazette*, fix a later day for the taking of votes of electors, either generally or for a specified Division.

“(2) The Electoral Commissioner shall, as soon as possible, give such notice of the fixing of the new day as he or she thinks necessary.

“(3) Where the voting day for a referendum is the same as the day fixed for the polling at an election and the time for holding the election is extended under section 286 of the *Commonwealth Electoral Act 1918*:

- (a) where the extension of time for holding the election relates only to a specified Division—the day on which the election is to be held in that Division shall be taken to be the voting day for the referendum in that Division; and
- (b) in any other case—the day on which the election is to be held shall be taken to be the voting day for the referendum.

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“(4) In spite of any other provision of this Act, the Governor-General may, before or after the voting day for a referendum, by notice published in the *Gazette*, postpone the day appointed under subsection 8 (1) for the return of the writ.

“(5) A day to which the taking of votes or the return of the writ is postponed under this section shall, for the purposes of other provisions of this Act, be regarded as having been appointed under subsection 8 (1).”.

Distribution to electors of arguments for and against proposed law

6. Section 11 of the Principal Act is amended by inserting after paragraph (4) (a) the following paragraph:

“(aa) the preparation and distribution of presentations of that material in forms suitable for the visually impaired;”.

7. After section 46 of the Principal Act the following section is inserted in Division 1 of Part III:

Forwarding of declaration votes

“46A. (1) A presiding officer at a polling place shall forward to the Assistant Returning Officer designated for the purposes of this subsection by the Divisional Returning Officer any ballot-boxes containing envelopes bearing declarations made by persons who have cast declaration votes and which purport to contain the ballot-papers of such voters.

“(2) An Assistant Returning Officer to whom a ballot-box is forwarded under subsection (1) or subsection 49 (8) or 51 (10) shall:

- (a) compare the particulars of the envelopes with the particulars appearing in the presiding officer's record made under subsection 34 (2) or in any other records forwarded by the presiding officer, note the number of envelopes and report any discrepancy to the Divisional Returning Officer;
- (b) place in a parcel all the envelopes contained in such ballot-boxes, endorse on the parcel the number of envelopes contained in the parcel, seal up the parcel and forthwith deliver it, or cause it to be delivered, to the Divisional Returning Officer; and
- (c) forward to the Divisional Returning Officer advice in writing of the total number of envelopes bearing declarations enclosed in the parcel delivered or to be delivered to the Divisional Returning Officer.

“(3) Each Divisional Returning Officer shall:

- (a) maintain a record of the particulars of the advices, and of the number of envelopes bearing declarations, received from each Assistant Returning Officer;
- (b) until they are dealt with under other provisions of this Act, keep the envelopes received from Assistant Returning Officers in one or more securely fastened ballot-boxes; and
- (c) compare the record referred to in paragraph (a) with the envelopes received and note any discrepancy.

“(4) A Divisional Returning Officer shall:

- (a) place in a parcel all the envelopes bearing declarations and relating to a particular Division, endorse 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 that includes that Division, to another person to be dealt with in accordance with subsection (5); and
- (b) forward to the last-mentioned Divisional Returning Officer advice in writing of the total number of envelopes bearing declarations enclosed in the parcel delivered or to be delivered to that Divisional Returning Officer.

“(5) Each Divisional Returning Officer shall:

- (a) maintain a record of the particulars of the advices, and of the number of envelopes bearing declarations, received from other Divisional Returning Officers;
- (b) maintain a locked and sealed ballot-box labelled so as to identify it as a declaration vote ballot-box; and
- (c) keep in that ballot-box, until the scrutiny, all envelopes bearing a declaration and purporting to contain a ballot-paper recording a declaration vote in relation to his or her Division, being, in the case of envelopes purporting to contain postal ballot-papers, envelopes:
 - (i) delivered to the Divisional Returning Officer before the end of the period of 13 days after the close of the poll; or
 - (ii) received from another Divisional Returning Officer or from a person referred to in subsection (7) or (8) where the envelope bearing the certificate bears evidence that it was received, prior to the close of the poll, by that Divisional Returning Officer, by a person appointed under section 54, by an Assistant Returning Officer at a place outside Australia or by a presiding officer.

“(6) Before placing in the ballot-box maintained under subsection (5) an envelope purporting to contain a postal ballot-paper and delivered to a Divisional Returning Officer which is received after the close of the poll and which does not bear evidence sufficient to satisfy the Divisional Returning Officer that the vote contained in the envelope was recorded before the close of the poll, the Divisional Returning Officer shall endorse on the envelope the date of its receipt and shall initial the endorsement.

“(7) Where declaration vote ballot-papers or envelopes bearing declarations relating to a particular Division are, with the approval of the Australian Electoral Officer for the State or Territory that includes that Division, 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.

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“(8) An Assistant Returning Officer at a place outside Australia shall forward envelopes containing postal ballot-papers to such person as is specified in a written direction given to that Assistant Returning Officer by the Electoral Commissioner.

“(9) Where envelopes relating to a particular Division are forwarded under subsection (8) 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.”.

8. Before section 110 of the Principal Act the following section is inserted in Part IX:

Application

“109A. (1) This Part does not apply to a referendum if the voting day for the referendum is the same as the day fixed for the polling at a general election or a Senate election.

“(2) In this section:

‘general election’ means a general election of the members of the House of Representatives;

‘Senate election’ means an election of Senators for a State or Territory.”.

9. Before section 137 of the Principal Act the following section is inserted in Part XI:

Extension of time for acts by officers

“136A. Where:

(a) an officer is required by a provision of this Act or the regulations to do an act; and

(b) the officer refuses or fails to do the act at the time, or within the period, required by that provision;

the Electoral Commission may determine that the act may be done within such further time, not exceeding 48 hours, as the Commission fixes.”.

Formal amendments

10. The Principal Act is further amended as set out in the Schedule.

SCHEDULE

Section 10

FORMAL AMENDMENTS

Subsection 30 (3):

Omit the subsection.

Paragraph 30 (5) (a):

Add at end of paragraph “or”.

Paragraph 30 (5) (b):

Omit the paragraph.

Subsection 30 (6):

Omit the subsection.

Subsection 34 (2):

(a) Omit “votes at the polling place as an absent voter and”, substitute “casts a declaration vote at the polling place and, in the case of an absent voter,”.

(b) Omit “subsection 46 (6)”, substitute “subsection 46A (1)”.

Subsections 46 (6), (7) and (8):

Omit the subsections.

Subsection 66 (3):

Omit “10 days”, substitute “13 days”.

Subsection 72 (1):

Omit “10 days”, substitute “13 days”.

Section 113:

Repeal the section.

Subsection 114 (3):

Omit the subsection.

Section 136:

Omit “111, 112 or 113”, substitute “111 or 112”.

NOTE

1. No. 44, 1984, as amended. For previous amendments, see Nos. 120 and 133, 1984; and No. 67, 1985.

*[Minister's second reading speech made in—
House of Representatives on 18 February 1988
Senate on 18 March 1988]*