

REFERENDUM (CONSTITUTION ALTERATION).

No. 11 of 1906.

An Act relating to the submission to the Electors
of proposed Laws for the alteration of the
Constitution.

[Assented to 8th October, 1906.]

BE it enacted by the King's Most Excellent Majesty, 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 (Constitution Alteration) Act 1906*.

Part.s

2. This Act is divided into Parts as follows :—

- PART I.—Preliminary.
- PART II.—Writ for the Referendum.
- PART III.—Voting at the Referendum.
- PART IV.—Scrutiny of the Referendum.
- PART V.—Return of the Writ.
- PART VI.—Disputed Returns.
- PART VII.—Regulations.

Definition.

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

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

Application of
Electoral Acts.

4.—(1.) The provisions of Part X. (Voting by Post) Part XI. (the Polling) and Part XV. (Electoral Offences) of the Commonwealth Electoral Acts 1902–1905 shall, so far as applicable, apply to the referendum as if it were an election of members of the House of Representatives but subject to the modifications and provisions in this Act.

(2.) In the application of Parts X., XI., and XV. of the said Acts—

- (a) any reference to polling day shall be deemed to be a reference to the day fixed by the writ under this Act for the taking of the votes of the electors ; and
- (b) any reference to a poll shall be deemed to be a reference to the taking of the votes of the electors under this Act ; and
- (c) any reference to an election shall be deemed to be a reference to a referendum.

(3.) In the application of Part X. of the said Acts—

- (a) the postal ballot-paper shall be in the Form A in the Schedule to this Act ; and
- (b) the postal vote certificate shall be in the Form B in the Schedule to this Act ; and
- (c) Section 118A shall be read as if the directions on Form A in the Schedule to this Act were substituted for those in the section.

(4.) In the application of Part XI. of the said Acts—

- (a) the Returning Officer shall in any case make all necessary arrangements for taking the poll ;
- (b) the ballot-papers shall be in the Form C in the Schedule to this Act ;
- (c) Sections 133, 135, 150, and 151 shall not apply ;
- (d) facilities for enabling electors to vote at elections prescribed by regulations under section 139 (2) shall so far as applicable apply to the referendum, but so that the ballot-paper shall be in Form D in the Schedule to this Act, and no ballot-paper shall be rejected as informal for any reason other than the reasons specified in this Act ;
- (e) Section 147 shall apply, but so that the elector must mark his vote on the ballot-paper as thereon directed, and must fold the ballot-paper so as to conceal his vote ;
- (f) any reference to scrutineers shall be deemed to refer to scrutineers appointed by the Governor of a State.

PART II.—WRIT FOR THE REFERENDUM.

5.—(1.) 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. Writ for a referendum.

(2.) The writ may be in accordance with the Form E in the Schedule, and shall appoint dates—

- (1) for taking the votes of the electors, and
- (2) for the return of the writ.

6. The Governor-General may cause to be attached to the writ a copy of the proposed law, or a copy of a statement setting out— Statement of proposed law.

- (a) the text of the proposed law,
- (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.

7. A copy of the writ and a copy of the proposed law or of the statement (if any) attached to the writ shall immediately after the issue of the same be forwarded to the Governors of the several States. Copy of writ and proposed law to be sent to Governors of States.

Action by
Chief Electoral
Officer on
receipt of writ.

8. The original writ shall be forwarded to the Chief Electoral Officer, who shall forthwith after the receipt thereof—

- (a) forward copies of it to the Commonwealth Electoral Officers for the several States; and
- (b) insert in the *Gazette* a notification of the receipt and particulars of the writ, and a copy of the proposed law or of the statement (if any) attached to the writ.

Action by
Commonwealth
Electoral
Officers.

9. The Commonwealth Electoral Officer for each State shall forthwith after the receipt of the copy of the writ—

- (a) give notice of the receipt and particulars of the writ by advertisement in two or more newspapers circulating in the State, which notice shall include a copy of the proposed law or a copy of the statement (if any) attached to the writ; and
- (b) cause copies of the proposed law or of the statement (if any) attached to the writ to be exhibited at Post Offices and Customs Houses in the State, and at such other places in the State as the Chief Electoral Officer directs; and
- (c) forward a copy of the writ and of the proposed law or of the statement (if any) attached to the writ to each Divisional Returning Officer and Assistant Returning Officer.

Action by
officers to carry
writ into effect.

10. Each Divisional Returning Officer and Assistant Returning Officer shall, subject to this Act, and to the directions of the Commonwealth Electoral Officer for the State, forthwith take all such steps as are necessary to be taken on his part to carry the writ into effect.

PART III.—VOTING AT THE REFERENDUM.

Voting on same
day throughout
Australia.

11. The voting at the referendum shall, subject to this Act, be taken throughout Australia on the day appointed by the writ for taking the votes of the electors.

Polling places.

12. The polling places appointed under the Commonwealth Electoral Acts 1902-1905 shall be polling places for the purposes of the referendum.

One vote only.

13. Each elector shall vote only once at any referendum.

Voting to be
by ballot.

14. The voting at the referendum shall be by ballot, and each elector shall indicate his vote by marking it on the ballot-paper in accordance with the directions thereon.

Postal vote
certificates for
referendum.

15. Where the polling for one or more referendums is appointed to take place on the same day as the polling for an election for the Senate or a general election for the House of Representatives, an application for a postal vote certificate for the purposes of the election shall be deemed to contain an application for a postal vote certificate and a postal ballot-paper for the purposes of the referendums.

Use of ballot-
boxes and
polling booths.

16. Where a referendum is held on the same day as an election the same ballot-boxes and polling booths may be used for the

purposes of the referendum and the election but in that case the ballot-papers for the referendum shall be of a different colour to the ballot-papers for the election.

17. The Governor of a State or any person thereto authorized by him may appoint one scrutineer at each polling place in the State.

Appointment of scrutineers.

PART IV.—SCRUTINY OF THE REFERENDUM.

18.—(1.) The result of the referendum shall be ascertained by scrutiny.

Ascertainment of result of submission.

(2.) The Governor of a State or any person thereto authorized by him may appoint one scrutineer to be present at each place where the scrutiny is conducted in each Electoral Division for the State.

19. The scrutiny shall be conducted in accordance with the following provisions:—

Conduct of scrutiny.

- (a) The scrutiny shall commence as soon as practicable after the closing of the poll;
- (b) a scrutineer and any person authorized by the Returning Officer or Assistant Returning Officer may be present;
- (c) all the proceedings at the scrutiny shall be subject to the inspection of the scrutineer;
- (d) the scrutiny may be adjourned from time to time;
- (e) each Assistant Returning Officer shall open all ballot-boxes for polling places within, or for the portion of the Division in which he exercises his powers; and
- (f) the Divisional Returning Officer shall open all ballot-boxes not opened by an Assistant Returning Officer.

20. At the scrutiny the following things shall be done:—

Action at scrutiny.

- (a) The ballot-papers in the ballot-boxes shall be taken out of the ballot-boxes and examined and shall either be allowed or rejected;
- (b) all informal ballot-papers shall be rejected and their number recorded;
- (c) all allowed ballot-papers in favour of the proposed law shall be placed in one parcel and all allowed ballot-papers not in favour of the proposed law in another parcel, and all rejected ballot-papers in another parcel;
- (d) the votes on the allowed ballot-papers shall be counted and a record of them taken;
- (e) all parcels of ballot-papers shall when the counting is complete be sealed up;
- (f) each Assistant Returning Officer shall forthwith after completing the scrutiny of the ballot-papers in the ballot-boxes opened by him transmit to the Divisional Returning Officer the sealed parcels of ballot-papers together with a statement showing—
 - (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;
 - (III.) the number of ballot-papers rejected as informal.

Informal ballot-papers.

21. A ballot-paper shall be informal if—

- (a) it is not initialed by the presiding officer ; or
- (b) it has no vote indicated on it ; or
- (c) it has more than one vote indicated on it ; or
- (d) it has upon it some mark or writing not authorized by this Act to be put on it which would in the opinion of the Divisional Returning Officer or Assistant Returning Officer enable any person to identify the voter.

Return of result of submission by Returning Officers.

22. Each Divisional Returning Officer shall forthwith after he has counted the votes on the ballot-papers taken from the ballot-boxes opened by him and has received from each Assistant Returning Officer a statement showing the voting on the ballot-papers taken from the ballot-boxes opened by him, indorse on the copy of the writ a statement certifying in relation to the votes given at the polling-places in or for his Division—

- (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 transmit the copy of the writ so indorsed together with all sealed parcels of ballot-papers to the Commonwealth Electoral Officer for the State.

Recount.

23. The Commonwealth Electoral Officer for a State may, if so requested by the Governor of the State, direct a recount of the ballot-papers from any Division, or portion of a Division, or of the ballot-papers contained in any parcel.

PART V.—RETURN OF THE WRIT.

Indorsement on writ by Commonwealth Electoral Officer.

24. Each Commonwealth Electoral Officer shall indorse on his copy of the writ a statement showing as regards his State—

- (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 sign the statement, and shall transmit the copy of the writ so indorsed to the Chief Electoral Officer.

Return of writ.

25.—(1.) The Chief Electoral Officer shall, forthwith after the indorsed copies of the writ have been transmitted to him by the Commonwealth Electoral Officers for the several States, indorse on the original writ a statement showing as regards each State and as regards the whole Commonwealth—

- (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 sign the statement and shall return the writ with the statement indorsed thereon to the Governor-General.

(2.) The Chief Electoral Officer shall publish a copy of the statement in the *Gazette*, and the statement so published shall, subject to this Act, be conclusive evidence of the result of the referendum.

26. Copies of the statement indorsed on the writ shall be forwarded to the Governors of the several States.

Copies of returns to Governors of the States.

PART VI.—DISPUTED RETURNS.

27. The validity of any referendum or of any return or statement showing the voting on any referendum may be disputed by the Commonwealth or by any State by petition addressed to the High Court.

Disputing validity of submission or return.

28. The petition disputing a referendum, return, or statement must—

Requisites of petition.

- (a) set out the facts relied on to invalidate the referendum, return, or statement ;
- (b) contain a prayer asking for the relief to which the petitioner claims to be entitled ;
- (c) be signed by the Attorney-General of the Commonwealth for and on behalf of the Commonwealth or the Attorney-General of a State for and on behalf of the State ; and
- (d) be filed in the Principal Registry of the High Court or in the District Registry of that Court in the capital city of the State by which the referendum statement or return is disputed within forty days after the publication in the *Gazette* of the statement by the Chief Electoral Officer of the result of the voting.

29. The High Court shall have jurisdiction to entertain and to hear and determine the petition.

Jurisdiction of High Court.

30. Where the petition is filed by the Commonwealth the Attorney-General shall notify the Attorneys-General of the several States of the filing of the petition, and where the petition is filed by a State the Attorney-General of that State shall notify the Attorney-General of the Commonwealth and the Attorneys-General of the other States of the filing of the petition.

Notice of Petition.

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

Joinder of Parties.

32. The procedure in relation to a petition disputing a referendum 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 or a Justice thereof.

Procedure on petition.

33. No referendum and no return or statement showing the voting on any referendum shall be avoided on account of any delay in relation to the taking of the votes of the electors or in relation to the making of any statement or return or on account of the absence or error of any officer which is not proved to have affected the result of the referendum.

Immaterial errors not to vitiate referendum.
 Cf. 1902, No. 19, s. 200.

PART VII.—REGULATIONS.

Regulations.

34. The Governor-General may make regulations not inconsistent with this Act, prescribing all matters which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

THE SCHEDULE.

FORM A.

COMMONWEALTH OF AUSTRALIA.

The Referendum (Constitution Alteration) Act 1906.

Postal Ballot-paper.

State of [here insert name of State].

Submission of a proposed Law for the Alteration of the Constitution, entitled [here insert title of proposed law] to the Electors.

INSTRUCTIONS TO ELECTOR.

- (a) The elector shall exhibit his postal ballot-paper (in blank) and his postal vote certificate to an authorized witness.
- (b) The elector should indicate his vote as follows:—
 If he approves of the proposed law he should make a cross in the square opposite the word "Yes".
 If he does not approve of the proposed law he should make a cross in the square opposite the word "No".
- (c) If the elector's sight is so impaired that he cannot vote without assistance, the authorized witness, if so requested by the elector, may mark his vote on the ballot-paper.
- (d) The elector shall then fold the ballot-paper and fasten margin to margin.
- (e) The elector shall then sign his name in his own handwriting on the counterfoil, in the place provided for the signature of the voter.
- (f) The authorized witness shall then sign his name in his own handwriting in the place provided for the signature of the witness, and shall add his occupation and place of living, and the date.
- (g) The elector shall then place the ballot-paper with the counterfoil attached into the envelope addressed to the Returning Officer, and fasten the envelope, and hand it to the authorized witness for posting.

INSTRUCTIONS TO AUTHORIZED WITNESS.

The authorized witness shall—

- (a) see that the above directions are substantially complied with;
- (b) refrain from looking at the vote given by the elector except where the elector's sight is so impaired that he cannot vote without assistance, and the elector requests his assistance;
- (c) not disclose any knowledge officially acquired by him touching the vote of the elector; and
- (d) forthwith post the envelope containing the postal ballot-paper.
- Penalty: One hundred pounds, or three months' imprisonment.

AUTHORIZED WITNESSES.

Any one of the following persons is an authorized witness, namely:—

[The persons who are authorized witnesses within the meaning of the Commonwealth Electoral Acts 1902-1905 to be enumerated here.]

COUNTERFOIL.

No.

Signature of voter—

Witness—

[Authorized witness to sign here and insert his title].

BALLOT-PAPER.

Question :—Do you approve of the proposed law for the alteration of the Constitution entitled [*here set out the title of the proposed law*]?

YES.

NO.

FORM B.

The Referendum (Constitution Alteration) Act 1906.

Postal Vote Certificate.

Electoral Division of (*here insert name of Division*).

I hereby certify that _____ of _____ is entitled to vote at the referendum to be held on the _____ day of _____ 19 .

Dated this _____ day of _____ 19 .

Returning Officer.

FORM C.

COMMONWEALTH OF AUSTRALIA.

The Referendum (Constitution Alteration) Act 1906.

Ballot-paper.

State of [*here insert name of State*].

Submission of a proposed Law for the Alteration of the Constitution entitled [*here insert title of proposed law*] to the Electors.

Directions to Voter.—The voter should indicate his vote as follows:—

If he approves of the proposed law he should make a cross in the square opposite the word "Yes".

If he does not approve of the proposed law he should make a cross in the square opposite the word "No".

Question :—Do you approve of the proposed law for the alteration of the Constitution entitled [*here set out the title of the proposed law*]?

YES.

NO.

FORM D.

COMMONWEALTH OF AUSTRALIA.

The Referendum (Constitution Alteration) Act 1906.

Absent Voters' Ballot-paper.

To be used by an Elector voting at a polling place in the State (other than a polling place for the Division for which he is enrolled) which is presided over by a Divisional Returning Officer or an Assistant Returning Officer.

State of [*here insert name of State*].

Submission of a proposed Law for the alteration of the Constitution entitled [*here insert title of proposed law*] to the Electors.

Instructions.—The declaration on the counterfoil must be filled in, signed by the elector in his own handwriting, and completed. The elector should then retire alone into an unoccupied compartment of the Polling Booth, and there in private mark his vote on the ballot-paper. He should then fold and fasten the

ballot-paper so that the vote cannot be seen without unfastening it or tearing off the margin, and hand it to the Returning Officer.

Directions to Voter.—The voter should indicate his vote as follows :—

If he approves of the proposed law he should make a cross in the square opposite the word "Yes".

If he does not approve of the proposed law he should make a cross in the square opposite the word "No".

BALLOT-PAPER.

Question :—Do you approve of the proposed law for the alteration of the Constitution entitled [*here set out the title of the proposed law*] ?

YES.

NO.

COUNTERFOIL.

COMMONWEALTH OF AUSTRALIA.

I declare that I am the person whose name appears as _____ on the Electoral Roll for the Electoral Division of _____ at _____ to vote at _____ Polling Place, and that I have not voted here or at any other Polling Place at this Referendum, and I promise and declare that, if I am permitted to vote here, I will not vote at this Referendum at any other Polling Place.

Signature of elector—

Place of living—

Occupation—

Declared before me the _____ day of _____ 19 _____ at _____ Polling Place.

Divisional Returning Officer or Assistant Returning Officer.

FORM E.

COMMONWEALTH



OF AUSTRALIA.

Writ for a Referendum.

HIS MAJESTY THE KING.

To the Chief Electoral Officer for the Commonwealth and to the Commonwealth Electoral Officers for the several States and to all others whom it may concern :

GREETING :

We command you that you cause a proposed law entitled [*here set out the title of the proposed law and add "a copy of which is attached hereto" or "a statement of which is attached hereto" as the case requires*] to be submitted, according to law, in each State to the electors qualified to vote for the election of Members of the House of Representatives: And we appoint the following dates for the purposes of the said submission :—

- 1. For taking the votes of the electors _____ the _____ day of _____ 19 _____
- 2. For the return of the writ on or before _____ the _____ day of _____ 19 _____

Witness [*hereinsert Governor-General's title and the date*].

Governor-General.

By His Excellency's Command,