

REFERENDUM (CONSTITUTION ALTERATION).

No. 17 of 1912.

An Act to amend the *Referendum (Constitution Alteration) Act 1906-1910.*

[Assented to 6th November, 1912.]

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows :—

Short title and citation.

1.—(1.) This Act may be cited as the *Referendum (Constitution Alteration) Act 1912.*

(2.) The *Referendum (Constitution Alteration) Act 1906-1910* is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be referred to as the *Referendum (Constitution Alteration) Act 1906-1912.*

Amendment of s. 2.

2. Section two of the Principal Act is amended by adding the words " Part IX.—Referendum Offences."

Definitions.

3. Section three of the Principal Act is amended by adding thereto the following definitions :—

“ ‘ Absent voter ’ means an elector voting or desiring to vote in pursuance of section one hundred and thirty-nine or of the regulations relating to absent voting made in pursuance of section one hundred and thirty-nine A of the *Commonwealth Electoral Act 1902-1911* in connexion with a referendum ;

‘ Absent voting ’ means voting in pursuance of section one hundred and thirty-nine or of the regulations relating to absent voting made in pursuance of section one hundred and thirty-nine A of the *Commonwealth Electoral Act 1902-1911* in connexion with a referendum ;

‘ Election ’ means an election of senators or of members of the House of Representatives.”

4. Section four of the Principal Act is repealed, and the following section inserted in its stead :—

Application of Electoral Act.

“ 4.—(1.) The provisions of section sixty-four of Part VI. of the *Commonwealth Electoral Act 1902-1911*, and the provisions of Parts XI. and XV. of that Act shall, subject to this Act, and so far as they are applicable, apply to a referendum as if it were an election.

“(2.) In the application of any provision or part of the said Act to a referendum :—

- (a) A reference to a writ shall be read as a reference to a writ for a referendum ;
- (b) A reference to a polling-day shall be read as a reference to the day fixed by a writ for a referendum for the taking of the votes of the electors ;
- (c) A reference to a poll shall be read as a reference to the taking of the votes of the electors for the purposes of a referendum ;
- (d) A reference to an election shall be read as a reference to a referendum ;
- (e) Each Divisional Returning Officer and Assistant Returning Officer shall, in any case, make the necessary arrangements for the taking of the votes of the electors in his Division or portion of a Division, as the case requires ;
- (f) Sections one hundred and thirty-one, one hundred and thirty-two, one hundred and thirty-three, one hundred and thirty-five, one hundred and thirty-eight, one hundred and fifty, one hundred and fifty-one, one hundred and seventy-five, one hundred and seventy-six, one hundred and seventy-seven, one hundred and seventy-eight, one hundred and seventy-nine, one hundred and eighty, and one hundred and eighty-one shall not apply to a referendum ;
- (g) The ballot-papers to be used under section one hundred and thirty-nine or under section one hundred and thirty-nine A for the purposes of a referendum shall be in accordance with the form prescribed for use in connexion with a referendum ;
- (h) A ballot-paper used for the purposes of a referendum shall only be rejected as informal for the reasons specified in this Act or the regulations ;
- (i) The vote of an elector shall be marked on his ballot-paper in the manner directed by this Act or the regulations, and the ballot-paper shall be folded so as to conceal the vote mark thereon ;
- (j) A reference to scrutineers or to a scrutineer shall be read as a reference to scrutineers or to a scrutineer appointed in pursuance of this Act, as the case requires ;
- (k) A reference to electoral matter or to electoral papers shall be read as a reference to corresponding matter or papers in relation to a referendum ;
- (l) A reference to a ballot-paper, ballot-box, or other thing shall be read as a reference to a ballot-paper, ballot-box, or corresponding thing in relation to a referendum ;
- (m) Any reference to “ this Act ” shall be read as a reference to the provisions and Parts of the said Act which are applicable to a referendum.”

Amendment of
s. 5.

5. Section five of the Principal Act is amended by adding thereto the following proviso :—

“Provided that the day fixed for taking the votes of the electors shall be a Saturday.”

6. After section fourteen of the Principal Act the following section is inserted :—

Forms of
ballot-paper.

“14A.—(1.) The ballot-papers to be used for the purposes of a referendum may be in accordance with Form C in the Schedule.

“(2.) For the purposes of voting under section one hundred and thirty-nine or of the regulations relating to absent voting made in pursuance of section one hundred and thirty-nine A of the *Commonwealth Electoral Act* 1902-1911, the ballot-papers to be used for the purposes of a referendum may be in accordance with the forms prescribed by the regulations.

“(3.) Where two or more referendums are held on the same day, it shall not be necessary for the forms of ballot-paper for each referendum to be on separate pieces of paper, but two or more forms of ballot-paper which may be used by any one elector may be on one piece of paper, in which case it shall not be necessary for the initials of the presiding officer or of the Electoral Registrar, as the case requires, or the official mark, to appear more than once on the piece of paper, and the presence of any mark or writing on the piece of paper by which the voter might be identified shall invalidate all the forms of ballot-paper and votes appearing on the piece of paper, but any other ground of informality shall only apply to the particular ballot-paper and vote to which it relates, and shall not affect the validity of any other ballot-paper or vote.

“(4.) For the purposes of sub-section (3.) the form of ballot-paper may be modified as prescribed, or a special form of ballot-paper may be prescribed, but so that each question shall be capable of being voted on separately, and so that no change be prescribed in the method of marking the votes on the ballot-papers.”

7. Section fifteen of the Principal Act is repealed, and the following section inserted in its stead :—

Application of
absent voters'
provisions.

“15. Where the day fixed for the taking of the votes for the purposes of a referendum is the same as that fixed for the polling at an election—

(a) a declaration which suffices to enable an elector to vote as an absent voter for the purposes of the election shall suffice to enable him to vote as an absent voter for the purposes of the referendum ; and

(b) any reference in the declaration to the election shall be deemed to include a reference to the referendum.”

8. Section fifteen A of the Principal Act is repealed, and the following section inserted in its stead :—

Answers to
questions may
be accepted for
purposes of
referendum.

“15A. Where the day fixed for the taking of the votes of the electors for the purposes of a referendum is the same as that fixed for the polling at an election, the answers by a person claiming to vote to the questions put to him in pursuance of section one hundred

and forty-one of the *Commonwealth Electoral Act 1902-1911* may be accepted as sufficient to enable him to vote for the purposes of the referendum, if they are satisfactory as regards the election, but the presiding officer may, if he thinks fit, in addition to the questions prescribed by that section, put to the person claiming to vote the following question :—

Have you already voted, either here or elsewhere, at this referendum? (or these referendums?—as the case may be), and, if the person claiming to vote does not answer the question or admits that he has already voted at the referendum or referendums, shall refuse to allow him to vote.”

9. Section eighteen of the Principal Act is amended by inserting therein, at the commencement of sub-section (2.) thereof, the words “The Governor-General, or any person authorized by him, may appoint one scrutineer at each place where the scrutiny is conducted in each Electoral Division and”.

Amendment of
s. 18.

10. Section nineteen of the Principal Act is amended—

- (a) by omitting from paragraph (b) the words “a scrutineer” and inserting in their stead the word “scrutineers”; and
- (b) by omitting from paragraph (c) the word “scrutineer” and inserting in its stead the word “scrutineers”.

Amendment of
s. 19.

11.—(1.) Section twenty of the Principal Act is amended—

- (a) by omitting paragraph (c) therefrom;
- (b) by omitting paragraph (e) therefrom and inserting in its stead the following paragraph :—

“(e) when the counting is complete all the ballot-papers shall be made up into sealed parcels”;

and

- (c) by adding thereto the following sub-section :—

“(2.) All ballot-papers used for voting in pursuance of the regulations relating to absent voting shall be dealt with as prescribed by the regulations.”

Amendment of
s. 20.

12. Section twenty-one of the Principal Act is repealed and the following section inserted in its stead :—

“21.—(1.) A ballot-paper, other than an absent voter’s ballot-paper, shall be informal if—

- (a) it is not authenticated by the initials of the presiding officer or by an official mark as prescribed; or
- (b) it has no vote marked on it; or
- (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 the regulations to be put upon it) which would in the opinion of the Divisional Returning Officer or Assistant Returning Officer enable the voter to be identified :

Informal ballot-
papers.

Provided that paragraph (d) shall not apply to any mark or writing placed upon the ballot-paper by an officer, notwithstanding that the placing of the mark or writing upon the ballot-paper is a contravention of this Act.

“(2.) An absent voter’s ballot-paper shall be informal only on the grounds prescribed by the regulations relating to absent voting.

“(3.) 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 : Ten pounds.”

Amendment of
s. 22.

13. Section twenty-two of the Principal Act is amended by omitting therefrom the words “together with all sealed parcels of ballot-papers”.

14. Section twenty-three of the Principal Act is repealed, and the following section inserted in its stead :—

Recount.

“23.—(1.) At any time before indorsing his copy of the writ as provided for in section twenty-four, the Commonwealth Electoral Officer for the State may, if he thinks fit (and shall if so directed by the Chief Electoral Officer), direct any Divisional Returning Officer to make a recount of the ballot-papers contained in any parcel relating to his Division.

“(2.) The Chief Electoral Officer may, at the instance of the Governor-General or the Governor of a State, 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 in relation to the scrutiny as to the allowance or admission or disallowance or rejection of any ballot-paper.”

15. After section twenty-three of the Principal Act the following section is inserted :—

Reservation of
disputed ballot
papers.

“23A.—(1.) At any recount the officer conducting the recount may, and at the request of any scrutineer shall, reserve any ballot-paper for the decision of the Commonwealth Electoral Officer for the State.

“(2.) The Commonwealth Electoral Officer for the State shall decide whether any ballot-paper reserved for his decision in pursuance of this section is to be allowed and admitted or disallowed and rejected.

“(3.) In the event of the validity of the referendum being disputed, the Court of Disputed Returns may consider any ballot-papers which were reserved for the decision of the Commonwealth Electoral Officer for the State, but shall not order any recount of the whole or any part of the ballot-papers in connexion with the referendum unless it is satisfied that such recount is justified.”

16. Part VIII. of the Principal Act, including sections thirty-five and thirty-six, is repealed, and the following Part and sections are inserted in its stead :—

“PART VIII.—MISCELLANEOUS.

Return of
expenses in
connexion
with the
referendum.

“35.—(1.) Every trades union, registered or unregistered, organization, association, league, or body of persons, which has, or person who has, within three months before the date of taking the

vote at any referendum, in connexion with any referendum, expended any money or incurred any expense—

- (a) in support of the proposed law submitted to the electors at the referendum; or
- (b) in opposition to the proposed law submitted to the electors at the referendum,

shall in accordance with this section make a return of the money so expended or expense so incurred.

“(2.) Every trades union, registered or unregistered, organization, association, league, or body of persons, which has, and every person who has, within three months before the date of taking the vote at any referendum, in connexion with any referendum expended any money or incurred any expense in printing publishing or issuing advertisements or notices, or procuring the insertion in any newspaper of any advertisement article or report or matter, intended or calculated to affect the result of the referendum shall, in accordance with this section, make a return of the money so expended or expense so incurred.

“(3.) Where two or more referendums are being held on the same day the particulars as regards all the referendums may be included in one return.

“(4.) The return shall be in accordance with the prescribed form, and shall be signed and declared to before a justice of the peace by the president or chairman and the secretary or other officer of the trades union, registered or unregistered, organization, association, league, or body of persons or by the person concerned, and shall contain particulars of the money expended or expense incurred, and shall state whether such money was expended or expense incurred in support of or in opposition to the proposed law, and shall be filed with the Commonwealth Electoral Officer for the State in which the money was expended or expense incurred within twelve weeks after the result of the referendum has been declared.

“(5.) If any trades union, registered or unregistered, organization, association, league, or body of persons, satisfies the Chief Electoral Officer that it has in connexion with any referendum expended money or incurred expense in support of or opposition to the proposed law in all the States or in more than one State he may permit it to file with him, in lieu of any other return under this section, a return of the whole of the money expended or expense incurred by it in connexion with the referendum.

“(6.) If any trades union, registered or unregistered, organization, association, league, or body of persons, fails to comply with this section, every person who was an officer thereof at the time the money was expended or expense incurred shall be liable to a penalty of Fifty pounds.

“(7.) If any person fails to comply with this section he shall be liable to a penalty of Fifty pounds.

“(8.) Any person who wilfully makes any untrue statement in any return under this section shall be liable to a penalty of One hundred pounds or to imprisonment for six months.

“(9.) The Chief Electoral Officer may, by notice in writing in the prescribed form, require the president or chairman and the secretary or other officer of any trades union, registered or unregistered, organization, association, league, or body of persons, or any person, within such time, not being less than one month, as is specified in the notice, to make a return in accordance with this section of any money expended or expense incurred in respect of which a return is required to be made under sub-section (1.) or sub-section (2.) of this section and the president or chairman and secretary or other officer or person who neglects or refuses to comply with the notice shall be guilty of an offence and liable to a penalty not exceeding Five hundred pounds and not less than One hundred pounds or to imprisonment for any period not exceeding six months.

“(10.) Every return filed in pursuance of this section shall, subject to the regulations, be open to public inspection.

Return by
newspaper
proprietors.

“36.—(1.) The proprietor or publisher of a newspaper published in the Commonwealth shall, in accordance with this section, make or cause to be made a return setting out the amount of matter in connexion with any referendum inserted in his newspaper within three months before the date of taking the vote at the referendum in respect of which payment was or is to be made, the space occupied by such matter, the amount of money paid or owing to him in respect of such matter, and the names and addresses of the trades unions, registered or unregistered, organizations, associations, leagues, bodies of persons, or persons authorizing the insertion thereof.

Penalty (on proprietor): Five hundred pounds.

“(2.) In this section ‘matter’ means advertisements, articles, and other matter intended or calculated to affect the result of the referendum.

“(3.) Where two or more referendums are being held on the same day the particulars as regards all the referendums may be included in one return.

“(4.) The return shall be in accordance with the prescribed form, and shall be signed by the person making it, and shall be declared to before a justice of the peace, and shall be filed with the Commonwealth Electoral Officer for the State in which the newspaper is published within twelve weeks after the result of the referendum has been declared.

“(5.) Every return made in pursuance of this section shall, subject to the regulations, be open to public inspection.

Rates for
referendum
telegrams.

“37. Telegrams despatched after a referendum and containing a reference to the referendum, the names of Divisions and Sub-divisions, the number of votes cast in such Divisions and Sub-divisions for or against the proposed law, and the number of informal votes may, subject to the regulations, be transmitted on payment of the rates prescribed in the Second Part of the Second Schedule to the *Post and Telegraph Rates Act 1902-1910*.

Referendum
papers to be
post free.

“38.—(1.) Referendum papers provided for by this Act or the regulations may, subject to the postal regulations, be transmitted through the post free of charge.

“(2.) Referendum papers posted for transmission by post and properly addressed shall, in the absence of proof to the contrary, be deemed to have been duly received by the addressees thereof at the times when, in the ordinary course of post, they should have been so received.

“39. In all cases where it is impracticable to communicate any referendum matter by post without occasioning undue delay, it may be communicated by telegraphic advice, and that advice communicated in the ordinary course shall suffice to the same extent as if the matter telegraphed had been communicated by serving or forwarding the actual matter. Telegraphing matter.

“40. All ballot-papers, certified lists of voters, and declarations used at or in connexion with a referendum shall be preserved for a period of one year. Preservation ballot-papers, &c.

“41.—(1.) Form C in the Schedule may from time to time be altered by the regulations.

“(2.) If Form C is altered by the regulations any reference in this Act to that form shall be deemed to be a reference to that form as so altered.”

17. After Part VIII. of the Principal Act the following Part and sections are inserted :—

“PART IX.—REFERENDUM OFFENCES.

“42. The provisions of this Part of this Act shall be construed as being in addition to such of the provisions in Part XV. of the *Commonwealth Electoral Act 1902-1911* as are applicable to a referendum. Construction of Part.

“43. Whoever, after the issue of a writ for a referendum and before the votes have been taken in pursuance thereof, supplies to an elector any meat, drink, or entertainment, or horse or carriage hire, with a view to influence his vote in connexion with the referendum shall be guilty of an offence. Supply of meat drink, or entertainment, &c

Penalty : Two hundred pounds or imprisonment for one year.

“44. Whoever gives, confers, or procures, or promises, or offers to give or confer, or to procure or attempt to procure, any money, property, or benefit of any kind, to upon or for any elector or any other person— Bribery.

(a) in order to influence the elector in his vote in connexion with a referendum, or

(b) in order to induce the elector to refrain from voting at a referendum,

shall be guilty of an offence.

Penalty : Two hundred pounds or imprisonment for one year.

“45. Any elector who asks for, receives or obtains, or agrees or attempts to receive or obtain any money, property, or benefit of any kind, for himself or any other person upon the understanding Receipt of bribe by elector.

that his vote in connexion with any referendum shall be influenced thereby, or shall be given in any particular manner, or that he will refrain from voting at any referendum, shall be guilty of an offence.

Penalty : Two hundred pounds or imprisonment for one year.

Undue
influence.

“46. Whoever by fraud, or by unlawful threats, or intimidation of any kind—

(a) endeavours to influence any elector in his vote in connexion with a referendum, or

(b) endeavours to induce any elector not to vote at a referendum,

shall be guilty of an offence.

Penalty : Two hundred pounds or imprisonment for one year.

Advertisements
relating to
referendum.

“47.—(1.) Every advertisement, and every handbill or pamphlet, relating to a referendum and intended or calculated to affect the result thereof shall have the name and address of the person authorizing it at the end thereof, and every such advertisement (other than an advertisement in a newspaper), handbill, or pamphlet, if printed, shall in addition have printed thereon the name and place of business of the printer who printed it.

“(2.) Every person who prints or publishes or authorizes the printing or publication of any such advertisement, handbill, or pamphlet which does not comply with this section shall be guilty of an offence.

Penalty : One hundred pounds.

Misleading
advertisements,
&c.

“48.—(1.) Every person who—

(a) prints, publishes, or distributes any advertisement or document containing a representation of a ballot-paper, or any representation apparently intended to represent a ballot-paper, and having thereon any directions intended or likely to mislead or improperly interfere with an elector in or in relation to the casting of his vote at a referendum, or

(b) prints, publishes, or distributes any advertisement or document containing any untrue or incorrect statement intended or likely to mislead or improperly interfere with any elector in or in relation to the casting of his vote at a referendum,

shall be guilty of an offence.

Penalty : One hundred pounds.

“(2.) This section shall not prevent the printing, publishing, or distributing of any advertisement or document (not otherwise illegal) which contains instructions how to vote in favour of or against any proposed law submitted to the electors by a referendum, if those instructions are not intended or likely to mislead any elector in or in relation to the casting of his vote.

"49.—(1.) 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 shall be guilty of an offence. Misconduct at public meetings.

Penalty : Five pounds.

"(2.) This section applies to any lawful public meeting held in relation to a referendum between the date of the issue of the writ for the referendum and the date of the return of the writ."

SERVICE AND EXECUTION OF PROCESS.

No. 18 of 1912.

An Act to amend the *Service and Execution of Process Act 1901*, and to repeal the *Service and Execution of Process Act 1905*.

[Assented to 6th November, 1912.]

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows :—

1.—(1.) This Act may be cited as the *Service and Execution of Process Act 1912*. Short title and citation.

(2.) The *Service and Execution of Process Act 1901* is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *Service and Execution of Process Act 1901–1912*.

2. The *Service and Execution of Process Act 1905* is repealed. Repeal of Act No. 5 of 1905.

3. Section three of the Principal Act is amended by omitting from paragraph (b) the words " other mesne ". Definition of " writ of summons."

4. Section four of the Principal Act is amended by inserting after the words " issued out of " the words " or requiring the defendant to appear at ". Amendment of section 4.