

The Constitution Act Amendment (Electoral Procedures) Bill

No.

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By Authority F D Atkinson Government Printer Melbourne

LEGISLATIVE ASSEMBLY

Read 1° 19 August 1987

(Brought in by Mr McCutcheon and Mr Wilkes)

A BILL

to amend *The Constitution Act Amendment Act 1958* to reform electoral procedures, to amend the *Magistrates (Summary Proceedings) Act 1975* and the *Senate Elections Act 1958* and for other purposes.

The Constitution Act Amendment (Electoral Procedures) Act 1987

The Parliament of Victoria enacts as follows:

Purpose of Act.

1. The purpose of this Act is to—
 - (a) amend *The Constitution Act Amendment Act 1958* to reform electoral procedures; and
 - (b) amend the *Magistrates (Summary Proceedings) Act 1975* and the *Senate Elections Act 1958*.

Commencement.

2. This Act comes into operation on a day or days to be proclaimed.

10 Principal Act.

3. In this Act *The Constitution Act Amendment Act 1958* is called the Principal Act.

Principal Act
No. 6224.
Reprinted to
No. 10146.
Subsequently
amended by Nos.
10244,
16/1986,
59/1986 and
110/1986.

Definitions.

4. Section 3 (1) of the Principal Act is amended as follows:
- (a) After the definition of “Council” insert:
- “**Declaration vote**” means—
- (a) an absent vote; 5
- (b) an unenrolled vote;
- (c) the vote of an elector whose address is not shown on the roll; or
- (d) the vote of an elector whose name is marked on the roll as having already voted.’; 10
- (b) After the definition of “Electoral Commissioner” insert:
- “**Electoral matter**” means matter which is intended or likely to affect voting in an election.’;
- (c) After the definition of “Provisional enrolment” insert:
- “**Real place of living**” includes the place of living to which a person, when temporarily living elsewhere, has a fixed intention of returning for the purpose of continuing to live at that place.’; 15
- (d) The definition of “Registered officer” is repealed.
- (2) After section 3 (2) of the Principal Act insert: 20
- “(3) Without limiting the generality of the definition of “**electoral matter**” in sub-section (1), matter is to be taken to be intended or likely to affect voting in an election if it contains an express or implicit reference to, or comment on—
- (a) the election; 25
- (b) the Government, the Opposition, a previous Government or a previous Opposition of the State;
- (c) the Government, the Opposition, a previous Government or a previous Opposition of the Commonwealth or any other State or a Territory; 30
- (d) a member or a former member of the Parliament of Victoria, the Commonwealth, any other State or a Territory;
- (e) a political party, a branch or division of a political party or a candidate in the election; or
- (f) an issue submitted to, or otherwise before, the electors in connection with the election. 35
- (4) A reference in a provision of this Act that—
- (a) provides for the giving of a document to; or
- (b) confers a power or function on— 40
- the returning officer is to be taken to be a reference to the returning officer appointed for the election for the province or district to which the provision applies.”.

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Registered officer of a political party.

5. After section 3 of the Principal Act insert:

Registered officer of a political party.

5 “4. (1) Subject to sub-section (2), a reference in this Act to the registered officer of a registered political party is a reference to the person shown on the Register of Political Parties as the registered officer of that party.

10 (2) A reference in Divisions 4 to 13 and 16 to 21 of Part V to the registered officer of a registered political party includes a reference to a person for the time being nominated by the registered officer of a party as a deputy registered officer of the party for the purposes of this Act.

(3) A nomination under sub-section (2)—

- 15 (a) must be in writing, signed by the registered officer and lodged with the Electoral Commissioner; and
- (b) must specify the name and address of the person nominated and bear the signature of that person; and
- (c) may be revoked at any time by the registered officer by written notice lodged with the Electoral Commissioner.”

Application of Act.

20 6. Before the Heading to Part I. of the Principal Act insert:

Act to bind Crown.

“5. (1) This Act binds the Crown, not only in right of the State of Victoria but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

25 (2) Nothing in this Act renders the Crown liable to be prosecuted for an offence.”

Extraterritorial operation of Act.

“6. This Act extends to officers appointed for the purposes of this Act outside Victoria.”

30 **Registration of claims.**

7. (1) Section 118 of the Principal Act is amended as follows:

- (a) In sub-section (1B) after “its receipt by the Australian Electoral Officer for Victoria” insert “subject to section 119 (2A)”;
- 35 (b) In sub-section (1C) after “its receipt by the registrar” insert “subject to section 119 (2A)”.

(2) After section 119 (2) of the Principal Act insert:

“(2A) This sub-section applies during the period commencing on a public announcement that an election will be held or the issue of the writ or writs for the election, whichever is the earlier, and ending at 6 o’clock in the afternoon of the day on which the rolls for the election close. 5

(2B) At any time when sub-section (2A) applies, an electoral registrar may, with the concurrence of the Australian Electoral Officer for Victoria and in accordance with any directions given by the Commonwealth Electoral Commissioner, deal with a claim for enrolment or transfer of enrolment received by the electoral registrar or any other electoral registrar in Victoria. 10

(2C) Where a claim for enrolment or transfer of enrolment for a subdivision is dealt with by the electoral registrar for another subdivision, sub-section (1) applies as if the electoral registrar were the electoral registrar for the first-mentioned subdivision. 15

(2D) At any time when sub-section (2A) applies, the Australian Electoral Officer for Victoria may, in accordance with any directions given by the Commonwealth Electoral Commissioner, deal with a claim for enrolment or transfer of enrolment received by the Australian Electoral Officer for Victoria or any electoral registrar in Victoria. 20

(2E) If a claim for enrolment or transfer of enrolment is dealt with by the Australian Electoral Officer for Victoria, sub-section (1) applies as if the Australian Electoral Officer were the registrar for the subdivision for which the claim is made.” 25

Certified lists.

8. (1) After section 131 (1) of the Principal Act insert:

“(1A) Instead of complying with sub-section (1) (a), an electoral registrar may in relation to the roll last printed that included the subdivision for which the electoral registrar was appointed prepare— 30

- (a) a certified list of names deleted from that roll; and
- (b) a certified list of names added to that roll.”

(2) In section 81 of the Principal Act after “rolls” insert “and the preparation of certified lists”.

Appointment of returning officers and postal voting officers. 35

9. (1) In section 145 of the Principal Act for “Governor in Council” (where twice occurring) substitute “Electoral Commissioner”.

(2) In section 146 of the Principal Act for “Governor” substitute “Electoral Commissioner”.

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(3) For section 147A (1) of the Principal Act substitute:

“(1) If the Electoral Commissioner considers it appropriate to do so, the Electoral Commissioner may appoint—

- 5 (a) a fit person to be postal voting officer for the United Kingdom of Great Britain and Northern Ireland; and
(b) as many fit persons as the Electoral Commissioner considers appropriate to be postal voting officers in any other State or any Territory or Country.”

10 (4) In sections 147A (2), 109 (1) and 201C (1) of the Principal Act for “Governor in Council” substitute “Electoral Commissioner”.

(5) In sections 147B, 157 (3) (b) and 157A (2) of the Principal Act for “Governor” substitute “Electoral Commissioner”.

(6) In sections 109 (4) and 109 (7) of the Principal Act for “Minister” substitute “Electoral Commissioner”.

15 **Appointment of polling places.**

10. For section 148 of the Principal Act substitute:

“148. (1) The Electoral Commissioner may, by notice published in the *Government Gazette*—

- 20 (a) appoint, by name, as many polling places for each province and district as the Electoral Commissioner considers necessary; and
(b) declare polling places appointed under paragraph (a) in respect of a province or district to be polling places for a specified subdivision; and
25 (c) abolish any polling place.

(2) Except in the case of an emergency of which the Electoral Commissioner is the sole judge, a polling place for a province or district cannot be appointed or abolished during the period commencing on the day of nomination for any election for a province or district and ending on the day of the return of the writ for the election.
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(3) Despite sub-section (2), the Electoral Commissioner may, in respect of any election other than a general or periodical election, by notice published in the *Government Gazette* between the day of nomination and the day of polling appoint a polling place within the city of Melbourne to be a polling place for that election for the subdivision of the province or district specified in the notice and this Act and the regulations apply to the polling place as if it was situated in the subdivision and the polling place is to be administered accordingly.
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(4) If it is practicable to do so, the Electoral Commissioner must, on at least one occasion after the issue of a writ relating, in whole or in part, to the taking of a poll in a province or district but before the date
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fixed for the polling, publish in a newspaper circulating in that province or district a notice—

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

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Repeal of registration of candidates' provisions.

11. Division 1B of Part V of the Principal Act is repealed.

Nomination of Candidates.

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12. (1) For section 159 (1) of the Principal Act substitute:

“(1) A person may become a candidate at any election for the Council or the Assembly by nomination in the following manner:

- (a) After the issue of the writ and before noon on the day of nomination there must be delivered to the returning officer a nomination form in the appropriate prescribed form which—
 - (i) specifies the name, place of residence and occupation of the candidate; and
 - (ii) is signed by not less than 6 persons entitled to vote at the election for which the candidate is nominated or by the registered officer of the registered political party by which the candidate has been endorsed for that election;
- (b) There must be delivered with the nomination form the sum of \$250 in legal tender or in a banker's cheque.”

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- (2) In section 159 (1B) of the Principal Act after paragraph (b) insert:

“; or

- (c) a commonly used other name specific to the candidate by which the candidate is usually identified.”

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- (3) After section 159 (1B) of the Principal Act insert:

“(1BA) A name cannot be specified on a ballot-paper under subsection (1B) (c) unless the candidate produces evidence to the satisfaction of the Electoral Commissioner that the proposed name is a commonly used other name specific to the candidate by which the candidate is usually identified.”

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- (4) The Seventh Schedule to the Principal Act is repealed.

Political party endorsement.

13. (1) After section 159A of the Principal Act insert:

Notification of party endorsement.

5 “159B. (1) The registered officer of a registered political party may request that the name, or the registered abbreviation or initials, of that party be printed on the ballot-papers for an election adjacent to the name of a candidate who has been endorsed by that party.

(2) A request under sub-section (1) must—

- 10 (a) be in writing signed by the registered officer; and
(b) be given with the nomination of the candidate or to the Electoral Commissioner before the close of nominations.

(3) In this section “**registered abbreviation or initials**” has the same meaning as in section 165B.”.

Verification of party endorsement.

15 “159C. (1) For the purposes of this Act, a person is to be taken to have been endorsed as a candidate in an election by a registered political party if—

- 20 (a) the candidate is nominated by the registered officer of the party; or
(b) the name of the candidate is included in a statement, signed by the registered officer of the party specifying the names of any candidates endorsed by the party in the election and lodged with the Electoral Commissioner before the close of nominations for the election; or
25 (c) after making any inquiries that the Electoral Commissioner thinks appropriate of the registered officer of the party, the Electoral Commissioner is satisfied that the candidate is so endorsed.

30 (2) If a person is endorsed as a candidate in an election by 2 or more registered political parties, the person is for the purposes of this Part to be taken to have been endorsed—

- (a) if the person is nominated by the registered officer of one of the parties by that party; or
35 (b) if a request is made under section 159B in respect of the person by the registered officer of one of the parties, by that party; or
(c) by the party specified by the person in a written notice given to the Electoral Commissioner.”

Provisions relating to requests.

“159D. (1) A request required under this Part may be—

(a) written on the same paper as the nomination of the candidate to whom the request relates; and

(b) if 2 or more requests are to be made by the same person, 5
 combined with the other requests.

(2) A request under this Part is not ineffective because of any formal defect or error in the request if the requirements of this Act have been substantially complied with.”

(2) For section 165B of the Principal Act substitute: 10

Form of party name on ballot-papers.

“165B. (1) In this section, ‘**registered abbreviation or initials**’, in relation to the name of a registered political party, means the abbreviation or initials (if any) of the name of the party entered in the Register of Political Parties. 15

(2) Subject to sub-section (3), if a provision of this Part requires the name of a registered political party to be printed on ballot-papers for use in an election, the name to be so printed is the name of the party entered in the Register of Political Parties.

(3) If the registered officer of a registered political party has requested under section 159B that the registered abbreviation or initials of the name of that party be printed on the ballot-papers for an election adjacent to the name of a candidate, a provision referred to in sub-section (2) applies as if a reference to the name of a registered political party were a reference to the registered abbreviation or initials of that name. 20 25

(4) The names of registered political parties, or abbreviations or initials of such names, printed adjacent to the names of candidates on ballot-papers for use in an election must be printed in capital letters in type that is uniform in size and style for all the names of those parties or abbreviations or initials of those names.” 30

Printing of political party names on ballot-papers.

“165C. If a person—

(a) has been endorsed as a candidate in an election by a registered political party; and 35

(b) a request has been made in respect of the candidate under section 159B—

the name of that party must be printed adjacent to the name of the candidate on ballot-papers for use in the election.”

(3) In sections 187 (4) (b) and 227 (4) of the Principal Act for “section 165B” substitute “section 165C”. 40

(4) In section 290A (d) of the Principal Act for “section 165B” substitute “sections 165B and 165C”.

Ballot boxes.

5 14. In section 168 (2) (b) of the Principal Act for “having a lock and key” substitute “which is securely fastened”.

Questions relating to place of residence.

15. (1) Sections 103 (3), 179 (2) and 179 (4) (b) of the Principal Act are repealed.

(2) Sections 187 (2) and 187 (3) (b) of the Principal Act are repealed.

10 **Appointment of scrutineers.**

16. For section 173 (2) of the Principal Act substitute:

“(2) An appointment of a scrutineer for the purposes of this Act must be—

- 15 (a) by notice in writing or telegram specifying the name and address of the scrutineer and signed by the candidate; and
- (b) produced for inspection on request by a returning officer or deputy returning officer.”.

Declaration votes.

17. The Principal Act is amended as follows:

- 20 (a) In section 185A (1) (a) for “of address in the prescribed form” substitute “in the prescribed form”;
- (b) In section 185A (1) (b) after “declaration” insert “in the prescribed form”;
- 25 (c) In section 185A (1) (c) for “signs a postal vote certificate” substitute “makes a declaration in the prescribed form”;
- (d) In section 185A (2) (b) for “postal vote certificate” substitute “declaration”;
- (e) In section 185A (6) for “postal vote certificate” substitute “declaration”;
- 30 (f) In section 185A (7) omit “or certificate”;
- (g) In section 220 (1) for “postal vote certificate” substitute “declaration in the prescribed form”;
- (h) In section 220 (2) for “form of the Twelfth Schedule” substitute “prescribed form”;
- 35 (i) In sections 220 (2) (a) and 220 (4) (a) (i) for “postal vote certificate” substitute “declaration”;
- (j) In section 220 (4) (a), sub-paragraph (ii) is repealed;
- (k) In section 221 (14) for “postal vote certificate” substitute “declaration”;

- (l) In sections 223, 224, 225, 226, 227, 228 (2), 229, 230, 231, 232 (2), 233, 234 (1), 234 (2), 234 (6), 235, 237 and 238A for “postal vote certificate” (wherever occurring) substitute “declaration”;
- (m) In sections 225 (1) and 225 (2) for “a certificate” substitute “a declaration”; 5
- (n) In section 225 (5) for “form of the Fourteenth Schedule” substitute “prescribed form”;
- (o) In section 225 (6) for “form of Part A of the Thirteenth Schedule” substitute “prescribed form”; 10
- (p) In section 225 (7) for “form of Part B of the Thirteenth Schedule” substitute “prescribed form”;
- (q) In sections 225 (9) and 232 (2) for “or certificate” (wherever occurring) substitute “or declaration”; 15
- (r) In sections 227 (1), 228 (1) and 234 (1) for “postal vote certificates” (wherever occurring) substitute “declarations”;
- (s) In section 233 (2) for “in the form of the Fifteenth Schedule” substitute “in the prescribed form”;
- (t) In section 234 (1) for “the certificate” (wherever occurring) substitute “the declaration”; 20
- (u) In section 236 for “a postal vote certificate in the form of Part B of the Thirteenth Schedule” substitute “a declaration in the form prescribed for the purposes of section 225 (7)”;
- (v) In section 237 (6) (c) for “in the form of Part B of the Thirteenth Schedule” substitute “in the form prescribed for the purposes of section 225 (7)”;
- (w) The Twelfth, Thirteenth, Fourteenth and Fifteenth Schedules are repealed. 25
- Time limit on receipt of absent votes.** 30
18. In section 187 (5) (c) of the Principal Act after “enrolled” insert “so as to reach the returning officer before the end of the period of 13 days immediately succeeding the close of the poll”.
- Voting at simultaneous election.**
19. The Principal Act is amended as follows: 35
- (a) In section 187A after “187A.” insert “(1)”;
- (b) In section 187A (1) (b) after “(b)” insert “subject to sub-section (2),”;
- (c) At the end of section 187A insert— 40
- “(2) If the returning officer is dealing with an envelope under section 187 that purports to contain a ballot-paper for the election for the Assembly and a ballot-paper for the

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corresponding election for the Council and the returning officer is satisfied that—

(a) the voter, at the time of voting, was not entitled to be enrolled on the roll for the relevant district; and

(b) the voter, at the time of voting, was enrolled on the roll for another district included in the relevant province; and

(c) if the voter were enrolled for the relevant district, the ballot-papers contained in the envelope would be accepted for further scrutiny under section 187—

the returning officer must comply with sub-section (3).

(3) The returning officer must open the envelope and withdraw the ballot-papers and, without as far as practicable, inspecting or unfolding the ballot-papers or allowing any other person to do so—

(a) deal with the ballot-paper for the Council election in the manner prescribed in connection with the scrutiny of absent voters' ballot-papers; and

(b) disallow the ballot-paper for the Assembly election.”;

(d) In section 238A after “238A.” insert “(1)”;

(e) At the end of section 238A insert:

“(2) Sub-sections (2) and (3) of section 187A apply in respect of the scrutiny of votes received by the returning officer under this section.”.

25 Tied elections.

20. The Principal Act is amended as follows:

(a) In section 207 (e) omit “(including the casting vote of the returning officer if necessary)”;

(b) Section 207 (f) is repealed;

(c) In section 208 (e) omit “(including the casting vote of the returning officer if necessary)”;

(d) In section 208 (g) omit “(including the casting vote of the returning officer if necessary)” (where twice occurring);

(e) In section 208 (h) for the words beginning “and if” and ending at the end of the section insert “but if on the final count two candidates have received an equal number of votes section 208B applies.”.

(f) After section 208A insert:

Determination of tied election.

“208B. If on the final count two or more candidates have an equal number of votes the following provisions apply:

(a) The returning officer must declare that the election is tied;

- (b) Within 14 days of the declaration that the election is tied a candidate who has the same number of votes as another candidate at the election may petition the Court of Disputed Returns under Division 22;
- (c) If at the expiry of 14 days after the declaration that the election is tied the Court of Disputed Returns has not been petitioned, the election is by force of this section declared absolutely void and a new election must be held.” 5

Preference distributions.

- 21. (1) Section 208 of the Principal Act is amended as follows: 10
 - (a) After “208.” insert “(1)”;
 - (b) At the end of the section insert:
 - “(2) If the Electoral Commissioner so directs in writing, the procedure referred to in sub-section (1) (f) is to include a scrutiny of preferences (other than first preferences) on such of the ballot-papers as is required by the direction conducted in the manner specified in the direction.”; 15
 - (c) In section 209A after “those directions” insert “and may for that purpose open any sealed parcels containing used ballot-papers”. 20

Postal voting officers.

- 22. For section 219 of the Principal Act substitute:

Postal voting officers.

- “219. (1) In this Division, a reference to a “**postal voting officer**” in relation to an election other than a by-election is a reference to— 25
 - (a) any returning officer for a province or district other than the province or district for which an applicant for a declaration and postal ballot-paper claims to be enrolled; and
 - (b) any postal voting officer appointed under section 147A.
- (2) In this Division, a reference to a “**postal voting officer**” in relation to a by-election is a reference to — 30
 - (a) such officers referred to in sub-section (1) (a) as are appointed for the purposes of the by-election by the Electoral Commissioner; and
 - (b) any postal voting officer appointed under section 147A. 35
- (3) In this Division, a reference to a “**substitute postal voting officer**” is a reference to a substitute of a postal voting officer referred to in sub-section (1) or (2) as the case may be.”

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Postal voting.

23. (1) Section 225 of the Principal Act is amended as follows:

(a) In sub-section (1) for “whose name is” substitute “who claims to be enrolled”;

5 (b) In sub-section (5) omit “or that the applicant is entitled to vote by post”;

(c) In sub-section (8) omit all words beginning “if the returning officer” and ending at the end of the sub-section.

(2) In section 230 (3) of the Principal Act for “10” substitute “13”.

10 (3) In section 234 (1) of the Principal Act for “10” (where twice occurring) substitute “13”.

Electoral matter.

24. The Principal Act is amended as follows:

15 (a) In section 267A (5) for “that is intended or calculated to affect the result of an election” substitute “that contains electoral matter”;

(b) Section 267D (2) is repealed;

20 (c) In section 267E (1) for “commenting on any candidate, political party or the issues being submitted to the electors” substitute “containing electoral matter”;

(d) For section 267E (2) (b) substitute:

“(b) an article that consists solely of a report of a meeting and does not contain electoral matter, other than comment made by a speaker at the meeting.”.

25 **Matter broadcast or televised.**

25. After section 267F of the Principal Act insert:

Matter broadcast or televised.

30 “267G. (1) A person must not, during the relevant period in relation to an election under this Act, broadcast or televise, or cause, permit or authorise to be broadcast or televised, from a broadcasting station or a television station any announcement, statement or other matter commenting upon any candidate, political party or the issues presented to the electors unless that announcement, statement or other matter includes the true name and address or names and addresses of the author or authors thereof.

35 Penalty:

(a) If the offender is a natural person—\$500; or

(b) If the offender is a body corporate—\$2500.

(2) Where any announcement, statement or other matter is broadcast or televised in contravention of sub-section (1), the person who supplied the announcement, statement or other matter to the broadcasting station for broadcasting or to the television station for televising, as the case may be, is unless the person proves that the true name and address or names and addresses of the author or authors were included in the announcement, statement or other matter so supplied, guilty of an offence. 5

Penalty:

(a) If the offender is a natural person—\$500; or 10

(b) If the offender is a body corporate—\$2500.

(3) This section does not apply to the inclusion in a summary of news of a report of a meeting which contains no comment (other than comment made by a speaker at the meeting) upon any candidate, political party or the issues being submitted to the electors. 15

(4) In this section—

‘Address’ does not include a post-office box.

‘Broadcasting station’ means a broadcasting station (including a broadcasting translator station) within the meaning of the *Broadcasting and Television Act 1942* of the Commonwealth as amended and in force for the time being or the *Australian Broadcasting Corporation Act 1983* of the Commonwealth as amended and in force for the time being that is operating as authorised by or under either of those Acts. 20

‘Television station’ means a television station (including a television repeater station or a television translator station) within the meaning of the *Broadcasting and Television Act 1942* of the Commonwealth as amended and in force for the time being or the *Australian Broadcasting Corporation Act 1983* of the Commonwealth as amended and in force for the time being that is operating as authorised by or under either of those Acts.”. 25
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Statute Law Revision.

26. The Principal Act is amended as follows:

(a) In section 1 omit all words commencing with “and is divided into Parts and Divisions as follows:” and ending with the end of the section; 35

(b) In section 103 (5) (c) for “section 39A” substitute “section 94”;

(c) In section 103 (6) (g) for “section 39B” substitute “section 95”;

(d) In section 103 (7) (c) for “section 39C” (where twice occurring) substitute “section 96”. 40

Alternative Procedure Summons.

27. In Schedule Two of the *Magistrates (Summary Proceedings) Act 1975* after paragraph (o) insert:

5 “(p) Offences against section 274 of *The Constitution Act Amendment Act 1958*.”.

Senate Elections Act 1958.

28. The *Senate Elections Act 1958* is amended as follows:

- 10 (a) In section 4 (3) for “ninety” substitute “100”;
- (b) In section 10 omit “Within twenty days before or after the day appointed for the election”.

