

REFERENDUMS LEGISLATION AMENDMENT ACT

No. 101 of 1990

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Queensland



ANNO TRICESIMO NONO

ELIZABETHAE SECUNDAE REGINAE

No. 101 of 1990

An Act to amend certain Acts in relation to the conduct of referendums, and for other purposes

[ASSENTED TO 12TH DECEMBER, 1990]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART 1—PRELIMINARY

1. **Short title.** This Act may be cited as the *Referendums Legislation Amendment Act 1990*.

PART 2—AMENDMENT OF THE REFERENDUMS ACT 1989

2. **Citation.** (1) In this Part, the *Referendums Act 1989* is referred to as the Principal Act.

(2) The Principal Act, as amended by this Part, may be cited as the *Referendums Act 1989-1990*.

3. **Amendment of s.1.2. Definitions.** Section 1.2 of the Principal Act is amended by inserting, before the definition “principal electoral officer”, the following definition:—

“prescribed form” means—

(a) a form prescribed by this Act or the regulations;

or

(b) a form approved by the Chief Returning Officer;”.

4. **Amendment of s.4.2. Provision of ballot boxes, etc.** Section 4.2 of the Principal Act is amended by—

(a) in subsection (3), omitting the words “capable of being locked by means of a key;”;

(b) omitting subsection (4).

5. **Amendment of s.4.13. Ballot-box to be opened for inspection.** Section 4.13 of the Principal Act is amended by omitting the words “locked and” and the words “, and must stand upon the table at which the presiding officer presides”.

6. **Amendment of s.4.15. Questions to voters.** Section 4.15 of the Principal Act is amended, in subsection (1), by omitting the words “for this electoral district” and the words “in this electoral district or any other electoral district”.

7. **Amendment of s.4.21. Mode of voting.** Section 4.21 of the Principal Act is amended by—

(a) in subsection (1), omitting the words “The elector” and substituting the words “Subject to subsection (1A), the elector”;

(b) after subsection (1), inserting the following subsection:—

“(1A) If—

(a) the elector—

(i) writes the word “YES” in the square opposite the word “YES” on the ballot-paper;

or

(ii) otherwise marks the ballot-paper in a way that clearly and unambiguously indicates that the voter approves of the Bill or the Question;

the elector is taken to have marked the ballot-paper as mentioned in subparagraph (1) (a) (i);

and

(b) the elector—

(i) writes the word “NO” in the square opposite the word “NO” on the ballot-paper;

or

(ii) otherwise marks the ballot-paper in a way that clearly and unambiguously indicates that the voter does not approve of the Bill or the Question;

the elector is taken to have marked the ballot-paper as mentioned in subparagraph (1) (a) (ii).”.

8. Amendment of s.4.28. Electoral visitor voting in cases of illness, etc. Section 4.28 of the Principal Act is amended by—

(a) in subsection (8), omitting from paragraph (b) the word “, lock” and the words “keep the key”;

(b) in subsection (26), omitting the words “locked and”.

9. Amendment of s.4.34. Voting compulsory. Section 4.34 of the Principal Act is amended by, in subsection (3), omitting the words “in more than one district” and substituting the words “more than once”.

10. Amendment of s.5.6. Causes for rejection and circumstances of non rejection of ballot-paper. Section 5.6 of the Principal Act is amended by, in subsection (1), omitting paragraph (a) and substituting the following paragraph:—

“(a) has not been marked as mentioned in subparagraph 4.21 (1) (a) (i) or (ii); or”.

11. New Part. The Principal Act is amended by inserting after section 7.3 the following Part:

“PART VIII—POLLING IN CONJUNCTION WITH 1991
TRIENNIAL MUNICIPAL ELECTIONS

“8.1 Interpretation. In this Part, unless the contrary intention appears—

“City of Brisbane Act” means the *City of Brisbane Act 1924-1990*, and includes the provisions of the

Elections Act that are applied by subsection 17 (6) of that Act;

“City of Brisbane area” means the Area for the time being comprised within the City of Brisbane, and includes a part of that Area;

“Community Services (Aborigines) Act” means the *Community Services (Aborigines) Act 1984-1990*, and includes—

(a) the regulations under that Act;
and

(b) the provisions of the Local Government Act that are applied by section 18 of that Act;

“Community Services (Aborigines) area” means an area, or a part of an area, for which an Aboriginal Council is established under the Community Services (Aborigines) Act;

“Community Services Act” means the Community Services (Aborigines) Act or the Community Services (Torres Strait) Act;

“Community Services area” means a Community Services (Aborigines) area or a Community Services (Torres Strait) area;

“Community Services (Torres Strait) Act” means the *Community Services (Torres Strait) Act 1984-1990*, and includes—

(a) the regulations under that Act;
and

(b) the provisions of the Local Government Act that are applied by section 18 of that Act or the regulations under that Act;

“Community Services (Torres Strait) area” means an area, or a part of an area, for which an Island Council is established under the Community Services (Torres Strait) Act;

“Elections Act” means the *Elections Act 1983-1990*, and includes the regulations under that Act;

“Local Government Act” means the *Local Government Act 1936-1990*, and includes the regulations under that Act;

“local government area” means an Area within the meaning of the Local Government Act, and includes a part of such an Area;

“modifications” includes additions, omissions and substitutions;

“relevant Community Services Act” means—

- (a) in relation to a Community Services (Aborigines) area—the Community Services (Aborigines) Act; and
- (b) in relation to a Community Services (Torres Strait) area—the Community Services (Torres Strait) Act;

“Town Clerk” has the same meaning as in the City of Brisbane Act.

“8.2 Application of Part. This Part applies only in relation to the referendum on the *Constitution (Duration of Legislative Assembly) Amendment Bill 1990*.

“8.3 Polling under Local Government Act. Subject to the regulations—

- (a) each person who is a returning officer, presiding officer or poll clerk under the Local Government Act for a local government area is, by force of this section, appointed respectively to be a returning officer, presiding officer or poll clerk under this Act for the area; and
- (b) the Chief Returning Officer is to compile, for each local government area, a roll of electors qualified under the Elections Act to vote for the election of members of the Legislative Assembly and that roll is to be—
 - (i) the roll for the area for the purposes of this Act; and
 - (ii) the voters’ roll for the area for the purposes of the Local Government Act; and
- (c) the Local Government Act and the Elections Act do not apply in relation to the compilation of the roll of electors; and
- (d) each polling-place under the Local Government Act for a local government area is, by force of this section, appointed a polling booth under this Act for the area; and
- (e) subject to paragraph (g), the vote for the referendum for a local government area is to be taken in accordance with the Local Government Act and not in accordance with this Act; and
- (f) without limiting paragraph (e), the Local Government Act applies (with all necessary changes), and

subsections 4.1 (2) and (3) and 4.4 (1) and (3) and sections 4.3, 4.5 to 4.9 (inclusive), 4.11, 4.25 and 4.27 to 4.38 (inclusive) of this Act do not apply, to the taking of the vote for the referendum for the area, but this Act otherwise applies to the conduct of the referendum for the area;

and

(g) subject to paragraphs (i) and (j), sections 4.10, 4.12 to 4.24 (inclusive) and 4.26 of this Act apply to the taking of the vote for the referendum for the area;

and

(h) in the application of the provisions of this Act that apply to the taking of the vote for the referendum for the area or otherwise apply to the conduct of the referendum for the area, a reference to an electoral district or district is a reference to the area and all necessary consequential changes to this Act are taken to be made;

and

(i) section 4.24 applies as if—

(i) subsection (2) were amended by:

(A) omitting paragraph (a);

and

(B) in paragraph (e), omitting the words “for the electoral district for which you claim to vote”;

and

(ii) subsection (10) were omitted and the following subsections were substituted:—

“(10) When the returning officer for the area has received the absent vote envelopes, advice notes and form of record from each presiding officer for the area who has permitted votes under this section, the returning officer must—

(a) verify the number of votes permitted by each presiding officer;

and

(b) enclose the envelopes, together with notifications in the prescribed form, in an outer envelope and securely fasten the envelope;

and

(c) send the envelope to the Chief Returning Officer.

“(10A) The Chief Returning Officer must, without unfastening the enclosed envelopes, forward them to the appropriate returning officers, together with notifications in the prescribed form.”;

and

- (j) section 4.26 applies as if subsections (7) and (8) were omitted and the following subsections were substituted:—

“(7) The officer must make, in the prescribed form, a record of the full name and address of each voter permitted by the officer to vote under this section.

“(8) As soon as practicable after 6p.m. (local time in the city in question) on the day immediately before polling day, the officer must—

- (a) enclose the envelopes, together with the records made under subsection (7), in an outer envelope, endorse the envelope “Record of (name of city) Voters” and securely fasten the envelope;

and

- (b) send the envelope to the Chief Returning Officer.

“(8A) The Chief Returning Officer must, without unfastening the enclosed envelopes, send them to the appropriate returning officers, together with the records made under subsection (7).”;

and

- (k) the regulations may prescribe modifications to this Act, the Local Government Act or any other Act for the purposes of the taking of the vote for the referendum, and otherwise conducting the referendum, in accordance with this section.

“8.4 Polling under City of Brisbane Act. Subject to the regulations—

- (a) each person who is a returning officer, presiding officer or poll clerk under the City of Brisbane Act for a City of Brisbane area is, by force of this section, appointed to be respectively a returning officer, presiding officer or poll clerk under this Act for the area;

and

- (b) the Town Clerk is the Chief Returning Officer for the purposes of the City of Brisbane Act, but not for the purposes of this Act;

and

- (c) the Chief Returning Officer is to compile, for each electoral ward of the City of Brisbane, a roll of electors qualified under the Elections Act to vote for the election of members of the Legislative Assembly and that roll is to be—

- (i) the roll for the ward for the purposes of this Act;

and

- (ii) the electoral roll for the ward for the purposes of the City of Brisbane Act;
and
- (d) the City of Brisbane Act and the Elections Act do not apply in relation to the compilation of the roll of electors;
and
- (e) subject to paragraph (g), the vote for the referendum for the City of Brisbane area is to be taken in accordance with the City of Brisbane Act and not in accordance with this Act;
and
- (f) without limiting paragraph (e), the City of Brisbane Act applies (with all necessary changes), and subsections 4.1 (2) and (3) and 4.4 (1) and (3) and sections 4.3, 4.5 to 4.9 (inclusive), 4.11, 4.25 and 4.27 to 4.38 (inclusive) of this Act do not apply, to the taking of the vote for the referendum for the area, but this Act otherwise applies to the conduct of the referendum for the area;
and
- (g) subject to paragraphs (i) and (j), sections 4.10, 4.12 to 4.24 (inclusive) and 4.26 of this Act apply to the taking of the vote for the referendum for the area;
and
- (h) in the application of the provisions of this Act that apply to the taking of the vote for the referendum for the area or otherwise apply to the conduct of the referendum for the area, a reference to an electoral district or district is a reference to the area and all necessary consequential changes to this Act are taken to be made;
and
- (i) section 4.24 applies as if—
 - (i) subsection (2) were amended by:
 - (A) omitting paragraph (a);
and
 - (B) in paragraph (e), omitting the words “for the electoral district for which you claim to vote”;
and
 - (ii) subsection (10) were omitted and the following subsections were substituted:—
 - “(10) When the returning officer for a City of Brisbane area has received the absent vote envelopes, advice notes and form of record from

each presiding officer for the area who has permitted votes under this section, the returning officer must—

(a) verify the number of votes permitted by each presiding officer;

and

(b) enclose the envelopes, together with notifications in the prescribed form, in an outer envelope and securely fasten the envelope;

and

(c) send the envelope to the Chief Returning Officer.

“(10A) The Chief Returning Officer must, without unfastening the enclosed envelopes, forward them to the appropriate returning officers, together with notifications in the prescribed form.”;

and

(j) section 4.26 applies as if subsections (7) and (8) were omitted and the following subsections were substituted:—

“(7) The officer must make, in the prescribed form, a record of the full name and address of each voter permitted by the officer to vote under this section.

“(8) As soon as practicable after 6p.m. (local time in the city in question) on the day immediately before polling day, the officer must—

(a) enclose the envelopes, together with the records made under subsection (7), in an outer envelope, endorse the envelope “Record of (name of city) Voters” and securely fasten the envelope;

and

(b) send the envelope to the Chief Returning Officer.

“(8A) The Chief Returning Officer must, without unfastening the enclosed envelopes, send them to the appropriate returning officers, together with the records made under subsection (7).”;

and

(k) the regulations may prescribe modifications to this Act, the Elections Act or any other Act for the purposes of the taking of the vote for the referendum, and otherwise conducting the referendum, in accordance with this section.

“8.5 Polling under Community Services Acts. Subject to the regulations—

(a) each person who is a returning officer, presiding officer or poll clerk under a Community Services Act

for a Community Services area is, by force of this section, appointed to be respectively a returning officer, presiding officer or poll clerk under this Act for the area;

and

- (b) the Chief Returning Officer is to compile, for each Community Services area, a roll of electors qualified under the Elections Act to vote for the election of members of the Legislative Assembly and that roll is to be—

(i) the roll for the area for the purposes of this Act;
and

(ii) the voters' roll for the area for the purposes of the relevant Community Services Act;

and

- (c) the relevant Community Services Act and the Local Government Act do not apply in relation to the compilation of the roll of electors;

and

- (d) each polling-place under the relevant Community Services Act for a Community Services area is, by force of this section, appointed a polling booth under this Act for the area;

and

- (e) subject to paragraph (g), the vote for the referendum for a Community Services area is to be taken in accordance with the relevant Community Services Act and not in accordance with this Act;

and

- (f) without limiting paragraph (e), the relevant Community Services Act applies (with all necessary changes), and subsections 4.1 (2) and (3) and 4.4 (1) and (3) and sections 4.3, 4.5 to 4.9 (inclusive), 4.11, 4.25 and 4.27 to 4.38 (inclusive) of this Act do not apply, to the taking of the vote for the referendum for the area, but this Act otherwise applies to the conduct of the referendum for the area;

and

- (g) subject to paragraphs (i) and (j), sections 4.10, 4.12 to 4.24 (inclusive) and 4.26 of this Act apply to the taking of the vote for the referendum for the area;

and

- (h) in the application of the provisions of this Act that apply to the taking of the vote for the referendum for the area or otherwise apply to the conduct of the referendum for the area, a reference to an electoral

district or district is a reference to the area and all necessary consequential changes to this Act are taken to be made;

and

(i) section 4.24 applies as if—

(i) subsection (2) were amended by:

(A) omitting paragraph (a);

and

(B) in paragraph (e), omitting the words “for the electoral district for which you claim to vote”;

and

(ii) subsection (10) were omitted and the following subsections were substituted:—

“(10) When the returning officer for the area has received the absent vote envelopes, advice notes and form of record from each presiding officer for the area who has permitted votes under this section, the returning officer must—

(a) verify the number of votes permitted by each presiding officer;

and

(b) enclose the envelopes, together with notifications in the prescribed form, in an outer envelope and securely fasten the envelope;

and

(c) send the envelope to the Chief Returning Officer.

“(10A) The Chief Returning Officer must, without unfastening the enclosed envelopes, send them to the appropriate returning officers, together with notifications in the prescribed form.”;

and

(j) section 4.26 applies as if subsections (7) and (8) were omitted and the following subsections were substituted:—

“(7) The officer must make, in the prescribed form, a record of the full name and address of each voter permitted by the officer to vote under this section.

“(8) As soon as practicable after 6p.m. (local time in the city in question) on the day immediately before polling day, the officer must—

(a) enclose the envelopes, together with the records made under subsection (7), in an outer envelope, endorse the envelope “Record of (name of city) Voters” and securely fasten the envelope;

and

(b) send the envelope to the Chief Returning Officer.

“(8A) The Chief Returning Officer must, without unfastening the enclosed envelopes, send them to the appropriate returning officers, together with the records made under subsection (7).”;

and

(k) the regulations may prescribe modifications to this Act, a Community Services Act or any other Act for the purposes of the taking of the vote for the referendum, and otherwise conducting the referendum, in accordance with this section.

“8.6 Polling for other areas of State. Subject to the regulations—

(a) the Chief Returning Officer is to compile, for the areas of the State in relation to which sections 8.3 to 8.5 (inclusive) do not apply, a roll of electors qualified under the Elections Act to vote for the election of members of the Legislative Assembly and that roll is to be the roll for the areas for the purposes of this Act;

and

(b) this Act (apart from this Part) and the Elections Act do not apply in relation to the compilation of the roll of electors;

and

(c) in the application of the provisions of this Act to the taking of the vote for the referendum for the areas and otherwise to the conduct of the referendum for the areas, a reference to an electoral district or district is a reference to those areas taken as a whole and all necessary consequential changes to this Act are taken to be made;

and

(d) section 4.24 applies as if—

(i) subsection (2) were amended by:

(A) omitting paragraph (a);

and

(B) in paragraph (e), omitting the words “for the electoral district for which you claim to vote”;

and

(ii) subsection (10) were omitted and the following subsections substituted:—

“(10) When the returning officer for an area in relation to which section 8.6 applies has received the

absent vote envelopes, advice notes and form of record from each presiding officer for the area who has permitted votes under this section, the returning officer must—

- (a) verify the number of votes permitted by each presiding officer;
and
- (b) enclose the envelopes, together with the notifications in the prescribed form, in an outer envelope and securely fasten the envelope;
and
- (c) send the envelope to the Chief Returning Officer.
“(10A) The Chief Returning Officer must, without unfastening the enclosed envelopes, send them to the appropriate returning officers, together with notifications in the prescribed form.”;
and
- (e) section 4.26 applies as if subsections (7) and (8) were omitted and the following subsections were substituted:—
 - “(7) The officer must make, in the prescribed form, a record of the full name and address of each voter permitted by the officer to vote under this section.
 - “(8) As soon as practicable after 6p.m. (local time in the city in question) on the day immediately before polling day, the officer must—
 - (a) enclose the envelopes, together with the records made under subsection (7), in an outer envelope, endorse the envelope “Record of (name of city) Voters” and securely fasten the envelope;
and
 - (b) send the envelope to the Chief Returning Officer.
“(8A) The Chief Returning Officer must, without unfastening the enclosed envelopes, send them to the appropriate returning officers, together with the records made under subsection (7).”;
- (f) the regulations may prescribe modifications to this Act, the Elections Act or any other Act, for the purposes of the taking of the vote for the referendum, or otherwise conducting the referendum, in accordance with this section.

“8.7 Directions etc. by Chief Returning Officer. (1) Where any difficulty arises in the application of this Part, the Chief Returning Officer may give such directions, make such

appointments and take such action as the Chief Returning Officer considers necessary or desirable to ensure that the votes of electors are properly taken and the referendum is otherwise properly conducted.

“(2) If the Chief Returning Officer exercises any powers under subsection (1) in relation to the referendum, the Chief Returning Officer must, within 30 days after the day on which the writ for the conduct of the referendum is returned, give to the Speaker of the Legislative Assembly, for presentation to the Parliament, a report on the powers exercised under that subsection in relation to the referendum.

“(3) Subsection (1) has effect despite any other provision of this Act or any other Act.”.

12. Amendment of Schedule. The Schedule to the Principal Act is amended by, in Forms C and D, omitting the words “ELECTORAL DISTRICT OF [*Here insert relevant Electoral District*]”.

PART 3—AMENDMENT OF THE CITY OF BRISBANE ACT 1924-1990

13. Citation. (1) In this Part, the *City of Brisbane Act 1924-1990* is referred to as the Principal Act.

(2) The Principal Act, as amended by this Part, may be cited as the *City of Brisbane Act 1924-1990*.

14. Amendment of s.17. Provisions concerning elections. Section 17 of the Principal Act is amended by adding at the end the following subsection:—

“(7) This section has effect subject to Part VIII of the *Referendums Act 1989-1990*.”.

PART 4—AMENDMENT OF THE COMMUNITY SERVICES (ABORIGINES) ACT 1984-1986

15. Citation. (1) In this Part, the *Community Services (Aborigines) Act 1984-1986* is referred to as the Principal Act.

(2) The Principal Act, as amended by this Part, may be cited as the *Community Services (Aborigines) Act 1984-1990*.

16. Amendment of s.18. Voters' roll. Section 18 of the Principal Act is amended—

(a) by inserting before the word “For” the number “(1)”;

(b) by adding at the end the following subsection:—

“(2) This section has effect subject to Part VIII of the *Referendums Act 1989-1990*.”.

**PART 5—AMENDMENT OF THE COMMUNITY SERVICES
(TORRES STRAIT) ACT 1984-1986**

17. Citation. (1) In this Part, the *Community Services (Torres Strait) Act 1984-1986* is referred to as the Principal Act.

(2) The Principal Act, as amended by this Part, may be cited as the *Community Services (Torres Strait) Act 1984-1990*.

18. Amendment of s.18. Voters' roll. Section 18 of the Principal Act is amended—

(a) by inserting before the word “For” the number “(1)”;

(b) by adding at the end the following subsection:—

“(2) This section has effect subject to Part VIII of the *Referendums Act 1989-1990*.”.

PART 6—AMENDMENT OF THE CRIMINAL CODE

19. Amendment of s.98. Section 98 of The Criminal Code is amended by—

(a) in the definition of “election”, inserting after the words “public character” the words “and any referendum conducted under the *Referendums Act 1989-1990*”;

(b) after the definition of “election”, inserting the following definition—

“Unless the contrary intention appears, the term “parliamentary election” includes a referendum conducted under the *Referendums Act 1989-1990*.”.

20. Amendment of s.106. Section 106 of The Criminal Code is amended, in paragraph (1), by inserting after the word “elections” the words “or referendums”.

21. Amendment of s.109. Section 109 of The Criminal Code is amended, in paragraph (b), by omitting the words “the names of the candidates” and substituting the words “how the person has voted”.

22. Amendment of s.114. Section 114 of The Criminal Code is amended by—

(a) in paragraph (2), by omitting the words “the candidate for whom the vote of any person is given” and substituting the words “how any person votes”;

(b) in paragraph (3), by omitting the words “the candidate for whom” and substituting the word “how”.

23. Amendment of s.115. Section 115 of The Criminal Code is amended by inserting after the word “elections” the words “or referendums”.

PART 7—AMENDMENT OF THE ELECTIONS ACT 1983-1989

24. Citation. (1) In this Part, the *Elections Act 1983-1989* is referred to as the Principal Act.

(2) The Principal Act, as amended by this Part, may be cited as the *Elections Act 1983-1990*.

25. Amendment of s.60. Provision of ballot-boxes, etc. Section 60 of the Principal Act is amended by—

- (a) in subsection (3), omitting the words “capable of being locked by means of a key,”;
- (b) omitting subsection (4).

26. Amendment of s.71. Ballot-box to be opened for inspection. Section 71 of the Principal Act is amended by omitting the words “locked and” and the words “, and shall stand upon the table at which the presiding officer presides”.

27. Amendment of s.85. Electoral visitor voting in cases of illness, etc. Section 85 of the Principal Act is amended by—

- (a) in subsection (8), by omitting from paragraph (b) the word “, lock” and the words “keep the key”;
- (b) in subsection (27), by omitting the words “locked and”.

PART 8—AMENDMENT OF THE LOCAL GOVERNMENT ACT 1936-1990

28. Citation. (1) In this Part, the *Local Government Act 1936-1990* is referred to as the Principal Act.

(2) The Principal Act, as amended by this Part, may be cited as the *Local Government Act 1936-1990*.

29. Amendment of s.7. Qualification and election of Chairman and members. Section 7 of the Principal Act is amended by, in subsection (7), inserting after paragraph (iv) the following paragraph:—

“(v) This subsection has effect subject to Part VIII of the *Referendums Act 1989-1990*.”

30. Amendment of r.40, Schedule 3. Returning officer to provide ballot-boxes, etc. Rule 40 of Schedule 3 to the Principal Act is amended by—

- (a) in subrule (2), omitting the words “capable of being locked by means of a key,”;
- (b) omitting subrule (3);
- (c) in subrule (4), omitting the words “locked and” and the words “, and shall stand upon a table at which a presiding officer presides”.

31. Amendment of r.62A, Schedule 3. Voting at Local Authority office. Rule 62A of Schedule 3 to the Principal Act is amended by, in

subrule (8), omitting the words “a separate locked box, the key of which he shall keep” and substituting “a separate sealed box”.

32. Amendment of r.72, Schedule 3. Ballot-box at office of Local Authority. Rule 72 of Schedule 3 to the Principal Act is amended by—

- (a) omitting the word “locked” and substituting the word “sealed”;
- (b) omitting the words “of which he shall keep the key”.