

REFERENDUMS BILL 1996

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Bill

The existing *Referendums Act 1989* is of no practical utility because it relies upon the machinery provisions in the repealed *Elections Act 1983*. The *Electoral Act 1992*, which repealed the *Elections Act*, created the Electoral Commission of Queensland (ECQ) which is the body now responsible for the conduct of elections throughout the State. The proposed Bill is designed to replace the existing *Referendums Act*, updating the machinery provisions to reflect the mechanics contained in the *Electoral Act* and vest the ECQ with responsibility for conducting a referendum should the need arise.

Reasons for the Objectives and how they will be achieved

Because of the disparity between the present provisions of the *Referendums Act* and the structures, procedures and mechanisms put in place by the ECQ in conformity with the *Electoral Act 1992*, it would be practically impossible to conduct a referendum based on the present state of the legislation without some hurried amendments being enacted at the time of the passage of legislation setting up the particular referendum in question.

To avoid having to amend the *Referendums Act* in such a hasty fashion and risk error, it is preferable to update the legislation in a timely and considered way to ensure a qualitative package. An example of the dangers of attempting to piece together in an *ad hoc* way a legislative framework for the conduct of referendums is evident from the experience of the 1991 referendum. In order to effect the referendum held in 1991, hasty amendments were needed to the *Referendums Act*. Part 8, inserted for this purpose, allowed directions by the then Chief Returning Officer to overrule specific statutory provisions in the *Referendums Act* or any other Act (section 8.7(3)).

In light of the *Legislative Standards Act 1992*, this is not an ideal legislative arrangement because it allows the directions of a public official to prevail over specific statutory provisions in primary legislation. This device was designed to overcome the practical difficulties in conducting a referendum in the time frame required. It remains an undesirable conferral of power on a public official.

The amendments necessary to streamline the current Act with the machinery provisions under the *Electoral Act* are quite extensive. For example, the *Referendums Act* refers to non-existent offices like the Chief Returning Officer and poll clerks. As well, the challenge provisions in the present Act, based on the now non-existent Elections Tribunal, require extensive updating in recognition of the establishment of the Court of Disputed Returns under the *Electoral Act 1992* with its detailed procedures provided for in that Act. As well, the machinery provisions provided in Part 4 “Polling and Conduct of Referendum” of the *Referendums Act* requires extensive modification to accord with the provisions of Part 6 of the *Electoral Act*.

Given the extensiveness of the necessary amendments, it was considered more efficient to simply rewrite the entire Act to harmonise it with the current processes under the *Electoral Act*.

Administrative Cost

The Bill in itself will be cost neutral. It will simply be conferring an additional function on the already existing ECQ to bear administrative responsibility for the conduct of referendums as the need arises. Of course, should a referendum be held, there will be the associated cost equivalent to that incurred by the State of Queensland for holding a general election.

Fundamental Legislative Principles

By removing Part 8 of the current *Referendums Act* which empowers a public official to unilaterally override a statutory provision, the Bill removes an extraordinary abrogation of the fundamental legislative principles. To this extent, the Bill promotes the requirements of the *Legislative Standards Act 1992*.

Consultation

The Electoral Commission of Queensland has been consulted throughout the course of developing the legislation.

NOTES ON CLAUSES**PART 1—PRELIMINARY**

Clause 1 sets out the short title of the Bill.

Clause 2 provides that the dictionary, which defines particular words, is in Schedule 3.

Clause 3 vests the Electoral Commission of Queensland with the function of making appropriate administrative arrangements for the conduct of referendums. (Section 8(1)(h) of the *Electoral Act* allows other functions to be bestowed on the Commission by another Act.)

PART 2—WRIT***Division 1—Calling of a referendum***

Clause 4 provides that the Electoral Commission of Queensland must conduct a referendum if the relevant writ is issued by the Governor.

Clause 5 vests the Governor with a discretionary power as to whether to issue a writ for a Bill or a question to be submitted to the electors. Under the various Constitution Acts, Bills dealing with certain subject matter (for example, the re-introduction of an Upper House) must be endorsed by the majority of electors at a referendum before it can be presented for Royal Assent. A question, on the other hand, may be the subject of a referendum if the Legislative Assembly resolves that the question be submitted to the electors at a referendum.

Clause 6 provides for the official form and content of writs. Paragraph (c) sets a different maximum time period for the polling day compared to the *Electoral Act* requirements for an election. Under the *Electoral Act*, the polling day must be not more than 56 days after the issue of the writ. For a referendum, the maximum time period is set at 70 days after the issue of the writ. This is necessary because the various Constitution Acts stipulate that a ‘constitutional’ referendum cannot be presented to the electors less than two months after the Bill has been passed by the Legislative Assembly. Those provisions in the various Constitution Acts are ‘doubly entrenched’ and cannot themselves be amended except by referendum. It is therefore necessary to ensure that the subsequent Referendums Bill accommodates the constitutional requirements. Hence the necessity to set a maximum time period of ‘a Saturday..not more than 70 days after the issue of the writ’ to accommodate the two month constitutional requirement.

Clause 7 provides that a copy of the Bill or a statement of the question must be attached to the writ.

Clause 8 requires the Commission to publish the writ in the Gazette and advertise the key days listed in the writ in such other appropriate ways. The Commission must also make available at any of its offices a copy of the Bill or a statement of the question.

Clause 9 allows the Governor to extend any of the relevant days nominated in the writ to a later date. Such time extension can be for a particular electorate or generally for all electorates. This clause mirrors section 82 of the *Electoral Act 1992*. It will be particularly useful when a writ for a general election is issued after the referendum processes have commenced so as to allow the two polls to be conducted on the same day.

PART 3—STATEMENTS OF ARGUMENTS

Clause 10 states that this part provides for the way arguments for or against a Bill or question are authorised and subsequently published by the Commission.

Clause 11 sets out what is required in order to invoke the Commission’s obligation to publish or distribute an argument for or against the Bill or question. Such an argument, to be accepted as the official one, must have

been endorsed by the majority of members who voted in favour of (or against, as the case may be) the Bill or question, cannot exceed 1000 words and must be forwarded to the Commission within four weeks of the passage of the Bill or resolution on the question in the Legislative Assembly.

Clause 12 sets the way in which the Commission is to publish the official arguments it receives under Clause 11. Provided at least one argument is accompanied by a request for the argument to be printed and posted to each elector in a pamphlet containing the argument or arguments, the Commission must do so. The Commission must comply with this process whether it receives one or two arguments, provided at least one of them is accompanied by a formal request that the pamphlet be posted out in this way. If there is no request at all, the Commission must publish the argument or arguments at least twice in at least two newspapers circulated throughout the State, the last publication being on the day before polling day. In any event, if the Commission does receive two arguments and they are published in the one document, the Commission must publish them in a way that does not unfairly favour one argument over the other. In other words, equal prominence must be given to both.

Clause 13 provides for the publication of the pamphlet when there is multiple Bills or questions to be put to the electors on the one day. In that case, the arguments are to be printed in the one pamphlet and an argument in favour of (or against) a particular Bill or question may exceed 1000 words provided that all of the arguments in favour (or against as the case may be) do not average out in excess of 1000 words each.

Clause 14 limits the use of State budgetary funds for the presentation of the arguments. It provides that the State can only use public funds on the presentation of the arguments—

- (a) to prepare and publish a newspaper notice under clause 12;
- (b) to prepare, print and distribute pamphlets under clause 12 (including the printing of the pamphlet in other languages);
- (c) to enable the Commission to provide other publications or information about the referendum issues; or
- (d) to provide for the salaries and allowances of members and their staff and of officers of the Public Service.

Paragraph (c) requires elaboration. Clauses 11 and 12 outline the threshold minimum of what the Commission must do when it receives official arguments. However, sometimes the Commission discharging its general function to administratively oversee the conduct of a referendum in a fair way, might determine that an additional publication is necessary. For example, some newspapers, although technically published “State wide” might only receive limited circulation in the more remote parts of the State. In those regions, it would be preferable to include a publication in the local regional newspaper. Sub-paragraph (c) will allow the Commission to do this. Clauses 11 and 12 merely outline the bare minimum obligations on the Commission in respect of publication of the arguments. In other words, the expenditure of public money appropriated to the independent Commission is legitimate and appropriate. However, the State, beyond what is appropriated to the Commission, is not to spend additional funds on the presentation of an argument.

PART 4—VOTING AND CONDUCT OF REFERENDUMS

Division 1—Arrangements for referendums

Clause 15 requires the Commission to establish polling booths for referendums and advertise the location and hours of opening of the booths. Previously established ordinary polling booths (that is, those polling booths used at the last poll taken) cannot be abolished once the writ for a referendum has been issued unless it is necessary to do so for circumstances beyond the Commission’s control. Likewise, the Commission cannot establish a polling booth at the last minute on polling day. Cumulatively, the intention of this provision is to ensure that electors have sufficient notice of the location of polling booths and equally sufficient notice that a polling booth used for the last poll has been abolished. It is also the Commission’s responsibility to ensure that electors are allowed to enter and vote on polling day at ordinary polling booths.

Clause 16 provides for the two different types of polling booths. An “ordinary polling booth” is a place where electors can vote on polling day.

A “mobile polling booth” is either an institution (for example, a hospital or home for the aged) which is declared by the Commission to be a mobile polling booth or a building, structure, vehicle or other place so declared by the Commission to be a mobile polling booth because an area is too remote to have enough electors to justify an ordinary polling booth. Relevant electors can vote at mobile polling booths from 11 days before polling day up to the close of polling day at such times as determined by the Commission.

Clause 17 allows a returning officer to adjourn the poll at a particular polling booth if the taking of the poll is likely to be interrupted or obstructed by inclement weather or a riot or open violence. When an adjourned poll is held, only the electors who are enrolled in the electoral district for which the polling booth is established and who have not already voted, are entitled to vote. (Otherwise, any person throughout the State who failed to vote on polling day could legitimately exercise a voting right at the adjourned poll date). However, should the Commission be satisfied that the number of voters to cast a vote at the adjourned poll will not affect the overall outcome of the referendum, the adjourned poll need not proceed. In other words if it is already apparent that the majority of electors have resoundingly rejected or affirmed the proposal, there is no need to proceed with the adjourned poll.

Clause 18 requires the Commission to ensure that a sufficient number of ballot papers and copies of the certified electoral roll are available at polling places. Ballot papers are to be in accordance with the forms (at Schedule 1), and must comply with the other stylistic requirements listed in the clause. Should two or more questions or Bills be put to the vote on the same day, they must be presented on the one piece of paper.

Clause 19 allows members of the Legislative Assembly to appoint scrutineers to oversee the polling processes throughout the conduct of the referendum. Unlike the situation when there is an election, it would be impractical and illogical to have every ‘candidate’ appoint a scrutineer for the purpose of a referendum. For a referendum is solely initiated by members of the Legislative Assembly. Thus the nomination of scrutineers is logically reliant upon members. To ensure that each electorate has scrutineers for each political party, a member of a particular political persuasion will have to technically appoint a scrutineer for another electorate in which the presiding member is of a different political persuasion. In practice, the respective Party machinery will take over the

co-ordination of this exercise to ensure the appointment of a sufficient number of scrutineers for each and every electorate.

Clause 20 allows the Governor to correct technical errors in the preparation, issue or return of any writ by Gazette notice. The Commission has a like power of correction in respect of technical errors in relation to the preparation, issue, sending or return of any electoral roll, ballot paper or other document.

Division 2—Who may vote at a referendum

Clause 21 stipulates who are the only persons entitled to vote. Besides those who are on the electoral roll or who should be on the electoral roll but for official error, sub-clause (b) picks up on the equivalent provision of the *Electoral Act* which allows voting privileges for certain British subjects. Sub-clause (2) provides that a person cannot vote more than once at a referendum.

Division 3—How voting takes place at a referendum

Subdivision A—Ordinary voting

Clause 22 outlines the way in which ordinary voting takes place. Ordinary voting is voting that does not need to be accompanied by a declaration and basically refers to the usual way most people vote by presenting at a polling booth (either an ordinary or a mobile polling booth) established for the electorate for which the elector is enrolled.

Clause 23 enables a person chosen by the elector to assist them in the voting process if they are unable to vote without assistance. The Clause also provides for an elector who is incapacitated to be brought to a place close to the polling booth and be permitted to vote as if it were the polling booth.

Clause 24 enables an issuing officer to visit patients in a hospital for the purpose of taking votes if the hospital is an appointed polling booth for the purposes of the referendum.

Subdivision B—Declaration voting

Clause 25 specifies those electors who *may* make a declaration vote. This covers postal voters (both ordinary and special) and electoral visitor voters. An ordinary postal voter is a person who, for a number of reasons (for example, they will be outside the electorate on polling day, or, because of illness or advanced pregnancy will be unable to attend at a polling booth), are unable to vote at a polling booth. Special postal voters are as defined under the *Electoral Act*. This category of voters has a more enduring character and basically includes that list of people whose address is more than 15 km from a polling booth or whose address has been excluded from the roll under an arrangement with the Commonwealth (for example, individuals whose publicised address might pose a ‘security risk’ such as judges). An electoral visitor voter, that is, a person who, because of illness, requires an issuing officer to visit them at home so they can vote, may also cast a declaration vote.

Clause 26 specifies those persons who *must* make a declaration vote. This includes an elector who wishes to vote at a booth on polling day outside their electoral district (otherwise referred to as an “absentee” vote), certain British subjects who retain the right to vote under the *Electoral Act*, an elector whose name is not on the roll because of official error or who erroneously appears to have already voted, or an elector whose identity is uncertain.

Clause 27 provides that, subject to Clause 32, an elector who makes a declaration vote is to do so by —

- going to a place close to a polling booth and voting under clause 23(3) if the elector is unable to enter a polling booth because of illness, disability or advanced pregnancy;
- voting at a polling booth during polling hours and following procedures outlined in Clause 24;
- voting at an office staffed by the Commission prior to polling day and following procedures outlined in Clause 29;
- using declaration voting papers that have been posted to the elector and following the procedures outlined in Clause 30;
- if the person is an electoral visitor voter—voting before an electoral visitor following the procedures outlined in Clause 31.

Clause 28 details the procedure to be followed when voting as a declaration voter at a polling booth.

Clause 29 details the procedure to be followed when voting as a declaration voter at an office staffed by the Commission prior to polling day.

Clause 30 details the procedures to be followed when making a declaration vote using posted declaration voting papers.

Clause 31 details the procedures to be followed when voting before an electoral visitor.

Clause 32 provides the procedures to be followed for the issuing of a declaration vote when an issuing officer is uncertain of an elector's identity. The Clause lists certain questions to be put to those electors.

Subdivision C—Marking of ballot papers

Clause 33 outlines the way in which an elector can validly vote. Should the elector approve of the Bill or question, the elector may place a tick in the box beside the word "Yes", or write the word "Yes" in that space or otherwise mark the ballot paper in a way that clearly and unambiguously indicates that the elector approves of the Bill or question. The same rules apply should the elector wish to indicate disapproval of the Bill or question (i.e. tick "No" etc).

Clause 34 outlines the criteria for determining formal and informal ballot papers. In order to be effective, the ballot paper must be marked in accordance with clause 31, it must not contain any markings that would reveal the elector's identity and it must have been placed in a ballot box. For a declaration vote, the envelope in which the ballot is placed must have been witnessed (unless the person required to witness was in fact a member of the Commission staff). A ballot paper that is effective to indicate a vote is "formal" and a ballot paper that is ineffective is "informal".

Division 4—Counting of Votes

Clause 35 provides that votes are to be counted in accordance with this Division.

Clause 36 provides the procedures to be followed when carrying out the preliminary processing of declaration voting papers. When a declaration vote is sent by post, it must be received by the Commission staff within 10 days after polling day. Once a declaration vote is acceptable, the ballot paper must be taken out of the envelope and, without unfolding it or allowing another person to see it, placed in a sealed ballot box. It is intended that the assessment of declaration envelopes (in order to decide if the ballot papers in them are to be accepted for counting) is to be done by the returning officer for the electoral district in which the elector is enrolled. So, if a returning officer receives a declaration envelope for another electoral district, he or she is not to assess its validity but is to forward it to the relevant returning officer for that other district who will in turn conduct the assessment. Likewise for any declaration envelopes that are received at an office of the Commission.

Clause 37 provides for the preliminary and official counting of votes and states that the Commission must arrange for votes to be counted—

- on polling day—in accordance with Clause 38;
- after polling day—in accordance with Clause 39.

Clause 38 outlines the procedures to be followed by staff of the Commission in counting votes after the end of ordinary voting hours on polling day. First, all declaration envelopes are separated. Then all the “yes”, “no” and “informal” votes are separated and counted. The returning officer for the electoral district is advised of the results. The separate piles are then sealed up into separate parcels of “yes”, “no” or “informal” or such other parcels as the Commission directs when multiple Bills or questions are put to the vote. The parcels are sent to the returning officer.

Clause 39 outlines the procedures to be followed by staff of the Commission in counting votes after polling day. First, the returning officer opens the unopened ballot boxes and separates out the declaration envelopes in groups corresponding to the various electoral districts. Those unopened declaration votes are then forwarded to the respective returning

officers for each district. Then the returning officer opens the parcels of votes received under clause 38 and proceeds to count them. Those declaration votes received by the returning officer opened under clause 36 and placed in a ballot box must also be counted in the same way. The whole process is continually reapplied as more votes are received until all the count is complete.

Clause 40 makes provision for a scrutineer to object to the treatment of a ballot paper by a member of the staff of the Commission. In the event of a challenge by a scrutineer, the staff member must mark on the back of the ballot paper the way in which the member decides to treat the ballot, (ie either formal or informal or yes or no).

Clause 41 provides in certain circumstances for a recount of some or all of the ballot papers by a returning officer.

Division 5—Notifying the results of a referendum

Clause 42 requires the returning officer for each electoral district to notify the Commission of the total number of yes votes, no votes and informal ballot papers.

The returning officer must not delay notifying the result because some ballot papers are not yet received if, on the advice of the Commission, the outstanding ballots could not possibly affect the overall result of the referendum. If however, more than one question or Bill has been the subject of a poll, a returning officer may delay advising the results for all of them if, on the advice of the Commission any outstanding ballots could possibly affect the outcome of the results of at least one Bill or question. In other words, because the multiple questions or Bills are contained on the one paper, and the result in respect of any one of them is uncertain, the returning officer can hold over notifying the results (and returning the ballot papers to the Commission) until the outstanding ballots are received.

Clause 43 requires the Commission to work out the final results of the count, write them on the writ (and whether the Bill is finally approved or not by the majority of electors), return the writ to the Governor and publish the results in the Gazette.

Clause 44 provides that the Commission may issue a “notice” to each elector who appears to have failed to vote at the election advising them that such failure is an offence and that the elector can either pay the fine or give a statement of reasons in an attempt to justify such failure to vote.

Also, if a person made a declaration vote under clause 26(1)(b) (ie the person’s name was not on the roll because of official error) and the declaration vote is not accepted, the Commission must advise the person the reason why the ballot paper was not counted.

Clause 45 provides that payment of the fine under section 44 finalises the matter and prevents the Commission from taking any other proceedings against the person.

Clause 46 requires the Commission to keep all ballot papers, certified copies of electoral rolls and declaration envelopes for a period of two years after the return of the writ for the referendum.

The Clause also requires that the Commission provides access to these records in certain circumstances.

PART 5—DISPUTED RETURNS

Clause 47 provides that results of the referendum can only be disputed in the Court of Disputed Returns. (The Court of Disputed Returns is established under the *Electoral Act* and is constituted by a single judge of the Supreme Court.)

Clause 48 provides that only a member or the Commission may dispute the results of the referendum.

Clause 49 details the requirements for a petition to be effective. It must be filed within seven days of the return of the writ accompanied by a filing fee (\$400 or such other prescribed amount).

Clause 50 requires the staff of the Supreme Court to give a copy of the petition to—

- the Clerk of the Parliament and
- the Commission unless the Commission lodged the petition.

Clause 51 allows the petitioner to apply to the court for an order requiring the Commission to give to the court documents relating to the referendum that are held by the Commission.

Clause 52 provides that the parties to a petition are—

- the person who lodged it;
- any respondent under this clause.

The Clause states that the Commission is a respondent to any petition and the court may, on being requested by another member, join another member as respondent.

Clause 53 outlines the means by which the petition is to be dealt with by the court. The aim of the Clause is to ensure that the petition is to be dealt with as expeditiously as possible.

Clause 54 permits the Commission to apply to the court for an order dismissing the petition on the ground of there having been excessive delay by the petitioner.

Clause 55 outlines the power of the court. In particular, the court may order that the referendum as conducted is invalid, or that the result contained in the writ is invalid or is to be reversed, or may dismiss or uphold the petition.

Clause 56 restricts the court in making orders merely because of a delay by an official in complying with the voting procedures or because of any absence or error or omission by an official that appears unlikely to have effected the results of the referendum. Should the court find that an elector was erroneously prevented from voting, the court must not take into account any evidence of the way the voter might have voted.

Clause 57 prevents the court taking into account certain evidence or making certain enquiries during proceedings. For example, the court must assume that the electoral roll used was a certified copy in accordance with the other requirements of the Bill.

Clause 58 provides that a referendum is not to be questioned because of technical defects in the title of any person by whom the referendum is held or any formal error or defect in any declaration or publication.

Clause 59 requires the court to provide a copy of the court's order to the Clerk of the Parliament as soon as possible after it has been made.

Clause 60 enables the court to order that reasonable costs be awarded to the successful parties to the petition. The deposit lodged with the petition must be applied towards payment of the costs if costs are awarded against the person lodging the petition. If not, the deposit should be refunded.

Clause 61 declares that an order or other action by the court is final.

Clause 62 states that unless the court orders otherwise, the lodging of a petition does not deprive the Commission of any right to have access to a document for the purpose of performing its functions.

PART 6—ENFORCEMENT

Division 1—Offences in general

Clause 63 deems that a person who attempts to commit an offence under this Part is taken to have committed the offence. (This corresponds to the equivalent offence under section 149 of the *Electoral Act 1992*.)

Clause 64 provides for an offence of knowingly making a false or misleading statement in a material particular. (This corresponds to the equivalent offence under section 153 of the *Electoral Act 1992*.)

Clause 65 makes it an offence to knowingly give a document under or for the purposes of this Bill containing information that is false, misleading or incomplete in a material particular. (This corresponds to the equivalent offence under section 154 of the *Electoral Act 1992*.)

Clause 66 provides an offence in relation to action affecting or influencing a person's referendum conduct.

“Referendum conduct” is defined as meaning—

- the way in which the person votes at a referendum; or
- the person's approval or disapproval of the Bill or question submitted to the electors.

(This corresponds to the equivalent offence under section 155 of the *Electoral Act 1992*.)

Clause 67 prohibits a person from knowingly providing money for any payment that is contrary to law relating to referendums, or for replacing any money that has been spent in any such payment. (This corresponds to the equivalent offence under section 156 of the *Electoral Act 1992*.)

Clause 68 provides that a person must not influence a Commissioner in the performance of the Commissioner's duties under this Bill. (This corresponds to the equivalent offence under section 157 of the *Electoral Act 1992*.)

Clause 69 prohibits a person hindering or interfering with the free exercise or performance, by any other person, of any right or duty under this Bill that relates to a referendum. (This corresponds to the equivalent offence under section 158 of the *Electoral Act 1992*.)

Clause 70 makes it an offence to forge any electoral papers or utter any forged electoral paper, knowing it to be forged. (This corresponds to the equivalent offence under section 159 of the *Electoral Act 1992*.)

Clause 71 provides that a senior electoral officer or member of the staff of the Commission must not wilfully neglect or wilfully fail to perform any of the duties under this Bill. (This corresponds to the equivalent offence under section 160 of the *Electoral Act 1992*.)

Division 2—Offences relating to electoral advertising etc.

Clause 72 requires the author and the author's address to appear on any advertisement, hand bill, pamphlet or notice containing referendum matter during the referendum period. The printer's name and business address must also appear. Certain types of advertising medium (for example, car stickers, T-shirts) are exempted from the operation of the Clause. (This corresponds to the equivalent offence under section 161 of the *Electoral Act 1992*.)

Clause 73 places a duty on the proprietor of a newspaper to cause the word "advertisement" to appear as a header to an article or paragraph containing referendum matter, when the article or paragraph is to be paid for, or for which any reward or compensation is to be made. (This

corresponds to the equivalent offence under section 162 of the *Electoral Act 1992*.)

Clause 74 provides for an offence for misleading voters during the referendum period in relation to—

- printing, publishing, distributing or broadcasting any matter or thing that is intended or likely to mislead an elector in relation to the manner of voting at the referendum;
- printing, publishing, distributing or broadcasting by television any representation of a ballot paper for use at the referendum if it is likely to induce an elector to vote other than in accordance with this Bill.

(This corresponds to the equivalent offence under section 163 of the *Electoral Act 1992*.)

Division 3—Offences relating to voting etc.

Clause 75 makes it an offence to fail to vote at a referendum without a valid and sufficient excuse. Certain electors are exempted from the operation of the Clause (for example, Antarctic voters). (This corresponds to the equivalent offence under section 164 of the *Electoral Act 1992*.)

Clause 76 makes it an offence for an employer to refuse, except in certain circumstances, an employee leave of absence for a reasonable period of not more than two hours to enable the employee to vote at a referendum. (This corresponds to the equivalent offence under section 165 of the *Electoral Act 1992*.)

Clause 77 prevents a person during the referendum period from—

- canvassing for votes;
- inducing an elector not to vote or to vote in a particular way; or
- loitering, or obstructing the free passage of electors

inside a polling booth or within six metres of any entrance to a building with voting compartments. (This corresponds to the equivalent offence under section 166 of the *Electoral Act 1992*.)

Clause 78 makes it an offence to interrupt, obstruct or disturb voting at a referendum. (This corresponds to the equivalent offence under section 167 of the *Electoral Act 1992*.)

Clause 79 prohibits a person, by violence or intimidation, influencing the vote of any person at a referendum. (This corresponds to the equivalent offence under section 168 of the *Electoral Act 1992*.)

Clause 80 prohibits a person, during the referendum period, from displaying a referendum statement inside a room with voting compartments or within six metres of the entrance to a building with voting compartments. A “referendum statement” means a statement or design that a reasonable person would associate with the approval or disapproval of the Bill or question submitted to the electors. (This corresponds to the equivalent offence under section 169 of the *Electoral Act 1992*.)

Clause 81 prohibits a person from voting more than once at a referendum, voting under an assumed name, or procuring another to vote knowing the person is not entitled to vote. (This corresponds to the equivalent offence under section 170 of the *Electoral Act 1992*.)

Clause 82 creates certain offences for mishandling ballot papers. (This corresponds to the equivalent offence under section 171 of the *Electoral Act 1992*.)

Clause 83 makes it an offence to fail to post voting papers on behalf of another person. (This corresponds to the equivalent offence under section 172 of the *Electoral Act 1992*.)

Clause 84 provides for the secrecy of voting at referendums. (This corresponds to the equivalent offence under section 173 of the *Electoral Act 1992*.)

Clause 85 creates an offence for breaking the seal of a parcel sealed under clause 38(2)(h). (This corresponds to the equivalent offence under section 174 of the *Electoral Act 1992*.)

Clause 86 imposes certain duties on witnesses to the signing of declaration voting papers. (This corresponds to the equivalent offence under section 175 of the *Electoral Act 1992*.)

PART 7—REFERENDUMS HELD IN CONJUNCTION WITH ELECTION UNDER ELECTORAL ACT 1992

Clause 87 provides that when the polling day for a referendum is the same as for an election and the polling day for the election is extended under section 82 of the *Electoral Act*, the polling day for the referendum is taken to be likewise extended.

Clause 88 provides for an extension of the cut off day for the electoral roll for a referendum to the same cut off day for the closure of the roll for an election when an election is called after a referendum and it is intended to hold the polls on the same day. In other words, the rolls are to close at the same time.

Clause 89 allows the days for which pre-poll votes are available at Commission offices to be co-ordinated to the same day when an election and a referendum is to be held on the same day.

Clause 90 allows the same ballot boxes, polling booths and certified copies of the electoral rolls to be used when an election and a referendum are to be conducted on the same day.

Clause 91 permits the use of a place declared or arranged to be used as mobile polling booth under the *Electoral Act* to be taken to be so declared or arranged to be used as such for the purposes of the referendum when an election and a referendum is to be held on the same day.

Clause 92 provides that, when a ballot box is used for a referendum and an election conducted on the same day, the ballot box can only be opened in accordance with either the *Electoral Act* or this Bill.

Clause 93 provides that, when an election and referendum is to be conducted on the same day, any applications, declarations, and declaration envelopes to be made or used for the purposes of voting under the *Electoral Act* can also be taken to be made or used for the corresponding purpose for the referendum. In such circumstances, a reference in an application to the election is to be taken as including a reference to the referendum.

Clause 94 provides that, when an election and a referendum are to be conducted on the same day, the issuing officer need only make one mark against the person's name on the electoral roll when issuing both ballot papers.

Clause 95 provides that, when a referendum and an election are conducted on the one day and the the poll is adjourned at a particular booth under section 95 of the *Electoral Act* until a later day, that later day is also to be taken as the re-appointed day for the taking of the votes for the referendum.

PART 8—MISCELLANEOUS

Clause 96 enables any document required or permitted to be given to the Commission to be done by leaving it at, or sending it by post or facsimile to the Commission's office.

Clause 97 states that, for the purposes of the Bill, a person signs something by either signing their name or, if unable to do so, makes an identifying mark before a witness.

Clause 98 provides that the Commission must advertise the locations and opening hours of its office and offices of returning officers and other members of staff where relevant for the purposes of this Bill.

Clause 99 enables the Governor in Council to make regulations for the purposes of the Bill.

PART 9—REPEAL AND CONSEQUENTIAL AMENDMENTS

Clause 100 provides that the *Referendums Act 1989* is repealed.

Clause 101 provides that Schedule 2 amends the Acts listed in it in the way set out in the Schedule.

SCHEDULE 1

REFERENDUM FORMS

Form 1 sets out the form of the writ for a referendum on a Bill.

Form 2 sets out the form of the writ for a referendum on a question.

Form 3 sets out the form of the ballot paper for a referendum on a Bill.

Form 4 sets out the form of a ballot paper for a referendum on a question.

Form 5 sets out the form of the ballot paper for a multiple referendum consisting of multiple Bills and/or multiple questions.

SCHEDULE 2

MINOR AMENDMENTS

ELECTORAL ACT 1992

Clause 1 expands the definition of “cut off day for electoral rolls” in section 3 so as to include a reference to a referendum (the relevant day being the day described in the writ for the referendum).

Clause 2 amends the definition of “issuing officer” in section 3 so as to include a reference to the function of issuing ballot papers or declaration envelopes to electors at a referendum (as well as at an election).

Clause 3 inserts a definition of “referendum” into section 3. It cross references to the definition contained in this Bill.

Clause 4 inserts a reference to a referendum into section 30(3)(b) and (4) so as to ensure that any temporary staff employed in connection with the conduct of a referendum (or an election) are not to be treated as

appointed under the *Public Sector Management and Employment Act 1988*.

Clause 5 amends section 59(1)(b) to include a reference to the cut off day for electoral rolls in relation to a referendum to oblige the Commission to prepare all electoral rolls as soon as possible after the cut off day for the rolls in relation to either an election or a referendum.

Clause 6 amends section 65(5) to include a reference to a referendum so as to ensure that the Commission does not amend the rolls after the cut off day and up to polling day for either a referendum or an election.

Clause 7 amends section 127 so that the Supreme Court is the Court of Disputed Returns for both elections and referendums.

Clause 8 inserts into section 152(2) another purpose for which a copy of the restricted version of the electoral roll may be used, being “any purpose related to a referendum”.

Clause 9 effects the renumbering of section 152(2) as a result of the amendment in clause 8 above.

SCHEDULE 3

DICTIONARY

This Schedule sets out defined terms used throughout the Bill.