



Referendums Act 1997

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Queensland

Referendums Act 1997

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Referendums Act 1997

An Act to provide for the conduct of a referendum, and for other purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *Referendums Act 1997*.

2 Dictionary

The dictionary in schedule 3 defines particular words used in this Act.

3 Function of the commission

The commission has the continuing function of making appropriate administrative arrangements for the conduct of referendums.

Note—

See the *Electoral Act 1992*, section 7(1)(j).

Part 2 Writ for a referendum

4 Writ for a referendum

- (1) The commission must conduct a referendum if the Governor issues a writ for a referendum to the commission under section 5.

- (2) The commission must conduct the referendum in accordance with the writ and this Act.

5 Writ by Governor

The Governor may issue a writ for a referendum if—

- (a) a Bill is to be submitted to the electors; or
- (b) the Legislative Assembly has resolved that a question be submitted to the electors.

6 Form and content of writs

- (1) A writ must be issued—
 - (a) for a referendum to submit a Bill to the electors—in form 1; or
 - (b) for a referendum to submit a question to the electors—in form 2.
- (2) A writ must state the following—
 - (a) the day of its issue;
 - (b) the cut-off day for electoral rolls for the referendum, which must be not less than 5 days, or more than 7 days, after its issue;
 - (c) the polling day for the referendum, which must be a Saturday not less than 26 days, or more than 70 days, after its issue;
 - (d) the return day for the writ, which must be not more than 84 days after its issue.
- (3) For deciding the cut-off day, polling day or return day, that day and the day of issue of the writ are both to be included in any number of days specified in subsection (2)(b) to (d).
- (4) Subsection (3) applies despite the *Acts Interpretation Act 1954*, section 38.

- (5) Subsection (2)(c) applies subject to another Act that has specific provision for the time for taking a poll for a particular referendum.

Editor's note—

See, for example, the *Constitution Act 1867*, section 53 and the *Constitution Act Amendment Act 1934*, section 3.

7 Attachment to writ

There must be attached to the writ—

- (a) for a referendum to submit a Bill to the electors—a copy of the Bill; or
- (b) for a referendum to submit a question to the electors—a statement of the question.

8 Commission to publish writ and prepare for referendum

On receiving a writ, the commission must—

- (a) publish a copy of the writ in the gazette; and
- (b) advertise the days stated in the writ in other ways the electoral commissioner considers appropriate; and
- (c) give a copy of the writ and the attached Bill or statement of the question to the returning officer of each electoral district; and
- (d) make available for inspection by anyone, without fee, a copy of the writ and the text of the attached Bill or question at offices of the commission and anywhere else the commission considers appropriate; and
- (e) make appropriate arrangements for the conduct of the referendum.

9 Governor's powers for referendum

- (1) The Governor may by gazette notice—

- (b) authorised under subsection (2); and
 - (c) forwarded to the commission by members within 4 weeks after the passage of the Bill.
- (2) The argument must be authorised by—
- (a) for an argument in favour of the Bill or an argument against the Bill, if all the members voting voted for the Bill—a majority of the members who wish to forward the argument to the commission; or
 - (b) for an argument in favour of the Bill, if paragraph (a) does not apply—a majority of the members who voted for the Bill and wish to forward the argument to the commission; or
 - (c) for an argument against the Bill, if paragraph (a) does not apply—a majority of the members who voted against the Bill and wish to forward the argument to the commission.
- (3) An argument in favour of or against the question must be distributed or published by the commission under section 12 if the Legislative Assembly resolves that the question be submitted to the electors and the argument is—
- (a) not more than 1000 words; and
 - (b) authorised under subsection (4); and
 - (c) forwarded to the commission by members within 4 weeks after the Assembly's resolution.
- (4) The argument must be authorised by—
- (a) for an argument in favour of a 'yes' answer or a 'no' answer to the question, if all the members voting voted in favour of the 'yes' answer—a majority of the members who wish to forward the argument to the commission; or
 - (b) for an argument in favour of a 'yes' answer to the question, if paragraph (a) does not apply—a majority of the members who voted in favour of the 'yes' answer and wish to forward the argument to the commission; or

- (c) for an argument in favour of a ‘no’ answer to the question, if paragraph (a) does not apply—a majority of the members who voted against the ‘yes’ answer and wish to forward the argument to the commission.

12 How an argument for or against the Bill or question is distributed or published

- (1) If—
 - (a) an argument is forwarded to the commission under section 11; and
 - (b) a majority of the members who authorised the argument ask the commission to post the argument to each elector;
the commission must, not later than 14 days before the polling day for the referendum, print and post to each elector a pamphlet containing the argument and, if another argument was forwarded to the commission under section 11, the other argument.
- (2) Also, the commission must publish any argument forwarded to it under section 11—
 - (a) at least twice before the polling day for the referendum in a newspaper circulating throughout the State, including on the day before the polling day; and
 - (b) on the commission’s website.
- (3) If more than 1 argument is required to be published under subsection (2), the arguments must be published at the same time.
- (4) If more than 1 argument is published in the same pamphlet or newspaper, the format and printing style used must not unfairly favour 1 argument.

13 More than 1 referendum on the same day

- (1) This section applies if more than 1 referendum is to be held on the same day.

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- (2) All arguments required to be published under section 12(1) or (2) in a pamphlet or newspaper must be published in the same pamphlet or newspaper at the same time.
 - (3) An argument in favour of a particular Bill or question may be more than 1000 words if the average number of words for all arguments in favour of the Bills and questions is not more than 1000.
 - (4) An argument against a particular Bill or question may be more than 1000 words if the average number of words for all arguments against the Bills and questions is not more than 1000.
 - (5) Subsections (3) and (4) have effect despite section 11(1)(a) or section 11(2)(a).

14 Limitation on expenditure by State

The State must not spend money on the presentation of arguments about Bills or questions that are to be submitted to electors at a referendum other than—

- (a) to prepare and publish a newspaper notice under section 12(2); and
- (b) to prepare, print and distribute pamphlets under section 12(1), or prepare, print and distribute the pamphlets in languages other than English; and
- (c) to enable the commission to provide other publications or information about the Bill or question; and
- (d) to provide for the salaries and allowances of members and their staff and of officers of the public service.

Part 4 Voting and conduct of referendums

Division 1AA

Preliminary

14A Particular references relating to an electoral district

For this part—

- (a) a reference to an electoral district in relation to an elector is a reference to the electoral district for which the elector is enrolled; and
- (b) a reference to a polling booth established for an electoral district, or otherwise in relation to an electoral district, is a reference to a polling booth at which an ordinary vote for the electoral district may be made; and
- (c) a reference to a returning officer in relation to an elector is a reference to the returning officer for the electoral district for which the elector is enrolled.

Division 1 Arrangements for referendums

15 Setting up and operating polling booths

- (1) The commission must ensure that appropriate polling booths are established for electoral districts for referendums.
- (2) In deciding the number, kind and location of polling booths, the commission must take into account, in addition to any other relevant matters, the desirability of the booths being—
 - (a) the same as polling booths for the *Electoral Act 1992*; and
 - (b) accessible to electors with disabilities.
- (3) The commission must ensure that each polling booth is provided with an adequate number of voting compartments and ballot papers.
- (4) The commission must advertise, in the ways the commission considers appropriate, including, for example, on the commission's website, the following information about each polling booth for a referendum—
 - (a) the electoral districts for which an ordinary vote may be made at the polling booth;

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- (b) the location of the polling booth;
 - (c) the voting hours of the polling booth.
- (5) The commission must not—
- (a) establish a polling booth on the polling day for a referendum; or
 - (b) abolish a previously established ordinary polling booth during the period starting when the writ for a referendum is issued and ending on the polling day, unless it is necessary to do so for circumstances beyond the commission's control.
- (6) The commission must advertise the establishment and abolition of ordinary polling booths in the ways the commission considers appropriate, including, for example, on the commission's website.
- (7) The commission must ensure that—
- (a) electors are allowed to enter ordinary polling booths between 8a.m. and 6p.m. on the polling day and to stay until they have voted; and
 - (b) electors mentioned in section 16(4) and (6) are allowed to enter mobile polling booths, at times decided in writing by the commission, during the period referred to in the subsections and to stay until they have voted.

16 Kinds of polling booths

- (1) There are 3 kinds of polling booths—
- (a) ordinary polling booths; and
 - (b) mobile polling booths; and
 - (c) pre-poll voting offices.
- (2) An ordinary polling booth is a building or other structure, or a part of a building or other structure, that the commission arranges to be available on the polling day for a referendum to enable electors in general to vote.
- (3) A mobile polling booth is—

- (a) an institution declared under subsection (4) to be a mobile polling booth; or
 - (b) a building, structure, vehicle or other place declared under subsection (6) to be a mobile polling booth.
- (4) If the commission considers that patients or residents of an institution should be able to vote at the institution, the commission may declare the institution to be a mobile polling booth for the referendum.
- (5) If the commission declares the institution to be a mobile polling booth, the person in charge of the institution must allow access by members of the commission's staff, and by patients, residents or inmates of the institution, to enable voting to take place at the referendum.
- (6) If the commission considers an area is too remote to have enough electors to establish an ordinary polling booth, the commission may—
 - (a) arrange for a building, structure, vehicle or other place to be available as a mobile polling booth for electors in the area to vote at the referendum; and
 - (b) declare the building, structure, vehicle or other place to be a mobile polling booth for the referendum.
- (7) The commission, a returning officer or an issuing officer may change the arrangements made under subsection (6) at any time.
- (8) If the arrangements are changed, the commission, returning officer or issuing officer must take the steps that are practical and appropriate to give public notice of the changed arrangements.
- (9) The result of the referendum is not invalidated only because an issuing officer failed to visit a mobile polling booth as arranged.
- (10) A declaration made under subsection (4) or (6) must state—
 - (a) the electoral districts for which electors may make an ordinary vote at the mobile polling booth; and

- (b) the days, during the period that starts 11 days before polling day and ends at 6p.m. on polling day, on which electors may vote at the mobile polling booth; and
 - (c) the voting hours for the mobile polling booth on those days.
- (11) The commission must publish a declaration made under subsection (4) or (6), and otherwise advertise the information about the mobile polling booths stated in the declaration, in the ways the commission considers appropriate, including, for example, on the commission's website.

16A Pre-poll voting offices

- (1) The commission may declare for a referendum—
- (a) a stated place (a *pre-poll voting office*) to be a place where an elector may—
 - (i) make a pre-poll ordinary vote for the referendum;
or
 - (ii) make a declaration vote for the referendum; and
 - (b) the electoral districts for which a pre-poll ordinary vote may be made at the place; and
 - (c) the times during which electors are allowed to make a vote at the place.
- (2) The commission must publish a declaration under subsection (1), and otherwise advertise the information about the pre-poll voting offices stated in the declaration, in the ways the commission considers appropriate, including, for example, on the commission's website.

16B Suspension of poll

- (1) A returning officer may suspend the poll at a polling booth on polling day for not more than 4 hours if the returning officer is satisfied the taking of the poll is, or is likely to be, temporarily interrupted or obstructed by—

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- (a) a serious threat of a riot or open violence happening; or
 - (b) a serious risk to the health or safety of persons at the polling booth; or
 - (c) another emergency.
- (2) The returning officer must ensure an elector who attends the polling booth while the poll is suspended is given information to assist the elector to vote at the referendum, including—
- (a) the time the poll is expected to resume at the polling booth; and
 - (b) the location of other polling booths.
- (3) The returning officer must adjourn the conduct of the poll at the polling booth if—
- (a) for any reason, taking of the poll at the polling booth can not resume on polling day; or
 - (b) the returning officer is satisfied that it is unreasonable for an elector who would have otherwise cast a vote at the polling booth while it was suspended to have cast a vote at another polling booth.

17 Adjournment of poll at polling booth

- (1) A returning officer may adjourn the poll at a polling booth to another day if the returning officer is satisfied the taking of the poll at the polling booth is, or is likely to be, interrupted or obstructed by a thing stated in subsection (2) to the extent that the taking of the poll can not start or continue at the polling booth.
- (2) For subsection (1), the things are as follows—
- (a) a storm, flood, fire or similar happening;
 - (b) a riot or open violence;
 - (c) a serious threat of a riot or open violence happening;
 - (d) a serious risk to the health or safety of persons at the polling booth;

- (e) another emergency.
- (3) If the poll is adjourned under subsection (1) or section 16B(3), the commission must fix a day (not later than 34 days after the polling day) for taking, or resuming, the adjourned poll.
- (4) The commission must give notice of the day fixed for taking, or resuming, the adjourned poll on the commission's website and in other ways the commission considers appropriate.
- (5) If an adjourned poll is held, only 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.
- (6) If a poll is adjourned under subsection (1) and the commission is satisfied that the number of votes likely to be cast at the polling booth will not affect the overall referendum result, the commission may abandon the poll at the polling booth.
- (7) The adjourned poll is taken to have been held on the polling day.

17A Supply of electoral rolls and ballot papers

- (1) The commission must ensure that a sufficient number of the following are available for the referendum at each polling place—
 - (a) certified copies of the electoral roll for each electoral district as at the cut-off day for electoral rolls;
 - (b) ballot papers.
- (2) Without limiting subsection (1)(a), a certified copy of the electoral roll for an electoral district is available at a polling place if—
 - (a) a certified copy of the electoral roll can be accessed electronically from the polling place; and
 - (b) an issuing officer at the polling place can use the certified copy to make an electronic record of the persons to whom a ballot paper is issued.

- (3) Without limiting subsection (1)(b), a ballot paper is available at a polling place if a ballot paper can be reproduced at the place under section 18A.

18 Form of ballot papers

- (1) Ballot papers for voting at the referendum for an electoral district, other than a completed ballot paper printed for an electronically assisted vote, must—
- (a) be in form 3 for a referendum to submit a Bill to the electors or form 4 for a referendum to submit a question to the electors; and
 - (b) be of a material and opacity that, when folded, effectively conceals the way the elector voted; and
 - (c) for a ballot paper other than a ballot paper reproduced under section 18A, be attached to a butt that—
 - (i) is not part of the ballot paper; and
 - (ii) is perforated in a way that allows the ballot paper to be easily detached from it; and
 - (iii) states the name of the electoral district; and
 - (d) contain a square opposite the words ‘YES’ and ‘NO’; and
 - (e) show the name of the State, the name of the electoral district and the day of the referendum.
- (2) For ballot papers to which subsection (2) applies, if 2 or more referendums are held on the same day, the ballot papers for each referendum must be printed on 1 piece of paper and must be in form 5.
- (3) A completed ballot paper printed for an electronically assisted vote must—
- (a) be of a size or format that enables the elector’s electronically assisted vote to be accurately determined; and

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- (b) state the name of the State, the name of the electoral district for which the vote is cast and the day of the referendum.

18A Ballot papers may be reproduced if required

- (1) This section applies if a polling place does not have, or runs out of, ballot papers for an electoral district.
- (2) An issuing officer at the polling place may reproduce a ballot paper, including, for example, by photocopying, handwriting or printing the ballot paper.
- (3) Section 18(1) applies to a ballot paper reproduced under this section.
- (4) The issuing officer must keep a record of the number of ballot papers for an electoral district the officer reproduces under this section.

19 Scrutineers

- (1) Each member may, by notice given to a member of the commission's staff, appoint adults as scrutineers for a referendum.
- (2) Scrutineers are entitled to be present in each ordinary polling booth, mobile polling booth and pre-poll voting office at times when electors are allowed to vote at the place.
- (3) Scrutineers are also entitled to be present—
 - (a) beforehand at polling places—
 - (i) to inspect ballot boxes; and
 - (ii) to examine declaration envelopes received before 6p.m. the day before the polling day; and
 - (b) afterwards at polling places and elsewhere to observe the examination of declaration envelopes, the printing of completed ballot papers for electronically assisted votes and the counting of votes; and

- (c) at a place to observe any part of a procedure for making an electronically assisted vote.
- (4) At a polling place during times when electors are allowed to vote and beforehand, each member is entitled to have 1 scrutineer present for each issuing officer at the place.
- (5) At the examination of declaration envelopes and the counting of votes, including electronically assisted votes, each member is entitled to have 1 scrutineer present for each member of the commission's staff at the place.
- (6) A scrutineer may—
 - (a) object to the entitlement of a person to vote at the referendum; or
 - (b) do anything else permitted by this Act.
- (7) Issuing officers at a polling place must, before voting starts, allow scrutineers to inspect the ballot boxes that are to be used for voting at the place.
- (8) Each scrutineer must carry adequate identification to show that the person is a scrutineer.
- (9) Each member is taken to be a scrutineer under this Act.

20 Correction of errors

- (1) If there is a delay, error or omission in or in relation to the preparation, issue or return of any writ, it may be corrected by gazette notice by the Governor stating what is to be done.
- (2) If there is a delay, error or omission in or in relation to the preparation, issue, sending or return of any electoral roll, ballot paper or other document (apart from a writ), it may be corrected by a gazette notice by the commission stating what is to be done.

Division 2 Who may vote at a referendum

21 Who may vote

- (1) The following persons are the only persons who are entitled to vote at a referendum—
 - (a) persons enrolled on the electoral roll for an electoral district;
 - (b) persons who are not enrolled, but are entitled to be enrolled on the electoral roll for an electoral district because of the *Electoral Act 1992*, section 64(1)(a)(ii);
 - (c) persons whose names are not on the electoral roll for an electoral district because of official error;
 - (d) persons who—
 - (i) are not enrolled on the electoral roll for any electoral district but are entitled under the *Electoral Act 1992* to be enrolled on the electoral roll for an electoral district; and
 - (ii) after the cut-off day for electoral rolls for the referendum and no later than 6p.m. on the day before the polling day, give the commission or an electoral registrar for the district a notice under the *Electoral Act 1992*, section 65.
- (2) A person is not entitled to vote more than once at a referendum.
- (3) Also, a person who is serving a sentence of imprisonment of 3 years or longer is not entitled to vote at a referendum.
- (4) For subsection (3), a person is serving a sentence of imprisonment only if—
 - (a) the person is in detention on a full-time basis for an offence against a law of the Commonwealth or a State or Territory; and
 - (b) the detention is attributable to the sentence of imprisonment concerned.

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- (5) To enable the commission to decide the persons who are not entitled to vote because of subsection (3), the commission may ask the chief executive (corrective services) to give the commission information about persons who are serving sentences of imprisonment for offences against the law of the Commonwealth or of a State or Territory.
- (6) The chief executive (corrective services) must give the commission the information as soon as practicable after receiving the request.
- (7) Subsection (6) has effect despite the provisions of any other Act that would otherwise permit or require the chief executive (corrective services) to refuse the commission's request.

Division 3 How voting takes place at a referendum

Subdivision 1 Ordinary voting

22 Procedure for voting

- (1) An elector is to vote by following the procedures stated in this section unless the elector—
 - (a) makes a pre-poll ordinary vote under section 24C; or
 - (b) makes, or must make, a declaration vote under subdivision 2; or
 - (c) makes an electronically assisted vote under subdivision 2A.
- (2) The elector is to enter—
 - (a) if the vote is to be taken at an ordinary polling booth—
an ordinary polling booth for the elector's electoral district during ordinary voting hours; or
 - (b) if the vote is to be taken at a mobile polling booth declared for an institution or arranged for an area—the

mobile polling booth during the times decided by the commission under section 15(7)(b).

- (3) In the polling booth, the elector is to request a ballot paper for the electoral district from an issuing officer.
- (4) If the elector has a ballot paper for the electoral district and declaration envelope for the referendum given to the elector under section 30 and does not intend to make a declaration vote under subdivision 2, the elector must give the ballot paper and declaration envelope to the issuing officer.
- (5) The issuing officer must issue a ballot paper for the electoral district to a person who asks for a ballot paper only if the issuing officer is satisfied that the person is entitled to vote at the referendum for the electoral district.
- (6) The issuing officer may question a person requesting a ballot paper to decide whether the person is entitled to vote at the referendum for the electoral district.
- (7) If, after asking questions under subsection (6), the issuing officer suspects that a person claiming to be a particular elector is not the elector, the issuing officer must comply with section 32.
- (8) The issuing officer must keep a record of all persons to whom the officer issues ballot papers under this section.
- (9) The issuing officer must, if a scrutineer requests it, keep a record of an objection by the scrutineer to the entitlement of a person to vote.
- (10) On being given the ballot paper, the elector must, without delay—
 - (a) go alone to an unoccupied voting compartment in the polling booth; and
 - (b) there, in private, mark a vote on the ballot paper in accordance with section 33; and
 - (c) fold the ballot paper to conceal the vote and put it in a ballot box in the polling booth; and
 - (d) leave the polling booth.

23 Help to enable electors to vote at polling booths

- (1) If an elector satisfies an issuing officer that the elector is unable to vote without help, the elector may be accompanied in the polling booth by another person chosen by the elector.
- (2) The other person may help the elector, but only in the following ways—
 - (a) by acting as an interpreter;
 - (b) by explaining the ballot paper and the requirements of section 33 relating to its marking;
 - (c) by marking, or helping the elector to mark, the ballot paper in the way the elector wishes;
 - (d) by folding the ballot paper and putting it in the ballot box.
- (3) If an elector (including an elector who makes or must make a declaration vote)—
 - (a) is unable to enter a polling booth because of illness, disability or advanced pregnancy; and
 - (b) is able to come to a place (the *voting place*) close to the polling booth;the issuing officer may perform the issuing officer's functions and the elector may vote at the voting place as if it were the polling booth.
- (4) However, the issuing officer must—
 - (a) before taking any action under subsection (3), inform any scrutineers present of the proposed action; and
 - (b) allow only 1 scrutineer for each member to be present at the voting place; and
 - (c) ensure that, after the ballot paper is marked, it is—
 - (i) folded to conceal the vote; and
 - (ii) put into an envelope and sealed; and
 - (d) if the elector has made an ordinary vote—open the envelope inside the polling booth in the presence of any

scrutineers and put the folded ballot paper in a ballot box.

24 Help to enable electors to vote at hospitals

- (1) If a polling booth is a hospital or part of a hospital, an issuing officer may visit patients in the hospital or the part of the hospital to enable them to vote.
- (2) When visiting a patient, the issuing officer must—
 - (a) take to the patient—
 - (i) a ballot paper or a ballot paper and declaration envelope; and
 - (ii) a ballot box; and
 - (iii) anything else necessary to enable the patient to vote; and
 - (b) if a scrutineer wishes—be accompanied by the scrutineer.
- (3) The issuing officer must ensure that, so far as reasonably practicable, section 22 is complied with when the patient votes.

Subdivision 1A Pre-poll ordinary voting

24A Pre-poll ordinary voting

- (1) This section applies to an elector, other than one who must make a declaration vote under subdivision 2, who wishes to vote—
 - (a) before the polling day for a referendum; and
 - (b) other than by making a declaration vote under subdivision 2.
- (2) If there is a pre-poll voting office for the elector's electoral district, the elector may make a vote under section 24C (a *pre-poll ordinary vote*).

24C Procedure for pre-poll ordinary voting

- (1) An elector who wishes to vote during the period beginning 3 days after the cut-off day for electoral rolls for the referendum and ending at 6p.m. on the day before polling day may make a pre-poll ordinary vote by following the procedures stated in this section.
- (2) The elector is to go to a pre-poll voting office for the elector's electoral district.
- (3) At the pre-poll voting office, the elector must ask the issuing officer for a ballot paper for the electoral district.
- (4) If the elector—
 - (a) has a ballot paper for the electoral district and declaration envelope for the referendum; and
 - (b) does not intend to make a declaration vote under subdivision 2;the elector must give the ballot paper and declaration envelope to the issuing officer.
- (5) The issuing officer must issue a ballot paper for the electoral district to a person if the issuing officer is satisfied the person is entitled to vote at the referendum for the electoral district.
- (6) The issuing officer may ask questions of a person requesting a ballot paper for the purpose of deciding whether the person is entitled to vote at the referendum for the electoral district.
- (7) The issuing officer must comply with section 32 if the issuing officer has asked questions under subsection (6) and suspects a person claiming to be a particular elector is not the elector.
- (8) The issuing officer must keep a record of all persons to whom the officer issues ballot papers under this section.
- (9) The issuing officer must, if a scrutineer requests it, keep a record of any objection by the scrutineer to the entitlement of a person to vote.
- (10) On being given the ballot paper, the elector must, without delay—

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- (a) go alone to an unoccupied voting compartment in the pre-poll voting office; and
 - (b) there, in private, mark a vote on the ballot paper in accordance with section 33; and
 - (c) fold the ballot paper to conceal the vote and put it in a ballot box in the pre-poll voting office; and
 - (d) leave the pre-poll voting office.

24D Help to enable electors to vote at pre-poll voting offices

- (1) Subject to subsection (2), if an elector satisfies an issuing officer that the elector can not vote without help, the elector may be accompanied in the pre-poll voting office by another person chosen by the elector.
- (2) The other person may help the elector in any of the following ways—
 - (a) acting as an interpreter;
 - (b) explaining the ballot paper and the requirements of section 33 relating to its marking;
 - (c) marking, or helping the elector to mark, the ballot paper in the way the elector wishes;
 - (d) folding the ballot paper and putting it in the ballot box.
- (3) If an elector can not enter a pre-poll voting office because of illness, disability or advanced pregnancy, but can come to a place (the *voting place*) close to the pre-poll voting office, then, subject to subsection (4)—
 - (a) the issuing officer may perform the issuing officer's functions; and
 - (b) the voter may vote;at the voting place as if it were the pre-poll voting office.
- (4) The issuing officer must—
 - (a) before taking any action under subsection (3), inform any scrutineers present of the proposed action; and

- (b) ensure that, after the ballot paper is marked, it is—
 - (i) folded to conceal the vote; and
 - (ii) put into an envelope and sealed; and
- (c) open the envelope inside the pre-poll voting office in the presence of any scrutineers and put the folded ballot paper in a ballot box.

Subdivision 2 Declaration voting

25 Who may make a declaration vote

- (1) The following electors may make a declaration vote—
 - (a) an elector who wishes to make a declaration vote before the polling day for a referendum;
 - (b) an elector who is a special postal voter;
Note—
See subsection (2) and the *Electoral Act 1992*, section 114(2).
 - (c) an elector who is an electoral visitor voter under subsection (3).
Note—
See subsection (3) and the *Electoral Act 1992*, section 114(3).
- (2) An elector is a special postal voter for this Act if the elector would be a special postal voter for an election under the *Electoral Act 1992*.
- (3) The following electors are electoral visitor voters for this Act—
 - (a) an elector who will, because of illness, disability or advanced pregnancy, be prevented from voting at a polling booth;
 - (b) an elector who will, because the elector is caring for a person who is ill, has a disability or is pregnant, be prevented from voting at a polling booth.

26 Who must make a declaration vote

The following electors must make a declaration vote—

- (a) an elector who wishes to vote by going on the polling day for the referendum to a polling booth that has not been established for the elector's electoral district;
- (b) an elector who wishes to vote at a polling booth described in section 16(4) or (6) that has not been established for the elector's electoral district;
- (c) an elector whose name is not on the electoral roll for an electoral district because of an official error;
- (d) an elector who goes on a polling day to a polling booth but is not able to make an ordinary vote at the polling booth for a reason that is beyond the elector's control;

Example of a reason beyond an elector's control why the elector cannot make an ordinary vote—

an electronic copy of the electoral roll can not be accessed from the polling booth so an issuing officer at the polling booth can not confirm the elector's name is on the electoral roll for the electoral district

- (e) an elector to whom section 21(1)(b) or (d) applies;
- (f) an elector who is serving a sentence of imprisonment, or is otherwise detained in lawful custody, on the polling day;
- (g) an elector who appears from a record made in error to have already voted in the referendum for any electoral district;
- (h) an elector who is given a ballot paper and declaration envelope under section 32.

27 Ways in which an elector may make a declaration vote

- (1) An elector who may or must make a declaration vote must do so by—
 - (a) if the elector is unable to enter a polling booth because of illness, disability or advanced pregnancy—going to a

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place close to a polling booth and voting under section 23(3); or

- (b) going during voting hours to a polling booth and following the procedures stated in section 28; or
 - (c) if the person is a postal voter—using the ballot paper and declaration envelope that have been posted to the elector under section 30 or 34B and following the procedures stated in section 30 or 34B; or
 - (d) if the person is an electoral visitor voter—voting before an electoral visitor following the procedures stated in section 31.
- (2) This section is subject to section 32.

28 Making a declaration vote at a polling booth

- (1) An elector who may or must make a declaration vote may enter a polling booth during voting hours and request a ballot paper for an electoral district and declaration envelope from an issuing officer.
- (2) The issuing officer must comply with the request, unless the issuing officer is satisfied that the elector may make an ordinary vote for the elector’s electoral district at the polling booth.
- (3) The issuing officer must keep a record of all persons to whom the officer gives a ballot paper and declaration envelope under this section.
- (4) The issuing officer must, if a scrutineer requests it, record on the declaration envelope an objection by the scrutineer to the right of the person to vote.
- (5) On being given the ballot paper and declaration envelope, the elector must, without delay—
 - (a) sign the appropriate declaration on the declaration envelope before the issuing officer and have the officer sign the envelope as witness; and

- (b) go alone to an unoccupied voting compartment in the polling booth; and
 - (c) there, in private, mark a vote on the ballot paper in accordance with section 33; and
 - (d) place the ballot paper in the envelope, seal the envelope and put it in a ballot box in the polling booth; and
 - (e) leave the polling booth.
- (6) Sections 23 and 24 apply to the making of a vote under this section in the same way, with any necessary changes, as they apply to the making of a vote under section 22.

30 Making a declaration vote using posted referendum papers

- (1) A special postal voter or ordinary postal voter may make a declaration vote under this section using a ballot paper and declaration envelope sent to the elector.
- (2) An elector is an *ordinary postal voter* if—
 - (a) the elector makes a request (a *postal vote request*) to the commission or the returning officer to make a declaration vote using a ballot paper and declaration envelope sent to the elector; and
 - (b) the elector's postal vote request is received by the commission or returning officer not later than 7p.m. on the day that is 12 days before the polling day for the election.

Note—

The polling day for a referendum is always a Saturday—see section 6(2)(c). The day that is 12 days before the polling day for a referendum is 2 Mondays before the polling day.

- (3) A postal vote request—
 - (a) may be made by the elector orally or in writing; and
 - (b) if the request is written—
 - (i) must be in the approved form; and

- (ii) may be given to the commission or returning officer by the elector or someone else; and
 - (c) must state the address to which the ballot paper is to be sent.
- (4) The commission must, as soon as practicable after the issue of the writ for a referendum, post a ballot paper and declaration envelope to each special postal voter.
- (5) Also, the commission must post, deliver or otherwise send a ballot paper and declaration envelope to an ordinary postal voter as soon as practicable after receiving the elector's postal vote request.
- (6) If the commission or a returning officer receives a postal vote request for an elector after the time mentioned in subsection (2)(b), the commission or returning officer must give the elector a written notice that states the elector is not entitled to make a declaration vote under this section.
- (7) Returning officers and the commission must keep a record of all ballot papers and declaration envelopes posted, delivered or sent under this section.
- (8) On receiving the ballot paper and declaration envelope, the elector must—
- (a) sign the appropriate declaration on the declaration envelope before another elector or a person approved by the commission for this paragraph and have the other elector or person sign the envelope as witness; and
 - (b) mark a vote on the ballot paper in accordance with section 33; and
 - (c) place the ballot paper in the envelope and seal the envelope; and
 - (d) either—
 - (i) give the envelope to a member of the commission's staff at a pre-poll voting office before the polling day or at a polling booth on the polling day; or

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- (ii) post or send the envelope, or give it to another person to post or send, to the commission or the returning officer.
- (9) If the elector is unable to vote without help, another person may help by doing any of the things mentioned in subsection (8)(b) to (d) for the elector.
- (10) A member of the commission's staff who is given an envelope under subsection (8)(d)(i) must—
- (a) if it is given before the polling day—send the envelope to the appropriate returning officer or put the envelope in a ballot box at the office; or
 - (b) if it is given on the polling day—put the envelope in a ballot box at the polling booth.

Note for subsection (10)—

Section 36 sets out the process for examining declaration envelopes and preparing the ballot papers in them for counting.

31 Electoral visitor voting

- (1) An electoral visitor voter may give a request to vote as an electoral visitor voter to the commission or returning officer.
- (2) The request—
 - (a) must—
 - (i) be in writing; and
 - (ii) be in the approved form; and
 - (iii) state the address the electoral visitor is to visit; and
 - (b) may be given to the commission or returning officer by the elector or someone else.
- (3) If the request is received not later than 7p.m. on the Wednesday before the polling day for the referendum, the commission or the returning officer must ensure that an issuing officer visits the elector to enable the person to vote.
- (4) The issuing officer must visit the elector at a reasonable hour—

- (a) before the polling day; or
 - (b) before 6p.m. on the polling day.
- (5) When visiting the elector, the issuing officer must—
- (a) take to the elector—
 - (i) a ballot paper; and
 - (ii) a ballot box; and
 - (iii) anything else necessary to enable the elector to vote; and
 - (b) if a scrutineer wishes—be accompanied by the scrutineer.
- (6) The issuing officer must ensure, as far as practicable, section 22 is complied with when the elector votes.
- (7) The elector may ask a person to help the elector, but only in the following ways—
- (a) by acting as an interpreter;
 - (b) by explaining the ballot paper and the requirements of section 33 about its marking;
 - (c) by marking, or helping the elector to mark, the ballot paper in the way the elector wishes;
 - (d) by folding the ballot paper and putting it in the ballot box.
- (8) The elector may make an ordinary vote or declaration vote.

32 Making a declaration vote in cases of uncertain identity

- (1) If section 22(7) or 24C(7) applies for a person who is an elector or a person claiming to be an elector, the issuing officer must give the person a declaration envelope.
- (2) The declaration envelope must have on it the following questions—
 - (a) ‘Are you the same person whose name appears as [*here the issuing officer must write the name of the particular*

elector and the number appearing on the electoral roll for the name]?’

- (b) ‘Have you already voted, either here or elsewhere, at this referendum?’
- (3) The person must write answers to the questions on the envelope, sign the envelope and have the signature witnessed by the issuing officer.
- (4) The issuing officer must keep the envelope and tell the person that he or she is not entitled to vote, if the person does not answer the questions or answers in either or both of the following ways—
 - (a) in the negative to the question in subsection (2)(a);
 - (b) in the affirmative to the question in subsection (2)(b).
- (5) The person must then leave the polling place.
- (6) If subsection (4) does not apply, the issuing officer must give the person a ballot paper.
- (7) The person must, without delay—
 - (a) go alone to an unoccupied voting compartment at the polling place; and
 - (b) there, in private, mark a vote on the ballot paper in accordance with section 33; and
 - (c) place the ballot paper in the envelope, seal the envelope and put it in a ballot box in the polling place; and
 - (d) leave the polling place.
- (8) Sections 23 and 24 apply to the making of a vote under this section in the same way, with any necessary changes, as they apply to the making of a vote under section 22.

Subdivision 2A Electronically assisted voting

32A Who may make an electronically assisted vote

An elector may make an electronically assisted vote if—

[s 32B]

- (a) the elector can not vote without assistance because the elector has—
 - (i) an impairment; or
 - (ii) an insufficient level of literacy; or
- (b) the elector can not vote at a polling booth because of an impairment; or
- (c) the elector is a member of a class of elector prescribed by a regulation for this section.

Examples of a class of elector—

- an elector whose address, as shown on an electoral roll, is more than 20km by the nearest practical route from a polling booth
- an elector who will not, throughout ordinary voting hours on polling day, be within Queensland

32B Prescribed procedures for electronically assisted voting

- (1) The commission may make procedures about how an elector may make an electronically assisted vote for a referendum.
- (2) The procedures must provide for the following—
 - (a) the registration of electors who may make an electronically assisted vote for a referendum under section 32A;
 - (b) the authentication of each electronically assisted vote;
 - (c) the recording of each elector who uses electronically assisted voting;
 - (d) ensuring the secrecy of each electronically assisted vote;
 - (e) the secure transmission of each electronically assisted vote to the electoral commissioner, and secure storage of each electronically assisted vote by the commissioner, until printing;
 - (f) the printing, for scrutiny and counting, of a ballot paper for each electronically assisted vote;

- (g) the secure delivery of each printed ballot paper to the returning officer for the appropriate electoral district or to the commission.
- (3) The procedures—
 - (a) do not take effect until approved by a regulation; and
 - (b) must be tabled in the Legislative Assembly with the regulation approving the procedures; and
 - (c) must be published on the commission’s website.

32C Audit of electronically assisted voting for a referendum

- (1) The commission must appoint an independent person to audit the information technology used under the procedures for electronically assisted voting made under section 32B.
- (2) The audit must be conducted—
 - (a) at least 7 days before the cut-off day for electoral rolls for the referendum; and
 - (b) within 60 days after the polling day for the referendum.
- (3) A person appointed under subsection (1) must be an individual who is not, and has not ever been, a member of a political party.
- (4) The person appointed to conduct the audit may make recommendations to the commission to reduce or eliminate risks that could affect the security, accuracy or secrecy of electronically assisted voting.
- (5) A regulation may prescribe requirements about the conduct of an audit under this section.
- (6) In this section—
political party see the *Electoral Act 1992*, schedule 1.

32D Protection of information technology

- (1) A person must not disclose to another person a source code or other computer software relating to electronically assisted voting, unless the person is authorised to do so under—
 - (a) the procedures made under section 32B; or
 - (b) an agreement entered into by the person with the electoral commissioner.

Maximum penalty—40 penalty units or 6 months imprisonment.

- (2) A person must not, without reasonable excuse, destroy or interfere with a computer program, data file or electronic device used for or in connection with electronically assisted voting.

Maximum penalty—100 penalty units or 2 years imprisonment.

32E Electoral commissioner may decide electronically assisted voting is not to be used

- (1) The electoral commissioner may decide that electronically assisted voting is not to be used—
 - (a) at a particular referendum; or
 - (b) by a class of electors at a particular referendum.
- (2) The electoral commissioner's decision must be in writing and published on the commission's website.

32F Review of electronically assisted voting

- (1) On the request of the Minister following a referendum, the electoral commissioner must conduct—
 - (a) a review of the use of electronically assisted voting for the referendum; and
 - (b) an investigation into extending the use of electronically assisted voting to other electors for future referendums.

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- (2) A report on the review and investigation must be given to the Minister.
 - (3) The Minister must, within 14 days after receiving the report, table the report in the Legislative Assembly.

Subdivision 3 Marking of ballot papers

33 How electors must vote

- (1) An elector must vote in accordance with—
 - (a) if the elector votes using electronically assisted voting—the procedures approved under section 32B(3); or
 - (b) otherwise—subsection (2) or (3).
- (2) If the elector approves of the Bill or question submitted to electors at the referendum, the elector may—
 - (a) place a tick √ in the space provided opposite the word ‘YES’ in the space provided on the ballot paper; or
 - (b) write the word ‘YES’ in the square opposite the word ‘YES’ on the ballot paper; or
 - (c) otherwise mark the ballot paper in a way that clearly and unambiguously indicates the voter approves of the Bill or question.
- (3) If the elector does not approve of the Bill or question, the elector may—
 - (a) place a tick √ in the space provided opposite the word ‘NO’ in the space provided on the ballot paper; or
 - (b) write the word ‘NO’ in the square opposite the word ‘NO’ on the ballot paper; or
 - (c) otherwise mark the ballot paper in a way that clearly and unambiguously indicates the voter does not approve of the Bill or question.

34 Formal and informal ballot papers

- (1) For a ballot paper to have effect to indicate a vote—
 - (a) the ballot paper must contain writing that is in accordance with section 33; and
 - (b) the ballot paper must not contain any writing or mark by which the elector can be identified; and
 - (c) the ballot paper must have been put into a ballot box by the elector as required by this Act; and
 - (d) if the ballot paper was put into a declaration envelope as required by this Act—the envelope must have been signed, and the signature must have been witnessed, as required by this Act.
- (2) Subsection (1)(d) does not apply to the witnessing of a signature if—
 - (a) the person required to witness the signature was a member of the commission's staff; and
 - (b) the person certifies in writing to the returning officer that the envelope was signed by the elector concerned.
- (3) If a ballot paper has effect to indicate a vote, it is a formal ballot paper.
- (4) If a ballot paper does not have effect to indicate a vote, it is an informal ballot paper.

Subdivision 4 Replacement ballot papers

34A Replacement ballot paper issued at polling place

- (1) This section applies if, while voting at a polling place, an elector—
 - (a) satisfies an issuing officer that—
 - (i) a ballot paper given to the elector (the *spoilt ballot paper*) is marked, damaged or destroyed to the extent that it can not be used to make a vote; and

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- (ii) the spoiled ballot paper has not been put in a ballot box in the polling place; and
 - (iii) the elector has not voted in the election; and
 - (b) gives the spoiled ballot paper, or the remains of the ballot paper, to the issuing officer.
- (2) The issuing officer must give the elector another ballot paper.
- (3) The issuing officer must also—
- (a) place the spoiled ballot paper in an envelope and seal the envelope; and
 - (b) keep the envelope for separate identification under section 38.

34B Replacement ballot paper issued to postal voter

- (1) This section applies if a ballot paper for a referendum and declaration envelope is sent to an elector under section 30 and either—
- (a) the elector does not receive the ballot paper and declaration envelope; or
 - (b) the ballot paper (the *spoilt ballot paper*) is marked, damaged or destroyed to the extent that it can not be used to make a declaration vote.
- (2) The elector may ask the commission or returning officer for a replacement ballot paper.
- (3) If the replacement ballot paper is to be sent to the elector, the request must state the address to which the ballot paper is to be sent.
- (4) An issuing officer must—
- (a) if the elector makes the request in person— give another ballot paper and declaration envelope to the elector; or
 - (b) post, deliver or otherwise send another ballot paper and declaration envelope to the elector as soon as practicable after receiving the request.

- (5) When the elector makes a declaration vote under subdivision 2, the elector must make the declaration on the declaration envelope that states—
 - (a) the ballot paper sent to the elector has not been received or has been marked, damaged or destroyed; and
 - (b) the elector has not otherwise voted in the election.
- (6) The commission and returning officers must keep a record of all ballot papers and declaration envelopes given or sent under this section.

Division 4 Counting of votes

35 Votes to be counted in accordance with division

Votes in a referendum are to be counted in accordance with this division.

36 Preliminary processing of declaration envelopes and ballot papers

- (1) The commission or the returning officer for each electoral district must ensure that members of the commission's staff examine all declaration envelopes received by the commission or returning officer to decide whether the ballot papers in them are to be accepted for counting.
- (2) A ballot paper must be accepted for counting only if the person examining the declaration envelope is satisfied that—
 - (a) the elector concerned was entitled to vote at the referendum; and
 - (b) the declaration was signed and witnessed before the end of voting hours on the polling day for the referendum; and
 - (c) if the declaration on the envelope was witnessed by a person other than a member of the commission's staff—

the requirements of section 30(8)(d) were complied with; and

- (d) if the ballot paper is in a declaration envelope received by post—the envelope was received before 6p.m. on the 10th day after the polling day for the referendum.
- (3) If the ballot paper is accepted, the person must take it out of the envelope and, without unfolding it or allowing another person to unfold it, put it in—
- (a) if the envelope was received by the returning officer and not sent to the commission to be dealt with under this section—a sealed ballot box; and
 - (b) if the envelope was received by the commission—a sealed ballot box in which ballot papers for the appropriate electoral district, and no other ballot papers, are placed.
- (4) If a declaration envelope received by a returning officer is for a different electoral district, it must be sent to the commission or the appropriate returning officer without being examined under this section.
- (5) If a declaration envelope is received by an office of the commission, it must be sent to the returning officer for the district for which the elector is enrolled without being examined under this section.
- (6) Members of the commission's staff must also seal up in separate parcels, and keep, all unopened envelopes and all opened envelopes.
- (7) The commission or returning officer must take reasonable steps to advise all members of the times when, and places where, declaration envelopes will be examined under this section.
- (8) Declaration envelopes may be examined under this section before or after polling day for the referendum.
- (9) In this section—

member means a member of the Legislative Assembly on the day the writ for the referendum is issued.

37 Preliminary and official counting of votes

The commission must arrange for votes to be counted—

- (a) on the polling day for the referendum—in accordance with section 38; and
- (b) after the polling day for the referendum—in accordance with section 39; and
- (c) in accordance with the procedures made under section 41A.

38 Preliminary counting of ordinary votes

- (1) As soon as practicable after the end of ordinary voting hours on the polling day for the referendum, the member of the commission's staff in charge of a polling booth must ensure that the commission's staff at the polling place follow the procedures—
 - (a) stated in subsection (2); and
 - (b) made under section 41A.
- (2) The staff must—
 - (a) open all ballot boxes at the polling booth, including ballot boxes in which ballot papers from declaration envelopes have been placed under section 36(3); and
 - (b) identify and keep in separate parcels for each different electoral district—
 - (i) all formal ballot papers (including ballot papers printed for electronically assisted votes) that are not in a declaration envelope; and
 - (ii) all declaration envelopes; and
 - (iii) all informal ballot papers (including ballot papers printed for electronically assisted votes) that are not in a declaration envelope; and
 - (c) for each electoral district for which ordinary votes are to be counted at the polling booth—

- (i) arrange, count and keep in separate parcels—
 - (A) all yes votes; and
 - (B) all no votes; and
 - (C) all informal ballot papers; and
- (ii) prepare and sign a statement, in the approved form, setting out—
 - (A) the number of yes votes; and
 - (B) the number of no votes; and
 - (C) the number of informal ballot papers; and
- (iii) advise the returning officer for the electoral district of the contents of the statement; and
- (d) for each electoral district to which paragraph (c) does not apply, identify and keep in a separate parcel—
 - (i) all formal ballot papers, including ballot papers printed for electronically assisted votes; and
 - (ii) all informal ballot papers, including ballot papers printed for electronically assisted votes; and
- (e) for each separate parcel of ballot papers or declaration envelopes—
 - (i) seal the parcel; and
 - (ii) write on the parcel a description of its contents, including the number of ballot papers or declaration envelopes in the parcel; and
 - (iii) sign the description; and
 - (iv) if a scrutineer wishes to countersign the description—allow the scrutineer to do so; and
- (f) send the parcels, and the statement mentioned in subsection (2)(c)(ii), to the returning officer for the appropriate electoral district.

- (3) However, if the poll was for more than 1 referendum, the staff must make up the ballot papers into separate sealed parcels in the way the commission directs.
- (4) Also, the staff must—
 - (a) identify all envelopes containing spoilt ballot papers for each different electoral district; and
 - (b) keep the envelopes in a separate parcel; and
 - (c) deal with the parcel in the way stated in subsection (2)(e) and (f) as if the reference in that subsection to ballot papers were a reference to envelopes containing spoilt ballot papers.
- (5) This section also applies, in the way stated in subsection (6), to the following votes received by the commission—
 - (a) votes received under section 36 for an electoral district;
 - (b) pre-poll votes for an electoral district made at a pre-poll voting office;
 - (c) ballot papers printed for electronically assisted votes at a place other than a polling booth.
- (6) This section applies to the votes mentioned in subsection (5) in the same way it would apply if an office of the commission, or a pre-poll voting office, were a polling booth for an electoral district—
 - (a) to the extent it is reasonably practicable to count the votes on polling day; and
 - (b) subject to any changes prescribed by regulation and any other necessary changes.

39 Official counting of votes

- (1) As soon as practicable after the polling day for the referendum, the returning officer for each electoral district must ensure that the commission's staff follow the procedures stated in this section and made under section 41A.
- (2) Firstly, the staff must—

- (a) open all ballot boxes for the electoral district that have not previously been opened; and
 - (b) identify and keep in separate parcels for each different electoral district—
 - (i) all formal ballot papers (including ballot papers printed for electronically assisted votes) that are not in a declaration envelope; and
 - (ii) all declaration envelopes; and
 - (iii) all informal ballot papers (including ballot papers printed for electronically assisted votes) that are not in a declaration envelope; and
 - (c) for each parcel for an electoral district other than the returning officer's electoral district—
 - (i) seal the parcel; and
 - (ii) write on the parcel a description of its contents, including the number of ballot papers or declaration envelopes in the parcel; and
 - (iii) sign the description; and
 - (iv) if a scrutineer wishes to countersign the description—allow the scrutineer to do so; and
 - (d) send the parcels to the returning officer for the appropriate electoral district.
- (3) Secondly, the staff must—
- (a) open—
 - (i) the parcels mentioned in subsection (2)(b) for the returning officer's electoral district; and
 - (ii) all sealed parcels of ballot papers and declaration envelopes sent to the returning officer under section 38; and
 - (b) follow the procedures set out in section 36 for all declaration envelopes; and

- (c) arrange all yes votes, no votes and informal ballot papers not in declaration envelopes; and
 - (d) count the yes votes, no votes and informal ballot papers.
- (4) Thirdly, the staff must—
- (a) open all ballot boxes on hand in which ballot papers from declaration envelopes have been placed under section 36(3); and
 - (b) arrange all yes votes, no votes and informal ballot papers; and
 - (c) count the yes votes, no votes and informal ballot papers; and
 - (d) reapply paragraphs (a) to (c) as more ballot papers are placed in ballot boxes under section 36(3), until there are no more ballot papers required to be placed in ballot boxes under that section.

40 Objections by scrutineers

- (1) If, while a member of the commission's staff is complying with section 38 or 39, a scrutineer objects to the staff member's treatment of a ballot paper as informal, the staff member must mark on the back of it 'formal' or 'informal' according to whether the staff member's decision is to treat it as formal or informal.
- (2) If, while a member of the commission's staff is complying with section 38 or 39, a scrutineer objects to the counting of a ballot paper as a yes vote or a no vote, the staff member must mark on the back of the relevant ballot paper whether the ballot paper has been counted as a yes vote or a no vote or rejected as informal.

41 Recounting of votes

- (1) At any time before the writ is returned to the Governor, the commission may direct the returning officer, or another

member of the commission's staff, to recount some or all of the ballot papers for the referendum.

- (2) A person carrying out a recount of ballot papers must, so far as practicable, ensure the requirements of section 39 are complied with.
- (3) A returning officer or an assistant returning officer must act in accordance with any directions given by the commission.

41A Prescribed procedures for counting of absentee votes

- (1) The commission must make procedures about how, subject to this division, absentee votes at a referendum are to be counted.
- (2) The procedures must provide for—
 - (a) the circumstances in which absentee votes are counted at a polling booth under section 38; and
 - (b) ensuring absentee votes are counted at polling places in a way that does not compromise the secrecy of voting; and
 - (c) the secure delivery of sealed ballot boxes, and sealed parcels of ballot papers and declaration envelopes, containing absentee votes to the returning officer for the appropriate electoral district or the commission; and
 - (d) the arrangements for scrutineers to be present when absentee votes are counted and their roles and responsibilities.
- (3) The procedures—
 - (a) do not take effect until approved by a regulation; and
 - (b) must be tabled in the Legislative Assembly with the regulation approving the procedures; and
 - (c) must be published on the commission's website.
- (4) In this section—

absentee vote means an ordinary vote made by an elector at a polling booth that is not located in the elector's electoral district.

Division 5 Notifying the results of a referendum

42 Notifying the results of a referendum

- (1) As soon as practicable after the result of the count under section 39 (including that section as applied under section 41) for a referendum, the returning officer for the electoral district must notify the commission of—
 - (a) the total number of yes votes; and
 - (b) the total number of no votes; and
 - (c) the total number of informal ballot papers.
- (2) A returning officer must not delay complying with subsection (1) because ballot papers have not been received if it is clear, on the advice of the commission, the outstanding ballot papers could not possibly affect the referendum result.
- (3) However, if more than 1 referendum is held on the same day, a returning officer may delay advising the results of the counts for all referendums if, on the advice of the commission, any outstanding ballot papers could possibly affect the result of 1 or more of the referendums.

43 Return of writ for referendum

- (1) As soon as practicable after the commission has received notice under section 42(1) from the returning officers for all electoral districts and before the day for the return of the writ, the commission must comply with subsection (2).
- (2) The commission must—
 - (a) on receipt of the count from each of the returning officers for a referendum, work out the total number of yes votes and no votes and write the totals on the writ; and
 - (b) write on the writ whether or not the Bill or question has been approved by a majority of the electors voting; and

- (c) return the writ to the Governor; and
 - (d) publish in the gazette the referendum result.
- (3) Publication in the gazette of the referendum result is evidence of the referendum result.

44 Notice of failure to vote

- (1) The commission may, as soon as practicable after a referendum, send a notice to each elector who appears to have failed to vote at the referendum stating the following—
- (a) the elector appears to have failed to vote at the referendum;
 - (b) it is an offence to fail, without a valid and sufficient reason, to vote at a referendum;
 - (c) the elector may, if the elector considers he or she has committed the offence, pay $\frac{1}{2}$ a penalty unit (the *penalty*) to the commission by a stated day, not earlier than 21 days after the elector received the notice (the *appropriate day*);
 - (d) if the commission receives the payment by the appropriate day, no further steps will be taken against the elector about the offence;
 - (e) if the elector intends paying the penalty by the appropriate day, the elector is required—
 - (i) to sign the appropriate form for payment of the penalty; and
 - (ii) to include payment of the penalty; and
 - (iii) to give the form and payment to the commission by the appropriate day;
 - (f) if the elector does not intend paying the penalty by the appropriate day, the elector is required—
 - (i) to state, in a form included in or with the notice, whether the elector voted; and

- (ii) if the elector failed to vote, to state in the form the reason for failing to vote; and
 - (iii) to give the form to the commission by the appropriate day.
- (2) The elector must comply with the requirements of the notice.
- (3) An elector is taken to have complied with the requirements if—
 - (a) the elector is absent or unable, because of physical incapacity, to comply with the requirements of the notice; and
 - (b) another elector who has personal knowledge of the facts complies with the requirements and in doing so also has his or her signature on the form witnessed.
- (4) As soon as practicable after a referendum, the commission must send a notice to each person who made a declaration vote under section 26(c), but whose ballot paper was not accepted for counting under section 36(1), advising the person why the ballot paper was not accepted for counting.

45 Payments for failure to vote

- (1) If the commission sends a person a notice under section 44(1) for a referendum and the person makes payment to the commission under the subsection, the commission must—
 - (a) accept the payment; and
 - (b) give the person a receipt for the payment; and
 - (c) not take any proceeding against the person for failing to vote at the referendum.
- (2) In this section—

proceeding includes serving an infringement notice under the *State Penalties Enforcement Act 1999*.

46 Storage of ballot papers and declaration envelopes

- (1) The commission must keep the following material for a referendum for the period that applies under subsection (2)—
 - (a) formal and informal ballot papers for the referendum;
 - (b) certified copies of electoral rolls;
 - (c) declaration envelopes.
- (2) For subsection (1), the period starts on the polling day for the referendum and ends on the latest of the following days—
 - (a) the day that is 1 year after the polling day;
 - (b) if the material relates to an application to dispute a referendum or an appeal—the day on which—
 - (i) the application is withdrawn; or
 - (ii) if the application is decided and an appeal from the decision has not been started—the time for starting an appeal from the decision ends; or
 - (iii) if the application is dismissed and an appeal from the decision or order to dismiss the application has not been started—the time for starting an appeal from the decision or order ends; or
 - (iv) the appeal is decided, dismissed or withdrawn;
 - (c) if the commission has authorised a person, including, for example, a person who conducts research at a university, to use the materials for analysis or research—the day on which—
 - (i) the person finishes the analysis or research; or
 - (ii) the person no longer requires the materials for the analysis or research; or
 - (iii) the commission withdraws the authorisation.
- (3) However, the commission must comply with any order by a court, or any request by the commissioner of the police service, to hand over, allow access to or give copies of any ballot papers or declaration envelopes.

(4) In this section—

appeal means an appeal started under part 5, division 2.

application to dispute a referendum means an application to dispute a referendum under part 5, division 1.

Part 5 Disputed returns

Division 1 Disputing referendums

47 Referendum may be disputed under this part

- (1) The result of a referendum may be disputed by an application to the Court of Disputed Returns under this division or an appeal under division 2.
- (2) The result may not be disputed in any other way.

48 Who may dispute the referendum

The result of a referendum may be disputed by—

- (a) a member; or
- (b) the commission; or
- (c) an elector.

49 Requirements for an application to be effective

- (1) For an application to have effect for this division, the requirements of this section must be complied with.
- (2) The application must—
 - (a) state the facts relied on to dispute the referendum result; and
 - (b) state the order sought from the court; and
 - (c) be signed by—

-
- (i) for an application by the commission—the electoral commissioner; and
 - (ii) for an application by a member or elector—the member or elector, before a witness; and
 - (d) if paragraph (c)(ii) applies—contain the signature, occupation and address of the witness.
- (3) The person disputing the referendum result must—
- (a) file the application with the Supreme Court registry in Brisbane within 7 days after the day on which the writ for the referendum is returned as mentioned in section 43(2)(c); and
 - (b) when filing the application, deposit with the court—
 - (i) \$400; or
 - (ii) if a greater amount is prescribed under a regulation—that amount.
- (4) Subsections (1) and (2) do not, by implication, prevent the amendment of the application.

50 Copies of application to be given to clerk of the Parliament and commission

The registrar of the Supreme Court must give a copy of the application to—

- (a) the clerk of the Parliament; and
- (b) the commission, unless the commission filed the application.

51 Application to court for order relating to documents etc.

- (1) The applicant may apply to the court for an order requiring the commission to give the court stated documents and other things held by the commission in relation to the referendum.
- (2) The court may make the order about the application it considers appropriate.

52 Parties to application

- (1) The parties to an application are the person who filed it and any respondent under this section.
- (2) The commission is a respondent to any application by another person under this division.
- (3) The court may join a member, on the member's application, as respondent under this section.

53 How application is to be dealt with by court

- (1) The court may conduct hearings and other proceedings in relation to the application.
- (2) The court is not bound by technicalities, legal forms or rules of evidence.
- (3) The court must deal with the application as quickly as is reasonable in the circumstances.
- (4) In giving effect to subsection (3), the court must use its best efforts to ensure that—
 - (a) the proceeding begins within 28 days after the application is filed; and
 - (b) the court's final orders are given within 14 days after the end of the proceeding.
- (5) Despite subsections (3) and (4), the court must give all parties to the proceeding at least 10 days notice before it begins the proceeding.
- (6) The rules of court of the Supreme Court may include provision, not inconsistent with this division, about the practices and procedures of the Court of Disputed Returns.
- (7) Without limiting subsection (6), the rules of court may make provision regarding the withdrawal of applications, the consequences of the death of applicants and the substitution of applicants in these circumstances.

54 Application for dismissal of application disputing referendum

- (1) The commission may apply to the court for an order dismissing the application disputing the referendum on the ground that there has been excessive delay by the applicant in relation to the application.
- (2) The court may make the order on the application under subsection (1) that the court considers appropriate.

55 Powers of the court

- (1) The court may make any order or exercise any power in relation to the application that the court considers just and equitable.
- (2) The orders may include any of the following—
 - (a) an order to the effect that the referendum as conducted is invalid;
 - (b) an order to the effect that the referendum result as endorsed on the writ is invalid;
 - (c) an order to the effect that the referendum result as endorsed on the writ is reversed;
 - (d) an order to dismiss or uphold the application in whole or part.
- (3) However, the court may not order a new referendum be conducted.
- (4) To remove doubt, it is declared that the court may order the opening of a sealed declaration vote envelope.
- (5) However, the court must ensure, as far as practicable, the secrecy of the ballot is maintained.
- (6) This section is subject to sections 56 and 57.

56 Restrictions on certain orders

- (1) The court must not make an order mentioned in section 55(2) because of a delay in complying with the requirements of part 4, division 3, 4 or 5.
- (2) Also, the court must not make an order under section 55(2) (other than an order to dismiss the application)—
 - (a) because of an absence or error of, or omission by, any member of the commission's staff that appears unlikely to have affected the referendum result; or
 - (b) because incorrect information an elector gives to an issuing officer is written on a declaration envelope the elector signed.
- (3) In deciding whether the requirements of subsection (2) are met, the court must not, if it finds that an elector was prevented from voting at the referendum by absence, error or omission, take into account any evidence of the way in which the elector had intended to vote.

57 Restriction on certain evidence and inquiries

- (1) In a proceeding in relation to the application, the court must not take into account evidence by any person that the person was not permitted to vote during voting hours in relation to a polling place, unless the court is satisfied that, so far as the person was permitted to do so, the person did everything required by this Act to enable the person to vote.
- (2) In a proceeding in relation to the application, the court—
 - (a) may inquire whether persons voting were enrolled on the electoral roll for the electoral district concerned and whether ballot papers were correctly treated as formal or informal during the counting of votes; but
 - (b) must not inquire whether the electoral roll, or any copy used at the referendum, was in accordance with this Act.

58 Referendum not to be disputed because of minor defects or errors

A referendum is not liable to be disputed because of—

- (a) any defect in the title, or any want of title, of any person by or before whom a referendum is held, if the person in fact acted at the referendum; or
- (b) any formal error or defect in any declaration or other instrument or in any distribution or publication made under this Act or intended to be made under this Act; or
- (c) any distribution or publication mentioned in paragraph (b) being out of time.

59 Copy of final court orders to be sent to clerk of Parliament

The registrar of the Supreme Court must arrange for a copy of the court's final orders to be sent to the clerk of the Parliament as soon as possible after they are made.

60 Costs

- (1) The court may order an unsuccessful party to the application to pay the reasonable costs of the other parties to the application.
- (2) If costs are awarded against the applicant, the deposit filed with the application must be applied towards payment of the costs.
- (3) If not, the deposit must be returned to the person.

61 Decisions and orders to be final etc.

Subject to division 2, a decision of, or order made by, the court about the application—

- (a) is final and conclusive; and
- (b) can not be appealed against or otherwise called in question on any ground.

62 Right of commission to have access to documents

Unless the court otherwise orders, the filing of an application does not deprive the commission of any right to have access to a document for the purpose of performing its functions.

Division 2 Appeals

62A Appeal to Court of Appeal on question of law

An appeal lies to the Court of Appeal from any decision of, or order made by, the Court of Disputed Returns on a question of law.

62B Time for appealing

The notice of appeal starting the appeal must—

- (a) be filed within 7 days after the date of the decision or order appealed from; and
- (b) be served as soon as practicable on all other parties to the appeal.

62C Commission is a party to appeal

The commission is a party to the appeal, whether or not it is the appellant.

62D How appeal is dealt with by Court of Appeal

- (1) In deciding the appeal, the Court of Appeal—
 - (a) is not bound by technicalities, legal forms or rules of evidence; and
 - (b) may use the procedures, whether usual or otherwise, that it considers necessary to enable the appeal to be decided quickly and properly; and

- (c) has all the powers given to it by the *Uniform Civil Procedure Rules 1999*.
- (2) The court must use its best efforts to ensure that the appeal is heard, and the court's final decision is made or order is given, as quickly as is reasonable in the circumstances.

62E Application for dismissal of appeal

- (1) A party, other than the appellant, may apply to the Court of Appeal for an order dismissing the appeal on the ground that there has been excessive delay by the appellant in relation to the appeal.
- (2) The court may make an order on the application it considers appropriate.

62F Copy of final court orders to be sent to clerk of Parliament

The registrar of the Supreme Court must arrange for a copy of the Court of Appeal's final orders to be sent to the clerk of the Parliament as soon as possible after they are made.

62G Right of commission to have access to documents

Unless the Court of Appeal otherwise orders, the filing of the notice of appeal 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

63 Attempts taken to be offences

A person who attempts to commit an offence against a provision of this part is taken to have committed the offence.

68 Improperly influencing commission

A person must not improperly influence the electoral commissioner in the performance of the commission's duties under this Act.

Maximum penalty—35 penalty units or 1 year's imprisonment.

69 Interfering with referendum right or duty

A person must not hinder or interfere with the free exercise or performance, by another person, of another right or duty under this Act relating to a referendum.

Maximum penalty—20 penalty units or 6 months imprisonment.

71 Wilful neglect etc. by commission staff

A senior electoral officer or member of the commission's staff must not wilfully neglect or fail to perform a duty under this Act.

Maximum penalty—20 penalty units.

Division 2 Offences relating to referendum advertising

72 **Author of referendum matter must be named**

- (1) A person must not, during a referendum period—
- (a) print, publish, distribute or broadcast; or
 - (b) permit or authorise another person to print, publish, distribute or broadcast;

any advertisement, handbill, pamphlet or notice containing referendum matter unless there appears, or is stated, at its end the particulars required by subsection (2).

Maximum penalty—

- (a) for an individual—20 penalty units; or
 - (b) for a corporation—85 penalty units.
- (2) The particulars are the name and address (other than a post office box) of the person who authorised the advertisement, handbill, pamphlet or notice.
- (3) Subsection (1) does not apply to an advertisement—
- (a) that is printed, published or distributed on a car sticker, T-shirt, lapel button, lapel badge, pen, pencil or balloon; or
 - (b) that is of a kind prescribed under a regulation for this subsection.
- (4) In this section—

publish includes publish on the internet, even if the internet site on which the publication is made is located outside Queensland.

73 **Headline to general referendum matter advertisements**

- (1) If—

- (a) an article, or a paragraph, containing general referendum matter is printed in the newspaper; and
- (b) either—
 - (i) the insertion of the article or paragraph is or is to be paid for; or
 - (ii) any reward or compensation, or promise of reward or compensation, is or is to be made for the insertion of the article or paragraph;

the proprietor must cause the word ‘advertisement’ to be printed as a headline to the article or paragraph in letters not smaller than 10 point or long primer.

Maximum penalty—

- (a) for an individual—10 penalty units; or
 - (b) for a corporation—40 penalty units.
- (2) In this section—

general referendum matter means a matter relating to a referendum.

74 Misleading electors

- (1) A person must not, during a referendum period print, publish, distribute or broadcast anything that is intended or likely to mislead an elector about the way of voting at the referendum.

Maximum penalty—40 penalty units.

- (2) A person must not, during a referendum period, print, publish, distribute or broadcast by television any representation or purported representation of a ballot paper for use in the referendum if it is likely to induce an elector to vote other than in accordance with this Act.

Maximum penalty—40 penalty units.

- (3) In this section—

publish includes publish on the internet, even if the internet site on which the publication is made is located outside Queensland.

Division 3 Offences relating to voting etc.

75 Failure to vote etc.

- (1) An elector must not—
 - (a) fail to vote at a referendum without a valid and sufficient excuse; or
 - (b) contravene section 44(2); or
 - (c) state anything to the commission or the commission's staff under section 44 the person knows is false or misleading in a material particular.

Maximum penalty—1 penalty unit.

- (2) Without limiting subsection (1)(a), if an elector believes it to be part of the elector's religious duty not to vote at a referendum, that is a valid and sufficient excuse for failing to vote at a referendum.
- (3) A person may be prosecuted for an offence against subsection (1)(a) only if the person has been sent a notice about the referendum under section 44.
- (4) In a proceeding for an offence against subsection (1)(a), a certificate purporting to be signed by a member of the commission's staff stating any of the following matters is evidence of the matter—
 - (a) a referendum happened on a stated day;
 - (b) an elector failed to vote at the referendum;
 - (c) a notice was sent by the commission to the elector under section 44 on a stated day;

- (d) a form mentioned in section 44(1) was not received by the commission from the elector by the day stated under the subsection.
- (5) If a form is not received by the commission from the elector by the day stated under section 44(1), it is evidence the elector failed to vote at the referendum without a valid and sufficient excuse.
- (6) If a form is received by the commission about the elector's compliance with section 44, statements in the form purporting to be made by—
 - (a) the elector are evidence as statements made by the elector; and
 - (b) another elector under section 44(3), are evidence as statements made by the other elector.
- (7) Subsection (1)(a) does not apply to an Antarctic elector.
- (8) For the *Justices Act 1886*, section 139, the place where an offence against subsection (1)(a) is committed is taken to be the office of the returning officer for the electoral district for which the elector was enrolled for the referendum.

76 Leave to vote

- (1) This section applies if—
 - (a) an employee who is an elector asks his or her employer, before the polling day for a referendum, for leave of absence to vote at the referendum; and
 - (b) the absence is necessary to enable the employee to vote at the referendum.
- (2) Unless the absence is reasonably likely to cause danger or substantial loss to the employer in relation to the employment concerned, the employer—
 - (a) must allow the employee leave of absence for a reasonable period of not more than 2 hours to enable the employee to vote at the referendum; and

- (b) must not impose any penalty or disproportionate deduction of pay for the leave of absence.
- (3) An employee must not ask for leave of absence under subsection (1) to vote at a referendum unless the employee genuinely intends to vote at the referendum.

Maximum penalty—

- (a) for an individual—10 penalty units; or
- (b) for a corporation—40 penalty units.

77 Canvassing etc. in or near polling places

- (1) A person must not, during a referendum period, do anything mentioned in subsection (2)—
 - (a) inside a room with voting compartments; or
 - (b) within 6m of the entrance to a building with voting compartments.

Maximum penalty—10 penalty units.

- (2) For subsection (1), the things are—
 - (a) canvassing for votes; or
 - (b) inducing an elector not to—
 - (i) vote in a particular way; or
 - (ii) vote at all at the referendum; or
 - (c) loitering; or
 - (d) obstructing the free passage of voters.

78 Interrupting voting etc.

A person must not—

- (a) enter or remain in a polling booth otherwise than as authorised under this Act; or
- (b) wilfully interrupt, obstruct or disturb any proceeding at a referendum; or

- (c) enter a voting compartment otherwise than as authorised under this Act; or
- (d) prevent a scrutineer from entering or leaving a polling place—
 - (i) during voting hours for the polling place; or
 - (ii) while votes are being counted at the polling place; or
- (e) obstruct or wilfully mislead a senior electoral officer or member of the commission’s staff in the performance of a duty.

Maximum penalty—10 penalty units.

80 Displaying referendum statements in certain places

- (1) A person must not, during a referendum period, display a referendum statement—
 - (a) inside a room with voting compartments; or
 - (b) within 6m of the entrance to a building with voting compartments.

Maximum penalty—1 penalty unit.

- (2) In this section—

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.

82 Offences relating to ballot papers

- (1) A person must not at a referendum—
 - (a) wilfully fail to comply with section 22(10)(c), 28(5)(d), 29(3)(c) or (d) or 30(8)(c) or (d); or
 - (b) take a ballot paper out of a polling place otherwise than as authorised under this Act; or
 - (c) place in a ballot box a ballot paper that has not been—

- (i) given to an elector under this Act; or
- (ii) marked by the elector.

Maximum penalty—20 penalty units or 6 months imprisonment.

- (2) A person must not, without lawful excuse, obtain possession of, or have in the person's possession—
 - (a) a ballot paper that has been marked by someone else; or
 - (b) a declaration envelope that has been signed by someone else.

Maximum penalty—20 penalty units or 6 months imprisonment.

83 Failure to give, post or send documents for someone else

- (1) If a person is given a request in the approved form under section 30 or 31 to give to the commission or a returning officer, the person must promptly give the request to the commission or returning officer, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units or 6 months imprisonment.

- (2) If a person is given a declaration envelope under section 30(8)(d)(ii) to post or send to the commission or returning officer, the person must promptly post or send it to the commission or returning officer, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units or 6 months imprisonment.

84 Secrecy of voting

A person must not—

- (a) unfold a ballot paper that has been marked and folded by an elector under this Act, unless ordered by a court or authorised under this Act to do so; or

- (b) if the person is a member of the commission's staff performing duties at a polling place for a referendum—
 - (i) ascertain or discover how an elector has voted at the referendum, unless the person is authorised to do so under this Act; or
 - (ii) disclose any information about how an elector has voted at a referendum, unless the person is authorised to do so under this Act or ordered by a court to do so.

Maximum penalty—20 penalty units or 6 months imprisonment.

85 Breaking seals on parcels

A person must not wilfully open or break the seal of a parcel sealed under section 38(2)(e), unless the person is authorised to do so under this Act or ordered by a court to do so.

Maximum penalty—20 penalty units or 6 months imprisonment.

86 Duty of witness to signing of declaration voting papers

An elector or other person (the *witness*) must not sign a declaration envelope as witness under section 30(8)(a) unless—

- (a) the witness is satisfied of the identity of the elector who signs the declaration before the witness; and
- (b) the witness has seen the elector sign the declaration; and
- (c) either—
 - (i) the witness knows that the declaration made by the elector on the envelope is true; or
 - (ii) the witness is satisfied, on the basis of inquiries of the elector or otherwise, that the declaration is true.

Maximum penalty—20 penalty units or 6 months imprisonment.

Division 4 Injunctions

87 Injunctions

- (1) This section applies if—
 - (a) a person (the *offending party*)—
 - (i) has engaged, is engaging or is proposing to engage in conduct; or
 - (ii) has failed, is failing or is proposing to fail to do anything; and
 - (b) the conduct or failure constituted, constitutes or would constitute a contravention of, or an offence against, this Act.
- (2) Application may be made to the Supreme Court under this section for an injunction in relation to the conduct or failure.
- (3) The application may be made by—
 - (a) a member; or
 - (b) the commission; or
 - (c) an elector.
- (4) The Supreme Court may grant an interim injunction pending determination of the application.
- (5) If the commission makes the application for the injunction, the Supreme Court must not require it or another person to give any undertakings as to damages as a condition of granting an interim injunction under subsection (4).
- (6) On considering the application for the injunction, the Supreme Court may—
 - (a) in a case to which subsection (1)(a)(i) applies—grant an injunction restraining the offending party from engaging in the conduct concerned and, if in the court’s opinion it is desirable to do so, requiring the offending party to do anything; or

- (b) in a case to which subsection (1)(a)(ii) applies—grant an injunction requiring the offending party to do the thing concerned.
- (7) The Supreme Court may grant the injunction—
- (a) if the court is satisfied that the offending party has engaged in the conduct, or failed to do the thing, mentioned in subsection (1)—whether or not it appears to the court that the offending party intends—
 - (i) to engage again or continue to engage in the conduct; or
 - (ii) to fail or continue to fail or do the thing; or
 - (b) if it appears to the court that, if the injunction is not granted, it is likely that the offending party will engage in the conduct, or fail to do the thing, mentioned in subsection (1)—whether or not—
 - (i) the offending party has previously engaged in the conduct or failed to do the thing; and
 - (ii) there is an imminent danger of substantial damage to any person if the offending party engages in the conduct or fails to do the thing.
- (8) The Supreme Court may refuse to grant an injunction if it appears to the court that the application was not made to the court at the earliest possible opportunity.
- (9) The Supreme Court may discharge or vary the injunction or any interim injunction granted under subsection (4).
- (10) The powers conferred on the Supreme Court by this section are in addition to, and do not limit, any other powers of the court.

Part 7 **Referendum held in conjunction with particular elections**

Division 1 **Referendum held with election under Electoral Act 1992**

88 **Extension of time**

- (1) This section applies if the polling day for a referendum is the same day as the polling day for an election and the time for holding the election is extended under the *Constitution of Queensland 2001*, section 19B or *Electoral Act 1992*, section 86.
- (2) If the extension of time for holding the election relates only to a particular electoral district, the day on which the election is to be held in that district is to be taken to be the polling day for the referendum in that district.
- (3) In any other case, the day on which the election is to be held is to be taken to be the polling day for the referendum.

89 **Cut-off day for electoral rolls for an election and a referendum**

- (1) This section applies if—
 - (a) a writ is issued for a referendum; and
 - (b) before the polling day for the referendum, a writ is subsequently issued for an election: and
 - (c) the polling day for the election is also the polling day for the referendum.
- (2) The cut-off day for electoral rolls stated in the writ for the referendum is, by force of this section, extended to the cut-off day for electoral rolls for the election under the *Electoral Act 1992*.

91 Use of ballot boxes, polling booths and electoral rolls

If the polling day for a referendum is also the polling day for an election—

- (a) the same polling booths and ballot boxes may be used for the election and the referendum, but if the same ballot boxes are used, the ballot papers for the referendum must, by colour or marking, be readily distinguishable from the ballot papers for the election; and
- (b) the same electoral roll must be used for both the election and the referendum.

92 Mobile polling booths

If the polling day for a referendum is also the polling day for an election, a declaration or arrangement made under the *Electoral Act 1992*, section 99(4) to (8) also has effect as a declaration or an arrangement under section 16(4) or (6) of this Act for the referendum.

93 Opening of ballot boxes

A ballot box used for a referendum must not be opened except under this Act or, if the ballot box has been used for both a referendum and an election, under this Act or the *Electoral Act 1992*.

94 Applications, declarations, ballot papers and references

If the polling day for a referendum is also the polling day for an election—

- (a) a request made under the *Electoral Act 1992*, section 119(2) or 120(1) is also taken to be a request under section 30(2) or 31(1) respectively; and
- (b) a declaration made for the election under the *Electoral Act 1992*, section 108(3), 113(3), 117, 118, 120 or 121 is

also taken to be a declaration made under section 23(3), 24D(3), 28, 30, 31 or 32 respectively; and

- (c) a ballot paper given to an elector under section 23(3), 24D(3), 28, 30, 31 or 32 may be enclosed in the same declaration envelope as a ballot paper given to the elector under the *Electoral Act 1992*, section 108(3), 113(3), 117, 118, 120 or 121 respectively.

95 Record of ordinary voters

If the polling day for a referendum is also the polling day for an election, the issuing officer is taken to have complied with section 22(8) if he or she has complied with the *Electoral Act 1992*, section 107(8).

95A Suspension of poll at both referendum and election

- (1) This section applies if—
 - (a) the polling day for a referendum is also the polling day for an election; and
 - (b) the returning officer suspends the poll at a polling booth under the *Electoral Act 1992*, section 99B.
- (2) The poll at the polling booth for the referendum is also suspended while the poll at the polling booth for the election is suspended.

96 Adjournment at both referendum and election

- (1) This section applies if—
 - (a) the polling day for a referendum is also the polling day for an election; and
 - (b) the returning officer adjourns the poll at a polling booth under the *Electoral Act 1992*, section 99B or 100; and
 - (c) the commission fixes a day for the taking of the adjourned poll under the *Electoral Act 1992*, section 99B or 100.

- (2) The poll at the polling booth for the referendum is also adjourned until the day fixed by the commission for the taking of the adjourned poll for the election.

Division 2 Referendum held with local government election

96AA Application of division

This division applies if the polling day for a referendum is the same day as the polling day for a local government election.

96AB Definitions for division

In this division—

LGEA means *Local Government Electoral Act 2011*.

local government election means a quadrennial election under the LGEA.

96AC Application of division 1

- (1) Division 1, other than sections 89, 90 and 94, applies in relation to the referendum and local government election as if—
- (a) a reference in the division to an election were a reference to a local government election; and
 - (b) the reference in section 88(1) to the *Electoral Act 1992*, section 86 were a reference to the LGEA, section 38; and
 - (c) a reference in section 88(2) to an electoral district or a district were a reference to a local government area or division of a local government area; and
 - (d) the reference in section 92 to a declaration or arrangement made under the *Electoral Act 1992*, section

- 99(4) to (8) were a reference to an arrangement under the LGEA, section 49; and
- (e) the reference in section 93 to the *Electoral Act 1992* were a reference to the LGEA; and
 - (f) the reference in section 95 to the *Electoral Act 1992*, section 107(8) were a reference to the LGEA, section 75(6); and
 - (g) the reference in section 95A or 96(1) to the *Electoral Act 1992*, section 99B were a reference to the LGEA, section 52A; and
 - (h) the reference in section 96(1)(b) to the returning officer were a reference to the returning officer or presiding officer under the LGEA; and
 - (i) a reference in section 96(1) to the *Electoral Act 1992*, section 100 were a reference to the LGEA, section 53; and
 - (j) a reference in section 96 to the commission were a reference to the returning officer under the LGEA.
- (2) In this section—
division, of a local government area, see the LGEA, schedule 2.

96AD Cut-off day for electoral rolls

- (1) If the cut-off day for electoral rolls stated in the writ for the referendum would, but for this section, be a day before the local cut-off day, the cut-off day for electoral rolls is extended to the local cut-off day.
- (2) In this section—
local cut-off day means the cut-off day for the voters rolls, under the LGEA, for the local government election.

96AE Particular applications, declarations, ballot papers and references

For the purposes of the referendum and local government election—

- (a) an application made under the LGEA, section 72(2) or 79(2) is taken to be a request under section 30(2) (and vice versa) and an application under the LGEA, section 77(2) is taken to be a request under section 31(1) (and vice versa); and
- (b) a declaration made for the election under the LGEA, section 70 is taken to be a declaration made under section 28 (and vice versa) and a declaration made for the election under the LGEA, section 72 is taken to be a declaration made under section 30 (and vice versa); and
- (c) a ballot paper given to an elector under section 28 or 30 may be enclosed in the same declaration envelope as a ballot paper given to the elector under the LGEA, section 70, 72 or 79.

96AF Holding postal ballot election

- (1) This section applies if a poll for the local government election is to be conducted by a postal ballot election under the LGEA.
- (2) An elector who must cast a postal vote under the LGEA for the local government election must cast a vote for the referendum using ballot papers posted to the elector under this section.
- (3) The commission must, as soon as practicable after the issue of the writ for the referendum, post a ballot paper and declaration envelope to each elector who is entitled to cast a vote in the postal ballot election.
- (4) For subsection (3), the ballot paper may be enclosed in the same declaration envelope as a ballot paper given to the elector under the LGEA, section 80(1) or 81(5).

- (5) Returning officers and the commission must keep a record of all ballot papers and declaration envelopes posted or given to the elector under this section.

96AG Pre-poll voting

- (1) An elector may make a pre-poll ordinary vote at a pre-polling booth in the local government area only during voting hours for the booth under the LGEA.
- (2) This section applies despite section 24C(1).

96AI Application of particular provisions of the LGEA

- (1) For the purpose of holding the referendum and local government election on the same polling day, a provision of the LGEA dealing with matters about procedures for conducting a local government election applies with necessary changes.
- (2) Subsection (1) applies subject to this Act.

Part 7A Returns by broadcasters and publishers

96A Returns by broadcasters

- (1) If a referendum has taken place, each broadcaster who, during the referendum period, broadcast an advertisement relating to the referendum must, before the end of 8 weeks after the voting day for the referendum, give the commission a return, in an approved form, stating—
 - (a) particulars of the broadcasting service as part of which the advertisement was broadcast; and
 - (aa) the name and address of the person at whose request the advertisement was broadcast; and

- (b) the name and address of the person with whose authority the advertisement was broadcast; and
- (c) the date on which, and the times between which, the advertisement was broadcast; and
- (d) whether or not, on each occasion when the advertisement was broadcast, a charge was made by the broadcaster for the broadcasting of the advertisement and, if a charge was made, specifying the amount of the charge.

Maximum penalty—20 penalty units.

- (1A) Subsection (1) applies to a broadcaster even if at the time the broadcaster broadcast the advertisement the broadcaster was outside Queensland.
- (2) If, in a return under subsection (1), the amount of a charge is specified by a broadcaster in relation to an advertisement, the broadcaster must, in the return, state whether or not the charge is a charge at less than normal commercial rates having regard to the length of the advertisement and the day on which, and the times between which, the advertisement was broadcast.

Maximum penalty—20 penalty units.

- (4) A broadcaster who is required to make a return under this section for an advertisement must keep the record made for the purpose of the relevant provision until the end of the period of 1 month starting on the day on which the return is given to the commission.

Maximum penalty—20 penalty units.

- (5) The requirement of subsection (4) is in addition to the requirements of the relevant provision for the retention of the record.
- (6) In subsections (4) and (5)—

relevant provision means—

- (a) in relation to the Australian Broadcasting Corporation—
the *Australian Broadcasting Corporation Act 1983* (Cwlth), section 79B; or

- (b) in relation to the Special Broadcasting Service—the *Special Broadcasting Service Act 1991* (Cwlth), section 70B; or
- (c) in any other case—the *Broadcasting Services Act 1992* (Cwlth), schedule 2, section 5.

96B Returns by publishers

- (1) If a referendum has taken place, each publisher of a journal who, during the referendum period, published in the journal an advertisement relating to the referendum must, before the end of 8 weeks after the voting day in the referendum, give the commission a return, in an approved form, stating—
 - (a) particulars of the journal in which the advertisement was published; and
 - (aa) the name and address of the person at whose request the advertisement was published; and
 - (b) the name and address of the person with whose authority the advertisement was published; and
 - (c) the date on which the advertisement was published; and
 - (d) particulars of the page in the journal on which the advertisement was published and the space in the journal occupied by the advertisement; and
 - (e) whether or not a charge was made by the publisher for the publication of the advertisement and, if a charge was made, specifying the amount of the charge.

Maximum penalty—20 penalty units.

- (1A) Subsection (1) applies to a publisher even if at the time the publisher published the advertisement the publisher was outside Queensland.
- (2) If, in a return under subsection (1), the amount of a charge is specified by a publisher in relation to an advertisement, the publisher must, in the return, state whether or not the charge was a charge at less than normal commercial rates having

regard to the space in the journal occupied by the advertisement and the nature of the journal.

Maximum penalty—20 penalty units.

- (3) A publisher is not required to give a return under subsection (1) in relation to a referendum if the total amount of the charge made by the publisher for the publication of the advertisement referred to in the subsection and any other advertisement relating to a referendum that took place on the same day as the first-mentioned referendum does not exceed \$1000.

96C Combined returns

- (1) If—
- (a) the voting at 2 or more referendums took place on the same day; and
 - (b) a person would, apart from this subsection, be required to give 2 or more returns under this part relating to the referendums;

the person may, instead of giving the returns, give 1 return, in an approved form, stating the particulars that he or she would have been required to state in the returns.

- (2) If—
- (a) a return is given by a person under subsection (1); and
 - (b) a matter details of which are required to be stated in the return relates to more than 1 referendum;

it is sufficient compliance with this part if the return states details of the matter without showing the extent to which the matter relates to any particular referendum.

96D Inspection and supply of copies of returns

- (1) The commission must keep a copy of each return given under this part.
- (2) Anyone is entitled to read the copy.

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- (3) The commission must, on request, make the copy available for a person's inspection.
 - (4) A person is entitled, on payment of the prescribed fee, to get a copy of a return mentioned in subsection (1).

Part 8 Miscellaneous

97 How things are to be given to commission

A form, notice, or other document or thing that is required or permitted by this Act to be given to the commission may be given to the commission by leaving it at, or sending it by post or facsimile or in a similar way, to the commission's office.

98 How things are to be signed

For this Act, a person signs a thing—

- (a) by signing the person's name in writing on the thing; or
- (b) if the person is unable to sign as mentioned in paragraph (a)—by making the person's mark on the thing as a signature before another person who signs the thing as witness; or
- (c) if the person is unable to sign as mentioned in paragraph (a) or make a mark as mentioned in paragraph (b)—by having another person sign the other person's name in writing, and write the other person's name and address and the words 'signed for the elector', on the thing.

99 Advertising of office addresses etc.

Within a reasonable time after the commencement of a referendum period, the commission must advertise the locations and opening hours of its office and offices of returning officers and other members of the commission's staff.

100 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may create offences and prescribe penalties of not more than 20 penalty units for each offence.

Part 9 Transitional provisions

Division 1 Transitional provision for Electoral and Other Acts Amendment Act 2001

101 Transitional provision—petition disputing referendum

- (1) If, immediately before the commencement day, there was a petition filed under section 49 that had not been finally dealt with by the Court of Disputed Returns, the petition is taken to be an application under that section.

Editor's note—

The commencement day is 25 May 2001.

- (2) In this section—

commencement day means the day that the amendments of this Act in the *Electoral and Other Acts Amendment Act 2001*, schedule 2, commenced.

Division 2 **Transitional provision for
Constitution (Fixed Term
Parliament) Referendum Act 2015**

102 **Application of s 11 for particular referendum**

- (1) This section applies to a referendum held for the purpose of the *Constitution (Fixed Term Parliament) Referendum Act 2015*, section 2.
- (2) Section 11(1)(c) applies as if the reference in the paragraph to within 4 weeks after the passage of the Bill were a reference to at least 25 days before the polling day for the referendum.

Schedule 1 Referendum forms

section 3

Form 1

Referendums Act 1997

Writ for a referendum on a Bill

To Electoral commissioner

I, (*insert name*), Governor direct you to submit a Bill entitled [*here state the title of the Bill*], a copy of which is attached, to electors within the meaning of the *Referendums Act 1997*.

The following days are appointed—

- for the issue of this writ—(*insert day and date*)
- for the cut-off day for the electoral rolls for the referendum—(*insert day and date*)
- for the polling day for the referendum—(*insert day and date*)
- for the return of this writ—(*insert day and date*)

Witness

[*insert the Governor's title and the date*]

Governor

By Command

Reverse

This writ was received by me (*insert day and date*)

Electoral commissioner

I declare that on (*insert day and date*) the electors qualified to vote at the referendum voted as follows—

To approve a Bill entitled [*here state title of Bill*] Votes

Not to approve a Bill entitled [*here state title of Bill*] Votes

I declare that the Bill entitled [*here state title of Bill*] has/has not been approved by a majority of the electors voting.

Electoral commissioner

Form 2

Referendums Act 1997

Writ for a referendum on a question

To Electoral commissioner

I, (*insert name*), Governor direct you to submit a question [*here state the question*] approved by the Legislative Assembly, a copy of which is attached, to electors within the meaning of the *Referendums Act 1997*.

The following days are appointed—

- for the issue of this writ—(*insert day and date*)
- for the cut-off day for the electoral rolls for the referendum—(*insert day and date*)
- for the polling day for the referendum—(*insert day and date*)
- for the return of this writ—(*insert day and date*)

Witness

[*insert the Governor's title and the date*]

Governor

By Command

Reverse

This writ was received by me (*insert day and date*)

Electoral commissioner

I declare that on (*insert day and date*) the electors qualified to vote at the referendum voted as follows—

To approve the question [*here state the question*] Votes

Not to approve the question [*here state the question*] Votes

I declare that the question [*here state the question*] has/has not been approved by a majority of the electors voting.

Electoral commissioner

Form 3

Referendums Act 1997

Ballot paper

(For submission of a Bill)

HOW TO VOTE—

IF YOU APPROVE PLACE A TICK [✓] IN THE SQUARE OPPOSITE THE WORD ‘YES’

IF YOU DO NOT APPROVE PLACE A TICK [✓] IN THE SQUARE OPPOSITE THE WORD ‘NO’

A Bill:

[*Here insert long title of Bill*]

YES

NO

Form 4

Referendums Act 1997

Ballot paper

(For submission of a question)

HOW TO VOTE—

IF YOU APPROVE PLACE A TICK [✓] IN THE SQUARE OPPOSITE THE WORD ‘YES’

IF YOU DO NOT APPROVE PLACE A TICK [✓] IN THE SQUARE OPPOSITE THE WORD ‘NO’

[Here insert question]

YES

NO

Form 5

Referendums Act 1997

Ballot paper

(For Use For Multiple Referendums)

HOW TO VOTE FOR EACH OF THE FOLLOWING REFERENDUM ISSUES—

IF YOU APPROVE PLACE A TICK [✓] IN THE SQUARE OPPOSITE THE WORD 'YES'

IF YOU DO NOT APPROVE PLACE A TICK [✓] IN THE SQUARE OPPOSITE THE WORD 'NO'

A Bill—

[Here insert long title of Bill]

YES

NO

A question—

[Here insert question]

YES

NO

Schedule 3 Dictionary

section 2

Antarctic elector see the *Commonwealth Electoral Act 1918* (Cwlth), section 246(1).

assistant returning officer means an assistant returning officer under the *Electoral Act 1992*, section 32.

ballot paper means a paper—

- (a) on which is shown the issue to be submitted to the electors at a referendum; and
- (b) on which the elector is to record the elector's vote on the issue.

Bill means a Bill for an Act.

broadcast includes televise.

broadcaster means—

- (a) the Australian Broadcasting Corporation established under the *Australian Broadcasting Corporation Act 1983* (Cwlth); or
- (b) the Special Broadcasting Service Corporation established under the *Special Broadcasting Service Act 1991* (Cwlth), section 5; or
- (c) the holder of a licence under the *Broadcasting Services Act 1992* (Cwlth); or
- (d) the provider of a broadcasting service under a class licence under the *Broadcasting Services Act 1992* (Cwlth).

certified copy, of an electoral roll, means a certified copy of the electoral roll under the *Electoral Act 1992*.

commission means the Electoral Commission of Queensland.

court means the Court of Disputed Returns.

Court of Disputed Returns see the *Electoral Act 1992*, section 137.

Editor's note—

See the *Electoral Act 1992*, section 137 (Supreme Court to be Court of Disputed Returns).

cut-off day for electoral rolls see the *Electoral Act 1992*, schedule 1.

day for the return of a writ means the day so described in the writ for the referendum.

declaration envelope means—

- (a) a declaration envelope under section 32; or
- (b) another envelope on which there is a declaration to be made by an elector for this Act.

deputy electoral commissioner means the deputy electoral commissioner under the *Electoral Act 1992*.

election means an election of a member or members of the Legislative Assembly under the *Electoral Act 1992*.

elector means a person entitled to vote at a referendum.

Editor's note—

See section 21.

electoral commissioner means the electoral commissioner under the *Electoral Act 1992*.

electoral district see the *Electoral Act 1992*, part 3.

electoral roll means an electoral roll under the *Electoral Act 1992*.

electoral visitor voter see section 25(3).

form 1 see schedule 1.

form 2 see schedule 1.

form 3 see schedule 1.

form 4 see schedule 1.

form 5 see schedule 1.

formal ballot paper see section 34(3).

informal ballot paper see section 34(4).

institution see the *Electoral Act 1992*, schedule 1.

issuing officer see the *Electoral Act 1992*, schedule 1.

journal means a newspaper, magazine or other periodical, whether published for sale or for distribution without charge.

LGEA, for part 7, division 2, see section 96AB.

local government election, for part 7, division 2, see section 96AB.

member means a member of the Legislative Assembly.

member of the commission's staff see the *Electoral Act 1992*, section 29.

mobile polling booth see section 16.

no vote means a vote on a formal ballot paper not approving of the Bill or question submitted to electors.

ordinary polling booth see section 16.

ordinary postal voter see section 30(2).

ordinary vote means a vote that is not a declaration vote.

Editor's note—

Part 4, division 3, subdivision 2 is about declaration voting.

ordinary voting hours means voting hours in relation to ordinary polling booths.

polling booth means an ordinary polling booth, a mobile polling booth or a pre-poll voting office.

polling day means—

- (a) for a referendum—the day described in the writ for the referendum as the polling day; or
- (b) for an election—the day so described in the writ for the election.

polling place means a polling booth or another place where voting at a referendum takes place.

postal voter means an elector who is—

(a) an ordinary postal voter; or

(b) a special postal voter.

pre-poll ordinary vote see section 24A(2).

pre-poll voting office see section 16A(1)(a).

referendum means the taking of the vote of electors on a Bill or question the subject of a writ.

referendum matter means anything able to, or intended to—

(a) influence an elector in relation to voting at a referendum; or

(b) affect the result of a referendum.

referendum paper means a ballot paper, declaration envelope or other document issued by the commission for this Act.

referendum period means the period—

(a) beginning on the day after the writ for the referendum is issued; and

(b) ending at 6p.m. on the polling day for the referendum.

returning officer means a returning officer under the *Electoral Act 1992*, section 31.

scrutineer means a person appointed as a scrutineer under this Act.

Editor's note—

See section 19 (Scrutineers).

senior electoral officer means the electoral commissioner or deputy electoral commissioner.

special postal voter see the *Electoral Act 1992*, section 114(2).

spoilt ballot paper see section 34A(1)(a)(i) and 34B(1)(b).

voting compartment means a compartment in a polling place where electors may vote in private.

voting hours, of a polling place, means the hours during which electors may enter the polling place.

writ means a writ for a referendum issued under section 5.

yes vote means a vote on a formal ballot paper approving of the Bill or question submitted to electors.