Western Australia

Referendums Act 1983

Compare between:

[11 Dec 2023, 02-b0-00] and [01 Jul 2024, 02-c0-00]

Western Australia

Referendums Act 1983

An Act relating to the submission of questions to the electors of the State.

Part I — Preliminary

1. Short title

This Act may be cited as the *Referendums Act 1983*.

2. Terms used

(1) In this Act, unless the contrary intention appears —

authorised manner in relation to the marking of a vote on a ballot paper used for a referendum means a manner of marking —

(a) prescribed in section 16(2); or

(b) prescribed in the Act by which the referendum is authorised or required; or

(c) directed on the ballot paper,

as the case may require;

district means an electoral district for the election of a member of the Legislative Assembly;

election means an election of members of the Legislative Assembly or of the Legislative Council under the *Electoral Act 1907* other than an election under sections 156C and 156D of that Act;

Electoral Commissioner means the Electoral Commissioner appointed under the *Electoral Act 1907*;

electors means the electors qualified to vote for the election of members of the Legislative Assembly according to the provisions of the *Electoral Act 1907*;

officer means an officer appointed under this Act or whose appointment has effect for the purposes of this Act;

official paper ~~means paper referred to in section 113(4) of~~has the meaning given in the *Electoral Act 1907*~~;~~ section 94A(2);

place to vote means a polling place or mobile voting place declared by written notice under the *Electoral Act 1907* section 90 as applied by section 18(a);

referendum means the submission of a question to the electors pursuant to an Act but does not include any election under the *Electoral Act 1907*;

referendum as to a Bill means a referendum on the question for the approval or otherwise of a Bill for an Act that has been passed by both Houses of Parliament;

returning officer means the returning officer for a district appointed for the purposes of the *Electoral Act 1907* and includes a person exercising or discharging the powers, functions and duties of the returning officer.

(2) A reference in this Act to the holding of a referendum on the same day as an election is a reference to the votes of the electors for the purposes of a referendum being taken on the day on which the polling at an election is conducted.

[Section 2 amended: No. 40 of 1987 s. 98 and 103; No. 79 of 1987 s. 80; No. 43 of 1996 s. 30; No. 36 of 2000 s. 25(2).]; No. 30 of 2023 s. 190.]

3. Construction of applied provisions

(1) Where pursuant to this Act any provision of the *Electoral Act 1907* applies to or in relation to a referendum or to or in relation to any act, matter or thing pertaining to a referendum or done or to be done pursuant to this Act —

(a) the provision shall so apply *mutatis mutandis* subject to such modifications, additions or deletions, if any, as are prescribed by this Act or by regulations made under this Act; and

(b) any regulation, order or other statutory instrument made under or for the purposes of that provision shall so apply in like manner.

(2) In the application of any provision, regulation, order or statutory instrument as referred to in subsection (1) —

(a) a reference to a polling day shall be read as a reference to the day fixed for the taking of the votes of the electors for the purposes of a referendum;

(b) a reference to a poll shall be read as a reference to the taking of the votes of the electors for the purposes of a referendum;

(c) a reference to the close of nominations shall be read —

(i) where a referendum is held on the same day as an election, as a reference to the time of the close of nominations for the election;

(ii) in any other case, as a reference to 6 p.m. on the day that is 7 days after the day on which the writ for a referendum is issued;

(d) a reference to electoral matter or to electoral papers shall be read as a reference to corresponding matter or papers in relation to a referendum.

(3) Notwithstanding any provision or regulation referred to in subsection (1) a ballot paper used for the purposes of a referendum shall not be rejected as informal except for a reason specified in this Act or regulations made under this Act.

[Section 3 amended: No. 79 of 1987 s. 80.]

Part II — The writ for a referendum

4. Issue of writ

(1) Whenever —

(a) an Order in Council is made under the *Constitution Act 1889* fixing the day for the taking of the votes of the electors for the purposes of a referendum as to a Bill; or

(b) a referendum is otherwise authorised or required by any Act,

the Governor may cause a writ to be issued for the referendum.

(2) When any writ is issued under subsection (1) notice of that fact shall be published by the Electoral Commissioner in the *Government Gazette*.

[(3) deleted]

(4) The writ shall be deemed to have been issued at 6 o'clock in the afternoon of the day on which it was issued.

[Section 4 amended: No. 79 of 1987 s. 80; No. 36 of 2000 s. 25(3)-(5).]

5. Form of writ

(1) Subject to subsections (2) and (3) the writ for a referendum shall be in the prescribed form and shall fix —

(a) the day for the taking of the votes of the electors; and

(b) the day for the return of the writ.

(2) The day fixed pursuant to subsection (1)(a) shall be a Saturday other than Easter Saturday or the Saturday immediately preceding or succeeding Easter Saturday.

(3) Subsection (1)(a) does not apply to the writ where the day for the taking of the votes of the electors is fixed by or under the Act by which the referendum is authorised or required.

6. Address of writ and action on receipt

(1) The writ for a referendum shall be addressed to the Electoral Commissioner.

(2) On the receipt of the writ the Electoral Commissioner shall —

(a) indorse on the writ the date of receipt by him; and

(b) advertise the receipt and particulars of the writ —

(i) in the *Gazette*; and

(ii) in a newspaper circulating in the State, or by placards or otherwise;

and

(c) forward a copy of the writ to the returning officer for each district.

[Section 6 amended: No. 40 of 1987 s. 103.]

7. Arrangements for taking votes

For the purposes of a referendum —

(a) the Electoral Commissioner shall, as soon as practicable after the receipt of the writ advertise the places at which the votes of the electors will be taken in a newspaper circulating in the State, or by placards or otherwise, and shall make all arrangements that are necessary to be made by him for taking the votes of the electors;

(b) each returning officer shall make all arrangements that are necessary to be made by him for taking the votes of the electors in his district.

[Section 7 amended: No. 40 of 1987 s. 103.]

8. Additional action in case of referendum as to Bill

In the case of a referendum as to a Bill —

(a) the Governor may cause a copy of the Bill, or a copy of a statement setting out —

(i) the text of the Bill;

(ii) the text of the particular provisions (if any) of any Act proposed to be textually altered by the Bill, and the textual alterations proposed to be made therein,

to be attached to the writ;

(b) the Electoral Commissioner shall cause a summary of the provisions of the Bill to be published in the *Gazette* when he advertises the receipt and particulars of the writ under section 6(2)(b)(i);

(c) the Electoral Commissioner shall attach a copy of the Bill, or of the statement (if any) attached to the writ, to each copy of the writ that he forwards to a returning officer under section 6(2)(c).

[Section 8 amended: No. 40 of 1987 s. 103; No. 36 of 2000 s. 25(6).]

9. Arguments in relation to referendum question

(1) In the case of a referendum as to a Bill if within 4 weeks after the passage of the Bill through both Houses of Parliament there is forwarded to the Electoral Commissioner —

(a) an argument in favour of the Bill, complying with such conditions or requirements as may be prescribed, and authorised by a majority of those members of both Houses with whose concurrence the Bill was passed who desire to forward such an argument; or

(b) an argument against the Bill, complying with such conditions or requirements as may be prescribed, and authorised by a majority of those members of both

Houses who voted against the Bill and desire to forward such an argument,

the Electoral Commissioner shall cause the argument to be printed and distributed to electors or otherwise cause the argument to be brought to the notice of electors.

(2) Where arguments are forwarded under each of paragraphs (a) and (b) of subsection (1) the Electoral Commissioner shall cause the same action to be taken under subsection (1) in respect of each argument.

(3) In the case of a referendum other than a referendum as to a Bill, if before the expiration of the period ending 7 days after the day of the issue of the writ there is forwarded to the Electoral Commissioner an argument in favour of the marking of ballot papers used for the referendum in a particular authorised manner complying with such conditions and requirements as may be prescribed and authorised by members of Parliament the Electoral Commissioner shall, subject to subsection (4), cause the argument to be printed and distributed to electors or otherwise cause the argument to be brought to the notice of electors.

(4) Where 2 or more arguments are received in accordance with subsection (3) in relation to the same authorised manner of marking ballot papers the Electoral Commissioner shall cause action to be taken under subsection (3) in respect of the argument that was authorised by the greater or greatest number of members or, where 2 or more such arguments were authorised by an equal number of members (which number was greater than the number of members by whom any other such argument was authorised), in respect of such one of those arguments as is decided by the Electoral Commissioner by the drawing of lots.

(5) In the case of a referendum other than a referendum as to a Bill the Electoral Commissioner may, in respect of each authorised manner in which votes may be marked on a ballot paper used

for the referendum in relation to which no argument has been received in accordance with subsection (3), invite a body, corporate or unincorporate, to forward to him an argument in favour of the marking of ballot papers in that authorised manner and, if before the expiration of 21 days after the day of the issue of the writ a body to which an invitation has been so issued forwards to the Electoral Commissioner an argument complying with such conditions or requirements as may be prescribed or as may be specified in the invitation, the Electoral Commissioner shall cause the argument to be printed and distributed to electors or otherwise cause the argument to be brought to the notice of electors.

(6) Subject to subsection (4), where arguments are forwarded under subsection (4) or (5) in respect of more than one authorised manner of marking votes the Electoral Commissioner shall cause the same action to be taken in respect of each argument.

[Section 9 amended: No. 40 of 1987 s. 103.]

Part III — Voting at a referendum

10. Voting on same day

The voting at a referendum shall, subject to this Part, be taken throughout the State on the day fixed for the taking of the votes of the electors —

(a) by or under the Act by which the referendum is authorised or required; or

(b) by the writ,

as the case may be.

*[**11**. ~~*Provisions*~~**, 12.** *Deleted: No. 30 of 2023 s. 191.]*

13. Rolls to be used for referendums

(1) The Electoral ~~Act as to postal, absent voting etc.~~ Commissioner must cause a roll to ~~apply~~ be prepared for the referendum.

~~Sections 90, 92, 93(4) and 94~~ (2) A separate roll must be prepared under subsection (1) for each district.

(3) Subject to ~~99B (both inclusive) of~~ subsection (2), the *Electoral Act 1907* ~~shall apply~~Part IV Division 1A applies to ~~and in relation~~the preparation of a roll under subsection (1), with all necessary modifications, including the following —

(a) a reference to ~~a referendum as if it were~~ an election~~.~~ is taken to be a reference to the referendum;

~~**12. Polling places**~~

~~The polling places appointed from time to time under section 100(1) of the *Electoral Act 1907* shall be places for the taking of the votes of the electors at a referendum and declarations in force from time to time under paragraph (d) or (e) of that subsection shall have effect for the purposes of a referendum.~~

~~**13. Rolls**~~

~~At a referendum the electoral roll~~ (b) a reference to the close of the roll for an election is taken to be a reference to the last day on which a person may be enrolled under the *Electoral Act 1907* ~~that would be used in respect of a district if~~to vote at the referendum;

(c) a reference to a person who may vote in an election is taken to be a reference to a person who may vote at the referendum;

(d) a reference to polling day is taken to be a reference to the day on which the referendum ~~were an election shall be used in respect of that district for the purposes of the referendum~~is held.

[Section 13 ~~amended~~inserted: No. ~~40~~30 of ~~1987~~2023 s. ~~103.]~~ 192.]

14. Voting entitlement

(1) At a referendum only those electors who would be entitled to vote if the referendum were an election shall be admitted to vote.

(2) Each elector shall vote only once at a referendum.

(3) Nothing in this section entitles a person to vote if he is disqualified from voting.

15. Question to be submitted to electors

(1) Subject to subsection (2), in the case of a referendum as to a Bill the question to be submitted to the electors shall be —

" Do you approve of the Bill entitled (*the title of the Bill*)? "

(2) References in the title of the Bill to the amendment of Acts or other written laws may be omitted from the question if the title also describes the subject-matter of the Bill in another manner.

(3) In the case of a referendum other than a referendum as to a Bill the question to be submitted to the electors shall be the question prescribed in the Act by which the referendum is authorised or required.

(4) No question shall be submitted to the electors on the same day as a referendum except by way of another referendum or an election.

16. Voting to be by ballot

(1) The voting at a referendum shall be by ballot.

(2) In the case of a referendum as to a Bill each elector shall mark his vote on the ballot paper —

(a) if he approves of the Bill — by placing the word "Yes" in the space provided on the ballot paper; or

(b) if he does not approve of the Bill — by placing the word "No" in the space provided on the ballot paper.

(3) In the case of a referendum other than a referendum as to a Bill each elector shall mark his vote on the ballot paper in the manner prescribed in the Act by which the referendum is authorised or required that gives effect to his intention or, if the manners of marking votes are not so prescribed, in the manner directed on the ballot paper that gives effect to his intention.

17. Ballot papers

(1) The ballot papers to be used at a referendum shall be in accordance with the prescribed form or forms.

(2) Different forms of ballot paper may be prescribed —

(a) for voting of different kinds; and

(b) for different referendums or referendums of different kinds.

(3) Where 2 or more referendums are held on the same day, it shall not be necessary for the forms of ballot paper for each

referendum to be on separate pieces of paper, but 2 or more forms of ballot paper which may be used by any one elector may be on one piece of paper in accordance with a prescribed form, in which case it shall not be necessary for the signature or initials of the presiding officer to appear more than once on the piece of paper, and any ground of informality that relates only to a particular ballot paper and vote shall not affect the validity of any other ballot paper or vote.

(4) The returning officer for each district must provide ballot papers to be used at the referendum to each place in the district at which the votes of electors at a referendum are being taken.

[Section 17 amended: No. 30 of 2023 s. 193.]

18. ~~Provisions~~Particular provisions of *Electoral Act* ~~as to ordinary voting etc. to~~ *1907* apply

~~**Sections 100(3) to (3b), 100A, 100B, 102, 102A(2) and (3), 103[1] to 112 (both inclusive), 114(3), 115 to 127 (both inclusive)[2], 129 to 133 (both inclusive) and 156**~~**referendums**

The following provisions of the *Electoral Act 1907* ~~shall~~ apply to and in relation to a referendum as if ~~it~~the referendum were an election~~.~~ —

(a) Part IV Division 3 Subdivisions 1 and 2;

(b) sections 92, 92A, 92B, 92C, 92D, 92E, 92I, 92J, 93, 93A and 93B;

(c) Part IV Division 3A, other than sections 98B(b), 98C, 98D and 98E;

(d) section 156;

(e) another provision of the *Electoral Act 1907* necessary to give to effect to a referendum that is prescribed by the regulations;

(f) any other provision of the *Electoral Act 1907* necessary to give effect to a provision mentioned in paragraphs (a) to (e).

[Section 18 ~~amended~~inserted: No. ~~36~~30 of ~~2000~~2023 s. ~~54(2).]~~194.]

19. Simultaneous poll for referendum and election

Where a referendum is held or to be held on the same day as an election —

(a) an application for ~~an early ballot paper or for~~ permission to vote as an absent voter or provisional voter under ~~section 99A of~~ the *Electoral Act 1907* Part IV Division 3A Subdivision 3 or ~~as a provisional voter under section 119(4a), 122(2) or 122A~~to vote by postal voting under Part IV Division 3A Subdivision 6 of that Act shall be deemed to include a corresponding application in respect of the referendum and any reference in the application to the election shall be deemed to include a reference to the referendum; and

(aa) if a person is a postal voter for the election under the *Electoral Act 1907* section 100D, the Electoral Commissioner must send the postal voter the ballot paper for the referendum when the Electoral Commissioner sends the documents required for the election under section 100D of that Act; and

(b) a declaration that enables an elector to vote under any provision of the *Electoral Act 1907* at the election enables him to vote under that provision at the referendum and any reference in the declaration to the election shall be deemed to include a reference to the referendum; and

(c) subject to paragraph (d) a determination of entitlement to vote at the election determines the entitlement to vote at the referendum; and

(ca) if an issuing officer within the meaning of the *Electoral Act 1907* visits an elector to take a vote for the election and the elector makes an application under section 102B(4) of that Act, the issuing officer must give

the elector the ballot paper for the referendum when the Electoral Commissioner gives the documents required under section 102C(1) of that Act; and

(d) the answers ~~by a person claiming to vote~~ to the questions ~~put to him pursuant to section 119 of~~asked under the *Electoral Act 1907* section 96C may be accepted as sufficient to enable ~~him~~the person to vote at the referendum~~,~~ if ~~they are satisfactory as regards~~the claim to vote at the election~~, but the presiding~~ is not rejected; and

(da) if the officer considers it necessary, the officer may ~~if he thinks fit~~, in addition to the questions ~~prescribed by that~~asked under the *Electoral Act 1907* section~~, put to~~ 96C, ask the person the following question~~:~~ —

“

Have you already voted here or elsewhere at this referendum? (or these referendums? as the case ~~may be~~). ~~”~~*requires).*

~~and,~~

(db) if the person does not answer the question or admits ~~that he has~~they have already voted at the referendum or referendums, ~~shall~~must refuse to allow ~~him~~the person to vote; and

(dc) if the person’s claim to vote at the referendum is not rejected, the officer must give the elector the ballot paper for the referendum when the officer gives the ballot paper for the election under the *Electoral Act 1907* section 98A(1)(a); and

(e) the same ballot boxes and polling booths may be used for the purposes of the referendum but in that case the ballot papers for the referendum shall be of a different colour to the colour of the ballot papers for the election; and

(f) a ballot paper used at the referendum shall, if it is required to be placed in an envelope by a voter, be

placed in the same envelope as the ballot paper used at the election; and

(g) the copies of the rolls supplied to the returning officer and delivered to presiding officers for the purposes of the election pursuant to ~~section 112 of~~ the *Electoral Act 1907* ~~shall~~section 76AA must be used for the purposes of the referendum; and

(h) appointments made under any provision of the *Electoral Act 1907* for the purposes of the election shall have effect under that provision for the purposes of the referendum.

Note for this section:

For the purposes of paragraph (a), a person can apply under the *Electoral Act 1907* section 61 to be a general postal voter who votes by postal voting in every election and referendum.

[Section 19 amended: No. 79 of 1987 s. 80; No. 36 of 2000 s. 49(2~~).~~); No. 30 of 2023 s. 195.]

20. Scrutineers at polling

(1) A group of members of Parliament or body with whose authority or by which an argument has been forwarded to the Electoral Commissioner under section 9(1) or (3) may appoint one scrutineer to represent them or it at each place~~, or section of a place if divided, at which~~ to vote while the votes of electors ~~are being taken while those votes~~ are being taken.

(2) The appointment of a scrutineer under subsection (1) shall be made by written notice to the returning officer or presiding officer, signed on behalf of the group of members of Parliament or body, giving the name and address of the scrutineer, or without such notice by permission of the returning officer or presiding officer.

(3) Before a scrutineer appointed under subsection (1) acts as a scrutineer, the scrutineer must make a declaration in the presence of the returning officer for the district in which the

place to vote is located, or presiding officer for the place to vote, in the approved form.

[Section 20 amended: No. 40 of 1987 s. ~~99~~99; No. 30 of 2023 s. 196.]

Part IV — Ascertainment of result of referendum

21. Terms used

In this Part —

officer conducting the count means the Electoral Commissioner or a returning officer or assistant returning officer, as the case may be;

poll means the taking of the votes of the electors for the purposes of a referendum.

22. Scrutiny and count of votes

(1) The result of a referendum shall be ascertained by scrutiny and count of the votes in accordance with this Act.

(2) The following provisions apply to the scrutiny and count of votes —

(a) the scrutineers (if any) and officers may be present but no other person;

~~(aa) the scrutineers and officers shall wear or display such identification as is provided or required by the returning officer;~~

[(aa) deleted]

(b) where the count is not commenced immediately after the close of the poll the scrutineers (if any) shall be informed in writing by the officer conducting the count as regards the time and place when and where the count will be commenced and conducted by him;

(c) all the proceedings at the count shall be subject to the inspection of the scrutineers (if any);

(d) all informal votes shall be marked "informal" and rejected and the number recorded;

(e) the count may, from time to time, be adjourned as the officer conducting the count may deem necessary, until it has been duly completed;

(f) each adjournment shall be announced to the scrutineers (if any) and officers by the officer conducting the count and the time and place for the continuation of the count shall be in a similar manner made known to them;

(g) before each adjournment all ballot papers and other documents connected with the count shall be placed in one or more ballot boxes, and then —

(i) the officer conducting the count shall in the presence of the scrutineers (if any) and officers, seal the ballot box or boxes with his official seal (if any) or with his private seal; and

(ii) any scrutineer who so desires shall be permitted by the officer conducting the count to place his special seal on the ballot box or boxes; and

(iii) the cleft of each ballot box shall be closed and sealed unless the ballot box is provided with an outer cover without a cleft;

(h) before recommencing the count after an adjournment the seals mentioned in paragraph (g) shall be exhibited unbroken to the scrutineers (if any) and officers.

(3) Where a referendum is held on the same day as an election any information given or announcement made in relation to the election pursuant to a provision of the *Electoral Act 1907* corresponding to subsection (2)(b) or (f) shall have effect in relation to the referendum.

[Section 22 amended: No. 79 of 1987 s. 80; No. 30 of 2023 s. 197.]

23. Scrutineers at count

(1) A group of members of Parliament or body with whose authority or by which an argument has been forwarded to the Electoral Commissioner under section 9(1) or (3) may appoint one scrutineer to represent them or it at the scrutiny and count of votes at any counting place.

(2) The appointment of a scrutineer under subsection (1) shall be made by written notice to the officer conducting the count, signed on behalf of the group of members of Parliament or body, giving the name and address of the scrutineer.

(3) If a scrutineer appointed under subsection (1) objects to a ballot paper as informal the officer conducting the count shall mark the ballot paper "admitted" or "rejected" according to his decision to admit or reject the ballot paper, and initial such marking, but nothing in this subsection prevents the officer from rejecting any ballot paper as being informal although it is not objected to.

[Section 23 amended: No. 40 of 1987 s. 100.]

24. Informal ballot papers

(1) A ballot paper shall be informal if —

(a) it is not initialled by the presiding officer, or, in the case of a postal ballot paper, not initialled by the issuing officer, but where a ballot paper is not initialled by the presiding officer or the issuing officer, if it is printed on official paper the fact that it is not so initialled shall not of itself render the ballot paper informal; or

(b) the elector has failed to mark his vote on it in an authorised manner.

(2) Notwithstanding anything in this Act or any other Act or any directions on a ballot paper where a ballot paper clearly indicates the elector's intention and is not informal under subsection (1)(a) that ballot paper —

(a) shall not be informal by reason of the elector having marked his vote on it otherwise than in an authorised manner; and

(b) shall be deemed for the purposes of this Part, and of the Act by which the referendum is authorised or required, to have on it a vote marked in the authorised manner that gives effect to the elector's intention.

(3) The decision of the officer conducting the count to admit a ballot paper or to reject a ballot paper shall, subject to section 29, be final and subject only to reversal by the Supreme Court under Part VI.

[Section 24 amended: No. 43 of 1996 s. 31.]

25. Appointment of assistant returning officers and counting places to expedite count

(1) Section 141 of the *Electoral Act 1907* shall apply in relation to a referendum as if it were an election in a district.

(2) Where a referendum is held on the same day as an election, appointments of assistant returning officers and counting places under the *Electoral Act 1907* shall have effect for the purposes of the referendum.

[Section 25 amended: No. 25 of 1987 s. 101 and 103; No. 79 of 1987 s. 80.]

26. Procedure for assistant returning officers

(1) As soon as practicable after the close of the poll each assistant returning officer shall —

(a) open all ballot boxes received at his counting place and count all the votes on the ballot papers, rejecting all informal ballot papers, and ascertain the number of votes marked, respectively, in each of the authorised manners; and

(b) enclose —

(i) in one packet, all the used ballot papers in his possession; and

(ii) in another packet, all the unused ballot papers in his possession; and

(iii) in another packet, all copies of rolls, books, communications from officers, or other papers or documents used or received at or in connection with the referendum, that are in his possession;

and

(c) seal up those packets, indorse each with a description of its contents and with the name of the counting place and the date of the poll, sign the indorsement, and forward the packets to the returning officer for the district together with a statement certifying —

(i) the number of votes marked, respectively, in each of the authorised manners; and

(ii) the number of ballot papers rejected as informal.

(2) The packet mentioned in subsection (1)(b)(i) shall be sealed before the scrutineers (if any) present and any scrutineer who desires to do so shall be permitted by the assistant returning officer to affix his seal on the packet.

(3) The statement prepared under subsection (1)(c) shall be verified by the signature of the assistant returning officer and also by the signatures of such of the scrutineers (if any) as are present and consent to sign it.

(4) Where a referendum is held on the same day as an election subsection (1)(b)(iii) does not apply to papers or documents that apply to both the referendum and the election.

[Section 26 amended: No. 40 of 1987 s. 103.]

27. Procedure for returning officers

(1) As soon as practicable after the close of the poll the returning officer for each district shall —

(a) open all ballot boxes received from polling places within the district that have not been opened by an assistant returning officer and count all the votes on the ballot papers, rejecting all informal ballot papers, and ascertain the number of votes marked, respectively, in each of the authorised manners; and

(b) enclose —

(i) in one packet, all the used ballot papers in his possession; and

(ii) in another packet, all the unused ballot papers in his possession; and

(iii) in another packet all copies of rolls, books, communications from officers, or other papers or documents used or received at or in connection with the referendum, that are in his possession,

other than those that have been forwarded to him under section 26(1)(c); and

(c) seal up those packets, indorse each with a description of its contents and with the name of the district and the date of the poll, and sign the indorsement; and

(d) prepare a statement certifying —

(i) the number of votes marked, respectively, in each of the authorised manners; and

(ii) the number of ballot papers rejected as informal;

and

(e) enclose —

(i) in one packet, all the packets made up under section 26(1)(b)(i) and forwarded to him under section 26(1)(c), the statements forwarded to him

with those packets, the packet made up by him under paragraph (b)(i) and the statement prepared by him under paragraph (d); and

(ii) in another packet, all the packets made up under section 26(1)(b)(ii) and forwarded to him under section 26(1)(c) and the packet made up by him under paragraph (b)(ii); and

(iii) in another packet, all the packets made up under section 26(1)(b)(iii) and forwarded to him under section 26(1)(c) and the packet made up by him under paragraph (b)(iii);

and

(f) seal up those packets, indorse each with a description of its contents and with the name of the district and the date of the poll, sign the indorsement, and forward the packets to the Electoral Commissioner.

(2) The packets mentioned in subsection (1)(b)(i) and (e)(i), respectively, shall be sealed before the scrutineers (if any) present and any scrutineer who desires to do so shall be permitted by the returning officer to affix his seal on any such packet.

(3) The statement prepared under subsection (1)(d) shall be verified by the signature of the returning officer and also by the signatures of such of the scrutineers (if any) as are present and consent to sign it.

(4) Where a referendum is held on the same day as an election subsection (1)(b)(iii) and (e)(iii) do not apply to papers or documents that relate to both the referendum and the election.

[Section 27 amended: No. 40 of 1987 s. 103.]

28. Appointment of assistant returning officers to count postal, absent votes etc.

(1) Section 142A(1) of the *Electoral Act 1907* shall apply in relation to referendum as if it were an election.

(2) Where a referendum is held on the same day as an election appointments of assistant returning officers under section 142A of the *Electoral Act 1907* for the purposes of the election shall have effect for the purposes of the referendum.

[Section 28 amended: No. 79 of 1987 s. 80.]

29. Re-count

(1) At any time before indorsing the writ for a referendum pursuant to section 30 the Electoral Commissioner may, if he thinks fit (and shall if so directed by the Governor), direct a re-count of any ballot papers.

(2) The officer conducting a re-count shall have the same powers as if the re-count were the scrutiny, and may reverse any decision in relation to the scrutiny as to the allowance or admission or disallowance or rejection of any ballot paper.

[Section 29 amended: No. 40 of 1987 s. 103.]

Part V — Return of writ and statement of result of referendum

30. Return of writ and publication of statement

(1) After the Electoral Commissioner has received from each of the returning officers the statement referred to in section 27(1)(d) and the ~~ballot papers used for voting at general polling places, within the meaning of section 100(3) of the *Electoral Act 1907*, the early vote~~postal ballot papers and the ballot papers for absent voting ~~under section 99A,~~ and provisional voting under ~~section 119(4a), 122(2), or 122A, of~~ the *Electoral Act 1907* Part IV Division 3A Subdivision 3 (as~~-~~ applied to the referendum by section 18) have been counted, the Electoral Commissioner shall indorse on the original writ a statement showing as regards each district and as regards the whole State —

(a) the number of votes marked, respectively, in each of the authorised manners; and

(b) the number of ballot papers rejected as informal,

and shall sign the statement and in the case of a referendum as to a Bill, transmit the writ to the Governor.

(2) The day on which the writ was indorsed under subsection (1) shall be deemed to be the day of the return thereof.

(3) The Electoral Commissioner shall cause a copy of the statement indorsed on the writ under subsection (1) to be published in the *Gazette*, and the statement so published shall, subject to this Act, be conclusive evidence of the result of the referendum.

(4) Where the Electoral Commissioner is satisfied that the votes —

(a) on any ballot papers issued at ~~some remote place~~a mobile voting place as defined in the *Electoral Act 1907* section 4(1) that is a place to vote in connection with the referendum, which have not been received by ~~him~~the Electoral Commissioner; and

(b) on ~~any~~postal ballot papers ~~used for voting at general polling places, within the meaning of section 100(3) of the *Electoral Act 1907*, early vote ballot papers or~~ and the ballot papers for absent voting ~~under section 99A, or~~and provisional voting under ~~section 119(4a), 122(2), or 122A of the~~ the *Electoral Act 1907* Part IV Division 3A Subdivision 3 (as applied to the referendum by section 18), which have not been received by ~~him,~~the Electoral Commissioner,

cannot, having regard to the number of those ballot papers, possibly affect the result of the referendum ~~he~~the Electoral Commissioner may indorse a statement on the writ under subsection (1) (including in that statement the number of those ballot papers), return the writ under subsection (1), and publish a copy of the statement under subsection (3), without awaiting the receipt of those ballot papers.

[Section 30 amended: No. 40 of 1987 s. 103; No. 79 of 1987 s. 80; No. 36 of 2000 s. 49(3), 54(3) and (4); No. 8 of 2009 s. 109; No. 30 of 2023 s. 198.]

31. Validity of referendum

Sections 148 and 149 of the *Electoral Act 1907* shall apply in relation to a referendum as if it were an election.

32. Retention, production and destruction of papers

(1) Any member of Parliament may give notice to any returning officer requiring production of the rolls used by him and any assistant returning officers at a referendum, and if the notice is so given after the day of the referendum and before the day when the referendum can no longer be questioned those rolls shall be produced to that member as soon as is practicable.

(2) Such books, documents, ballot papers and other papers used for or in connection with a referendum as may be required by the Supreme Court under Part VI shall, upon an order of the Court,

be produced by the Electoral Commissioner but shall not be available for any other purpose.

(3) All books, documents, ballot papers and other papers used for or in connection with a referendum may, when the referendum can be no longer questioned, be destroyed by the Electoral Commissioner or with his approval, by any returning officer or Registrar.

(4) Sections 153 and 155 of the *Electoral Act 1907* shall apply in relation to a referendum as if it were an election.

[Section 32 amended: No. 40 of 1987 s. 103.]

Part VI — Disputed returns

33. Reference to Supreme Court

(1) Any question respecting the validity of a referendum, or of any return or statement showing the voting on any referendum, may be referred by resolution of the Legislative Council or of the Legislative Assembly, within 14 sitting days of the House making the reference after the publication in the *Gazette* of the copy of the statement signed by the Electoral Commissioner under section 30(1), to the Supreme Court, and the Supreme Court shall have jurisdiction to hear and determine the question.

(2) For the purposes of subsection (1), sitting days shall be counted, whether or not they occur during the same session or during the same Parliament.

[Section 33 amended: No. 40 of 1987 s. 103.]

34. Question

Where any question is referred to the Supreme Court under this Part, the President of the Legislative Council or the Speaker of the Legislative Assembly (as the case may be) shall transmit to the Principal Registrar of the Court a statement of the question upon which the determination of the Court is desired.

35. Powers of Supreme Court

The Supreme Court, in relation to a reference under this Part, shall sit in open court, and shall have the powers conferred by the *Electoral Act 1907* on the Court of Disputed Returns, so far as they are applicable.

36. Representation

The Electoral Commissioner shall be entitled, and the Supreme Court may allow any other person, to be represented and heard upon the hearing of the reference.

[Section 36 amended: No. 40 of 1987 s. 103.]

37. Procedure

The procedure in relation to a reference under this Part shall be as prescribed by Rules of Court or in default of Rules of Court by the Supreme Court or a judge thereof.

38. Notification of determination

After the hearing and determination of a reference under this Part the Principal Registrar of the Supreme Court shall forthwith forward a copy of the determination of the Court to the Clerk of the House of Parliament by which the reference was made.

39. Immaterial errors not to vitiate referendum

(1) No referendum and no return or statement showing the voting on any referendum shall be avoided on account of any delay in relation to the taking of the votes of the electors or in relation to the making of any statement or return or on account of the absence or error of or omission by any officer which did not affect the result of the referendum.

(2) Where any elector was, on account of the absence or error or omission by any officer, prevented from voting at a referendum, the Supreme Court shall not, for the purpose of determining whether the absence or error of or omission by the officer did or did not affect the result of the referendum, admit any evidence of the way in which the elector intended to vote.

Part VII — Referendum offences

40. Provisions of Electoral Act as to offences to apply

(1) ~~Sections~~The *Electoral Act 1907* sections 179(1) and (3), 180, 190 (other than the item in the Table commencing with the word "Distributing"), 191, 192, 192A, 196, 197, 198, 201, ~~204,~~ 205 and 206 ~~of the *Electoral Act 1907* shall~~ apply to and in relation to a referendum as if it were an election.

(2) The provisions of this Part shall be construed as being in addition to such of the provisions of the *Electoral Act 1907* as are applicable to a referendum.

[Section 40 amended: No. 30 of 2023 s. 199.]

41. Supply of refreshments or entertainment

A person who, after the issue of a writ for a referendum and before the votes have been taken in pursuance thereof, supplies to an elector any food, drink, entertainment or transport with a view to influence his vote in connection with the referendum shall be guilty of an offence and shall be liable to a penalty not exceeding $400 or imprisonment for one year.

42. Bribery

A person who gives, confers, or procures, or promises, or offers to give or confer, or to procure or attempt to procure, any money, property or benefit of any kind, to, upon, or for an elector or any other person —

(a) in order to influence the elector in his vote in connection with a referendum or to induce him to mark his vote in a particular manner; or

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

(c) in the case of a referendum as to a Bill, in order to induce the elector to support or oppose the Bill,

shall be guilty of an offence, and shall be liable to a penalty not exceeding $400 or imprisonment for one year.

43. Receipt of bribe by elector

An elector who asks for, receives, or obtains, or agrees or attempts to receive or obtain any money, property, or benefit of any kind for himself or any other person upon the understanding that his vote in connection with a referendum shall be influenced thereby, or shall be marked in a particular manner, or that he will refrain from voting at a referendum, or, in the case of a referendum as to a Bill, that he will support or oppose the Bill, shall be guilty of an offence, and shall be liable to a penalty not exceeding $400 or imprisonment for one year.

44. Undue influence

A person who —

(a) threatens, offers, or suggests any violence, injury, punishment, damage, loss, or disadvantage to an elector or any other person —

(i) in order to influence the elector in his vote in connection with a referendum or to induce him to mark his vote in a particular manner; or

(ii) in order to induce the elector to refrain from voting at a referendum; or

(iii) in the case of a referendum as to a Bill, in order to induce the elector to support or oppose the Bill;

or

(b) uses, causes, inflicts, or procures any violence, injury, punishment, damage, loss or disadvantage towards, to, or upon any elector or any other person, for or on

account of any such vote, refraining from voting, support, or opposition,

shall be guilty of an offence, and shall be liable to a penalty not exceeding $400 or imprisonment for one year.

45. Purposely rendering person unable to vote or incapable of voting

(1) A person who does any act or engages in any course of conduct intending that as a result thereof another person —

(a) will be rendered; or

(b) will be encouraged or assisted to render himself,

unable to vote or mentally incapable of voting at a referendum shall be guilty of an offence.

Penalty: $200.

(2) Subject to proof of the other elements of the offence, a person is guilty of an offence under subsection (1) notwithstanding that —

(a) the other person was not rendered or did not render himself unable or incapable as mentioned therein; or

(b) the other person did vote.

[Section 45 amended: No. 50 of 2003 s. 89(2).]

46. Misleading advertisements etc.

(1) Every person who —

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

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

shall be guilty of an offence, and shall be liable to a penalty not exceeding $200.

(2) This section shall not prevent the printing, publishing, or distributing of an advertisement or document (not otherwise illegal) which contains instructions how to vote in any particular manner in connection with a referendum, if those instructions are not intended or likely to mislead any elector in or in relation to the casting of his vote.

47. Misconduct at public meeting

(1) A person who, at a public meeting to which this section applies, acts in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting is held shall be guilty of an offence, and shall be liable to a penalty not exceeding $10.

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

48. Advertisements relating to referendums

(1) In this section ***referendum notice*** means notice, advertisement, handbill or pamphlet in relation to a referendum and intended or calculated to affect the result of the referendum.

(2) A person who publishes a referendum notice without the name and address of the person authorising it being shown at the end of it shall be guilty of an offence.

Penalty: $200.

(3) A person who prints or publishes a printed referendum notice (other than an advertisement in a newspaper) without the name and place of business of the printer being printed at the end of it shall be guilty of an offence.

Penalty: $200.

(4) A person who distributes a referendum notice published in contravention of subsection (2) or (3) shall be guilty of an offence and shall be liable to a penalty not exceeding $100.

[Section 48 amended: No. 50 of 2003 s. 89(3).]

Part VIII — Miscellaneous

49. Regulations

(1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to the purposes of this Act.

(2) Where the time allowed to do an act in connection with a referendum is insufficient, and an alteration or extension of such time and any alteration of dates consequent thereon is expedient, the regulations may declare that such alteration shall be made, and thereupon the same shall be made and take effect accordingly.

50. Temporary assistance

(1) The Electoral Commissioner may appoint such temporary assistants as he may consider requisite for the purposes of a referendum.

(2) Part 3 of the *Public Sector Management Act 1994* shall not apply to temporary assistants appointed under this section.

[Section 50 amended: No. 40 of 1987 s. 102; No. 32 of 1994 s. 3(2).]

51. Disqualification of officers

Section 16 of the *Electoral Act 1907* shall apply to and in relation to appointments made for the purposes of a referendum.

Notes

This is a compilation of the *Referendums Act 1983* and includes amendments made by other written laws. For provisions that have come into operation, and for information about any reprints, see the compilation table. ~~For provisions that have not yet come into operation see the uncommenced provisions table.~~

Compilation table

Short title	Number and year	Assent	Commencement
Referendums Act 1983	83 of 1983	22 Dec 1983	22 Dec 1983
Acts Amendment (Electoral Reform) Act 1987 Pt. VI	40 of 1987	12 Jul 1987	30 Oct 1987 (see s. 2 and *Gazette* 30 Oct 1987 p. 3977)
Electoral (Procedures) Amendment Act 1987 s. 80	79 of 1987	1 Dec 1987	16 Feb 1988 (see s. 2 and *Gazette* 16 Feb 1988 p. 477)
Acts Amendment (Public Sector Management) Act 1994 s. 3(2)	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and *Gazette* 30 Sep 1994 p. 4948)
Electoral Legislation Amendment Act 1996 Pt. 5	43 of 1996	16 Oct 1996	9 Nov 1996 (see s. 2(2) and *Gazette* 8 Nov 1996 p. 6265)
Reprint of the *Referendums Act 1983* as at 21 Jan 2000 (includes amendments listed above)			
Electoral Amendment Act 2000 s. 25, 49 and 54	36 of 2000	10 Oct 2000	s. 25 and 54: 21 Oct 2000 (see s. 2 and *Gazette* 20 Oct 2000 p. 5899); s. 49: 11 Nov 2000 (see s. 2 and *Gazette* 10 Nov 2000 p. 6193)
Sentencing Legislation Amendment and Repeal Act 2003 s. 89	50 of 2003	9 Jul 2003	15 May 2004 (see s. 2 and *Gazette* 14 May 2004 p. 1445)
Statutes (Repeals and Miscellaneous Amendments) Act 2009 s. 109	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))
Reprint 2: The *Referendums Act 1983* as at 15 Aug 2014 (includes amendments listed above)			

~~Uncommenced provisions table~~

~~To view the text of the uncommenced provisions see *Acts as passed* on the WA Legislation website.~~

~~Short title~~	~~Number and year~~	~~Assent~~	~~Commencement~~
Electoral Amendment (Finance and Other Matters) Act 2023 Pt. 5	30 of 2023	11 Dec 2023	1 Jul 2024 (see s. 2(c))

~~Other notes~~

~~[1] The *Electoral Act 1907* s. 103 was deleted by the *Electoral Amendment Act 2000* s. 75.~~

~~[2] The *Electoral Act 1907* s. 118 was deleted by the *Electoral Legislation Amendment Act 2006* s. 31.~~

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