

APPENDIX 1

AMENDMENTS ON BEHALF OF THE GOVERNMENT

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

AUSTRALIAN CAPITAL TERRITORY (ELECTORAL) AMENDMENT BILL 1991

(Amendments to be moved on behalf of the Government)

- (1) Page 1, after clause 2, insert the following new clause:

Heading to Part 1

"2A. Before section 1 of the Principal Act the following heading is inserted:

'PART 1 — PRELIMINARY'.".

- (2) Clause 3, page 1, lines 10 and 11, omit the clause.

- (3) Page 1, after clause 2, insert the following new clause:

Heading to Part 2

"2B. After section 7 of the Principal Act the following heading is inserted:

'PART 2 — ELECTIONS'.".

- (4) Page 2, line 4, after clause 4, insert the following new clause:

Application of Commonwealth Electoral Act

"4A. Section 16 of the Principal Act is amended:

- (a) by inserting in subsection (2) 'and Schedules 2 and 3' after '(inclusive)';
- (b) by omitting paragraph (2)(a);
- (c) by adding at the end of paragraph (6)(b) 'and';
- (d) by omitting from paragraph (6)(c) 'and';
- (e) by omitting paragraph (6)(d)."

- (5) Clause 5, page 2, lines 5 to 15, omit the clause, substitute the following new clause:

Voting at general elections

"5. Section 18 of the Principal Act is amended by adding at the end the following subsections:

'(2) Paragraph (1)(a) does not prevent the making of special provisions exempting certain persons who are in Antarctica or overseas from the compulsory voting requirement.

Note: See section 245 of the Electoral Act.

'(3) Paragraph (1)(b) does not prevent the making of special provisions for persons who are so sight impaired or physically incapacitated or illiterate that they cannot vote without assistance.

Note: See section 234 of the Electoral Act'."

- (6) Clause 6, page 2, lines 16 to 41, and page 3, lines 1 to 17, omit the clause, substitute the following new clause:

Counting votes: transfer of preferences of provisionally unsuccessful candidates etc.

"6. Section 21 of the Principal Act is amended:

- (a) by omitting paragraph (1)(a);
- (b) by omitting subsection (2)."

- (7) Page 3, after clause 6, insert the following new clauses:

Heading to Part 3

"6A. After section 25 of the Principal Act the following heading is inserted:

'PART 3 — MISCELLANEOUS.'

Regulations

"6B. Section 28 of the Principal Act is amended by adding at the end the following section:

'(4) The regulations may amend, omit or add to the modifications of the *Commonwealth Electoral Act 1918* set out in Schedule 1.'

"6C. After section 29 of the Principal Act the following Part is inserted:

'PART 4 — REFERENDUM TO CHOOSE ELECTORAL SYSTEM

Definitions

'30. In this Part, unless the contrary intention appears:

"**declaration vote**" means any of the following:

- (a) a postal vote;
- (b) a pre-poll vote;
- (c) an absent vote;
- (d) a provisional vote;

"**election ballot paper**" means a ballot paper for the election;

"**referendum**" means the referendum referred to in section 31;

"**referendum ballot paper**" means a ballot paper for the referendum;

"**the election**" means the election whose polling day is the same day as voting day for the referendum;

"**voting day**" means the day when the votes are to be taken for the purposes of the referendum.

Referendum to choose electoral system

'31.(1) A referendum is to be held to enable the electors of the Territory to choose which of 2 voting systems is to be used at future elections.

'(2) The 2 systems are the single member electorates system and the proportional representation (Hare-Clark) system, more fully described in the Referendum Options Description Sheet set out in Schedule 3.

'(3) Votes for the purposes of the referendum are to be taken on the same day as polling day for the next general election to be held after the commencement of this Part.

Administration

'32.(1) The Electoral Commission is to conduct the referendum.

'(2) A person who holds an office or appointment under this Act for the purposes of the election is taken to hold that office or appointment also for the purposes of the referendum.

'(3) The Electoral Commission may, on behalf of the Commonwealth, engage such temporary staff as it thinks necessary for the purposes of the referendum. A person so engaged is taken to be an officer for the purposes of this Part.

'(4) The Australian Capital Territory Electoral Officer may give directions to officers about the conduct of the referendum on matters not provided for by or under this Part.

Distribution to electors of Referendum Options Description Sheet and arguments for and against different options

'33.(1) The Electoral Commissioner must, not later than 14 days before voting day, cause to be printed and to be posted to each elector, as nearly as practicable, a copy of the Referendum Options Description Sheet set out in Schedule 3.

'(2) The Electoral Commissioner must:

- (a) print the Referendum Options Description Sheet so that the descriptions of the 2 systems appear side by side in 2 vertical columns; and
- (b) determine by lot which option is to occupy the left-hand vertical column in the Sheet and print the Sheet accordingly.

'(3) If, within 2 weeks after the commencement of this Part, there is forwarded to the Electoral Commissioner:

- (a) an argument in support of the single member electorates system option, consisting of not more than 2,000 words, authorised by the Minister; or
- (b) an argument in support of the other option, consisting of not more than 2,000 words, authorised by the Leader of the Opposition in the House of Representatives and the Leader of the Australian Democrats in the Parliament;

the Electoral Commissioner must, not later than 14 days before voting day, cause to be printed and to be posted to each elector, as nearly as practicable, a pamphlet containing the argument.

'(4) If both arguments are forwarded to the Electoral Commissioner in accordance with subsection (3), the Electoral Commissioner must:

- (a) print both arguments in the same pamphlet; and
- (b) print those arguments side by side in 2 vertical columns, so that the left-hand column is occupied by the argument in support of the option whose description occupies the left-hand column in the Referendum Options Description Sheet.

'(5) The Commonwealth and the Territory must not spend money in respect of the presentation of the argument in support of either of the options except in relation to:

- (a) the preparation, printing and distribution of the Sheet and pamphlet referred to in this section, or the preparation and distribution of translations into other languages of material contained in that Sheet and pamphlet;
- (b) the preparation and distribution of presentations of that material in forms suitable for the visually impaired;
- (c) the provision by the Electoral Commission of other information relating to either of the options; or
- (d) the salaries and allowances of members of the Parliament, of members of the staff of members of the Parliament, of members of the Legislative Assembly, of members of the staff of members of the Legislative Assembly, or of persons who are officers or employees within the meaning of the *Public Service Act 1922*.

Entitlement to vote

'34.(1) A person is entitled to vote at the referendum if he or she is entitled to vote at the election.

'(2) A person must not vote more than once at the referendum.

Compulsory voting

'35.(1) A person who:

- (a) is entitled to vote at the referendum; and
- (b) fails to vote at the referendum without a valid and sufficient reason for the failure;

is guilty of an offence punishable, upon conviction, by a fine not exceeding \$50.

'(2) Subsection (1) does not apply to an Antarctic elector or an eligible Territory overseas elector.

Ballot papers

'36.(1) The ballot papers are to be in the alternative formats set out in Schedule 4, one format with one option appearing first, the other format with the other option appearing first.

'(2) So far as is practicable, ballot papers are to be issued to voters so that no 2 consecutive voters at a particular place where ballot papers are issued will receive ballot papers of the same format.

'(3) Ballot papers are to bear an official mark approved by the Electoral Commission by notice published in the *Commonwealth Gazette*.

Scrutineers

'37.(1) Subject to subsection (2), a person appointed as a scrutineer for the election is taken also to be appointed for the referendum.

'(2) At each place where referendum ballot papers are being counted, the number of scrutineers for a candidate must not exceed the number of officers engaged in the counting.

Procedures for polling

'38.(1) The same polling booths are to be used for the election and the referendum.

'(2) The same ballot boxes may be used for the election and the referendum.

'(3) The hours of polling for the referendum are to be the same as for the election (including any adjournment or resumption of polling).

'(4) Subject to subsection (6), a person must be issued with a referendum ballot paper at the same time as he or she is issued with an election ballot paper.

'(5) The provisions of the Electoral Act relating to the issue of fresh election ballot papers in substitution for spoilt election ballot papers apply in the same way in relation to referendum ballot papers.

'(6) A person who is issued with a fresh election ballot paper because the ballot paper has been spoilt need not be issued with a fresh referendum ballot paper.

'(7) A voter who is entitled to assistance in marking an election ballot paper is entitled to the same assistance in marking a referendum ballot paper.

'(8) A person who casts a vote (other than a declaration vote) for the election must cast his or her vote for the referendum in the same way.

Declaration voting

'39.(1) A person who casts a declaration vote for the election must cast his or her vote for the referendum in the same way.

'(2) The marked referendum ballot paper of a declaration voter must be placed in the same envelope as the election ballot paper.

'(3) The referendum ballot paper of a declaration voter is to be admitted to further scrutiny for the referendum if, and only if, the election ballot paper is admitted to further scrutiny for the election.

'(4) A voter who is entitled to assistance in casting a declaration vote for the election is entitled to the same assistance in casting a declaration vote for the referendum.

Marking a ballot paper

'40. A voter must mark his or her ballot paper in accordance with the directions on it.

Informal ballot papers

'41.(1) A ballot paper is informal if, and only if:

(a) it:

(i) does not bear the official mark; or

(ii) is not authenticated by the initials of the issuing officer;

and the Australian Capital Territory Electoral Officer is not satisfied that it is an authentic ballot paper; or

(b) it has no vote marked on it or the voter's intention is not clear; or

(c) it has on it any mark or writing (other than a mark or writing authorised by law or placed on the ballot paper by an officer) by which, in the opinion of the Australian Capital Territory Electoral Officer, the voter can be identified.

'(2) Effect is to be given to a ballot paper according to the voter's intention, so far as that intention is clear.

Scrutiny

'42. The Australian Capital Territory Electoral Officer must:

- (a) cause the number of votes in favour of each option, and the number of informal votes, to be counted; and
- (b) as soon as practicable after the count is concluded, publish a notice in the *Commonwealth Gazette* setting out the numbers so counted.

Close of the polling in Antarctica

'43. The procedure on and after the close of the poll in Antarctica is the same for the referendum as for the election.

General offences

'44.(1) The provisions of the Electoral Act creating offences in relation to the election apply in the same way, subject to paragraph (2)(b), in relation to the referendum.

'(2) For the purposes of subsection (1):

- (a) the relevant period defined in section 322 of that Act is the same period for the referendum as for the election; and
- (b) "electoral matter" means matter that is intended or likely to affect voting in the referendum, and includes any matter that contains an express or implied reference to the referendum or to either of the options.

Bribery

'45.(1) A person must not give or confer, or promise or offer to give or confer, any property or benefit of any kind to another person:

- (a) in order to influence the vote of any person at the referendum; or
- (b) in order to induce any person not to vote at the referendum.

Penalty: Imprisonment for two years.

'(2) Subsection (1) does not apply in relation to a declaration of public policy or a promise of public action.

Badges or emblems in polling booths

'46. An officer or scrutineer who wears or displays in a polling booth on voting day any badge or emblem in support of or in opposition to either of the options is guilty of an offence.

Penalty: \$1,000.

Errors, etc.

'47. The provisions of the Electoral Act providing for the correction of delays, errors and omissions, and the extension of times, in relation to the election apply in the same way in relation to the referendum.

Disputed Returns

'48.(1) The validity of the referendum or of any statement showing the voting at the referendum may be disputed in accordance with this section and not otherwise.

'(2) The validity of the referendum or of any statement showing the voting at the referendum may be disputed by a person who was qualified to vote at the referendum by petition addressed to the Supreme Court of the Australian Capital Territory.

'(3) For the purposes of such a dispute, Part VIII of the *Referendum (Machinery Provisions) Act 1984* applies with the necessary changes.

'(4) In particular, that Act applies for the purposes of this section as if:

- (a) references to the High Court were references to the Australian Capital Territory Supreme Court; and
- (b) the reference in paragraph 101(1)(c) of that Act to the various Attorneys-General were a reference to the petitioner; and
- (c) references to the Electoral Commissioner or to an Electoral Officer were references to the Australian Capital Territory Electoral Officer; and
- (d) section 105 of that Act were omitted; and
- (e) the reference in section 106 of that Act to the Commonwealth, a State or the Northern Territory were omitted; and
- (f) the reference in paragraph 107A(a) of that Act to Schedule 4 were a reference to Schedule 3 to the Electoral Act; and

- (g) the references to that Act and the regulations were references to the law relating to the referendum.

‘(5) The referendum or any statement showing the voting at the referendum is not invalidated merely because the Electoral Commissioner may not have strictly complied with a provision of section 33.

Regulations

‘49. The regulations may prescribe all matters necessary or convenient to be prescribed for carrying out or giving effect to this Part and, in particular, prescribe penalties not exceeding \$500 for offences against those regulations.’.”.

- (8) Clause 7, page 3, lines 32 and 33, omit subclause (5).
 (9) Page 3, after clause 7, insert the following new clause:

Addition of Schedules 3 and 4

“7A. The Principal Act is amended by adding at the end the Schedules set out in Schedules 5 and 6 of this Act.”.

- (10) Schedule 1, page 5, modification of subsection 4(1), omit paragraph (c).
 (11) Schedule 1, page 6, modification of subsections 239(1) and (2), omit paragraphs (b) and (c).
 (12) Schedule 1, pages 6 and 7, omit all words from and including “Modification of paragraph 273(2)(c)” to the end of the Schedule.
 (13) Schedule 2, page 8, item relating to the modification of sections 211, 211A and 212, omit the item.
 (14) Schedule 2, pages 8 and 9, item relating to the modification of section 216, omit the item.
 (15) Schedule 2, pages 9 and 10, item relating to the modification of section 270, omit the item.
 (16) Schedule 4, page 12, item inserting modifications after the modification of subsection 192(1), omit the item.
 (17) Schedule 4, pages 12 and 13, item inserting modification after the modification of subsection 273(1), omit the item.
 (18) Page 13, at the end of the Bill add the following Schedules:

"SCHEDULE 5

Section 7A

NEW SCHEDULE 3 TO BE ADDED TO PRINCIPAL ACT**'SCHEDULE 3 - REFERENDUM OPTIONS
DESCRIPTION SHEET**

Section 31

COMMONWEALTH OF AUSTRALIA*Referendum Options Description Sheet*

The following brief descriptions of a model single member electorates system and a model proportional representation (Hare-Clark) system have been prepared to assist ACT electors to determine their preferred electoral system.

MODEL SINGLE MEMBER ELECTORATES SYSTEM

- . The ACT will be divided into 17 separate electorates. Each electorate will elect one member to the Legislative Assembly.
- . No candidate will be allowed to stand in more than one electorate at a general election.
- . The ballot paper used will look like this:

BALLOT PAPER
LEGISLATIVE ASSEMBLY
FOR THE
AUSTRALIAN CAPITAL TERRITORY
ELECTORAL DIVISION OF

**Number the
boxes from 1 to**

- CANDIDATE'S NAME
PARTY
- CANDIDATE'S NAME
PARTY
- CANDIDATE'S NAME
PARTY
- CANDIDATE'S NAME
PARTY
- CANDIDATE'S NAME
PARTY
- CANDIDATE'S NAME
PARTY

- . Voting will take place in each electorate in accordance with the system of voting used to elect members of the House of Representatives.
 - Instructions on the ballot paper will require voters to show preferences (1, 2 and so on) for all of the candidates standing in the electorate.
 - Candidates to be elected will have to receive a majority (ie 50% plus 1) of the formal votes in the electorate.
 - If no candidate has obtained a majority of votes after first preference votes have been counted, the candidate with the fewest votes will be excluded and his or her votes will be transferred to the remaining candidates who stood next highest in the relevant voters' preferences.
 - This process of excluding candidates with the fewest votes will continue until one candidate has obtained a majority of the votes still in the count.
- . If a member dies, or resigns, or otherwise vacates his or her seat, the vacancy will be filled by a by-election in his or her electorate.
- . The boundaries of electorates will be drawn by bodies independent of the Commonwealth and ACT governments. The criteria which govern the drawing of the boundaries of House of Representatives divisions will apply as nearly as practicable to the drawing of the boundaries of Legislative Assembly electorates.
- . A redrawing of boundaries should take place in the first 12 months after each general election of members of the Legislative Assembly.

MODEL PROPORTIONAL REPRESENTATION (HARE-CLARK) SYSTEM

- . The ACT will be divided into 3 separate electorates, of which two will elect 5 members each, and one will elect 7 members, to the Legislative Assembly.
- . No candidate will be allowed to stand in more than one electorate at a general election.
- . The ballot paper used will look like this:

BALLOT PAPER

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY
ELECTORAL DIVISION OF

Number the boxes from 1 to

PARTY	PARTY	GROUPED NON-PARTY CANDIDATES	UNGROUPED CANDIDATES
<input type="checkbox"/> CANDIDATE'S NAME	<input type="checkbox"/> CANDIDATE'S NAME	<input type="checkbox"/> CANDIDATE'S NAME	<input type="checkbox"/> CANDIDATE'S NAME
<input type="checkbox"/> CANDIDATE'S NAME	<input type="checkbox"/> CANDIDATE'S NAME	<input type="checkbox"/> CANDIDATE'S NAME	<input type="checkbox"/> CANDIDATE'S NAME
<input type="checkbox"/> CANDIDATE'S NAME	<input type="checkbox"/> CANDIDATE'S NAME	<input type="checkbox"/> CANDIDATE'S NAME	
<input type="checkbox"/> CANDIDATE'S NAME	<input type="checkbox"/> CANDIDATE'S NAME		
<input type="checkbox"/> CANDIDATE'S NAME	<input type="checkbox"/> CANDIDATE'S NAME		
<input type="checkbox"/> CANDIDATE'S NAME	<input type="checkbox"/> CANDIDATE'S NAME		
<input type="checkbox"/> CANDIDATE'S NAME	<input type="checkbox"/> CANDIDATE'S NAME		
<input type="checkbox"/> CANDIDATE'S NAME	<input type="checkbox"/> CANDIDATE'S NAME		

- . The names of candidates within party groups will not be printed in the same position within the group on every ballot paper. Instead, a particular candidate's name will be printed at the top of the group on some ballot papers, in the second position within the group on other ballot papers and so on, so as to share out the positions.
- . The same principle will apply to the printing of independent candidates' names in the column for independents on the ballot paper.
- . Instructions on the ballot paper will require voters to show preferences (1, 2 and so on) for as many candidates as there are vacancies to be filled in the electorate concerned. Voters will have the option of showing as many further preferences as they wish. Seats will then be allocated to the candidates using the Hare-Clark system of proportional representation, as used at elections for the Tasmanian House of Assembly:
 - Candidates will have to achieve a quota of votes in order to be elected. The quota will be determined by dividing the number of formal votes by 1 more than the number of vacancies to be filled, and adding 1 to the number so obtained (disregarding any remainder).
 - If an elected candidate obtains surplus votes (ie votes in excess of the quota), the votes will be transferred to other candidates in the count.
 - If vacancies remain to be filled after surplus votes have been transferred, the candidates standing lowest on the count will be excluded and their votes transferred to the remaining candidates who stood next highest in the relevant voters' preferences.
 - This process of distributing the surplus votes of elected candidates and of excluding candidates will continue until all the vacancies have been filled.
- . If a member dies, resigns, or otherwise vacates his or her seat, the vacancy will be filled by a fresh examination of the ballot papers bearing the votes which elected him or her, to determine which of the available candidates who failed to be elected was most preferred by the voters who chose the former member.
- . The boundaries of electorate(s) will be drawn by bodies independent of the Commonwealth and ACT governments. The criteria which govern the drawing of the boundaries of House of Representatives divisions will apply as nearly as practicable to the drawing of the boundaries of Legislative Assembly electorates.
- . A redrawing of boundaries should take place in the first 12 months after each general election of members of the Legislative Assembly.

SCHEDULE 6

Section 7A

NEW SCHEDULE 4 TO BE ADDED TO PRINCIPAL ACT

'SCHEDULE 4 - BALLOT PAPERS

Section 35

FORMAT 1

Please put the number "1" in one of the boxes below to show which electoral system you believe should be used to elect members to the Australian Capital Territory Legislative Assembly. Leave the other box empty.

EITHER

A single member electorates system

(as outlined in the Commonwealth's *Referendum Options Description Sheet*)

OR

A proportional representation (Hare-Clark) system

(as outlined in the Commonwealth's *Referendum Options Description Sheet*)

FORMAT 2

Please put the number "1" in one of the boxes below to show which electoral system you believe should be used to elect members to the Australian Capital Territory Legislative Assembly. Leave the other box empty.

EITHER

A proportional representation (Hare-Clark) system
(as outlined in the Commonwealth's *Referendum Options Description Sheet*)

OR

A single member electorates system
(as outlined in the Commonwealth's *Referendum Options Description Sheet*)