

CONSTITUTION (CITIZEN-INITIATED REFERENDUMS) BILL 1991

[DRAFT BILL FOR INTRODUCTION BY THE HON. F.J. NILE]

NEW SOUTH WALES

[STATE ARMS]

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to enable the electors to initiate referendums on proposed laws by petition signed by at least 2.5% of the total number of electors and at least 2.5% of the electors enrolled in each of a majority of electoral districts.

PART 1 - PRELIMINARY

Clauses 1-3 deal with the short title and commencement of the proposed Act, and the definitions used in the proposed Act.

PART 2 - AMENDMENT OF CONSTITUTION ACT 1902

Clause 4 amends the Constitution Act 1902 to confer on electors the right to initiate referendums on proposed laws by petition under the proposed Act. A proposed law approved at referendum becomes an Act of Parliament but is not required to be approved by Parliament. Under clause 4(a), any Act which removes or alters that right of the electors must itself be approved by the electors.

PART 3 - INITIATION OF REFERENDUMS BY PETITION OF ELECTORS

Division 1 (clauses 5-10) deals with the commencement of a petition. It sets out the requirements for registration of a petition, the appointment of the petitioners, and how a proposal may be withdrawn, in part or in full, amended, or amalgamated, and how disputes as to petition proposals may be resolved.

Division 2 (clauses 11-18) deals with the signing of petitions. Petitions are to be signed before approved witnesses, who certify their witnessing of the signatures to the petition. At the end of each month signed petition forms are to be lodged with the returning officer for each electoral district or division, and on checking, the returning officer issues a certificate which is sent to the Electoral Commissioner.

Division 3 (clauses 19-24) deal with the closing date of petitions, and the issue of a Certificate of Qualification of Petition when the petition has been signed by the prescribed number of electors. It is provided that the subject of a petition is to be submitted to the electors at the next election or next referendum, whichever first occurs. Where a petition qualifies and is signed by a number of electors not less than 5% of the number of formal votes at the last preceding election, the subject of the petition may be submitted to the electors within 6 months of the petition so qualifying.

Provision is made for the tabling of qualified petitions in the Legislative Assembly and the Legislative Council.

Provision is made for a House of the Parliament to propose an alternative submission to the electors. The Ballot papers are to provide that each submissions is to be on one subject only. Proposals may be submitted as a number of submissions to enable the electors the opportunity to vote to approve alternative propositions and to distinguish between acceptable and not acceptable proposals.

Provision is made for the deferral of, and withdrawal or postponement of a proposal where the Legislature has passed a law which appears to give effect to a proposal.

PART 4 - HOLDING OF REFERENDUMS

Clauses 25-30 set out when the Poll is to be taken, who may vote, how the vote may be taken, provide for the publication of the poll result, and sets out the requirements for approval of proposed laws. Provision is made for the deferral of a poll where the legislature has passed a law which gives effect to a proposal in the petition.

PART 5 - MISCELLANEOUS

Clauses 31-42 provide that a proposal approved by the electors is to be interpreted in the same manner as legislation of the Legislature. When a writ for the holding of a referendum has been issued by the Speaker, the writ is not to be challenged. Forms are provided suitable for the purposes of the Act.

Certain provisions of the proposed Act and proposals approved by the electors under the proposed Act require the approval of the electors to any amendment, except where otherwise provided.

Provision is made for resolving any possible inconsistency between laws and proposals approved by the electors.

Local Authorities and other bodies may within their respective jurisdictions adopt the principles of this Act.

Provision is made for offences, in circumstances where the provisions of the electoral legislation does not cover the safeguarding of petitions.

Provision is made for Regulations with respect to any matters necessary or convenient for the purposes of the proposed Act. No regulations are presently envisaged, as the provisions sets out in the one document what is necessary to be prescribed to implement the process with integrity at every step in the process.

CONSTITUTION (CITIZEN-INITIATED REFERENDUMS) BILL 1991

NEW SOUTH WALES

[STATE ARMS]

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CONSTITUTION (CITIZEN-INITIATED REFERENDUMS) BILL
1991

NEW SOUTH WALES

[STATE ARMS]

No. ,1991

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A BILL FOR

An Act to enable the electors of New South Wales to initiate referendums on proposed laws; and to amend the Constitution Act 1902.

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BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the Constitution (Citizen-Initiated Referendums) Act 1991.

Commencement

2. This Act shall commence on assent.

Definitions

3. In this Act:

"appoint" means appoint by an instrument in writing.

"Court" means the Supreme Court, and includes any other Court or Tribunal appointed by the Attorney-General for the purposes of this Act.

"election" includes a general election under the Local Government Act, and a general election of members of the House of Representatives or of the Senate, of the Commonwealth.

"Electoral Act" means the Parliamentary Electorates and Elections Act 1912.

"elector" means an elector qualified to vote for the election of Members of the Legislative Assembly.

"electoral registrar" means the electoral registrar appointed for any electoral district or division.

"legislation" includes acts, regulations, by-laws, rules, and any subordinate legislation whatsoever made directly or indirectly by virtue of an Act, and any part or provision of such legislation.

"law" includes legislation.

"measure" means the scope of objects intended to be effected by a petition in the manner set out therein and for purposes consequent thereon or incidental thereto.

"month" in relation to a petition means a named calendar month, and the end a month means the last day of a named calendar month.

"petition" means a petition under this Act, and includes a signed copy of the petition.

"petitioners" means the persons appointed under this Act as the petitioners with respect to a petition.

"prescribed" means prescribed by this Act or by regulations.

"proposed law" means a law proposed by a petition.

"qualify" with respect to a petition means to obtain the prescribed number of signatures to enable a petition to be submitted to the electors at referendum.

"referendum" means the submission of a proposed law or measure to the electors pursuant to the provisions of this Act for their approval or disapproval.

"referendum poll" means a poll of referendum votes upon a petition or bill pursuant to the provisions of this Act.

"Speaker" means the Speaker of the Legislative Assembly.

and generally the terms used have the same meanings as are respectively assigned to them in the Elections Act.

PART 2 - AMENDMENT OF CONSTITUTION ACT 1902

Amendment of Constitution Act 1902 No. 32

4. The Constitution Act 1902 is amended:

(a) by inserting in section 7B(1)(a) after the word "section" the matter "8,";

(b) by inserting after section 7B the following section:

Citizen-initiated referendums on proposed laws

8. (1) Electors have the right to initiate referendums on proposed laws by petition in accordance with the Constitution (Citizen-Initiated Referendums) Act 1991.

(2) A proposed law approved at any such referendum by the electors in accordance with that Act is to be presented to the Governor for Her Majesty's assent.

(3) On assent, the proposed law is to be taken to be an Act duly enacted by the Legislature of New South Wales.

(4) Any other Act passed before a proposed law becomes an Act which is inconsistent with the proposed law is, to the extent of the inconsistency, invalid.

(5) Sections 7A and 7B do not apply to a proposed law approved at a referendum as referred to in this section.

(6) In this section;
"electors" means electors qualified to vote for the election of Members of the Legislative Assembly;

"proposed law" means a Bill for any Act within the legislative powers of the Legislature of New South Wales.

PART 3 - INITIATION OF REFERENDUMS BY PETITION OF ELECTORS

Division 1 - Commencement of petitions

Petition details

5.(1) A petition may request that a referendum be held on a proposed law, and that a proposed law be submitted to the electors at referendum.

(2) A proposed law may be set out in detail in the petition, or the provisions of a proposed law may be set out in detail in an accompanying document, or the petition may provide that a bill be prepared to give effect to a proposed law, the substance and effect of which is set out in general terms in the petition or an accompanying document.

(3) The petition shall be in a form in the Schedule, and must be addressed to the Speaker of the Legislative Assembly and the President of the Legislative Council.

(4) The title of the petition shall be a fair indication of its contents.

(5) The petition shall be accompanied by a summary which contains not more than 100 words, and which is a fair representation of the substance and effect of the proposed law.

(6) The petition and the summary shall be so framed as to be clearly intelligible, and not of doubtful or ambiguous meaning.

(7) Copies of the petition for signature may be endorsed with the summary or may set out in full the law as proposed.

(8) The petition shall not name a person for appointment to any Office.

(9) A proposed law shall be within the legislative powers of the State.

(10) The giving of full effect to a law proposed by the petition, and what is necessary or convenient, and for the purpose of perfecting the measure or ancillary thereto, or for purposes consequent thereon or incidental thereto is implied.

(11) A petition may be accompanied by written material and arguments with respect to the subject matter of the petition.

Petitioners

6.(1) A petition must, when delivered to the Electoral Commissioner for registration, appoint 12 signatories to the petition nominated by at least 100 signatories to the petition, to be the petitioners for the purposes of this Act.

(2) A signatory to a petition may by instrument in writing signed by all the existing petitioners lodged with the Electoral Commissioner, be appointed as a petitioner to replace a petitioner who has resigned or died.

(3) The petitioners have the right to authorise and or prepare any formal case in favour of any proposal for publication, including publication in any newspaper or by radio or television.

(4) The petitioners shall ensure that the integrity of the intent of the petition is maintained.

Registration of Petition by Electoral Commissioner

7.(1) On delivery of a petition by the petitioners, the Electoral Commissioner is required to register the petition if satisfied that:

- (a) the petition has been signed by not less than 400 electors; and
- (b) that the petition complies with this Act.

(2) Only electors who sign a petition within 3 months of the date of registration are to be taken into account for the purposes of this section, and as signatories for the purpose of qualification of the petition.

(3) The Electoral Commissioner is required to publish in the Gazette a notice of the title of a petition registered by the Commissioner, the date of registration and the description of the proposed law set out in the petition at the cost of the petitioners.

(4) The Electoral Commissioner may request the petitioners to make such changes to the petition (being changes to its title, the summary of the proposed law set out in the petition or the support material accompanying the petition) as the Commissioner considers necessary to enable it to be registered.

(5) Any such change may be effected by the withdrawal of the petition and the delivery of a new petition duly signed by the requisite number of electors or, if the Electoral Commissioner is satisfied that the change does not alter the substance of the proposed law, by a notice in writing signed by all the petitioners.

(6) The Commissioner is required to number each petition consecutively in the year of its receipt, complete the register page, and lodge with the petition any accompanying documents, and documents lodged by the Petitioners from time to time.

(7) The Electoral Commissioner must notify the petitioners within 14 days of lodgment of the petition satisfy himself whether the petition complies with the preceding sections.

(8) Where the Electoral Commissioner is not so satisfied, shall mark the petition with the words "Non-Conforming petition", and endorse on the petition every reason why the petition does not so comply, and sign and date the endorsement.

(9) Where the Electoral Commissioner does not notify the petitioners on the 14th day following lodgment of a petition that it does not comply with this Act, the petition shall be deemed registered on the next ensuing day, and shall be entered in the Register, as a registered petition.

Availability of copy of petition etc.

8.(1) The Electoral Commissioner is:

- (a) to make available for public inspection copies of any petition registered by the Commissioner, together with any changes

notified to the Commissioner and any supporting material accompanying the petition at the office of the Electoral Commissioner in Sydney, without fee; and

(b) is to cause to be forwarded that matter to each Clerk of a Local Court.

(2) Any person may purchase a copy of any such material at cost.

(3) Copies of the petition, the statement or the full text of the petition shall be in a form approved by the Electoral Commissioner, and may be printed by the petitioners or by the Government Printer at the expense of the petitioners.

(4) A copy of the petition and any document lodged with the petition from time to time by the petitioners with the Electoral Commissioner may be inspected at the office of the Electoral Commissioner without fee.

Changes to petition after registration

9.(1) The Petitioners may, by instrument signed by all the petitioners and a majority of the electors who appointed them, propose the amendment, amalgamation, or withdrawal of a petition or any part thereof, whether or not in consequence of the passing of a proposal by the Legislature, or the making of a regulation or other subordinate legislation.

(2) The Notice of Proposed Action must be lodged with the Electoral Commissioner.

(3) The Electoral Commissioner is required to publish such notice in the Gazette at the cost of the petitioners.

(4) The Notice must set out particulars of the proposed action, and must nominate a date, not less than 28 days from the date of publication in the Gazette for referral to the Court, by signatories to the petition on the grounds that the proposed action or any specified part thereof is, having regard to the measure, not a representative act.

(5) The petitioners may at any time withdraw in whole or in part any proposal in a notice of proposed action.

(6) Where no referral to the Court has been lodged with the Electoral Commissioner, or where the Court has not held the proposed action or a part to be not an unrepresentative action, the Petitioners may issue their Certificate in respect of any proposed action or part thereof in respect of which no referral has been made, or which the Court has not declared to be an unrepresentative, and thereupon the petition shall be amended in terms of the certificate.

(6) Petitions proposed to be amalgamated shall have similarity of object, and shall propose 12 petitioners chosen by the original petitioners as petitioners with respect to the amalgamated petition.

Referral

10.(1) A referral to the Court must be by notice lodged with the Electoral Commissioner signed by not less than 400 signatories who signed the petition before the date of the Gazette containing the Notice of Proposed Action.

(2) The 400 signatories to the referral are required to nominate one of their number to be their representative for the purposes of the referral.

(3) The notice of referral must set out the grounds for alleging that the proposed action or any part thereof is not a representative act, and must set out full particulars in support of such grounds.

(4) The Electoral Commissioner on receipt of a Referral Notice which complies with this section, must lodge the referral with the Registrar of the Court.

(5) Where the Court determines a proposed withdrawal to be an unrepresentative act, the Court may, on application of the electors making the referral, appoint 12 persons nominated by those electors (which may include original petitioners), in the place of the original petitioners.

(6) The petitioners may apply directly to the Court for directions in respect of any proposed action, or to resolve any alleged inconsistencies within a petition or disputes whatever between the petitioners with respect to any matter concerning the measure or the petition.

(7) The petitioners, and any person appearing on a referral shall have the right to be heard in person. No award of costs shall be made, except where the Court dismisses applications as frivolous or vexatious.

(8) A referral shall be determined according to law.

(9) The Attorney General may appoint any court or tribunal for the determination of referrals, whether or not on the request of the petitioners or the person appointed to represent the petitioners who made the referral.

Division 2 - Signatories to petitions

Petition Representatives

11.(1) The petitioners may, by notice in writing to the Electoral Commissioner, appoint any number of electors as petition representatives for the purposes of seeking signatures to the petition.

(2) The Electoral Commissioner is to register the names and addresses of all petition representatives.

(3) A Returning Officer may on the application of the petitioners, or of a petition representative appointed by the petitioners, or by not less than 20 electors who have signed the petition, appoint one or more electors to be a petition representative.

(4) The returning officer shall maintain a register which shall contain the particulars and signature of every elector appointed by the returning officer as a petition representative.

(5) Petition representatives shall ensure the return of all signed petitions at the end of each month to Returning Officer.

(6) A petition representative shall produce on request an identification supplied by the returning officer.

(7) The identification shall state the title of the petition, the name, address and signature and telephone number of the petition representative, the date of issue and signature of the returning officer.

(8) Before a person signs a petition, the petition representative or authorised witness who is to witness the signature must give the person an opportunity to read the description of the proposed law or must read the description to that person.

Returning Officers

12.(1) The Electoral Commissioner may appoint any person to be returning officer for an electoral district or division.

(2) Unless some other person is appointed to be the Returning Officer for the purposes of this Act, the Clerk of the Local Court in any electorate is the returning officer for that electoral district or division for the purposes of this Act.

Signatures to Petition

13.(1) Any person claiming to be enrolled on the Electoral Roll may sign the petition before a petition representative.

(2) Every person claiming to sign the petition shall state his or her full name and such other particulars as are necessary for the purpose of identifying his or her name on the electoral roll.

(3) The name of an elector appearing on an electoral roll at any time during the currency of the petition is evidence of that elector's right to sign the petition.

(4) A person shall not sign a petition except before a petition representative.

(5) A person shall not knowingly sign a petition more than once.

(6) The signature on a petition of a person who is not enrolled, or whose signature is not witnessed by a petition representative, is not to be counted, and that person is taken not to have signed the petition.

(7) A person shall have the right to sign a confidential petition by completion of an envelope bearing on the outside a declaration in a form approved by the Electoral Commissioner, and inserting therein a non-identifying form for completion in favour or against the holding of a referendum of a proposed law.

Petition Representatives - functions

14.(1) A petition representative shall -

- (a) ask each person claiming to sign the petition that person's name and other particulars necessary for the purpose of identifying his or her name on the electoral roll;
- (b) ensure the completion of the particulars of the person claiming to sign the petition, and present the petition to the person for signature;
- (c) ensure that as far as practicable, persons enrolled in different electoral districts or divisions sign a form of petition for those electoral districts or division;
- (d) ensure as far as practicable that persons not enrolled on the last published electoral roll as at the commencement of the petition sign separate petition forms entitled "Supplementary Enrolments", in respect of the appropriate district or division;

- (e) write the enrolment number as shown in the last published electoral roll as at the commencement of the petition beside the signature;
 - (f) rule through all uncompleted spaces on signed forms of petition not later than the end of the month;
 - (g) complete and ensure the completion of the declaration at the foot of each petition before an approved witness; and
 - (h) at the end of each month, deliver all petitions signed in the month to the petition representative appointed by the petitioners or to the Returning Officer by whom the petition representative is appointed;
- (2) Petition representatives and other approved witnesses may stamp the petition with a stamp which provides the particulars required to be shown on a petition, and must supply such other information as the Returning Officer requires.

Signatures to be witnessed

15. The signature of a person to a petition is to be witnessed by any of the following approved witnesses:

- (a) a Petition Representative;
- (b) a Justice of the Peace or Commissioner for Affidavits of an Australian State or Territory, or of the United Kingdom or of New Zealand,
- (c) an Australian Consular Officer, State Representative or person appointed by an Australian Consular Officer or State representative;
- (d) a Member of the Australian Armed Forces overseas or a person holding a position equivalent to a Justice of the Peace, or Town Clerk outside Australia.
- (e) a person appointed by the Electoral Commissioner as an approved witness.

Issue of Returning Officer's Certificate

16.(1) As soon as practicable after the end of each month during the currency of a petition, the Returning Officer is to count the number of signatories who are enrolled in that electoral district or division, and send a copy of the certificate to the Electoral Commissioner.

(2) The Certificate must state the date and the month of the batch, the number of electors' signatures in the batch, and the corresponding particulars of each preceding batch;

(3) A copy of the Certificate is to be available for public inspection at the office of the Returning Officer.

(4) The Returning Officer may make due inquiries as to whether a signature on the petition is that of an elector enrolled in that electoral district or division.

(5) The Returning Officer is not to take into account any copies of a petition that are delivered to the Returning Officer later than 2 months after the closing date for the petition.

(6) The Returning Officer is to ensure that the petitioners or any petition representatives registered by the Returning Officer are given an opportunity to be present at the count of the signatories to a petition and to scrutinise the count.

(7) A recount of a batch may be held on request of a scrutineer.

(8) The count of signatories must be conducted the office of the Returning Officer or at such other place as the Returning Officer may arrange.

(9) The Certificate must be countersigned by an approved witness or scrutineer as to the accuracy of the count of signatories to the petition in the batch.

(10) A Returning Officer may issue an amended Certificate should error be found on a recount of a batch.

(11) The Certificate shall be conclusive evidence of the minimum number of electors of the district or division who have signed the petition.

Checking of Petitions by the Returning Officer

17.(1) The Returning Officer must:

- (a) date stamp each signed petition on receipt, and deposit it in a locked ballot box until the count for that month;
- (b) at the count of signed petitions for the month, write the enrolment number of each signatory against that person's name on the electoral roll;
- (c) write the number of the month, being the batch number on the copy of the roll beside the roll number of the signatory, and rule through the name of the signatory on the roll;

- (d) where a person has signed a confidential petition, after checking that the signatory's name against the roll, count the requirement (if any) enclosed as the signature of that elector to the petition.
- (e) and retain a copies of Returning Officer's Certificates for public inspection at the office of the Returning Officer.
- (f) keep all signed petitions for a month in a sealed packet for that month (referred to as a "batch", and affix a copy the Returning Officer's Certificate to the outside of that batch.
- (g) each batch must be kept in secure locked ballot box and not be dealt with except in the presence of scrutineers.

(2) The Returning Officer may count a sample of not less than 5 percent of the signatures of a batch, and where 95% or more of the signatures appear to be of electors enrolled in the electorate or division, the Registrar may issue a Certificate in respect of the batch showing a number determined by reducing the total of the signatures in the batch by the percentage of signatures of persons in the same not so enrolled, followed by the word "sample".

(3) Following each monthly count of signed petitions, each batch and the certificate for that month must be kept with preceding batches and certificates in respect of the same petition in a secure locked ballot box.

(4) Where there has been a redistribution of electorates since the commencement of the petition, the electorates for the purposes of this section shall be the electorates as at the commencement of the petition.

Signature of petition in other electoral districts or divisions.

18.(1) Where it appears that a person who has signed a petition is enrolled in another electoral district or division, the Returning Officer is required to make a photocopy of the signed petition, date stamp and countersign it, and send it to the appropriate Returning Officer.

(2) The first Returning Officer is to keep a the signed petition with the batch to which it relates, and the copy is to be received and dealt with by the appropriate Returning Officer as if it were an original signed petition.

Division 3 - Qualification of petition for submission for submission of proposed law to electors

Closing date for petition

19.(1) The closing date for a petition is the date that is 18 months from the last day of the named month when the petition was registered.

(2) Only electors who sign a petition before the closing date for the petition are to be taken into account for the purposes of determining whether the petition is a qualified petition.

(3) A signature to a petition made earlier than 3 months before the lodgment of the petition is not to be taken into account for the purpose of determining whether the petition is a qualified petition.

(4) A petition which does not qualify has no effect, and is cancelled.

Number of electors required to sign petition to qualify for referendum

20.(1) A proposed law does to qualify for submission of a proposed law to a referendum unless the number of electors who have duly signed the petition constitutes:

- (a) at least 2.5 per cent of the total number of electors enrolled; and
- (b) at least 2.5 per cent of the electors enrolled in each of a majority of electoral districts.

Certificate of Qualification of Petition

21.(1) The Electoral Commissioner is required to certify, upon receipt of Returning Officers certificates showing that the required number of electors have signed the petition for it to qualify, that the proposed law has qualified for submission to referendum.

(2) The Electoral Commissioner is required to publish the Certificate of Qualification of the proposed law in the Gazette.

(3) The Electoral Commissioner is required to deliver to the Speaker, the President of the Legislative Council, and the Parliamentary Counsel a copy of the certificate and any supporting material accompanying the petition.

(4) The Certificate shall be conclusive evidence that a law proposed by a petition may be presented to referendum at the time in respect of which it qualifies to be submitted to referendum.

Speaker and President of the Legislative Council to table qualified petition in Parliament

22. As soon as practicable after the Electoral Commissioner has delivered to the Speaker and the President of the Senate the certificate of qualification of a petition, the Speaker and the President are required to cause a copy of the certificate, and any supporting material, then and thereafter lodged with the Electoral Commissioner to be tabled in the Legislative Assembly and the Legislative Council.

Drafting of proposed law

23.(1) The Parliamentary Counsel is required, in conjunction with the petitioners to prepare a draft of a proposed law on the instructions of the petitioners as is appropriate to give effect to the proposal, upon the issue of the Certificate of Qualification.

(2) The Petitioners may present, withdraw and represent from time to time to the Electoral Commissioner draft legislation prepared to express the effect to a law proposed by the petition, and for the purpose of perfecting the measure or ancillary thereto, or for purposes consequent thereon or incidental thereto.

Drafting of ballot papers

24.(1) Where a petition deals with more than one subject matter, separate proposals may be set out as for each of the several subject matters.

(2) Each proposal shall be set out as a separate proposal on the Ballot Paper.

(3) The provisions of a proposed law or an alternative proposed law may be presented as single submissions or as a number of separate referendum submissions.

(4) A House of the Parliament may submit an alternative proposed law to the electors at the same time as the submission of the proposed law to the electors.

(5) Proposals may be divided into portions to enable electors to approve or disapprove each portion, which shall be deemed a separate submission to the electors.

(6) The ballot paper shall clearly set out the alternative means of approval or disapproval of proposed laws, and how preferences may be indicated.

(7) The form and presentation of the submissions and ballot paper shall be determined by the petitioners upon consultation with the Electoral Commissioner.

(8) The petitioners may submit both or either of the Petition and the bill as last presented to the Electoral Commissioner to the electors as separate bills.

PART 4 - HOLDING OF REFERENDUM

Date of referendum

25.(1) The proposed law upon the petition qualifying, must, subject to this Act, be submitted to referendum at the same time as the next election or referendum, whichever first occurs.

(2) Where a proposed law qualifies and the petition is signed by a number of electors not less than 5 percent of the formal votes at the last election, the proposed law must, subject to this Act, be submitted to referendum within 6 months of being signed by that number of electors.

(3) The Speaker may issue a writ for referendum of a proposed law at any earlier time as seems convenient, and the Speaker must issue a writ for referendum of a proposed law, proposed by a qualified initiative petition, subject to this Act, if a poll is not earlier held.

How vote taken

26.(1) The mode of ascertaining the right to vote at a referendum poll, and of ascertaining such right, shall be the same as at elections of members of the Legislative Assembly:

And generally (except as may otherwise be provided in this Act, or any regulations made hereunder), the provisions of the Elections Act and Regulations made thereunder regulating and making provision for the holding and conduct of elections, the proceedings before and at and subsequent to such elections, and all incidental matters shall, so far as is applicable thereto, apply with such adaptations as may be necessary to the a petition and referendum poll: Provided that the provisions (if any) of the Elections Act for securing the absolute majority of votes shall not apply.

(2) Pre-poll Voting. Any elector may vote at any time after the writ for referendum has issued during ordinary office hours at the office of the Returning Officer.

(4) **Simultaneous Polls.** Where a referendum is held or to be held on the same day as an election, an application for a postal ballot paper or for permission to vote as an absent voter 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.

(5) **Scrutineers.** Scrutineers may be appointed by the Petitioners, or by petition representatives in the same manner as a scrutineer may be appointed under the Elections Act.

Who entitled to vote

27. The persons entitled to vote at the taking of a referendum poll shall be the electors and no other persons.

Endorsement and return of writ

28.(1) The returning officer shall, in a manner provided by the Electoral Act, ascertain and endorse of the writ the number of votes respectively recorded at each polling place within the electoral district or division in respect of each submission at the referendum poll (after the distribution of preferences, if applicable), and forthwith return the writ so endorsed to the Electoral Commissioner.

(2) The Speaker shall publish the result of the referendum poll in the Gazette within 28 days of the date of the referendum poll or sooner when the result of the poll is conclusively determined.

(3) Publication in the Gazette shall be conclusive evidence of the result of the referendum poll.

Approval by electors

29.(1) A proposed law is approved by the electors at a referendum if:

- (a) a majority of the electors voting approve the proposed law; and
- (b) the electors who approve the proposed law constitute a majority of the electors voting in each of a majority of electoral districts.

(2) Upon approval, the responsible Minister shall forthwith present the approved law as a bill for assent by and on behalf of Her Majesty with a request that the Governor assent to the Bill, and that it commence on the day of the referendum poll, or such other date as the petition may provide.

(3) The enacting provision of a law approved by the electors, when so assented to shall be:

"BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the consent of the electors of New South Wales, and by the authority of the same, and pursuant to the provisions of the Constitution (Citizen-Initiated Referendums) Act 1991 as follows:-"

(4) Where the effect of a law approved at referendum is the disapproval of legislation, a bill which by itself or with other legislation or administrative action purports to give effect to disapproved legislation or purports to implement the effect of disapproved legislation cannot be presented for assent unless the electors at referendum have first approved that bill, and any administrative action whatsoever which purports to give effect thereto is of no effect.

(5) Where the electors approve at the same referendum proposals, the provisions of which conflict, those provisions of the proposal receiving the highest affirmative vote shall, to the extent of the inconsistency, prevail.

(6) No lack of formality shall disqualify a petition or vote which otherwise complies with the requirements of this Act.

Passing of proposal by the legislature

30.(1) Where the Legislature enacts legislation, or other legislation is made, the petitioners may deliver to the Electoral Commissioner, the Speaker and the President of the Senate at Notice of concurrence certifying the extent to which the legislation satisfies the purpose of the petition.

(2) Upon publication of the Certificate of Concurrence in the Gazette, the issue of a writ for referendum or the writ for referendum may be stayed for a period not exceeding 6 months following the next election in respect of those provisions of the Act or specified enactments in which the petitioners have certified their concurrence.

(3) The petitioners may at any time following the issue of the certificate of concurrence and not less than 6 months following the next election request that the Speaker issue a writ for referendum of the proposed law or part of the proposed law at the same time as the next election or referendum, whichever first occurs, failing which the purpose of the petition shall be deemed to be satisfied.

(4) Within 6 months following that election the Petitioners shall by Notice of Proposed Action, propose that the referendum be held, or that the petition be withdrawn.

PART 5 - MISCELLANEOUS

Application of the Interpretation Act

31. Except as otherwise herein indicated or required, the provisions of the Interpretation Act 1987 applies to any law enacted, amended or repealed under this Act as if it were an Act passed by the Parliament in the usual manner.

Validity of Writ

32. The validity of any writ for a referendum issued by the Speaker shall not be questioned in any proceedings whatsoever.

Forms

33. The forms in the schedule may be used with such adaptations as may be necessary, and the Electoral Commissioner may approve forms for the purposes of this Act.

Bill for repeal or amendment of this Act or of an Act approved by virtue of this Act

34.(1) Every Bill for the repeal or amendment of sections 4,5,6,7,9,10,11,19,20,21,25,26,29,30,32,34 and 35 of this Act or of any law approved at a referendum poll shall be submitted as proposed law to the electors by a referendum in accordance with the provisions of this Act.

(2) A law approved on a referendum poll may itself contain authority for the amendment thereof by an Act of Parliament, and in such case it shall not be necessary to submit the Bill for such an Act to a referendum poll.

Inconsistency of Laws

35. The provision of this Act or any other Act made hereunder are, to the extent of the inconsistency, prevail over any law inconsistent therewith.

Adoption of principle of Act

36.(1) The provisions of this Act may generally be adopted with necessary adaptations by any local authority, instrumentality or quasi autonomous State Government organisation which makes laws, ordinances, rules, regulations or by-laws or subordinate legislation.

(2) The provisions of this Act may be adopted by a Local Authority by resolution of the Council, or upon approval of the electors upon a petition for the adoption of the provisions of this Act.

(3) The electors of a local government area may circulate petitions for the adoption of the provisions of this Act for that local government area, and upon qualification of the petition a poll must be held to approve or disapprove the adoption of the provisions of this Act for the local government area.

Local Authorities

37.(1) Where a local authority contains wards or ridings, a proposed ordinance or by-law within the legislative jurisdiction of the local authority, shall require qualification of the petition and the approval or disapproval of a majority of electors and a majority of electors in a majority of wards, divisions, or ridings, and thereupon the Shire Clerk shall request the relevant Minister who shall forthwith request the Governor to make the ordinances or by-law.

(2) The Electoral Commissioner, or the electors by petition under this Act may for the purposes of this Act appoint divisions for a Local Authority where there are no divisions existing, provided that the electors of that Local Authority area may approve divisions for the purpose of this Act.

Offences relating to petitions

38.(1) A person who signs another person's name to a petition or who knowingly signs a petition more than once is guilty of an offence.

(2) A person who gives or offers or promises to give any money or other material benefit to a person to obtain the person's signature to a petition is guilty of an offence.

(3) Obstruction. A person who, without reasonable excuse, hinders or obstructs a person from collecting signatures for a petition is guilty of an offence.

(4) Threats. A person who threatens, offers or suggests any violence, injury, punishment, loss or disadvantage to any elector or any other person in order to induce an elector to sign or refrain from signing a petition is guilty of an offence.

(5) Violence. A person who inflicts or procures any violence, injury, damage, loss or disadvantage to an elector or any other person, for or on account of the elector signing or refraining from signing a petition is guilty of an offence.

(6) Misrepresentation. A person who knowingly misrepresents a proposed law on which a petition is being circulated to an elector in order to induce the elector to sign or refrain from signing a petition is guilty of an offence.

(7) **Misleading Material.** A person who prints, publishes or distributes any advertisement or document containing a representation of a ballot paper, or any representation appearing to represent a ballot paper, containing directions likely to mislead, or any untrue or incorrect statement likely to mislead an elector in or in relation to the casting of a vote at a referendum is guilty of an offence.

(8) **Return of Signed Petitions.** A Petition representative or other approved person who fails without reasonable cause to return a signed petition to the appropriate electoral registrar or petitioner's representative within 7 days of the last day of the month on which the petition was signed by an elector, is guilty of an offence.

(9) **Confidentiality.** Any person who without the approval in writing of a person signs a petition or uses or makes available to any person any particulars derived from any petition for which may identify a person, or for any purpose not connected with the signing of the petition is guilty of an offence.

(10) **Jurisdiction.** Proceedings for an offence against a provision of this Act or the regulations or against the provisions of the Elections Act as with necessary adaptations applies to any act or omission which constitutes an offence against a provision of the Elections Act or regulations shall be dealt with before a Local Court.

(11) **Offence by corporation.** Where a body, whether incorporated or otherwise, contravenes, whether by act or omission, any provision of this Act or the regulations, each director and any or officer of that body shall be deemed to have contravened the same provision unless that person satisfies the court that -

- (a) the body contravened the provision without the knowledge of that person;
- (b) that person was not in a position to influence the conduct of the body in relation to its contravention of the provision; or
- (c) that person, being in such a position, used all due diligence to prevent the contravention of the provision by the body.

(12) A person referred to in subsection (11) may be proceeded against and convicted under a provision pursuant to this Act or regulations or the Electoral Act whether or not the body referred to therein has been proceeded against or convicted under that provision.

(14) **Application of Elections Act.** Every act or omission which would be punishable by law, if the same had occurred in connection with the holding of an election shall be held to constitute the like offence, cognisable in the like manner, and punishable by the like punishment if the same occurs in connection with a referendum poll.

(15) A person who fails to comply with the provisions of this Act or of the Electoral Act as applied by this Act or the Regulations is guilty of an offence.

Maximum penalty: 20 penalty units, or the penalty provided in the Electoral Act.

(16) The Electoral Commissioner or a Returning Officer may issue an injunction to restrain a breach of this Act or of the Elections Act applied by this Act.

Expenses

39.(1) All expenses incurred in the execution of this Act in the taking of a referendum poll shall be defrayed out of moneys to be from time to time appropriated by Parliament for the purpose.

(2) No activity in favour of or in opposition to a petition or by which any elector may be influenced in voting at a referendum shall be paid for or reimbursed from any Government moneys, including moneys in respect of which a person holding appointment under the Crown has a control or discretion.

Disclosure of financial contributions

40. A person must disclose in accordance with the Electoral Act and Regulations financial contributions made by the person to the preparation of any petition or campaign in support of for against a referendum, as if the petition were an election.

Maximum penalty: 100 penalty units.

Proceedings for offences

41. Proceedings for an offence against this Act are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Regulations

42.(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving full effect to this Act.

(2) In particular, the regulations may make provision for or with respect to the directing, assisting, and safeguarding the promoting, signing, making and presentation of petitions and taking of referendum polls, and may by such regulations impose or provide for a penalty for any breach thereof.

THE SCHEDULE

The forms in the schedule may be used for the following purposes

Form	Purpose
A	Commencement of Petition.
B	Register of Petition by Electoral Commissioner
C	Notice of Referral to Court
D	Certificate of Qualification of Petition
E	Register of Petition Representatives and authorised persons
F	Notice of Proposed Amendment, Withdrawal etc.
G	Certificate of Electoral Registrar
H	Certificate of Petitioners
I	Voter's Registration Declaration (on envelope to contain Voter's Petition for Confidential Voting)
J	Voter's Petition
K	Referendum - Ballot Paper

PROPOSED LAW for REFERENDUM OF THE ELECTORS

Petition No.
Closing date:

TITLE: (INSERT FULL TITLE)

Summary: INSERT full text, or summary not exceeding 100 words.

THIS PETITION has been registered and may be signed by electors.

.....
Electoral Commissioner

If you wish to vote on the above proposal either to approve or disapprove, you may complete and sign this form. The full text of the proposal is available for your inspection from an Approved Witness, or from the Electoral Office or a Court House.

PETITION

To: The Honourable the Speaker of the Legislative Assembly , Parliament House.

We, the undersigned electors petition that the proposed law or measure be submitted to referendum of the electors for their approval or disapproval by ballot.

ELECTORATE:Subdivision:.....

Date of Signatures.....

Roll No.	SURNAME	Given names	Address as enrolled	Signature
.....
.....

(attach further sheets showing title of Petition and signature of declaring witness)

DECLARATION OF APPROVED WITNESS TO SIGNATURES OF ELECTORS

I am authorised to witness the signatures of electors to this petition. Each signature was written in my presence on the date shown. This petition comprises [] pages and contains [] signatures. I declare the foregoing to be true and correct.

.....
Signature of declarant Full name Address of declarant

DECLARED before me at this 19

.....
Signature of person authorised to witness signatures: Qualification (see below)

The Authorised Witness must make this declaration before an approved witness:
(see below):

Approved Witnesses: a Justice of the Peace for any Australian State, New Zealand or of the United Kingdom, a Clerk employed in any Court House in the State, the Agent General, London, a person appointed by an Australian Consular Officer and any State public servant or member of the Australian Armed Forces outside Australia stating rank or position.

IMPORTANT NOTE:

This form, fully completed, with all annexures, must be delivered to: the Electoral Registrar for the district in which it is signed; or the Electoral Commissioner, on the last day of each month. ALL BLANK SPACES must be ruled through.

Each supplementary page must show the title of the petition, be signed by the declaring authorised witness, and attached to this declaration.

Electors must sign a petition form entitled with the name of the electoral district or division in which they are enrolled.

To be endorsed on form for registration only:

APPOINTMENT OF PETITION REPRESENTATIVES

We, the undersigned electors hereby request the registration of the above Petition, and nominate the undersigned 12 electors who have signed this Petition as the Petitioners for the purpose of this Act.

Roll No.	Surname	given names	Address enrolled	Electorate	Signature

ACCEPTANCE OF APPOINTMENT

WE the undersigned electors hereby accept appointment as Petition Representatives with respect to the above petition.

Roll No.	Surname	given names	Address enrolled	Electorate	Signature

Citizen-Initiated Referendums Act 1991

Form B

Petition No.

PETITION REGISTER

PETITION:

received:
registered:

closing date:

Date published in Gazette:

Date of Certificate of Qualification:

referral to Parliamentary Counsel:

presentation to Parliament:

Parliamentary Bill relevant:

Date proclaimed:

Date commenced:

Date of Certificate of Proposed Concurrence:

Certificate issued:

Issue of writ for referendum:
withdrawal of writ:

Date of referendum:

Result of Referendum Poll in Votes:

Date presented to Governor:

Date of assent:

Date assent Gazetted:

Date commenced:

Citizen-Initiated Referendums Act 1991

Form C

NOTICE OF REFERRAL TO COURT

TITLE OF PETITION:

We, the undersigned electors hereby refer:

(state specifically the matter to be referred to the Court)

for a determination as to whether proposed action of the petitioners referred to above, and published in the Government Gazette of datePage.....is a representative action

We appoint

of

an elector who has signed the petition before the date of the gazettal referred to above to be our representative for the purpose of the referral.

We have all signed the petition before the gazettal..

PARTICULARS OF REFERRING ELECTORS

Roll No...	Surname	given names	Address enrolled	Electorate....	Signature

Citizen-Initiated Referendums Act 1991

Form D

CERTIFICATE OF QUALIFICATION OF PETITION

Petition No.

Title of Petition:

I CERTIFY that the required number of signatures of electors having been obtained for the presentation of this Petition to Parliament, the petition and documents lodged therewith may be presented to the Parliament in accordance with the provisions of the "Citizen-Initiated Referendums Act 1991.

.....
Electoral Commissioner

Date of Certificate:.....

Form E

Citizen-Initiated Referendums Act 1991

REGISTER OF PETITION REPRESENTATIVES

Petition No.

Title of Petition:

To the Electoral Registrar:

I/we request the appointment of the following persons as Petition Representatives/Authorised Persons.

Electorate of:.....Subdivision:.....

Particulars of Petition Representatives/Authorised Persons

Full name	Address	Phone No.	signature	Date :
.....
.....

Signature of Petition Representative
authorised by the
Petitioners.....

Signed:

.....
Petitioners / Petition Representative appointed by Petitioners

Citizen-Initiated Referendums Act 1991

Form F

CERTIFICATE OF ELECTORAL REGISTRAR

Petition No.

Title of Petition:

Electorate:.....Subdivision:.....

I hereby certify the number of electors of the who have signed the petition is: -

<u>BATCH NO.</u>	<u>COUNTED DATE</u>	<u>No. in BATCH</u>	<u>CUMULATIVE TOTAL</u>
.....
.....
.....

Copy hereof delivered to

.....

Signature of Electoral Registrar.....

Date of Certificate:.....

OFFICE ADDRESS:.....

Certified Correct by Petition Representative

ADDRESS:

Citizen-Initiated Referendums Act 1991

Form G

Petition No.

NOTICE OF PROPOSED *

PETITION:

The Petitioners propose that:

Signature of Petitioners:

(each petitioner to sign)

(NOTICE: The Petitioners may issue their Certificate to amend, withdraw, amalgamate the Petition, or concur in legislation of the Legislature, as proposed herein, unless a referral is lodged with the Electoral Commissioner within 28 days of date of this Gazette, or unless upon referral the Court has declared the proposal or any part thereof to be not a representative act.)

* Insert Amendment, Withdrawal, Amalgamation, Concurrence, as applies.

Form H

Citizen-Initiated Referendums Act 1991

CERTIFICATE OF PETITIONERS

Petition No.

PETITION:

The Petitioners certify as follows:

Signature of the Petitioners:

Form I

Citizen-Initiated Referendums Act 1991

ELECTOR'S REGISTRATION DECLARATION

Petition No.

Full Name:.....

Address as enrolled:

Date of Birth: I claim a confidential petition.

Signature of Elector:

Signature of
Approved

Witness:.....Date:.....

Form J

Citizen-Initiated Referendums Act 1991

Petition No.

ELECTOR'S PETITION

Proposed Law:

DO YOU REQUIRE a Referendum to be held to approve or disapprove of this Proposed Law?

Write "YES" or "NO" in the Square

Place this form in the Declaration envelope, seal and Place in Ballot Box or post to Electoral Registrar.

Form K

Citizen-Initiated Referendums Act 1991

BALLOT PAPER

Directions to Voter

If you approve the Bill/Proposed law you should place a tick (✓) in the square opposite the word "YES".

If you do not approve the Bill/Proposed law you should place a tick (✓) in the square opposite the word "NO".

Set out name of law/proposed law and Summary

DO YOU APPROVE this law/proposed law?

<input type="checkbox"/>	YES
<input type="checkbox"/>	NO
