

AS TABLED IN THE HOUSE OF ASSEMBLY

A BILL

entitled

REFERENDUM ACT 2012

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WHEREAS it is expedient to enact legislation that sets out the framework for the conduct of a referendum;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

PART 1

PRELIMINARY

Citation

1 This Act may be cited as the Referendum Act 2012.

Interpretation

2 (1) In this Act, unless the context otherwise requires—

“Committee” means an ad hoc committee appointed under section 53;

“excepted day” means a Sunday or other public holiday as defined by the Public Holidays Act 1947;

“observers” has the meaning given in section 14(4), and “observer” has a corresponding meaning;

“parliamentary register” means the parliamentary register prepared, revised and maintained by the Registrar pursuant to section 7(1) of the Parliamentary Election Act 1978, and includes a part of the register relating to a constituency;

“person” means an individual natural person;

“polling day” means the day appointed in a referendum notice, under section 7, for a referendum to take place;

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“polling place” means that part of a polling room which is set aside, and separated by a barrier, from the other parts of the polling room pursuant to rule 1(1)(b) of the Rules contained in Schedule 1;

“polling room” means the place appointed for the voting at a referendum to take place;

“referendum” means the taking of a poll on the referendum question or questions, the counting of the ballots, and the declaration of the results of the referendum, in accordance with this Act;

“referendum notice” means a notice under section 7 appointing the day for the holding of a referendum;

“referendum question” means a question referred to in section 6(1)(a);

“Registrar” means the Parliamentary Registrar appointed under section 6 of the Parliamentary Election Act 1978;

“Returning Officer” has the meaning given in section 11 and, to the extent that a presiding officer appointed pursuant to section 11(3) is authorized to exercise the powers or perform the duties of a Returning Officer, includes such presiding officer;

“voter” means a person entitled to vote at a referendum in accordance with section 4;

“voter’s identification card” means a card for which provision is made in section 25 of the Parliamentary Election Act 1978;

(2) In reckoning a period of time for any of the purposes of this Act all days, whether excepted days or not, shall be counted unless it is otherwise expressly provided.

(3) Where in this Act any person is required to make or sign a declaration he shall do so on oath or with solemn affirmation.

Meaning of ordinarily resident

3 (1) Subject to this section, the place where a person is ordinarily resident shall be taken to be—

- (a) if the person is a married person, the place where his family lives and sleeps and to which, when away he intends to return or, if he is living apart from his family with the intent of remaining apart from it, then the place where he lives and sleeps and to which when away he intends to return, without regard to the place where he takes his meals or is employed; and
- (b) if the person is unmarried, then the place where he lives and sleeps the majority of the time.

(2) No person shall, for the purpose of this Act, be deemed to be ordinarily resident in lodgings, or a hostel, refuge or similar institution conducted for charitable or benevolent purposes, unless that person has been in continuous residence in such lodgings or such hostel, refuge or similar institution for at least ten days immediately preceding the day on

which the referendum notice is published under section 7 and intends to live there indefinitely.

(3) No person shall, for the purposes of this Act, be deemed to be ordinarily resident in a hospital, a home for the aged, or other institution for the treatment of any chronic illness or disability unless that person has been in continuous residence therein for at least ten days immediately preceding the day on which the referendum notice is published under section 7 and intends to live there indefinitely.

(4) A person shall not be deemed to have changed his place of ordinary residence by reason only of his absence from Bermuda for a period of not more than six months if he intends to continue to reside in Bermuda.

PART 2
GENERAL PROVISIONS

Entitlement to vote

4 (1) Subject to subsection (2), a person is entitled to vote at a referendum if, and only if, on the polling day, he is registered in accordance with the Parliamentary Election Act 1978 as an elector in the parliamentary register of any constituency.

(2) Notwithstanding that a person may be registered in the parliamentary register of a constituency, he is not entitled to vote at a referendum if, on the polling day—

- (a) he has ceased to be a Commonwealth citizen;
- (b) he has ceased to be ordinarily resident in Bermuda;
- (c) he is registered in the parliamentary register of more than one constituency;
- (d) he is disqualified from voting at a referendum under section 44, or from voting at a parliamentary election under section 71 of the Parliamentary Election Act 1978;
- (e) he is in prison or detained in a senior training school or having been sentenced to a term of imprisonment, preventive detention or corrective training the adjudged term of his sentence has not yet expired, whether or not he is then at large on licence, unless he has been granted a free pardon or has been granted remission under section 10 of the Prisons Act 1979; or
- (f) he is a person suffering from a mental disorder within the meaning of the Mental Health Act 1968 or is otherwise adjudged to be of unsound mind under any statutory provision.

Functions of Parliamentary Registrar

5 (1) Subject to this Act, the Parliamentary Registrar (“the Registrar”) shall—

- (a) be responsible for the conduct of a referendum; and

(b) exercise general supervision and control over the conduct of Returning Officers in and about the conduct of a referendum.

(2) Expenses incurred by the Registrar pursuant to the conduct of a referendum shall be defrayed from moneys provided by the Legislature.

PART 3

CALLING OF REFERENDUM

Holding of referendum and answer to question

6 (1) Where an Act requires that a referendum be held—

(a) the question or questions to be answered at the referendum shall be set out in that Act; and

(b) subject to anything to the contrary in that Act, the referendum shall be conducted in accordance with the provisions of this Act.

(2) The ballot paper to be used for the purposes of a referendum shall be in the form set out in Schedule 2.

(3) Any question to be answered at a referendum shall be answered by a voter, in accordance with Schedule 1, marking his ballot paper with either an affirmative (“Yes”) vote or a negative (“No”) vote.

(4) A referendum question shall be taken to be answered in the affirmative (“Yes”) if, and only if—

(a) 50 per cent or more of the persons who are registered in the parliamentary register, published under section 9(b) for the referendum, vote at the referendum; and

(b) 50 per cent or more of the persons voting at the referendum mark their ballot “Yes”.

(5) A referendum question shall be answered in the negative (“No”) if—

(a) less than 50 per cent of the persons referred to in subsection (4)(a) vote at the referendum; or

(b) less than 50 per cent of the persons voting at the referendum mark their ballot “Yes”.

Publication of referendum notice

7 (1) Within 90 days after an Act referred to in section 6(1) (requiring a referendum to be held) comes into operation, the Premier shall commence the referendum by, after consultation with the Parliamentary Registrar, publishing a referendum notice in accordance with subsection (2).

(2) The Premier shall by notice published in the Gazette appoint the day for the holding of the referendum, being a day—

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- (a) not earlier than the thirtieth day after the day on which that notice is so published; and
- (b) not later than the sixtieth day after the day on which that notice is so published.

Notice of referendum by Registrar

8 (1) The Registrar shall, as soon as practicable after a referendum notice is published under section 7, also give notice of the holding of the referendum by publication of a notice in two successive publications of the Gazette and in at least one other newspaper circulating in Bermuda.

(2) Every such notice shall specify—

- (a) the polling day;
- (b) the polling room, or polling rooms, for the holding of the referendum; and
- (c) the question or questions to be answered at the referendum.

(3) A polling room appointed for a referendum shall be a building or part of a building which is not licensed for the sale of intoxicating liquor.

Publication of parliamentary register for referendum

9 Where the Premier publishes a referendum notice pursuant to section 7—

- (a) the registration of voters shall immediately close; and
- (b) the Registrar shall, within seven days after the publication of the referendum notice, publish the parliamentary register that is to be used for the referendum.

Power to postpone referendum

10 (1) Where at any time between the publication of a referendum notice and the polling day appointed by that notice, the Premier is satisfied that it is expedient so to do by reason of—

- (a) Bermuda having become, or being likely to become, engaged in any war;
- (b) a state of emergency having been proclaimed under section 14(3) of the Constitution;
- (c) the occurrence of an earthquake, hurricane, flood or fire, or the outbreak of a pestilence or an infectious disease or other calamity whether similar to the foregoing or not;
- (d) the likelihood that the parliamentary register will not be available before the polling day; or
- (e) the occurrence of rioting, open violence or other civil disturbance which has caused, or is likely to cause, such interruption or abandonment of the electoral process as to prejudice the holding of a fair referendum,

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he may by notice published in the Gazette cancel the polling day and appoint another day, not being more than thirty days after that notice is published, to be the polling day instead.

(2) Where the polling day ("the original day") appointed by a referendum notice is postponed by virtue of this section to another day ("the substitute day"), any reference in this Act or in any Rules made under this Act to the original day shall, if the context so requires, be construed as a reference to the substitute day and not the original day.

(3) Where the polling day appointed by a referendum notice is postponed by notice by virtue of this section, the Premier may by that notice or by a later notice published in the Gazette if, in his opinion, the polling room appointed for the original day ("the original polling room") will not be available for the purposes of the referendum, appoint another polling room (a "substitute polling room") for those purposes instead; and, where a substitute polling room has been so appointed, any reference in this Act or in any Rules made under this Act to the original polling room shall, if the context so requires, be construed as a reference to the substitute polling room and not the original polling room.

Duties of Returning Officers

11 (1) In this Act "Returning Officer" means the Justice or Justices of the Peace charged by the Registrar, in writing, with the duty of conducting a referendum in respect of the parliamentary register for a constituency.

(2) Where two or more Justices of the Peace are charged with the duty of conducting a referendum in respect of the parliamentary register for the same constituency, then so far as is reasonably practicable and subject to this Act they shall act jointly in the discharge of that duty, but the exercise of the powers conferred upon Returning Officers by this Act by any one or more of the Justices so charged shall be as valid and effectual as the exercise of those powers by all of them and no proceedings relating to a referendum shall be liable to be impugned on the ground that anything required or authorized to be done by, to or before the Returning Officer was done by, to or before one or more but not all of the Justices.

(3) The Returning Officer, after consultation with the Registrar, may appoint one or more persons approved by the Registrar as presiding officers to assist him in the discharge of his duties and in particular may appoint any one of them to preside at the polling room during any temporary absence of the Returning Officer therefrom and any presiding officer so appointed shall on behalf of the Returning Officer exercise such powers and perform such duties as he may be authorized to exercise and perform by the Returning Officer.

(4) The Registrar may, subject to this Act, give Returning Officers generally or any particular Returning Officer such directions as he may think necessary and appropriate for ensuring the efficient and orderly conduct of a referendum and it shall be the duty of each Returning Officer to conform to any directions so given.

Delivery of parliamentary registers etc. to Returning Officers

12 (1) Before eight o'clock in the forenoon of polling day for a referendum, the Registrar shall deliver to the Returning Officer the parliamentary register for the

constituency for which the Returning Officer is responsible, certified under the Registrar's hand to be correct.

(2) The Returning Officer shall retain the parliamentary register in his custody until the conclusion of the referendum and shall then deliver it back to the Registrar.

PART 4

TAKING OF REFERENDUM POLL

Special interpretation

13 A Returning Officer may, if so directed by the Registrar, assume particular responsibility for the taking of the poll in relation to a particular part of the parliamentary register for a constituency including the supervision and control of a separate ballot box in relation to that part and in that event all references in this Part and in the Rules contained in Schedule 1 to the Returning Officer, a voter, a ballot box, the parliamentary register or ballot paper or a polling place within the polling room shall be construed as references to the particular Returning Officer and to those matters within his responsibility for the taking of the poll in relation to that particular part only of the parliamentary register, unless the context otherwise requires.

Taking of poll

14 (1) Subject to sections 16 and 17, a poll on the referendum question, or questions, shall be taken at the polling room, or rooms, on the polling day.

(2) In the taking of a poll at a referendum the voting shall be by ballot and—

- (a) every voter desiring to vote at the referendum shall have facilities for voting in secrecy, freely and without interference; and
- (b) every voter who votes at the referendum shall do so in secrecy, freely and without interference.

(3) Every voter shall, if he is in employment, be entitled to receive from his employer without penalty sufficient time off work on the polling day to enable him to travel to the polling room and there record his vote.

(4) Each political party which is represented in the House of Assembly may, in writing addressed to the Registrar, designate two observers per constituency to attend at the poll.

(5) The Registrar may, in his absolute discretion, for the purposes of operational efficiency allow only one of the two observers referred to in subsection (4) into the polling room at any one time.

Duration of poll

15 (1) Subject to sections 16 to 18, the poll in a referendum shall be taken on the polling day between the hours of eight o'clock in the forenoon and eight o'clock in the afternoon.

(2) If at the hour of closing of the poll there are any voters in the polling room, or in line at the door, who are qualified to vote and have not been able to do so since their arrival at the polling room, the poll shall be kept open a sufficient time to enable them to vote before the outer door of the polling room is closed, but no person who is not actually present at the polling room at the hour of closing shall be allowed to vote, even if the poll is still open when he arrives.

Advanced polls for voters who are sick, infirm, absent or have polling duties

16 (1) Where any voter who is duly registered in the parliamentary register is, or is likely to be, on the polling day an inmate of any institution registered under subsection (5) and to be prevented by illness, infirmity or disability from travelling to the polling room, it shall be lawful for such voter to record his vote at an advanced poll to be held for that purpose at such institution on such date prior to the polling day, and at such place, as shall be appointed by the Registrar.

(2) Where any voter who is duly registered in the parliamentary register expects to be absent from Bermuda, or to travel to or from Bermuda, on polling day, he may apply to the Registrar for a certificate of intended absence or intended travel, as the case may be, and the Registrar, if satisfied that the application is made in good faith, shall thereupon issue him with a certificate under his hand for the purpose of enabling him to vote at an advanced poll stating the name of such voter and the fact that he intends to be absent from Bermuda, or to travel to or from Bermuda, as the case may be, on polling day.

(3) Where—

- (a) the Registrar, a Returning Officer, presiding officer or observer; or
- (b) a police officer or other person certified by the Registrar to be employed at the polling on polling day,

is duly registered in the parliamentary register, it shall be lawful for such person to record his vote at an advanced poll to be held for that purpose at such place and on such date as the Registrar appoints.

(4) Advanced polls for voters intending to be absent from Bermuda shall be held at such places and on such dates as the Registrar may by notice published in the Gazette appoint for the purpose, and it shall be lawful for every such voter, on production of a certificate issued under subsection (2), to record his vote at such an advanced poll.

(5) Any hospital, home for the aged or other institution for the treatment of any chronic illness or disability with permanent accommodation for five or more patients may apply to the Registrar for registration for the purposes of subsection (1) and the Registrar may, if he is satisfied that it is reasonable to hold an advanced poll in such place, so register it.

Advanced polls for incapacitated voters

17 (1) Without prejudice to section 28, where any voter who is duly registered in the parliamentary register is unable or likely to be unable by reason either of illness, infirmity or disability to travel to the polling room, it shall be lawful for such voter to record his vote

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at an advanced poll to be held for that purpose at such place or places, and on such date or dates, as the Registrar may by notice in the Gazette appoint for the purpose.

(2) For the purpose of voting at an advanced poll referred to in subsection (1), such voter must apply to the Chief Medical Officer for a specially issued card certifying incapacity and the Chief Medical Officer, if satisfied that the applicant is incapacitated, shall thereupon issue him with such a card under his hand for the purpose of enabling him to vote at an advanced poll, stating the name of such voter and the fact that he is incapacitated.

(3) Any voter desiring to vote at any advanced poll referred to in subsection (1) shall, upon the production of a specially issued card certifying incapacity under this section, be allowed to vote in like manner as he would have been entitled so to do on the day appointed for the taking of the poll.

Conduct of advanced polls

18 (1) At any advanced poll held in accordance with section 16 or 17 a ballot box, or ballot boxes, shall be provided and at the close of such advanced poll the ballot papers shall without any examination be placed in a packet, or packets, and sealed by the officer conducting the poll, each such packet clearly designating the number of ballot papers it contains and the constituency to which it relates.

(2) Each sealed packet of ballot papers taken at an advanced poll shall be immediately given by the officer conducting the poll to the Registrar to be kept intact in his office until delivery by him on polling day to the Returning Officer for the constituency to which the packet relates.

(3) The Returning Officer shall open every packet of ballot papers delivered to him pursuant to subsection (2) immediately before the commencement of the poll in the presence of any persons who are lawfully in the polling room at that time and shall place the ballot papers without examining them in the ballot box at his poll before he locks it up as provided in Schedule 1.

(4) For the avoidance of doubt it is hereby declared that the other provisions of this Act applying to voters, to polling procedure and to referendums shall apply so far as is convenient to the taking of an advanced poll under this section, section 16 and section 17 as they apply to the taking of a poll at a polling room.

(5) For the avoidance of doubt, the day or days appointed for any advanced poll shall be a day or days not earlier than the publication of the parliamentary register under section 9(b).

(6) The Registrar shall invite the attendance at an advanced poll of two persons designated by each political party that is represented in the House of Assembly, and such representatives shall be deemed to be observers for the purposes of the advanced poll and, for the avoidance of doubt, for the purposes of section 26.

General duties of Returning Officer as to taking of poll

19 (1) The Returning Officer, or a presiding officer appointed under section 11(3), shall be present at the polling room throughout the taking of the poll and shall conduct and

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have charge of the proceedings and it shall be his duty to keep good order in and about the polling room during the proceedings.

(2) If any person during a referendum misconducts himself in or about the polling room or fails to obey the lawful order of the Returning Officer, he may immediately by order of the Returning Officer be removed from the polling room or the vicinity thereof by any police officer or other person authorized by the Returning Officer to remove him:

Provided that the powers conferred by this subsection shall not be exercised so as to deprive any voter who is entitled to vote at a referendum of his opportunity so to vote.

Adjournment of poll in special circumstances

20 (1) Where the proceedings at a polling room on polling day in a referendum are interrupted or obstructed by general disorder or by any other circumstances beyond the control of the Returning Officer which, in his opinion, makes it impracticable to continue the taking of the poll, he may adjourn the proceedings until the hour of eight o'clock in the forenoon of the following day not being an excepted day and in that event he shall inform the Registrar forthwith of his decision, shall seal up the ballot boxes effectively and ensure that they are so stored as to be free from interference and shall take every practicable step to bring the adjournment to the attention of the public.

(2) Where the poll is adjourned pursuant to subsection (1) the hours of voting on the day to which it is adjourned shall be the same as for the original day and the other provisions of this Act shall apply *mutatis mutandis* to the taking of such adjourned poll.

Rules for taking a poll

21 The Rules contained in Schedule 1 shall have effect with respect to the taking of the poll at a referendum:

Provided that no referendum shall be declared void by reason of a failure to comply with any such rule if it appears that the poll was conducted substantially in accordance with section 14(2) and that the failure to comply did not affect the results of the referendum.

Ballot paper

22 (1) The ballot of each voter at a referendum shall consist of a ballot paper, in the form set out in Schedule 2, impressed with the official mark in accordance with subsection (3).

(2) There shall be shown on the ballot paper instructions to voters on how to complete the ballot paper.

(3) The Returning Officer shall, at the time he issues a ballot paper in accordance with section 24, impress the official mark on the back of the ballot paper.

(4) The official mark shall be of such design and shall be impressed by use of such instruments as may be approved by the Registrar.

(5) All Returning Officers and other persons concerned with referendums shall comply with such directions as may be given by the Registrar regarding the safe custody of any instrument for impressing the official mark.

Premises not to be used as committee room

23 (1) No premises which are situated above, below, adjacent to or within the same curtilage as the polling room shall be used by any person at any time on the polling day of a referendum for any of the purposes of a committee room.

(2) Any person who uses or permits any other person to use any premises in contravention of subsection (1) commits an offence:

Punishment on summary conviction: a fine of \$500.

(3) In this section, “the purposes of a committee room” means any of the purposes of a political party or other association of persons interested in the referendum.

PART 5

POLLING PROCEDURE

Issue of ballot papers

24 (1) Subject to sections 25 and 26 every person whose name is registered in the parliamentary register shall, upon application therefor, be given one ballot paper by the Returning Officer and shall be allowed to vote thereat.

(2) It is hereby declared that nothing in subsection (1) shall—

- (a) entitle any person to vote at a referendum who is not so entitled by section 4; or
- (b) relieve any person from any punishment to which he may be or become liable under this Act for so voting.

Identification of intending voters

25 (1) A person shall not be given a ballot paper and shall not be allowed to vote at a referendum unless—

- (a) he produces to the Returning Officer one of the following documents issued to him—
 - (i) a valid and signed voter’s identification card;
 - (ii) a current Bermudian driver’s licence;
 - (iii) a valid special person’s card issued by the Transport Control Board;
 - (iv) a valid passport issued by a Commonwealth country; or
 - (v) any other document of identity of a type prescribed under the Parliamentary Election Act 1978; and
- (b) the Returning Officer is satisfied that the documents produced relate to that person, and that he is registered in the parliamentary register, and that he has not already voted in the referendum.

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(2) Notwithstanding anything contained in subsection (1), in any case where a document produced by a person as a means of identification is defective only because it bears a date or date stamp showing that it expired before the date of production, such document shall still be accepted as valid or current as the case may be if the document—

- (a) bears a photograph of the person from which the person can be identified;
- (b) bears the date of birth of the person and that date is verified by the Returning Officer; and
- (c) bears the signature of the person.

Challenge of intending voters

26 (1) The Returning Officer, at the request of an observer or on his own initiative, may require any person claiming to vote at a referendum to read aloud or repeat after him and sign before him a declaration in the form set out in Schedule 3, and if the person so required does not comply with that requirement, the Returning Officer shall not give him a ballot paper or allow him to vote, notwithstanding section 24(1):

Provided that the reading and signing of such a declaration as aforesaid shall not entitle any person to vote at a referendum unless he is entitled to vote by section 4 or relieve him from any punishment to which he may be or become liable for so voting:

Provided further that the requirements of this subsection shall be in addition to and not in derogation of section 25.

(2) Every request made by the observer for the purposes of subsection (1) shall be made in writing, specifying the grounds of the request, and the Returning Officer shall disregard any request which is not so made.

Marking the ballot paper

27 Subject to section 28, every person voting at a referendum shall secretly mark his vote on the ballot paper given to him and, without revealing his vote, shall place the ballot paper in a ballot box in the presence of the Returning Officer.

Incapacitated voters

28 The Returning Officer, on the application of any voter who is blind, unable to read or so physically incapacitated as to be unable to vote in the manner prescribed by section 27 to assist him in voting, shall require the voter making the application to take an oath in the form set out in Schedule 4 of his incapacity to vote without assistance and shall thereafter assist the voter by marking his ballot paper in the manner directed by such voter and if he so requests in the presence of one other presiding officer and a friend, and shall place the ballot paper in the ballot box.

Spoilt ballot papers

29 A person voting at a referendum who has inadvertently dealt with his ballot paper in such a manner that it cannot conveniently be used as a ballot paper may, on delivering it to the Returning Officer and on proving the fact of the inadvertence to the satisfaction of the Returning Officer, obtain another ballot paper in the place of the one so delivered up

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(hereinafter referred to as a “spoilt ballot paper”) and the spoilt ballot paper shall immediately be cancelled but shall be preserved by the Returning Officer.

Void ballot papers

- 30 (1) Any ballot paper—
- (a) which does not have the official mark duly impressed on its back;
 - (b) on which anything is written or marked by which the voter can be identified; or
 - (c) which is unmarked or which does not indicate with sufficient clarity how the voter intended to vote,

shall be void and shall not be counted.

- (2) A ballot paper on which a vote is marked—
- (a) elsewhere than in the proper place;
 - (b) otherwise than by means of a cross; or
 - (c) by more than one mark,

shall not by reason thereof be deemed void if an intention that the vote shall be for or against the particular question clearly appears and the way the ballot paper is marked does not of itself identify the voter and it is not shown that he can be identified thereby.

(3) It is hereby declared that nothing contained in the Rules set out in Schedule 1 or in any directions prescribed by such Rules shall be construed as extending or adding to subsections (1) or (2).

Arrest of voter for personation

31 (1) If at any time a person applies for a ballot paper for the purpose of voting at a referendum, or after he has applied for a ballot paper for that purpose but before he has left the polling room, the Returning Officer has reasonable cause to believe that that person has committed an offence of personation, the Returning Officer may order a police officer to arrest that person and the order of the Returning Officer shall be sufficient authority for the police officer to do so.

(2) A person arrested in accordance with this section shall not by reason only thereof be prevented from voting.

(3) A person arrested under subsection (1) shall be dealt with as a person taken into custody by a police officer without a warrant charged with an offence triable summarily.

PART 6

CLOSE OF POLL PROCEDURE

Count of ballots

32 (1) Immediately after the close of the poll at a referendum, the Returning Officer shall seal the ballot box so as to prevent the introduction of additional ballot papers and shall take charge of such box and shall then, in the presence of such observers as may choose to attend, and such other persons whom the Returning Officer shall permit to be present, open the ballot box and ascertain the results of the poll by counting all the “Yes” votes and all the “No” votes in respect of the question or questions.

(2) Immediately after the counting of the votes pursuant to subsection (1) has terminated, an observer present at the count may demand a re-count and thereupon, unless the Returning Officer considers the demand to be unreasonable having regard to the results of the first count, he shall proceed to re-count the votes accordingly to ascertain the results of the poll.

(3) In the event of a re-count of votes—

- (a) an observer shall have the right to demand a further re-count, and the Returning Officer may in his own discretion conduct further re-counts;
- (b) the results of the poll shall be determined by the final count of the votes.

(4) When the results of the poll in respect of the constituency concerned have been ascertained the Returning Officer shall forthwith publicly declare the results.

(5) References in this section to the ballot box shall, where more than one ballot box is used pursuant to section 13 be construed as a reference to all the ballot boxes so used at the referendum in respect of the parliamentary register for the constituency concerned.

Declaration and publication of referendum results

33 (1) When the results of the poll in respect of every constituency has been declared under section 32(4), the Registrar shall forthwith determine and publicly declare the results of the referendum.

(2) As soon as practicable after declaring the results under subsection (1), the Registrar shall publish the results by notice in the Gazette.

PART 7

OFFENCES

Secrecy during and after poll

34 (1) Every officer or other person in attendance at a polling room shall maintain and aid in maintaining the secrecy of the voting, and no officer or other person shall—

- (a) at the polling room, interfere with, or attempt to interfere with, a voter when marking his ballot paper, or influence or attempt to influence the choice of a voter or otherwise attempt to obtain information as to how any voter is about to vote or has voted;
 - (b) at any time, communicate any information as to the manner in which any ballot paper has been marked in his presence in the polling room;
 - (c) at any time or place, directly or indirectly, induce or endeavour to induce any voter to show his ballot paper after he has marked it, so as to make known to any person the manner in which he has cast his vote;
 - (d) at any time, communicate to any person any information obtained at a polling room as to the manner in which any voter at the polling room is about to vote or has voted; or
 - (e) at the counting of the votes, attempt to obtain any information or communicate any information obtained at the counting as to the manner in which any vote is given in any particular ballot paper.
- (2) Notwithstanding subsection (1)(a) a voter who at the polling room wears a shirt or other apparel having thereon a badge, sticker, sign, emblem, symbol, word or other mark indicating connection with or support for or opposition to the question, or questions, being voted on in the referendum shall not be guilty of an offence.
- (3) Subject to subsection (4), no voter shall—
- (a) upon entering the polling room and before receiving a ballot paper, openly declare how he intends to vote;
 - (b) show his marked ballot paper, or a copy thereof, so as to allow the manner in which he has voted to be known; or
 - (c) before leaving the polling room, openly declare the manner in which he has voted.
- (4) A voter unable to vote in the manner prescribed by this Act on account of inability to read, blindness or other physical incapacity does not commit an offence under subsection (3) if he does anything proscribed by that subsection solely for the purpose of voting in accordance with section 28.
- (5) Any person who contravenes or fails to observe any provision of this section commits an offence.
- (6) It shall be the duty of a Returning Officer to draw the attention of any voter who has contravened subsection (3) to the offence that he has committed and to the penalty to which he has rendered himself liable, but such voter shall nevertheless be allowed to vote in the usual way.

Misconduct at referendum

- 35 (1) Any person—
- (a) who at any referendum—

- (i) behaves in a violent, offensive or disorderly manner in or about, or within fifty metres of, the polling room or improperly disturbs or impedes the proceedings;
- (ii) fails to leave a polling room when requested so to do by the Returning Officer;
- (iii) interferes with a voter who is engaged in voting;
- (iv) obtains or attempts to obtain in the polling room information as to the manner in which a voter is about to vote or has voted; or
- (v) directly or indirectly induces or attempts to induce any voter to display his ballot paper so as to show the manner in which the voter has voted;
- (b) who in the course of any proceedings before the Registrar behaves in a violent, offensive or disorderly manner or improperly disturbs or impedes the transaction of business; or
- (c) who, subject to subsection (2), during the hours when the poll is being taken on polling day, assembles or congregates with other persons in a polling room or within fifty metres thereof without the permission of the Returning Officer,

commits an offence.

(2) Subsection (1)(c) shall not apply to—

- (a) any voters who are waiting to vote at such polling room and who obey such instructions as may be given by the Returning Officer or any police officer for the purpose of forming a queue with other voters so waiting;
- (b) any person who is only lawfully remaining in, entering or leaving such room with reasonable despatch; or
- (c) any person who assembles or congregates in the manner referred to in that subsection, if he so assembles and congregates—
 - (i) on private property; and
 - (ii) that private property is not the property on which the polling room is situated.

(3) Where a person commits an offence against this section:

Punishment on summary conviction: imprisonment for one year or a fine of \$500 or both such imprisonment and fine.

Returning Officer to be conservator of peace

36 Every Returning Officer, during a referendum, during the hours that the polls are open, may—

- (a) require the assistance of police officers or other persons present to aid him in maintaining peace and good order at the referendum;

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- (b) arrest or cause by verbal order to be arrested, and place or cause to be placed in the custody of any police officer or other persons, any person disturbing the peace and good order at the referendum; and
- (c) cause such arrested person to be imprisoned under an order signed by him until an hour not later than the close of the poll.

No person to carry offensive weapons or propaganda apparatus on polling day

37 (1) No person shall arm himself, during any part of polling day, with any offensive weapon and thus armed approach within a kilometre of a polling room, unless called upon so to do by lawful authority.

(2) No person shall—

- (a) furnish or supply any loudspeaker to any person with intent that it be carried or used on any automobile, truck or other vehicle for the purposes of propaganda relating to the referendum on polling day; or
- (b) with any such intent, have on him, or carry on any automobile, truck or other vehicle any such loudspeaker on polling day.

(3) Any person who contravenes any of the provisions of this section commits an offence against this Act:

Punishment on summary conviction: imprisonment for one year or a fine of \$250 or both such imprisonment and fine.

Bribery

38 A person shall be guilty of bribery—

- (a) if he directly or indirectly, by himself or through any other person on his behalf, gives or lends, or agrees to give or lend, or offers or promises, or promises to procure or to endeavour to procure, any money or valuable consideration to or for any voter, or to or for any other person, in order to induce such voter to vote or refrain from voting at a referendum, or corruptly does any such act or thing as aforesaid on account of any voter having voted or refrained from voting at a referendum;
- (b) if he directly or indirectly, by himself or through any other person on his behalf, gives or procures, or agrees to give or procure, or offers or promises, or promises to procure or to endeavour to procure, any office, place or employment to or for any voter, or to or for any other person, in order to induce such voter to vote or refrain from voting at a referendum, or corruptly does any such act or thing as aforesaid on account of any voter having voted or refrained from voting at a referendum;
- (c) if he directly or indirectly, by himself or through any other person on his behalf, makes any gift, loan, offer, promise, procurement or agreement referred to in paragraph (a) or (b) to or for any person, in order to induce that person to procure or to endeavour to procure the vote of a voter on any question at a referendum;

- (d) if, upon, or in consequence of any such gift, loan, offer, promise or agreement, he procures or engages or promises or endeavours to procure the vote of any voter on any question at a referendum;
- (e) if he advances or pays or causes to be paid any money to or to the use of any other person, with the intent that that money or any part thereof should be expended in bribery at a referendum; or if he knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at a referendum;
- (f) if, being a voter before or during a referendum, he directly or indirectly, by himself or through any other person on his behalf, receives, or agrees or contracts for any money, gift, loan or valuable consideration, or any office, place or employment, for himself or for any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting, at a referendum; or
- (g) if after a referendum he directly or indirectly, by himself or through any other person on his behalf, receives any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or to refrain from voting, at the referendum.

Undue influence

39 (1) A person shall be guilty of undue influence if he directly or indirectly, by himself or through any other person on his behalf—

- (a) makes use of or threatens to make use of any force, violence or restraint; or
- (b) inflicts or threatens to inflict any temporal or spiritual injury, damage, harm or loss,

upon or against any person in order to induce or compel that person to vote or refrain from voting, or vote “Yes” or ‘No”, or on account of that person having voted or refrained from voting, or having voted “Yes” or “No”, at a referendum.

(2) A person shall also be guilty of undue influence if he directly or indirectly, by himself or through any other person, by abduction, duress, or any fraudulent device or contrivance—

- (a) impedes or prevents any person from freely exercising his right to vote at a referendum; or
- (b) compels, induces or prevails upon any person to vote or refrain from voting, or to vote “Yes” or ‘No”, at a referendum.

Punishment for bribery and undue influence

40 Where a person is convicted on indictment of bribery or of undue influence:

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Punishment: imprisonment for two years or a fine of \$1,000 or both such imprisonment and fine.

Personation and voting if not qualified

- 41 A person commits an offence against this Act who—
- (a) except as authorized by section 28, applies for a ballot paper in the name of some other person, whether such name is that of a person living or dead or of a fictitious person;
 - (b) having voted once at a referendum, applies at the same referendum for another ballot paper;
 - (c) votes or attempts to vote at a referendum knowing that he is not qualified to vote at the referendum; or
 - (d) induces or procures any other person to vote at a referendum knowing that such other person is not qualified to vote at the referendum.

Offences relating to voting

- 42 (1) A person commits an offence against this Act who—
- (a) forges a ballot paper or utters a forged ballot paper;
 - (b) fraudulently alters, defaces or destroys a ballot paper or the official mark impressed thereon;
 - (c) without authority under this Act, supplies a ballot paper to any person;
 - (d) not being a person entitled under this Act to be in possession of a ballot paper, has, without authority, any ballot paper in his possession;
 - (e) forges the official mark used for impressing on ballot papers;
 - (f) has in his possession without lawful authority an instrument for impressing the official mark;
 - (g) fraudulently puts or causes to be put into a ballot box a ballot paper or other paper;
 - (h) fraudulently takes a ballot paper out of the polling room;
 - (i) without authority under this Act, destroys, takes, opens or otherwise interferes with a ballot box or book or packet of ballot papers;
 - (j) without authority under this Act, prints any ballot paper or what purports to be or is capable of being used as a ballot paper at a referendum;
 - (k) forges a voter's identification card or other document used as a means of identification pursuant to section 25, or at any polling room utters a forged voter's identification card or such other document knowing the same to be forged;

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- (l) being a Returning Officer, places upon any ballot paper any writing, number or mark with intent that the voter to whom such ballot paper is to be, or has been, given may be identified thereby; or
- (m) manufactures, constructs, imports into Bermuda, has in possession, supplies for use at a referendum, or uses for the purposes of a referendum, or causes to be manufactured, constructed, imported into Bermuda, supplied for use at a referendum, or used for the purposes of any referendum, any ballot box containing or including any compartment, appliance, device or mechanism in or by which a ballot paper may or could be secretly placed or stored or, having been deposited during voting, may be secretly diverted, misplaced, affected or manipulated.

(2) For the purposes of subsection (1) and any other provision of this Act, knowingly to do or omit to do an act is deemed to be fraudulent if to do or omit to do the act results or would be likely to result in the reception of a vote that should not have been cast or in the non-reception of a vote that should have been cast.

(3) Where a person commits an offence under this section:

Punishment on conviction on indictment: imprisonment for two years or a fine of \$1,000 or both such imprisonment and fine.

Supplying intoxicating liquor by way of organized treating

43 (1) Any person who on the polling day before the closing of the poll at any referendum, by himself or with others gives or provides by way of organized treating, any intoxicating liquor for consumption by voters in connection with the holding of the referendum, commits an offence:

Punishment on summary conviction: a fine of \$500.

(2) In this section “organized treating” means the giving or providing of intoxicating liquor to some person without charge or at a reduced or unduly small charge to the person consuming such liquor under some arrangement which but for the referendum would not have been made.

Disqualifications

44 Any person who is convicted of any offence under sections 34, 35, 38, 39, 41 and 42 shall, whether or not any other penalty is imposed, be disqualified, for a period of six years from the date of the conviction, from voting at any referendum.

Publishing of forms

45 Any person who publishes, issues or prints, or makes any copy of a form referred to in this Act without the authority of the Registrar and without placing thereon the words “Copy only” in letters at least half an inch in height, commits an offence.

Breaches of official duty

46 (1) Any person who, being required under this Act to perform any official function thereunder, without reasonable cause, commits, or omits to do, any act in breach of his duty under such provisions commits an offence.

(2) Any employer who on being requested by an employee pursuant to section 14(3) to allow him sufficient time off work to enable him to travel to a polling room and there record his vote fails to allow him such time or who penalizes an employee whom he has allowed time to so travel and vote commits an offence.

General penalty

47 Where a person commits an offence under this Act for which no specific penalty is provided:

Punishment on summary conviction: imprisonment for nine months or a fine of \$500 or both such imprisonment and fine.

PART 8

MISCELLANEOUS

Registrar to retain documents

48 (1) The Registrar shall retain in safe custody, for a period of one year, all documents relating to a referendum delivered to him by a Returning Officer pursuant to this Act and shall then, unless otherwise directed by an order of the Supreme Court, cause them to be destroyed.

(2) The Registrar shall not, except by or under the order of the Supreme Court, permit any other person to have access to or to inspect the documents retained by him under subsection (1).

Rules

49 (1) The Premier may make rules for the better carrying out of this Act.

(2) Rules made under subsection (1) shall be subject to the affirmative resolution procedure.

Duty of Commissioner of Prisons

50 It shall be the duty of the Commissioner of Prisons as soon as may be after the publication of a referendum notice under this Act to transmit to the Registrar a certified list of those persons who will be disqualified from voting by virtue of section 4(2)(e).

Printing of forms at public expense

51 Forms under this Act shall be printed as circumstances may require under the supervision of the Registrar and the cost of the printing shall be defrayed out of the Consolidated Fund.

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Fees

52 The fees set out in Schedule 5 shall be paid to the specified persons who discharge duties in connection with a referendum.

Ad hoc committee

53 At any time after an Act referred to in section 6(1) (requiring a referendum to be held) comes into operation, the Premier may appoint an ad hoc committee to advise him on any matter relating to the referendum, and Schedule 6 has effect in relation to any such Committee.

SCHEDULE 1

(section 21)

RULES FOR THE TAKING OF A POLL

1 (1) The Registrar or the Returning Officer shall ensure that on polling day the polling room is sufficiently furnished and equipped to facilitate the proper and orderly taking of the poll and shall in particular ensure that—

- (a) an adequate number of tables (in these Rules referred to as “referendum tables”) is provided in the polling room for use by officers in, and by observers in observing, the checking of the credentials of, and the handing out of ballot papers to, voters;
- (b) a polling place is set aside in the polling room and separated by a barrier from the remaining parts of the room;
- (c) the polling place is divided into compartments of sufficient size and so furnished that a voter can record his vote therein screened from observation and that a sufficient number of such compartments are provided having regard to the number of voters registered in the constituency for which the Returning Officer is responsible;
- (d) one of the compartments in the polling place is of sufficient size to accommodate at least three persons at a time for the convenience of incapacitated voters;
- (e) each compartment is furnished with an indelible pencil or pen attached thereto;
- (f) sufficient ballot papers are available printed on paper capable of being easily folded up but of sufficient thickness to prevent the marking on one side from being read through the paper from the other; and
- (g) a ballot box is provided of convenient size, furnished with a secure lock and key and so constructed that ballot papers can be introduced into it but cannot be withdrawn from it without the box being unlocked.

(2) In arranging the furniture, equipment and manning of a polling room on polling day, the Returning Officer shall seek to ensure a free flow of voters from the entrance, via the officer checking their credentials to the officer handing out the ballot papers and thence through the barrier, one at a time, to the polling place and shall also position an officer in the vicinity of the ballot box to check that the marked ballot papers are introduced into the ballot box thereafter by voters in an orderly manner and in accordance with these Rules.

2 For the guidance of voters in voting, each compartment in the polling place shall be posted with the directions written in conspicuous characters and approved by the Registrar.

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3 Except for the purpose of voting, no person other than an observer or a person authorized by the Registrar or the Returning Officer may be present in the polling room during the taking of the poll, or approach nearer than seven metres to any of the doors of the polling room during the hours that the poll is open.

4 The Returning Officer immediately before the commencement of the poll shall show the ballot box empty to such persons as may then be present in the polling room so that they may see that it is empty, thereafter place the advanced poll ballot papers referred to in section 18(3) into it, and shall then lock it up and keep the key himself and shall place the box in his view for the receipt of ballot papers keeping it so locked until the conclusion of the poll.

5 The Returning Officer shall not allow anyone to be present in the polling place at any time during the poll except the voters engaged in voting, friends of blind or incapacitated voters, and the officers assisting him in the polling room, and no other person (except an observer) shall be allowed within the polling room during the poll without the permission of the Returning Officer.

6 Where the responsibility for the taking of a poll has been divided pursuant to section 13, a Returning Officer shall ensure that—

- (a) he (assisted by any presiding officer assigned to him) is furnished with that part only of the parliamentary register which pertains to the part of the poll that falls within his own responsibility;
- (b) the relevant referendum table or tables are assigned to him; and
- (c) he checks the credentials of, and hands out ballot papers to, those voters for whom he is responsible and no others.

7 (1) A Returning Officer or presiding officer shall check the identity of each intending voter by examining his signed voter's card or other means of identification produced, and verifying from the copy of the parliamentary register in the officer's possession that the voter is not recorded as having already voted.

(2) If the Returning Officer or presiding officer is so satisfied, and subject to any challenge under section 26, a line shall be drawn through the voter's name on the copy of the parliamentary register and one ballot paper shall be given to the voter.

8 (1) A voter receiving a ballot paper shall proceed forthwith through the barrier to one of the compartments of the polling place and shall there, with the indelible pencil or pen provided mark his ballot paper and fold it up, so that it cannot be seen how he has voted on the question, or questions, in the referendum but the official mark thereon is visible upon it.

(2) The voter shall then display the folded ballot paper to the Returning Officer, permit the mark to be verified, and then put it into the ballot box in the presence of the Returning Officer without showing the front of it to any person present.

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(3) A voter shall vote without undue delay and, having put his ballot paper into the ballot box, he shall withdraw from the polling room forthwith.

9 At the count of votes the Returning Officer shall endorse any ballot paper appearing to him to be void under section 30 with the word “rejected” and if an objection is made by an observer shall further endorse it with the words “rejection objected to”.

10 (1) On the completion of the counting of the votes the Returning Officer in the presence of such observers as may choose to attend, shall seal up in separate packets all—

- (a) counted ballot papers;
- (b) rejected ballot papers;
- (c) spoilt ballot papers; and
- (d) unused ballot papers in his possession,

and shall endorse on each packet a description of its contents, the date of the referendum, and the name of the constituency.

(2) The Returning Officer shall then deliver all the aforesaid packets so endorsed to the Registrar together with a statement showing the total number of ballot papers prepared by him for the election and accounting for them all under one of the heads above mentioned.

SCHEDULE 2

(sections 6(2) and 22)

FORM OF BALLOT PAPER

BALLOT PAPER

* Referendum question	YES:	NO:
* Referendum question	YES:	NO:

* If there is more than one question being asked at the referendum, numerically list the referendum questions on the ballot paper.

Instructions to Voters

1. To indicate your answer to any question on this ballot paper, place an X in either the "YES" or the "NO" column that is opposite the question.
2. Make no other mark on the ballot paper.
3. Fold the ballot paper through the centre, so that your vote cannot be seen.

SCHEDULE 3

(section 26)

FORM OF DECLARATION OF INTENDING VOTER

DECLARATION OF INTENDING VOTER

I, (full name) of (address) do solemnly declare that—

- (1) I am registered in the parliamentary register of the [blank] constituency.
- (2) I have read (or have had read to me) and understand the provisions relating to the qualifications and disqualifications of voters set out below.
- (3) I am entitled to vote at this referendum.

Dated this [blank] day of [blank] 20 [blank]

Signed and declared by the above named (full name) in the presence of [blank]

(Signature of declarant)

Returning Officer

*Provisions related to Qualifications and
Disqualifications of Voters*

1 Subject to the provisions of paragraph 2 below, a person shall be entitled to vote at a referendum if on the polling day he is registered in the parliamentary register.

2 A person shall not be entitled to vote at a referendum if—

- (a) he has ceased to be a Commonwealth citizen;
- (b) he has ceased to be ordinarily resident in Bermuda;
- (c) he is registered in the parliamentary register of more than one constituency;
- (d) he is disqualified from voting at a referendum under section 44, or from voting at a parliamentary election under section 71 of the Parliamentary Election Act 1978;
- (e) he is in prison or detained in a senior training school or, he having been sentenced to a term of imprisonment, preventive detention or corrective training, the adjudged term of his sentence has not yet expired whether or not he is then at large on licence, unless he has been granted a free pardon or has been granted remission under section 10 of the Prisons Act 1979; or

(f) he is a person suffering from a mental disorder within the meaning of the Mental Health Act 1968 or is otherwise adjudged to be of unsound mind under any statutory provision.

SCHEDULE 4

(section 28)

FORM OF OATH BY BLIND OR INCAPACITATED VOTER

OATH TO BE TAKEN BY BLIND OR INCAPACITATED VOTER

Oath to be taken by a voter who is blind, unable to read or so physically incapacitated as to be unable to vote in the manner prescribed by section 27

*I do swear/I do solemnly and sincerely affirm and declare that I am incapable of voting without assistance by reason of being blind/ unable to read/so physically incapacitated as to be unable to vote in the manner prescribed by section 27.

Sworn before me [blank]

Returning Officer for the [blank] Constituency.

Date [blank]

**The voter should only be required to repeat the incapacity he has.*

SCHEDULE 5

(section 52)

FEES PAYABLE TO PERSONS DISCHARGING REFERENDUM DUTIES

The following persons shall be paid the specified fees for discharging the following duties under the Act—

Returning Officers:	\$500 for discharging their duties on polling day
Returning Officers:	\$500 an advanced poll. If the advanced poll is held on more than one day, \$500 in respect of each day of the advanced poll.
Presiding Officers:	\$20 per hour for discharging duties on polling day, and at an advanced poll, between the hours of 7:00 in the forenoon and 8:00 in the afternoon and thereafter, when requested by the Returning Officer to assist in the counting of ballots, \$25.00 per hour. Presiding officers who are public officers shall be paid fees in respect of only the hours they discharge such duties outside of their normal working hours.
Other persons employed temporarily to assist in the referendum procedure:	\$10 per hour. Persons so employed who are public officers shall be paid fees in respect of only the hours they are so employed outside of their normal working hours.

SCHEDULE 6

(section 53)

AD HOC COMMITTEE

Constitution of ad hoc committee

1 (1) The members of an ad hoc Committee (hereinafter referred to as “the Committee”) shall consist of—

- (a) the following persons appointed in writing by the Premier—
 - (i) a Chairperson;
 - (ii) a barrister;
 - (iii) three Members of the Legislature; and
- (b) the Registrar, or a public officer designated by him to attend a meeting on his behalf, but the Registrar (or his designate) shall not have a vote at any meeting.

(2) In the case of absence or inability of a person appointed under subparagraph (1)(a) to act, the Premier may in writing appoint a person to act temporarily in his place.

(3) A person appointed under subparagraph (1)(a) may at any time resign his office by instrument in writing addressed to the Premier and from the date of receipt by the Premier of the instrument that member shall cease to be a member.

(4) The Committee shall be deemed to be properly constituted notwithstanding that there is a vacancy in the office of the Chairperson or any other member appointed under subparagraph (1)(a).

(5) The validity of any proceedings of the Committee shall not be affected by any defect in the appointment of a member.

(6) No act done or proceeding taken under this Act by the Committee shall be questioned on the ground of any omission, defect, or irregularity not affecting the merits of the case.

(7) No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Committee in respect of any act done bona fide in pursuance or execution or intended execution of this Act.

(8) Fees shall be paid to members of the Committee in accordance with the Government Authorities (Fees) Act 1971.

(9) The Committee shall stand dissolved on the day following the day the Registrar, under section 33(1), publicly declares the results of the referendum in respect of which the Committee was appointed.

Functions of the Committee

2 The functions of the Committee shall be—

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- (a) to advise the Premier on any matter relating to the referendum;
- (b) to establish operational best practice for the holding of the Referendum;
and
- (c) to make the public aware of the question or questions for consideration at the referendum.

Meetings of Committee

3 (1) The Committee shall meet as often as may be necessary or expedient for the performance of its functions.

(2) The Chairperson may at any time call a meeting of the Committee and shall call a meeting to be held within five days of a written request for that purpose addressed to him by any three members.

(3) At any meeting of the Committee, the Registrar (or his designate) and three other members shall constitute a quorum.

(4) At any meeting of the Committee, in the absence of the Chairperson, the members present shall elect one of their number to act as Chairperson.

(5) At any meeting of the Committee, every member appointed under paragraph 1(1)(a) shall have one vote but, in the event of an equality of votes, the chair of the meeting shall have a second or casting vote.

(6) Subject to subparagraph (5), the decisions of the Committee shall be by a majority vote.

(7) The Committee shall have power to co-opt persons for the purpose of any particular meeting if such persons are considered by it to be competent to assist in any special area of the Committee's deliberations, but any such persons shall not be entitled to vote at the meeting.

(8) Minutes of each meeting of the Committee shall be kept in proper form.

(9) Subject to this paragraph, the Committee may regulate its own proceedings.

REFERENDUM BILL 2012

EXPLANATORY MEMORANDUM

This Bill would set out the framework for the conduct of a referendum. It is modelled on the framework for the holding of a parliamentary election under the Parliamentary Election Act 1978. The Bill provides that the referendum process would be triggered by the coming into operation of an Act requiring a referendum to be held on a question or questions set out in that Act. Within 90 days of the coming into operation of that Act, the Premier would be required to publish a referendum notice which would commence the conduct of the referendum. The referendum would be conducted in accordance with this Bill.

Clause 1 is self-explanatory.

Clause 2 provides definitions of expressions used in the Bill.

Clause 3 gives the meaning of “ordinarily resident”.

Clause 4 provides that a person who is on the parliamentary register on polling day is entitled to vote at a referendum, subject to certain exceptions in subsection (2).

Clause 5, subsection (1) provides that the Parliamentary Registrar is responsible for the conduct of a referendum and shall exercise supervision and control over the Returning Officers. Subsection (2) provides for expenses incurred by the Registrar to be defrayed from moneys provided by the Legislature.

Clause 6, subsection (1) provides that where an Act requires a referendum to be held on a question or questions set out in the Act, the referendum shall, subject to anything to the contrary in that Act, be conducted in accordance with the provisions of this Bill. Subsections (2) and (3) relate to the ballot paper (which shall be in the form set out in Schedule 2). Subsection (4) provides that a referendum question shall be taken to have been answered in the affirmative if 50% of persons entitled to vote do actually vote and at least 50% of those voting vote “Yes”.

Clause 7 provides for the Premier to publish a referendum notice appointing the day for the referendum.

Clause 8 requires the Registrar to publish notices in the Official Gazette and in another newspaper specifying the polling day, polling rooms and the referendum question or questions.

Clause 9 provides that the publication by the Premier of the referendum notice has the effect of closing the registration of voters, and requires the Registrar to publish the parliamentary register which will be used within seven days.

Clause 10 empowers the Premier to postpone a referendum in extraordinary circumstances set out in subsection (1).

Clause 11 sets out certain duties of the Returning Officers.

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Clause 12 relates to the delivery of the parliamentary register to the Returning Officers.

Clause 13 provides that if a Returning Officer is directed by the Registrar to assume particular responsibility for the taking of the poll in relation to a particular part of the parliamentary register for a constituency then, unless the context otherwise requires, all references in Part 4 and in Schedule 1 to the Returning Officer, a voter, a ballot box, the parliamentary register or ballot paper or a polling place within the polling room shall be construed as references to the particular Returning Officer and to those matters within his responsibility for the taking of the poll in relation to that particular part only of the parliamentary register.

Clause 14 provides that voters shall have facilities for voting secretly and without interference, and shall be allowed by their employer, without penalty, time off work to vote. The clause also provides for observers to be in attendance from political parties represented in the House of Assembly.

Clause 15 provides that a poll will take place between 8 a.m. and 8 p.m., and provides that only persons who are waiting to vote at 8 p.m. are to be allowed into the polling room after that time.

Clause 16 makes provision for advanced polls for voters who will be unable to vote on the polling day due to sickness, infirmity, travel etc, and for persons who will be employed at the polling station on the polling day.

Clause 17 makes provision for advanced polls for incapacitated voters.

Clause 18 prescribes the procedure for advanced polls.

Clause 19, subsection (1) requires the Returning Officer to be present throughout the poll and to keep good order. Subsection (2) provides that a person who misconducts himself in the polling room may be removed by the Returning Officer.

Clause 20 provides for the adjournment of a poll to the following day in exceptional circumstances.

Clause 21 and Schedule 1 set out the Rules which have effect for the taking of a referendum.

Clause 22 describes the ballot paper and instructions, and provides for the ballot paper to have an official mark.

Clause 23 prohibits the use of premises close to the polling room for political meetings.

Clause 24 requires persons whose names are in the parliamentary register to be given one ballot paper by the Returning Officer.

Clause 25 requires a person to produce one of several listed forms of identification before he is given a ballot paper.

Clause 26 sets out a procedure if a person's right to vote is challenged by the Returning Officer or an observer.

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Clause 27 sets out the procedure for voting i.e. marking the ballot paper and placing it in the ballot box in the presence of the Returning Officer.

Clause 28 makes provision for an incapacitated voter to be assisted in voting. Schedule 4 sets out the oath to be sworn by a person needing assistance.

Clause 29 allows a voter who inadvertently spoils his ballot paper to be given another.

Clause 30 describes when a ballot paper is void.

Clause 31 empowers the Returning Officer to order a police officer to arrest a person who has committed an offence of personation (see clause 41).

Clause 32 sets out the procedure for sealing the ballot boxes at the close of the poll and for the counting of the ballot papers. It provides that an observer may require a re-count of votes and that the Returning Officer, after the final count, is to publicly declare the results of the votes cast in that constituency.

Clause 33 provides that, when the final results are obtained, the Registrar is required to publicly declare the results of the referendum and publish them in the Gazette.

Clause 34 requires officers in attendance at the polling room and the count to maintain secrecy. A number of criminal offences are created including if a person interferes with or attempts to influence a voter, or if a voter shows his marked ballot paper, or a copy thereof, to any person to show how he voted.

Clause 35 creates offences of misconduct at a referendum, punishable on summary conviction with imprisonment for a year or a fine of \$500 or both.

Clause 36 allows the Returning Officer to require police assistance to maintain peace and good order at the referendum, which includes arresting or causing a person who is disturbing the peace and good order to be arrested and detained until the close of the poll.

Clause 37 creates offences of carrying an offensive weapon within a kilometre of a polling room, and supplying or using a loudspeaker for the purposes of propaganda on polling day. Both offences are punishable on summary conviction with imprisonment for a year or a fine of \$250 or both.

Clause 38 creates specific offences of bribery relating to a referendum.

Clause 39 creates an offence of undue influence if a person inflicts or threatens to inflict harm on another person in order to compel him to vote, refrain from voting, or vote in a particular way, or impedes a person from freely exercising his right to vote.

Clause 40 sets out the penalties for offences of bribery and undue influence: punishable on conviction on indictment with imprisonment for two years or a fine of \$1,000 or both.

Clause 41 creates an offence of personation and voting when not qualified to vote.

Clause 42 creates other offences relating to the referendum, including forging a ballot paper, altering a ballot paper, unlawfully supplying a ballot paper to any person and making or supplying a ballot box with a secret compartment. It is also an offence for a Returning Officer to mark a ballot paper so that the voter can be identified. These offences are

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punishable on conviction on indictment with imprisonment for two years or a fine of \$1,000 or both.

Clause 43 creates an offence of supplying intoxicating liquor by way of organized treating punishable on summary conviction with a fine of \$500.

Clause 44 disqualifies a person convicted of certain offences relating to the referendum from voting at a referendum for a period of six years.

Clause 45 creates an offence of publishing or printing forms without the authority of the Registrar.

Clause 46, subsection (1) creates an offence of breach of official duty for a person required to perform a function under this Bill. Subsection (2) makes it an offence for an employer to refuse to give an employee time off to vote.

Clause 47 sets out a general penalty for offences which do not have a specific penalty: punishable on summary conviction with imprisonment for nine months or a fine of \$500 or both.

Clause 48 requires the Registrar to retain in safe custody all documents relating to the referendum for a year and then, unless directed otherwise by the Supreme Court, to destroy them.

Clause 49 empowers the Premier to make Rules, subject to the affirmative resolution procedure, for the better carrying out of this Act.

Clause 50 requires the Commissioner of Prisons to send the Registrar, once a referendum notice is published, a certified list of persons disqualified from voting by reason of being imprisoned.

Clause 51 provides that the cost of printing forms shall be met out of the Consolidated Fund.

Clause 52 sets out the fees to be paid to persons discharging duties in connection with a referendum.

Clause 53 empowers the Premier to establish an ad hoc Referendum Committee to advise regarding a specific referendum. Schedule 6 makes provision as to the Committee and its functions.

Schedule 1 sets out the Rules for the taking of a poll at a referendum.

Schedule 2 sets out the form of the ballot paper.

Schedule 3 sets out the form of the declaration to be signed by a voter whose entitlement to vote at the referendum has been challenged.

Schedule 4 sets out the oath to be taken by a blind or incapacitated voter, declaring that the person is unable to vote without assistance.

Schedule 5 sets out the fees that are to be paid to referendum officers discharging specified duties at a referendum.

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Schedule 6 makes provision for an ad hoc committee that may be appointed by the Premier to advise and perform certain functions in respect of a referendum.