

Constitution Further Amendment (Referendum) Act 1930 No 2

[1930-2]



New South Wales

Status Information

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
Miscellaneous Acts (Local Court) Amendment Act 2007 No 94 (not commenced)

Authorisation

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New South Wales

Contents

Long title	5
Part 1 Preliminary	5
1 Name of Act	5
2 (Repealed)	5
Part 2 Referendum on Scheduled Bill	5
3 (Repealed)	5
Part 3 Conduct of a referendum	5
Division 1 Interpretation and application of Parliamentary Electorates and Elections Act 1912	5
4 Definitions	5
5 Application of Act No 41, 1912	5
Division 2 Writ for the referendum	7
6 Issue of writ for a referendum	7
7 Form of writ etc	7
8 Statement of proposed Bill	7
9 Duties of Electoral Commissioner upon receipt of writ	7
10 Electors who may be admitted to vote at referendum	8

Division 3 Voting at the referendum	8
11 Voting on same day	8
12 Polling places	8
13 One vote only	8
14 Voting to be by ballot	8
15 Form of ballot-papers	8
16 Simultaneous poll for referendum and election	9
17, 18 (Repealed)	10
Division 4 Proceedings after close of poll	10
19 Conduct of scrutiny	10
20 Informal ballot-papers	10
21 Saving of informality	10
22 Duties of deputy	11
23 Statement of result, account of ballot-papers etc	11
24 Returning officers' parcels	11
25 Poll for the district	12
26 Recount	12
Division 5 Return of writ	12
27 Return of writ	12
Division 6 Disputed returns	13
28 Reference to Supreme Court	13
29 Question	13
30 Powers of the court	13
31 Electoral Commissioner	13
32 Procedure	13
33 Order to be sent to House affected	13
34 Immaterial errors not to vitiate referendum	14
Division 7 Regulations	14
35 Regulations	14
Division 8 Offences	14

36 Construction of Division.....	14
37 Supply of meat, drink, entertainment etc.....	14
38 Bribery.....	15
39 Receipt of bribe by elector	15
40 Undue influence	15
41 Misleading advertisements etc.....	16
42 Misconduct at public meeting.....	16
Part 4 Legislative Council elections	16
43-75 (Repealed)	16
Part 5 Retention of privileges.....	17
76, 77 (Repealed).....	17
First Schedule (Repealed).....	17
Second Schedule	17
Third Schedule (Repealed)	19
Appendix (Repealed).....	19

Constitution Further Amendment (Referendum) Act 1930 No 2



New South Wales

An Act to provide for the conduct of any referendum upon a Bill authorised or directed by law to be submitted to a referendum.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Constitution Further Amendment (Referendum) Act 1930*.

2 (Repealed)

Part 2 Referendum on Scheduled Bill

3 (Repealed)

Part 3 Conduct of a referendum

Division 1 Interpretation and application of **Parliamentary Electorates and Elections Act 1912**

4 Definitions

(1) In this Part, unless the contrary intention appears:

Referendum means the submission of a Bill to the electors in pursuance of the authority of any Act passed either before or after the commencement of this Part.

Election means an election of Members of the Legislative Assembly.

This Part includes the Second Schedule.

(2) (Repealed)

5 Application of Act No 41, 1912

(1) Subject to this Part the provisions of the *Parliamentary Electorates and Elections Act 1912*, and any regulations or rules made thereunder, shall, so far as they are

applicable, apply to and in respect of a referendum as if it were an election, and for the purposes of a referendum references in any such provision shall be read as follows:

- (a) a reference to a writ shall be read as a reference to a writ for a referendum,
- (b) a reference to a polling-day shall be read as a reference to the day fixed by a writ for a referendum for the taking of the votes of the electors,
- (b1) a reference to a day of nomination shall be read:
 - (i) except as provided in subparagraph (ii), as a reference to the day that is 7 days after the day on which the writ for a referendum is issued, or
 - (ii) where the day fixed for the taking of the votes for the purposes of a referendum is the same as that for the polling at an election, as a reference to the day of nomination for that election,
- (c) a reference to a poll shall be read as a reference to the taking of the votes of the electors for the purposes of a referendum,
- (d) a reference to an election shall be read as a reference to a referendum,
- (e) a reference to electoral matter or to electoral papers shall be read as a reference to corresponding matter or papers in relation to a referendum,
- (f) a reference to a ballot-paper (including the form of a ballot-paper), ballot-box, or other thing shall be read as a reference to a ballot-paper (including the form of a ballot-paper), ballot-box, or corresponding thing in relation to a referendum,
- (g) any reference to “this Act” or “this Part” shall be read as a reference to the provisions or Part, as the case may be, of the Act applicable to a referendum.

(2) For the purposes of a referendum:

- (a) each returning officer shall, subject to the directions of the Electoral Commissioner, make the necessary arrangements for the taking of the votes of the electors in the returning officer’s electoral district,
- (b) a ballot-paper shall not be rejected as informal except for a reason specified in this Act or in the regulations made thereunder,
- (c) the vote of an elector shall be marked on the elector’s ballot-paper in the manner directed by this Part,
- (d) upon the adjournment of a poll by any deputy, such deputy shall forthwith give notice thereof to the returning officer,
- (e) where any polling stands adjourned the returning officer shall not transmit the

returning officer's statement of the result of the voting in the returning officer's district to the Electoral Commissioner until the poll so adjourned has been finally closed and the ballot-papers transmitted to the returning officer.

(3), (4) (Repealed)

Division 2 Writ for the referendum

6 Issue of writ for a referendum

Where any Bill is to be submitted to a referendum, a writ for the referendum may be issued by the Governor.

The writ shall be directed to the Electoral Commissioner.

7 Form of writ etc

- (1) The writ may be in or to the effect of the Form A in the Second Schedule and shall appoint a day for taking the votes of the electors, and a day for the return of the writ.
- (2) The day appointed for taking the votes of the electors shall be a Saturday, and shall be not later than the fortieth day from the date of the issue of the writ.
- (3) The day appointed for the taking of the votes of the electors on the *Constitution (Fixed Term Parliaments) Amendment Bill 1991* (or, if that Bill is re-introduced into the Legislative Assembly in 1992 with or without amendment, that Bill) shall be no later than the day named for the taking of the poll in the next general election (within the meaning of the *Constitution (Fixed Term Parliaments) Special Provisions Act 1991*).

8 Statement of proposed Bill

The Governor may cause to be attached to the writ a copy of the Bill, or a copy of a statement setting out:

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

9 Duties of Electoral Commissioner upon receipt of writ

The Electoral Commissioner shall forthwith after the receipt of the writ:

- (a) indorse on the writ the date of receipt by the Electoral Commissioner,
- (b) cause to be inserted in the Gazette and in two or more newspapers circulating in the State a notification of the receipt of the writ, and of the days appointed for the taking of the votes of the electors and for the return of the writ,
- (c) cause a copy of the Bill or of the statement (if any) attached to the writ to be

exhibited at each Local Court throughout the State,

- (d) forward a copy of the writ and of the proposed Bill, or of the statement (if any) attached to the writ, to the returning officer for each electoral district.

10 Electors who may be admitted to vote at referendum

- (1) At a referendum only those electors who would be entitled to vote if the referendum were an election shall be admitted to vote.
- (2) Nothing in this section shall be deemed to entitle any person who is disqualified from voting to vote.

Division 3 Voting at the referendum

11 Voting on same day

The voting at the referendum shall, subject to this Part, be taken on the day appointed by the writ for taking the votes of the electors.

12 Polling places

The polling places and subdivisions appointed and established under the laws for the time being in force relating to elections shall be polling places and subdivisions for the purposes of the referendum.

13 One vote only

Each elector shall vote only once at any referendum.

14 Voting to be by ballot

- (1) The voting at the referendum shall be by ballot.
- (2) Each elector shall mark his or her vote on the ballot-paper:
 - (a) if the elector approves of the Bill—by placing a tick in the square opposite the word “YES”, or
 - (b) if the elector does not approve of the Bill—by placing a tick in the square opposite the word “NO”.

15 Form of ballot-papers

- (1) Except as provided in subsection (5), the ballot-papers to be used at a referendum shall be:
 - (a) except as provided in paragraph (b), in or to the effect of Form B in the Second Schedule, and

(b) in the case of ballot-papers to be used for postal voting, in or to the effect of Form D in the Second Schedule.

(2)-(4) (Repealed)

(5) Where two or more referendums are held on the same day, it shall not be necessary for the forms of ballot-paper for each referendum to be on separate pieces of paper, but two or more forms of ballot-paper which may be used by any one elector may be on one piece of paper in or to the effect of Form E in the Second Schedule, in which case it shall not be necessary for the signature or initials of the returning officer or deputy to appear more than once on the piece of paper, and the presence of any mark or writing on the piece of paper by which the voter can be identified shall render informal all the forms of ballot-paper and votes appearing on the piece of paper, but any other ground of informality shall only apply to the particular ballot-paper and vote to which it relates, and shall not affect the validity of any other ballot-paper or vote.

16 Simultaneous poll for referendum and election

Where the day fixed for the taking of the votes for the purposes of a referendum is the same as that fixed for the taking of the poll at an election:

- (a) an application for a postal vote certificate and postal ballot-paper or an application or request to vote before polling-day made in respect of the election is a corresponding application or request, as the case may require, in respect of the referendum,
- (b) a declaration or certificate which enables an elector to vote under any provision of the *Parliamentary Electorates and Elections Act 1912* at the election enables the elector to vote under the corresponding provision at the referendum,
- (c) the answers by a person claiming to vote at the election, put to the person pursuant to the *Parliamentary Electorates and Elections Act 1912*, may be accepted as sufficient to enable the person to vote at the referendum if they are satisfactory as regards the election,
- (d) the ballot-papers used for the referendum shall be of a different colour from those used for the election,
- (e) a ballot-paper shall not be issued to a person for the referendum unless a ballot-paper is issued to that person for the election,
- (f) a ballot-paper used at the referendum shall, if it is required to be placed in an envelope by a voter, be placed in the same envelope as the ballot-paper used at the election,
- (g) the copy of the printed roll and the certified copies of rolls in force provided for the purposes of the election shall be used for the purposes of the referendum,

- (h) the same polling-booths and ballot-boxes shall be used for the purposes of the referendum and the election, and
- (i) a reference in Division 13 of Part 5 of, or Schedule 20 to, the *Parliamentary Electorates and Elections Act 1912* to an election shall be construed as a reference to the election and the referendum and the Electoral Commissioner shall not under section 120C of that Act send more than one notice to the same elector.

17, 18 (Repealed)

Division 4 Proceedings after close of poll

19 Conduct of scrutiny

As soon as is practicable after the close of the poll the returning officer and every deputy at the polling place at which each presides shall, in the presence and subject to the inspection of the poll clerks (if any), but of no other persons, open the ballot-box and proceed to count the number of votes given in favour of the Bill and the number of votes given not in favour of the Bill.

20 Informal ballot-papers

- (1) A ballot-paper (including a postal voter's ballot-paper and an absent voter's ballot-paper) shall be informal if:
 - (a) it is not signed or initialled or does not bear a mark as required by the *Parliamentary Electorates and Elections Act 1912* in respect of ballot-papers for an election,
 - (b) it has upon it any mark or writing not authorised by this Part to be put upon it, which, in the opinion of the returning officer, will enable any person to identify the voter, or
 - (c) the voter has failed to mark his or her vote in the manner directed on the ballot-paper.
- (2) Informal ballot-papers shall be rejected at the scrutiny.

21 Saving of informality

- (1) Notwithstanding anything to the contrary in this Act, a ballot-paper shall not, by reason of any mark or writing thereon that is not authorised or required by this Act, be rejected as informal if, in the opinion of the returning officer, the voter has, by some mark or writing, clearly indicated his or her intention on the ballot-paper.
- (2) Notwithstanding anything to the contrary in this Act, a ballot-paper shall not be rejected as informal by reason only that the voter has marked his or her vote by:
 - (a) placing a cross in a square and not placing any mark or writing in the other

square, or

(b) placing the number "1" in a square and not placing any mark or writing (except the number "2") in the other square,

but the ballot-paper shall be treated as if the cross or the number "1", as the case may be, were a tick.

22 Duties of deputy

Immediately after ascertaining the total number of votes given in favour of the Bill, and the total number of votes given not in favour of the Bill, each deputy shall make up:

- (a) in one parcel, the ballot-papers which have been used in voting at the deputy's polling-booth during the referendum,
- (b) in a second separate parcel, the ballot-papers which have remained unused thereat,
- (c) in a third separate parcel, the certified copies of rolls supplied to the said deputy, signed by the deputy, and all books, rolls, and papers kept or used by the deputy during the polling,

and shall seal up the said several parcels; and shall endorse the same severally with a description of the contents thereof, and with the name of the district and polling place, and the date of the polling; and sign with the deputy's name the said endorsement; and shall transmit the said parcels to the returning officer.

23 Statement of result, account of ballot-papers etc

Each deputy shall, together with the parcels aforesaid, transmit to the returning officer a statement setting out the total number of votes given in favour of the Bill, and the total number of votes given not in favour of the Bill, and also an account in which such deputy shall charge himself or herself with the number of ballot-papers originally delivered to the deputy, and the number (if any) written out by the deputy, specifying therein the number thereof delivered to and used by voters and the number not so delivered or left unused; and every such statement and account respectively shall be verified by the signatures of the said deputy and the poll clerk (if any).

24 Returning officers' parcels

The returning officer shall, in respect of the polling booth at which the returning officer personally has presided, make up in separate parcels in like manner as is herein required of deputy returning officers, all ballot-papers used or unused, and all books, rolls, and paper kept or used by the returning officer at such polling booth; and shall seal up and endorse in like manner as aforesaid the several parcels; and shall also make out in respect of the said booth the like statement as is herein required in the case of deputy returning officers, which said statement shall be verified by the signatures of the returning officer and the poll clerk (if any) in the manner aforesaid.

25 Poll for the district

- (1) The returning officer shall, as soon as practicable after the close of the poll, with such assistance as the returning officer may deem necessary, proceed to count the votes given on all ballot-papers (not rejected as informal), including postal and absent voters' ballot-papers, used in connection with the poll for the returning officer's district.

The returning officer shall as soon as is practicable after the count has been completed prepare a statement certifying in relation to the votes given at all the polling places in or for that district:

- (a) the number of votes given in favour of the Bill,
- (b) the number of votes given not in favour of the Bill,
- (c) the number of ballot-papers rejected as informal,

and shall transmit the statement to the Electoral Commissioner.

- (2) It shall be permissible for the returning officer to accept information as to the votes polled at Lord Howe Island which is transmitted to the returning officer by cable or wireless and which the returning officer is satisfied is authentic in lieu of the statement referred to in section 23.

26 Recount

- (1) At any time before indorsing the writ the Electoral Commissioner may, if the Electoral Commissioner thinks fit (and shall, if so directed by the Governor), direct the returning officer for any district to make a recount of the ballot-papers contained in any parcel relating to the returning officer's district.
- (2) The officer conducting a recount shall have the same powers as if the recount were the scrutiny, and may reverse any decision in relation to the scrutiny as to the allowance or admission or disallowance or rejection of any ballot-paper.

Division 5 Return of writ

27 Return of writ

- (1) The Electoral Commissioner shall, after the Electoral Commissioner has received from the returning officer of each electoral district the statement referred to in section 25, endorse on the writ a statement showing as regards each electorate and as regards the whole State:
 - (a) the number of votes given in favour of the Bill,
 - (b) the number of votes given not in favour of the Bill,

(c) the number of ballot-papers rejected as informal,

and shall sign the statement and shall return the writ with the statement indorsed thereon to the Governor.

- (2) The Electoral Commissioner shall cause a copy of the statement to be published in the Gazette, and the statement so published shall, subject to this Act, be conclusive evidence of the result of the referendum.

Division 6 Disputed returns

28 Reference to Supreme Court

- (1) Any question respecting the validity of a referendum, or of any return or statement showing the voting on any referendum, may be referred by resolution of the Legislative Council or of the Legislative Assembly, within 15 sitting days of the House making the reference after the publication in the Gazette of the copy of the statement signed by the Electoral Commissioner under section 27 (1), to the Supreme Court, and the Supreme Court shall have jurisdiction to hear and determine the question.
- (2) For the purposes of subsection (1), sitting days shall be counted whether or not they occur during the same session.

29 Question

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

30 Powers of the court

The Supreme Court, in relation to a reference under this division, shall sit as in open court, and shall have the powers conferred by the *Parliamentary Electorates and Elections Act 1912* on the Court of Disputed Returns, so far as they are applicable.

31 Electoral Commissioner

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

32 Procedure

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

33 Order to be sent to House affected

After hearing and determination of any reference under this division the Prothonotary shall

forthwith forward to the Clerk of the Parliaments or to the Clerk of the Legislative Assembly, as the case may be, a copy of the determination of the Supreme Court.

34 Immaterial errors not to vitiate referendum

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

Provided that where any elector was, on account of the absence or error of or omission by any officer, prevented from voting at a referendum, the court shall not, for the purpose of determining whether the absence or error of or omission by the officer did or did not affect the result of the referendum, admit any evidence of the way in which the elector intended to vote.

Division 7 Regulations

35 Regulations

- (1) The Governor may make regulations not inconsistent with this Part prescribing all matters which are required to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Part.
- (2) Form B, Form D, and Form E in the Second Schedule may, from time to time, be altered or modified by the regulations.

If any of such forms is altered by the regulations any reference in this Part to that form shall be deemed to be a reference to that form as so altered.

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

(4)-(6) (Repealed)

Division 8 Offences

36 Construction of Division

The provisions of this Division shall be construed as being in addition to such of the provisions of the *Parliamentary Electorates and Elections Act 1912* as are applicable to a referendum.

37 Supply of meat, drink, entertainment etc

Any person who, after the issue of a writ for a referendum and before the votes have been

taken in pursuance thereof, supplies to an elector any meat, drink, or entertainment, or horse or carriage hire, with a view to influence the elector's vote in connection with the referendum is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 3 years, or both.

38 Bribery

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

- (a) in order to influence the elector in his or her vote in connection with a referendum, or
- (b) in order to induce the elector to refrain from voting at a referendum, or
- (c) in order to induce the elector to support or oppose any Bill submitted or to be submitted for the approval of the electors,

is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 3 years, or both.

39 Receipt of bribe by elector

Any elector who asks for, receives, or obtains, or agrees or attempts to receive or obtain any money, property, or benefit of any kind for himself or herself or any other person upon the understanding that the elector's vote in connection with any referendum shall be influenced thereby, or shall be given in any particular manner, or that the elector will refrain from voting at any referendum, or that the elector will support or oppose any Bill submitted or to be submitted for the approval of the electors, is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 3 years, or both.

40 Undue influence

Any person who:

- (a) threatens, offers, or suggests any violence, injury, punishment, damage, loss, or disadvantage to an elector or any other person:
 - (i) in order to influence the elector in his or her vote in connection with a referendum, or
 - (ii) in order to induce the elector to refrain from voting at a referendum, or
 - (iii) in order to induce the elector to support or oppose any Bill submitted or to be submitted for the approval of the electors, or
- (b) uses, causes, inflicts, or procures any violence, injury, punishment, damage, loss or

disadvantage towards, to, or upon any elector or any other person, for or on account of any such vote, refraining from voting, support, or opposition,

is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 3 years, or both.

41 Misleading advertisements etc

(1) Every person who:

- (a) prints, publishes, or distributes any advertisement or document containing a representation of a ballot-paper, or any representation apparently intended to represent a ballot-paper, and having thereon any directions intended or likely to mislead or improperly interfere with any elector in or in relation to the casting of the elector's vote at a referendum, or
- (b) prints, publishes, or distributes any advertisement or document containing any untrue or incorrect statement intended or likely to mislead or improperly interfere with any elector in or in relation to the casting of the elector's vote at a referendum,

shall be guilty of an offence, and shall be liable to a penalty not exceeding 2 penalty units.

(2) This section shall not prevent the printing, publishing, or distributing of any advertisement or document (not otherwise illegal) which contains instructions how to vote in favour of or against any Bill submitted to the electors by a referendum, if those instructions are not intended or likely to mislead any elector in or in relation to the casting of the elector's vote.

42 Misconduct at public meeting

(1) Any person who, at a public meeting to which this section applies, acts in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting is held shall be guilty of an offence, and shall be liable to a penalty not exceeding 0.1 penalty unit.

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

Part 4 Legislative Council elections

43-75 (Repealed)

Part 5 Retention of privileges

76, 77 (Repealed)

First Schedule (Repealed)

Second Schedule

Form A

(Section 7)

Writ for a referendum

HIS MAJESTY THE KING

To the Electoral Commissioner for New South Wales, and to all others whom it may concern:

GREETING:

We command you that you cause a Bill entitled [*here set out the title of the Bill and add "a copy of which is attached hereto" or "a statement of which is attached hereto" as the case requires*] to be submitted, according to law to the electors qualified to vote for the election of Members of the Legislative Assembly: And we appoint the following dates for the purposes of the said submission:

1. For taking the votes of the electors the day of 19 .
2. For the return of the writ on or before the day of 19 .

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

Governor.

By His Excellency's Command.

Form B

(Section 15 (1))

BALLOT-PAPER

CONSTITUTION FURTHER AMENDMENT (REFERENDUM) ACT 1930

Electoral District for which voter is enrolled:

Directions to Voter

You should mark your vote as follows:

If you approve of the Bill you should place a tick [✓] in the square opposite the word "YES".

If you do not approve of the Bill you should place a tick [✓] in the square opposite the word "NO".

[hrule]

Submission to the Electors of the following Bill:

[hrule]

DO YOU APPROVE of the Bill entitled (*Here set out the title of the Bill*)?

[] YES

[] NO

Form C

(Repealed)

Form D

POSTAL BALLOT-PAPER
CONSTITUTION FURTHER AMENDMENT (REFERENDUM) ACT 1930

Electoral District for which voter is enrolled:

Directions to Voter

You must not mark your vote hereon until you have first exhibited the ballot-paper (in blank) to the authorised witness.

You should mark your vote as follows:

If you approve of the Bill you should place a tick [✓] in the square opposite the word "YES".

If you do not approve of the Bill you should place a tick [✓] in the square opposite the word "NO".

You should then fold the ballot-paper so that the vote cannot be seen and place it in the envelope provided and fasten the envelope.

[hrule]

Submission to the Electors of the following Bill:

[hrule]

DO YOU APPROVE of the Bill entitled (*Here set out the title of the Bill*)?

[] **YES**

[] **NO**

Form E

BALLOT-PAPER
CONSTITUTION FURTHER AMENDMENT (REFERENDUM) ACT 1930

Electoral District for which voter is enrolled:

Directions to Voter

You should mark your vote in relation to EACH Bill as follows:

If you approve of the Bill you should place a tick [✓] in the square opposite the word "YES".

If you do not approve of the Bill you should place a tick [✓] in the square opposite the word "NO".

[hrule]

Submission to the Electors of the following Bills:

[hrule]

QUESTION 1

DO YOU APPROVE of the Bill entitled (*Here set out the title of the Bill*)?

[] **YES**

[] **NO**

[hrule]

QUESTION 2

DO YOU APPROVE of the Bill entitled (*Here set out the title of the Bill*)?

[] **YES**

[] **NO**

[hrule]

(Additional questions (numbered consecutively) in similar form may be included in this form.)

(If this form is to be used as a postal ballot-paper, the form shall include the additional directions to voter as in Form D and the heading to the form shall be "POSTAL BALLOT-PAPER".)

Third Schedule (Repealed)

Appendix (Repealed)