

REPUBLIC OF NAURU

(Act No. 14 of 2009)

AN ACT

To provide for the conduct of a referendum.

(Certified: 27 November 2009)

REPUBLIC OF NAURU

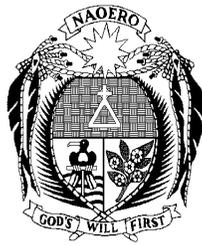
REFERENDUM PROCEDURES ACT 2009

(No. 14 of 2009)

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REPUBLIC OF NAURU

An Act

(No. 14 of 2009)

to provide for the conduct of a referendum.

(Certified: 27 November 2009)

Enacted by the Parliament of Nauru as follows:

PART 1 PRELIMINARY MATTERS

Short Title

1. This Act may be cited as the *Referendum Procedures Act 2009*.

Commencement

2. This Act commences on the date the Speaker certifies that it has been passed by Parliament under Article 47.

Definitions

3. In this Act, unless a contrary intention appears:

Article 84 referendum means a referendum held on a proposed law in accordance with Article 84.

Article 84A referendum means a referendum held under Article 84A.

Court means the Court of Disputed Returns established by section 22.

Electoral Act means the *Electoral Act 1965-2007*.

polling hours means the hours a polling place is open for voting at a referendum.

polling place means a place established as a polling place under section 10.

presiding officer means a person appointed to be a presiding officer under section 11.

proposed law means a proposed law to alter, or that will have the effect of altering, the Fifth Schedule of the Constitution or any of the provisions of the Constitution contained in the Fifth Schedule.

referendum means an Article 84 or 84A referendum.

referendum day means the date of a referendum fixed under section 6 or 7.

returning officer means the person appointed to be returning officer under section 9.

roll means a roll kept under section 6 of the Electoral Act.

scrutineer means a person appointed to be a scrutineer under section 12.

voter means a person entitled to vote at a referendum.

Application of Act

4. Unless the contrary intention appears, this Act applies to Article 84 and 84A referenda.

Act binds Republic

5. This Act binds the Republic.

PART 2 PREPARING FOR A REFERENDUM

Date of Article 84 referendum

6. (1) This section applies only to an Article 84 referendum.
 - (2) Within 30 days after Parliament passes a proposed law, Cabinet must, by Gazette notice, fix the date for a referendum on the proposed law.
 - (3) The date fixed must be:
 - (a) at least 2 months after the proposed law is passed; and
 - (b) within 12 months after the proposed law is passed.

Date of Article 84A referendum

7. (1) This section applies only to an Article 84A referendum.
 - (2) The date for an Article 84A referendum must be fixed by the Speaker by Gazette notice.

Additional information to be published

8. Cabinet must include the following additional information in a Gazette notice published under section 6 or 7:

- (a) for an Article 84 referendum – the places at, and times during which, the proposed law on which the referendum will be held is available for inspection by the public;
- (b) that a person will not be entitled to vote at the referendum unless the person's name appears on a roll at midnight on the 6th working day immediately before referendum day.

Returning officer

- 9. (1) Cabinet may, by Gazette notice, appoint a person to be the returning officer for the referendum.
- (2) If Cabinet does not appoint a returning officer, the Chief Secretary is the returning officer for the referendum.
- (3) The returning officer has the powers and functions conferred on the returning officer by this Act.

Polling places

- 10. (1) At least 7 days before the referendum, the returning officer must, by Gazette notice:
 - (a) establish each polling place for the referendum; and
 - (b) specify the polling hours for each polling place; and
 - (c) allocate a polling place for each roll.
- (2) In establishing and allocating polling places, the returning officer must ensure:
 - (a) the polling place allocated for a roll is reasonably accessible to each voter whose name appears on that roll; and
 - (b) sufficient polling places are established to ensure voting can be completed during the polling hours; and
 - (c) polling places are distributed in a way that ensures a voter can vote within a reasonable time after arriving at the polling place.
- (3) A voter may only vote at the referendum at the polling place allocated for the roll on which the voter's name appears.

Presiding officers

- 11. The returning officer must appoint a presiding officer for each polling place.

Scrutineers

- 12. The returning officer must appoint scrutineers for the counting of the votes.

PART 3 VOTING

Application of Electoral Act

13. (1) Part IV (except sections 19 and 22(1)) of the Electoral Act applies, with the necessary and appropriate modifications, to the conduct of the referendum.
- (2) Without limiting subsection (1), the following modifications apply:
- (a) a reference to an election of members is taken to be a reference to the referendum;
 - (b) a reference to a polling day is taken to be a reference to the referendum day;
 - (c) a reference to the Returning Officer is taken to be a reference to the returning officer under this Act;
 - (d) a reference to a presiding officer is taken to be a reference to a presiding officer under this Act;
 - (e) a reference to a ballot-paper, ballot-box or other thing is taken to be a reference to a ballot paper, ballot box or other corresponding thing under this Act;
 - (f) a reference to section 26 of the Electoral Act is taken to be a reference to section 17(2) of this Act.
- (3) If there is a method prescribed under the Electoral Act for a person to vote in an election under that Act if the person is unable to attend a polling place during polling hours, the method applies, with the necessary and appropriate modifications, to voting in a referendum.

Entitlement to vote – Article 84A referendum

14. (1) A person whose name appears on the roll at midnight on the 6th day working day immediately before referendum day is entitled to vote at an Article 84A referendum.
- (2) In this section:

working day means a day other than Saturday, Sunday or a public holiday.

Example for section 14

If the date of an Article 84A referendum is Saturday 14 November, a person is entitled to vote at the referendum if the person's name appears on a roll at midnight on Friday 6 November.

Form of ballot paper

15. (1) The ballot paper for an Article 84 referendum must be in the form of the Schedule, Form 1.
- (2) The ballot paper for an Article 84A referendum must be in the form of the Schedule, Form 2.

How vote is conducted

16. (1) Voting at a referendum must be conducted by ballot.

- (2) A voter may mark his or her vote on the ballot paper in one of the following ways:
- (a) to answer “Yes” to the question – by writing the word “Yes” in the box provided on the ballot paper;
 - (b) to answer “No” to the question – by writing the word “No” in the box provided on the ballot paper.

PART 4 RETURNS AND SCRUTINY

Opening of ballot boxes

17. (1) Immediately after the close of polls, the presiding officer for a polling place must take each ballot box at the polling place to a place specified by the returning officer.
- (2) Each ballot box must be opened by the returning officer in the presence of:
- (a) the presiding officer; and
 - (b) the Clerk; and
 - (c) each scrutineer.

Counting of votes

18. (1) The votes must be counted by the returning officer and the presiding officers in the presence of each scrutineer and any other person who wishes to be present.
- (2) However, the returning officer may limit the number of persons (other than scrutineers) who may be present in order to ensure the count, and scrutiny of the count, is not interfered with.

Informal ballot paper

19. (1) A ballot paper is informal if:
- (a) the ballot paper is not authenticated by the initials of the presiding officer in accordance with section 21(1) of the Electoral Act (as applied by section 13 of this Act); or
 - (b) the ballot paper has no vote indicated on it; or
 - (c) it is not possible to determine the voter’s intended vote; or
 - (d) the ballot paper is marked in a way that identifies the voter.
- (2) However, a ballot paper is not informal only because the returning officer has marked it in some way.
- (3) An informal ballot paper is not a validly cast vote, and the returning officer must disregard all informal ballot papers in counting the votes.

Result of referendum

20. Within 7 days after all validly cast votes are counted, the returning officer must:
- (a) complete a certificate of the results in the form of the Schedule, Form 3; and
 - (b) give the certificate to the Speaker; and
 - (c) publish the certificate in the Gazette.

Certification of proposed law following Article 84 referendum

21. (1) This section applies if a proposed law is approved by not less than two-thirds of votes validly cast at to an Article 84 referendum.
- (2) The Speaker must not certify the proposed law under Article 47 unless:
- (a) the time for filing notice of a dispute under section 23 has expired; and
 - (b) any dispute filed has been finally determined by the Court; and
 - (c) the decision of the Court on any dispute does not alter the result of the referendum so that the proposed law is no longer approved by not less than two-thirds of votes.

PART 5 DISPUTES

Court of Disputed Returns

22. The Supreme Court is the Court of Disputed Returns for a referendum and has jurisdiction to hear and determine a dispute under this Part.

Filing notice of dispute

23. (1) A person may dispute the validity of the result of a referendum by filing notice of the dispute with the Court within 5 days after the certificate of the result is published in the Gazette.
- (2) The notice filed must state the nature and basis of the dispute and be accompanied by a filing fee of:
- (a) \$100; or
 - (b) if another amount is prescribed – the other amount.

Determination of dispute

24. (1) The Court must hear and determine the dispute as soon as practicable.
- (2) In determining the dispute, the Court may do any of the following:
- (a) dismiss all or part of the dispute;

- (b) set aside the result of the referendum and direct that a new referendum be held on the same question;
- (c) allow or disallow ballot papers;
- (d) make any other order the Court considers just, including as to costs.

PART 6 OFFENCES

Voting compulsory

25. (1) A voter must vote at a referendum.

Penalty: \$100

(2) Subsection (1) does not apply if:

- (a) the voter is unable to attend a polling place to vote because the voter is:
 - (i) outside Nauru during polling hours on the referendum day; or
 - (ii) seriously ill or infirm; or
 - (iii) approaching maternity; and
- (b) there is no method prescribed under the Electoral Act for a person to vote in an election under that Act if the person is unable to attend a polling place during polling hours.

(3) Proceedings for an offence against subsection (1) must not be started unless:

- (a) notice is given under section 27 and the time for complying with the notice expires; and
- (b) the Chief Secretary gives written approval to start proceedings.

Evidence of failure to vote

26. (1) The returning officer must, as soon as possible after referendum day, prepare and sign a list of voters who did not vote at the referendum.

(2) The signed list is evidence of the fact that a voter whose name appears on the list did not vote.

Notice of failure to vote

27. (1) The returning officer must give each voter whose name appears on the list mentioned in section 26 a notice in the form of the Schedule, Form 4.

(2) The voter must comply with the notice.

Penalty: \$100

- (3) The voter must not give false or misleading information in purported compliance with the notice.

Penalty: \$100

Modification of Criminal Code

28. (1) A reference to an election in Chapter XIV of the Criminal Code is taken to include a reference to the referendum.
- (2) Subsection (1) applies in addition to any other modifications required under section 10 of the *Interpretation Act*.

PART 7 ADMINISTRATIVE MATTERS

Regulations

29. (1) Cabinet may make regulations under this Act that are necessary or convenient to give effect to this Act.
- (2) The regulations may prescribe modifications to the Electoral Act and the Criminal Code.

PART 8 AMENDMENT OF ELECTORAL ACT

Act amended

30. (1) This Part amends the Electoral Act.
- (2) The Electoral Act as amended by this Part may be cited as the *Electoral Act 2007- 2009*.

New Part VII

31. After section 42

insert

PART VII SPECIAL PROVISIONS APPLYING TO REFERENDA

Qualification to vote

43. (1) For Article 84(4), a person is taken to be qualified to vote at an election of members at the time a referendum is held if the person's name appears on a roll at midnight on the 6th working day immediately before the date of the referendum.
- (2) In this section:

working day means a day other than Saturday, Sunday or a public holiday.

Note for section 43

Referendum Procedures Act 2009

Under Article 84(4), a person who, at the time the referendum is held, is qualified to vote at an election of members of Parliament, is entitled to vote at a referendum held for the purposes of Article 84.

Example for section 43

If the date of a referendum held for the purposes of Article 84 is Saturday 14 November, a person is entitled to vote at the referendum if the person's name appears on a roll at midnight on Friday 6 November.

SCHEDULE 1 FORMS

sections 15, 20(a) and 27

FORM 1 BALLOT PAPER – ARTICLE 84 REFERENDUM
BALLOT PAPER – ARTICLE 84 REFERENDUM

Write “Yes” or “No” in the box provided under the following question:

Do you approve of the proposed law entitled *[insert name of proposed law]*?

FORM 2 BALLOT PAPER – ARTICLE 84A REFERENDUM

BALLOT PAPER – ARTICLE 84A REFERENDUM

Write “Yes” or “No” in the box provided under the following question:

Do you think there should be a Constitutional Convention to consider whether there should be any amendments to the Constitution?

FORM 3 CERTIFICATE OF RESULTS

CERTIFICATE OF RESULTS – REFERENDUM

To the Speaker:

I certify that the results of the referendum held on *[insert date of referendum]* in respect of the question *[insert question]* are as follows:

Number of votes validly cast: *[insert number]*

Number of “Yes” votes counted: *[insert number]*

Number of “No” votes counted: *[insert number]*

The following proportion of votes validly cast answered the question “Yes”:

[insert proportion]

[insert signature of returning officer]

Returning officer

[insert date]

Date

FORM 4 NOTICE OF FAILURE TO VOTE

NOTICE OF FAILURE TO VOTE

Part 1 – Notice

To: *[insert full name and address of voter]*

This notice has been sent to you under section 27 of the *Referendum Procedures Act 2009*.

You did not vote at the referendum held on *[insert date of referendum]* in respect of the question *[insert question]*. You must do the following by *[insert date]*:

- (a) complete the declaration attached in Part 2 of this notice; and
- (b) sign it in the presence of a witness who is another Nauruan over the age of twenty years (who must also sign the form); and
- (c) return it to the returning officer at the following address:
[insert address].

Under the *Referendum Procedures Act 2009* you may commit an offence if you:

- (a) fail to vote at a referendum; or
- (b) fail to comply with this notice; or
- (c) give false or misleading information in purported compliance with this notice.

Each offence carries a maximum penalty of \$100.

[insert signature]
Returning officer

[insert date]
Date

Part 2 – Declaration

I, *[insert full name of voter]*, declare that the following is the true reason I did not vote at the referendum held on *[insert date of referendum]* in respect of the question *[insert question]*:

[insert reason]

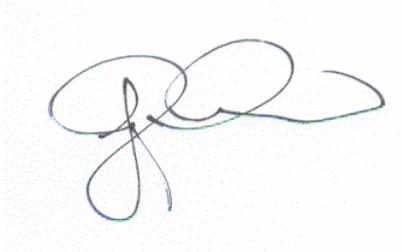
[insert signature and date]

I, *[insert full name of witness]*, a Nauruan over the age of twenty years, certify that I witnessed *[insert full name of voter]* sign the declaration above.

[insert signature of witness]
[insert address of witness]
[insert

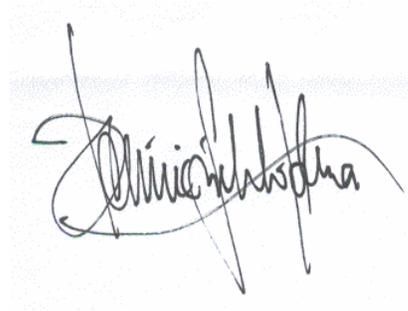
date]

I hereby certify that the above is a fair print of a Bill for an Act entitled ***Referendum Procedures Act 2009*** that has been passed by the Parliament of Nauru and is now presented to the Deputy Speaker for his certificate under Article 47 of the Constitution.

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke.

Deputy Clerk of Parliament
27 November 2009

Pursuant to Article 47 of the Constitution, I, Dominic Tabuna, Deputy Speaker of Parliament, hereby certify that the ***Referendum Procedures Act 2009*** has been passed by the Parliament of Nauru.

A handwritten signature in black ink, appearing to read 'Dominic Tabuna' with a stylized flourish.

Deputy Speaker of Parliament
27 November 2009