

South Africa

Referendums Act, 1983

Act 108 of 1983

Legislation as at 12 September 1983

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Referendums Act, 1983

Act 108 of 1983

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Commenced on 12 September 1983

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(English text signed by the State President.)

ACT

To provide for the holding of referendums in order to ascertain the views of voters in the Republic or any part thereof on any matter.

BE IT ENACTED by the State President and the House of Assembly of the Republic of South Africa, as follows:—

1. Definitions

In this Act, unless the context indicates otherwise—

"**chief referendum officer**" means the chief referendum officer appointed under [section 2\(1\)\(e\)](#); (ii)

"**referendum**" means a referendum referred to in [section 2](#); (iv)

"**referendum officer**" means a referendum officer appointed under [section 3](#); (v)

"**this Act**" includes the regulations made under [section 4](#); (i)

"**vote**" or "give a vote" means to give a view contemplated in [section 2\(1\)\(a\)](#); (vi)

"**voter**", in relation to a referendum, means any person who has, in terms of the Population Registration Act, 1950 ([Act No. 30 of 1950](#)), been classified as a White person or as a member of the Cape Coloured, Malay, Griqua, Chinese or Indian Group or the Other Coloured Group and who, in terms of the proclamation by virtue of which the referendum is held, is entitled to vote at such referendum. (iii)

2. Determination of referendum

(1) The State President may by proclamation in the *Gazette*—

- (a) declare that a referendum shall be held in order to ascertain the views of voters or of a category of voters mentioned in the proclamation on a matter so specified;
- (b) determine that the referendum shall be held in the Republic, or in a part of the Republic specified in the proclamation, on a day or consecutive days and, subject to the provisions of this Act, during the hours so specified;
- (c) determine who shall be entitled, on compliance with and subject to the provisions of this Act, to vote at the referendum;
- (d) determine the form of a ballot paper for the purposes of the referendum and the particulars it shall contain; and
- (e) appoint an officer in the public service as chief referendum officer, who shall be charged with the organization and control of the referendum and exercise the powers and perform the duties conferred upon or assigned to him by this Act.

- (2) The State President may from time to time amend any proclamation issued under subsection (1), by further proclamation in the *Gazette*.

3. Referendum officers

- (1) The chief referendum officer shall, for each area determined by him, appoint as referendum officer any officer in the public service, who shall in respect of the area for which he has been appointed assist the chief referendum officer in the exercise of his powers and the performance of his duties and exercise the other powers and perform the other duties conferred upon or assigned to a referendum officer by this Act.
- (2) A notice of any appointment made under subsection (1) and the area for which it was made, shall be published in the *Gazette* within 14 days of the proclamation referred to in [section 2](#) of this Act.
- (3) If in terms of such a notice the occupier of a post in the public service has as such been appointed as the referendum officer for such an area, the occupier for the time being of such post shall be the referendum officer for that area.

4. Regulations

- (1) The State President may in relation to a particular referendum make regulations relating to—
 - (a) the division of the Republic or, in the case of a referendum which is to be held in any part of the Republic, of any such part of the Republic into areas for the purposes of holding the referendum;
 - (b) the appointment for each area contemplated in paragraph (a) of—
 - (i) a person who shall, subject to the control and instructions of the chief referendum officer, in respect of the area for which he has been appointed, control, organize and supervise the carrying out of the provisions of this Act; and
 - (ii) such other persons as may be necessary to assist such person in such control, organization and supervision,who shall exercise such other powers and perform such other duties as may be conferred upon or assigned to any such persons by this Act;
 - (c) the appointment of agents for organizations having an interest in the referendum, or of persons to act as agents for voters who hold a particular view that may be expressed in terms of the referendum;
 - (d) the powers, duties and conditions of appointment of the chief referendum officer, a referendum officer or any other person appointed under this Act, and the rights of agents contemplated in paragraph (c);
 - (e) the establishment of polling stations in each area contemplated in paragraph (a);
 - (f) the arrangements to be made in connection with the referendum by the chief referendum officer, a referendum officer or any other person appointed under this Act;
 - (g) the manner in which a voter who for any reason specified in the regulations cannot attend a polling station may give his vote before the date on which the referendum is held;
 - (h) the polling station where any voter or any voter belonging to a particular category of voters may give his vote;
 - (i) the manner in which there is to be voted at a polling station, including—
 - (i) the manner in which a voter shall be required to identify himself as a voter before a ballot paper may be issued to him;

- (ii) the circumstances under which a ballot paper shall not be issued to any person, or another ballot paper may be issued to a voter if he has inadvertently spoiled his ballot paper;
 - (iii) the manner in which a voter who cannot read or write or who is incapacitated by blindness or other physical cause from marking his ballot paper, may give his vote;
 - (iv) the steps which may be necessary in order to ensure that not more than one ballot paper in relation to the same matter is issued to a voter, including the right to place, notwithstanding anything to the contrary in any law contained, a mark specified in the regulations in any document issued under any law to a voter to whom a ballot paper has been issued;
 - (j) the sealing, after the close of the poll, of ballot boxes, counterfoils of used ballot papers, spoiled ballot papers and unused ballot papers and other material used at the referendum, and the delivery thereof;
 - (k) the manner in which the result of the referendum shall be determined and announced, including the circumstances under which a ballot paper shall be rejected;
 - (l) the sealing, after the announcement of the result of the referendum, of counted and rejected ballot papers, and the manner in which those ballot papers and the counterfoils, ballot papers and material referred to in paragraph (j) which have been used at a referendum shall be dealt with and the circumstances under which they shall be kept;
 - (m) the manner in which and the circumstances under which—
 - (i) subject to an order of a court and on the conditions (if any) determined by the court, any sealed packet of rejected ballot papers or, under circumstances where care is taken that the manner in which any particular voter has voted shall not be discovered until he has been proved to have voted and his vote has been declared by the court to be invalid, of counted ballot papers or, subject to the provisions of subparagraph (ii), of counterfoils of used ballot papers may be opened and investigated for the purposes of any prosecution for an offence in terms of this Act;
 - (ii) the sealed packet of counterfoils of used ballot papers may be opened and investigated by the chief referendum officer in the presence of agents contemplated in paragraph (c) who in terms of the regulations may attend and who are present, within a period of 30 days after the announcement of the result of the referendum in order to ascertain whether any voter has contravened the provisions of [section 8](#) (b);
 - (n) the issuing of instructions and the prescribing of forms by the chief referendum officer which may be necessary for the effectual carrying out of the provisions of this Act, and generally, any matter which he considers necessary or expedient in order that the objects of this Act be achieved.
- (2) A regulation made under subsection (1) may in respect of any contravention thereof or failure to comply therewith prescribe a penalty not exceeding a fine of R1 000 or imprisonment for a period of 12 months.
- (3) The regulations made under this section shall be published in the *Gazette* within 14 days from the date of the proclamation referred to in [section 2](#).

5. Infringement of secrecy

- (1) Every officer or other person appointed by or under this Act in attendance at a polling station shall maintain, and aid in maintaining, the secrecy of the voting at that polling station, and shall not communicate, except for some purpose authorized by law, to any person any information likely to defeat the secrecy of the voting.

- (2) Subject to the provisions of this Act, no person shall interfere with or attempt to interfere with a voter when giving his vote, or otherwise attempt to obtain at a polling station information as to how any voter at that polling station is about to vote, or has voted, or communicate at any time to any person any information obtained at a polling station as to how any voter at such polling station is about to vote or has voted, or as to the number, if any, on the ballot paper handed to any voter at such polling station.
- (3) No person shall directly or indirectly induce any voter to display his ballot paper, after he has given his vote, in such a manner as to make known to any person how the voter has voted.
- (4) No person shall place upon any ballot paper any mark or writing whereby a voter who gives his vote on that ballot paper may be identified.
- (5) Every person in attendance at the determination of the result of a referendum shall maintain, and aid in maintaining, the secrecy of the voting, and shall not attempt to ascertain at such determination, or communicate any information obtained at such determination as to, the manner in which any particular voter has given his vote.
- (6) Subject to the provisions of this Act, no person shall attempt to ascertain, or directly or indirectly assist in ascertaining, how any voter has given his vote.
- (7) Any person who, in the exercise of his powers or the performance of his duties in terms of this Act, has obtained knowledge as to the vote which any voter has given, shall not disclose such knowledge except in reply to a question lawfully put to him in the course of proceedings in any court.
- (8) No person shall, except upon the order of any court or as authorized by this Act, break the seal of, or open, any packet sealed in terms of this Act.
- (9) Any person who contravenes, or fails to comply with, any provision of this section, shall be guilty of an offence and liable on conviction to a fine not exceeding R1 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

6. Obstructing proceedings and officers

Any person who wilfully obstructs or disturbs any proceedings under this Act at a polling station or wilfully obstructs or interferes with any officer or other person appointed by or under this Act in the exercise of his powers or the performance of his duties in terms of this Act, shall be guilty of an offence and liable on conviction to a fine not exceeding R1 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

7. Undue influence and bribery

Any person who, directly or indirectly, by himself or by any other person—

- (a) makes use or threatens to make use of any violence, force or restraint, or inflicts or threatens to inflict any injury, damage, harm or loss, upon or against, or does or threatens to do anything to the disadvantage of, any person in order to induce or compel any person to vote or to refrain from voting at a referendum, or on account of any person having voted or refrained from voting at a referendum; or
- (b) by any such means as aforesaid or any fraudulent device or contrivance induces, compels or prevails upon any voter to vote or to give or refrain from giving a particular vote at a referendum, or impedes or prevents the free exercise of the franchise by any voter at a referendum; or
- (c) gives, lends or procures, or agrees to give, lend or procure, or offers or promises, any money or other reward to or for any voter or any other person, in order to induce such voter or any other voter to vote or to give or to refrain from giving a particular vote at a referendum; or

- (d) receives or contracts for any money or other reward for himself or for any other person, on account of voting, giving or agreeing to give, or refraining or agreeing to refrain from giving, a particular vote at a referendum,

shall be guilty of an offence and liable on conviction to a fine not exceeding R10 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

8. Personation

Any person who—

- (a) at any referendum applies for a ballot paper in the name of some other person, whether living or dead, or of a fictitious person, or who gives a vote in the name of any such person; or
- (b) having previously voted at any referendum, again votes or applies at the same referendum for a ballot paper,

shall be guilty of an offence and liable on conviction to a fine not exceeding R10 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

9. Offences relating to voting procedures, polling stations and voting equipment

(1) Any person who—

- (a) forges or counterfeits or fraudulently destroys any ballot paper or a mark, stamp or note on any ballot paper; or
- (b) deliberately without due authority supplies any ballot paper to any person; or
- (c) fraudulently places into any ballot box any paper other than a ballot paper handed to him in terms of this Act; or
- (d) fraudulently takes out of any polling station any ballot paper; or
- (e) deliberately without due authority destroys, takes, opens, uses or otherwise interferes with any ballot box, voting compartment, instrument, form, document or other equipment used or intended for use at any polling station,

shall be guilty of an offence and liable on conviction to a fine not exceeding R10 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

- (2) In any indictment, summons or charge for an offence in relation to ballot papers, ballot boxes or voting equipment at a referendum, the property in such papers, boxes or equipment may be stated to be vested in any officer or other person appointed by or under this Act.

10. Certain printed matter to bear publisher's name

- (1) All bills, placards, posters, pamphlets, circulars or other printed matter having reference to a referendum shall bear upon the face thereof the name and address of the printer and publisher thereof.
- (2) No person shall print, publish or post or cause to be printed, published or posted any such printed matter which fails to bear upon the face thereof the name and address of the printer and publisher thereof.
- (3) The proprietor and publisher of every newspaper shall cause the word "advertisement" to be printed as a headline to each article or paragraph in his newspaper containing referendum matter the insertion of which is or is to be paid for or for which any reward or compensation or promise of reward or compensation is or is to be made.

- (4) The words "referendum matter" used in subsection (3) include all matters which on the face thereof are intended or calculated to affect the result of a referendum, and any report of a speech of an agent contemplated in [section 4\(1\)\(c\)](#) if the insertion of the report is or is to be paid for.
- (5) Every report, letter, article, placard, poster, pamphlet, circular, cartoon or other printed matter (hereinafter in this subsection called a newspaper article) which, on the face of it, is intended or calculated to affect the result of a referendum, is inserted in any newspaper or otherwise produced and is published in the Republic on or after the date of commencement of such referendum, shall bear at the foot thereof the full name and address of the person by whom such newspaper article was written or produced: Provided that—
 - (a) any such newspaper article which is inserted in any newspaper as aforesaid and which has been altered materially by the editor of such newspaper, may also be signed by such editor;
 - (b) in the case of a report of a public meeting which is written jointly by two or more persons, it shall be sufficient for the purposes of this subsection if the report as a whole bears the full names and addresses of the persons by whom it was written; and
 - (c) in the case of headlines to any newspaper article which is inserted in any newspaper as aforesaid, and bills, placards or posters having reference thereto, and which are issued in the ordinary practice of a newspaper, it shall be sufficient for the purposes of this subsection if the full names and addresses of the persons by whom such headlines, bills, placards or posters were written, and a statement that such headlines, bills, placards or posters were written by such persons, are published in the issue of the newspaper in which such newspaper article is inserted.
- (6) Subject to the provisions of paragraph (c) of the proviso to subsection (5), no person shall print or publish any newspaper or other printed matter in which is inserted or produced any newspaper article which fails to comply with the provisions of subsection (5).
- (7) Any person who contravenes or fails to comply with any provision of this section shall be guilty of an offence and liable on conviction to a fine not exceeding R1 000 or to imprisonment for a period not exceeding 12 months.

11. Prohibition of opinion polls during referendum

- (1) No person shall, in respect of a referendum, conduct in any area contemplated in [section 4\(1\)\(a\)](#) an opinion poll in respect of the support enjoyed by the several views in relation to the matter mentioned in the proclamation referred to in [section 2\(1\)\(a\)](#) or publish the result of such an opinion poll conducted prior to, on the subsequent to the date on which the said proclamation is issued.
- (2) The provisions of subsection (1) shall not prohibit the obtaining of opinions in the course of canvassing for votes for the advancement of a particular view mentioned in subsection (1) or the publishing of the result of such obtaining of opinions.
- (3) Any person who contravenes any provision of subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding R1 000 or to imprisonment for a period not exceeding 12 months.

12. Prohibition of use of flags and loudspeakers

Any person who in connection with any referendum on the polling day uses or displays any flag which is or was the national flag of any country or uses any form of loudspeaker on the polling day shall be guilty of an offence and liable on conviction to a fine not exceeding R1 000 or to imprisonment for a period not exceeding 12 months.

13. When referendum commences

For the purposes of this Act a referendum shall be deemed to have commenced on the date on which the proclamation referred to in [section 2\(1\)](#) is issued.

14. Evidence of referendum

Upon any charge of an offence in terms of this Act alleged to have been committed at or in connection with the referendum, the certificate of the chief referendum officer that the referendum was being or had been held, shall be conclusive evidence of the fact that the referendum was being or had been held.

15. Voter not required in legal proceedings to disclose his vote

No person who voted at a referendum shall be required in any legal proceedings to state how he has voted.

16. Cost of referendum

The costs incurred by the chief referendum officer in respect of any referendum held in terms of this Act, shall be defrayed out of the State Revenue Fund.

17. Repeal of [Act 97 of 1982](#)

The Referendums Act, 1982, is hereby repealed.

18. Short title

This Act shall be called the Referendums Act, 1983.