

# REFERENDUM PROCEDURES

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# Referendum Procedures Act 2009

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- FORM 4 — NOTICE OF FAILURE TO VOTE

# Referendum Procedures Act 2009

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## TABLE OF AMENDMENTS

The Referendum Procedures Act 2009 No 14 was certified and commenced on 27 November 2009.

<b>Amending Legislation</b>	<b>Certified</b>	<b>Date of Commencement</b>
Interpretation (Consequential Amendments) Act 2011 No 18	3 November 2011	3 November 2011
Crimes Act 2016 No 18	12 May 2016	12 May 2016
Revised Written Laws Act 2021 No 7	1 June 2021	1 June 2021



An Act to provide for the conduct of a referendum.

Enacted by the Parliament of Nauru as follows:

## PART 1 — PRELIMINARY MATTERS

### 1 Short title

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

### 2 Commencement

This Act commences on the date the Speaker certifies that it has been passed by Parliament under Article 47 of the *Constitution* and came into effect on 27 November 2009.

### 3 Definitions

In this Act:

‘*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 2016*;

‘*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 37 of the *Electoral Act*;

‘*scrutineer*’ means a person appointed to be a scrutineer under Section 12; and

‘*voter*’ means a person entitled to vote at a referendum.

### 4 Application of this Act

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

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**5 Act binds the Republic**  
This Act binds the Republic.



## PART 2 — PREPARING FOR A REFERENDUM

### **6 Date of Article 84 referendum**

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

### **7 Date of Article 84A referendum**

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

### **8 Additional information to be published**

The Cabinet shall 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; and
- (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 sixth working day immediately before referendum day.

### **9 Returning officer**

- (1) The Cabinet may, by Gazette notice, appoint a person to be the returning officer for the referendum.
- (2) Where the 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.

### **10 Polling places**

- (1) At least 7 days before a referendum, the returning officer shall, by Gazette notice:
  - (a) establish each polling place for the referendum;
  - (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 shall ensure:
  - (a) the polling place allocated for a roll is reasonably accessible to each voter whose name appears on that roll;
  - (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.

**11 Presiding officers**

The returning officer shall appoint a presiding officer for each polling place.

**12 Scrutineers**

The returning officer shall appoint scrutineers for the counting of the votes.

## PART 3 — VOTING

### 13 Application of Electoral Act

- (1) The *Electoral Act 2016* 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; and
  - (f) a reference to Section 81 of the *Electoral Act* is taken to be a reference to Section 17(2).
- (3) Where there is a method prescribed under the *Electoral Act* for a person to vote in an election under that Act, and 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.

### 14 Entitlement to vote – Article 84A referendum

- (1) A person whose name appears on the roll at midnight on the sixth 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.]*

### 15 Form of ballot paper

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

### 16 How vote is conducted

- (1) Voting at a referendum shall 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; or
  - (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

### 17 Opening of ballot boxes

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

### 18 Counting of votes

- (1) The votes shall be counted by the returning officer and the presiding officer in the presence of each scrutineer and any other person who wishes to be present.
- (2) 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.

### 19 Informal ballot paper

- (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 82(1)(a) of the *Electoral Act*, as applied by Section 13 of this Act;
  - (b) the ballot paper has no vote indicated on it;
  - (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) 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 shall disregard all informal ballot papers in counting the votes.

### 20 Result of referendum

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

### 21 Certification of proposed law following Article 84 referendum

- (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 shall not certify the proposed law under Article 47 of the *Constitution* unless:
  - (a) the time for filing notice of a dispute under Section 23 has expired;
  - (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

### 22 **Court of Disputed Returns**

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

### 23 **Filing notice of dispute**

- (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 shall 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.

### 24 **Determination of dispute**

- (1) The Court shall hear and determine the dispute as soon as practicable.
- (2) In determining the dispute, the Court may do any of the following:
  - (a) dismiss whole 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; or
  - (d) make any other order the Court considers just, including as to costs.





## PART 6 — OFFENCES

### 25 Voting compulsory

(1) A voter shall 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) shall 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.

### 26 Evidence of failure to vote

(1) The returning officer shall, 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.

### 27 Notice of failure to vote

(1) The returning officer, shall 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 shall comply with the notice.

Penalty: \$100.

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

Penalty: \$100.

### 28 Modification of Criminal Code

[Repealed]

[s 28 rep Act 18 of 2016 s 76, opn 12 May 2016]



**PART 7 — ADMINISTRATIVE MATTERS**

**29 Regulations**

- (1) The 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 *Crimes Act 2016*.

[subs (2) am Act 18 of 2016 s 77, opn 12 May 2016]



**PART 8 — AMENDMENT OF ELECTORAL ACT**

**30 Act amended**

- (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*.

**31 New Part VII**

[s 31 omitted by the Law Revision Commission under powers authorised by Act 10 of 2019]



**SCHEDULE**

**FORM 1**



**REPUBLIC OF NAURU  
REFERENDUM PROCEDURES ACT 2009**

*[Sections 15, 20(a) and 27]*

**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**



**REPUBLIC OF NAURU  
REFERENDUM PROCEDURES ACT 2009**

*[Section 15(2)]*

**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**



**REPUBLIC OF NAURU  
REFERENDUM PROCEDURES ACT 2009**

*[Section 20(a)]*

**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



REPUBLIC OF NAURU  
REFERENDUM PROCEDURES ACT 2009

[Section 27(1)]

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 shall do the following by *[insert date]*:

- (a) complete the declaration attached in Part 2 of this notice;
- (b) sign it in the presence of a witness who is another Nauruan over the age of twenty years (who shall 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;
- (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 20 years, certify that I witnessed *[insert full name of voter]* sign the declaration above.

*[insert signature of witness]*

*[insert address of witness]*

*[insert*

*date]*



# Referendum (Proxy Voting) Regulations 2010

## TABLE OF PROVISIONS

<i>Regulation</i>	<i>Title</i>
1	Citation
2	Commencement
3	Modification of Electoral (Proxy Voting) Regulations 2004



# Referendum (Proxy Voting) Regulations 2010

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## TABLE OF AMENDMENTS

The Referendum (Proxy Voting) Regulations 2010 were notified and commenced on 19 February 2010 (GN No 91/2010; Gaz 19/2010).

<b>Amending Legislation</b>	<b>Notified</b>	<b>Date of Commencement</b>
Revised Written Laws Act 2021 No 7	1 June 2021	1 June 2021





**IN EXERCISE** of powers under Section 29 of the *Referendum Procedures Act 2009*, the Cabinet makes the following regulations:

**1 Citation**

These Regulations may be cited as the *Referendum Procedures (Proxy Voting) Regulations 2010*.

**2 Commencement**

These Regulations commence on the date of publication in the Gazette.

**3 Modification of Electoral (Proxy Voting) Regulations 2004**

Without limiting the necessary and appropriate modifications mentioned in Section 13(3) of the Act, the *Electoral (Proxy Voting) Regulations 2004*, including the form prescribed for voting by proxy under those Regulations, are modified for voting in a referendum as follows:

- (a) a reference to a general election or by-election is taken to be a reference to a referendum;
- (b) a reference to a polling day is taken to be a reference to referendum day;
- (c) a reference to the Returning Officer is taken to be a reference to the returning officer under the Act;
- (d) a reference to a Presiding Officer is taken to be a reference to a presiding officer under the Act;
- (e) a reference to a ballot paper is taken to be a reference to a ballot paper under the Act;
- (f) a reference to a polling place is taken to be a reference to a polling place under the Act; and
- (g) a reference to an electoral dispute is taken to be a reference to a dispute under Part 5 of the Act.

