

APPENDIX 22: BILLS FOR ENTRENCHING LAWS

Proportional Representation (Hare-Clark) Entrenchment Bill 1994

Only one entrenching law has been enacted in the Territory to date, the *Proportional Representation (Hare-Clark) Entrenchment Act 1994*. The particular provisions, insofar as they focus on the entrenchment of the Hare-Clark electoral system, are discussed in Chapter 3. The entrenchment provisions in the Bill for the Act as agreed by the Assembly provide that:

- the principal Act (or any amendment or repeal of the Act) has no effect unless it is passed by –
 - at least a 2/3 majority of the members of the Legislative Assembly; AND
 - a majority of the electors at a referendum held in accordance with the *Referendum (Machinery Provisions) Act 1994*;
- a law to which the principal Act applies (by virtue of section 4¹) has no effect unless it is passed by –
 - the Legislative Assembly and passed by a majority of electors at a referendum held in accordance with the *Referendum (Machinery Provisions) Act 1994*; OR
 - at least a 2/3 majority of the members of the Legislative Assembly.

The 'hurdles' therefore differ – to be effective, *the principle Act or any amendment thereto*, requires approval of at least a 2/3 majority of members in the Assembly and a majority of the electors at a referendum, whilst *a law to which the Act applies* requires, to be effective, approval of the Assembly and a majority of the electors at a referendum or at least a 2/3 majority of members in the Assembly.

The Bill was presented on 30 November 1994² and agreed to, with amendments, on 8 December 1994. The question - That this Bill, as amended be agreed to – having been declared in favour of the 'Ayes' and no vote being called for, the Speaker drew attention to the requirement that the Bill must be passed by a special majority of members and directed that a vote be taken. The result of the vote being 'Ayes' 16 and 'Noes' one, the question was resolved in the affirmative by the special majority required.³

The Bill was initially certified by the Clerk as having passed the Assembly and transmitted to the Electoral Commissioner by covering letter on 22 December 1994 for submission to a referendum of the electors of the Territory.

On 16 March 1995 the Electoral Commissioner advised the Clerk that, on 18 February 1995,⁴ the Bill had been submitted to a referendum of the electors of the Territory in accordance with the provisions of the *Referendum (Machinery Provisions) Act 1994* and he had that day officially set out the number of votes cast in the election and had declared the result of the referendum by notice published in the Gazette. The notice⁵ set out the number of votes counted in the referendum and declared that, according to the results of the referendum as set out, a majority of the electors entitled to vote at the referendum had approved the entrenching law.⁶

1 Section 4 entrenches certain principles of the Hare-Clark electoral system and also provides compulsory voting and provides that the Act applies to any law made pursuant to a power at any time vested in the Legislative Assembly to make a law with respect to the number of members of the Assembly.

2 MoP 1992-94/789.

3 MoP 1992-94/824-6.

4 The general election for the Third Assembly was held on that day.

5 In accordance with the provisions of paragraph 14(4)(b) of the Act.

6 Australian Capital Territory Gazette, Special Gazette No. S59, Thursday, 16 March 1995.

Community Referendum Laws Entrenchment Bill 1995

The Bill for an entrenching law that was unsuccessful was the Community Referendum Laws Entrenchment Bill 1995 (a Bill for an Act to entrench the *Community Referendum Act 1995* and laws made after community referendums)⁷ was presented in the Assembly by the Attorney-General on 14 December 1995.⁸ However, consideration of the Bill did not proceed for 12 months as the proposed primary Act to which the proposed entrenching law was to apply, the Community Referendum Bill 1995, was negated later that day. The entrenching Bill was not further considered for two years and remained on the Notice Paper until 4 December 1997 when, the Community Referendum Bill 1996⁹ having been negated at the agreement in principle stage, the order of the day for the resumption of the debate on the question that the entrenchment Bill be agreed to in principle was put and negated.¹⁰

PROPOSED ENACTMENTS TO WHICH ENTRENCHING LAWS APPLY

Proportional Representation (Hare-Clark) Entrenchment Amendment Bill 2001

The Proportional Representation (Hare-Clark) Entrenchment Amendment Bill 2001 (A Bill for an Act to amend the *Proportional Representation (Hare-Clark) Entrenchment Act 1994*) was presented in the Assembly by a cross bench member on 14 February 2001.¹¹ The Bill proposed to insert into the Proportional Representation Entrenchment Act the provision that any law that relates to the day on which an ordinary election of members is to be held was also entrenched.¹² As an amendment of the principal Act, the Bill was caught by the provisions of subsection 5 (1) of that Act.¹³

The Bill was debated in the Assembly on 2 May 2001 and, though the question, 'That the Bill be agreed to', was agreed to by a majority of members (7 members voting with the 'Ayes', 6 with the 'Noes'), the Bill did not progress further. The Speaker drew the attention of the Assembly to the requirement of paragraph 5(1)(a) of the Proportional Representation (Hare-Clark) Entrenchment Act that any amendment or repeal of that Act had no effect unless it was passed by at least a two-thirds majority of Members of the Legislative Assembly.

Electoral (Entrenched Provisions) Amendment Bill 2001

The Electoral (Entrenched Provisions) Amendment Bill 2001 (A Bill for an Act to amend the *Electoral Act 1992*) was presented in the Assembly on 29 March 2001. The Bill proposed to amend the *Electoral Act 1992* to increase the number of combinations of different ballot

7 The Bill proposed to entrench the proposed community Referendum Act and the laws made under that Act. A law that amended, repealed or was inconsistent with the proposed Community Referendum Act would have to be passed by at least two-thirds of the Assembly or by a majority of voters voting at a referendum. The same restrictions were to apply to laws that amended, repealed or were inconsistent with the laws made by people through the proposed referendum process for the first 12 months those laws were in operation. See Assembly Debates (14.12.1995) 3006.

8 MoP 1995-97/240. The 'special procedures for making enactments' clause contained in the Bill mirrored those contained in the *Proportional Representation (Hare-Clark) Entrenchment Act 1994*.

9 Presented on 27 June 1996 MoP 1995-97/389.

10 MoP 1995-97/931.

11 MoP 1998-2001/1159.

12 For the background to this proposal see Assembly Debates (14.2.2001) 89-9. The Bill sought to amend sections 4 and 5 of the entrenchment Act and to insert new sections into the entrenchment Act. Again, the 'special procedures for making enactments' clause contained in the amending Bill were the same as those already contained in the *Proportional Representation (Hare-Clark) Entrenchment Act 1994*.

13 That is, at least a two-thirds majority of the members of the Legislative Assembly; AND a majority of the electors at a referendum held in accordance with the *Referendum (Machinery Provisions) Act 1994*.

papers that are to be printed for the Legislative Assembly election under the Robson Rotation method.

The Bill was a law to which the *Proportional Representation (Hare-Clark) Entrenchment Act 1994* applied by virtue of section 4 of that Act¹⁴. Changes to the Robson Rotation tables set out in the Bill were inconsistent with Schedule 2 of the Electoral Act as in force on 1 December 1994, consequently the Bill could not take effect unless it was passed by at least 2/3 of the members of the Assembly or a majority of the members of the Assembly and a majority of electors at a referendum.

The Assembly considered the Bill on 15 June 2001. The Bill having been agreed to in principle and leave having been given to dispense with the detail stage, the Speaker advised the Assembly that the Bill was a proposed law to which the *Proportional Representation (Hare-Clark) Entrenchment Act 1995* applied by virtue of section 4 of that Act and that it could not take effect unless it was passed by at least a 2/3 majority of the members of the Assembly or by a majority of members of the Assembly and a majority of electors at a referendum. The Speaker therefore directed that there be a call of the Assembly in accordance with standing orders 158 to 162. The question was resolved in the affirmative by the special majority required, the vote being Ayes, 15, Noes, 0.¹⁵

14 Pursuant to the provisions of subsection 5(2) of the principal Act.

15 MoP 2001-2004/ 1433.