



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Social Policy Scrutiny Committee

**Inquiry into the Electoral
Legislation Amendment Bill 2018**

March 2019

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Chair's Preface

This report details the Committee's findings regarding its examination of the Electoral Legislation Amendment Bill 2018. The Bill amends the *Electoral Act 2004* and associated Regulations to provide for a return to a full preferential voting method. In addition, the Bill proposes amendments to the 100 metre prohibition zone around pre-election and mobile voting centres and empowers the Electoral Commissioner to establish alternate prohibition zones, designated campaign areas, and issue a Code of Conduct for campaigners.

The Committee received two submissions to its inquiry. While both submissions supported the intent of the legislation, clarification was sought regarding the anticipated operation of prohibition zones and designated campaign areas. As outlined below, the Committee has recommended that the Assembly pass the Bill with the proposed amendments as set out in recommendations two and three.

The Electoral Commissioner raised concerns regarding the 100 metre prohibition zone where election day voting centres are located in schools. Given that the prohibition zone generally only covers part of the school grounds, the Commissioner noted that this caused a number of issues during the 2016 Territory election and proved difficult for Electoral Commission staff to administer. Based on the evidence received, and consistent with equivalent legislation in Victoria, South Australia, the ACT and the Commonwealth, the Committee has proposed an amendment to section 275 to provide an exemption where a voting centre is located in a building situated on enclosed grounds.

As highlighted by Mr Gerry Wood MLA, the Committee was concerned that the proposed introduction of designated campaign areas defeats the purpose of the prohibition zones which, as pointed out by the Commissioner, worked extremely well in the last Territory election. Acknowledging the value of ensuring voters have access to how-to-vote material, and taking into consideration practices elsewhere in Australia, the Committee has recommended that proposed section 275B be deleted and replaced with a provision whereby the Commissioner may designate an area where how-to-vote cards may be made available for collection by voters should they choose to do so. The Committee considers that this strikes an appropriate balance between ensuring voters have access to how-to-vote material and ensuring that the legislation does not recreate a situation where voters have to 'walk the gauntlet'.

On behalf of the Committee, I would like to thank the Electoral Commissioner and Mr Wood for their submissions and for appearing before the Committee at its public hearing. The Committee also thanks the Department of the Chief Minister for their advice. I would also like to thank my fellow Committee members for their bipartisan commitment to the legislative review process.



Ms Ngaree Ah Kit MLA

Chair

Committee Members

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	Committee Membership	
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	Sessional:	Social Policy Scrutiny
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	Committee Membership	
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	Standing:	House, Public Accounts
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	Select:	Northern Territory Harm Reduction Strategies for Addictive Behaviours
Chair:	Public Accounts	
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Acknowledgements

The Committee acknowledges the individuals and organisations that provided written submissions or oral evidence at the public briefing and public hearings.

Terms of Reference

Sessional Order 13

Establishment of Scrutiny Committees

- (1) Standing Order 178 is suspended.
- (2) The Assembly appoints the following scrutiny committees:
 - (a) The Social Policy Scrutiny Committee
 - (b) The Economic Policy Scrutiny Committee
- (3) The Membership of the scrutiny committees will be three Government Members and one Opposition Member nominated to the Speaker in writing by the respective Whip and one non-party aligned Member to be appointed by motion.
- (4) The functions of the scrutiny committees shall be to inquire and report on:
 - (a) any matter within its subject area referred to it:
 - (i) by the Assembly;
 - (ii) by a Minister; or
 - (iii) on its own motion.
 - (b) any bill referred to it by the Assembly;
 - (c) in relation to any bill referred by the Assembly:
 - (i) whether the Assembly should pass the bill;
 - (ii) whether the Assembly should amend the bill;
 - (iii) whether the bill has sufficient regard to the rights and liberties of individuals, including whether the bill:
 - (A) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; and
 - (B) is consistent with principles of natural justice; and
 - (C) allows the delegation of administrative power only in appropriate cases and to appropriate persons; and
 - (D) does not reverse the onus of proof in criminal proceedings without adequate justification; and
 - (E) confers powers to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer; and
 - (F) provides appropriate protection against self-incrimination; and
 - (G) does not adversely affect rights and liberties, or impose obligations, retrospectively; and

- (H) does not confer immunity from proceeding or prosecution without adequate justification; and
 - (I) provides for the compulsory acquisition of property only with fair compensation; and
 - (J) has sufficient regard to Aboriginal tradition; and
 - (K) is unambiguous and drafted in a sufficiently clear and precise way.
- (iv) whether the bill has sufficient regard to the institution of Parliament, including whether the bill:
- (A) allows the delegation of legislative power only in appropriate cases and to appropriate persons; and
 - (B) sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly; and
 - (C) authorises the amendment of an Act only by another Act.
- (5) The Committee will elect a Government Member as Chair.
- (6) Each Committee will provide an annual report on its activities to the Assembly.

Adopted 24 August 2017

Recommendations

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Electoral Legislation Amendment Bill 2018 with the proposed amendments set out in recommendations 2 and 3.

Recommendation 2

The Committee recommends that proposed section 275 be amended to provide that where an election day voting centre is located in a building situated on grounds within an enclosure, the Commissioner may, by written notice, specify that those grounds are, for the purposes of this section, part of the voting centre.

Recommendation 3

The Committee recommends that proposed section 275B be deleted and replaced with a provision whereby:

The Commissioner may designate an area within 10 metres of the entrance of a polling booth where how-to-vote cards may be made available for collection by voters, with campaign workers for each candidate registered in the relevant division responsible for monitoring and refreshing stocks of how-to-vote cards as required in compliance with the rules of the prohibition zone.

1 Introduction

Introduction of the Bill

1.1 The Electoral Legislation Amendment Bill 2018 (the Bill) was introduced into the Legislative Assembly by the Chief Minister, the Hon Michael Gunner MLA, on 29 November 2018. The Assembly subsequently referred the Bill to the Social Policy Scrutiny Committee for inquiry and report by 12 March 2019.¹

Conduct of the Inquiry

- 1.2 On 30 November 2018 the Committee called for submissions by 30 January 2019. The call for submissions was advertised via the Legislative Assembly website, Facebook, Twitter feed and email subscription service. In addition, the Committee directly contacted a number of individuals and organisations.
- 1.3 As noted in Appendix 2, the Committee received two submissions to its inquiry. The Committee held a public briefing with the Department of the Chief Minister on 3 December 2018 and public hearings with six witnesses in Darwin on 20 February 2019.

Outcome of Committee's Consideration

- 1.4 Sessional order 13(4)(c) requires that the Committee after examining the Bill determine:
- (i) whether the Assembly should pass the bill;
 - (ii) whether the Assembly should amend the bill;
 - (iii) whether the bill has sufficient regard to the rights and liberties of individuals; and
 - (iv) whether the bill has sufficient regard to the institution of Parliament.
- 1.5 Following examination of the Bill, and consideration of the evidence received, the Committee is of the view that the Legislative Assembly should pass the Bill with proposed amendments as set out in recommendations 2 and 3.

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Electoral Legislation Amendment Bill 2018 with the proposed amendments set out in recommendations 2 and 3.

¹ Hon Michael Gunner MLA, Chief Minister, Parliamentary Record, *Debates Day 3 – 29 November 2018*, <http://www.territorystories.nt.gov.au/jspui/handle/10070/305255>, pp.1-3

Report Structure

- 1.6 Chapter 2 provides an overview of the policy objectives of the Bill and the purpose of the Bill as contained in the Explanatory Statement.
- 1.7 Chapter 3 considers the main issues raised in evidence received.

2 Overview of the Bill

Background to the Bill

- 2.1 In 2016 the *Electoral Act 2004* was amended to provide for an optional preferential voting method for Northern Territory elections. In presenting the Bill the Chief Minister, the Hon Michael Gunner MLA, advised the Assembly that the proposed amendments seek to return to a full preferential voting method for two main reasons:

First, the current optional preferential voting method is inconsistent with how voters are instructed to complete a ballot paper at both Local Government and Federal Government elections. This inconsistency between elections at different levels of government may contribute to voter confusion and the rise in voters unintentionally filling out their ballot papers incorrectly so that their votes cannot be admitted, and ultimately, do not count. It was noted after the introduction of optional preferential voting at the 2016 Territory general election, 5% of informal votes at the 2017 Local Government elections were due to voters placing a single number one on the ballot paper.²

- 2.2 Secondly, the Chief Minister noted that the current optional preferential voting method does not encourage the full engagement of voters in the electoral system:

Northern Territory elections are based on a voting system where preference votes are allocated to candidates in order to determine the final election result. A full preferential voting method encourages each and every voter to be more aware of their choice of candidates. It aligns the way in which ballot papers are required to be marked and completed with the way that these same ballot papers will be ultimately treated when distributing preferences. A full preferential voting method ensures that individual voters do not have less of a say in this democratic process due to how they choose to complete their ballot paper. Instead, each formal vote has an equal say on the distribution of preferences for candidates and this more fully represents the will of all Territory voters.³

- 2.3 The Bill also makes amendments to the 100 metre prohibition zone around voting centres where campaigning is prohibited. Introduced to ensure that voters have easier access to voting centres without having to ‘walk the gauntlet’, a number of issues were nevertheless identified in remote and regional areas and at pre-election voting centres where the 100 metre zone was found to be too large a distance relative to the size, nature and location of the voting centre:

The Bill retains the 100 metre prohibition zone for election day voting centres. The Bill introduces a smaller 10 metre buffer zone for mobile voting centres and pre-election voting centres, including regional and remote areas, reflecting the different nature of these voting centres and the unique nature of voting in the Territory.⁴

² Parliamentary Record, *Debates Day 3 – 29 November 2018*, <http://www.territorystories.nt.gov.au/jspui/handle/10070/305255>, p.1

³ Parliamentary Record, *Debates Day 3 – 29 November 2018*, <http://www.territorystories.nt.gov.au/jspui/handle/10070/305255>, pp.1-2

⁴ Parliamentary Record, *Debates Day 3 – 29 November 2018*, <http://www.territorystories.nt.gov.au/jspui/handle/10070/305255>, p.2

Purpose of the Bill

2.4 The Bill amends the *Electoral Act 2004* and associated Regulations in relation to campaigning and voting in Northern Territory elections. As highlighted in the Explanatory Statement, the Bill seeks to provide for a strengthened and more accessible voting process by:

- a) returning to full preferential voting creating uniformity in vote marking across all levels of government;
- b) increased flexibility to exclude fewer votes by introducing a requirement that voter's intention must be taken into account when considering whether a ballot paper is formal or informal;
- c) improving voter access to campaigning material providing a power for the Northern Territory Electoral Commission (Commission) to designate specific areas where campaigning activities may be undertaken during voting hours at voting centres;
- d) ensuring the boundaries of prohibition areas where certain campaigning activities are not permitted reflect requirements of specific voting centres by reducing the default size at mobile voting centres and pre-election voting centres and providing the Commission with a power to designate an alternative size prohibition area where required, including for regional and remote areas; and
- e) promoting appropriate campaigning behaviour at voting centres by providing the Commission with the power to issue a code of conduct for campaign workers.⁵

⁵ Explanatory Statement, *Electoral Legislation Amendment Bill 2018 (Serial 72)*, <https://parliament.nt.gov.au/committees/spsc/72-2018>, p.1

3 Examination of the Bill

Introduction

3.1 While the two submissions received were generally supportive of the proposed legislation, clarification was sought regarding prohibition zones and designated campaign areas as provided for in proposed sections 275, 275A and 275B. The following discussion considers the issues raised by submitters and the subsequent advice received from the Department of the Chief Minister (the Department).

Prohibition Zones

3.2 Pursuant to proposed section 275 campaigning activities are restricted:

- within 100 metres of the entrance of an election day voting centre;
- within 10 metres of the entrance to a pre-election voting centre or mobile voting centre; or
- if an alternate prohibition zone has been designated, within the alternate prohibition zone.

With regards to the latter point, proposed section 275A provides that the Northern Territory Electoral Commission (the Commission) may designate an alternate prohibition zone with boundaries between 10 and 100 metres of a voting centre.

3.3 While supporting the intent of these provisions, Mr Gerry Wood MLA (Mr Wood) suggested that rather than prescribing a default prohibition zone of 10 metres for pre-election and mobile voting centres, the intention of the legislation should be:

to have the area as large as is practical within a 100 metres limitation and not working towards a minimum of 10m.⁶

Similarly, in relation to proposed section 275A, Mr Wood noted that:

The idea of an alternate prohibition zone is good but the basis for that zone should be to have an area as large as is practical up to 100m.⁷

3.4 By way of clarification, the Department advised the Committee that:

the default buffer zone of 10 metres operates as a minimum distance and is designed to have the greatest benefit in the majority of circumstances. It is not considered appropriate to change the default position. It is also considered appropriate that the power to designate an alternative prohibition zone remains at the Commission's discretion (within the range of 10 to 100 metres) to ensure that prohibition zones are applied consistently in each voting centre.⁸

3.5 Noting that schools are often used as election day voting centres, Mr Iain Loganathan (Northern Territory Electoral Commissioner) pointed out that since the 100 metre prohibition zone generally only covers part of the school, campaign workers can still

⁶ Mr Gerry Wood MLA, Submission 2, p.1

⁷ Mr Gerry Wood MLA, Submission 2, p.1

⁸ Department of the Chief Minister, *Responses to Written Questions*, 19 February 2019, <https://parliament.nt.gov.au/committees/spsc/72-2018>, p.3

campaign on areas of the school grounds that fall outside of this zone.⁹ As highlighted by the Commissioner, this caused a number of issues during the 2016 Territory election and proved difficult for Electoral Commission staff to administer.

- 3.6 For example, the Committee heard that the 100 metre boundary around Wanguri Primary School included a number of houses. As pointed out by the Commissioner, in this instance, the proposed amendments will serve to address this issue:

The fact that this boundary can now be reduced to between 10 metres and 100 metres means we will not have to face that issue in the future, and those houses would no longer be within the prohibition zone.¹⁰

- 3.7 However, in relation to Parap Primary, the Committee heard that the boundary only included half the school:

you will see that the reason the 100 metre boundary was drawn in that manner was to specifically include the car park in the 100 metre boundary. It is very clear, in terms of feedback from electors they do not like the gauntlets on Election Day. They do not like being harassed, so we wanted to make it so that people could park their car, vote and leave and not have to interact with campaign workers.¹¹

This approach meant we debated with some campaign workers if they are on the oval, whether they are in that 100 metres or whether they are outside the 100 metres – it just becomes, quite frankly, a bit of a nonsense in how it is administered.¹²

With the boundaries that we had, we had over exuberant party workers trying to stop cars as they are just about to enter into the 100 metre zone and try to give them how-to-vote material. We certainly had a few calls and emails basically saying this is going to end badly because it will lead to an accident.¹³

- 3.8 Consequently, the Commissioner advised the Committee that:

In instances like this, the Commission would prefer to have the ability to extend the prohibition boundary so that it encompasses the whole school such as following a physical boundary like a fence. This would provide clarity on where the boundary extends and consequently make it easier to administer and inform candidates and parties accordingly. For this to occur at some voting centres the prohibition zone would be greater than 100m.¹⁴

- 3.9 In response to the Commission's concerns, the Department advised the Committee that:

In developing the proposed amendments, consideration was given to providing the Northern Territory Electoral Commission with the discretion to set the boundaries of prohibition zones at voting centres at schools and other locations, with particular reference to the physical features of a voting centre and no minimum or maximum limits to the size of the boundaries.

However, allowing the declaration of areas in this way would not provide for broad consistency across voting centres. Different voting centres have different physical characteristics and aligning prohibition areas to physical features could create inequity between voting centres.

⁹ Northern Territory Electoral Commission, Submission 1, p.1

¹⁰ Committee Transcript, Public Hearing, 20 February 2019, p.3

¹¹ Committee Transcript, Public Hearing, 20 February 2019, p.3

¹² Committee Transcript, Public Hearing, 20 February 2019, p.3

¹³ Committee Transcript, Public Hearing, 20 February 2019, p.3

¹⁴ Northern Territory Electoral Commission, Submission 1, p.1

For example, one voting centre could have a prohibition zone with a boundary of 150 metres because that is where the fence at the edge of the school grounds is located or 200 metres because that is the end of the school carpark, while another may have a boundary of 50 metres because of the location of the fence.

This approach also does not recognise that not all voting centres have physical boundaries, such as fences or carparks, which the Commission could rely upon to establish the boundary of a prohibition zone.¹⁵

- 3.10 To assist in the administration of prohibition zones, the Department further advised that proposed section 313A provides that the Commission may 'issue a code of conduct for campaign workers':

Where campaigners are simply not permitted in a prohibition zone, a Code of Conduct gives the Commission more flexibility to govern the behaviour of campaigners at voting centres, both inside and outside prohibition zones.

The proposed amendments are designed so that the Commission can issue a Code of Conduct to be used in conjunction with prohibition zones to provide a consistent and orderly approach to campaigning across voting centres.

The Code of conduct would function to assist the Commission to formalise existing guidelines and information about campaigning that it distributes to candidates.¹⁶

- 3.11 Acknowledging the difficulty of striking an appropriate balance between ensuring equity between polling places and the practicalities of administering prohibition zones, Ms Maria Mohr (Deputy Chief Executive Officer: Department of the Chief Minister) noted that:

One option could be to make an exemption where if a polling place is a school, the entire school boundary could be defined. That may or may not exceed the 100 metres. It was felt that the 100 metres provided sufficient scope between 10 metres and 100 metres, but that is a matter for the committee to consider.¹⁷

Committee's Comments

- 3.12 While the Committee agreed that a Code of Conduct would certainly assist the Commission to manage the behaviour of campaigners in and around voting centres, it was not convinced that this provision adequately addresses the Commissioner's concerns regarding administration of the 100 metre prohibition zone where voting centres are located in schools. As the Commissioner pointed out:

you have codes of conduct in parliament, in schools and numerous places. Whether they are abided by and what are the repercussions if you do not abide by them is probably the most important question.¹⁸

- 3.13 Similarly, although the Commission's existing powers under section 295 provide that an authorised officer may direct a person who is being disruptive to leave, electoral commission staff do not have the authority to remove people:

¹⁵ Department of the Chief Minister, *Responses to Written Questions*, 19 February 2019, <https://parliament.nt.gov.au/committees/spsc/72-2018>, p.2

¹⁶ Department of the Chief Minister, *Responses to Written Questions*, 19 February 2019, <https://parliament.nt.gov.au/committees/spsc/72-2018>, pp.2-3

¹⁷ Committee Transcript, Public Hearing, 20 February 2019, p.12

¹⁸ Committee Transcript, Public Hearing, 20 February 2019, p.3

We give people a warning to say, “We think you are crossing the line here”. If it gets to the point where someone is really disruptive to voters – our polling staff are not bodyguards, it is not the job of the OIC [Officer in Charge] to forcibly remove people. ... We would get police to go there and remove that person – whether that be a party worker or a member of the public who is creating a nuisance within the polling place.¹⁹

- 3.14 The Committee notes that difficulties associated with the administration of prohibition zones around schools used as voting centres are not specific to the Northern Territory. Equivalent legislation in Victoria, South Australia, the ACT and the Commonwealth all incorporate exemptions whereby if voting centres are located in buildings situated on enclosed grounds, the Commissioner may, by written notice, specify those grounds as being part of the voting centre.²⁰
- 3.15 In practice, this would mean that campaigning would be prohibited within 100 metres of the entrance of the grounds enclosing the voting centre. However, if this was deemed to be impractical or undesirable, the Committee notes that pursuant to proposed section 275A, the Commission would be able to designate an alternate prohibition zone. For example, a prohibition zone of 10 metres would ensure that electors could enter and exit the grounds of the voting centre safely and without being harassed, yet still provide for campaigning activities within a similar distance (10 metres as opposed to 6 metres) to that provided for in the same circumstances at Commonwealth elections.²¹
- 3.16 The Committee is, therefore, of the view that an exemption similar to that provided for in equivalent legislation elsewhere in Australia would be the most appropriate means of addressing the concerns raised by the Commissioner.

Recommendation 2

The Committee recommends that proposed section 275 be amended to provide that where an election day voting centre is located in a building situated on grounds within an enclosure, the Commissioner may, by written notice, specify that those grounds are, for the purposes of this section, part of the voting centre.

Designated Campaign Areas

- 3.17 Proposed section 275B provides that the Commission ‘may designate an area to be a designated campaign area in a place where campaigning activity is prohibited under section 275 or 275A’. As discussed below, while the Commission sought clarification regarding the anticipated operation of this section, Mr Wood questioned the underlying intent of the provision.
- 3.18 Given that it is not unusual for voting centres to have multiple points of entry, particularly when they are located in a school, the Commission asked whether it is

¹⁹ Committee Transcript, Public Hearing, 20 February 2019, p.3; see also *Electoral Act 2004* (NT), s 295(5) and (7)

²⁰ *Commonwealth Electoral Act 1918* (Cwlth), s 340; *Electoral Act 1982* (ACT), s 303; *Electoral Act 1985* (SA), s 125; *Electoral Act 2002* (Vic), s 158

²¹ *Commonwealth Electoral Act 1918* (Cwlth), s 340(1)

intended that there will still only be one designated campaign area at these locations.²² The Department advised that:

While some voting centres have more than one entrance, the proposed amendments are designed to allow only one designated campaign area at each voting centre. Creating more than one campaign area would create unnecessary complexity and inequity between voting centres.

The designated campaign area must be accessible to voters. This could include placing it at a suitable location that is within sight and reach of more than one entry point. The Northern Territory Electoral Commission may also erect signage at voting centres to direct voters to the location of designated areas.²³

3.19 Pursuant to proposed section 268, 'campaigning activity' means any of the following:

- a) canvassing for votes;
- b) soliciting the vote of a person;
- c) inducing a person not to vote for a particular candidate;
- d) inducing a person not to vote at the election;
- e) exhibiting a notice or sign relating to the election.

3.20 However, under proposed section 275B(2) the conduct of a person in a designated campaign area established by the Commission is limited to canvassing for votes, soliciting the vote of a person and handing out how-to-vote cards. As such, the Commission queried whether campaign workers would be allowed to "display posters, corflute signs or other campaign materials in this designated area."²⁴

3.21 Noting that 'exhibiting a notice or sign relating to the election' is expressly prohibited under section 275, the Department advised that this would also apply to section 275B(2):

Accordingly, displaying corflute signs and other campaign materials remains prohibited in designated campaign areas.²⁵

Mr Tom McCrie (Principal Legal Policy Officer: Department of the Chief Minister) further advised that the wearing of campaign T-shirts and badges would be permitted within designated campaign areas since "the only prohibition on those is within the polling place itself."²⁶

3.22 Proposed section 275B(3) provides that a designated campaign area must be 'large enough to allow up to 3 campaigners for each candidate registered in the relevant division.' The Commission queried whether third party campaigners would be permitted in these areas.²⁷ In response, the Department noted that it will be a matter

²² Northern Territory Electoral Commission, Submission 1, p.2

²³ Department of the Chief Minister, *Responses to Written Questions*, 19 February 2019, <https://parliament.nt.gov.au/committees/spsc/72-2018>, p.6

²⁴ Northern Territory Electoral Commission, Submission 1, p.2

²⁵ Department of the Chief Minister, *Responses to Written Questions*, 19 February 2019, <https://parliament.nt.gov.au/committees/spsc/72-2018>, p.5

²⁶ Committee Transcript, Public Hearing, 20 February 2019, p. 10

²⁷ Northern Territory Electoral Commission, Submission 1, p.2

for each candidate to determine “who they nominate as a campaigner in their division for the purposes of the designated campaign area.”²⁸

- 3.23 Mr Wood questioned the purpose of section 275B and suggested that it should be removed from the Bill given that:

To allow them [campaigners] in the prohibited area defeats the reason for a prohibited area. If how-to-vote cards are needed leave them on a table near the entrance to the polling booth. Also the way the section reads under these changes, designated campaign areas could be allowed within a 10m prohibited area, which was prohibited under the old rules and would mean designated campaign areas would be nearly up to the front entrance of the polling booth.

The Chief Minister said in his second reading that he wants to ensure a *gauntlet is not recreated* then the scrapping of section 275B would achieve that without any complications or controversy that is likely to occur with designated campaign areas.²⁹

- 3.24 Noting that “a healthy democracy requires voters to have access to electoral information such as how-to-vote cards or speaking with candidates and campaigners”, the Department advised the Committee that to ensure a gauntlet is not recreated, proposed section 275B(3)(c) provides that in determining a designated campaign area, the Commission must ensure that it is also ‘avoidable by voters who do not wish to engage with campaigners.’³⁰

- 3.25 As mentioned previously, the conduct within a designated campaign area is limited to handing out how-to-vote cards, soliciting and canvassing for votes. While acknowledging that the latter terms are not specifically defined in the Act, Ms Jean Doherty (Executive Director Federal Policy and Strategic Coordination: Department of the Chief Minister) advised the Committee that they are taken to mean:

to initiate a conversation with a person, as opposed to calling someone out. ... The key thing is that the voter has to want to go to the designated campaign area and they are not to be enticed to do so. That is the key point.³¹

- 3.26 In support of the concept of designated campaign areas, the Commissioner noted that:

In relation to the exclusion zone within the 100 metres for candidates to have a place to hand out how-to-vote cards, we do support that. We think that this is a practical measure, particularly with the change back to full preferential voting where how-to-vote cards certainly have a role to play in assisting electors to cast a formal vote. We think voters should have access to how-to-vote cards but have the choice to acquire this information.³²

The expectation of the Electoral Commission is that the intent is that it is just a place where people can collect how-to-vote cards. If you have a voter who is walking through and they want to collect a how-to-vote card, they would go to the party worker who is offering the how-to-vote card they want, collect it and enter the polling place and vote. It is not an area where people would be screaming

²⁸ Department of the Chief Minister, *Responses to Written Questions*, 19 February 2019, <https://parliament.nt.gov.au/committees/spsc/72-2018>, p.5

²⁹ Mr Gerry Wood MLA, Submission 2, pp.1-2

³⁰ Committee Transcript, Public Briefing, 3 December 2018, p.3

³¹ Committee Transcript, Public Hearing, 20 February 2019, p.13

³² Committee Transcript, Public Hearing, 20 February 2019, pp 2-3

and yelling at people and asking them to come and collect their how-to-vote cards.³³

It cannot be a distraction, it really has to be nothing more than a place where people can walk up, collect how-to-vote cards. We are not looking for places where people will be trying to convince people to vote for this person or that person. Technically, it is an exclusion zone. We are only creating an exemption so that how-to-vote material can be made available.³⁴

- 3.27 With regards to Mr Wood's suggestion that how-to-vote cards could just be left on a table near the entrance to the polling booth, the Committee heard that this option was considered in the drafting of the Bill. However, as Ms Doherty pointed out:

That would require the Electoral Commissioner and his staff to be able to monitor those particular designated tables across all of the polling centres, which is quite resource intensive and it also puts the Electoral Commissioner potentially in a difficult area in terms of arbitrating the equity between those different areas.³⁵

- 3.28 Given that the majority of shopping centres, which are often used as early voting centres, do not allow party workers to scrutineer in their premises, the Commissioner further advised the Committee that:

In practice that is what we did at the early voting centres ... We had a table and voters could access how-to-vote cards should they choose to. I am open to that option, but there are some practical issues with that. What happens if someone runs out of how-to-vote material? What happens if a voter comes in and just grabs all the how-to-vote material of someone they do not support so there is no how-to-vote material there?³⁶

- 3.29 As an alternative to the options discussed above, the Committee heard that in South Australia the Electoral Commissioner must have posters formed from how-to-vote cards submitted by candidates prepared for use in polling booths.³⁷ However, as the Commissioner pointed out:

It is an option, but it would be potentially confusing for some electors to try to identify which is the how-to-vote card they want to use. You will, basically, be walking in and it will be like *The Matrix* – all different numbers in different places. There is no perfect solution.³⁸

Committee's Comments

- 3.30 While acknowledging the value of ensuring voters have access to how-to-vote cards, the Committee was not convinced that designated campaign areas should also allow canvassing and soliciting for votes. As highlighted in the *Consultation Discussion Paper: Electoral Reforms in the Northern Territory*, the Committee notes that to do so would be at odds with all other Australian jurisdictions which expressly prohibit canvassing and soliciting for votes in prohibition zones.³⁹

³³ Committee Transcript, Public Hearing, 20 February 2019, p.4

³⁴ Committee Transcript, Public Hearing, 20 February 2019, pp.5-6

³⁵ Committee Transcript, Public Hearing, 20 February 2019, p.12

³⁶ Committee Transcript, Public Hearing, 20 February 2019, p.6

³⁷ Committee Transcript, Public Hearing, 20 February 2019, p.6; see also *Electoral Act 1985* (SA), s. 66(1)

³⁸ Committee Transcript, Public Hearing, 20 February 2019, p.6

³⁹ Northern Territory Government, *Consultation Discussion Paper: Electoral Reforms in the Northern Territory*, Northern Territory Government, Darwin, 2017, pp.12-13

- 3.31 The Committee further notes that, as drafted, the Bill provides that a designated campaign area must be 'large enough to allow up to 3 campaigners for each candidate registered in the relevant division'. Given that this could quite easily equate to nine or more campaign workers in many designated campaign areas, the Committee does not consider that it would necessarily be possible to ensure that the area is both accessible to and avoidable by voters and does not constitute a distraction or re-create a 'gauntlet' situation.
- 3.32 As noted by Mr Wood, the Committee agrees that the notion of designated campaign areas would seem to defeat the purpose of having prohibition zones which, as the Commissioner pointed out, worked extremely well at the last Territory election. However, as provided for in Western Australia, Queensland, New South Wales, and Victoria, the Committee is of the view that it would be beneficial if how-to-vote cards were made available near the entrance to polling booths for voters to collect should they choose to do so.
- 3.33 Noting the concerns raised by the Department and the Commissioner regarding the provision of how-to-vote cards on unmanned tables, the Committee agrees that Electoral Commission staff should not be responsible for refreshing stocks of how-to-vote cards. Rather, it is suggested that campaign workers for each candidate registered in the relevant division should be responsible for monitoring and restocking how-to-vote cards as required.
- 3.34 Alternatively, should the Department in consultation with the Electoral Commissioner consider that this would be impractical, the Committee suggests that consideration be given to the provision of how-to-vote information in polling booths in a similar manner to that provided for in section 66(1) of the South Australian legislation.
- 3.35 The Committee considers that the proposed amendments outlined above strike an appropriate balance between ensuring voters have access to how-to-vote material and ensuring that the legislation does not recreate a situation where voters have to 'walk the gauntlet'.

Recommendation 3

The Committee recommends that proposed section 275B be deleted and replaced with a provision whereby:

The Commissioner may designate an area within 10 metres of the entrance of a polling booth where how-to-vote cards may be made available for collection by voters, with campaign workers for each candidate registered in the relevant division responsible for monitoring and refreshing stocks of how-to-vote cards as required in compliance with the rules of the prohibition zone.

Appendix 1: Submissions Received

Submissions Received

1. Northern Territory Electoral Commission
2. Mr Gerry Wood MLA

Note

Copies of submissions are available at: <https://parliament.nt.gov.au/committees/spsc/72-2018>

Appendix 2: Public Briefing and Public Hearings

Public Briefing – 3 December 2018

Department of the Chief Minister

- Hayley Richards: Acting Deputy Chief Executive Officer
- Tom McCrie: Principal Legal Policy Officer

Public Hearing – 20 February 2019

- Iain Loganathan: Northern Territory Electoral Commissioner
- Maria Mohr: Deputy Chief Executive Officer, Department of the Chief Minister
- Jean Doherty: Executive Director Federal Policy and Strategic Coordination, Department of the Chief Minister
- Genevieve Mogridge: Director Federal Policy and Strategic Coordination
- Tom McCrie: Principal Legal Officer, Department of the Chief Minister
- Gerry Wood MLA: Member for Nelson

Note

Copies of hearing transcripts and tabled papers are available at:
<https://parliament.nt.gov.au/committees/spsc/72-2018>

Bibliography

Commonwealth Electoral Act 1918 (Cwlth)

Department of the Chief Minister, *Responses to Written Questions*, 19 February 2019, <https://parliament.nt.gov.au/committees/spsc/72-2018>

Electoral Act 1907 (WA)

Electoral Act 1982 (ACT)

Electoral Act 1985 (SA)

Electoral Act 1992 (Qld)

Electoral Act 2002 (Vic)

Electoral Act 2004 (NT)

Electoral Act 2004 (Tas)

Electoral Act 2017 (NSW)

Electoral Regulations

Explanatory Statement, *Electoral Legislation Amendment Bill 2018 (Serial 72)*, <https://parliament.nt.gov.au/committees/spsc/72-2018>

Local Government (Electoral) Regulations

Northern Territory Electoral Commission, *2016 Territory Election Report*, Northern Territory Electoral Commission, Darwin, 2017

Northern Territory Government, *Consultation Discussion Paper: Electoral Reforms in the Northern Territory*, Northern Territory Government, Darwin, 2017

Northern Territory Government, *Summary of Consultation Feedback: Electoral Reforms in the Northern Territory*, Northern Territory Government, Darwin 2018

Parliamentary Record, *Debates Day 3 – 29 November 2018*, <http://www.territorystories.nt.gov.au/jspui/handle/10070/305255>

Statement of Compatibility with Human Rights, *Electoral Legislation Amendment Bill 2018 (Serial 72)*, <https://parliament.nt.gov.au/committees/spsc/72-2018>