# ECONOMIC POLICY SCRUTINY COMMITTEE

## Electoral Legislation Further Amendment Bill 2019

## DEPARTMENT OF THE CHIEF MINISTER'S RESPONSE TO ADDITIONAL WRITTEN QUESTIONS FROM THE COMMITTEE

**Clause 12 – Section 32 amended (Nomination form)**

1. **In the Explanatory Speech it was noted that the Bill provides for the nomination deposit to be increased to $500 to reflect the effects of inflation. However, proposed s32 allows the nomination deposit to be prescribed by regulation. This would enable a government to impose a prohibitive nomination deposit before an election and after scheduled sittings have concluded. As such it could be deemed an inappropriate delegation of legislative power.**

a. **What is the rationale for prescribing the amount of the nomination deposit by regulation rather than setting a fixed amount as indicated in the Explanatory Speech?**

The proposed amendments are based on a recommendation included in the Northern Territory Electoral Commission's (NTEC) 2012 and 2016 Territory Election Reports. In making its recommendation, NTEC noted that the amount had not been increased since 1980.

The legislation provides for an increase in the nomination deposit amount to $500, reflecting the effect of inflation historically, and allows for the deposit to be paid electronically to provide administrative ease, given the increasing prevalence of online banking.

By not linking the nomination deposit amount to monetary units (which is adjusted on an annual basis in accordance with the *Monetary Units Act 2018*), the proposed amendments provide a fixed amount for the nomination deposit amount. That is, it will not be automatically adjusted on a yearly basis. This will allow for the amount to be reviewed and adjusted in the future to ensure that, as noted by NTEC in its 2016 Territory Election Report, it is set at a rate that is "*a suitable deterrent to frivolous participants, whilst not providing a barrier to legitimate candidates*".

Regulations, which are made by the Administrator on the advice of the Executive Council and as proposed by the Minister responsible for the Act under which the regulations are to be made, are widely used across the Northern Territory Statute Book to set fees.

It is also noted that a nomination deposit is returned if the candidate is elected, obtains a number of first preference votes equal to or greater than 20 per cent of first preference votes, or withdraws their nomination. For the 2016 election, approximately 62 per cent of nomination deposits were refunded in the Northern Territory.

**Clause 14 – Section 42 amended and Clause 37 – Section 69 amended (Arrangements for voting)**

2. ***Proposed s69(2A) states that a region may be declared to apply to one or more specific early voting centres.***

**a. What does it mean to declare that a region applies to one or more early voting centres?**

While the Act currently provides for the declaration of regions, it does not include a mechanism to link a declared '*region*' to a specific early voting centre declared under section 42(1)(a). The insertion of proposed section 69(2A) is a technical amendment to clarify the link between regions declared under section 69(1) and the early voting centres appointed under section 42(1)(a).

The nature and location of early voting centres means that voters from a number of regions may choose to vote at a single early voting centre. For example, people from divisions all over the greater Darwin area may choose to vote at the Darwin CBD early voting centre if they work in the city. For this reason, section 69(1) allows NTEC to declare regions.

Declaring a region comprising one or more early voting centres allows NTEC to accept early votes at the relevant centres as ordinary votes. If a region is not applied to a particular early voting centre then any voter from outside that region will be casting an absent vote.

Sections 42(1)(a) and 69(2A) are to be read in conjunction with each other, allowing the Commission to make arrangements for appointed early voting centres:

- the first provision (proposed section 42(1)(a)) relates to the physical venue of an early voting centre; and
- the second provision (proposed section 69(2A)) links the appointed early voting centre to a region.

As outlined above, this process will allow a voter from that region to cast an ordinary vote. All other voters will be required to cast an absent vote.

**b. How does proposed s69(2A) interact with proposed s42(1)(a)?**

Minimal changes have been proposed to sections 42 and 69 of the Act.

Proposed section 42(1)(a) has only been amended to reflect terminology changes, that is, the term "pre-election" has been replaced with "early voting". This section provides NTEC with the power to appoint the venues where early voting can be conducted.

As outlined above, proposed section 69(2A) provides that NTEC may declare a region comprising one or more early voting centres.

The two provisions are to be read in conjunction with each other, allowing NTEC to make arrangements for appointed early voting centres:

- the first provision (proposed section 42(1)(a)) relates to the physical venue of an early voting centre; and
- the second provision (proposed section 69(2A)) links the appointed early voting centre to a region.

This process will allow a voter from that region to cast an ordinary vote. All other voters will be required to cast an absent vote.

**c. What would be the effect on the operation of the Bill of removing proposed s69(2A)?**

As outlined above, while the Act currently provides for the declaration of regions, it does not include a mechanism to link a declared '*region*' to a specific early voting centre declared under section 42(1)(a). The insertion of proposed section 69(2A) is a technical amendment to clarify the link between regions declared under section 69(1) and the early voting centres appointed under section 42(1)(a).

This process will allow a voter from that region to cast an ordinary vote. All other voters will be required to cast an absent vote.

Therefore, removing proposed section 69(2A) would remove the mechanism to link a '*region*' to a specific early voting centre.

***3. Clause 14, proposed section 42, subsection (1)(a) specifies that the Commission may, in writing, appoint a stated place to be an early voting centre for an election while subsection (1)(b) states that the Commission may appoint a stated place to be an election day voting centre for an election for one or more divisions.***

**a. Why is the phrase '*one or more divisions*' specified in subsection (1)(b) but not in (1)(a)?**

The proposed amendments have been drafted to be as minimal as possible, with existing sections amended rather than replaced.

Under the Act, subsection 42(1)(a) does not reference '*divisions*' or '*regions*' – this is specified in section 69 and the amendments to section 69 have been proposed accordingly.

If the concept of '*regions*' was to be removed, and language similar to section 42(1)(b) was used, then sections dealing with putting absent votes in ballot boxes and provisions that deal with sorting and counting absent votes would also need to be amended. As noted above, the intention was to make minimal amendments. Using the existing framework of '*regions*' meant that only limited changes to vote marking or scrutiny processes for early votes was required.

Current subsection 42(1)(b) does reference the appointment of an election day voting centre for a '*division*'. Thus, the Bill includes proposed amendments to subsection 42(1)(b) to allow NTEC to appoint an election day voting centre for '*one or more divisions*'.

This has the same effect as the '*regions*' framework used for early voting. However, for election day voting centres amending subsection 42(1)(b) to read '*one or more divisions*' is designed to reduce the level of absent voting at voting centres that are heavily used by voters from two or more divisions. For example, if an election day voting centre is located close to a divisional boundary, it is likely voters from both divisions will vote at the centre. Appointing the place to be an election day voting centre for both divisions will allow voters from both divisions to cast ordinary votes.

**Clause 94 – Section 176 amended (Definitions)**

4. ***Proposed s176 – 'candidate' (d) defines a candidate as a person 'who contested an election that was within 4 years before election day for the election'. This definition could place reporting requirements on any person who was a candidate for an election over the last four years and, in some instances, would include all the candidates from the previous general election.***

a. **Who is this definition intended to capture?**

b. **What is the reason for designating the timeframe as '*within 4 years before election day*'?**

A '*candidate*' is not currently defined in the Act as reporting requirements are currently tied to the disclosure periods as set out in section 182. The Bill includes proposed amendments to repeal this section, with new reporting obligations set out in proposed sections 191 to 194 (Clauses 102, 103 and 104).

The new definition of '*candidate*' clarifies when a person is a candidate and is critical in determining when a person becomes subject to reporting obligations as a candidate. The definition in proposed section 176 (Clause 94) is based on obligations contained in existing section 182 to capture the same disclosure periods, including when the disclosure period for an election starts:

- section 182(1)(a): for a candidate who was a candidate in an election the polling day for which was within four years before polling day for the relevant election – at the end of 30 days after polling day for the last election before the relevant election in which the person was a candidate; and

- section 182(1)(a): for a person or entity to which section 192 or 193 applies – at the end of 30 days after the polling day for the last general election.

The new definition of '*candidate*' and existing section 182 Disclosure Periods are intended to capture candidates from the previous election whether or not they are contesting the current election.

This provides continuity of reporting by ensuring that previous candidates, as participants in the electoral environment, are obliged to report political donations or electoral expenditure that may occur. Without this continuity of reporting, donations and electoral expenditure may remain unreported, particularly as nominations or endorsement may occur very close to election day, reducing the overall transparency of the electoral landscape.

Under proposed section 204A (Clause 117), unendorsed candidates do not have to include in their annual returns information disclosed in returns provided under proposed sections 191 and 192 (Clause 102). In addition, under proposed section 201 (Clause 113) and current section 198, nil returns can be submitted if a 'candidate' does not incur any electoral expenditure or receive any donations.

**Clause 103 – Section 193 amended (Donations to candidates)**

5. ***Proposed s193(4) states 'The return must state for each person referred to in subsection (1) ...'. However, the only 'person' in subsection (1) is the person providing the return. The current Act states that the return 'must state for each gift mentioned in subsection (1)'.***

a. **Is the statement that the return '*must state for each person referred to in subsection (1)*' and error and should it read '*must state for each gift mentioned in subsection (1)*' as it does in the current Act?**

There is no drafting error. The Department of the Chief Minister has sought advice from the Office of the Parliamentary Counsel who confirmed the wording is correct.

The proposed amendment requires the person submitting the return to disclose the total amount of gifts made to each candidate (or entity referred to in section 193(1)(b)) instead of disclosing the amount and date of each gift.

**Clause 117 – Section 204A inserted**

6. ***Proposed section 204A requires a reporting agent of a candidate who is not endorsed by a registered party to not disclose any gift that has already been reported to the Commission under another provision of this Part.***

a. **What is the rationale for introducing this provision – why is duplication of such reporting expected to be a potential issue?**

The amendments proposed to sections 191, 192 and 207 (Clauses 102 and 121) replace the requirement for candidates to provide one return each election cycle with a requirement to provide increased pre-election reporting (sections 191 and 192) and an ongoing annual return (section 207).

Proposed section 204A has been inserted to ensure that unendorsed candidates do not have to include in their annual returns information disclosed in returns required under proposed sections 191 and 192 (Clause 102). That is, there will be no need to duplicate the new pre-election and post-election reporting requirements introduced under Clause 102.

This recognises that unendorsed candidates have not previously been required to provide annual returns and may not have the same level of resources and staffing as a political party.