

Statement of compatibility with human rights

Prepared in accordance with the Thirteenth Assembly Sessional Orders (part 12.3) as adopted on 24 August 2017.

Electoral Legislation Amendment Bill 2018

Serial No. 72

1. This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).

OVERVIEW OF THE BILL

2. This Bill amends the *Electoral Act* (the Act) and *Electoral Regulations* (the Regulations) in relation to two main changes to campaigning and voting in Northern Territory elections:

A. Full preferential voting method

3. The current voting method is optional preferential voting and is proposed to be returned to the full preferential voting method (FPV), which existed under previous versions of the Act.
4. A FPV method requires voters to indicate preferences for all candidates on the ballot paper in order to cast a valid vote; an optional preferential voting method allows voters the choice to indicate preferences for one or more candidates but no requirement to indicate all candidate preferences.
5. This amendment will establish consistency of the voting method across local government, Territory and Federal elections. This is expected to provide greater clarity for voters as the public will receive consistent communications and instructions for how to vote at elections across all three levels of Government, leading to a long-term reduction in the rates of unintentional informal voting.

B. Reduced exclusion zones and designating a campaign area for campaign workers

6. The Act currently provides that a person must not undertake campaigning activities within 100 metres of the entrance of a voting centre. The policy rationale for this exclusion zone is to facilitate the orderly conduct of elections and allow voters to approach a voting centre free from confrontation or pressure by campaigners. The proposed amendments reduce the 100 metre exclusion zone in certain areas and allows the Northern Territory Electoral Commission (the NTEC) to designate a specified area for campaign workers within the exclusion zone. The designated area must be located to be both accessible and avoidable by voters so that voters have the option to approach campaigners to receive how-to-vote cards or discuss electoral matters. The introduction of a designated campaign area recognises that providing voters access to electoral materials is important in a healthy democratic process.

HUMAN RIGHTS IMPLICATIONS

1. *Right to take part in public affairs and elections*

7. Clause 6 of the Bill provides for the FPV method of voting, which mandates that voters indicate preferences for all candidates on the ballot paper. In all other ways, the voting process remains the same. The FPV method of voting requires greater engagement of voters because a preference must be expressed for all candidates. In the context of the Act, FPV guarantees the free expression of the will of the voters in alignment with article 25(b) of the International Covenant on Civil and Political Rights (ICCPR) and is supportive of political rights.
8. Clause 9 of the Bill (change of mobile polling place, dates or hours for voting) is supportive of political rights, as it requires that changes to mobile voting centre location or polling hours are made public and that the notice must be 'reasonable and practicable in the circumstances' (section 81(2)). This provision acts as a safeguard for remote and regional voters so that these voters are not disadvantaged through unannounced changes to mobile voting centres, or a voting centre closing early without adequate notice. Ensuring fair and reasonable access to voting facilities is in alignment with article 25(b) ICCPR. As a whole, providing for mobile voting centres (early voting in regional and remote areas across the Northern Territory) promotes universal and equal suffrage and reduces logistical and practical barriers which otherwise may impede the realisation of this political right for geographically isolated voters.
9. Clause 10, specifically sections 94(5)-(6) of the Act, allows the voter's intention when marking a ballot paper to be considered if the voter's intention is clear. This provision is supportive of political rights as it affords voters with low literacy and numeracy skills a greater chance that their vote will be counted (article 25(b), ICCPR). For example, if a voter makes a mistake when numbering their preferences and leaves a candidate square blank, effect can be given to the voter's intention (in so far as the voter's intention is clear) despite the fact the ballot paper has been completed incorrectly. This amendment is also applied to the Local Government (Electoral) Regulations to ensure consistency between Territory and local government elections.

2. *Right to freedom of assembly*

10. Clauses 10 and 11 of the Bill relate the definition of 'campaigning activity', offence provisions for campaigning activities near voting centres, and the NTEC designating alternate prohibition zones and designated campaign areas. It can be argued that these provisions touch upon the right to peaceful assembly (article 21, ICCPR). However, only activities relating to canvassing for votes and exhibiting notices or signs relating to the election are affected, the Bill does not otherwise limit the right to peaceful assembly or peaceful protest. To the extent that the right to freedom of assembly is limited, it is done so for the purpose of 'public order' and is seen as proportionate to the interests of protecting public order.
11. The considerations in relation to the right to freedom of expression apply equally to the right to freedom of assembly and are discussed in detail below.

3. *Right to freedom of expression*

12. In accordance with article 19(3), the right to freedom of expression is limited in this instance for the purpose of 'public order'. The public purpose underlying this limitation is to ensure that voters have easier access to voting centres and do not have to 'walk the gauntlet' in order to enter a voting centre and cast their vote. The prohibition zones prescribed by the Bill range from 10 to 100 metres. A distance of 100 metres is seen as proportionate in this instance, and in practical terms, does not enforce an unreasonable distance for campaign workers and political activists.
13. Section 275B allows the NTEC the discretion to designate an alternative prohibition zone, between 10 and 100 metres (section 275A(2)) and must give notice of the alternative prohibition zone to each candidate as soon as practicable after it is declared. This discretion is supportive of the right to freedom of expression because it provides the NTEC with flexibility to ensure the prohibition zones are appropriate for each voting centre and overcome any undesirable circumstances created by the application of a rigid distance.

CONCLUSION

14. As outlined, this Bill is compatible with human rights as, where it does engage with the applicable rights and freedoms (refer paragraphs 10 and 12), it is not an unreasonable or disproportionate limit on rights and is for the overall policy objective of establishing public order and free and easy access of the general public to voting centre facilities.