

# SOCIAL POLICY SCRUTINY COMMITTEE

Public Hearing – 20 February 2019

Electoral Legislation Amendment Bill 2018

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

1. Noting that schools are often used as election-day voting centres, NTEC advised the Committee that the 100 metre prohibition boundary usually covers only part of the school thereby allowing campaign workers to still campaign in areas of the school ground that fall outside of this boundary. The Committee understands that this caused a number of issues during the 2016 Territory election and proved difficult for NTEC staff to administer.

*a. Was any consideration given to providing NTEC with the discretion to extend the prohibition boundary so that it encompasses the whole school? If not, why?*

*b. How would it impact on the operation of the legislation if proposed subsection 275A(2) was amended to allow NTEC to designate an alternative prohibition zone with a boundary greater than 100 metres of the voting centre in such circumstances.*

1. At the 2016 Election, a number of issues with the 100 metre prohibition zone established under the current *Electoral Act* (the Act) were identified in remote and regional areas and at the pre-election voting centres. For example, there were instances where the 100 metre prohibition zone included a large portion of a shopping centre or extended to residential properties.
2. The proposed amendments retain the 100 metre prohibition zone for election day voting centres and introduces a smaller, 10-metre buffer zone for mobile voting centres and pre-election voting centres, including regional and remote areas. The amendments reflect the different nature of these voting centres and the unique nature of voting in the Northern Territory.
3. The proposed amendments also recognise that a one-size fits-all approach can lead to unintended consequences, and provides a discretionary power for the Northern Territory Electoral Commission to designate an alternative prohibition zone with boundaries between 10 and 100 metres of the voting centre. The provision of a discretionary power will ensure that prohibition zones are applied appropriately to each voting centre.

4. 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.
5. 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.
6. 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.
7. 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.
8. The minimum boundary size of 10 metres was set to ensure freedom of movement and avoid unnecessary regulation of areas well outside the active voting and canvassing areas. The Electoral Commission has existing powers under section 295 to manage disruptive behaviour.
9. The maximum boundary size of 100 metres maintains the boundary size that was applied to prohibition areas for the 2016 Territory Election and recognises that 100 metres does not extend into other properties in the majority of situations. The proposed amendments are designed to address the issues faced in applying the 100 metre boundary in 2016 through the provision of a discretionary power for the Northern Territory Electoral Commission.
10. Limiting the Commission's discretionary power to set the boundary of a prohibition zone between 10 and 100 metres is designed to prevent inequity between voting centres, while still ensuring that prohibition zones are applied appropriately to each voting centre.
11. The Commission's discretionary power with respect to setting the boundaries of prohibition zones is complemented by a new discretionary power to issue a Code of Conduct for Campaigners. Where campaigners are simply not permitted in a prohibition zone, a Code of Conduct gives the Commission more flexibility to govern behaviour of campaigners at voting centres, both inside and outside prohibition zones.

12. 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.
13. The Code of Conduct would function to assist the Commission to formalise existing guidelines and information about campaigning that it distributes to candidates.

**2. To overcome issues identified in regional and remote areas, section 275 provides that a person must not engage in a campaigning activity during polling hours within 10 metres of the entrance of a pre-election or mobile voting centre. Notwithstanding the provision for NTEC to designate an alternate prohibition zone, concern has been raised that there will be a tendency to work to the 10 metre default rather than ensure that the prohibition zone is as large as practical within the 100 metre limitation.**

- a. Was any consideration given to expressing the 10 metre prohibition zone as the 'minimum' distance from the entrance of a pre-election or mobile voting centre rather than as the default distance?*
- b. How would it impact on the operation of the legislation if a note was inserted to clarify that the prohibition zone should be as large as practical within the 100 metre limitation?*

14. As outlined above, the proposed amendments introduce 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 Northern Territory.
15. The proposed amendments provide the Northern Territory Electoral Commission with a discretionary power for the Northern Territory Electoral Commission to designate an alternative prohibition zone with boundaries between 10 and 100 metres of the voting centre.
16. 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.

**3. Proposed section 275B provides that NTEC may designate an area to be a designated campaign area in a place where campaigning activity is prohibited under section 275 or 275A. It has been suggested to the Committee that this would seem to defeat the purpose of the prohibition zones and should be removed from the Bill.**

***a. Can you clarify for the Committee the intended purpose of clause 275B?***

***b. How would it impact on the operation of the legislation if this section was removed from the Bill?***

17. The proposed amendments provide for an express power where the Northern Territory Electoral Commission may declare a designated area to be exempt from the 100 metre prohibition zone.
18. To allow the Northern Territory Electoral Commission to pre-determine the size and location of the designated area for each voting centre, while maintaining equity for all candidates who wish to use the designated area, the proposed amendments provide a cap of three campaigners per candidate in the designated area at any given time.
19. While the prohibition zone established under section 275 supports ease of voting by ensuring voters do not have to “walk the ‘gauntlet’”, it is also important to provide voters with access to electoral information, if they so desire.
20. The designated area would provide voters with an alternative and contained means of obtaining information from candidate(s) if voters wish to do so, without re-introducing a ‘gauntlet’ type situation. As noted by the Electoral Commissioner, the provision of this information is particularly important with the proposed return to full preferential voting.
21. The proposed amendments require the designated areas to be located in an area that is accessible by voters who wish to speak to candidates or campaigners. To preserve the intent and integrity of the prohibition zone, designated campaign areas must also be located to be avoidable by voters who do not wish to engage in this way.
22. Further, section 275B(2) only permits specific, non-disruptive, activities within the designated campaign area. Within designated campaign areas, a person may canvass for votes, solicit the vote of a person and hand out how-to-vote cards – all other activities prohibited in the prohibition zone continue to be prohibited in the designated campaign area. For example, the obligations in existing section 275(3) prohibiting the use of loud speakers or other tools to broadcast sound continue to apply under section 275(4).

23. While not defined in the Act, the ordinary meaning of 'canvassing' and 'soliciting' focus on the activity of initiating direct contact with a person and seeking to obtain something from a person. These activities, along with handing out how-to-vote cards were specifically chosen as suitable for the designated campaign area because they are not disruptive to voters generally and maintain the integrity of the prohibition zone.
24. Removing section 275B from the Bill, would have the effect of reducing voter access to electoral information, which is an important feature in a healthy democratic process

**4. Proposed section 275B(2) provides that a person may engage in canvassing votes, soliciting the vote of a person and handing out how-to-vote cards in designated campaign areas.**

***a. Will campaigners in designated campaign areas be allowed to display posters, corflute signs or other campaign materials?***

25. As discussed above, only the following activities identified in section 275B(2) are permitted within a designated campaign area:
  - a. canvassing for votes;
  - b. soliciting the vote of a person;
  - c. handing out how-to-vote cards.
26. Exhibiting a notice or sign relating to the election is expressly prohibited under section 275 and is not permitted under section 275B(2). Accordingly, displaying corflute signs and other campaign materials remains prohibited in designated campaign areas.

**5. The Committee understands that a designated campaign area must be large enough to allow up to 3 campaigners for each candidate registered in the relevant division.**

***a. Can you clarify for the Committee whether third party campaigners will be permitted in designated campaign areas?***

27. Under section 275B(3)(a), the designated campaign area is limited to the use by three campaigners for each candidate registered in the relevant division.
28. As such, the candidate has discretion as to who they nominate as a campaigner in their division for the purposes of the designated campaign area.

**6. As noted by NTEC, it is not unusual for voting centres to have multiple points of entry.**

***a. Where this is the case, is it intended that there will still only be one designated campaign area at these locations?***

29. 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.

30. 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.