



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY
13th Assembly
SOCIAL POLICY SCRUTINY COMMITTEE

Public Briefing Transcript

Electoral Legislation Amendment Bill 2018

3.30 pm, Monday, 3 December 2018
Litchfield Room, Level 3, Parliament House, Darwin

Members:

Ms Ngaree Ah Kit MLA, Chair, Member for Karama
Mrs Lia Finocchiaro MLA, Member for Spillett
Mrs Robyn Lambley MLA, Deputy Chair, Member for Araluen
Ms Sandra Nelson MLA, Member for Katherine

Witnesses:

Hayley Richards: Acting Deputy Chief Executive Officer, Department of
the Chief Minister
Tom McCrie: Principal Legal Policy Officer, Department of the Chief
Minister

Electoral Legislation Amendment Bill 2018

Department of the Chief Minister

Madam CHAIR: Good afternoon everyone and thank you for joining us. I am Ngaree Ah Kit, the Member for Karama and the Chair of the Social Policy Scrutiny Committee. On behalf of the committee I welcome everyone to this public briefing into the Electoral Legislation Amendment Bill 2018.

I also acknowledge my fellow committee members in attendance today: Lia Finocchiaro, Member for Spillet; and via teleconference Robin Lambley, Member for Araluen and Sandra Nelson, Member for Katherine.

I welcome to the table to give evidence to the committee from the Department of the Chief Minister Hayley Richards, Acting Deputy Chief Executive Officer and Tom McCrie, Principal Legal Policy Officer. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and we look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of Parliamentary Privilege and the obligation not to mislead the committee applies.

This is a public briefing and is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website. If at any time during the hearing you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and hear your evidence in private.

I will ask each witness to state their name for the record and the capacity in which you appear. I will then invite you to make an opening statement before proceeding to the committee's questions.

I will ask each witness to introduce themselves first.

Ms RICHARDS: Hayley Richards, Acting Deputy Chief Executive Officer, Department of the Chief Minister.

Mr McCRIE: Tom McCrie, Principal Legal Policy Officer, Department of the Chief Minister.

Madam CHAIR: Thank you very much. Ms Richards, would you like to make an opening statement.

Ms RICHARDS: Yes please.

Madam Chair thank you for the opportunity to brief the committee on the Electoral Legislation Amendment Bill 2018. This bill is the second stage of electoral reforms. The first was the Electoral Amendment Bill 2018 focusing on the redistribution process which was before the committee in October of this year and passed by the Legislative Assembly last week.

Consultations on this bill were undertaken over a 10 week period from November 2017 to January 2018 through the Have Your Say website comprising consultation meetings, presentations and letters sent to 43 key stakeholders including the Local Government Association of the Northern Territory and 24 members of the Legislative Assembly.

More detailed consultation was undertaken with the Electoral Commission on the operational aspects of the bill. The Department of Housing and Community Development were also consulted in relation to the consequential amendments affecting local government elections.

As outline during our previous attendance before the committee, the overarching aim of electoral reform is to improve participation and increase public support and confidence in our system of government. This is a key element of the government's integrity reform agenda.

The purpose of this bill is amend the Electoral Act to provide for two key changes to the way voting and campaigning operate in the Northern Territory. Voting systems are a crucial part of our democratic election process. They determine how votes are cast and the manner in which votes cast in an election are translated into seats in the legislature.

The key amendment to voting is to change the voting method. That is, the way a voter must mark a ballot paper in order to cast a formal vote. The bill proposes changing from the optional preferential voting method to the full preferential voting method. In both optional and full preferential voting methods, to win a seat in the Assembly a candidate needs to gain one vote more than 50% of the vote. This can be either on first preference votes alone or a combination of first preference and preferences from other candidates.

The optional preferential voting method is described as optional because the voter is only required to indicate a vote for their first preference candidate. Full preferential voting requires the voter to indicate a preference for every candidate by numbering all candidate squares.

A return to full preferential voting for Territory elections is preferable for two reasons. First, the full preferential voting method is consistent with how voters are instructed to complete ballot papers at both local government and federal government elections.

When optional preferential voting was introduced at the 2016 Territory general election 5% of informal votes at the 2017 local government elections were due to voters indicating only a first preference vote. This indicates that having different voting systems in place causes confusion amongst voters.

Second, full preferential voting encourages the full engagement of voters in the democratic process. It ensures that the outcome of elections is more closely aligned to the actual votes received. It means that every Territorian has an equal say either by primary vote or the allocation of a preference. In contrast, if a person indicates only a first preference under the optional preferential method, that person's vote becomes exhausted after allocation of that preference.

Supporting the return to full preferential voting are amendments that introduce discretion for the Electoral Commission to assess a ballot paper as formal where a rigid application of the act may see the ballot paper being assessed as informal for technical reasons and not counted in the vote. Most significantly, a new provision is introduced requiring that a ballot paper must be given effect according to the voter's intention.

For example, if a voter were to cross out a number written in a candidate square then circle or write a number next to that square, that vote could be deemed as informal. These amendments will allow more votes to be counted provided the intention is clear. Amendments to voter intent are also made to the Local Government (Electoral) Regulations to ensure that benefits are also applied to local government elections.

The bill also seeks to make amendments to the current 100 metre prohibition zone around voting centres where campaigning is prohibited. This prohibition was introduced 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.

Section 275 prohibits certain campaigning activities such as canvassing for votes and exhibiting signs related to the election. At the 2016 election a number of issues with the 100 metre zone were identified in remote and regional areas and at pre-election voting centres. In such instances, 100 metres was too large a distance relative to the size, nature and location of the voting centre.

For example, at a pre-election voting centre there were examples where 100 metres included a large portion of a shopping centre. The 2016 Territory Election Report published by the Northern Territory Electoral Commission identified that the 100 metre zone was particularly problematic at mobile voting centres in remote locations where prohibition zones encompassed entire communities or a significant number of private residences within that community.

The bill retains the 100 metre prohibition zone for election day voting centres but 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. To ensure the unique nature of each voting centre can be considered, a new section 275A is introduced which gives the Electoral Commission the discretion to designate an alternate prohibition zone with boundaries between 10 and 100 metres.

A healthy democracy requires voters to have access to electoral information such as how to vote cards or speaking with candidates and campaigners. New section 275B allows the Electoral Commission to designate an area within a prohibition zone to be a designated campaign area. Within a designated campaign area, a person can hand out how to vote cards and discuss electoral matters with voters. These areas will give voters the option whether to approach the designated campaign area to obtain electoral material and speak with campaigners.

To ensure a gauntlet is not recreated section 275B requires that designated campaign areas must be located to be accessible by voters who wish to speak to candidates or campaigners but also avoidable by voters who do not wish to engage.

Finally, the bill introduces a power for the Electoral Commission to issue a code of conduct for campaigners. A code of conduct would govern behaviour of campaigners at voting centres both in and outside of prohibition zones. It will formalise information contained in existing guidelines and newsletters published by the Electoral Commission. This is a key tool to support reducing the prohibition zone at pre-election and mobile voting centres while maintaining appropriate campaigning behaviours.

The code of conduct used in conjunction with prohibition zones would ensure a consistent and orderly approach to campaigning across voting centres, ensuring voters have easy access to voting centres and an undisturbed voting experience. To ensure any code of conduct is robust, fair and transparent, before issuing the code the proposed amendments require the Electoral Commission to consult with the leader of each registered political party and each unendorsed MLA.

I would now like to present my colleague, who has already introduced himself. He is available to answer any questions you may have regarding this amendment bill.

Madam CHAIR: Thank you very much.

I will now open it up to the committee for any questions. Member for Araluen or Member for Katherine down the line, would you like to start?

Ms NELSON: I do not have any questions at this time, thank you.

Madam CHAIR: Thank you Member for Katherine. Member for Araluen?

Mrs LAMBLEY: I have just one question and it is not about the content of the changes or anything. I was just wondering why the Department of the Chief Minister has carriage of this and not the Electoral Commission itself. How does that work?

Mr McCRIE: The Electoral Commission is governed by the act, established by the act and has powers under the act but the bill is actually administered by the Department of the Chief Minister. The Electoral Commission was consulted in this because obviously they have a lot of subject matter and specific expertise that will be very relevant. All changes were developed with that in mind.

Mrs LAMBLEY: Okay.

Mrs FINOCCHIARO: I just wanted to—sorry Robyn, have you finished?

Mrs LAMBLEY: Yes.

Mrs FINOCCHIARO: I just wanted to ask about section 275A. Will that broadly give the discretion to the Electoral Commissioner to make an alternative zone between 10 and 100 metres at the time or does that have to be published? For example, any booth might be—Durack booth to use an example in my electorate, could the electoral—I guess I am asking how does 275A work in practice?

Mr McCRIE: The intention is that notice will be given as soon as the Electoral Commission identifies that it would be needed. If it is possible to do so beforehand then it should be identified at the same time as electorates, newsletters are set out, it is published on the website. However, it does recognise that there are circumstances that it might need to change on the day of voting particularly in mobile voting centres in remote areas.

There is a requirement in 275A (4) that requires the Commission to give notice to each candidate in the relevant division. Regardless of when it is declared, there is still a notice requirement so that candidates are aware.

Mrs FINOCCHIARO: Is there a criteria that has to be followed or it is a practical flexibility? If the 100 metres is fine, it will be 100 metres. I am just trying to understand the rationale for why we need that.

Mr McCRIE: Unless there is any reason to change it then it would be the default boundaries.

Mrs FINOCCHIARO: Okay.

Mr McCRIE: To pick up some of the anomalies that happened, not just in remote areas but also in some of the urban locations. I think it was the Parap Primary School voting centre where the 100 metre when it is drawn just as a radius from a particular point, covered part of a road and went on to some private residences. This just gives flexibility that you could make it some other shape.

Mrs FINOCCHIARO: To the curb.

Mr McCRIE: To the curb, something that made sense.

Madam CHAIR: So we are looking for a bit of equity with this bill. We want to be able to protect the everyday Territorian who does not want to walk the gauntlet to be able to go into a voting centre to place their vote but those that also want to get the information, that is it nearby and do not have to go searching to have a talk with a candidate or get a how to vote card as well I guess.

Are there any further questions further down the line?

Mrs FINOCCHIARO: You mentioned it was between the 10 and 100 metres. The Electoral Commissioner does not have the discretion under the act to make it further if that practical requirement or if it was deemed required?

Mr McCRIE: That is correct. There is that limitation set on it. That is within the maximum and minimum parameters that are approved by the Assembly.

Mrs FINOCCHIARO: So the 10 metre zone was for mobile polling and pre-polling, is that right?

Mr McCRIE: That is correct.

Mrs FINOCCHIARO: Okay. In respect to the designated area, how is that being constrained? Is that a square meterage measurement?

Mr McCRIE: The requirement is that it must be large enough to accommodate three people for each candidate for that division. It is not by meterage it is by need.

Mrs FINOCCHIARO: Is it envisaged that that will be known as well as early as possible? In one of the newsletters or as something that will happen on the day.

Mr McCRIE: That is the intention, that it will be as early as possible.

Mrs FINOCCHIARO: I imagine there would need to be a significant education campaign around the change back from optional preferential. Noting that 5% of informal votes at the 2017 council election had only a vote one. Equally, come 2020 if there is a large percentage, 20% with only vote one, around and around we go again.

Is the department leading that or that will be the Electoral Commission?

Mr McCRIE: That will be the Electoral Commission. This bill has been driven to be passed as soon as possible so that there is plenty of time for that education campaign.

Madam CHAIR: Just as a bit of a follow up from the Member for Spillett's question. I guess some of the questions I had in regards to the bill was, having the flexibility to take into account voters' intent on how they wish to vote. So if they place a one and a one only does that mean that under this provision, that that one can count even though we are going to full preferential, not optional preferential.

Mr McCRIE: Only in very limited circumstances. I think probably only if there are two candidates only for that electorate because it still has to be clear from the intent that you can allocate a preference to every candidate. The starting point is that you do have to allocate a preference to each candidate—fill out each candidate's square—but if there is some anomaly with your vote and you can still work out clearly what was intended from it, then you can allocate those preferences.

It might be if you had a one and a two but the third square was left blank then clearly that is going to be the person's third preference. If you only allocate a one and there is five candidates then there is no way that the Commission could allocate or determine an intent.

Madam CHAIR: Thank you very much, that was a very helpful clarification. Are there any further questions?

No further questions down the line?

Mrs LAMBLEY: No Ngaree, I do not have any further questions.

Madam CHAIR: Thank you very much.

Mrs FINOCCHIARO: Sorry, just one. In respect to that small zone within the designated area, will it then be in the code of conduct what is allowed in that zone? Or is it sort of like this is the zone and you three get this much space, go your hardest—tents, corflutes or whatever? Or is it going to be very prescriptive like three people, three signs, paper—you know what is the?

Mr McCRIE: The way that section is designed is that, because it is still within the prohibition zone, all of the restrictions in that area still apply. That includes canvassing for votes, soliciting the vote of person, exhibiting signs and inducing a person to vote or not to vote.

Then section 275B(2) sets out the behaviours that are allowed and that is actually subset of what is allowed within the prohibition zone. It is allowing to canvass for votes, solicit the vote of a person and hand out how to vote cards. It is not having giant size core flute signs.

Madam CHAIR: As there are no further questions, on behalf of the Social Policy Scrutiny Committee I would like to thank you for taking the time to appear before us today. Thank you.