

**CONSULTATION
DISCUSSION PAPER
ELECTORAL REFORMS
IN THE NORTHERN TERRITORY**



FOLLOW DIRECTIONS

EVERY vote counts!



NORTHERN
TERRITORY
ELECTORAL
COMMISSION

EVERY vote counts!

CONTENTS

CONSULTATION DISCUSSION PAPER Electoral Reforms in the Northern Territory

02	WHY DO WE NEED ELECTORAL REFORM?
03	PUBLIC CONSULTATIONS
05	AREAS OF ELECTORAL REFORM
06	MAJOR AREAS OF REFORM
06	THE VOTING SYSTEM
08	USING MODERN TECHNOLOGIES TO VOTE
10	ENROLMENT
12	ELECTION CANVASSING
14	ELECTORAL BOUNDARIES REDISTRIBUTION
16	APPOINTMENT OF STATUTORY OFFICERS

WHY DO WE NEED ELECTORAL REFORM?

The Northern Territory (NT) Government is committed to reforms which ensure open, accountable and transparent government.

A fundamental principle of good governance is the participation of citizens in decision-making and public debate. Elections give every Territorian the opportunity to have a say about their government or to participate directly in government.

A good electoral system is one that works well for Territorians, is transparent and fair for voters and candidates, and which results in an effective democratic system of government.

The Government is consulting on the way we vote and the rules for conducting elections for the Legislative Assembly. The voting and election rules are set out in the *Electoral Act* (the Act), the provisions of which will be reviewed and amended to implement the reforms.

The reforms aim to:

- 1. increase the participation of Territorians in governance and public life**
- 2. enhance public support and confidence in our system of governance.**

The proposed electoral reforms are part of the development of a strong integrity framework for the Northern Territory. This means that our government systems are set up to be accountable to Territorians, with proper checks and balances on the powers exercised by politicians and public servants.

WHAT IS THE LEGISLATIVE ASSEMBLY?

The parliament of the Northern Territory is called the Legislative Assembly. The leader of the NT government is referred to as the Chief Minister. The Chief Minister is the leader of the party that wins the most seats.

There are 25 electoral seats (a seat, sometimes called a division, is a geographic area) in the Territory and each seat is allocated one member of the Legislative Assembly.

The 25 members of the Legislative Assembly are elected by voters of the Northern Territory every four years. A Territorian can vote if they are 18 years old or over, and their name is on the electoral roll for the Northern Territory.

PUBLIC CONSULTATIONS

This consultation paper sets out the major areas where our electoral system could benefit from reform.

HAVE YOUR SAY ON THE PROPOSED ELECTORAL REFORMS

Territorians have the opportunity to provide feedback on the areas of electoral reform discussed in this paper, or to suggest other changes.

Comments are now invited on electoral reform from members of the public with submissions closing on 19 January 2018.

There are many opportunities to have your say:

You may like to provide feedback via the online survey at www.haveyoursay.nt.gov.au/electoralreform or download and fill in the survey questionnaire for return by email to electoralreform.dcm@nt.gov.au or the postal address below.

The postal address for comments is:

Electoral Reforms

Legal Policy Coordination and Commissions
Department of the Chief Minister
GPO Box 4396
Darwin NT 0801

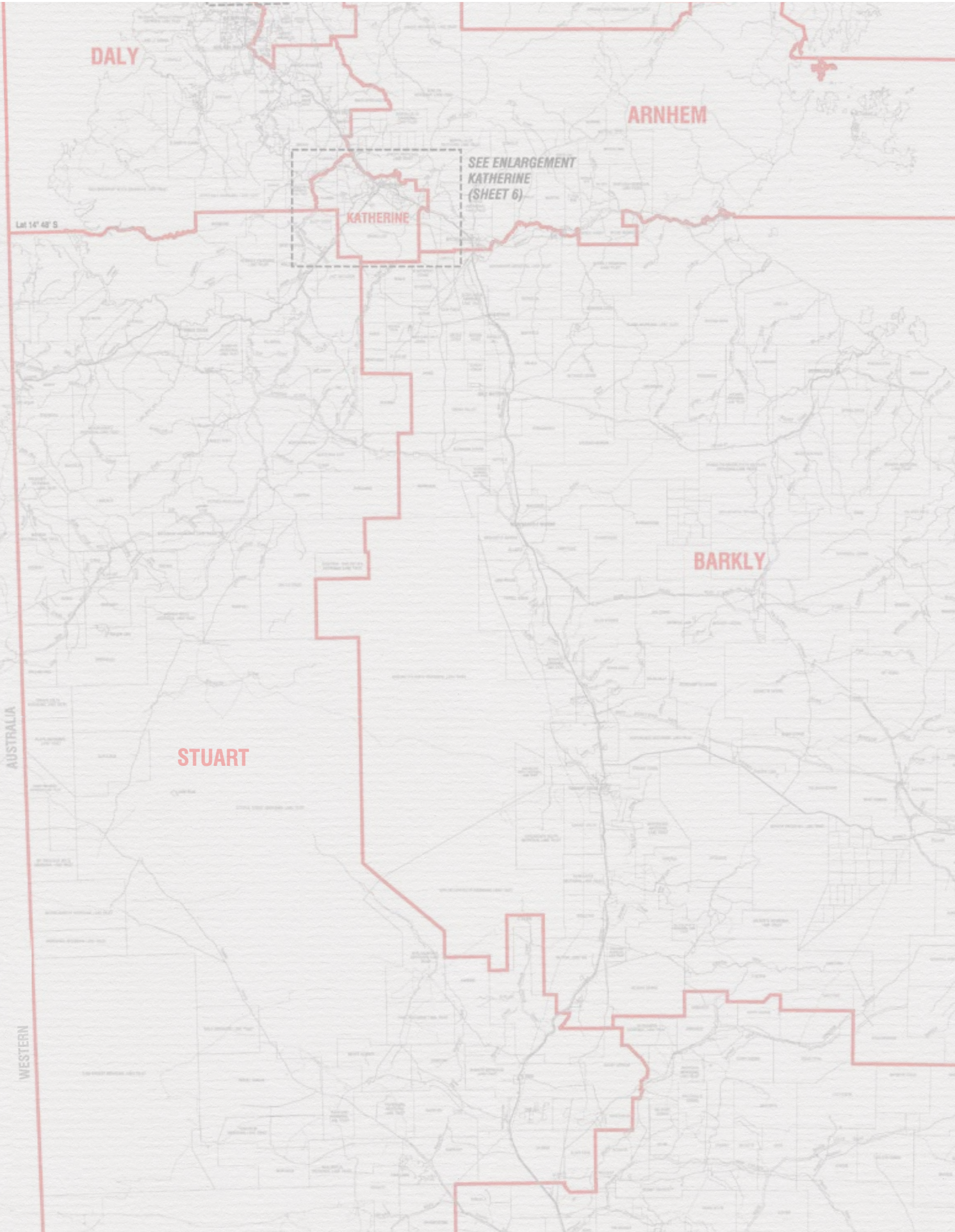
WHAT HAPPENS TO MY FEEDBACK?

Any feedback or comment received by the Department of the Chief Minister will be treated as a public document unless clearly marked as 'confidential'. In the absence of such clear indication, the Department of the Chief Minister will treat the feedback or comment as non-confidential.

Non-confidential feedback or comments are likely to be made publicly available and published on the Department of the Chief Minister website. The Department of the Chief Minister may draw upon the contents of such and quote from them or refer to them in reports, which may be made publicly available.

After the public consultation period Government will consider the ideas and opinions put forward by members of the public, and decide whether the *Electoral Act* needs to be amended.

This paper has been prepared for discussion purposes only and any views expressed are not to be taken to represent official policy or the views of the Northern Territory Government, the Northern Territory Chief Minister or the Department of the Chief Minister.



AREAS OF ELECTORAL REFORM

THERE ARE SIX MAIN REFORM AREAS:

1. THE VOTING SYSTEM
2. USING MODERN TECHNOLOGIES TO VOTE
3. ENROLMENT
4. ELECTION CANVASSING
5. ELECTORAL BOUNDARIES
6. THE APPOINTMENT OF STATUTORY OFFICIALS

Note: exclusion of political donations and election expenditure regulation

Electoral reforms related to the regulation of political donations and election expenditure are being considered by the current Inquiry into Options for the Reform of Political Funding and Donations in the Northern Territory (the Inquiry) and are not included in this electoral reform process. A second phase of electoral reforms in relation to regulation of political donations and election expenditure will commence after the Inquiry has delivered its report. More information on the Inquiry can be found at: www.donationsinquiry.nt.gov.au.



MAJOR AREAS OF REFORM

THE VOTING SYSTEM

CURRENT ARRANGEMENTS

Elections for the NT Legislative Assembly use an optional preferential system for voting. This requires voters to choose whether to:

- mark a single preference for one candidate, or
- number preferences against some or all of the candidates on the ballot paper.

Prior to the 2016 election, the method of voting for the Legislative Assembly was full preferential voting. This meant that federal, NT Legislative Assembly and local government elections in the NT used the same ballot marking system, that is, voters had to mark all the boxes in order of preference in each of those elections for their vote to be valid.

WHAT IS THE DIFFERENCE BETWEEN FULL PREFERENTIAL AND OPTIONAL PREFERENTIAL VOTING?

The term preferential refers to the voter being required to indicate an order of preference for candidates on the ballot paper.

Different types of preferential voting include:

- **full preferential** – the voter must show a preference for all candidates listed for the ballot paper to be valid
- **optional preferential** – the voter need only indicate a preference for the candidate of their first choice and can then choose whether or not to mark further preferences for some or all of the other candidates.

The aim of reform is to ensure that the NT has a method of voting that achieves the fairest result and allows all Territorians to fully and meaningfully participate in elections.

Compared to full preferential voting, optional preferential voting has been shown to reduce the number of informal votes, particularly votes classed as unintentionally informal, where voters make a mistake in numbering their ballot papers.

However where different vote marking systems are used within a state or Territory, this can also increase informality. Different marking systems are where, for example, a Federal election requires the voter to mark all the boxes and a Territory election requires voters to only mark one box.

Unintentional inform voting is a problem because it means that the votes of people who accidentally make a mistake when making the ballot paper are not in control in the election.

WHAT IS AN INFORMAL VOTE?

An informal vote is a vote that cannot be counted in an election because the ballot paper is not filled out correctly.

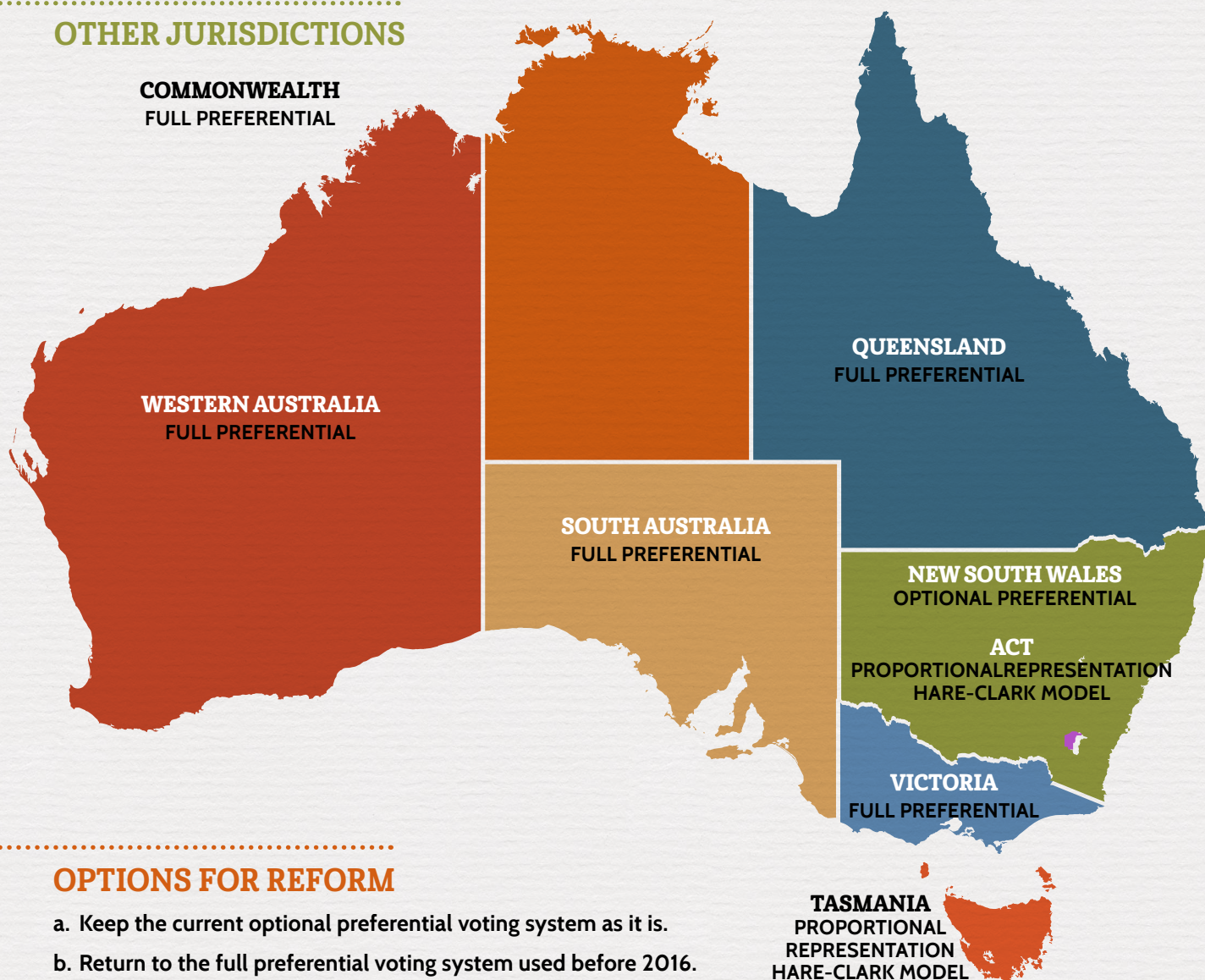
Under an optional preferential voting system:

- *a vote is formal as long as a ballot paper has a single first preference indicated. Under Territory law a unique first preference can be indicated by marking a number 1, a tick or a cross symbol.*
- *a vote is informal if a ballot paper has no mark or is without a mark next to a name of any candidate, if there is any mark identifying the voter, if it has a wrongly duplicated number or symbol, or where the voter's intention is not clear.*

There are two types of informality:

- *intentional informality is considered to be where, for example, ballot papers are blank, scribbled on, or with the same number recorded against every candidate*
- *unintentional informality is considered to be where there is more than one number 1 preference or no first preference, i.e. the voter has made a mistake in numbering the ballot paper.*

OTHER JURISDICTIONS



OPTIONS FOR REFORM

- Keep the current optional preferential voting system as it is.
- Return to the full preferential voting system used before 2016.
- Use another voting system.

USING MODERN TECHNOLOGIES TO VOTE

A separate information paper has been developed to look at the options for using technologies as a cost-effective and secure way of increasing access to voting (see Appendix A), with a brief discussion of the issues below.

CURRENT ARRANGEMENTS

In 2011 the *Electoral Act* was amended to allow an electronic or automated system to be used for voting. It was further amended in 2016 to expressly allow an electronic or automated system to be used for the issue and return of postal votes.

The 2016 amendment opened up the possibility of increasing the timely receipt of postal votes by allowing the return of postal votes by email. However there was insufficient time before the election (in August of that year) to develop a system that could negate all the risks associated with voter privacy and information technology security protocols.

Electronic or automated voting offers particular opportunity to increase access to the vote among specific groups such as people with disabilities,

voters in remote areas, or those for whom English is not their first language.

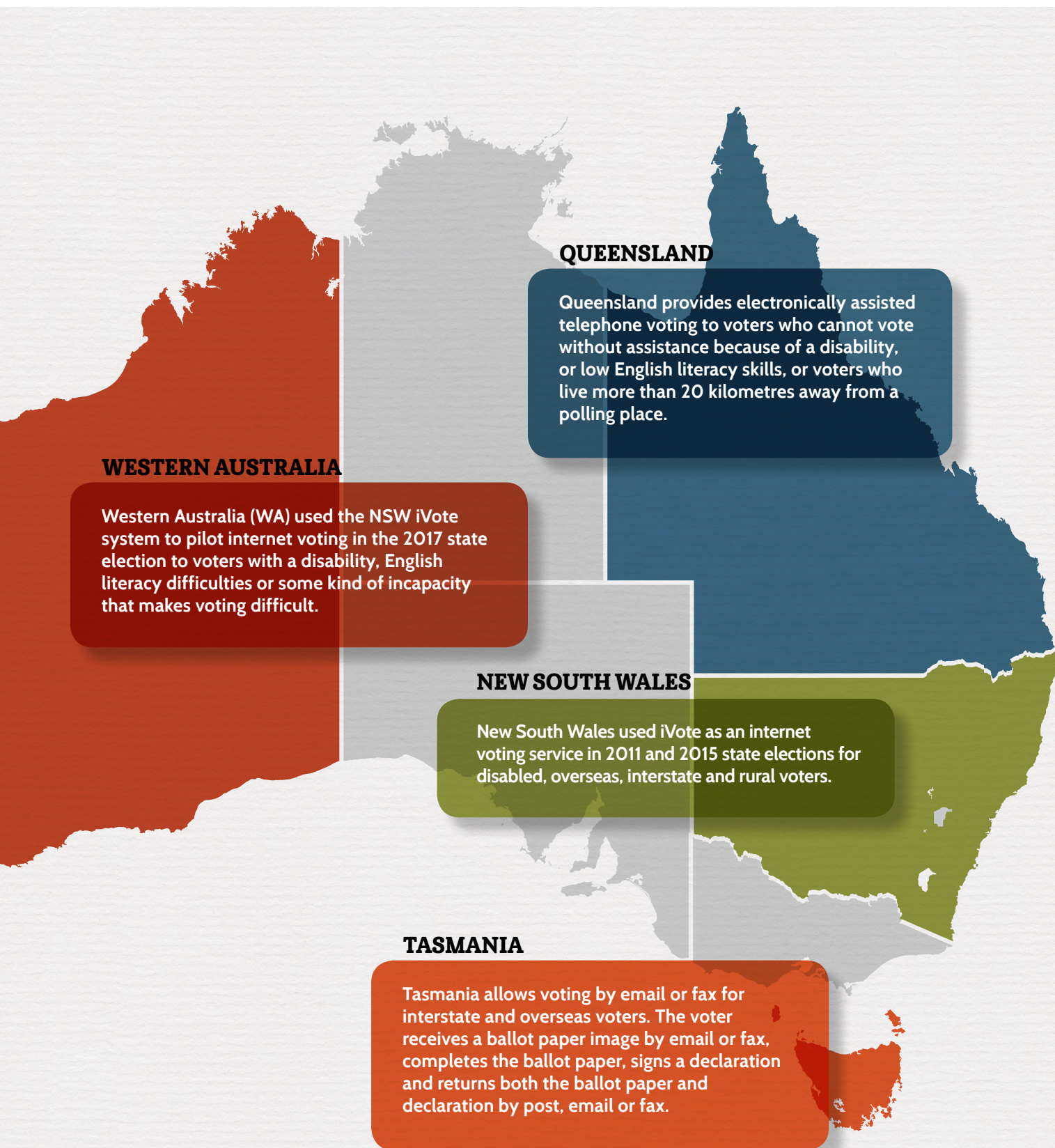
Postal voting is difficult in remote areas of the Northern Territory and is becoming more so with the decline of traditional postal services. Some remote areas receive only one scheduled postal service a week which makes it difficult to meet election timeframes. It is also challenging to reach overseas voters in a timely manner, with NTEC reporting that only 20% of potential overseas votes were admitted to the count in 2016.

Issues to consider include the cost of implementing electronic or automated systems, the technical expertise required to operate the systems, and the security and fraud risks in such systems.

OPTIONS FOR REFORM

- a. Investigate options for using electronic technologies for voting in the NT.
- b. Keep using the current ballot papers and pencils, and the postal service.
- c. Adopt other methods that make voting easier for remote voters, or voters with a disability.





WESTERN AUSTRALIA

Western Australia (WA) used the NSW iVote system to pilot internet voting in the 2017 state election to voters with a disability, English literacy difficulties or some kind of incapacity that makes voting difficult.

QUEENSLAND

Queensland provides electronically assisted telephone voting to voters who cannot vote without assistance because of a disability, or low English literacy skills, or voters who live more than 20 kilometres away from a polling place.

NEW SOUTH WALES

New South Wales used iVote as an internet voting service in 2011 and 2015 state elections for disabled, overseas, interstate and rural voters.

TASMANIA

Tasmania allows voting by email or fax for interstate and overseas voters. The voter receives a ballot paper image by email or fax, completes the ballot paper, signs a declaration and returns both the ballot paper and declaration by post, email or fax.

ENROLMENT

CURRENT ARRANGEMENTS

The NT electoral roll is managed by the Australian Electoral Commission (AEC) under a joint roll arrangement with the Northern Territory. The AEC is responsible for adding and removing voters and ensuring the quality of the data kept on the roll.

It is compulsory for all eligible Territorians to enrol to vote. A failure to enrol or notify a change of address is an offence under the *Commonwealth Electoral Act 1918* (Cth).

Changing demographic patterns and voter mobility have made it increasingly challenging to maintain the accuracy and currency of the electoral roll. There are continuing issues with roll integrity in NT, particularly for hard-to-reach remote voters. The proportion of estimated eligible Territorians on the roll is significantly lower than the national average. This is due in part to the younger population, high levels of mobility and difficulties in maintaining the roll in remote areas. The Territory has a relatively young population and the statistics show that young people aged 18-24 years are less likely to enrol and are difficult to reach through general enrolment methods.

The *Commonwealth Electoral Act 1918* allows the AEC to directly enrol voters or update their details on the electoral roll based on information from other government agencies. Information from tax returns and Centrelink payment recipients is used to automatically update the roll without direct voter involvement in the transaction.

OTHER JURISDICTIONS

COMMONWEALTH AUTOMATIC ENROLMENT

- Direct enrolment and update of enrolment.
- Based on information from a range of federal and state agencies including licencing, Centrelink, Tax Office, education, housing and utilities which is then verified.
- Person informed by correspondence from AEC of enrolment/update with opportunity to dispute.

NEW SOUTH WALES

ON THE DAY ENROLMENT

- An eligible voter may cast vote at a polling place on election day.
- Procedure is that a voter at a polling place on election day may change their address and cast a vote in their new division.
- Reports that this is resource intensive at polling places.
- Also allows voters to enrol up to the day before election day

AUTOMATIC ENROLMENT

- Direct enrolment and update of enrolment.
- Receives data from other bodies such as vehicle registration, licencing authorities, utilities and higher education authorities which is then verified.
- Person informed by post or electronic mail/SMS of the enrolment/update with opportunity to dispute.
- Core data sources are state educational assessment authorities (year 12 students) and vehicle licencing authorities.

VICTORIA

ON THE DAY ENROLMENT

- Any eligible voter may cast vote at polling place on election day
- A voter enrolled at an address other than their current address will cast their vote in division they are enrolled – they can change their enrolled address after that.
- The rolls close before the election – election day enrolment is a ‘savings’ provision to cater for people who have missed the deadline to enrol/update.

AUTOMATIC ENROLMENT

- Direct enrolment and update of enrolment.
- Data received from other bodies such as vehicle registration, licencing authorities, utilities and higher education authorities which is then verified.
- Person informed by mail of enrolment/update with opportunity to dispute.
- Core data sources are state educational assessment authorities (year 12 students) and vehicle licencing authorities.

WHAT IS THE ELECTORAL ROLL?

To vote in Federal, Territory and local government elections, you must be correctly enrolled on the electoral roll.

The electoral roll is a list of voters' names and addresses that is used to determine who can vote at elections.

The law requires all eligible persons to be enrolled correctly and to vote.

OPTIONS FOR REFORM

Options to improve electoral roll quality include:

a. Automatically enrolling voters through government data sources.

Expansion of the automatic enrolment of eligible voters through the provision of government collected data (name, address and date of birth) to the electoral authorities. Information is already sourced from the Tax Office and Centrelink but could be expanded to organisations such as Jacana Energy or eHealth. Only name, address and date of birth information would be passed on to electoral authorities. This would have to be undertaken in conjunction with reform by the Commonwealth Government so as to retain the one roll principle.

Care would need to be taken to enable newly enrolled voters, particularly those in remote areas or with low levels of English literacy, to understand the effect of enrolment and to access voting facilities. This would avoid the potential for increasing the application of fines for not voting, without increasing enfranchisement.

b. Allowing voters to enrol 'on the day' of the election.

Introduction of 'on the day' enrolment to allow voters who meet eligibility criteria but, have either failed to enrol or change their address before close of roll, to both enrol and have their vote count at an election.

NTEC reports consistently that a considerable number of voters who lodge declaration votes (a special voting procedure used when a person is not recorded on the roll at the polling booth) are subsequently found not to be enrolled, which results in their votes being void. In 2012 NTEC statistics show 1428 voters lodged declaration votes but were found not to be enrolled, and that increased to 2330 at the 2016 election.

On the day enrolment would significantly reduce the number of unenrolled votes rejected during election counting. Implementation would allow a person attending early, mobile and polling day centres who is not on the roll, or enrolled at a different address, to lodge a provisional vote. The person would have to complete an enrolment and declaration form and proof of identification with current address. Following election day, the AEC would take the forms, confirm eligibility, and then add the voter to the roll. Once enrolment was validated the vote could be admitted to the count.

c. Adopting another method to improve the accuracy and completeness of the electoral roll.

ELECTION CANVASSING

CURRENT ARRANGEMENTS

In 2016 the *Electoral Act* was changed to extend the restriction on election canvassing at polling booths. Canvassing is prohibited within 100 metres of polling places on polling day, where previously the restriction was within 10 metres. It is an offence to canvass, exhibit a sign or induce a person to vote a certain way within 100 metres of any polling booth.

NTEC reported that the 100 metre boundary was generally popular with voters but difficult to enforce in some areas, particularly in remote communities. The small physical size of some remote communities meant that the 100 metre boundary could encompass private homes or the entire community. It was also difficult for election officials to identify campaign workers and significant time was spent resolving complaints in some areas.

Restrictions are placed on election canvassing to protect voters from overbearing or inappropriate influence and misleading information. Canvassing rules need to be practical to administer and fair to all political candidates. Canvassing is a necessary part of an election because it can provide information a voter needs to make an informed choice.

How to vote cards are given to voters by political candidates with information on how to fill out the ballot paper in a way that will most benefit the candidate or political party. These cards are particularly useful for full preferential voting systems where voters have to number all the boxes on the ballot paper. Many voters, particularly when English is not a first language, may rely on how to vote information to help them fill out the ballot form correctly – that is, to cast a formal ballot and have their vote counted in the election.

WESTERN AUSTRALIA

- The following activities within 100 metres of the entrance to a polling booth on election day are prohibited:
 - canvassing for votes
- There is nothing that directly prevents a candidate handing out how to vote material in their district or region on polling day.
- Electors can take how-to-vote cards into the polling place, but clothing or badges promoting candidates cannot be worn in the polling place

OPTIONS FOR REFORM

Options to improve canvassing at polling stations include:

- a. Campaigning prohibited at voting centres except for the area defined by the officer-in-charge, acting in accordance with guidelines.
- b. Whether limits should be placed on the number of campaign workers at polling booths for each candidate on the ballot paper.
- c. Each candidate supplies how to vote material to voting centres which voters can access if they need to, at a location to be determined by NTEC, with no third party campaigners allowed at the polling place.
- d. Large and clear how to vote instructions are provided on the walls of polling booths that reflect party or individual candidate voting cards.
- e. Political party candidates and independents appoint a clearly identified representative inside each polling booth and are allowed to assist voters on request.
- f. Whether there should be rules about the relative size of the authorisation and inclusion of a party logo or organisation name on campaign signage.
- g. Any other arrangements to improve canvassing at polling stations.

SHOULD THE 100 METRE CANVASSING PROHIBITION BE APPLIED DIFFERENTLY IN REMOTE COMMUNITIES?

The difficulties reported by NTEC in implementing the 100 metre canvassing prohibition in some remote communities suggest that urban and remote polling locations could benefit from different requirements.

As reported by NTEC, election officials had difficulties in identifying and corralling campaign workers and implementing the prohibition where it covered a large part of a community.

Additional challenges in managing the situation arise because often party officials assist in rallying voters to the mobile polling stations.

COMMONWEALTH

- The following activities within 6 metres of the entrance to a polling booth on election day are prohibited:
 - canvassing for votes
 - soliciting the vote of any elector
 - inducing any elector not to vote for any particular candidate
 - inducing an elector not to vote at the election
 - notice or signs (other than an official notice) relating to an election.

SOUTH AUSTRALIA

- The following activities within 6 metres of the entrance to a polling booth on election day are prohibited:
 - canvassing for votes
 - solicit the vote of any elector
 - induce any elector not to vote for a particular candidate
 - inducing an elector not to vote at the election
 - notice or signs (other than an official notice) relating to an election

QUEENSLAND

- The following activities within 6 metres of the entrance to a polling booth on election day are prohibited:
 - wearing or displaying a political party or candidate emblem or other material of a political nature
 - canvassing for votes
- Only How-to-vote cards that have been lodged and approved by the Commission are allowed.
- A scrutineer must not communicate with any person in a polling booth except in the performance of their specific duties as a scrutineer

NEW SOUTH WALES

- The following activities within 6 metres of the entrance to a polling booth on election day are prohibited:
 - notices or signs relating to an election
 - canvassing for votes
- Only registered How to Vote cards can be distributed in public places on polling day.

ACT

- The following activities within 100 metres of the entrance to a polling booth on election day are prohibited:
 - influencing the vote of an elector
 - inducing an elector not to vote for any particular candidate
 - unauthorised notice or signs relating to an election.
- Officers to scrutineer prohibited from wearing or displaying in a polling place a badge or emblem associated with a particular candidate or political party.
- Persons cannot, except for the purposes of assisting another person to vote, exhibit or leave in a polling place any printed electoral matter.

VICTORIA

- The following activities within 400 metres of the entrance to a polling booth on election day are prohibited:
- Notice or signs or any other material, (other than registered how-to vote cards) relating to an election
- Canvass for votes

TASMANIA

- The following activities within 6 metres of the entrance to a polling booth on election day are prohibited:
 - canvassing for votes
 - solicit the vote of any elector
 - induce any elector not to vote for a particular candidate
- Distributing how to vote cards on polling day is strictly prohibited

OTHER JURISDICTIONS

Unlike Australia, many countries have bans on polling day campaigning, with New Zealand banning any form of election day paraphernalia anywhere in the country.

ELECTORAL BOUNDARIES REDISTRIBUTION

CURRENT ARRANGEMENTS

The *Electoral Act* requires that a redistribution process for Legislative Assembly electorates (referred to as electoral divisions) commences 2 years and 6 months after the polling day of the last election.

The aim of a redistribution process is to ensure that, at the next NT general election, the geographic area of each electoral division meets a number of criteria set out in the Act. The redistribution process recognises that electoral boundaries might need to change if the population has moved or changed. This is because one of the objects of the redistribution process is that the number of voters in each division are as near to equal as possible. This ensures each person's vote carries equal weight at the ballot box.

The Act sets out six other objects that are used to decide where electoral boundaries should be made; for example, that the physical area of remote or rural divisions is as small as practicable; and that divisions are as similar in demographic and geographic character as practicable. The Act also lists eight matters which must be given consideration when determining boundaries; for example, the community of interests in each proposed division.

The redistribution process is carried out by two committees established under the Act; the Redistribution Committee, and the Augmented Redistribution Committee.

The Redistribution Committee is chaired by the Electoral Commissioner and has two other members, the Surveyor-General and the Auditor-General. This Committee considers information about demographic, economic and geographic changes in the NT since the last redistribution to determine, according to the objects and principles set out in the Act, whether the electoral boundaries should be changed. This part of the process includes opportunity for public scrutiny of the proposed electoral boundaries and any objections to be submitted.

The Augmented Redistribution Committee includes the three members of the first committee plus an appointed member who has served or is qualified to serve as a Supreme or Local Court judge, or has other appropriate qualifications. The appointed member chairs this committee which reviews any objections made to the proposed electoral boundaries and either confirms or changes the decision of the first committee. There is no opportunity to object, appeal or overturn the final determination of the Augmented Redistribution Committee.

The proposed changes aim to align NT legislation with contemporary electoral practices, and to preserve the independence and integrity of, and stakeholder confidence in, the redistribution process.

WHAT IS AN ELECTORAL BOUNDARY?

Electoral boundaries are the way that a country or area is divided for the purposes of voting in an election. The boundaries separate each electoral division (or seat) into a geographically defined area. In the NT there are 25 electoral divisions and they each elect one representative to the Legislative Assembly.

The electoral boundaries are determined by a redistribution process which aims to achieve an approximately equal number of voters in each electoral division.

OPTIONS FOR REFORM

Options to improve the redistribution process include:

a. Simplify the process by establishing one redistribution committee.

This option would change the process for electoral boundary redistribution so that it is undertaken by one committee rather than two. The new committee would include four members, being, the Electoral Commissioner, the Auditor-General and the Surveyor-General, and an appointed member as the chairperson.

A person would be eligible to be an appointed member if they have served, or are qualified for appointment, as a Judge of the Supreme or Local Courts. A person would no longer be eligible if they merely satisfied the criteria of 'a person with appropriate qualifications or experience'.

The aim of reducing the number of redistribution committees is to streamline the process, which has been described as cumbersome by the NTEC. It may also assist in maintaining a consistent and independent approach throughout the process, and to promote public confidence in the independence and impartiality of the committee.

Currently there is no opportunity for the public to make comment or objections to the determination of the Augmented Redistribution Committee, where they have made changes to the first committee's proposed electoral boundaries.

In this option, the new Redistribution Committee would release a second proposed redistribution after all the initial objections have been considered. If this second proposal is the same as, or not significantly different from, the one first proposed, the second set of proposed boundaries becomes final. If the Redistribution Committee considers its second proposal to be significantly different from the first, further comment will be invited from individuals or organisations. Objections would be considered by the Committee, before a final determination of boundaries and names of divisions is undertaken. This approach aims to facilitate a transparent and consultative redistribution process.

b. Clarify the redistribution process by establishing one key objective for the redistribution process.

This option would amend the Act to clearly establish that there is one object of the redistribution rather than seven. That is, that at the time of the next general election, the number of electors in each proposed division should be as near to equal as practicable.

The aim is to ensure that the object of the redistribution is clearly defined, and consistent with the AEC's process. Currently there are six objects with equal weighting and one subject to the other objects and so the relative importance of the objects is unclear.

c. Any other arrangements to improve the process for redistribution of electoral boundaries.

APPOINTMENT PROCESS FOR STATUTORY OFFICERS

CURRENT ARRANGEMENTS

The Electoral Commissioner, as head of the Northern Territory Electoral Commission, plays a central role in maintaining our democratic system of government in the NT. The Commissioner is an independent statutory officer, appointed under the *Electoral Act*, who is responsible for conducting elections for the Northern Territory Legislative Assembly, maintaining electoral rolls, and providing advice and information to the government and the public on election matters.

The Commissioner is appointed by the Administrator of the Northern Territory on recommendation from the responsible Minister. The Minister must consult the leader of each political party and independent Members of the Legislative Assembly (MLAs) about the proposed appointment.

The Chair of the Augmented Redistribution Committee is an independent statutory officer, appointed under the *Electoral Act*, who chairs the committee which reviews and determines

the geographical boundaries of the 25 electoral divisions for the Legislative Assembly. Since the determination of boundaries can have a significant effect on the outcome of elections, the work of the Redistribution Committee must be undertaken rigorously and impartially.

The Chair of the Augmented Redistribution Committee is appointed by the Administrator of the Northern Territory on recommendation from the responsible Minister. To be eligible for appointment a candidate must have served or be qualified to serve as a Supreme or Local Court judge, or must hold other appropriate qualifications or experience. The candidate cannot be a member of a political party. The Minister must consult the leader of each political party and independent Members of the Legislative Assembly (MLAs) about the proposed appointment.

WHAT IS A STATUTORY OFFICER?

A statutory officer is a person appointed to a position which is established by legislation. Statutory officer positions are generally created where political neutrality and objectivity is required to effectively undertake a particular senior officer role, for example, an ombudsman.

Statutory officers are granted variable capacity to operate independently, autonomous from government, depending on their function. The independence is not always described directly in the legislation but is often provided through exacting, bi-partisan appointment and removal processes set out in the legislation.

Statutory officer positions are often established to provide democratic checks and balances on the power of politicians and public servants. This is one way of requiring accountability from the government of the day. As such, statutory officers, such as an auditor-general or electoral commissioner, perform a crucial role in the overall integrity framework protecting and maintaining our system of government.

OTHER JURISDICTIONS

Appointment processes for electoral commissioners across Australian jurisdictions generally recognise that the independence of an electoral commission is closely related to its commissioner's method of appointment:

- electoral commissioners for the Commonwealth, New South Wales and Victoria are appointed by the governor or governor-general, on the recommendation of the government of the day
- Western Australia, Tasmania, and the Australian Capital Territory require consultation with other political parties represented in parliament, although, as in the NT, there is no requirement to take the views of the other parties into account
- Queensland and South Australia (SA) require consultation with a parliamentary committee prior to the ratification of an appointment and the SA legislation also requires a resolution from both houses of parliament before the governor can appoint the electoral commissioner.

OPTIONS FOR REFORM

Options to ensure the appointment process is transparent and at 'arm's length from the government of the day' include:

- a. Changing the appointment process to include, for example, selection by a bipartisan committee of the Legislative Assembly; selection by a committee comprising the Chief Minister, the Opposition Leader, and a retired judicial officer, at or above Supreme Court level; or selection by a panel of retired judicial officers appointed by the Legislative Assembly.
- b. Leave the appointment process as it is.
- c. Any other arrangement to improve the appointment process.

There is potential for a new 'arm's length' appointment process to be considered as a model for the appointment of all statutory officers who come under the public integrity framework, including the Auditor-General, the Ombudsman, the Information Commissioner, the Children's Commissioner and the Anti-Discrimination Commissioner.



