



**NORTHERN
TERRITORY
ELECTORAL
COMMISSION**
EVERY vote counts!

Information Paper

Electoral Legislation Amendment Bill (2015)

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On 2 December 2015, the Electoral Legislation Amendment Bill (the Bill) was tabled in Parliament, proposing a number of amendments to the NT *Electoral Act* (the Act). The NTEC in its report on the 2012 Legislative Assembly elections, tabled in Parliament in April 2014 and available on the [NTEC website](#), made a number of recommendations to modernise and improve electoral administration. The proposed changes in the Bill address some of the recommendations contained in the 2012 election report, as well as putting forward other amendments not covered in the report.

As an independent agency, the NT Electoral Commission (NTEC) makes recommendations regarding electoral reform; however, any amendments to the electoral legislation are determined by the Parliament.

This paper discusses the likely impact of the proposed amendments and other relevant issues for consideration.

1. To have an express reference regarding compulsory enrolment in the Act

The NT Self Government Act (1978), section 14, states that electors on the Commonwealth electoral roll for the NT are entitled to vote at NT Legislative Assembly elections. Section 101 of the Commonwealth Electoral Act 1918 provides that it is an offence not to enrol if a person is entitled to do so. There is no express reference to compulsory enrolment in the NT *Electoral Act*.

The Australian Electoral Commission (AEC) maintains the electoral roll for the NT, a difficult task due to the Territory's remote terrain and high population mobility. The current estimate is that 78.5% of eligible Territorians are on the electoral roll compared to the national average of 92.8%.

A participative democracy depends on an accurate roll of eligible electors. An express provision in the Act stating that enrolment is compulsory will support the message to Territorians of the importance of being correctly enrolled.

2. To allow for the draw of positions on the ballot paper to be conducted at a location determined by the Electoral Commissioner

This recommendation was included in both the 2005 and 2008 NT Legislative Assembly election reports, and remained supported by the NTEC in the 2012 election report. When conducting Legislative Assembly by-elections outside the Greater Darwin area, it is preferable to conduct public events such as a draw for positions on ballot papers locally or on a regional basis. This provides candidates, local media and the public with a greater opportunity to attend and assists with community awareness of the by-election.

For general elections the draw for positions on ballot papers will continue to be conducted in the Darwin office with a video link to Alice Springs.

3. Changing full preferential voting to optional preferential voting (OPV)

Current vote marking systems in the NT (for the Commonwealth House of Representatives - full preferential, NT Legislative Assembly - full preferential and NT local government – proportional representation) require the elector to number every box on the ballot paper in order of preference for the candidates listed. There is a consistency in the information campaigns regarding formality and this consistent approach across the three levels of government minimises the potential for elector confusion and higher informality that differing vote marking systems could cause. Given the numeracy and literacy issues in some areas of the NT, using consistent ballot paper marking systems assists electors to cast a formal vote and minimises unintentional informal voting.

Optional preferential voting is a move from an absolute majority voting system (one which requires a candidate to receive more than 50% of formal votes to be elected) to a system that allows election with a lower level of support. Members of the Legislative Assemblies of New South Wales and Queensland are currently elected using optional preferential voting.

An optional preferential voting system does not require voters to express a preference for all candidates, unless they wish to. It is likely that an optional preferential voting system would result in reduced informal voting rates as most unintentional informal voting under a preferential voting system would likely be deemed formal under optional preferential voting. At the 2012 Legislative Assembly elections, 1447 votes cast were determined to be unintentionally informal. Nearly all of these votes would have been deemed formal under an optional preferential voting system.

The experience with optional preferential voting in Queensland has shown that the 'Just Vote One' campaigns by political parties encourage voters not to express preferences. In small electorates like the NT, the optional preferential voting system could result in a de-facto 'first past-the-post' system, with candidates elected with less than half the vote.

The Queensland experience has also shown that, with a change to optional preferential voting for Legislative Assembly elections, consistency in vote marking information would be lost, and may result in an increase in informal voting rates at federal and local government elections.

A change to optional preferential voting for Legislative Assembly elections would mean that the Territory would have three different vote counting systems for each level of government (Commonwealth – full preferential, Legislative Assembly – optional preferential voting, and proportional representation for local government).

An explanation of the optional preferential voting system is shown at Attachment A.

4. Providing more flexible voting services

The Act currently states that an elector needs to meet certain eligibility criteria in order to apply for a postal vote. Historically the same criteria used for postal voting have been applied to access early voting, for which no specific eligibility criteria are outlined.

Amendments to the *Local Government (Electoral) Regulations* in April 2015 removed the eligibility criteria for both postal and early voting at council elections, with the aim of increasing voter participation. This provided voters with the choice of 'convenience voting' either at an early voting centre or by post, as opposed to on the traditional Saturday polling day.

Since the change was implemented, experience at recent council elections showed an increase in the number of voters choosing to cast an early or postal ballot i.e. 'convenience voting' - Alice Springs (39.6%), Darwin-Lyons Ward (26.3%), Litchfield (42.7%) and Palmerston (24.2%); on average one in three electors.

Given that an increasing number of voters are embracing 'convenience voting', the proposed change would meet the electors' need for flexibility and harmonise the Act and the *Local Government (Electoral) Regulations*.

5. Electronic scanning and email return of postal votes

The proposal is to allow postal voters to electronically scan and return their ballot paper and certificate by email. Currently, the deadline for postal votes to be received by the NTEC is 6pm the Friday after polling day; however, it is proposed to extend this by a further week (see 6). The Act requires an elector to complete their postal vote before 6pm on polling day. The short election timeframe and declining postal services makes it difficult for remote electors to return their postal ballots before this deadline.

A potential issue with this proposed change is that the secrecy of the ballot, a fundamental principle of the electoral system, will be lost as the ballot paper is attached to the postal vote certificate containing details of the elector.

The Tasmanian Electoral Commission offers a service to interstate and overseas electors by which postal ballots, with their certificates, are emailed to electors and are then electronically scanned and emailed back. This enables electors to both receive and return their ballots using email without any reliance on the postal system.

Allowing postal ballots to be returned via email requires the development of a secure email service, system enhancements to the election management system and development of procedures to enable the secrecy of the ballot to be maintained.

An issue that needs to be clarified is whether the email option would be available to all postal voters or just certain groups i.e. remote, interstate or overseas.

6. Allow an extra week for ballots to be received after polling day

The proposal to extend the postal voting deadline by an extra week would bring the postal voting timetable in line with the Commonwealth and allow more postal votes to be returned before the deadline. As postal services in regional and remote areas decline, changes to the election timetable and/or approved election technologies can ensure postal voters participate in the electoral process.

In the small NT electorates, it is important that postal voters are given sufficient time to receive and return their ballots, as margins in close seats are often small and the number of postal votes admitted to the count can impact on final results.

The NTEC's 2012 report discussed concerns about the 20-day election timetable impacting on the current ability of remote and overseas electors to receive their postal ballot papers before polling day. At that election, 5314 postal votes were issued, with only 4185 returned before the deadline; 168 postal certificates were received after the deadline (the Friday after polling day).

The recommendation in the 2012 report was to extend the election timeframe, close the rolls on the issue of the writ, and bring forward the nomination process, thereby allowing postal votes to be despatched earlier. With the short election period, it would be preferable if the election timetable allowed postal votes to be posted earlier.

The proposal (see 4) to remove the eligibility criteria for postal votes will see more electors choosing this option. Time to both receive and return ballot papers will be facilitated by the proposed capacity to scan ballot papers for transmittal and return by email (see 5), possibly negating the need for a one week extension to accept postal ballots.

7. Restrictions on canvassing around polling places

The proposal to prohibit political canvassing within 500 metres of a polling place, including the distribution of 'how-to-vote' material, would result in polling places becoming apolitical, with voters no longer having to 'run the gauntlet' of campaign workers.

Candidates interact with voters through a variety of means including advertising, doorknocking, mail outs and attendance at polling places. The capacity for candidates to interact with voters is an integral part of the democratic process; however, a common complaint received from voters is the behaviour of campaign workers outside polling places. The concerns of voters need to be balanced with the rights of candidates to conduct campaigns.

Campaign workers do play a role in promoting participation, especially in remote communities where remote mobile polling teams may only be scheduled to offer voting for as little as 30 minutes. Many voters remain unaware of the details of mobile polling schedules, despite advertising polling times throughout the community. The presence and activities of campaign workers can have a positive impact not only on participation but vote formality. Many voters, especially those in remote communities, rely on how-to-vote material to ensure they cast a formal ballot, although a change to optional preferential voting (see 3) would weaken the link between the availability of how-to-vote cards and informal voting rates.

The Commonwealth Joint Standing Committee on Electoral Matters is currently conducting an inquiry into campaigning at polling places. The NTEC submission to this inquiry is available on the website at ntec.nt.gov.au. The NTEC suggests that a limit be placed on the number of campaign workers at a polling place, i.e. two campaign workers at each polling place per candidate. Polling place canvassing could also be restricted to candidates and parties with a direct and formalised interest in the election, as evidenced by candidature on the ballot paper. This would assist in addressing the problem of voters having to 'run the gauntlet' of campaign workers, thereby reducing the political nature of polling places, whilst still allowing them the option of accessing how-to-vote material.

The laws regarding canvassing at polling places need to be practical to administer, fair and equitable and enable voters to make an informed choice. The current 10 metre rule is administered by the Officer-in-Charge of the polling place who ensures that campaign workers comply with the requirement.

Practical difficulties could ensue for polling officials monitoring a 500 metre distance. For example, the Parap Primary School polling place is located within 500 metres of the nearby market, therefore any display of political material (including t-shirts and badges) would be prohibited within the market itself, which would be difficult to enforce. The 500 metre proposal would also mean that independent candidates, who are not sitting members of parliament, would be further restricted in interacting with voters, as they are currently not entitled to an extract of the electoral roll.

Optional preferential voting (OPV)

To cast a formal vote, the elector must place the number '1' in the box next to their first choice candidate. They then have the 'option' to show further preferences by placing the number '2' in the box next to their second choice candidate, the number '3' next to their third choice and so on. They may number as many or as few boxes as they wish, provided a 1st preference is clearly marked.

To be elected in the optional preferential system, a candidate has to receive an absolute majority of the total formal votes in the count, i.e. 50% + 1 vote.

For example - If there are 8756 formal 1st preference votes in an election, the absolute majority is calculated as: $8756 \div 2 = 4378 + 1 = \mathbf{4379}$

If a candidate has an absolute majority, that candidate is elected and no further counting is necessary.

If no candidate is elected, the candidate with the least number of votes is 'excluded' and the excluded candidate's votes are re-sorted to the other candidates according to the 2nd preference shown on each ballot paper.

However, if any of those ballot papers does not have a 2nd preference, the ballot paper is treated as 'exhausted' and is removed from the count. Exhausted ballot papers are only used as a balancing figure to check the number of votes at the end of each exclusion.

As exhausted ballot papers are removed from the count, the absolute majority required for election must be recalculated after the exclusion of a candidate. The process of exclusions is repeated until one candidate gains an absolute majority of the votes remaining in the count and is elected as shown in the following example of an OPV count:

Optional Preferential Count Example

Candidates	Count 1 1 st Preference Votes	Distribution of Candidate D Preference Votes	Count 2 Progressive Totals	Distribution of Candidate C Preference Votes	Count 3 Progressive Totals
Candidate A	3 024	250	3 274	822	4 096
Candidate B	2 552	441	2 993	1 189	4 182 Elected
Candidate C	2 290	87	2 377	Excluded	0
Candidate D	890	Excluded	0	0	0
TOTAL FORMAL VOTES	8 756	778	8 644	2 011	8 278
<i>Absolute Majority needed</i>	<i>4 379</i>	-	<i>4 323</i>	-	<i>4 140</i>
Informal votes	278	-	278	-	278
Exhausted	0	112	112	366	478
TOTAL VOTES	9 034	890	9 034	2 377	9 034

Source: NSW Electoral Commission