

SUBMISSION TO THE JOINT STANDING COMMITTEE ON ELECTORAL MATTERS - INQUIRY INTO CAMPAIGNING AT POLLING PLACES

Introduction

1. This submission addresses two issues relating to campaigning at polling places:
 - regulation of “bunting” and similar material; and
 - deceptive “how-to-vote” cards.
2. In formulating the observations and recommendations set out below, I draw on some 40 years of study of elections, including a 30 year career as an officer of the AEC in the course of which I did extensive work on amendments to the *Commonwealth Electoral Act 1918* and also managed the AEC’s international programs for the better part of 20 years. I have been involved in the organisation, observation and monitoring of polling not only in Australia (Commonwealth and State), but also in Namibia, Cambodia, South Africa, Indonesia, East Timor, Mozambique and (most recently) the Autonomous Region of Bougainville, Papua New Guinea.

Background

3. It is worth stating at the outset the role played by polling places in the overall electoral process. While these are often seen simply as sites for the issuing, marking and casting of ballots, they constitute, arguably much more importantly, a state-guaranteed place at which voters are supposed to be able to cast a secret ballot in a neutral political environment, free of fear, intimidation, or pressure.
4. In general, and with very few exceptions, this ideal has been met to a high standard at modern Australian federal elections. International visitors witnessing polling in Australia have in my experience almost without exception been struck by the calm, peaceful and friendly atmosphere on polling day, by the absence of overt presence of police or military officers at polling places, and by the typically polite way in which representatives of different political parties or candidates deal with each other. These characteristics of polling day are underpinned by strong cultural foundations: a widely shared societal understanding that the election process is to be respected and supported, and that everybody - including parties, candidates, scrutineers, canvassers and voters - has a role to play in ensuring its success.
5. That having been said, there have in recent years been a number of episodes at polling places at State elections which have not been consistent with this overall picture. Events at the 2014 Redcliffe State by-election in Queensland have been

addressed in detail in a Report prepared by the Electoral Commission Queensland.¹ More recently, it was noted in the press in February this year that the mayor of Ryde in Sydney was knocked unconscious outside a polling booth after an alleged altercation with a candidate at a local government by-election.

6. In some countries, canvassing for votes is forbidden either in the immediate vicinity of polling places, or anywhere on election day, or, sometimes, not only on election day but on the days immediately preceding it. Such bans are typically intended to prevent physical violence from breaking out between supporters of different parties and/or to give the voters the opportunity to enjoy a time of quiet reflection before voting.

7. While two Australian jurisdictions, Tasmania and the Australian Capital Territory, place strict limits on canvassing on election day, the other jurisdictions permit such activities on a scale which stands out when compared with international practice.² This would appear to be driven by two main factors:

- the belief on the part of parties and candidates that compulsory voting brings to the polling places significant numbers of people who may not be much engaged with politics, and whose voting choices may be influenced by last-minute messages; and
- the importance of the distribution of how-to-vote cards in buttressing electoral alliances between different candidates and/or parties.

These factors are deeply embedded features of Australian federal elections, and it would unrealistic in the short-term to expect them to be ignored when formulating an appropriate scheme for regulating campaigning at polling places.

8. In addition, any regulatory mechanism needs to take heed of the constitutional doctrine of freedom of political communication elaborated in various decisions of the High Court. In the context of the specific element of the Committee's Terms of Reference relating to "campaigning by organisations other than political parties at polling places", it should be noted that the High Court, in the *Unions NSW* case, made it clear that it did not see the freedom in question as one which was only protected when exercised by political parties, candidates or electors. It could also be observed that many of the political parties registered for federal elections in Australia have proven to be evanescent, and this could cause one to question whether such parties should be given a privileged position, in relation to election campaigning, over bodies which might not be seeking the election of their own candidates but which, on other measures, might be rather more enduring and substantial than some parties.

¹ Electoral Commission Queensland, 2014 *INQUIRY INTO THE REDCLIFFE BY-ELECTION*, (the "Redcliffe Report") at http://www.ecq.qld.gov.au/_data/assets/pdf_file/0020/1676/Inquiry-into-the-2014-Redcliffe-By-Election.pdf.

² On these, the Redcliffe Report provides useful cross-jurisdictional comparisons.

Posters and similar materials

9. Recent years have seen a proliferation of the display of posters and other electoral materials at polling places, and in some marginal seats this seems to have acquired some of the characteristics of an arms race. The Redcliffe Report noted in particular that:

“An emerging trend at elections is the use of continuous plastic wrapping signage referred to as ‘booth wrap’ or ‘bunting’. The plastic wrap is typically displayed along fences and features a recurring image and/or message every metre or so in a continuous repeated banner. Submissions on this subject were from two different groups, members of the public who believed the wrap was unsightly; and political supporters complaining that rival groups used the wrapping in long banner lengths thereby completely monopolising available space.”.

The Report also noted that:

“It is now common practice at elections in Queensland for supporters to erect signage and bunting on Friday afternoons and evenings and then guard the material throughout the night by the use of volunteers and professional security guards. Submissions to this inquiry made mention of incidents overnight between supporters competing for space to display electoral material. The Commission believes that consideration should be given to introducing legislation restricting the display of election material at and around polling booths prior to polling day.”.

10. For several reasons, this trend is a most undesirable one. Not only does it give rise to the possibility of conflict between party workers, but it also compromises what should be a politically neutral atmosphere at polling places: I have had it put to me by international visitors that it made the polling venues look as if they had been captured by a political party (something which in fact has been known to happen in countries such as India).

11. Up to 1984, the use of such bunting was forbidden, as the *Commonwealth Electoral Act 1918* specified limits on the size of electoral posters. Specifically, section 164B (now section 334) had provided (from 1966 to 1984) as follows.

“164B. (1) A person shall not post up or exhibit, or permit or cause to be posted up or exhibited, on any building, vehicle, vessel, hoarding or place (whether it is or is not a public place and whether on land or water or in the air)-

- (a) an electoral poster the area of which is more than one thousand two hundred square inches; or
- (b) any electoral poster in combination with any other such poster if the aggregate area of those posters exceeds one thousand two hundred square inches.

Penalty: Two hundred dollars.

(2) A person shall not write, draw or depict any electoral matter directly on any roadway, footpath, building, vehicle, vessel, hoarding or place (whether it is or is not a public place and whether on land or water or in the air).

Penalty: Two hundred dollars.

(2A) It is hereby declared that the application of the last two preceding sub-sections extends in relation to an election or referendum although the writ for that election or referendum has not been issued.

(3) Nothing in this section shall prohibit-

- (a) the posting up, exhibiting, writing, drawing or depicting of a sign on or at the office or committee room of a candidate or political party indicating only that the office or room is the office or committee room of the candidate or party, and specifying the name of the candidate, or the names of the candidates, or the name of the party, concerned; or
- (b) the projection, by means of a cinematograph or other similar apparatus, of electoral matter on to a screen in a public theatre, hall or premises used for public entertainment.

(4) In this section-

“electoral matter” means any matter intended or calculated to affect the result of an election or referendum under any law of the Commonwealth;

“electoral poster” means any material whatsoever on which any electoral matter is written, drawn or depicted.”.

12. The repeal of subsection 164B(1) in 1984 flowed from a recommendation made to the Joint Select Committee on Electoral Reform from the then Australian Electoral Office, and I can say from having been personally involved with the preparation of the Office’s submissions to that Committee’s inquiry that the primary motivation for the recommendation was to relieve electoral officials of the burden of dealing with complaints from political players concerning the sizes of their rivals’ posters.

13. There would appear to be no reason to believe that in the long run any particular party would enjoy any sustained advantage over its rivals from the continuing opportunity to make use of bunting; and it follows that its elimination from the electoral process would not be expected to have a partisan effect.

14. Taking all of these points into account, I would recommend that the *Commonwealth Electoral Act 1918* be amended so as to forbid the use of “bunting” (as described in the Redcliffe Report) at polling places, if necessary by re-enacting a limitation on the sizes of electoral posters. This should be

supplemented by appropriate penalties, and by an explicit power given to polling officials to remove or destroy any bunting displayed in breach of the law.

Deceptive how-to-vote cards

15. How-to-vote cards become a problem when they mislead voters. There have over the years been well-documented cases in which how-to-vote cards have been distributed which appeared to have been designed to give the impression that they had been officially issued by a candidate or party, but in fact have been issued by other players with the aim of “siphoning” preferences away from the preference flow officially recommended by that candidate or party. I note that the AEC’s witnesses spoke about this issue at the Committee’s public hearing on 16 July 2015.

16. At best, the distribution of such how-to-vote cards is a sharp practice. Section 329B of the *Commonwealth Electoral Act 1918* has at best sought to deal with this somewhat indirectly, by imposing more specific authorisation requirements for how-to-vote cards. I note that the AEC in its submission to this inquiry has flagged some issues with that provision.

17. The provision could, however, be strengthened further, and I **recommend that it be so strengthened, by inserting a requirement, supported by an appropriate penalty for non-compliance, that any how-to-vote card which suggests a first preference for a candidate/party but which is not in fact a how-to-vote card authorised by or on behalf of that candidate/party must have printed at the top in bold type and in a large point size (say, 16 point) words along the following lines: “THIS IS NOT THE OFFICIAL HOW-TO-VOTE CARD OF CANDIDATE [insert name] OF THE [insert party name]”.**

18. In making this recommendation, I am conscious that the issue of font sizes for authorisations required on how-to-vote cards is one which has been considered by the Committee previously; with the ultimate outcome being the repeal of some prescriptive provisions which had previously been enacted. The mechanism recommended above would not, however, apply either to the text specifying authorisation, or to how-to-vote cards officially issued by or on behalf of a candidate or party.