



2014

INQUIRY INTO THE
REDCLIFFE BY-ELECTION

15 April 2014

The Honourable Jarrod Bleijie MP
Attorney-General and Minister for Justice
Member for Kawana
GPO Box 149
BRISBANE QLD 4001

Dear Attorney

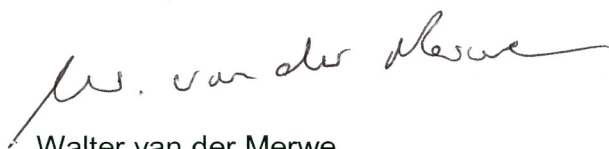
Final report - Redcliffe by-election inquiry

I refer to my letter dated 27 February 2014 in which I informed you of my intention to conduct an internal inquiry into the Redcliffe by-election and report to you in due course.

The inquiry has been completed and I am pleased to present the Commission's final report into this matter.

In my letter of 27 February 2014 I foreshadowed that if the inquiry resulted in the identification of any serious offences they would be referred on to the Queensland Police Service or Crime and Misconduct Commission. I advise that no offences necessitating referral were particularised by the inquiry process.

Yours sincerely



Walter van der Merwe
Electoral Commissioner

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EXECUTIVE SUMMARY

Following the Redcliffe by-election in February 2014 the Acting Electoral Commissioner decided to conduct an inquiry into the overall manner in which the by-election was conducted. This decision was made in response to a number of complaints that were received by the Electoral Commission of Queensland (the Commission) as well as complaints that were detailed in the media concerning the activity of political supporters at polling booths. The objective of this report is to summarise the Commission's inquiry, analyse issues identified, review relevant electoral laws and make recommendations to improve Queensland electoral laws.

The Commission specifically identified three issues (inquiry assessment points) in relation to the by-election:

1. Overt intimidating and obstructive behaviour towards the public and election staff;
2. Excessive displays of political statements and the manner and time in which those statements were erected and displayed; and
3. The conduct and number of scrutineers at the Saturday night count.

The electors of Redcliffe and stakeholders were invited to make submissions to the inquiry and in total 121 submissions were received by the Commission. In addition to examining submissions, inquiry staff reviewed media articles and other information such as photos, videos and social media sources related to the by-election. Detailed research was also conducted into relevant electoral law in Queensland, interstate and overseas.

The main findings of the inquiry are:

- Significant concern and dissatisfaction exists in the Redcliffe community in relation to activities of canvassers and supporters at the by-election. Many electors reported feeling intimidated and harassed by persons and groups protesting and canvassing at the entrance to polling booths on polling day;
- Queensland electoral laws in relation to canvassers and the display of electoral material were ineffective in regulating these activities at the by-election, and are significantly weaker than similar laws in other Australian States and Territories;
- The large number of scrutineers permitted by law to be present at polling booths during the Saturday night notional count was distracting and created significant challenges to polling booth staff. Queensland electoral laws governing the conduct of scrutineers are materially deficient in comparison to the laws of all other States and Territories.

The conclusion of this inquiry is that consideration be given to amending the *Electoral Act 1992* to better regulate the activity of political support groups at, and around polling booths.

The Commission makes the following key recommendations:

- The amendment of legislation to create an offence for conduct that may obstruct or hinder a person entering or approaching a polling booth;
- Authorise Officers of the Commission to give lawful directions in relation to the regulation of areas

around polling booths;

- Restriction on the display of election material around a polling booth prior to 6am on polling day and a general prohibition on the use of loudspeakers in vicinity of booths;
- Modifications to technical aspects in respect to lodgement of how-to-vote cards;
- A practical reduction in the numbers of scrutineers at polling booths during counting and greater clarity in rules governing scrutineer conduct;
- The introduction of a Voluntary Code for participants in Queensland elections that sets expectations for how supporters and staff will conduct themselves during a campaign.

The circumstances surrounding the by-election

The role of the Electoral Commission

The Electoral Commission of Queensland (the Commission) is a statutory authority that independently administers Queensland's electoral laws. The Commission was established and derives its authority from the *Electoral Act 1992* (Qld).

The objectives of the Commission are:

- Administering Queensland's electoral laws, impartially and Independently;
- Conducting free and democratic parliamentary, local government and industrial elections;
- Managing a comprehensive process for the independent review of local government boundaries;
- Promoting the informed participation and confidence of Queenslanders in the electoral system;
- Provide quality electoral services to stakeholders.

The Commission is required to maintain political neutrality and Commission staff must be, and must be seen to be, politically neutral and are required to:

- Refrain from membership of any political party;
- Refrain from engaging in political activity which could be seen as reflecting adversely on the staff member's political neutrality; and
- Remain politically neutral in all aspects of work and in dealing with all clients.

About Redcliffe

The Queensland state electoral district of Redcliffe is located to the north of Brisbane. The electoral district predominantly encompasses the Redcliffe Peninsular. The Coral Sea is to the north and east of the district and the southern boundary of the district is the southern coastline of the Redcliffe Peninsular and the western boundary is Hercules Road. The seats of Sandgate, Murrumba and Pumicestone border Redcliffe which is comprised of the suburbs of Newport, Scarborough, Margate, Clontarf, Kippa-Ring and Redcliffe.

Administrative arrangements

The writ for the by-election was issued on 28 February 2014 and pre-poll voting commenced on Monday, 17 February 2014. The writ for the election specified an unusually short period of nine days between close of nominations for candidates and polling day.¹ To assist voters, the Electoral Commission expanded the normal pre-poll voting hours at the main pre-poll centre at Kippa-Ring.

Pre-poll in-person voting was conducted at the Electoral Commission building in Mary St, Brisbane, at a designated pre-poll centre at Anzac Avenue, Kippa-Ring and at the Redcliffe Court House. The following

¹ *Queensland, Queensland Government Gazette*, [365- 23] 4 February 2014.

13 polling booths were declared for polling day.²

POLLING BOOTH NAME	POLLING BOOTH ADDRESS
BALLY CARA	RETIREMENT VILLAGE, OYSTER POINT ESPLANADE, SCARBOROUGH
CLONTARF	CLONTARF BEACH STATE SCHOOL HALL, 91 ELIZABETH AVENUE, CLONTARF
CLONTARF BEACH	GRACE LUTHERAN PRIMARY SCHOOL MULTI-PURPOSE HALL, 38 MAINE ROAD, CLONTARF
FRAWLEY	BR TIMOTHY PETER CENTRE, 294 SCARBOROUGH ROAD, SCARBOROUGH
HUMPYBONG	STATE SCHOOL HALL, ERNEST STREET, MARGATE
KIPPA-RING	STATE SCHOOL HALL, KORSCH STREET, KIPPA-RING
KIPPA-RING NORTH	SALVATION ARMY COMMUNITY HALL, 64-72 ASHMOLE ROAD, REDCLIFFE
REDCLIFFE SOUTH	SENIOR CITIZENS CENTRE, 401 OXLEY AVENUE, REDCLIFFE
REDCLIFFE TAFE	BLOCK C, 64-68 KLINGNER ROAD, REDCLIFFE
SCARBOROUGH	STATE SCHOOL, GARSDEN STREET, SCARBOROUGH
SCARBOROUGH NORTH	ALICE BARTLETT HALL, 72 SEAVILLE AVENUE, SCARBOROUGH
WOODY POINT	CATHOLIC CHURCH HALL, CNR COLLINS ST & VICTORIA AVENUE, WOODY POINT
WOODY POINT SOUTH	MEMORIAL HALL, CNR OXLEY AVE & HORNIBROOK ESPLANADE, WOODY POINT

Political circumstances

The Redcliffe by-election was held to elect a replacement for the retiring member, Scott Driscoll who had held the seat since the March 2012 Queensland state general election. Prior to 2012, the seat of Redcliffe had been held by the Australian Labor Party (ALP) for 33 of the last 34 years.³ The circumstances of Mr Driscoll's departure are relevant as they assist in understanding the political climate at the time of the by-election.

In March 2013, Mr Driscoll was suspended from the Liberal National Party (LNP) as a result of a number of allegations of impropriety.⁴ He subsequently resigned his LNP party membership in April of that year

² Queensland, Queensland Government Gazette, [365- 23] 4 February 2014.

³ ABC, 2014 Redcliffe by-election Guide, 2014 <<http://www.abc.net.au/elections/qld/2014/redcliffe/>>.

⁴ 'Embattled MP suspended from LNP', Brisbane Times (online), 25 March 2013. <<http://www.brisbanetimes.com.au/queensland/embattled-mp-suspended-from-lnp-20130325-2gpul.html>>

and continued as the Independent Member for Redcliffe.⁵ On 19 November 2013 Mr Driscoll resigned from Parliament following a finding of guilt by the Queensland Parliament Ethics Committee on charges of Contempt of Parliament, Failing to Register Interests and Misleading the House.⁶

The 2014 Redcliffe by-election occurred one month short of the second anniversary of the 2012 Queensland State general election. The 2012 State general election was a significant victory for the LNP Party, with LNP endorsed candidates winning 78 of Queensland's 89 seats.⁷ Opinion polling conducted in December 2013 and January and February 2014 predicted an ALP victory in the seat of Redcliffe.⁸

Candidates

Prior to the by-election, Queensland had not had a state electoral event since the April 2012 South Brisbane by-election. No other electoral events occurred in Australia on the weekend of the Redcliffe by-election which also contributed to a higher than usual level of interest from the public, media, third parties and interest groups. By way of comparison, in the 2012 state general election five candidates stood for election in Redcliffe (the same number that stood in the 2009 state general election) whereas the number of candidates at the 2014 by-election nearly doubled to nine.

Third parties

Commission staff noted an increased concentration of issue-based campaigning and third-parties at the by-election. A third party is defined under Queensland legislation as, "an entity other than a registered political party, an associated entity or a candidate."⁹ The term commonly refers to an interest group seeking to shape public debate and opinion.¹⁰ In Queensland third parties who register with the Electoral Commission have a higher electoral expenditure cap, which increases the amount of money they may spend on a campaign from \$2,300 to \$80,500. In the 2012 election, state-wide there were 32 third parties registered with the Electoral Commission; at the 2014 Redcliffe by-election nine groups registered.¹¹ In other words although only one of 89 parliamentary seats was being contested, third party registration at the by-election was 28% - close to one third - of the number of state-wide registrations in 2012.

Voting trends

At the close of roll for the election, 33,146 electors were enrolled in the district of Redcliffe. A total of 28,547 electors voted in the election, representing a voter turn-out percentage of 86%.¹² The election saw the continuing development of the trend of electors choosing to vote at pre-poll or by postal vote. Pre-poll voting accounted for 6,650 votes and postal ballots totalled 1,175.¹³ In percentage terms this represents

5 'Scott Driscoll resigns from LNP', *Brisbane Times* (online), 19 April 2013. <<http://www.brisbanetimes.com.au/queensland/scott-driscoll-resigns-from-lnp-20130419-2i5gz.html>>

6 *Parliament of Queensland, Ethics Committee Report No. 139.*

7 *Electoral Commission of Queensland, 2012 State General Election – Election Summary (February 2013)* <<http://www.ecq.qld.gov.au/elections/state/State2012/results/summary.html>>

8 *ABC, 2014 Redcliffe by-election Guide, 2014* <<http://www.abc.net.au/elections/qld/2014/redcliffe/>>.

9 *Electoral Act 1992 (Qld)* s 197.

10 *Graeme Orr and Anika Gauja, 'Third Party Campaigning and Issue Advertising in Australia' (2014) 60 Australian Journal of Politics and History 79.*

11 *Electoral Commission of Queensland, Register of Third Parties 2012 Election; 2014 Redcliffe by-election (2014).*

12 *Electoral Commission of Queensland, 2013 Redcliffe By-election Results, 2014.* <<http://www.ecq.qld.gov.au/elections/state/Redcliffe2014/results/district69.html>>

13 *Electoral Commission of Queensland, 2014 Redcliffe By-election Postal Vote Summary (2014); Electoral Commission of Queensland, 2014 Redcliffe By-election Pre-poll Summary Report (2014).*

23% and 4% of the total vote respectively, with the remaining 73% of votes cast at a polling booth on polling day.

The operational performance of ECQ at the by-election

From the perspective of the Commission the Redcliffe by-election was a normal electoral event and was run in accordance with current legislation and established policy and procedures that have been developed by experienced Commission staff. The core functions of the Commission ran smoothly at the by-election with no systems failures or unexpected events occurring with respect to voting or conducting the count.

The circumstances of the by-election were unremarkable save for the truncated time-table mandated by the writ for the election. The writ specified a shorter than usual time period for pre-polling and postal voting. Although the time constraints created some operational challenges, this was a single seat by-election and the Commission was able to adequately account for these factors and adapt. Prior to polling day there was no information available to the Commission that indicated anything out of the ordinary. Although some complaints were received in relation to canvassers and electoral material at pre-poll, the manner in which the majority of canvassers conducted themselves and the use of electoral material at pre-poll was generally satisfactory.

The Returning Officer for the electoral district was experienced in the position and had performed the function on previous occasions. Full-time Commission staff from the Brisbane office were deployed to assist the Returning Officer at pre-poll and assisted with the Saturday night count.

This inquiry

In the days following the by-election there was significant media and public interest in several aspects relating to the way the election was conducted. A number of news reports on the subject were broadcast and published, and complaints were received by the Commission from electors. The Acting Electoral Commissioner decided to exercise his authority under the Act to investigate three points of inquiry: canvassing, election material and scrutineers.¹⁴ As part of this process the Commissioner called for public submissions. In total 121 submissions were received from members of the public, interest groups, candidates and registered political parties. The inquiry also referred to media reports, photos and videos of polling booths and social media. Research was completed into relevant electoral laws in Queensland, throughout Australia and internationally.

To maintain the privacy of persons making submissions to this inquiry, the submissions that appear in this report are de-identified and are referred to by a unique number. Additionally, to ensure that observations remain untainted by allegations of partisanship, references to specific groups or entities have been removed or generalised.

Terminology

For the purpose of consistency throughout this report the following terms will be used to describe electoral activity and participants.

¹⁴ *Electoral Act 1992 (Qld) s 7(1)(c)(iii).*

Canvassers:

Refers to persons present at the entrance to polling booths, and by their actions (such as handing out electoral material, verbally or physically demonstrating) and /or presence attempt to solicit or influence the voting preference of electors with respect to a candidate or based on a particular issue or issues.

Electoral material (or election material):

‘Electoral material’ means material of a political nature that is displayed or distributed around polling booths, before or during polling for an election, and includes signs, notices, flyers, loudspeakers and other forms of advertising or communication.

Scrutineers:

The official representatives of candidates who are permitted to be present during voting and afterwards during the scrutiny and counting of ballots for the purpose of observing these processes under s 104 of the Act.

The Act:

Unless specified the words, ‘the Act’ will refer to the *Electoral Act 1992* (Qld).

The authority and scope of this inquiry

Authority

Section 7(1)(c)(ii) of the *Electoral Act 1992* prescribes that one of the functions of the Commission is to consider, and report to the Minister on “such other electoral matters as it considers appropriate”.

The Acting Electoral Commissioner wrote to the Queensland Attorney-General (on 27 February 2014) to advise of the decision to hold an inquiry into the conduct of the 2014 Redcliffe by-election.

Purpose

To conduct a thorough investigation including seeking submissions from the Redcliffe electorate, as to the alleged aggressive and intimidating manner in which the supporters of political parties and independent candidates conducted themselves at the 2014 Redcliffe by-election held on Saturday, 22 February 2014.

Scope

The Commission will be addressing three main points and making recommendations to the Honourable Jarrod Bleijie MP Attorney-General and Minister for Justice, in relation to these.

Inquiry assessment points (IAP):

1. Overt intimidating and obstructing behaviour towards the public and election staff;
2. Excessive display of political statements and the manner and time in which those statements were erected and displayed; and
3. Conduct and number of scrutineers at the Saturday night count.

The investigation will cover the time period from the commencement of pre-polling on Monday, 17 February 2014 to polling day evening, Saturday, 22 February 2014.

Functions

The functions of the inquiry are to:

- Evaluate public and internal submissions and commentary;
- Review and provide advice on electoral provisions contained within enabling legislation of other Australian electoral jurisdictions as to how these could relate to Queensland; and
- Produce a report in relation to the administration of the Redcliffe by-election, in particular the three IAP and make recommendations where appropriate.

Timeframe

To provide a report to the Minister by Tuesday, 15 April 2014.

IAP 1: Canvassers

Summary of submissions received

By far, the subject of the largest number of submissions received by the Commission related to canvassers at the by-election. Almost three quarters of submissions received concerned the activity of canvassers. Whilst some submissions were from canvassers complaining about the presence and activity of other canvassers, the majority of submissions were received from electors who had attended polling booths to cast their vote.

Presence

Many submitters were concerned about the presence of large numbers of canvassers at the entrances to polling booths. The idiom, ‘running the gauntlet’ appeared many times in submitters’ description of the entry to polling booths. The Returning Officer for the district reported that his booth supervisors informed him that on polling day, “*many, many complaints were received from voters*” about canvassers outside booths.¹⁵ Many submitters pointed to significant personal experience of voting in many elections and reported never having encountered an experience similar to polling day at this by-election.

Some notable examples of extracts from submissions are:

- Submitter 46, a Kippa-Ring North ECQ booth worker, reported voters entering the polling booth to vote were agitated and irate at having to force through a ‘scrum’ of canvassers outside.¹⁶
- In submitting that the number of canvassers be capped, Submission 22 (a volunteer and scrutineer), stated “...the very large phalanx of workers for both major parties were unnecessary, intimidating at worst, annoying at best, and, in a practical sense, simply counterproductive”.¹⁷
- Submitter 27 stated that she was frightened by a one particular interest group chanting loudly.¹⁸
- Submitter 42 stated that the number of canvassers was overbearing and left him feeling “quite uneasy”.¹⁹
- Submission 68 (party volunteer) described a large crowd of canvassers and reported, “There were so many people lining the footpath and gateway, that the majority of people coming to vote had to be told where to enter...”.²⁰
- A “noisy gauntlet of candidates supporters press papers at us and pressurising us...” was reported by Submission 21 at Kippa-Ring.²¹
- Submitter 107 voted at the Humpybong booth and stated she had to walk through shoulder to shoulder campaign workers who were lining each side of the path, shoving how-to-vote cards at

¹⁵ Returning Officer, submission, page 1.

¹⁶ Submission 46.

¹⁷ Submission 22, page 1.

¹⁸ Submission 27.

¹⁹ Submission 42.

²⁰ Submission 68.

²¹ Submission 21.

electors and yelling political messages.²²

- Submitter 100 in reporting a “scrum” of canvassers at Redcliffe TAFE booth said that, “No one particular party appeared worse than any other yet they were collectively out of line”.²³

However, not all comments received were negative. Submitter 47 reported no problem with party workers and saw no disruptive behaviour during her visit to the Woody Point polling booth.²⁴ Likewise Submitter 44 found all supporters friendly and commented that they assisted her in gaining access to the polling booth.²⁵

Issues accessing polling booths

Submitter 2 (political party supporter at the Redcliffe Court House pre-poll) reported that the paths of elderly electors using walking frames or sticks were blocked by third party volunteers seeking to distribute election material.²⁶ Submitter 118, (confirmed by video footage obtained by the Commission), described an unsafe situation where voters were forced to walk on the roadway because footpaths were blocked by canvassers and signage.²⁷

Submitter 6 noted that vehicles with political advertising parked on the road near booths took up limited spaces which could otherwise have been used by electors.²⁸ Street parking was a further issue reported by a number of electors, especially the elderly, and many stated they believed the large numbers of canvassers present had contributed to the problem.²⁹ Submitter 11 reported that a mobile billboard parked at the end of a cul-de-sac obstructed other vehicles’ safe use of the road.³⁰

The Commission’s booth supervisor at the pre-poll centre at Kippa-Ring related an incident on Thursday, 20 February 2014 where workers from a political party were blocking two disabled electors from accessing the entry ramp and would not let them pass. When the staff member intervened and asked the party workers to remove themselves and their signage from the ramp, one of the workers replied, “*We’re six metres from the entrance so we are legally allowed to be here*”.³¹ She reported having such difficulty keeping workers back the required six metres from the entrance that she resorted to demarcating the 6m boundary with a chalk line on the ground.³² The booth supervisor also reports party workers referring to, and making disparaging comments about electors who had raised complaints with staff or had refused to accept electoral material.³³

Again, not all electors had negative experiences. Submitter 13 voted at the Kippa-Ring pre-poll centre and said the process was ‘speedy’.³⁴ Submitter 24 described her pre-poll voting experience as normal; however this contrasts with the stressful and intimidating experience of her husband and daughter at 2 different

²² Submission 107.

²³ Submission 100.

²⁴ Submission 47.

²⁵ Submission 44.

²⁶ Submission 2, page 1.

²⁷ Submission 118, page 1 & 2.

²⁸ Submission 6, page 2.

²⁹ Submission 93.

³⁰ Submission 11, page 1.

³¹ ECQ Booth Supervisor, submission, page 4.

³² ECQ Booth Supervisor, submission, page 1.

³³ ECQ Booth Supervisor, submission, page 2 & 3.

³⁴ Submission 13.

locations on polling day.³⁵

Intimidating or threatening manner of canvassers

The comments in Submission 99, made by a worker at the sausage sizzle at the Scarborough booth, concisely encapsulates the views of many submitters, *“Polling places should be impartial and should allow voters to visit and cast their votes without any pressure from any other person and without any intimidation implied or otherwise.”*³⁶

Submission 5 reported threatening and intimidating behaviour by the major parties and third party groups.³⁷ Submission 83 described the submitter’s experience at pre-poll voting where, after accepting a how-to-vote card from one party he was confronted by another party supporter who blocked his path and delivered a political message in, *“a very threatening manner”*.³⁸ Submission 97 described aggressiveness and harassment of electors by canvassers from a third party campaign. The submitter stated that these supporters abused other party workers and showed contempt for voters who tried to ignore them.³⁹

A common theme from many submitters was the manner, tone and the content of the message of the third party supporters. Submitter 14 stated she was followed through the crowd by an interest group canvassing loudly in a *“very bullying tone”*. Further, the submitter stated that her husband was upset by a scene outside and cast an informal ballot in disgust.⁴⁰ Submitter 23 reported *“extremely aggressive and vocal”* supporters dressed in specific uniforms discouraged voting for a party.⁴¹ According to a submitter this also occurred during pre-poll voting where she was, *“yelled at by a large man in a uniform I felt very intimidated and considered not voting”*.⁴² A number of submitters took issue with particular third parties stating that the government had undertaken certain actions which submitters stated they believed to be untrue.⁴³

IAP 2: Electoral Material

Excessive signage

Just under one third of submissions received expressed opinions that electoral signage and advertising material at the by-election was excessive. During pre-poll submitter 6 and his wife were concerned with *“the extent of political posters displayed on the footpath and fence in front of the polling booth”* and also when driving past a booth on polling day found a *“multiplicity of the same corflute boards placed there by an interested party – taking up 10’s of metres of space”*.⁴⁴ Submissions spoke of excessive signage at pre-poll centres, polling day booths and throughout Redcliffe prior to polling day.

Some of those comments are listed below:

- *“They ... basically boxed us in with very big signs - I would guess 8’ x 6””*.⁴⁵

³⁵ Submission 24.

³⁶ Submission 99.

³⁷ Submission 5.

³⁸ Submission 83.

³⁹ Submission 97.

⁴⁰ Submission 14.

⁴¹ Submission 15.

⁴² Submission 23.

⁴³ Exemplified by submissions 118, 38, 68, 75, 78.

⁴⁴ Submission 6, page 2.

⁴⁵ Submission 16, page 1.

- Submission 18 also addressed the size of materials used that might be used in the future *“they will continue to get larger and larger. That is the very nature of competition unleashed”*.⁴⁶
- *“It was very distracting as a driver to be faced with black and yellow posters plastered along the fence line of Clontarf Beach Primary School and Kippa-Ring State School”* and *“I have never witnessed this sort of propaganda for any election prior to this one”*.⁴⁷
- Submission 42 was unhappy about, *“The mass amount of material thrust at us both in the mail & advertised on the streets”*.⁴⁸
- Submission 85 raised concerns about content, *“The promotion of written or verbalised information that was false and misleading. Third party supporters were verbalising that fire stations had been closed down and services reduced, which is clearly false”*.⁴⁹

There were many more submissions commenting on the amount of signage used with only two of those being somewhat positive: Submission 44, *“The display of political statements was what I consider to be normal and not overly done at the place I voted”*;⁵⁰ and Submission 69, *“As for the roadside political signs used during the course of the election surely we are still a democracy where people are allowed to demonstrate and display their views. I didn’t see any that should be cause for offence”*.⁵¹ Some submissions also raised the issue of signs in the community and the inadequate enforcement of advertising local laws by Council, however these issues fall outside the scope of this inquiry and the jurisdiction of the Electoral Commission.

Use of vehicles

The use of props was widely criticised in the submissions received, mostly touching on the use of uniforms, vehicles and mobile video screens with loudspeakers. These issues were outlined by the Redcliffe Returning Officer, for example: *“Mention made about mobile video not originally being authorised and also being very loud”*. The Returning Officer also referred to a vehicle parked outside a booth covered in signs attended by an interest group in uniform. Submitter 8 also commented that, *“Kippa-Ring had a ute with a massive TV screen on it playing an advertisement, which other than being annoying was distracting to drivers”*.⁵²

Use of security

There were several reports of security guards being used on the night prior to polling day to safe guard the canvassers’ signage. There were comments in submissions suggesting poor behaviour from security guards, this is outlined in Submission 97, *“The complete front fence of the booth was covered in signage from both major parties & there were security guards there all evening, who were not well behaved either”*.⁵³ One instance of a security guard feeling threatened enough to leave their post was reported by the Returning Officer, *“I was advised by a third party that the guard hired by Southern Cross Catholic School came across*

⁴⁶ Submission 18, page 2.

⁴⁷ Submission 24, page 1.

⁴⁸ Submission 42, page 1.

⁴⁹ Submission 85, page 1.

⁵⁰ Submission 44, page 1.

⁵¹ Submission 69, page 2.

⁵² Submission 8, page 1.

⁵³ Submission 97, page 1.

people pulling down signs at the Frawley Booth. Guard felt unsafe and left, police called”.⁵⁴

Time of setup

Some submitters reported that early setting up of electoral materials (e.g. booth wrap, corflutes) was an issue on the Friday before polling day. These submissions came mainly from parents attempting to pick up their children from schools after 2pm. Submission 23 states, *“At Clontarf Beach State School the parties were setting up on Friday 21st February prior to school finishing and had taken over most of the car park where parents park to pick up children they also were blocking the only gate that parents and children use to either enter or exit the school. When asked why they were setting up so early the answer was, ‘the Government did not give us a time line so we can set up when we like’, How inconsiderate of the Candidates and their helpers”*.⁵⁵ This was not an isolated incident, Submission 115 noted the only pickup and drop-off zones at Scarborough State School were blocked by canvassers setting up signs at 2:30pm on the Friday prior to polling day.⁵⁶

There were also reports from the Returning Officer that the, *“...registrars at Kippa-Ring School called about people trespassing on school ground to put up signs also mentioned that signs not all taken down after polling day”*.⁵⁷

IAP 3: Scrutineers

Summary of submissions received

The scrutineering process was the least mentioned subject in the submissions presumably because most contributions to the inquiry came from the general public who did not have access to areas counting ballots after the close of polling. Most complaints were in regards to the conduct of the scrutineers during counting, but overcrowding and the excessive amount of scrutineers present were also mentioned.

Overcrowding

It was expressed in submissions that when parties use the maximum permissible number of scrutineers (one scrutineer per Commission staff member present) it means there is very little physical room to complete the counting of the ballots. As mentioned by Submitter 46 who worked at the Kippa-Ring North booth, it created a *“very tense atmosphere”* to have so many scrutineers from opposing parties all grouped into the one room.⁵⁸ The same point is mentioned by the Returning Officer and in Submission 103 received from a polling booth officer;

- *“We had 9 candidates, if each one has 4 scrutineers that would be 36 people observing the count, which is not practical”*.⁵⁹
- *“Due to the number of candidates, obviously there were more scrutineers than at previous elections. Physically, this made it difficult to utilise the space available for sorting and general movement around*

⁵⁴ Returning Officer, submission, page 1.

⁵⁵ Submission 23, page 1.

⁵⁶ Submission 115.

⁵⁷ Returning Officer, submission, page 1.

⁵⁸ Submission 46, page 1.

⁵⁹ Returning Officer, page 1.

*the table”.*⁶⁰

- *“There seemed to be more scrutineers than staff counting”.*⁶¹

Attempts on Saturday night to limit the number of scrutineers present for the count, (due to practical considerations relating to the size of the room) were vigorously resisted by a political party who referred to the numbers of scrutineers specifically permitted by the Act.⁶²

Conduct of scrutineers

Of the 121 submissions received, five addressed the conduct of scrutineers with one of those mentions being positive. Submitters commented on the following issues encountered during the counting process:

- Commission staff instructions on the order of proceedings was not clear;⁶³
- Excessive requests from scrutineers to recount bundles;⁶⁴
- Excessive challenging of formal/informal votes;⁶⁵
- Mention made by scrutineer that they had to make sure the Act was being applied properly;⁶⁶
- Too much conversing with other scrutineers and booth staff during the count distracting counters;⁶⁷
- Scrutineers giving directions to less experienced booth staff;⁶⁸
- Scrutineers speaking over the booth supervisor.⁶⁹

The positive submission received stated, *“The subsequent scrutineering was all done in good spirit and co-operatively”*. This submitter also addressed the need for better training of ECQ staff involved in the count, *“ECQ staff could have had much clearer and preferably written instructions of how to proceed and that the lack of such did lead to confusion and errors in the initial counting procedures”*.⁷⁰

60 Submission 103, page 1.
61 Submission 46, page 1.
62 Submission 4, page 5 & 6.
63 Submission 22, page 1.
64 Submission 103, page 2.
65 Returning Officer, page 2.
66 Returning Officer, page 1.
67 Returning Officer, page 1.
68 Submission 103, page 1.
69 Submission 103, page 1.
70 Submission 22, page 1.

Perspectives of television, print & online

As part of the inquiry process, Commission staff researched media reports, photographs and videos of polling booths and examined social media sites and news broadcasts. In many cases these sources provided independent verification of the issues raised in submissions to the inquiry.

IAP 1: Canvassers

On the day of the by-election the Courier Mail ran a story in relation to the large number of canvassers present at polling booths.⁷¹

ABC news footage of the Premier's visit to the Humpybong State School polling booth on polling day shows canvassers chanting political slogans, protesters shouting at the Premier and the LNP candidate, and canvassers attempting to thrust material at the Premier as he left the area.⁷²

Television news footage also clearly shows large numbers of canvassers present at the entrance to polling booths. Numerous canvassers can be seen approaching voters attempting to enter polling booths and forcefully presenting the voter with electoral material.⁷³ Canvassers can be observed completely blocking pathways by their presence and with signage, umbrellas and tables.⁷⁴ A photo on Twitter depicts large numbers of canvassers operating very close to the entrance of the TAFE polling booth, possibly breaching the 6 metre rule.⁷⁵

Several news sources carried a story of canvassers using insulting words towards the Premier's wife at polling booths on polling day; however no direct evidence of the same has come to the attention of the inquiry.⁷⁶

An example of the atmosphere of animosity between groups of canvassers was reported by submitters and is evidenced by a video on the Not4Sale group's Facebook site. During a video interview of a Not4Sale canvasser at the Kippa-Ring booth, a party canvasser approaches the camera and can be heard to say, "*Stop the union corruption*" before returning to a group of other party canvassers.⁷⁷

IAP 2: Election material

Photographs and television news footage show the extent of the signage and plastic wrapping that was used by political and third party supporters at the front of polling booths. As raised in submissions, large swathes of plastic wrap bearing political messages can be seen secured to long, continuous sections of the front

71 Kay Picton, 'Voters in Redcliffe by-election smothered by campaigners at polling booths', *The Courier Mail* (online), 22 February 2014 <<http://www.couriermail.com.au/questnews/moreton/voters-in-redcliffe-by-election-smothered-by-campaigners-at-polling-booths/story-fni9r1i7-1226834616672>>.

72 ABC Television, 'Redcliffe By-Election Voter Verdict', *ABC News (Weekend)*, 22 February 2014.

73 ABC Television, 'By-Election Fallout, Booth Behaviour', *ABC News*, 24 February 2014.

74 Seven Television, 'Election Tension', *Seven News*, 22 February 2014 and *Nine Television*, *Nine News*, 22 February 2014.

75 Twitter, Dirk Bossard, 22 February 2014 <<https://twitter.com/DirkLB1>>.

76 For example: *Nine Television*, *Nine News*, 22 February 2014; Robyn Ironside, 'Personal abuse of Lisa Newman condemned as 'grubby new low' by the unions', *The Courier Mail* (online), 24 February 2014 <<http://www.couriermail.com.au/news/queensland/personal-abuse-of-lisa-newman-condemned-as-a-grubby-new-low-by-the-unions/story-fnihsrf2-1226835446523>>.

77 <https://www.facebook.com/photo.php?v=820161084666815&set=vb.100000187940131&type=2&theater>.

fences of polling booths.⁷⁸

Channel Seven news on election night depicted a white utility fitted with a large electronic billboard and loudspeaker system.⁷⁹ In the footage, a loudspeaker plays political messages while the vehicle appears to be parked in a cul-de-sac, as described in public submissions.⁸⁰

⁷⁸ Seven Television, 'Election Tension', Seven News, 22 February 2014 and Facebook, Not4saleQLD <https://www.facebook.com/Not4SaleQLD/photos_stream>.

⁷⁹ Seven Television, 'Election Tension', Seven News, 22 February 2014.

⁸⁰ Submission 11, page 1.

Queensland's *Electoral Act 1992*

IAP 1: Canvassers

The Act states that a person in, or within six metres from the entrance to a polling booth must not canvas for votes, induce an elector not to vote or to vote in a particular way, loiter or obstruct free passage of voters.⁸¹ It should be noted that outside of this six metre zone the Act makes no provision in relation to conduct of canvassers, or the obstruction of electors attempting to enter a booth. Further, the six metre zone is tied to the entrance of the building in which voting is being conducted which, in practice, is often a considerable distance from the entrance to the grounds of the booth.

IAP 2: Advertising material

How-to-vote cards

- Definition of a how-to-vote card
How-to-vote (HTV) card means a card, handbill or pamphlet that is, or includes a representation of a ballot paper or part of a ballot paper or something apparently intended to represent a ballot paper or part thereof. A HTV card may also list the names of any or all of the candidates for an election with a number indicating an order of voting preference against the names of any or all of the candidates. HTV cards can also otherwise direct or encourage the making of preference votes, other than first preference votes, in a particular way.⁸²
- Distribution of HTV cards
In regards to the distribution of HTV cards during election periods, cards must not be distributed unless they are authorised in compliance with the Act.⁸³
- Lodgement of HTV cards
The person who has authorised a HTV card to be used for a registered political party or a candidate at an election must ensure a compliant card is lodged with the Commission no later than 5pm on the Friday that is seven days prior to polling day. The requirements for lodgement are to provide:-
 - A required number of the HTV cards; and
 - A statutory declaration relating to any financial contribution received from another registered political party or another candidate, whether directly or from someone else on behalf of the party or candidate, in relation to the production of the HTV card that states—
 - (i) who the financial contribution was received from or on behalf of; and
 - (ii) the nature and amount of the financial contribution.

The Commission must reject any HTV cards that do not comply with section 182; and on polling day the Commission's staff reserve the right to inspect and confiscate any how to vote cards that have not been

⁸¹ *Electoral Act 1992 (Qld) s 188.*

⁸² *Electoral Act 1992 (Qld) s 2.*

⁸³ *Electoral Act 1992 (Qld) s 182.*

lodged as required by the Act.⁸⁴

Misleading voters

The Act states that a person must not, during the election period for an election:

- Print, publish, distribute or broadcast anything that is intended or likely to mislead an elector on how to vote; or
- A person may not knowingly publish any false statements regarding the personal character or conduct of a candidate for the purpose of affecting the election; and
- Purported representations of ballot papers must not be printed, published, distributed or broadcast by television during an election period if it is likely to induce an elector to vote other than in accordance with the Act.⁸⁵

Authorisation

The Act states that a person must not themselves, or permit another person, during the election period for an election print, publish, distribute or broadcast any advertisement, handbill, pamphlet or notice containing election matters unless it contains the name and address (other than a post office box) of the person who authorised the advertisement, handbill, pamphlet or notice. These particulars do not apply to an advertisement that is printed, published or distributed on a car sticker, T-shirt, lapel button, lapel badge, pen, pencil, balloon or similar.⁸⁶

IAP 3: Scrutineers

During election periods each candidate for an electoral district may appoint adult persons as scrutineers; these scrutineers are entitled to be in the following locations:

- Polling booths;
- Mobile polling booths;
- Each pre-poll voting office; and
- Each other office staffed by an issuing officer.

Scrutineers are also entitled to be present beforehand at polling booths as well as afterwards for the purpose of inspecting ballot boxes, examining declaration envelopes and counting of votes. Each candidate is entitled to have one scrutineer present for each Commission officer at the booth.⁸⁷

A scrutineer may:

- Object to the entitlement of a person to vote at the election; or
- Record details of electors who vote at the election, and take the record out of the polling booth; or
- Do anything else permitted by the Act.⁸⁸

⁸⁴ Electoral Act 1992 (Qld) s 183.

⁸⁵ Electoral Act 1992 (Qld) s 185.

⁸⁶ Electoral Act 1992 (Qld) s 181.

⁸⁷ Electoral Act 1992 (Qld) s 104.

⁸⁸ Electoral Act 1992 (Qld) s 104.

IAP 1: Canvassers

Laws that prohibit canvassing within a polling booth or within 6 metres of the entrance to a polling booth building are found in the electoral legislation of many Australian States and Territories and in the Commonwealth Act.⁸⁹ The Victorian Act adopts the shorter distance of three metres,⁹⁰ Tasmanian and ACT laws prohibit canvassing within 100 metres of a polling booth,⁹¹ and the Northern Territory sets a limit of 10 metres from the entrance to a polling booth.⁹² Many interstate provisions also prohibit the use of loudspeakers, public address systems and the like near polling booths.⁹³

Legislative provisions in some other Australian jurisdictions provide that the enclosed grounds of a polling booth may be treated as part of the polling booth by the posting of a declaratory notice by election staff.⁹⁴ The effect of this provision is that if, for example, a polling booth was set up in a local hall then the grounds of the hall could be included within the prohibited zone meaning that canvassing activity could not occur within the grounds, or within the prescribed distance, from the boundary fence.

The New South Wales Act creates an offence for a person who, on polling day, obstructs the access or approaches to a polling booth, or the office of a returning officer.⁹⁵ In Victoria election officials have the power to maintain order and keep the peace at a voting centre. This includes the authority to cause the removal of persons obstructing the approaches to a voting centre or person creating a disturbance or acting in a disorderly manner. The provision further states that police officers of the state are to assist electoral officials in that regard.⁹⁶

Similar restrictions can be found in overseas jurisdictions. In Canada, where laws that regulating polling booths are set on a province level, Ontario prohibits any attempt to influence a voter 'in the immediate vicinity' of a voting place.⁹⁷ And the province of Saskatchewan sets the same 100 metre boundary as Tasmania and the ACT.⁹⁸ In the U.S.A. individual states have adopted laws that prohibit canvassing and the display of electoral material at distances ranging between 50 and 600 feet (15 and 183 metres) of polling booths.⁹⁹ Additionally some municipalities also have laws relating to canvassing, for example in the City of South Lake Texas, canvassers must not impede pedestrian flow or act in an aggressive or intimidating manner which can include blocking a person's path, following alongside or behind a person, shouting and using loudspeakers.¹⁰⁰

In the United Kingdom the offence of undue influence may apply to a person impeding or preventing entry

89 *Parliamentary Electorates and Elections Act 1912 (NSW) s 151H; Electoral Act 1907 (WA) s 192; Electoral Act 1985 (SA) s 125(1); Commonwealth Electoral Act 1918 (Cth) s 340.*

90 *Electoral Act 2002 (Vic) s 158(1).*

91 *Electoral Act 2004 (Tas) s 177; Electoral Act 1992 (ACT) s 303(1).*

92 *Electoral Act (NT) s 275.*

93 *For example Electoral Act (NT) s 275(3).*

94 *Parliamentary Electorates and Elections Act 1912 (NSW) s 151J; Electoral Act 2002 (Vic) s 158(3); Electoral Act 1985 (SA) s 125(2); Electoral Act 1992 (ACT) s 303(2).*

95 *Parliamentary Electorates and Elections Act 1912 (NSW) s 113.*

96 *Electoral Act 2002 (Vic) s 177.*

97 *Municipal Elections Act 1996 (Ontario) s 48.*

98 *The Local Government Act (Saskatchewan) s 151.*

99 *National Association of Secretaries of State (USA), State Laws Prohibiting Electioneering Activities within a Certain Distance of the Polling Place, (21012) <http://www.nass.org/component/docman/?task=doc_download&gid=1347&Itemid=>*

100 *City Code (City of South Lake, Tx) ss 13.22, 13.24.*

to a polling station.¹⁰¹ The Electoral Commission of the United Kingdom state in their handbook for polling station staff that, *“In many areas, it is now common practice to provide mobile policing support to polling stations”*.¹⁰²

IAP 2: Electoral material

All Australian electoral statutes require that electoral material displayed, published, broadcast or distributed during an election be authorised in some manner. Queensland is alone in Australian jurisdictions in requiring only that the author of the material be named.¹⁰³ Other Australian electoral laws require that the printer of the material be named,¹⁰⁴ and commonly also that the details of the candidate or party for whom the material is produced.¹⁰⁵

Several states require that HTV cards must be lodged with the Commission prior to their distribution. South Australian legislation stipulates that HTV cards used during the election period must be lodged with the Commission prior to distribution.¹⁰⁶ In Victoria, the only materials permitted to be distributed within 400 metres of a voting centre are HTV cards. These cards must have previously been lodged, approved and endorsed by the Victoria Electoral Commission,¹⁰⁷ and approved cards must then bear the endorsement, *“Registered by the VEC”*.

Many of the laws of other jurisdictions that relate to canvassing, which were discussed in the previous section, also prohibit the display of signs and political messages at, or within, a specified distance from a polling booth.¹⁰⁸ Tasmanian electoral laws in relation to political signage are the strictest in Australia and prohibit the display and distribution of all electoral matter on polling day.¹⁰⁹ The practical effect of this law is that at Tasmanian polling booths, parties and interest groups cannot distribute how-to-vote cards or display political messages.

Four Australian jurisdictions prohibit the use of loudspeakers and public address systems in the vicinity of polling booths.¹¹⁰ In South Australia electoral advertisements throughout the state on vehicles, structures and buildings must not exceed one square metre.¹¹¹

IAP 3: Scrutineers

When compared with other Australian jurisdictions, Queensland has fewer restrictions regarding scrutineers at elections. As discussed earlier, Queensland’s Act sets the number of scrutineers, provides for access by a scrutineer and prescribes a scrutineer is entitled to do anything else permitted by the Act. In contrast, Victorian legislation provides that a scrutineer must obey lawful directions, must not touch ballot papers and must not communicate with any person except as necessary for the performance of their duties.¹¹² The

¹⁰¹ Representation of the People Act 1983 (UK) s 115.

¹⁰² Electoral Commission (UK), Handbook for Polling Station Staff (2010), 4 “Polling day: opening and conducting the poll” <http://www.electoralcommission.org.uk/_data/assets/electoral_commission_pdf_file/0009/55836/UKPGE-PSH-web-FINAL.pdf>

¹⁰³ Electoral Act 1992 (Qld) s 181.

¹⁰⁴ Electoral Act 1907 (WA) s 187.

¹⁰⁵ For examples see Electoral Act 1992 (ACT) s 292; Electoral Act 1985 (SA) s 112.

¹⁰⁶ Electoral Act 1985 (SA) s 112A.

¹⁰⁷ Electoral Act 2002 (Vic) s 156.

¹⁰⁸ Example: Electoral Act 2002 (Vic) s 158(e).

¹⁰⁹ Electoral Act 2004 (Tas) s 198.

¹¹⁰ Electoral Act (NT) s 275; Electoral Act 2002 (Vic) s 159.

¹¹¹ Electoral Act 1985 (SA) s 115.

¹¹² Electoral Act 2002 (Vic) s 76(5).

Victorian Act also allows for the removal of a scrutineer by the police for a breach of the provision or if they fail to obey a lawful direction from electoral staff.¹¹³ Similar laws in relation to the conduct of scrutineers exist in other States and Territories, with Queensland remaining the only state where clear behavioural guidelines for scrutineers are not fixed by legislation.

There is less national uniformity in laws pertaining to the number of scrutineers permitted in a polling booth.¹¹⁴ New South Wales does not permit more than one scrutineer per candidate per polling booth. Several other jurisdictions link the number of a candidate's scrutineers permitted at a polling booth to one per election official performing issuing or counting tasks.¹¹⁵

113 *Electoral Act 2002 (Vic)* s 76(8).

114 *Parliamentary Electorates and Elections Act 1912 (NSW)* s 90.

115 *Electoral Act 2002 (Vic)* s 76(5).

Comparison of Australian polling booth laws

Disclaimer: This is a visual aid only and is not intended to provide the detail as in legislation	QLD	ACT	NT	SA	Tas	WA	VIC	NSW
Canvassing								
Distance from booth	6m	100m	10m	6m	100m	6m	3m	6m
Grounds can be included in perimeter		✓		✓			✓	✓
Offence to obstruct entrance to polling place							✓	✓
Sign size limit								8000cm2
No Loudspeakers			10m				400m	6m
Election officials have power to maintain order							✓	
Election Materials								
Material must be authorised	✓	✓	✓	✓	✓	✓	✓	✓
Printer named			✓			✓	✓	✓
HTV authorisation must state who 'for'	✓	✓		✓				
Material distributed after the writ must be authorised					✓			
No HTV cards allowed on polling day					✓			
HTV cards must be lodged/registered with Commission	✓			✓			400m	✓
Any person may register a HTV card							✓	
Ads on vehicles, buildings and structures must not be >1m2				✓				
Scrutineers								
Polling and Count								
Number of scrutineers per candidate cannot exceed No. issuing officers		✓			✓			
2 scrutineers per candidate or party per polling place				✓				
At any time, no more than 1 scrutineer per candidate per polling place						✓		
1 scrutineer per candidate/party per count table				✓				✓
Number of scrutineers per candidate cannot exceed No. of Commission staff	✓		✓				✓	
Rules								
Provisions prohibiting certain conduct by scrutineers		✓	✓	✓	✓	✓	✓	✓
Must not touch ballots		✓	✓		✓	✓	✓	
Can be excluded/removed for breach							✓	

Linking submissions and legislation

IAP 1: Canvassers

It is clear from the submissions and complaints received that a large number of people were unhappy with the behaviour of canvassers on polling day at Redcliffe. A perception exists in the community that people should be free to exercise their democratic right to vote without being subjected to activity that could be considered at best an annoyance, and at worst interference.

A review of the submissions and extrinsic material leads to the conclusion that electors were unable to move freely around polling booths and they were frequently confronted by large numbers of canvassers and a volume of electoral material which they found intimidating and oppressive. Some canvassers appear to have treated electors as legitimate targets for protest activity. Voters arriving at booths were confronted by canvassers and vocally challenged on political issues as they made their way to the booth. The experience of electors at polling day at Redcliffe ran counter to community expectations of how elections should be run.

The six metre rule

When compared with legislation from other jurisdictions, Queensland electoral law in respect to canvassers is towards the more lenient end of the spectrum. To date the Queensland requirements have served the state well and there has been no real need for any expansion of the powers of the Commission or further prohibition of the activity of electoral participants. However the Redcliffe by-election, although an unusually intensive event, demonstrated that the political landscape has changed significantly since the introduction of the 'six metre' rule which has been part of Queensland electoral law for at least the last 30 years.¹¹⁶

Whilst it is accepted generally that prohibiting canvassing within six metres of the entrance to a polling booth is sufficient to allow for the free and unrestricted access of voters, this proscription is somewhat inflexible. The apparent failure of this provision was exemplified at the Redcliffe by-election booth of Clontarf Beach. As the building used for voting was in excess of six metres from the gates of the school grounds, canvassers were free to assemble and conduct their activity right at the school gate. It appears the gate was regarded as prime real estate and resultantly a large number of canvassers and a large volume of material were concentrated at this spot. The effect, highlighted in submissions, was that voters had trouble locating and accessing the entrance to the polling booth and many complained of being subjected to the attention of canvassers in a very concentrated fashion.

Polling booth boundaries

As discussed above in the comparison of laws section, a number of Australian states have adopted a more flexible approach to the demarcation of the boundary of the polling booth. This is achieved by allowing the grounds or the yard of the booth to be included as part of the booth by posting a public notice, typically at the entrance to the place.¹¹⁷ This model allows the boundaries of a polling booth to more suitably reflect the physical limitations of the individual site and the particular characteristics of the event and the booth,

¹¹⁶ *Elections Act 1983 (Qld)*.

¹¹⁷ *Parliamentary Electorates and Elections Act 1912 (NSW) s 151J; Electoral Act 2002 (Vic) s 158(3); Electoral Act 1985 (SA) s 125(2); Electoral Act 1992 (ACT) s 303(2)*.

such as the number of candidates, canvassers and voters.

Obstructing voters

Once a canvasser is more than six metres from the entrance to a booth, Queensland electoral laws have no application. As observed above, the electoral legislation of other Australian jurisdictions comprise offences for persons who obstruct the access of voters to booths, and allow electoral officials to remove those who acting in a disorderly manner.¹¹⁸ At the Redcliffe by-election many complaints were received by polling officials at booths from voters who were aggrieved by the activity of canvassers lining the way to the polling booth. As the behaviour that voters were complaining about typically occurred on the street, tens of metres from the booth, polling officials were unable to take any action under the Act.¹¹⁹

It is the opinion of the Commission that it should be an offence to engage in conduct which may interfere with access to polling booths at any stage in voter's journey to a booth. Restricting the Act's obstruction provisions to 6 metres does not deter unacceptable conduct at all, but merely moves and possibly even concentrates the conduct a short distance away from the building in which voting is being conducted.

Directions in the vicinity of polling booths

There is, quite reasonably, an expectation amongst electors that polling officials should be able to act on complaints received to keep the passage to a booth open. It is acknowledged that Queensland police officers, through the 'move on' provisions of the *Police Powers and Responsibilities Act 2000* (Qld), may issue a direction to an individual causing anxiety to persons entering a polling booth.¹²⁰ However it must also be recognised that the finite resources of police and competing operational demands means that in practice, police may not be able to exercise these powers in a timely fashion at all polling booths. In that regard it would be useful to enable representatives of the Commission to exert a degree of supervisory control over persons in the immediate vicinity of polling booths.

IAP 2: Election material

Loudspeakers

The use of loudspeakers/amplified public address systems at Redcliffe polling booths was a common cause for concern amongst submitters to this inquiry. A number of Australian jurisdictions prohibit the use of loudspeakers in the vicinity of polling booths. This appears to be a common sense approach as these devices have the capacity to circumvent laws in relation to electoral material as they have the ability to broadcast a message so it may be heard within a polling booth or the quarantined area around a polling booth. The sound and volume combination of several competing devices in use at the same polling booth may well be imagined.

Schools

The majority of Queensland polling booths are state and private schools and in many areas suitable alternatives simply do not exist. If the school administrators become reluctant to consent to the use of their facilities due to concerns about the safety of children or damage to their facilities, the Commission

¹¹⁸ *Parliamentary Electorates and Elections Act 1912* (NSW) s 113 and *Electoral Act 2002* (Vic) s 177.

¹¹⁹ *Electoral Act 1992* (Qld) s 188.

¹²⁰ ss 46 & 47.

could potentially find itself in the very difficult position of being unable to locate suitable polling booths at a competitive rate, or even at all. Accordingly the concerns of administrators and parents are treated very seriously by the Commission and it is requested that Parliament give due consideration to reviewing provisions of the Act to ensure that schools and other community entities remain agreeable to make their premises available for Queensland elections.

An area of concern identified in submissions to this inquiry was the presence of political supporters at schools setting up signs, banners and material during the hours that school activities are operating. A number of areas of concern were raised in submissions, including supporters occupying designated pick-up/drop-off zones outside school on Friday afternoon and trespassing on school grounds to erect signage and banners before class and after-school care had finished. The Returning Officer's submission mentioned past incidents where signs had not been taken down after polling and a child had put a zip tie in her mouth and required treatment.¹²¹

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.

Size of material

Several submissions expressed displeasure with the actual size of the electoral material displayed during the by-election. 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. Similar to laws relating to canvassing, the only restrictions on the display of electoral material in Queensland is that it not be placed within six metres of the entrance to a polling building, and that it discloses the name and address of the person who authorised it.¹²²

As discussed earlier, the ACT and Tasmanian approach is to restrict posting of any electoral material within 100m of a polling booth on polling day.¹²³ New South Wales restricts the size of signs placed on polling booths and fences to 8,000cm² (80cm x 100cm).¹²⁴ It is the recommendation of several submitters and the conclusion of the Commission that Parliament should give consideration to restricting the size of signs at polling booths with the aim of constraining the use of plastic booth wrap or other extensive election material.

How-to-vote cards

The distribution of how-to-vote (HTV) cards to electors by canvassers at the entrance to polling booths is

¹²¹ Returning Officer submission, page 1.

¹²² Electoral Act 1992(Qld) ss 188, 181.

¹²³ Electoral Act 1992 (ACT) s 303 and Electoral Act 2004 (Tas) ss 177, 199.

¹²⁴ Parliamentary Electorates and Elections Act 1912 (NSW) s 151B(2).

closely linked to concerns about the behaviour and presence of canvassers generally; it is not proposed to cover that ground again. Queensland legislation in relation to HTV cards is characterised by requirements that they contain proper authorisation and that they be lodged with the Commission prior to polling day. However not all HTV cards are covered by these requirements.

Queensland's Electoral Act defines what constitutes a HTV card, and any material that does not replicate a ballot or direct voting preferences is covered only by the normal authorisation provisions of Section 181.¹²⁵ The Act also makes the distinction between the HTV cards for political parties and candidates, and HTV cards distributed by issue-based or third party groups. No later than seven days prior to the date of an election, parties and candidates are required to lodge with the Commission copies of HTV cards that they intend to distribute on polling day.¹²⁶ No other person or entity is required to lodge their HTV cards with the Commission.

The restrictive wording used in these passages of the Act has practical effects today that may not have been foreseen by the original drafters. As the term 'polling day for an election' is restricted to the actual day of the election and does not include pre-polling, candidates and parties are free to distribute how-to-vote cards at pre-poll locations that have not been lodged with the Commission.¹²⁷ Every election the number of electors who take advantage of pre-poll voting increases and at the Redcliffe by-election over one quarter of voters cast their vote through a method other than in person at a polling booth on polling day. In light of these figures it seems counter-intuitive to only subject HTV cards for polling day to the scrutiny of Commission lodgement.

Similarly the rise of the third party means that a significant percentage of HTV cards distributed at the Redcliffe by-election were from entities other than parties and candidates. As with pre-poll HTV cards, the HTV cards of third parties - although meeting the definition of HTV cards - are not required to be lodged or even sighted by the Commission prior to distribution. This apparent incongruity caused confusion amongst participants and voters at Redcliffe, and was the subject of complaints and submissions to the Commission. There is also room for interpretive argument of the meaning of the word 'for' in relation to the Section 182 wording of a '*card for a registered political party...*' when applied to a card of a third party.

Other Australian states do not make the differentiation between the HTV cards of candidates and political parties and others. New South Wales requires that all material (including HTV cards) to be distributed on polling day be registered with the Electoral Commissioner regardless of who it belongs to.¹²⁸ Likewise, Victorian law makes no distinction in relation to the author of HTV cards and requires them all to be lodged.¹²⁹ South Australian law requires that HTV cards circulated at any time during the election period must be lodged with and approved by the Commission; not only those for distribution on polling day.¹³⁰

IAP 3: Scrutineers

Number of scrutineers

Submissions received on this point supported existing views held by the Commission in regards to the

¹²⁵ Electoral Act 1992(Qld) s 2.

¹²⁶ Electoral Act 1992(Qld) s 182.

¹²⁷ Electoral Act 1992(Qld) s 2.

¹²⁸ Parliamentary Electorates and Elections Act 1912 (NSW) ss 151F, 151G.

¹²⁹ Electoral Act 2002 (Vic) Division 5.

¹³⁰ Electoral Act 1995(SA) s 112A.

adequacy of the *Electoral Act 1992* provisions in regards to scrutineers. In Queensland each candidate is entitled to have one scrutineer at a polling booth for each member of the Commission staff present.¹³¹ An attempt by a Commission staff member at Redcliffe to decrease the permitted number of scrutineers below that specified in the legislation was resisted by a representative of a political party.

Significant political interest was created by the Redcliffe by-election occurring as it did, midway through a parliamentary term. The larger than usual number of candidates contesting the election had the corresponding effect of a larger than usual number of scrutineers present on the Saturday night count. This in turn created operational challenges for Commission staff in accommodating and supervising scrutineers. If each of the nine candidates at the by-election were represented by scrutineers present during counting then each Commission staff could be outnumbered by scrutineers by a factor of nine to one.

As numbers theoretically increase proportionally with each extra Commission staff member present, the operational, physical, safety and ballot security implications of such a large number of scrutineers can be easily imagined. As the Act ties the number of scrutineers at a polling booth to the number of Commission staff present, the ratio can be even further skewed. Not all Commission staff present will be involved in counting, with many performing other administrative duties. However all scrutineers present are permitted to be involved in supervising counting staff which can further effect the scrutineer to counter quotient. This issue is addressed by the Commonwealth and some other States and Territories by linking the number of scrutineers to the number of Commission staff actually involved in the count, or to the number of tables on which counting is being conducted.¹³²

Conduct and behaviour of scrutineers

It has been noted that tension between electoral officials and scrutineers could be minimised by an increased awareness of the roles and responsibilities of scrutineers.¹³³ When compared against statutes in other Australian jurisdictions, the Queensland Act is almost silent on any restrictions related to scrutineers; instead dealing only with the conferring of positive entitlements. With no clear guidance in legislation on permissible conduct for scrutineers, it is understandable that some scrutineers (and polling staff) at Redcliffe were a little unsure of the scope of their authority and responsibility

When compared to other jurisdictions the Queensland Act is alone in not providing any guidance on the way scrutineers must conduct themselves during election activities.

As detailed in the comparative law section of this report, many other States and Territories codify the acceptable standards of behaviour for scrutineers. Examples of behaviour prohibited include touching ballots, interfering with voting, and unnecessarily communicating with persons.¹³⁴ Another common provision is a requirement that scrutineers comply with the reasonable directions of election officials, this is demonstrated well in Victorian legislation which provides for the removal of scrutineers who breach the requirements or fail to comply with directions.¹³⁵ The Commission considers it reasonable that scrutineers who are permitted special access to polling booths or places of counting should be required to comply with

¹³¹ *Electoral Act 1992 (Qld)* s 104.

¹³² *Commonwealth Electoral Act 1918 (Cth)* s 123.

¹³³ Phillip Green, 'Transparency and Elections in Australia – The role of Scrutineers in the Australian Electoral Process' in Graeme Orr, Bryan Mercurio and George Williams (eds), *Realising Democracy* (Federation Press, Sydney, 2003) 216, 226.

¹³⁴ For example, *Electoral Act 2004 (Tas)* s 172.

¹³⁵ *Electoral Act 2002 (Vic)* s 77.

reasonable directions and standards of conduct. Clarification of the role of scrutineers through codification of these standards would greatly assist all participants in the process.

Preface to recommendations

In light of the submissions received and the research and analysis undertaken as part of this inquiry the Commission has several recommendations for legislative reform across the inquiry assessment points. Through the inquiry process the Commission has also identified opportunities to improve its own procedures and core business. Implementation of these business improvement opportunities will begin independent of the recommendations of this report.

The Commission's recommendations are drafted principally in terms of the desired outcomes and how they might be best achieved. The actual content and wording of any amendments to the legislation would be a matter for Parliament, should these recommendations be adopted.

Business Improvement Opportunities (BIP)

BIP 1:

Overhaul of training to polling booth staff on electoral laws relating to canvassers, electoral material and scrutineers.

The training programs delivered to polling staff are regularly revised and rewritten by the Commission. As part of this process it is recommended that extra attention be given to the role and powers of polling staff in ensuring participants in an election observe the provisions of the Act. The content of this training will be driven by Parliament's adoption of subsequent recommendations of this report.

BIP 2:

Proactive consultation with local police and councils

Commission procedures around the establishment of polling booths are to be reviewed to consider how polling staff may better engage and liaise with local police and council officers. Both police and local government authorities have roles to play in the management of the areas around polling booths and it is recognised that better consultation during the planning of electoral events may be beneficial. Several of the submissions received by the inquiry were complaints involving matters outside the authority of the Commission such as maintenance of public order, traffic control and advertising local laws.

BIP 3:

Introduction of a voluntary code for Queensland elections

Commonly associated with industry or sectors such as media and financial services, voluntary codes are codes of practice that encourage people or organisations to conduct themselves in ways that benefit themselves and the community. They are pre-agreed, non-legislated commitments that are designed to influence and control behaviour. Voluntary codes can contain statements of principles and also more specific technical agreements, or 'rules of the game'.

It is envisaged that a voluntary code for participants in Queensland elections would be drafted by the Commission following consultation with key stakeholders. Applicable to parties, candidates, third parties

and supporters, the Code would provide high-level guidance about how campaign activity should be conducted. The Code would be chiefly aspirational, setting expectations on how participants would conduct themselves and would certainly include themes of treating electors with respect. There could also be provision for agreements between participants on the use or restriction of certain types of advertisements or campaign activities.

IAP 1: Recommendations in respect to Canvassers

Recommendation 1:

Discretion to include a building's enclosed grounds as part of a polling booth for the purposes of regulating canvassing etc.

The Commission believes Queensland should amend the Act to adopt the model of several other Australian jurisdictions and empower polling officials to discretionally decide to increase the size of the area declared as a polling booth. By issuing a notice and placing it at the entrance to the grounds enclosing a polling booth, the Commission would be able to choose to keep the yard or grounds of the booth free from campaigning activity. In this scenario all canvassers would be required to keep six metres from the boundary fence of the polling booth.

As this declaration would not suit all polling locations it is recommended that the discretion to make this decision be delegated to the local polling official who has familiarity with the characteristics of their individual booth.

Recommendation 2:

Create the offence of obstructing a person entering a polling booth

Whilst the Commission acknowledges the utility of the six metre rule in protecting the area immediately surrounding the polling booth from even benign political messages, there is also a real need to expand the legislation and include the prohibition of any act that would impede or discourage an elector from accessing a polling booth. The proposed provision would importantly sever the current link between the conduct and the distance from the booth. It is submitted that this outcome is best achieved by creating a new offence of obstruct, hinder or otherwise impede a person entering, or attempting to enter a polling booth.

Similar provisions exist in the electoral legislation of New South Wales and Victoria. It is envisaged that such an offence would include obstruction that occurs due to physical presence, positive acts and words, or through use of banners, signs or equipment. As a safeguard, the legislation may require that prior to taking any action for this offence the officer must give the person an 'offence warning', similar to the type detailed Part 11 of the Act, informing them that it is an offence to obstruct the approaches to a polling booth.¹³⁶

Recommendation 3:

Empower an officer of the Commission to give reasonable directions within, and in the immediate vicinity of, a polling booth

The Commission submits that in order to effectively regulate behaviour in and around polling booths,

¹³⁶ Electoral Act 1992 (Qld) s 2.

the Electoral Act should be amended to give Commission officers the power to issue reasonable, lawful directions to maintain an orderly and positive environment around polling booths.

Such directions would typically involve requirements:

- To clear a pathway;
- Desist from obstructing/harassing electors; or
- Remove unauthorised election material.

It is recommended that a distance be set for the exercise of the power and that 50m from a polling booth would be sufficient to have effect.

It is submitted that for such a provision to be effective, failure to comply with such a direction should have actual consequence. Consideration should therefore be given to establishing the offence of 'Disobey Direction of an officer of the Commission'. As a safeguard, the legislation may require that the officer give the person an 'offence warning', similar to the type detailed Part 11 of the Act, informing them that it is an offence to fail to comply with the direction.¹³⁷

IAP 2: Recommendations in respect to Election Material

Recommendation 4:

Prohibit the use of loudspeakers etc. which may be heard at a polling booth.

Previous sections of this report detailed that several electoral jurisdictions throughout Australia prohibit loudspeakers in the vicinity of polling booths. The Commission submits that use of such devices is inconsistent with the provision of a peaceable and orderly election environment and their use should be restricted by amendment to the Act.

Recommendation 5:

Restrict the display of election material at a polling booth before 6am

The Commission recommends amendments to the Act to address concerns held by schools and other community organisations in relation to the effects of early display of election material. It is recommended the restrictions be placed on when supporters may arrive to erect posters and signs at polling booths. The Commission suggests that no material be displayed at polling booths prior to 6am on polling day, or in the case of a pre-poll centre, 6am on the day that polling commences.

It is further recommended that this restriction be applied to the booth, its grounds and a zone of public ground around the booth (to include roads and footpaths). It is suggested that the distance of 50 metres would be sufficient to achieve this objective.

Recommendation 6:

Consideration be given to restricting the size of signs and banners at polling booths

Responding to community concern in relation to the swathes of posters, signs, wrap and banners that now

¹³⁷ Electoral Act 1992 (Qld) s 2.

adorn polling booths during election events, the Commission suggest that Parliament give consideration to limiting the maximum size of signs that may be displayed within a prescribed distance from a polling booth.

Recommendation 7:

All how-to-vote cards to be approved by the Commission prior to distribution

The Commission recommends that the provisions of the Act in respect to HTV cards be modernised to address the increase in pre-poll voting and third party interest groups.

Removal of the stipulation that only the HTV cards of candidates and parties are to be lodged with the Commission is recommended. This amendment will have the effect of levelling the playing field for all stakeholders at an election as all cards distributed will have to undergo Commission scrutiny. The quality of information available to voters would also be improved, as all cards lodged with the Commission are required to be published on the Commission's website and made available for inspection at its offices.

In recognition of the increase in electors choosing to vote at pre-poll, the Commission believes that all HTV cards distributed should be registered, not only those distributed on polling day. It is suggested that this would be best achieved by amending the Act to stipulate that all HTV cards must be lodged with, and approved by, the Commission prior to distribution during the voting period of an election.

IAP 3: Recommendations in respect to Scrutineers

Recommendation 8:

Limit scrutineer numbers

To assist in the management of scrutineers, especially at electoral events with large numbers of candidates, the Commission recommends that Parliament amend the Act to allow for the restriction of the number of scrutineers permitted to be present during vote counting at a polling booth. It is recommended that the provision which links the number of scrutineers per candidate to the number of Commission staff at a booth be amended to adopt the model of several other Australian jurisdictions, and link the number of scrutineers permitted per candidate to the number of staff actually involved in counting duties. For example, if 10 Commission staff were present at a polling booth but only five were involved in counting, under the current model the number of scrutineers permitted is ten per candidate; under the proposed amendment the permissible number would be five.

Whilst this model will work well for large booths there is recognition that further flexibility is required for smaller polling booths. Therefore it is recommended that discretion to further limit the number of scrutineers should be given to the Commission staff member in charge of the individual polling booth. Where there are concerns that the number of scrutineers present under the above model would pose a risk to health and safety of persons present or interfere with the efficiency and security of the count, Commission staff may place a further limit on the total number of scrutineers at the booth. In setting a lower limit, the Commission staff member in charge of the polling booth must have regard to fairness and equality of access for all candidates.

Similarly the legislation should be flexible enough that, where appropriate, more than one scrutineer per counter may be present and observe proceedings.

Recommendation 9:

Introduction of legislation governing scrutineer behaviour

The Commission recommends that Queensland adopt a codification of the behaviour governing scrutineers. Queensland's Act is alone amongst Australian Electoral Acts in not placing any restrictions on how scrutineers must conduct themselves. It is suggested that legislation be introduced that states scrutineers must:

- Wear identification provided by the Commission;
- Obey lawful directions of the polling booth supervisor;
- Not touch ballots;
- Not communicate with any person other than as is necessary to raise an objection; and
- Not excessively challenge ballots on frivolous or vexatious grounds.

Clear prescription of the laws governing scrutineers will lead to greater understanding and clarity of both the rights and restrictions applicable to scrutineers in polling booth.

As part of this amendment the Commission recommends that Queensland adopt legislation similar to Victoria which allows for the removal from a booth of a scrutineer who fails to comply with a direction or rule. Such a section would also provide that prior to removing a scrutineer, the booth supervisor must warn the scrutineer that if they continue to disobey the direction or breach the law they will be removed from the booth. It may be convenient to incorporate this provision into Recommendation Three - the general power for an officer of the Commission to give directions in and around polling booths.

