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**CAMPAIGNING AND REGULATION: TIME FOR
CHANGE?**

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Abstract

The 2014 Victorian State election witnessed a shift in the manner of campaigning where organisations other than political parties were active in putting their views to electors, particularly during early voting. The mobilisation of organisations such as firefighters and ambulance officers and their conduct and behaviour around voting centres was the subject of formal complaints, received media attention and has been raised during the Victorian Electoral Matters Committee inquiry into the State election. Further the Joint Standing Committee on Electoral Matters (JSCEM) commissioned its own inquiry specifically into campaigning conduct at polling places. What was the VEC's conclusion from the election including around the need for further campaigning regulation?

In putting together this paper I have drawn on the material put to the Victorian Electoral Matters Committee including at public hearings and supplemented that with the Victorian Electoral Commission's own records from the 2014 election. The resulting conclusions are my own.

The 2014 Victorian State election was noteworthy for several reasons. A record number of political parties registered for the election supporting a record number of endorsed candidates. Independent candidate numbers were up 23% on 2010 and over 1.2 million Victorians voted before election day representing over 34% of all votes cast.

Attendance at early voting centres peaked on Thursday 27 November (154,286 votes cast) with the busiest metropolitan centre taking 2,466 votes up to the 8.00 pm close. By comparison, the busiest election day voting centre took 4,182 votes.

The strategy by political parties and other interest groups to target early voting centres in particular appeared lucrative in accessing and potentially influencing the early elector. As an example, in the district of South West Coast over 19,000 early votes were cast at two locations representing about 45% of that districts overall vote. Yet on election day, campaign workers needed to attend 34 voting centres to access a very similar number of electors, 20,147. Early voting as an investment in major party campaign worker time and resources was very cost effective, no doubt raising the stakes between the competitors!

Consequently party and campaign worker behaviour at voting centres drew the ire of some electors and opposing campaign workers, resulting in a number of formal complaints to the VEC.

These complaints covered several aspects:

- derogatory comments
- aggressive action against opposing workers
- the harassment and intimidation of electors
- the over promotion of early voting by party workers
- covering up of opposing billboards

- the use of uniforms and other props as a means of intimidation
- alleged impersonation of emergency service workers
- various breaches of the 3 metre limit
- intimidation of residents during mobile voting activities.

In raising these issues with the Victorian Electoral Matters Committee views were also provided on the need to increase regulation including changing electoral laws to:

- provide greater protection to candidates and party representatives
- requiring campaign workers to be authorised by parties or candidates
- formalise the registration and identification of campaign workers, such as for scrutineers
- prevent volunteers from impersonating any profession or interest group to which they do not legitimately belong, i.e. passing off
- establish a wider zone around voting centres where only registered campaign workers can operate
- the installation of security cameras at voting centres – could be a dual measure to deter multiple voting
- tighter laws to prevent electors being harassed and misled by dishonest statements and actions
- the assignment of Public Safety Officers at each voting centre to keep voters safe and free from unwanted pressure

Also, there were views that how to vote cards should be abolished and candidate and party advertising be banned outside voting centres or at least regulations be made over the erecting of signs and banners including the equitable pre-allocation of signage space.

This said, there was also commentary from the major parties against the idea of banning how to vote cards or in some way limiting party worker or candidate supporter numbers.

Specifically for the Victorian Electoral Commission, it was put to the Committee that more active monitoring outside voting centres was required and that there should be more comprehensive training of casual staff on electoral laws to better equip them to enforce the law at voting centres.

While each of these measures may serve in part to moderate behaviour in and around voting centres, the question now is whether this is a path down which the community would wish to go and that we as administrators could readily implement? Do Governments need to further regulate? Indeed are the present arrangements inadequate? Is the problem overstated?

As to the complaints received by the Victorian Electoral Commission, on breakdown, 11 complaints were received in relation to the conduct of candidates and a further 17 complaints regarding the conduct of party workers. At voting centres the majority of these complaints related to rude or aggressive behaviour towards voters generally outside voting centres with the intention of encouraging voters to accept how to vote cards. A number of such complaints (6) were received noting the allegedly aggressive campaigning of the Firefighters union and

Ambulance Employees Australia and a smaller number of complaints (4) alleged similar behaviour from political party workers.

Therefore, a total of 28 complaints from about 400 complaints that I would consider of substance; about 7%. This, over a two week voting period from 100 early voting centres and 1,786 election day voting centres, and over 3.2 million elector visits. So does this indicate a widespread problem? I would offer that it does not.

In Victoria, and I think this generally reflects other jurisdictions, the Election Manager's authority over conduct at voting centres is limited. Limited not only to particular behaviours at voting centres but physically to within 3 metres to the entrance of or within the building used as a voting centre. Within those 3 metres and in voting centres, persons must not:

- canvas for votes
- solicit the votes of electors
- induce electors not to vote for any particular elector
- induce an elector not to vote at the election
- exhibit any sign relating to the election
- conduct an exit poll
- wear any badge or emblem or slogan of a candidate or party if they are an election official or scrutineer.

Offences against these provisions carry a penalty currently of 5 penalty units or \$757.

In Victoria there are also obligations on an election manager regarding the management of how to vote cards within 400 metres of a voting centre on election day and also to maintain order and keep the peace at a voting centre, which must be assisted by the Police as necessary.

The VEC approach on this matter of conduct outside voting centres has always been one of constructive engagement in preference to overzealous adherence to the law. To this end the instructions to election managers are clear. While a voting centre manager has the authority to respond to activities that are in breach of legislation, they will not arbitrate on any disputes outside any venue between party/candidate workers. In such cases managers will request cooperation from all parties in the first instance but if unsuccessful the matter will be escalated to the relevant party/candidate administration to resolve or if necessary to the police.

For the 2014 State election this was advised to all political parties contesting the election in the form of a protocol. The protocol was also passed to other campaigning organisations as necessary during the election. Victoria Police were also alerted to all early voting locations and times and election day voting centres. There were no calls placed to Victoria Police although one matter was referred to a local police station by a candidate and statements were taken.

Why constructive engagement?

The role of the Election Manager is increasingly complex. Their internal focus at voting centres principally goes to compliance, client services and engagement. Thereafter their attention is

given to security, staff performance and efficiency, accuracy and numeracy. They are dealing with more technology and imposed accountability requirements. They are constantly juggling public demand against resources and dealing with public frustrations all the while under a very close public scrutiny. They must manage their time to not only observe operations in the voting centre and its entrance but ensure their readiness to transition from voting centre to a results centre. These requirements are placed on a casual employee with varying skills and work experiences and different motivations in undertaking the role. Invariably their skills tool kit will not contain law enforcement experience. Nor would such a skill be desirable.

But can the Election Manager now take on additional roles? Do they have the capacity to maintain a campaign worker register and ensure that only authorised workers are handing out election material? How often during an already busy day would this be policed noting likely worker changeover rates? Does the Election Manager now take on responsibility for the allocation of advertising space at each voting centre and arbitrate on related disputes? Instead do we employ a “compliance officer or a private security officer” at each voting centre to manage these aspects of the election conduct and at considerable cost. I think the answer to all the questions posed is no.

While there may be a perception that campaign worker behaviour outside voting centres has descended to a new low, I would offer that the evidence in Victoria indicates otherwise. Yes, there were specific and isolated examples of poor behaviour but it was not widespread. In responding, I think we need to be alert to the problem and act in a measured way and not immediately resort to regulation. Further regulation brings with it enforcement and its overheads and a heavy handedness uncharacteristic of elections in Australia.

I would propose the following approach:

- Develop relevant protocols covering Party and candidate workers outside voting centres reflecting legislation
- Engage parties and candidates at each opportunity and seek their commitment to promulgate and adhere to the protocol
- Be ready to engage with third parties in a similar way
- Enhance election staff training such that there is a better understanding of current legislative requirements, the existence of the protocol and restrictions.

I am with Tom Rogers on this where from one statement to the JSCEM he summed up the situation thus:

The only way that this calm atmosphere is going to be maintained both on the day and during pre-polling is if all the players recognise that the AEC is not solely responsible for this issue. Everyone involved in the voting process, from us to parties, candidates and citizens has a role to play. Elections are owned by all Australians not just the AEC. I think that is an important part of making sure that people understand the need to regulate their behaviour on that day to be within the spirit of the legislation.

Self-regulation in this regard is preferable.



Legislative Requirements (*Electoral Act 2002*)

- The only electoral material that may be distributed or made available during the hours of voting within 400 metres of a voting centre on election day are registered how-to-vote cards (s. 156). Cards distributed outside early voting centres do not need to be registered.
- The following activities are prohibited within 3 metres of the entrance of, or within a voting centre during the hours of voting: canvassing or soliciting for votes; inducing an elector not to vote for a particular candidate; exhibiting any sign or notice (other than official notice) relating to the election; conducting an exit poll; or the wearing or displaying of any badge emblem or political slogan of any candidate or political party (s. 158).
- Properly authorised signs may be displayed more than 3 metres from the entrance to voting centre as long as the protocols listed below are adhered to.
- Voting centre managers at each voting centre will attach an official notice to designate the entrance to the voting centre for the purpose of enforcing these provisions. The designated entrance may be the door to the building to be used for voting, or may be a gate at the entrance to the grounds containing the voting centre (s. 158). The voting centre manager has the authority to make this decision at each location and will consider matters specific to each location, such as approaches, structures and general access.

Protocol

In addition to the specific legal requirements listed above, party and candidate workers are asked to abide by the following guidelines in relation to all activities outside voting centres. Venues used as early and election day voting centres are not the property of the VEC. As such, much good will is relied upon in retaining the venue for subsequent elections.

- Be attentive to any local restrictions requested by venue owners and the VEC regarding the placement of personnel, banners and posters and ensure that the activities of your workers do not interfere with other concurrent activities at the venue;
- Ensure the complete removal of any banners (including ties), posters, how-to-vote cards and equipment before workers leave the venue at the end of each day;
- Ensure workers and materials do not impede or intimidate people moving in and out of the venue;
- A spirit of cooperation is requested from all workers outside voting centres with an equal entitlement to convey their message.

Please note that the voting centre manager has the authority to respond to activities that are in breach of the legislation as listed above, but will not arbitrate on any disputes outside any venue between party/candidate workers. In such cases, managers will request cooperation from all parties in the first instance but if unsuccessful, the matter will be escalated to the relevant party/candidate administration to resolve, or if necessary, to the police.