

Mr Mick Gentleman MLA
Chair
Select Committee on Amendments to the Electoral Act 1992
Legislative Assembly for the ACT
GPO Box 1020
CANBERRA ACT 2601

Dear Mr Gentleman

Further question put to the ACT Electoral Commission in relation to the inquiry into Amendments to the *Electoral Act 1992*

I refer to a further question asked by the Committee of the ACT Electoral Commission, communicated by the secretary of the Committee on 17 June 2014, relating to the 100 metre ban on canvassing.

An answer to this question is attached.

Yours sincerely



Phillip Green
Electoral Commissioner

19 June 2014

Question put to the ACT Electoral Commission in relation to the inquiry into Amendments to the *Electoral Act 1992*

1. Provide comments on a proposal to extend the present 100 metre ban on canvassing to a 500 metre ban.

Section 303 of the *Electoral Act 1992* provides:

303 Canvassing within 100m of polling places

- (1) A person shall not, during polling hours within the defined polling area in relation to a polling place—
 - (a) do anything for the purpose of influencing the vote of an elector as the elector is approaching, or while the elector is at, the polling place; or
 - (b) do anything for the purpose of inducing an elector not to vote as the elector is approaching, or while the elector is at, the polling place; or
 - (c) exhibit a notice containing electoral matter that is able to be clearly seen by electors approaching, or at, the polling place, other than a notice authorised by the commissioner for display there.

Maximum penalty: 5 penalty units.

- (2) If the building where a polling place is located is situated on grounds within an enclosure, the commissioner may, by written notice, specify the boundary of that enclosure for subsection (7), definition of ***defined polling area***, paragraph (b).
- (3) A notice is a notifiable instrument.
- (4) An officer may, if directed by the commissioner, remove or obliterate a notice that the commissioner or the officer believes on reasonable grounds to be exhibited in contravention of this section.
- (5) Subsection (4) does not authorise an officer to enter land that is subject to a territory lease.
- (6) A person shall not obstruct an officer in the exercise or attempted exercise of the officer's functions under subsection (4).

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (7) In this section:

defined polling area, in relation to a polling place, means the area—

- (a) within the building where the polling place is located, and within 100m of the building; or
- (b) if the commissioner issues a notice under subsection (2) in relation to the polling place—within the boundary of the enclosure specified in the notice, and within 100m outside that boundary.

polling hours, in relation to a polling place, means—

- (a) for a polling place appointed under section 119—between the hours of 8 am and 6 pm on polling day; or

- (b) for a polling place where a vote may be made before an officer—any time when the place is open for the acceptance of votes; or
- (c) for a polling place where polling is authorised under division 10.5—the period when a mobile polling visit is being made to the building where that place is located.

The 100 metre ban on canvassing was introduced before the 1998 ACT Legislative Assembly election. A similar provision exists for Tasmanian House of Assembly elections, which also uses the Robson rotation method of printing ballot papers with the Hare-Clark system, although the Tasmanian provision also bans the distribution of any advertising material (including how-to-vote cards) on polling day. Together, the ban on canvassing, Robson rotation and Hare-Clark proportional representation (without party ticket voting) are intended to reduce the influence of party tickets and give voters more power over their choice of elected members.

In effect, the 100 metre ban on canvassing at polling places is intended to ensure that how-to-vote cards are not made available to voters as they vote.

In practice, party/candidate supporters are prepared to routinely hand out how-to-vote cards outside the 100 metre limit as voters approach polling places and pre-poll voting centres. It is presumed that the suggestion by the Committee to extend the limit to 500 metres is intended to prevent this from happening to preserve the original intent of the current canvassing ban.

The difficulty with increasing the canvassing limit 5-fold is that it would significantly broaden the geographic scope of the canvassing ban. At present, the 100 metre “envelope” around each polling place typically extends into the adjoining streets and car parks immediately adjacent to the polling place building, many of which are schools. This generally does not encompass other public spaces, such as shopping centres. Pre-poll centres are an exception to this rule, as they are generally located near shops and/or offices.

Extending the canvassing ban to a 500 metre limit would have the effect of drawing a 1 kilometre-diameter circle around each polling place and pre-poll centre to be encompassed by the canvassing ban.

In numerical terms, making simplistic calculations assuming that the ban on canvassing applies to a circle drawn around each polling place with, respectively, 100 metre and 500 metre radii, the physical area covered by the ban would increase 25-fold. At present, with 80 polling places, the 100 metre canvassing ban encompasses roughly 2.5 square kilometres across the ACT. A 500 metre limit would encompass around 62.8 square kilometres (without subtracting overlaps).

Extending the ban to a 500 metre limit would be much more likely than the 100 metre limit to extend the coverage of the ban to shopping centres and main roads. This would create enforcement and compliance difficulties with parties and candidates wishing to place electoral signs in shop windows or on main roads, or hand out electoral material in shopping centres.

Definitional issues would also arise in relation to whether such electoral matter was distributed for the purpose of influencing the vote of an elector as the elector is approaching a polling place, given that many electors could be expected to be travelling through the 500 metre envelope without necessarily being en route to a polling place.

As many polling places are closer than 2 kilometres away from nearby polling places, the extension of the ban to a 1 kilometre diameter circle around each polling place would result in an overlapping series of areas in which canvassing would be banned on polling day, covering much of the urban area of Canberra. In some locations, areas in which canvassing might be permitted could be the exception rather than the rule. It is suggested that this would be difficult for the Electoral Commission to enforce. It is also suggested that this would make hitherto legitimate canvassing – such as placing signs on main roads – difficult to carry out without inadvertently placing advertising within a canvassing exclusion zone.

It may also be arguable that a significant increase in the area in which canvassing is banned might be able to be challenged on constitutional grounds on the basis of infringing the freedom of political communication implied by the Commonwealth Constitution.

The Tasmanian system of banning all distribution of electoral matter on polling day could be problematic in the ACT. In particular, a blanket ban might be able to be challenged on constitutional grounds on the basis of infringing the freedom of political communication implied by the Commonwealth Constitution. As the Tasmanian ban does not apply to posters and other material in situ before polling day, it is common to see electoral posters on polling day in Tasmania. The most recent Tasmanian *Candidates guide* indicates that their 100 metre restriction around polling places does not apply to static signs in place before polling day. It is arguable that this approach would not address the issues apparent in the ACT.

The Commission's report on the 2012 ACT election notes that only 18 allegations of breaches of the 100 metre ban were received at the election, compared to around 30 complaints received at the 2008 election. For the first time in 2012, the Commission published maps of all the polling places showing the location of the 100 metre canvassing limits. This may have contributed to the reduction in the number of complaints. The Commission intends to provide these maps at the 2016 election earlier in the election timetable and make their availability more widely known. This may assist to reduce infractions further in 2016.

An issue that arose in a small number of cases in 2012 were allegations that canvassers at the 100 metre limit had caused traffic accidents. While the Commission can stress in its information to candidates and their supporters the importance of not causing traffic hazards, this is ultimately a matter for the people concerned and the relevant traffic enforcement authorities.

This reduction in the number of reported breaches of the 100 metre ban would indicate that it is arguably not a significant problem.

Given the issues discussed above, I do not support increasing the ban to a 500 metre limit.