

## Electoral (Improving Representation) and Another Act Amendment Bill 2015

### Queensland Parliament, Legal and Community Safety Committee

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This Bill picks up on some of the more commendable aspects, without some of the more problematic aspects, of the recent private member's bill, the Electoral (Redistribution Commission) and Another Act Amendment Bill 2015 (Ian Walker MP).

The Bill's objectives are:

1. To increase the number of electoral districts/MPs from 89 to 93.
2. To improve key ECQ/Redistribution Commission appointments by requiring bipartisan support of a parliamentary committee.
3. To improve redistribution of electoral districts by appointing a non-judicial appointee to the Commission who has qualifications and experience in applied demography, in place of the current requirement for a chief executive of a state government department.

#### 1. Size of Parliament

In my evidence on the earlier bill, I suggested that the fairest and surest method of ensuring Parliament grows as the population grows, and to minimise partisanship over the question, is to anchor a quota in legislation. For example, to set a quota in the form of an average number of electors per seat, which when reached (or if reviewed say every 6 years), would trigger an increase and redistribution.

Failing that, it is preferable that Parliament should at least each generation consider its size in light of the needs of constituency representation and MPs/their electorate staff/technology. This bill is an opportunity for that consideration. Clearly, as the earlier inquiry and report noted, Queensland is not over-governed compared to other states in Australia – especially given its lack of an upper house and the large size (demographically and in some cases geographically) of its electoral districts. *Hence an increase in the size of the Legislative Assembly now is justified.*

Whether it should be an increase of 4 (as proposed in this bill) or up to 5 (proposed in the earlier bill) or some other figure, is not something I can expertly comment on. It requires an empirical balance: how has the population grown since the last increase? What is reasonable for an electorate of median size? What would an informed citizen think reasonable?

I can only speculate that increasing the size of Parliament by 4 may provide some short-term, stop-gap benefit for one or more of the 5 very large remote districts which are over 100 000km<sup>2</sup> each. I speculate this as the bill is sponsored by the Katter Australian Party which represents a couple of those districts, because concern for those electorates was at the heart of the earlier bill, and because this bill's Explanatory Notes specifically mentions the largest electorate, Mount Isa, without explaining how the magic number of '4' new MPs helped address the issue.

## 1.1 The Problem of the 5 Vast Districts - and the Dual MP Solution

The earlier bill proposed a further dilution of 1vote=1value, albeit for understandable concern around the continuing relative population shift and its impact on the 5 electorates above 100 000km<sup>2</sup> (which include a couple of mega electoral districts). These districts all lie in Queensland's north and west.

It is good that the further dilution of 1vote=1value is off the table in this bill. Since the previous bill, the High Court in a NSW electoral law case stated that the Australian Constitution incorporates a principle of 'political equality' (see *McCloy's* case).<sup>1</sup> The majority judges held that 'the equality of opportunity to participate in the exercise of political sovereignty ... is guaranteed by the Constitution'. Numerous judges also endorsed the 1902 claim by Sir Harrison Moore that '*the great underlying principle*' of the Constitution was that 'individual rights were sufficiently secured by *ensuring each an equal share of political power*'.

*McCloy's* case is thus, in terms of the constitutional idea of political equality, a step beyond the 1976 case of *Re McKinlay*, where at least 3 High Court judges held that 'gross' disparities of vote weighting are unconstitutional. It is buttressed by other electoral cases like *Roach* and *Rowe* (2006, 2010) which held that once a democratising legislative advance is in place for sufficient decades (eg a universal franchise, a grace period to enrol to vote after an election is called), then that advance may become constitutionally protected. A legislative consensus formed in Australia, between the 1970s and early 1990s, that lower house seats should be of relatively equal enrolment. That consensus may thus now be constitutionally protected. Whilst this does not mean Queensland's current weighting of the five very large seats is unconstitutional, any further dilution of the equality of vote weighting is likely to be unconstitutional. Particularly as there are other ways to address the concern of representing sparsely populated areas. One of these is via a regionally based upper house. A simpler expedient is dual-MPs.

I reiterate my appeal in my submission on the earlier bill. The Queensland Parliament needs to think creatively to accommodate the problems of representing very large seats without turning back the clock by further diluting 1vote=1value. Queensland has a flexible state constitution and can be creative.

*Those 5 large districts should each elect dual MPs. Those dual MPs can share constituency duties (on full salary/office support), but exercise a single vote on the floor of the Assembly. Just as the US President/Vice-President is elected on a single ticket, so each party (or even a pair of like-minded independents) could nominate a pair of candidates. Voters would still have one vote, between competing pairs/parties.*

*The first named nominee would hold the voting right on the floor of the Assembly; the second named or junior nominee could act as a delegate if required on the floor of parliament. The pair could share committee duties.*

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<sup>1</sup> *McCloy v NSW* [2015] HCA 34. I summarise the case here: <https://theconversation.com/in-mccloy-case-high-court-finally-embraces-political-equality-ahead-of-political-freedom-48746>

*In this way, for a modest extra expenditure, the residents of these vast electorates could have representatives from different key towns in the region, and the dual-MPs would share and thus be each relieved of some of the present burdens of travel and parliamentary duties.*

*I note that long-standing Courier-Mail commentator, Terry Sweetman, recently editorialised in favour of this idea.*

## 2. Appointments - Bipartisanship and Qualifications

The principle of 'bipartisanship' in key appointments to fundamental integrity bodies like the Electoral Commission is laudable. This is not to reflect on previous appointments; if nothing else it ensures the appearance of integrity, inhibits oppositions from later complaining about an appointment they sanctioned, and may introduce some multi-partisan deliberation into appointments that historically have been under executive fiat.

So the principle is a good one. Of course the relevant committee must uphold confidentiality etc in deliberating on such appointments, to avoid US style controversies or public-politicisation of them.

*Hence I support the bill's proposed amendments to s 6 of the Electoral Act to require bipartisanship in the choice of the Electoral Commissioner, Deputy Commissioner and Redistribution Commissioners.*

I note the bill does not actually require multi-partisanship or government/opposition bipartisanship, as it is enough if the opposition member on the committee or a cross-bencher, support the government's nominee.

The proposal to require the non-judicial appointee to the Redistribution Commission to have qualifications in 'applied demography', with experience relevant to 'contemporary redistributions' is understandable in intent. After all that kind of capacity was traditionally implied in such appointments. *However parliament should be careful about the language used in defining the 'non-judicial' appointee to the Redistribution Commission, lest it unduly limits the pool of people who can be nominated to that role.* I doubt Antony Green would qualify under the proposed wording, yet few people would have his breadth of knowledge of statistics, computing and electoral redistributions!

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