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Crime and Corruption
Commission

QUEENSLAND

Our Reference: AD-12-0212 / 15/180873
Contact Officer: Mr Rob Hutchings

23 November 2015

Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Ms Watson

**RE: ELECTORAL (IMPROVING REPRESENTATION) AND
ANOTHER ACT AMENDMENT BILL 2015**

I refer to the letter from Mr Mark Furner MP, Chair of the Legal Affairs and Community Safety Committee (the Committee), to the Crime and Corruption Commission (CCC) dated 22 July 2015 inviting a written submission concerning the *Electoral (Improving Representation) and Another Act Amendment Bill 2015* (the Bill).

Mr Furner's letter noted that the CCC recently made a submission on the *Electoral (Redistribution Commission) and Another Act Amendment Bill 2015* (ERC Bill) which canvassed some of the objectives of the Bill but did not pass its second reading in the Legislative Assembly.

The CCC welcomes the opportunity to comment on the Bill.

However, while it is appropriate to reiterate some comments made concerning the ERC Bill, the CCC considers that additional comment is necessary as this Bill, if enacted either in whole or in part, has a substantially different effect to that which had been proposed by the ERC Bill.

The CCC is not an elected body and the Bill concerns questions about the design of our system of democratic electoral representation which ultimately are appropriate for parliament and the people of Queensland. Accordingly the CCC intends to limit its comments to matters of principle relevant to the purpose of reducing the incidence of corruption in the public sector¹.

The Bill proposes amendments to parts of the *Constitution of Queensland Act 2001* and the *Electoral Act 1992* which implemented certain recommendations of the Fitzgerald Inquiry Report (the Inquiry)² and of the Electoral and Administrative Review Commission in November 1990.

¹ *Crime and Corruption Act 2001*, sections 4 and 5

² Report of a Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct Pursuant to Orders in Council, 3 July 1989

The Inquiry identified the need for fairness in the electoral process to achieve legitimate political authority for government³. This was said to safeguard against the degeneration of the institutional culture of public administration by reason that government activity might cease to be moderated by concern at the possibility of losing power⁴.

The Inquiry also identified the need for existing electoral boundaries to be examined by open, independent inquiry to promote social cohesion, public accountability and respect for authority⁵. The Inquiry stated that such an examination should appropriately be conducted by a person or group of people of undoubted integrity whose judgment will be acceptable to all political parties and the general community⁶.

Queensland's system of parliamentary democracy incorporates the principle of equal representation⁷ by enactment of ss 3, 34 and 45 of the *Electoral Act 1992*. This principle is entrenched by the requirement for the Electoral Commission Queensland (ECQ)/Queensland Redistribution Commission (QRC) to regularly review and redistribute State electoral districts consistent with the principle of equal representation in accordance with the provisions of Part 3 of the *Electoral Act 1992*. According to the ECQ, the legislatively mandated process for the next electoral redistribution is due to commence in early 2016 (the 2016 electoral redistribution).⁸

It is apparent from current enrolment figures⁹ that the 2016 electoral redistribution (whether or not the Bill is passed) will likely result in changes to the existing electoral boundaries which are no longer able to comply with the principle of equal representation provided by the *Electoral Act 1992*, s 45.¹⁰

Clauses 2 - 4

The amendment proposed in clauses 2 – 4 of the Bill to amend the *Constitution of Queensland Act 2001* to increase the number of electoral districts in the Legislative Assembly from 89 to 93 is consistent with the Inquiry recommendation for fairness in the electoral process when combined with the s.45 obligation.

It is noted that under the *Electoral Act 1992* the next general election will be undertaken on the existing unequal electoral boundaries, unless the next electoral redistribution takes effect prior to the issue of the writ for such election.

Clauses 6, 8 and 9

The Bill's proposal in Clause 8 (1) that the nonjudicial appointee must be a person with qualifications and experience in applied demography relevant to contemporary electoral redistributions may be seen to provide strengthening of protections against corruption by continuing to require that ECQ/QRC membership be comprised by persons of undoubted integrity but with the additional field of relevant expertise. In this regard it is noted that the QRC must consider demographic trends with a view to minimising the need for another electoral redistribution on grounds other than regular mandatory review periods.¹¹ The proposal may also be seen to strengthen protections against corruption by removing grounds for any perception that the nonjudicial appointee might be beholden to the government of the day.

However, the Bill's proposal at Clauses 6, 8(2) and 9 that the members of the ECQ/QRC be appointed with the bipartisan support of the Parliamentary committee may have potential to delay the legislative

³ Ibid, p 127

⁴ Ibid

⁵ Ibid

⁶ Ibid

⁷ Queensland Redistribution Commission Determination of Queensland Legislative Assembly Electoral Districts, Queensland Government Gazette No. 111, p 2249. http://www.ecq.qld.gov.au/_data/assets/pdf_file/0019/25453/Queensland-Redistribution-Commission-2008-Final-Report.pdf

⁸ <https://www.ecq.qld.gov.au/electoraldistricts/statedistricts/state-redistributions-2008>

⁹ <http://results.ecq.qld.gov.au/profiles/currentEnrolmentFigures.html>

¹⁰ Hansard, 12 November 2015, p 2851 and Tabled paper: Queensland Parliamentary Library Research Brief, dated 30 July 2015, regarding population and electors.

¹¹ Electoral Act 1992, ss 38 and 46((1)(e))

mandate for the QRC to redistribute the State electoral districts as soon as practicable in accordance with *Electoral Act 1992*, s 35(3).

The proposals, if enacted, may create uncertainty about the validity of the existing appointments of the members of the ECQ/QRC. Currently Commissioner appointments do not require the bipartisan support of the Parliamentary Committee. Commissioners hold office, subject to the *Electoral Act 1992*, Part 2 for the term specified in their instrument of appointment¹². Whilst the current Commissioner appointments may continue by virtue of s 20B of the *Acts Interpretation Act 1954*, the CCC considers the preferable course would be to enact appropriate transitional arrangements continuing the existing membership of the ECQ/QRC until such time that the ECQ/QRC is comprised by members appointed with the bipartisan support of the Parliamentary committee. This would prevent legal challenges and potential delay to the 2016 electoral distribution on grounds that it was not being conducted by a properly constituted QRC.

Clause 7

If enacted in its current form, clause 7 of the Bill - to amend the *Electoral Act 1992*, s 3(1), definition *average number of enrolled electors for electoral districts* - would commence upon assent. The current definition of *average number of enrolled electors for electoral districts* incorporates the principle of equal representation by dividing the total number of enrolled electors for all electoral districts by the current number of electoral districts (89). The amendment substitutes 93 for 89 as the denominator in the above equation. This is consistent with other proposals to amend the *Constitution of Queensland Act 2001* and the *Electoral Act 1992* to increase the number of electoral districts in the Legislative Assembly from 89 to 93. It is respectfully submitted that increased electoral representation of the kind advocated by clause 7 may strengthen the principle of equal representation by increasing potential for constituents to have direct personal access to their elected representatives.

Clauses 10 and 11

The Bill's proposal in clauses 10 and 11 to amend the *Electoral Act 1992* to increase the number of electoral districts from 89 to 93 is consistent with the Inquiry recommendation for fairness in the electoral process. These amendments may be seen to provide marginal strengthening of protections against corruption with increased potential for constituents to have direct personal access to their elected representatives.

Clause 12

The Bill's proposal in clause 12 effectively provides that for the 2016 electoral distribution there is no increase in the number of members of the Legislative Assembly and continues in force the existence of the current electoral districts until the writ for the next general State election issues and any appeals against the redistribution under s 57(6), *Election Act 1992* have been disposed of by the Court of Appeal.

It is respectfully submitted, however, that this clause highlights the significance of any delay to the current legislative mandated process for redistributing the state into equal electoral districts as soon as practicable in accordance with *Electoral Act 1992*.¹³

Conclusion

Queensland's system of parliamentary democracy is based upon the principle of equal representation¹⁴. The CCC considers that, in principle, mechanisms which facilitate movement away from equal representation have the inherent potential to lead to corruption or perceptions of

¹² *Electoral Act 1992*, s 9 (chairperson and nonjudicial appointee) and s 22(5) (commissioner/deputy commissioner)

¹³ *Electoral Act 1992*, ss 35(3) and 45

¹⁴ Queensland Redistribution Commission Determination of Queensland Legislative Assembly Electoral Districts, Queensland Government Gazette No. 111, p 2249. http://www.ecq.qld.gov.au/data/assets/pdf_file/0019/25453/Queensland-Redistribution-Commission-2008-Final-Report.pdf

corruption. Hence it is appropriate that such mechanisms should remain under regular review to ensure that the appropriate balance between effective representation and equal representation is struck.

The CCC considers that the Bill is generally consistent with the principle of equal representation. However, the CCC recommends further consideration be given to clarifying the status of the current members of the ECQ/QRC to ensure that it is not delayed or prevented in performing its legislatively mandated function to conduct such a review as soon as practicable in accordance with the *Electoral Act 1992*.

I would like to thank the Committee again for the invitation to deliver this submission concerning the Bill.

Yours sincerely

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A J MacSporran QC
Chairman