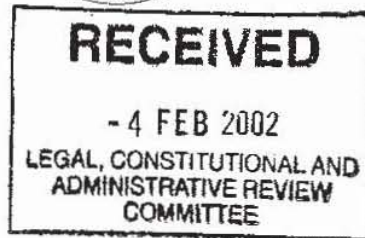


FROM CHIEF JUSTICE PAUL de JERSEY

Your Ref:  
Our Ref: 1:192



CHAMBERS OF THE CHIEF JUSTICE  
SUPREME COURT  
BRISBANE

30 January 2002

Ms Karen Struthers MP  
Chair  
Legal Constitutional and Administrative Review Committee  
Legislative Assembly of Queensland  
Parliament House  
George Street  
BRISBANE QLD 4000

Dear Ms Struthers,

**RE: THE ELECTORAL (FRAUDULENT ACTIONS) AMENDMENT BILL 2001**

I refer to your letter of 5<sup>th</sup> December 2001 in relation to the Electoral (Fraudulent Actions) Amendment Bill 2001. I have now had an opportunity to consider the Bill in consultation with some of my colleagues. There are two important observations I wish to make upon the Bill as presently framed.

Firstly, s 169/a(2) creates a fiction the appropriateness of which is doubtful. A person is to be taken to have done an act with intent to fraudulently influence the outcome of an election if he or she does an act with intent to have someone enrolled for an electoral district and is aware they are not entitled to be enrolled for that district. It is quite conceivable that a person might procure an enrolment in the wrong district for reasons of convenience, or even for reasons of branch-stacking such as emerged in the Shepherdson Inquiry; but for reasons that nonetheless have nothing to do with fraudulently influencing election outcomes. The provision would put a complexion on what might otherwise be naïve or stupid activity which would far outstrip the actual intention involved. At its highest, the section should provide for those acts to constitute *prima facie* evidence rather than be conclusive, as appears to be the current intent.

Secondly, as in cases of minimum penalties, this one could result in the imposition of imprisonment on a person in circumstances in which such punishment would be grossly unfair and disproportionate to penalties imposed for other similar offences. It is not hard to envisage a case in which a young and naïve person, perhaps under the influence of an older and more sophisticated person may perform a minor act with the intent and the awareness specified in proposed s 160A(2). It is impossible to predict every possible case in which subsection (2) could apply; that is why mandatory minimum sentences are morally wrong. There is, in any event, an anomaly in that the minimum penalty only applies if the subsection applies. On the one hand, one might have an individual seriously attempting fraudulently to influence the election outcome, but so long as he did not do so in connection with an enrolment not exposed to the minimum penalty. But, on the other hand, someone in the category we have just described, who might be young and silly and subject to the influence of others, who did enrol in the wrong electorate, for



Chambers of the Chief Justice – Supreme Court of Queensland

To:

Subject: The Electoral (Fraudulent Actions) Amendment Bill 2001

30 January 2002

2

---

example, for branch-stacking purposes, would be subject to the automatic imprisonment of three months.

I hope you may find these observations useful.

Yours sincerely

A handwritten signature in cursive script, reading 'Paul de Jersey'.

The Hon P de Jersey AC  
**Chief Justice**