



**ELECTORAL COMMISSION
QUEENSLAND**

14 February 2002

Ms Karen Struthers MP
Chair
Legal, Constitutional and Administrative
Review Committee
Parliament House
Cnr George and Alice Streets
BRISBANE QLD 4000

Dear Ms Struthers

Re: The Electoral (Fraudulent Actions) Amendment Bill 2001

Thank you for your letter of 5 December 2001 inviting the Electoral Commission to make a submission to your Committee's inquiry into the Electoral (Fraudulent Actions) Amendment Bill 2001.

The Commission is, of course, generally supportive of any proposed legislative change intended to improve the integrity of the electoral process in Queensland. The Commission does, however, have some concerns about the proposed amendment to the *Electoral Act 1992*.

Firstly, from a lay person's perspective, the wording of the proposed subsection (1) of section 160A is so broad and wide-ranging that there may well be difficulties in both the interpretation and enforcement of such a provision.

Secondly, subsection 2 of the proposed section 160A, which focuses on enrolment for the wrong electoral district, appears to raise a number of constitutional issues. These were summarised by the Honourable T F Shepherdson QC on Page 11 of the report "The Shepherdson Inquiry: An Investigation into Electoral Fraud" as follows:

"Prior to 1 January 1992, the State and the Commonwealth kept separate electoral rolls and the respective laws of the State and the Commonwealth applied to dealings with their own rolls. As from 1 January 1992, a joint roll administered by the Commonwealth has been kept for the Commonwealth and Queensland, with the result that any offences with respect to the roll committed since that time are offences against Commonwealth law.

IN REPLY PLEASE QUOTE EX/52(3) RLL/RLA
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The joint roll is the result of administrative arrangements between the Commonwealth and Queensland sanctioned in so far as Queensland is concerned by the provisions of section 62 of the *Electoral Act 1992* (Qld). In the case of a joint roll, no State offence is open because of the effect of section 109 of the Commonwealth Constitution, which excludes the application of State law where the Commonwealth has legislated to cover the field, as it has here."

Finally, on 4 February 2002, the Honourable the Premier and the Honourable the Attorney-General and Minister for Justice issued a joint statement to the effect that Cabinet had agreed to legislation which will amend the *Electoral Act 1992* and deliver on the electoral reform commitments made by the Honourable the Premier in Barcaldine in January 2001.

The Commission has been involved in the development of this legislation and is aware that it will remove the more serious electoral offences from the *Electoral Act 1992* to the *Criminal Code*.

I am concerned that the proposed amendment will not fit well with the comprehensive scheme for electoral offences being developed in the new legislation. For example, the seriousness of the offence contemplated in section 160A is such that, if the amendment were to proceed, it should be part of the electoral offence provisions in the *Criminal Code* rather than in the *Electoral Act 1992*.

Please feel free to contact me should you wish to obtain any clarification of the views I have expressed.

Yours sincerely



R L LONGLAND
Electoral Commissioner