DEPARTMENT OF GOVERNMENT

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Submission No 30
Spec 18·1

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28 October 1998

Mr Gary Fenlon MLA
Chair
Legal, Constitutional and
Administrative Review Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Fenlon

Re: Inquiry into Issues of Electoral Reform Raised in the Mansfield Decision

Thank you for your kind invitation to me to present submissions to your committee on the above matter.

Please find attached two submissions, the first covering paragraphs 153 and 154 of the Mansfield judgement, and the second on paragraph 155 of that judgement.

I hope they will be of some interest to the committee as it deliberates on these questions.

I do not wish these submissions to be covered by confidentiality provisions.

Yours sincerely

Paul Reynolds

Dr Paul Reynolds
Reader in Government

Submission on Paragraphs 153 and 154

The judge's comments are well taken, especially as the enactment of the 1992 legislation provided for Optional Preferential Voting (OPV). Prior to this the parties automatically allocated their preferences, confident that the vast majority of their voters (80-90%) would follow the How to Vote (HTV) cards and do as bidden.

However OPV changed this strategy in the following ways:

- Voters now had an additional alternative, namely to treat the vote as a first-past-the-post exercise and exhaust after voting for their preferred party; or

- Registering an incomplete ballot by avoiding voting for any party or parties they opposed; or

- Defying their party's HTV instructions and making their own voting ticket.

Of course voters could always exercise the third option, but few apparently did so. However, in a related development, the 1992 Act abolished the zonal system of vote weightage (except for the five Special Electoral Districts), which increased markedly the ratio of marginal seats, especially in the outer suburbs of cities and provincial towns and in seats with mixed urban/rural electors. The parties then had to strive harder to maximize their first preference vote and discipline it, while seeking support from their opponents (especially third party and Independent supporters) into directing second preferences their way. At stake was to prevent these latter electors from exhausting without finally opting for one or other major party. Hence strategies have been developed of the type complained of in the Mansfield case.

To minimize, with a view to eradication of these strategies, the obvious answer is to rescind OPV thereby forcing voters to return to compulsory preferential voting which, apparently, imposes tighter discipline on voters and gives all parties a greater predictability in assessing their voting flow. This consideration is outside the Committee's terms of reference, and is a matter for the legislature. Present indications are that a majority of Members do not favour repeal of OPV.

As one who agrees with the judgement in paras 153 and 154, the more practical solution would be to strictly delineate the production of HTV cards. Such an amending process is not, of itself, a radical exercise since all legislation should be the subject of further scrutiny to ensure that, in practice, it operates as intended and that unforeseen problems are addressed. This is particularly true of electoral legislation in which all parties necessarily have a vested interest.

My suggestion then is that the legislation be amended to provide for a second preference HTV card, and that this be clearly marked, on both sides if necessary. This can be done by stating, in bold type at the top: "The – Party's Second Preference How To Vote Card for the seat of – ". Immediately under this header, in upper case lettering, the words: "Authorised by 'Joe Blow'" and his/her designation as officer or campaign director for the relevant party. Where this is issued by an Independent, the header should replace the party designation with the person's name and description as "Independent Candidate for the Seat of —." The authorisation would then take similar form with the name being that of the candidate or his/her authorised agent, the latter being expressly identified as such.

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I do not think the question of colour of the HTV and Second Preference HTV cards is a material one. It may be impossible to obtain agreement on the appropriate colour to differentiate them or, worse, lead to endless petty disputes as to colour pigmentation and whether the shade of colour in fact met the colour requirements. Uniform wording in a properly designated place of sufficient clarity and size would ensure that voters could immediately recognise the cards and that their admissibility or otherwise could be ruled upon by the ECQ, with whom both sets of cards would have to be registered one week (7 clear days) before polling day.

In summary then, my submission is that:

- There be permitted two (2) HTV cards, the second designated as a Second Preference HTV Card;
- The second preference HTV carry that title, incorporating the party's name, and seat (or the Independent's name and seat) as a defined header;
- An authorisation in upper case lettering appears immediately below the header identifying the person and status in whose name the card is issued.
- Both HTV Cards be registered with ECQ within seven days of polling day.

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Submission on Paragraph 155

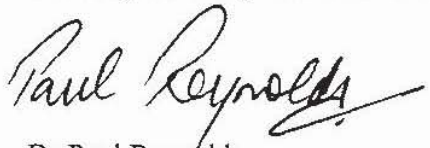
The question of appeal is always difficult, especially where the court is one of original and final jurisdiction. In cases of judicial review, we have lived with this situation vis-à-vis the High Court of Australia since that Court abolished appeals to the Privy Council. To some it is an expeditious method of dealing with contentious matters requiring swift adjudication. To others, it is inherently unjust not to allow an appeal mechanism which will either confirm the original judgement, thereby making it more water tight; or overturn it, thereby preventing a miscarriage of justice, or sending it back for re-trial so that matters and evidence can be more assuredly addressed. I favour the latter situation.

However I am conscious that electoral matters need comparatively swift resolution especially as, in both the Mundingburra and Mansfield cases, the fate of government depended on the court's judgement.

A suggestion perhaps worth considering is that an appeal process be introduced into the Act which covered the following:

- That any appeal from the Court of Disputed Returns must be lodged with the Court of Appeal within seven (or possibly 14) days;
- That a judge from the Court of Appeal be designated the Appeal Court of Disputed Returns and be obliged to hear the appeal within 14 days of the appeal being lodged;
- That the Appeal Court of Disputed Returns' procedures be limited to hearing addresses from counsel, except where that Court is satisfied that genuinely fresh evidence, not considered in the court of original jurisdiction, requires consideration;
- That judgement, if not given immediately the case is heard, be reserved for a specified period of time (again possibly 14 days).

While a layperson in these matters, I am not sure of the wisdom or practicality of the legislature binding the judiciary to a specified time frame. However I feel justification can be afforded in this case as it concerns the election of the Parliament and hence the formation of the executive branch. Surely this is of paramount importance to the voters, the legislature and the political system in its broadest sense.



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