Electoral Commissioner

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Submission No 9
Spec 22.1

Mr Gary Fenlon MLA
Chairman
Legal, Constitution and
Administrative Review Committee
Legislative Assembly of Queensland
Parliament House
George St
BRISBANE QLD 4000

Dear Mr Fenlon

In response to your invitation of 3 November 1999, I have pleasure in presenting a submission from the Australian Electoral Commission (AEC) to the inquiry by your Committee into Issues of Queensland Electoral Reform.

Yours sincerely

Bill Gray

30 November 1999

AUSTRALIAN ELECTORAL COMMISSION

SUBMISSION TO THE QUEENSLAND LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

INQUIRY INTO ISSUES OF QUEENSLAND ELECTORAL REFORM

30 November 1999

CONTENTS

Preamble

1. Electoral District for which Members may Enrol

2. Deposit to Accompany Nomination

3. Voting Material (HTV cards) – Declared Institutions

4. Authority to Re-Schedule Mobile Polling

5. Canvassing etc in or near Polling Places

6. Special Postal Voters

7. Non-Voter Process

8. Misleading Voters

9. Election Funding and Financial Disclosure

10. Electoral Enrolment Procedures

11. Maintenance of Electoral Rolls

Attachment 1: Letter dated 25 October 1999 from the Queensland Electoral Commissioner

Attachment 2: Extract from Background Paper on Inquiry into Issues of Queensland Electoral Reform

Preamble

On 28 October 1999, the Queensland Legal, Constitutional and Administrative Review Committee (QLCARC) resolved, on the request of the Queensland Attorney-General, Minister for Justice and Minister for the Arts, the Hon Matt Foley MLA, to undertake an inquiry into certain issues of electoral reform.

Most of these issues emanated from a memorandum from the Queensland Electoral Commissioner to the Attorney-General following the 1998 Queensland State election. The memorandum was later reproduced in a letter from the Queensland Electoral Commissioner to the QLCARC, dated 25 October 1999 (**Attachment 1**).

The Queensland Electoral Commissioner raised the following issues in his letter to the QLCARC:

1. Electoral District for which Members may Enrol
2. Deposit to Accompany Nomination
3. Voting Material (HTV Cards) – Declared Institutions
4. Authority to Re-Schedule Mobile Polling
5. Canvassing etc in or near Polling Places
6. Special Postal Voters
7. Non-Voter Process
8. Misleading Voters
9. Election Funding and Financial Disclosure
10. Electoral Enrolment Procedures
11. Maintenance of Electoral Rolls

In the context of these issues, and as outlined in the Background Paper (**Attachment 2**), the QLCARC is considering whether additional measures need to be taken to enhance the accuracy of the Queensland roll, and in particular, the following questions are raised for consideration:

1. Does Queensland need to gain further control over the roll keeping function?
2. Does Queensland need to establish its own separate electoral roll (but nevertheless share data with the AEC in order to ensure both rolls are of the highest integrity?)
3. If Queensland does establish its own separate electoral roll, how should that roll be maintained?
4. If 'data matching' is introduced as part of a new state roll, how should that data be used?
5. What privacy concerns does data matching raise in this context and how might these concerns be addressed especially given that Queensland does not have a privacy regime equivalent to that at the commonwealth level?
6. What balance needs to be achieved between the right to privacy and the right to vote? Which roll updating methods best achieve this balance?

7. What additional/alternative mechanisms and inducements can be used to update the electoral roll?
8. Are the new [federal] enrolment requirements desirable? If not, what steps should Queensland take to circumvent or modify these requirements?

On 3 November 1999, Mr Gary Fenlon MLA, the Chairman of the QLCARC, wrote to the Australian Electoral Commission (AEC), inviting a submission to this inquiry, by 3 December 1999. The AEC welcomes the opportunity to contribute to the QLCARC inquiry with the following submission, which addresses each of the issues raised by the Queensland Electoral Commissioner, and the Background Paper.

In this submission, the *Commonwealth Electoral Act 1918* is referred to as the CEA, and the *Electoral Act 1992* (Qld) is referred to as the QEA, the Electoral Commission for Queensland is referred to as the ECQ and the Australian Electoral Commission is referred to as the AEC.

In order to provide some relevant background on the legislative development of the parts of the CEA that are mentioned in this submission, reference is made to various AEC submissions to the Joint Standing Committee on Electoral Matters (JSCEM), the QLCARC equivalent at the federal level.

All AEC submissions to the JSCEM from the time of the 1996 federal election onwards can be accessed on the AEC Internet site at www.aec.gov.au. JSCEM Reports, and transcripts of JSCEM hearings, can be accessed on the Parliament House Internet site at www.aph.gov.au.

The JSCEM is finalising its current inquiry into the conduct of the 1998 federal election, and it is understood that the Report will be tabled in Parliament early next year.

1. Electoral District for which Members may Enrol

1.1 The Queensland Electoral Commissioner has recommended amendments to the QEA, in relation to the enrolment of Members for Queensland State Districts, in the terms specified in his letter of 25 October at Attachment 1. The AEC has no comment to make on this issue.

2. Deposit to Accompany Nomination

2.1 The Queensland Electoral Commissioner has recommended amendments to the QEA, in relation to the return of candidates' deposits, in the terms specified in his letter of 25 October at Attachment 1.

2.2 The CEA provides that a candidate's deposit may be paid by or on behalf of the candidate, and that the deposit is returned to the person who made the deposit, or alternatively, to a person who is authorised in writing by the candidate - see sections 170(3), 173 and 178. That is, the proposed amendments to the QEA parallel the existing provisions in the CEA.

2.3 Relevant background, in relation to the CEA provisions governing candidate nominations, is in part 5 of AEC submission No 88 of 12 March 1999.

3. Voting Material (HTV Cards) – Declared Institutions

3.1 The Queensland Electoral Commissioner has recommended amendments to the QEA, in relation to the distribution of HTV cards at hospitals and nursing homes, in the terms specified in his letter of 25 October at Attachment 1.

3.2 The CEA provides that literature relating to an election, or to political parties, including HTV cards, may be supplied to the general office of a special hospital. Any such literature must be provided to electors on request. Further, mobile teams and electoral visitors must advise electors that they have such literature available, and provide it on request - see sections 226(2) and (2A). That is, the proposed amendments to the QEA parallel the existing provisions in the CEA.

3.3 Relevant background, in relation to the CEA provisions governing voting at hospitals and nursing homes, is in Recommendations 26 and 54 of the JSCEM Report into the Conduct of the 1996 Federal Election, and in part 8.6 of AEC submission No 30 of 30 July 1996.

4. Authority to Re-Schedule Mobile Polling

4.1 The Queensland Electoral Commissioner has recommended amendments to the QEA, in relation to variations to mobile polling schedules, in the terms specified in his letter of 25 October at Attachment 1.

4.2 The CEA provides that, if, for reasonable cause, a mobile polling team is unable, or the leader considers it inappropriate, to visit a polling place, the team leader may substitute another place, day or time. If this is done, then the team leader must take such steps as he or she thinks fit to give public notice of the substituted place, day or time, and inform the Divisional Returning Officer. Any failure by a team to make a visit in accordance with procedures does not invalidate the result of the election – see section 227(6)(7). That is, the proposed amendments to the QEA parallel the existing provisions in the CEA.

4.3 Relevant background, in relation to the CEA provisions governing re-scheduling of mobile polling, is at paragraphs 37.16 to 37.20 of AEC submission No 210 of 23 July 1999.

5. Canvassing etc in or near Polling Places

5.1 The Queensland Electoral Commissioner has recommended amendments to the QEA, in relation to canvassing at pre-poll voting centres, in the terms specified in his letter of 25 October at Attachment 1.

5.2 The CEA prohibits canvassing within six metres of the entrance of a polling booth on polling day – see section 340. This prohibition does not apply to pre-poll voting centres.

5.3 Most pre-poll voting centres at federal elections are at Divisional Offices, which are often located in shopping centres or other large, multi-purpose buildings, which may have non-standard access/entrance areas. In relation to canvassing by party workers at the entrance to pre-poll voting centres where canvassing is not prohibited, Divisional Returning Officers liaise with party workers, as necessary, to ensure that there is no inconvenience to voters.

5.4 Relevant background, in relation to the CEA provisions governing canvassing at pre-poll voting centres, can be found at paragraph 42.23 of AEC submission No 176 of 4 May 1999.

6. Special Postal Voters

6.1 The Queensland Electoral Commissioner has recommended amendments to the QEA, in relation to special postal voters, in the terms specified in his letter of 25 October at Attachment 1.

6.2 The CEA provides for a similar system to the Queensland special postal voters, known as General Postal Voters – see sections 184A to 185C. However, the recommended amendment to the QEA would leave in place one existing inconsistency in the qualifications for State SPV and federal GPV registration, that is, the criteria relating to the distance from a polling place. The AEC would encourage any amendments that would more closely synchronise the Commonwealth and State criteria for registration.

7. Non-Voter Process

7.1 The Queensland Electoral Commissioner has recommended amendments to the QEA, in relation to the prosecution of non-voters, in the terms specified in his letter of 25 October at Attachment 1.

7.2 The CEA makes provision in relation to certificate evidence and averments – see sections 385 and 388.

7.3 On a related issue, the AEC has experienced similar difficulties in prosecuting multiple voters, and relevant background can be found at part 7 of AEC submission No 239 of 15 October 1999.

8. Misleading Voters

8.1 The Queensland Electoral Commissioner has recommended amendments to the QEA, which would define the word "publish" in the context of Internet activities, in the terms specified in his letter of 25 October at Attachment 1.

8.2 Relevant background, in relation to the publication of electoral advertising on the Internet, can be found at part 12.7 of AEC submission No 30 of 29 July 1996, and at part 6.3 of AEC submission No 88 of 12 March 1999.

9. Election Funding and Financial Disclosure

9.1 The Queensland Electoral Commissioner has recommended amendments to the QEA, relating to election funding and disclosure, in the terms specified in his letter of 25 October at Attachment 1.

9.2 The categorisation of receipts and expenditure in the disclosures of political parties was removed from the CEA effective from the 1994/95 financial year. The question of a continued requirement for political parties to categorise their receipts and expenditures under various headings ultimately rests upon the objectives of the disclosure legislation. This detail is, no doubt, of interest to some, providing some insight into the operations of political parties. However, with the exception of separately identifying donations, a breakdown of the receipts and expenditure of political parties does not make any significant contribution to exposing potential political corruption.

9.3 On the matter of the disclosure of donations, it should be noted that the lodgement of donor returns under the CEA not only serves to identify donations from other receipts listed on political party returns, but also plays an important role in ensuring full disclosure. A transaction threshold below which a political party does not need to aggregate receipts when determining whether it must disclose a person can be exploited through a donor making multiple donations, each just under the threshold. Theoretically, any value donation can be made and go undisclosed in the party's return. Monthly donations of $1,499 would add up to a total donation of $17,988 that need not be disclosed, with weekly donations totalling to a $77,948 undisclosed donation.

9.4 No transaction limit applies to donors when they are lodging their returns under the CEA. They must disclose donations totalling $1,500 or more to the same political party even where no single donation has reached the disclosure threshold.

9.5 After consideration of the continued relevance of these returns, the JSCEM concluded in its Report on the Conduct of the 1996 Federal Election that "donors should be required to lodge separate returns while there remains a threshold below which amounts received by political parties do not have to be aggregated for disclosure purposes".

9.6 Following the required tabling in Parliament later this year, the AEC will provide copy of the 1999 Funding and Disclosure Report to the QLCARC.

10. Electoral Enrolment Procedures

10.1 Amendments to the CEA arising from the *Electoral and Referendum Amendment Act (No. 1) 1999* (the amending Act) received assent on 13 October 1999. However, the date of Proclamation of those amendments covering changes to enrolment has yet to be fixed. The AEC will be recommending to the Minister that implementation of the new arrangements by Regulation be scheduled for 1 July 2000.

10.2 The amending Act makes two important changes to existing enrolment provisions. Firstly, all enrolments must be witnessed by someone who is currently enrolled and who belongs to a prescribed class of electors. The current requirement is for witnessing by any person entitled to enrolment on the Commonwealth or Queensland State electoral roll. The drafting of the Regulations is still in progress but the list of prescribed electors will be sufficiently broad to give reasonable access to claimants. Special provision will also be made for claimants who are unable to access a qualified witness.

10.3 Secondly, the amending Act also provides that the identity of persons enrolling for the first time must be verified in the manner prescribed by the Regulations. While the amending Act itself is not explicit, the Explanatory Memorandum to the amending Act stated that an original proof of identity document (POI) may be posted to an AEC office or alternatively presented in person at an AEC office.

10.4 The Explanatory Memorandum also sets out arrangements for the appointment of prescribed persons (agents) to receive enrolment applications, and to verify proof of identity, in circumstances where applicants do not wish to send their original documents in the mail, and do not have access to an AEC office. The use of agents will allow enrolments to be lodged up to the close of rolls at other than AEC offices. The Regulations will list a number of agents including State and Territory Electoral Authorities, Local Government Authorities, State and Territory Agencies (eg Government Shop Fronts) and Australian overseas missions to cater for people enrolling from outside Australia.

10.5 In order to achieve a wide geographical spread, negotiations are also under way with Australia Post and Centrelink for the provision of agent services. However, it should be noted that drafting of the Regulations is still in progress and no final position has yet been reached on the definition and responsibilities of agents.

10.6 The proof of identity provision will apply to the 200,000 plus young people nationally who enrol for the first time each year, as well as other persons enrolling for the first time. It is possible that a number of already enrolled electors will show proof of identity because they may not be aware of their previous enrolment. The Regulations will also take into account those electors with special needs, those without easy access to proof of identity, and those in remote areas.

10.7 Given the 2.5 million enrolment forms processed on average each year, it is possible that the new provisions may result in new electors delaying enrolment and existing electors not transferring their enrolment to a new address. The AEC will closely monitor public response to the new enrolment provisions. Responses to the AEC Continuous Roll Update (CRU) activities will also be closely monitored and changes to roll review procedures made if required.

10.8 All new electors who claim citizenship by grant, that is, those persons not born in Australia, whether first time enrolments, re-enrolments or transfers, will be required to provide sufficient information regarding their Australian citizenship to enable the AEC to verify their claim. This change is not considered to be a serious operational problem as the AEC is well advanced in obtaining current and historical citizenship data available on-line.

10.9 New citizens enrolling at citizenship ceremonies using the pre-printed personalised enrolment form provided by the Department of Immigration and Multicultural Affairs (DIMA) will not be required to provide additional proof of identity or proof of citizenship. The Regulations will provide that the pre-printed form will be sufficient proof of identity, but the enrolment will still be subject to the amended witnessing provision, a procedure that will require major change to arrangements for the completion and collection of forms at ceremonies. At large ceremonies, such as those at Brisbane City Hall, it will be very difficult to have all enrolment forms completed and witnessed at the event. Currently there are 60 to 70,000 new citizens who enrol at ceremonies nationally each year.

10.10 The amending Bill originally provided for rolls to close for new enrolments on the date of the issue of the writ. This provision was not included in the amending Act as passed, and arrangements for close of rolls are therefore unchanged. The AEC is confident that it can continue to meet the existing Queensland State election close of rolls timetable.

10.11 In developing new procedures for close of rolls, the AEC has considered the possibility of delays occurring in the transmission of claims by agents. The new procedures will include the faxing of claims during roll close where normal methods of dispatch are unsuitable.

10.12 The AEC has developed operational procedures for the new enrolment process and amendments to the relevant procedural documentation have been drafted. Details of the new procedures were provided to representatives of State and Territory electoral authorities at a meeting in Sydney on 4 November 1999 and the implications for joint roll arrangements were discussed. So that the AEC can finalise procedures and put them in place by the projected date of commencement, the AEC is seeking early advice from Joint Roll Partners of their intentions to adopt the Commonwealth provisions.

10.13 The QLCARC Background Paper discussed options for a Queensland managed computerised roll separate to the Commonwealth, and alternatives to existing roll review methods. The Joint Roll provides operational and financial benefits to both parties, but the most important benefit is that electors are able to enrol for federal and State or Territory elections (and in most jurisdictions for local government elections) by completing a single enrolment form.

10.14 If States and Territories do not adopt the new federal enrolment procedures, the joint enrolment form will, at the very least, need to become two-part, that is, with distinct sections to complete for State and Commonwealth purposes, to take into account proof of identity and amended witnessing requirements. In the event that a State or Territory considers that the Commonwealth provisions do not meet their requirements, it is an option for an individual State or Territory to no longer use the joint form and to replace it with a separate enrolment form for their own purposes.

10.15 As the joint enrolment form is the keystone of the joint roll arrangements, its replacement by separate forms will require separate enrolment procedures for the Commonwealth and State rolls. If this occurs in Queensland, the practicalities of the existing roll arrangements between ECQ and the AEC would have to be reviewed.

10.16 Given the lead time required for the design, printing, distribution and display of forms and for the development of administrative procedures and roll management systems, and for the development and conduct of public information campaigns, the AEC will require an early response from current State and Territory joint roll partners as to their intention to adopt the new enrolment provisions.

11. Maintenance of Electoral Rolls

11.1 The current Queensland State Rolls, including those for Local Government and Jury Districts, are maintained on the AEC Roll Management System (RMANS), in accordance with the 1992 Joint Roll Arrangement between the Commonwealth and the State of Queensland. Under the Arrangement, completed joint enrolment forms are processed into RMANS by AEC Divisional staff. RMANS files are also maintained covering the boundary information for all electoral areas and other information required by the electoral laws of the State of Queensland and the Commonwealth.

11.2 State roll data is extracted from RMANS at the direction of ECQ and supplied in a variety of specified formats, and regular changes to programs are made to meet changing State requirements. Other roll information, such as copies of enrolment forms, is maintained by the AEC's Queensland Head Office and supplied on request to the ECQ.

11.3 The joint enrolment procedure is based on almost identical eligibility criteria, a common form and the single entry into RMANS of enrolments. It is an economical means of collecting, processing and storing roll data, but this does not mean that the State and Commonwealth rolls are the same when data is extracted from RMANS. Specific data is held at the request of ECQ, such as 'old' State boundaries and elector occupation.

11.4 The Queensland State and the Commonwealth Rolls are separate documents. On entry into RMANS, each elector is marked as Joint, Federal Only or State Only and is allocated to the appropriate Federal, State, LGA and Jury boundaries, depending on eligibility. Separate eligibility can arise due to the Queensland State legislative requirement that applicants declare that they meet the one month residential qualification. There are also certain special category federal electors who are not entitled to State enrolment, and a small number of British Subject electors entitled to State but not federal enrolment. At 16 November 1999 there were 2,229,242 electors on the Queensland State Roll and 2,228,459 on the Commonwealth Electoral Roll for Queensland.

11.5 RMANS is a national enrolment system managed by the AEC. Its operation for Queensland State purposes is subject to monitoring by the Joint Roll Management Committee as prescribed in the Arrangement, with day to day issues handled between designated ECQ and AEC liaison officers. The AEC is of the view that the management protocols have worked well and that ECQ requests for data and for program changes have been met in a timely manner and that the service provided is in accordance with the Arrangement.

11.6 All roll management activities conducted on behalf of the State are carried out with full consultation with ECQ. This is most regularly conducted at the officer level along with frequent AEO QLD to Queensland Electoral Commissioner contact and supported by formal meetings of the Joint Roll Management Committee. All required products have been provided and a substantial menu now exists to support ECQ needs. All products are delivered within Arrangement timeframes or earlier.

11.7 As noted in the Background Paper, the AEC is implementing continuous roll update (CRU) procedures nationally, to replace the periodic Electoral Roll Review (ERR). This change is overseen by a sub-committee of the Electoral Council of Australia (ECA), and takes into account those roll stimulation activities already being undertaken or planned by other State and Territory electoral authorities.

11.8 CRU activities include data matching techniques, data mining of federal databases, marketing of enrolment as a process at times other than electoral events, introduction of GIS technologies (the data for which has not yet been approved for release to the AEC by the Queensland Department of Natural Resources) and direct enrolment approaches including citizenship ceremonies, school and community visits and the like.

11.9 Following pilot studies in 1996 and 1997, CRU activities commenced in Queensland on 25 March 1999 as part of a national implementation. The activities undertaken so far have used change of address information obtained from Australia Post and RMANS vacant address data for the targeting of enrolment reminder letters. From February 1999 up until the October 1999 Referendums, approximately 400,000 letters had been mailed to Queensland addresses seeking enrolment, and an estimated 150,000 completed forms were received in return.

11.10 It should be noted that approximately 40% of the responses were received in the six weeks up to the close of rolls for the Referendums, indicating that some electors did not respond immediately to CRU mailings. Additional responses containing valuable information relating to non-eligibility and the validity of addresses for enrolment was also received over the period. Details of the national program were provided to the Commonwealth Privacy Commissioner prior to the commencement of the 1999 CRU activities.

11.11 A report on the CRU program for 1999 is currently being prepared for submission to the Electoral Council of Australia. In preparation for CRU activities in 2000, the AEC has obtained approval to use Centrelink change of address data. In addition, various State and Territory electoral authorities are preparing to use, or are already accessing, State agency data for the purpose of keeping the joint roll up to date. The AEC will be monitoring the impact on CRU of changes to enrolment procedures consequent on the new federal legislation.

ATTACHMENTS

Attachment 1

Letter dated 25 October 1999 from the Queensland Electoral Commissioner

25 October 1999

Mr G Fenlon MLA
Chair
Legal Constitutional and Administrative
Review Committee
Legislative Assembly of Queensland
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Fenlon

After each State election, the Electoral Commission Queensland carefully reviews operational issues for the purpose of identifying legislative and administrative changes which will enhance performance.

In addition, changes occur over time which raise policy issues for consideration by Government. In particular, recent amendments to the *Commonwealth Electoral Act 1918* change electoral enrolment requirements significantly and are therefore drawn to your attention for consideration by your committee.

I have attempted to set out below a concise summary of various matters for examination and determination as to whether legislative amendments should be made.

1. **Electoral District for which Members may Enrol**

Section 64(3) of the *Electoral Act 1992* (the Act) allows a Member of the Legislative Assembly to enrol for the electoral district that the Member represents rather than the district in which the Member lives.

A redistribution of State electoral boundaries was completed in June this year. At the time of the next election, Members will **only be entitled to be enrolled for the electoral district in which they live.**

This situation does not cause the Commission any difficulties or concerns. However, some Members may be perturbed by not being enrolled for the district they are contesting and accordingly, the situation is submitted for your consideration.

2. Deposit to Accompany Nomination

Section 85 of the Act requires a nomination fee (currently $250) to be paid to the Commission by the candidate or another person on the candidate's behalf.

Most candidates are nominated by the registered political party to which they belong and the nomination fees are paid concurrently with the nomination by the party concerned.

Section 85(4) provides that such monies **must** be returned to the candidate.

It is recommended that section 85 be amended to enable deposit monies to be refunded to registered political parties in respect of endorsed candidates.

Representations by registered political parties support the view that it is simpler and more satisfactory for all concerned if the Commission refunds to the parties the nomination fees paid to the Commission by the parties.

Voting Material (How-to-Vote Cards) - Declared Institutions

Section 94(4) of the Act enables the Commission to declare institutions (nursing homes, hospitals, etc) as mobile polling booths thereby enabling the residents to vote at a predetermined time between 11 days before polling day and 6 pm on polling day.

The process works very well except for arguments which arise a, every election in relation to the distribution of how-to-vote material.

For example, after every election allegations are made to the effect that persons in charge of institutions secretly only distribute the voting material of the party of their own political persuasion. As the institutions are gazetted polling booths, party workers cannot distribute how-to-vote material on the premises whilst voting is taking place and therefore, must arrange for such material to be delivered to the institutions prior to the voting period.

A further difficulty arises in that many residents of declared institutions are not enrolled for the electoral district in which the institution is located and accordingly, local how-to-vote material is of no assistance to the elector.

It has been suggested that the Act should be amended to adopt a similar provision to s 226(2A) of the *Commonwealth Electoral Act 1918*, which allows polling officials to make available how-to-vote material to voters in declared institutions. This would mean polling officials carrying how-to-vote material when visiting institutions for vote taking.

The Commission supports the suggestion and recommends that the Act be amended accordingly.

4. Authority to Re-Schedule Mobile Polling

Section 94(6) of the Act provides for the conduct of mobile polling in remote areas of the State at times (determined by the Commission) during the period beginning 11 days before polling day. Although the Commission negotiates and appoints set times for the visits to remote communities, for reasons that are often quite unique to this type of voting, visits are not always able to commence and finish at the times advertised locally.

During the recent election, this situation arose when the plane carrying a mobile polling team was unable to land on a Torres Strait Island due to flooding. The Assistant Returning Officer was forced to re-schedule the voting period and to re-visit the Island by way of a helicopter.

Section 227(6) of the Commonwealth Electoral Act permits the mobile team leader, for reasonable cause or if it is inappropriate to visit at the pre-arranged time. to substitute another place, day or time for the visit.

It is recommended that the *Electoral Act 1992* be amended to make it clear that the Commission's officers are authorised to re-schedule mobile polling times and places when circumstances demand. (Of course, appropriate notice would need to be given to the areas concerned.)

5. **Canvassing etc in or near Polling Places**

Section 166 of the Act makes canvassing within six metres of the entrance to a building with voting compartments an offence.

This provision is essential for the orderly conduct of voting on polling day.

However, the section causes real difficulties at pre-polling day voting places. For example, party workers are required to occupy positions outside the Ann Street entrance to the Brisbane City Hall or in King George Square for many days prior to polling day often in unpleasant weather conditions when, in fact, the electors are entering and leaving the polling booth from other entrances. This situation is not unique to the City Hall as similar difficulties arise at other pre-poll centres throughout the State.

Many venues could provide for party workers to occupy positions, in some cases inside buildings, without interfering with the free flow of electors to or from the pre-poll booth.

To allow for the unique circumstances that apply to pre-poll voting centres, it is recommended that the Act be amended to give the Commission discretion to vary the six metres from the entrance requirement in relation to pre-poll voting only.

6. **Special Postal Voters**

Section 105(3) of the Act provides for persons living more than 15 kilometres by the nearest practicable route from a polling booth to be registered as

special postal voters. In effect, this means that such electors are automatically sent ballot papers without having to apply at each election which ordinary postal voters must do.

Special postal voters, for the most part, live in remote areas of the State with limited postal services. Automatic despatch of ballot papers early in the election period to such persons ensures they are not disenfranchised by the late arrival of ballot papers.

The *Commonwealth Electoral Act* has a category of electors called "general postal voters" which provides a similar arrangement (ie automatic despatch of ballot papers) for persons living in remote areas, although the registration in the case of persons living in remote areas is based upon 20 kilometres from a polling booth rather than 15 kilometres from a polling booth as is the case under State legislation.

The Commonwealth legislation is more encompassing than the Queensland Act. The Commonwealth 'General Postal Voter' legislation also provides for:

- some categories of patients at hospitals;
- electors, who because of serious illness or infirmity, are unable to travel to a polling place to vote;
- electors who are carers for persons who are seriously ill or infirm;
- electors in custody; and
- electors who are precluded from attending a polling booth because of their religious beliefs.

The necessity for the Australian Electoral Commission to keep both a register of special postal voters for State elections and a register of general postal voters for Commonwealth elections not only causes administrative difficulties, but results in confusion in the minds of many electors who find themselves, for various reasons, on one register but not on the other.

Accordingly, it is recommended that Queensland adopt the registration criteria of the Commonwealth to eliminate the duplication and confusion amongst electors. It would be prudent to allow all existing special postal voters who live between 15 and 20 kilometres from a polling booth to remain registered for Queensland elections, so as not to force any electors who are currently eligible to be special postal voters, but who do not meet the Commonwealth criteria, to be de-registered.

7 **Non Voter Process**

The advice of Mr Marshall Irwin of Counsel was sought on various aspects of the Non Voter process following the July 1995 State Election.

Mr Irwin, during the course of offering his 'opinion', suggested that consideration might be given to various amendments to the *Electoral Act 1992* to overcome difficulties he identified in the evidentiary and other provisions of

the legislation. The amendments suggested by Mr Irwin to increase the prospects of successful prosecution are:

- **Evidentiary Aids**

Section 164(1)(a) provides that an elector must not fail to vote at an election without a valid and sufficient excuse.
Section 164(4) provides that in a proceeding for an offence against section 164(1)(a), a certificate purporting to be signed by a member of the Commission's staff stating certain specified matters(eg an elector failed to vote at an election) is evidence of the matter.

Mr Irwin states that such provision does no more than make certain things 'evidence' in the proceedings and admissible and relevant to those proceedings. It does not make certain forms and certificates conclusive evidence of the matters stated in the absence of evidence to the contrary or evidence in rebuttal thereof. It does not even make the statements referred to, prima facie evidence of the matters stated.

Mr Irwin is of the opinion that the evidentiary aids should have their effect strengthened so as to facilitate the proof of any charge brought under section 1 64(1)(a). He suggests wording similar to that contained in section 91(16) of the repealed *Elections Act 1983-1985:*

> *"In proceedings against an elector for an offence against subsection (12) –*
>
> *(a) the form purporting to be the reply, if any, of that elector to a notice referred to in subsection (5) may be adduced in evidence by the prosecutor and shall be conclusive evidence that the elector made to the principal electoral officer the reply set out in that form unless the contrary is proved;*
>
> *(b) a certificate purporting to be signed by the principal electoral officer and stating that the principal electoral officer did not receive from the elector –*
>
> > *(i) consent to the matter being dealt with by him;*
> > *(ii) the sum by way of penalty specified by him (naming such sum); or*
> > *(iii) both such consent and such sum*
>
> *shall be evidence of the matter or matters so stated in such certificate, and in the absence of evidence in rebuttal thereof shall be conclusive evidence of such matter or matters;*
>
> *(c) a certificate purporting to be signed by the principal electoral officer stating his opinion that the reason contained in the said form is not a valid and sufficient reason for the failure of the elector to record his vote at an election shall be admissible as evidence of the holding of*

such opinion by the principal electoral officer and that the reason contained in the said form is not a valid and sufficient reason for the failure of the elector to record his vote at the election, and in the absence of evidence to the contrary shall be conclusive evidence of such matters."

- **Place where Failure to Vote Occurs**

Mr Irwin expressed concern that an issue could arise concerning the 'Place of Offence', taking into account the likely difference between boundaries of an Electoral District and a Magistrates Courts District. He suggests that because the counting of votes is the responsibility of the Returning Officer for each individual Electorate, the appropriate place to allege the offence of failing to vote as having occurred is at the place, and within the Magistrates Courts District, at which the Returning Officer has his or her headquarters.

So as to leave no doubt as to the place at which a failure to vote occurs, Mr Irwin suggests that it could be specified by a deeming provision, eg deeming the failure to occur at the headquarters of the Returning Officer in the Electoral District for which an elector is required to vote.

- **Onus of Proof**

Section 76 of the Justices Act states:

> "76. If the complaint in any case of a simple offence or breach of duty negatives any exemption, exception, proviso, or condition, contained in the Act on which the same is framed, it shall not be necessary for the complainant to prove such negative, but the defendant shall be called upon to prove the affirmative thereof in the defendant's defence."

Mr Irwin is of the opinion that as a matter of construction or section 164(1)(a) of the Electoral Act (Failure to vote) in the context of that Act, section 76 of the Justices Act is not clearly applicable and he believes a Court would not decide in the Electoral Commissioner's favour on this issue.

In reaching this conclusion, Mr Irwin cited various case law, adding that a Court will not readily shift the onus from the prosecution in the absence of clear words in the legislation.

Mr Irwin states, therefore, that if the Commissioner wishes the onus of proof to be reversed in future cases in relation to this issue, it will be necessary to seek a legislative amendment to place the matter beyond doubt.

it is recommended that the Act be amended to accommodate Mr Irwin's recommendations.

8. **Misleading Voters (Section 163(2) of the *Electoral Act 1992*)**

The Commission recently sought the advice of the Crown Solicitor in relation to the interpretation of s. 163(2) of the Act which reads:

> *"(2) A person must not for the purpose of affecting the election of a candidate, knowingly publish a false statement of fact regarding the personal character or conduct of the candidate."*

In particular, the Crown Solicitor was asked to advise whether the word "publish" included material which may be accessible on the internet. The Crown Solicitor concluded:

> *"Although it is not without doubt, I consider that the word 'publish' within s. 163(2) of the Act is in my view broad enough to include material that is accessible on the internet. I am of the opinion that political advertising material accessible on the internet which is capable of misleading voters, is material that has been published, and is therefore capable of being caught by s. 163(2) of the Act.*
>
> *My only cause for concern is the: there may be the basis for a technical legal argument if the relevant internet site used to publish the material in question is based outside of the State.*
>
> *Clearly, the States have power to pass law with an extraterritorial effect. In this regard, it may be prudent to include a definition of 'publish' in the Act that specifically states that the term includes the act of disseminating material on the internet which is accessible by persons in Queensland. This would provide a sufficient connection to ensure that the law has a sufficient extraterritorial nexus and would also make any prosecution action more secure in the future."*

It is recommended that a definition of "publish" be included in the Act as suggested by the Crown Solicitor.

9. Election Funding and Financial Disclosure

When public funding and disclosure provisions were included in the Act in 1994 they were substantially a reproduction of the relevant provisions of the *Commonwealth Electoral Act* (CEA) to the extent that the Commonwealth Scheme was adopted in Queensland.

These provisions place responsibilities upon registered political parties to maintain financial records and to complete and file annual returns with respective electoral authorities.

The major differences between the Commonwealth and State requirements in relation to the annual returns lodged by registered political parties are:

1. The threshold level of amounts for disclosure is $500 under the State Act whilst the CEA now prescribes the amount as $1,500.

2. The Queensland Act requires expenditure to be categorised under 12 headings and receipts to be categorised under 6 headings. The CEA does not require categorisation of expenditure and receipts in annual returns which means that persons examining the returns cannot obtain meaningful information relating to the expenditure incurred and, more importantly, cannot discern between donations received and other forms of income. To offset this deficiency in the provision of information, the CEA requires donors to political parties who give $1,500 or more in a year to file returns detailing donations made and gifts of $1,000 or more received and used to make donations to political parties. In addition, broadcasters and publishers are required to file returns after each election detailing electoral advertisements broadcast or published by them.

It is recommended that the threshold amount for reporting be increased to the level prescribed in the CEA, namely $1,500, and that no change be made to the information currently required to be reported especially as it would be necessary to impose a duty on donors and publishers to lodge returns to obtain basically the same information.

The CEA now requires details of loans of $1,500 or more to be disclosed in annual returns by amending the definition of "amount" for the purposes of Division 5A. The definition now includes "loan" in addition to "the value of a gift or bequest".

A related amendment to the CEA is the insertion of a new section which has the effect of prohibiting political parties and candidates from receiving loans of $1,500 or more other than from recognised financial institutions, unless details of the source, terms and conditions of the loan are recorded (new section 306A).

The Commission has no reason to support or oppose similar information being made a requirement in Queensland but considers that it is more a policy issue for Government to determine.

An "associated entity" is currently defined as:

> "associated entity" means an entity that –
>
> (a) is controlled by one or more registered political parties; or
> (b) operates wholly or mainly for the benefit of one or more registered political parties."

The recent amendments to the CEA changed the definition, in part, to read:

> "(b) operates wholly or to a significant extent for the benefit of one or more registered political parties."

It is recommended that the definition in the Queensland Act be changed to the CEA definition as this should have the effect of making it easier to identify associated entities.

10. **Electoral Enrolment Procedures**

On 13 October 1999, the *Commonwealth Electoral and Referendum Amendment Act (No. 1) 1999* was assented to. This Act significantly changes enrolment procedures which will commence on a date fixed by Proclamation. I am advised by the Australian Electoral Commission that the Proclamation is unlikely to be made before the expiration of six months.

The amendments to enrolment procedures require persons seeking to enrol for the first time to produce proof of identity and citizenship and to lodge the claim for enrolment by hand with a prescribed person. (Somewhat similar procedures are followed when a person seeks a passport.)

The *Queensland Electoral Act* provides for Commonwealth enrolments to be automatically included on the State roll. Accordingly no amendment to State legislation is necessary for the new enrolment procedures to become effective in Queensland.

Whilst the new enrolment procedures are aimed at reducing the potential for electoral fraud, they do place hurdles in front of persons seeking to enrol for the first time.

On the other hand, enrolment is compulsory and therefore it can be argued that the enrolment procedures should be as simple as possible for persons seeking to enrol for the first time.

A meeting will be arranged with the AEC at the first opportunity to discuss the implications of the new enrolment procedures, in particular, the processing of enrolments in the period between the issue of a writ and the close of rolls (generally no more than four working days). I will write to you when I have more information relating to the administration of the new enrolment procedures.

If the Queensland Parliament is not prepared to adopt the new enrolment procedure, the *Queensland Electoral Act* will have to be amended.

11. **Maintenance of Electoral Rolls**

Accurate electoral rolls are the foundation of free and democratic elections and the highest standards should exist in their preparation and maintenance.

Basically, the current practice for the electoral roll to be updated is by persons completing and lodging enrolment forms which are readily available throughout the State.

In accordance with a Joint Roll Arrangement the Australian Electoral Commission (AEC) is responsible for keeping the electoral roll in Queensland. The AEC is in the process of moving from the traditional door-knock review of

the electoral roll to the employment of continuous roll updating methods (CRU).

CRU involves matching roll records with information recorded in the databases of other organisations (ie Australia Post, CentreLink etc) to check the address of electors and to update the rolls where necessary.

The accuracy of the roll could be greatly enhanced by making name and address data held by various State Government Departments and Agencies available to the Electoral Commission.

For example, although the enrolment process to date has been simple and readily available, it is estimated that well in excess of 100,000 eligible Queenslanders are not enrolled. The most unrepresented group of persons not enrolled is the 18-21 year olds. Access to driver's licence records would enable electoral authorities to focus on this group for enrolment purposes. Perhaps, once a person establishes their bona fides for licence purposes, electoral enrolment should become an automatic consequential process with the person's consent.

It is recommended that the *Queensland Electoral Act* be amended to allow the Electoral Commission to obtain name, address data and date of birth from State Departments and Agencies for a price that reasonably reflects the cost of producing a copy of the data.

I will be pleased to elaborate on any of the issues raised or to provide any further information you may require.

Yours sincerely

D J O'SHEA
Electoral Commissioner

Attachment 2

Extract from Background Paper on Inquiry into Issues of Queensland Electoral Reform

1. THE COMMITTEE'S INQUIRY

On 28 October 1999, the committee resolved to undertake an inquiry into certain issues of electoral reform. Most of these issues emanate from a memorandum from the Queensland Electoral Commissioner. ('the commissioner') to the Queensland Attorney-General following the 1998 state election. (The memorandum was later reproduced in a letter from the commissioner to the committee dated 25 October 1999.)

Broadly, the issues the commissioner raises relate to proposed amendments to the *Electoral Act 1992* (Qld):

- resulting from the conduct of the 1998 State election;
- arising out of the recent amendments to the Commonwealth *Electoral Act 1918* by the *Electoral and Referendum Commencement Act (No 1) 1999*, concerning:
  - election funding and financial disclosure;
  - electoral enrolment procedures (which will require persons seeking to enrol for the first time to produce proof of identity and citizenship and upgrade witness requirements for claims for enrolment); and
- to enhance the accuracy of the electoral roll.

As part of its inquiry, the committee is also considering Queensland's electoral roll keeping arrangements, including whether Queensland should keep a separate state roll and mechanisms for roll updating such as data matching and various inducements to enrol.

The issues of electoral reform outlined in the commissioner's letter of 25 October 1999 are largely self-explanatory. However, in this paper the committee provides some further background information and highlights some additional options relevant to the issues under inquiry.

2. MAINTENANCE OF ELECTORAL ROLLS

Electoral rolls play a fundamental part in the democratic process. As the official list of electors, rolls are prima facie evidence of a person's right to vote. It is therefore imperative that measures are in place to ensure that electoral rolls are of the highest integrity and accuracy. The importance of an accurate electoral roll is highlighted where the election result is close (as has been the case in the last two Queensland elections).

While the *Electoral Act 1992* (Qld) requires the Electoral Commission of Queensland (ECQ) to keep an electoral roll for each of Queensland's 89 electoral districts, Queensland does not maintain its own electoral roll. Rather,

the commonwealth electoral authority, the Australian Electoral Commission (AEC), maintains a roll which is used not only for federal election purposes but also for Queensland state and local election purposes.

These 'joint roll' arrangements have existed since 1992 following a recommendation of the former Electoral and Administrative Review Commission (EARC) which was endorsed by EARC's parliamentary committee, the Parliamentary Committee for Administrative and Electoral Review.

EARC's reasoning for adopting a joint electoral roll was primarily:

- lower cost to the community through elimination of duplication;
- the greater accuracy of the commonwealth roll compared with the then state roll and therefore a higher public acceptance of the legitimacy of the electoral system; and
- greater convenience to electors through uniform eligibility criteria.

All other states and territories also have joint roll arrangements with the AEC although the nature of these arrangements differs among the jurisdictions.

Queensland's arrangement with the commonwealth means that the AEC is solely responsible for the maintenance of the roll used for state elections and the timing of roll maintenance activities. For these reasons, the term 'joint' electoral roll is somewhat of a misnomer.

Until recently, the primary method used by the AEC to update the roll (apart from processing enrolment cards received from electors) had been a periodic habitation review (essentially, door-knocking).

Concerns by state and territory electoral authorities with roll keeping methods and inaccuracy of the rolls resulted in the then-named Australian Joint Roll Council (which comprises of electoral commissioners and chief electoral officers from the commonwealth, state and territory electoral authorities) engaging consultants in 1995 to conduct a study of alternative methods of updating the electoral roll through the application of new processes and information technology. The consultants' key recommendation was that the AEC and state electoral commissions implement a system of continuous roll updating (CRU) to replace the existing method of updating the roll by door knocking.

CRU involves continuous roll maintenance using a variety of mechanisms including matching roll records with information recorded in databases of other organisations ('data matching'). The AEC is in the process of implementing CRU.

As the commissioner suggests in his letter, the accuracy of the (Queensland) roll could be greatly enhanced by making the name and address data held by various state government departments and agencies available to the ECQ which would pass it on to the AEC. The AEC could then use this data to verify

whether the roll needs updating. (The *Commonwealth Electoral Act 1918* requires the AEC to receive an enrolment form before it can update the roll.)

However, the committee is considering, and welcomes submissions on, whether additional measures need tc be taken to enhance the accuracy of the Queensland roll. Additional issues which the committee is considering are:

1. Does Queensland need to gain further control over the roll keeping function? The commissioner estimates in his letter that well over 100,000 eligible Queenslanders are not enrolled. (The average enrolment for each Queensland district in 1999 was 24545.)
2. Does Queensland need to establish its own separate electoral roll (but nevertheless share data with the AEC in order to ensure both rolls are of the highest integrity)?
3. If Queensland does establish its own separate electoral roll how should that roll be maintained? For example, should the ECQ develop a computer system which is integrated with the electronic systems of certain state departments and agencies?
4. If 'data matching' is introduced as part of a new state roll, how should that data be used? For example, should the ECQ be able to automatically update the roll if it receives the same change of address data from a number of sources? Alternatively, should the ECQ only use data for the purposes of detecting potential anomalies with the current roll thus enabling the ECQ to send out 'please (re) enrol' forms?
5. What privacy concerns does data matching raise in this context and how might these concerns be addressed especially given that Queensland does not have a privacy regime equivalent to that at the commonwealth level?
6. What balance needs to be achieved between the right to privacy and the right to vote? Which roll updating methods best achieve this balance?
7. What additional/alternative mechanisms and inducements can be used to update the electoral roll? For example, should filling in an electoral enrolment form be a precondition to applying for a driver's licence or an 18+ card?

Relevant to these issues are the recent changes to enrolment procedures for first-time enrollers and the ability to process enrolments in accordance with these new requirements in the time available (explained below).

3. PENDING CHANGES TO ELECTORAL ENROLMENT PROCEDURES

The recent amendments to the *Commonwealth Electoral Act* largely stem from a report of the Joint Standing Committee on Electoral Matters (JSCEM) on the 1996 federal election. (This committee inquires into, and reports on, the conduct of each federal election.) The amendments brought about by the Act include revised enrolment procedures for persons wishing to enrol for the first time, namely proof of identity and upgraded witnessing requirements (similar to the requirements to obtain a passport.). These new enrolment procedures will commence on a date to be fixed by proclamation. In his letter, the

commissioner refers to AEC advice that the proclamation is unlikely to be before March 2000.

A copy of the JSCEM's report and the government's response to the recommendations made in that: report can be accessed on the Internet at: <http://www.aph.gov.au/house/committem/emrep.htm>.

These amendments concern Queensland as the *Electoral Act* provides for commonwealth enrolment requirements and any changes thereto to be routinely applied for state purposes (which results from the joint roll arrangement).

Essentially, the new enrolment procedure were proposed by the JSCEM to reduce electoral fraud although that committee's inquiry "did not reveal improper enrolment or voting sufficient to affect any result at the (1996 federal) election". However, the committee has concerns as to the potential of the proposals to disenfranchise electors. Primarily, the committee is concerned that the new requirements are such significant hurdles that they will deter people from enrolling.

In addition, the committee is concerned about the AEC's ability to process enrolments in accordance with the new requirements in the short period between the issue of the writ and the close of the rolls. During the period between the issue of the writ for the 1998 state election and the close of rolls, 32 820 changes were made including the processing of 5 421 new enrolments. (The commissioner advises that he is pursuing this issue with the AEC.)

As EARC noted in its joint roll report, enrolment procedures 'need to strike the right balance between the need to be rigorous to ensure integrity of the rolls, and the need for flexibility to ensure that peoples' rights to enrol and vote are protected.

The commissioner notes in his memorandum that if the Queensland Parliament is not comfortable with the amended requirements for enrolment, it will be necessary to amend the *Electoral Act* accordingly. However, the practicalities of' Queensland having different enrolment requirements from the Commonwealth need to be considered, particularly if the current roll keeping arrangements remain unchanged.

A further issue which the committee is considering is:

8. Are the new enrolment requirements desirable? If not, what steps should Queensland take to circumvent or modify these requirements? Relevant considerations include whether Queensland has an electoral roll which has: (a) greater integrity against fraud; (b) higher gross enrolment; and (c) continuous high levels of enrolment and accuracy.