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STATE ELECTORAL OFFICE

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LEGAL, CONSTITUTIONAL AND
ADMINISTRATIVE REVIEW
COMMITTEE

Submission No 10
Spec 22.1

November 29, 1999

Ms Kerryn Newton
Research Director
Legal, Constitutional and Administrative Review Committee
Parliament House
George Street
BRISBANE
QUEENSLAND 4000

Dear Ms Newton,

Re Queensland Electoral Reform

I write in response to the request for submissions in relation to proposed amendments to the Queensland Electoral Act 1992 and electoral roll keeping arrangements.

I should like to observe that it is not my policy to comment on the administrative arrangements of other electoral jurisdictions. I will merely clarify the position of this agency in relation to the matters raised if I feel it appropriate. Please take SAEA to read the South Australian Electoral Act 1985 as amended to 1998.

Commissioner's letter

1. Electoral district for which members may enrol

Under SA legislation, an elector is entitled to be enrolled for a subdivision if the person has his or her principal place of residence in the subdivision and has lived there for at least one month. Regular boundary reviews (after each general election in SA) may mean that some members of the Lower House (the whole State acts as the district for the Upper House) find themselves living outside their electorate. This is not a concern of this office.

2. Deposit to accompany nomination

The \$450 nomination fee under SA legislation is forfeited unless the candidate is elected or the candidate or group receives >4% of the formal vote. S57(1) specifies that the deposit 'must be returned to the candidate, or to some person authorised to receive it', thus allowing deposits lodged in bulk by party officers to be returned to same if that authorisation has been given.

3. Voting material (How-to-vote cards - declared institutions)

Under the SAEA, s83, not more than one inmate of a declared institution can be counselled to apply for postal voting papers (ie absolving family members from the potential to err in law). Such institutions are gazetted prior to an election and s125 prohibits soliciting votes near polling booths which definition includes a declared institution or any other place where votes are issued. This office issues pre-poll vote issuing officers with books of how-to-vote cards. This allows an elector voting in person to sight officially approved how to vote material, provided the material was submitted prior to printing deadlines.

4. Authority to re-schedule mobile polling

SAEA s77 deals with the times and places for polling, including remote subdivision polling. The Electoral Commissioner determines the times and places which must be advertised. However details may be altered 'in exceptional circumstances that render compliance... impracticable - by the presiding officer taking such steps as are reasonably practicable to notify electors in the particular subdivision of the alteration'.

5. Canvassing etc in or near polling places

SAEA s125 prohibits canvassing at an entrance of, or within, the polling booth or in any public or private place within 6 metres, or such lesser distance as may be fixed in a particular case by the presiding officer, of an entrance to the booth.

6. Special postal voters

SAEA s74(3) permits the Electoral Commissioner to register certain electors to receive ballot-papers by post after the printing of the necessary ballot materials. SA criteria permits electors with a suppressed address, physical disability, membership of a religious order or religious beliefs or a remote residence (>8km from a polling booth) to go on the register.

7. Non voter process

The SAEA S 85(7) 'an elector must not -

- (a) fail to vote at an election without a valid and sufficient reason for the failure; or
 - (b) on receipt of a notice under subsection (3), fail to complete, sign and return the form (duly witnessed) that is attached to the notice within the time allowed under subsection (4).
- Maximum penalty \$50. Expiation Penalty \$10

Within 90 days after the close of each election those electors appearing to have failed to vote are sent a Form 8 (Regulations) that requires the elector to state the reason (if any) for their failure to vote. The SAEA S85 (8) (a)(b)(c)(d) sets out 'valid and sufficient reasons'. After the due date for reply has lapsed an 'Expiation Notice' in the prescribed form (\$10 expiation plus \$7 Criminal Injuries Levy) is sent to those electors who either failed to reply or whose reasons were not deemed 'valid and sufficient' in accordance with the Act. Similarly a 'Reminder Expiation Notice' in the prescribed form, (Expiation of Offences Act, Regs) is sent after the expiration of the stipulated time allowed for reply requesting the payment of the original expiation fine plus an additional late fee.

Both the Expiation Notice and the Reminder Expiation Notice allow for the elector to elect to be prosecuted. Eight electors chose this option following the 1997 election, in each instance the Electoral Commissioner was represented by the Crown Solicitor.

SAEA Sec 85(9)(b) states that prosecutions can commence any time within 12 months of polling day.

All notices are sent to updated addresses where applicable.

After the period of time has passed for return of the 'Reminder Expiation Notice' a disk containing the names of all those electors who have not responded is sent to the Courts Administration Authority. This administration has the responsibility of preparing and issuing the 'Enforcement Orders', 'Reminder Enforcement Orders' and subsequent warrants for commitment. Procedures are set out in the current Expiation of Offences Act 1996.

Electors are able to apply to the Courts for a review of enforcement, if the application is granted the Electoral Commissioner is subsequently advised by the courts that the expiation has been reinstated.

These Court procedures will alter once the Statutes Amendments Fine Enforcement Act 1999 comes into operation on 6th March 2000.

8. Misleading voters (s163(2) of the QEA 1992)

Part 13 Division 2 of the South Australian Electoral Act 1985 deals with offences and the Electoral Commissioner's authorities in relation to electoral advertisements, commentaries and other material. S 113 deals with the publication of inaccurate and misleading advertising "by any means" including radio or television. As the latter are electronic means of communication, my understanding is that the wording is broad enough to be also applicable to material published on the Internet.

9. Election funding and disclosure

The South Australian Electoral Act 1985 has no funding or disclosure provisions.

10. Electoral enrolment procedures

This Office is currently examining changes to electoral enrolment provisions as determined by the Commonwealth Electoral and Referendums Amendment Act (No 1) 1999. I am advised that the South Australian Electoral legislation may need to be amended if it is to mirror proposed Commonwealth enrolment requirements.

11. Maintenance of electoral rolls

Before August 1997 South Australia and the Commonwealth had a Joint Rolls Agreement for the electoral roll for South Australia. The Commonwealth were responsible for the maintenance functions associated with the roll and the computer processing was carried out on State equipment.

In 1996 the Commonwealth advised the State that their roll processing would be transferred to the National roll maintenance system (RMANS). The State's options were to transfer to RMANS or maintain an independent system. It was determined that the State roll would also transfer to the National system and a revised Joint Roll Arrangement commenced in August 1997.

Duplication of roll processing was eliminated and rolls for the three tiers of government in South Australia are provided from the same database.

The Australian Electoral Commission, as a function of the Joint Rolls Arrangement, has introduced a system of continuous roll updating (CRU) by matching change of address from Australia Post and Centre-Link.

The State Electoral Office approached a number of State agencies for appropriate information for use in the CRU exercise. The Registrar of Motor Vehicles has agreed to provide change of address information, on a monthly basis, for licence and registration holders from 30 November 1999. The Senior Secondary Assessment Board will include enrolment information for 17 year olds in literature forwarded with Year 12 results in December 1999.

December 1, 1999

Background paper

1. Roll issues

The privacy rights of electors are a very real concern. The confidentiality of roll information must be preserved and rights of access to the data carefully scrutinised though I note that MPs are now able to access this data. Concerns have also been expressed that more rigorous enrolment provisions may act as a deterrent to enrolment.

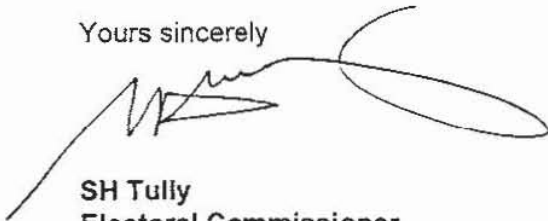
As already stated this office is holding discussions with a number of state agencies regarding using their services to contact potential electors or re-enrolees to maintain roll accuracy.

2. Pending changes to electoral enrolment procedures

See Point 10 above. This office submitted its concerns over the revised enrolment provisions to the Australian Electoral Commission in March this year and at the same time advised the responsible SA Minister, the Honorable the Attorney General of the issues. A briefing paper is expected to be prepared on this issue for the Attorney-General in December 1999.

In line with general courtesies I have forwarded a copy of this correspondence to Mr O'Shea, the Queensland Electoral Commissioner.

Yours sincerely



SH Tully
Electoral Commissioner