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LEGAL, CONSTITUTIONAL AND
ADMINISTRATIVE REVIEW
COMMITTEE

Submission No 12
Spec 22-1

Friday, December 03, 1999

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

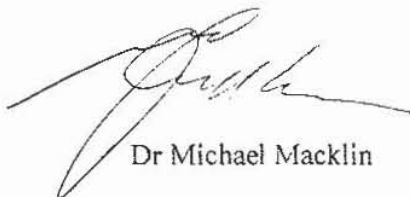
Dear Mr Fenlon

Please find enclosed a submission in response to your invitation to comment on the issues raised by the Electoral Commissioner relating to proposed amendments to the Queensland's Electoral Act 1992.

I have not commented on all of the issues but have indicated with reference to the headings in Mr. O'Shea's letter those items on which I wished to make a submission.

I would be happy to appear before the Committee if that is deemed useful.

Yours sincerely



Dr Michael Macklin

Submission
to the
Legal, Constitutional and Administrative Review
Committee
of the
Legislative Assembly of Queensland
on
Queensland Electoral Reform
from
Dr Michael Macklin

3 December 1999

1. Deposit to Accompany Nomination

The Electoral Commissioner's recommendation is a sensible modification to current practice which would only cause problems where a candidate resigns from a party during an election campaign.

However, in this case, political parties would already have paid the nomination fee and hence it makes sense to return the funds to the organisation which put up the nomination even though the candidate may have been an independent or a member of another party on the day of the election.

Another reform which should be considered in conjunction with this item is the need to substitute other methods of confirming a nomination.

The current method of paying a deposit is supposed to assist in ensuring that only *bona fide* candidates stand for election.

This can only work where the nomination fee is a deterrent to frivolous action. \$250 may deter the frivolous poor but it certainly would not deter the frivolous rich.

If, in addition, one considers the amount of public monies that are required to print ballot papers then each new candidate is a considerable cost to the community.

It follows that they ought be serious candidates and not simply putting their name forward for a bit of fun or to advertise their new shop. A deposit of money does not provide any assistance whatsoever nor does it enable a judgement to be made about the seriousness of a candidate.

I would urge the Committee to consider a set percentage of signatures from registered electors as a better method of weeding out the frivolous candidates.

Even 1% of an electorate would require considerably more effort and demonstrate at least some minimal support base in the electorate than does \$250.

Ultimately it is deemed to a democracy to maintain that the payment of money is an acceptable sorting mechanism or as a prerequisite to being able to stand for election.

**2.Voting
Material
(How-to-
Vote Cards)**

I would strongly support the proposed amendment canvassed by the Electoral Commissioner to insert a provision similar to that in the Commonwealth Electoral Act.

As a member of the Joint Committee on Electoral Reform which originally recommended this position in the Commonwealth Act and which reviewed the workings of this proposal in review mechanism set up by that Committee, I believe that the provision worked well.

It is a right of every citizen to receive electoral information prior to recording their vote. It was undoubtedly the case that either from an excess of paternalism or bias that many nursing homes residents were not being accorded this right.

I have no evidence that this situation is still continuing with regard to state elections. However, for the prevention of possible abuse, it would seem desirable to allow as far as possible similar provisions to operate at both state and federal elections.

3. Misleading Voters

The Crown Solicitor has proposed a definition of “publish” to include placing material on the Internet.

While I understand the reason for this proposal, it should be clear that this definition is purely for the purposes of an election and is directed solely at the person who wrote the material and “published” it via the Internet.

The USA has legislated with regard to defamation on the Internet and the European Parliament is at loggerheads with the European Commission over the same matter. The issues are undoubtedly complex but essentially they seek to sort out who is liable for the publication.

Practice reveals that the ISH and the ISP and even the chat group moderator have very little control over what goes over the Internet.

Thus, I do not believe that a political party, for example, should be made liable for material published on a party chat group if this material runs foul of this provision.

It may be useful for the Committee, if it agrees to proceed with this proposal, to seek to limit its application to those who are guilty of “publishing” such material rather than all those innocently associated with getting it “published”.

The law needs to be written in such a manner as to ensure that the person actually originating material is the one who is targeted.

Other groups involved but not responsible for the material should be permitted to act to remove the offending material once it has been drawn to their attention. If they do not then they would obviously have to be linked to the offence.

4. Election Funding

Given the increasingly complexity of accounting procedures and compliance requirements that will be required under the federal government's GST and PAYG schemes, it would be highly beneficial if Queensland law could reflect the provisions and approaches applicable under Commonwealth law for elections.

Failure to do so will merely had to the cost of state elections and create confusion and problems for all those seeking to involve themselves in the democratic process.

To this end, it would be beneficial for the Queensland Act to be amended so that it simply applies the relevant sections of the Commonwealth Act as applying at the time of the State election.

In this way, the Queensland Act would always be in concert with the federal election funding requirements and Queensland-based political parties, corporations and electors would only have one set of procedures to follow.

Indeed, I would go further and urge Queensland to lead the way in seeking uniform electoral administration laws and regulations throughout the country and that the appropriate parts of these laws should apply to all local, state and federal elections.

5. Electoral Enrolment Procedures

I would strongly urge the Committee to maintain the link with the Commonwealth Electoral Act so that citizens have only to enrol once in order to appear on both the Commonwealth and State roles.

The enrolment procedures enacted in the Commonwealth Electoral and Referendums Amendment Act (No. 1), while tougher than previously, are not unduly onerous and seek to prevent the enrolment process becoming a back door to establishing a false identity.

Pending any action on uniform laws and if it is not already the case then it may be that, for those States using dual rolls, more surveillance is necessary of impending Commonwealth changes and that they be asked, as a matter of course, for their views. This could be done via the AEC or the Parliament since changes to the Electoral Act invariably go to committee for consideration and report.

6. Non-enrolments

The final issue upon which I wish to comment concerns non-enrolments. While the issues of privacy are very important, there is also a very strong need to maintain the integrity of the Queensland electoral rolls. I believe that the new procedures at the federal level, while more complex, are not such as to lessen the numbers enrolling to any great extent.

The problem with no enrolments is a lack of attention to ensuring that provisional enrolment procedures are carried out carefully and thoroughly through the schools. One of the National Goals of Schooling as endorsed by all State and Federal Education Ministers is to promote good citizenship. Central to this is a commitment to the minimal involvement in the democratic process.

A large number of young people in the 17-21 year age bracket are either in school, TAFE or universities. In addition, a large number of other young people are in constant contact with government agencies via income support mechanisms. If evidence of enrolment or provisional enrolment was also required for gaining a driver's licence or 18 year old identify cards then the numbers who are not enrolled would be reduced dramatically.

Follow up operations via other State government databases would also assist but preference should be given to those situations where individuals must physically present themselves in order to gain a state controlled licence or certificate.

Rather than allow the electoral rolls to become a means of creating false identities, it would be preferable to use a wide range of State powers to creatively ensure that not to enrol is more difficult than enrolling.