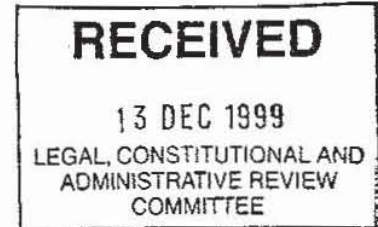


13 December 1999

Ms Kerry Newton
Research Director
Legal, Constitutional and Administrative
Review Committee
Legislative Assembly
Parliament House
George Street
Brisbane Qld 4000



Submission No 20
Spec 221


Dear Ms Newton

JOINT ROLL

I enclose herewith my submission to this inquiry.

The Committee's permission to lodge a submission after the deadline was appreciated.

Yours sincerely


Colin A. Hughes
Emeritus Professor

RECEIVED
13 DEC 1999
LEGAL, CONSTITUTIONAL AND
ADMINISTRATIVE REVIEW
COMMITTEE

Submission No 20

SUBMISSION
TO
THE LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE
LEGISLATIVE ASSEMBLY OF QUEENSLAND

INQUIRY INTO
THE JOINT ELECTORAL ROLL

COLIN A. HUGHES

13 DECEMBER 1999

The case for retaining a Joint Electoral Roll

In its 1990 Report which recommended introduction of a Joint Electoral Roll for Queensland, the Electoral and Administrative Commission (EARC), of which the Committee will be aware I was a member, stated:

The arguments for adopting a Joint Electoral Roll are based primarily on:

- (a) lower overall cost to the community, through elimination of duplication;
- (b) the greater accuracy of the Commonwealth roll, and therefore a higher public acceptance of the legitimacy of the electoral system; and
- (c) greater convenience to electors.

...

The arguments for the retention of a separate State electoral roll are based on:

- (a) the need to support State systems and functions such as Local Authority Rolls, Jury Lists, Justice of the Peace Register and Health Department Programs;
- (b) the superiority of the State address-based computer system over the Commonwealth part-street based system; and
- (c) the need to maintain State control over State functions, and to avoid conflict between State and Commonwealth priorities. (EARC 1990: 44)

I will comment on the validity of each argument at the present time.

Cost:

Re-establishing a separate roll would add a substantial recurrent item to government expenditure in circumstances in which members of the public would see little benefit to themselves and some additional nuisance with the probability of having to complete two enrolment cards thereafter. The amount would be better estimated by the Electoral Commission Queensland, but I note that the average annual expenditure on roll maintenance for the final three years of a separate roll 1987/90 was \$1.8 million (EARC 1990: 9) and that Queensland's contribution to Joint Roll costs 1998/99 was \$1.4 million (EQC 1999: 27). Roll maintenance costs are a combination of labour (which has been getting more expensive) and information technology (which has been getting cheaper), but on balance it appears safe to say that the cost argument remains persuasive.

Accuracy:

It is no longer possible to make comparisons as to relative accuracy between two existing rolls. What can be said, however, is that a joint roll that has two organisations committed to its integrity and comprehensiveness is likely to be better than two separate rolls. The benefit of roll-cleansing following a general election is increased by happening (roughly) twice as often. Whilst in theory the other agency could eventually copy roll transactions made by the authority that had held the election and eventually all

the benefit ought to flow on to its roll, the opportunity for errors would be increased by doubling the entries.

To instance the benefit of co-operation in another State, Victoria:

The VEC obtains data concerning connections and reconnections by Eastern Energy's domestic electricity customers under an agreement with Global Customer Solutions (GCS), the customer interactions service provider for that utility. When people contact GCS requesting electricity connection or reconnection with Eastern Energy, they are asked if they would like enrolment assistance from the VEC. If they consent, their details are forwarded to the VEC. Enrolment information and enrolment application forms are then sent to those not enrolled at their current addresses. This arrangement has been operating very effectively since 1996. The project achieves a very high 68 per cent return rate of completed enrolment forms.

The VEC is expanding its continuous roll update initiatives to include mail-outs to Powercor and Citipower customers when changing address.

Since 1997, the VEC has provided an electronic method for Victorians to lodge their enrolment details via the internet (www.maxi.com.au), or at multi-media kiosks, using the Victorian on-line government service provider maxi. The maxi system provides an electronic way for citizens to give us their electronic details twenty-four hours a day, every day of the year. (VEC 1999: 22)

It should be noted that picking up a new elector in Victoria by this means also ensures that they will be deleted from the roll on which they were previously, which might have been in Queensland, much sooner. Abandoning the Joint Roll would lose benefits that come from co-operation and, perhaps, the benefit of innovation in another jurisdiction.

Convenience:

As I understand the anticipated outcome if the Commonwealth's intentions are not modified, it will be necessary to revert to two separate enrolment application forms and a single form processed twice will not be suitable. Unless each Electoral Commission has on-line access to the others roll and is prepared to provide the service, a person inquiring whether they are "on the roll" will have to be given one answer and told to contact the other Commission to find out the situation with the other roll. Electors' convenience will suffer and some misunderstandings will result.

I would call the Committee's attention to the Blair Government's White Paper, *Modernising government*, published earlier this year. Second in the list of seven items which "the Government is putting forward [in] a new package of reforms now" is:

Joined-up government in action - including a clear commitment for people to be able to notify different

parts of government of details such as a change of address simply and electronically in one transaction. (CO 1999:6)

That is the way government is going in the best practice provision of services. Restoring separate rolls will be going in the opposite direction.

State services support

It is my understanding that satisfactory arrangements have been made in this regard but I cannot speak from direct knowledge.

Address-based entries

In 1990 it had been anticipated that the Australian Electoral Commission's Roll Management System (RMANS) which was then a street based system was preparing to move to an address-based system (EARC 1990: 39-40). In 1996/97 an address-based register was added to RMANS, and as a roll-enhancement exercise preceding the Constitutional Convention election 825,000 letters were sent to now known addresses but for which no electors were enrolled, thereby improving the roll significantly (AEC 1997:19). Incidentally, in the same year South Australia which had previously maintained its own roll system joined RMANS, creating a complete national system for recording inter-state movements expeditiously.

Further the then Australian Joint Roll Council (now replaced by the Electoral Council of Australia) commissioned a study to investigate the effectiveness of alternative roll review strategies. The study recommended implementation of a Continuous Roll Update (CRU) system based on alignment of information supplied by other agencies with that held by the AEC for the Joint Rolls. A subsequent pilot study suggested a possible reduction of costs, maintenance of more up-to-date enrolment, and possible reduction of peak enrolment roll preceding the close of rolls for an election (AEC 1997:18-19).

In 1997/98 work on the address-based register was completed:

The Register was enhanced to provide a generalised address reporting system for use in roll reviews and a 'vacant house' system for identifying and mailing to addresses at which no enrolment is currently held. Also, improvements were made to the RMANS street system to permit multiple address changes arising from rural road numbering and other bulk street alterations. (AEC 1998:26)

Co-operation from most local government authorities, who of course use the same roll for their elections, with street numbering & activities continues to improve the quality of the register.

With the introduction of the Address Register in 1997, divisional staff [of the AEC] have carried out ongoing checks on the accuracy of address information. This has required liaison with local councils, enquiries to

electors, the verification of details in the field and the entry into RMANS of altered address details following street changes and changes to rural road numbering. This activity has improved the accuracy and quality of the roll as street number ranges are more accurately defined, spot-on-earth descriptions are now included on the Register, and redundant and invalid addresses for enrolment have been identified. (AEC 1998:26)

Implementation of CRU has now begun.

The Joint Roll now has all the benefits of an address-based system, with improvements on what had been previously the State system.

State control

There is now a forum, the Electoral Council of Australia, with a chairman and an officer, at which problems arising from shared or divided responsibility can be discussed. The eruption of the present dispute over enrolment procedures is a matter of deep concern because unilateral action has been taken by the Commonwealth Government and Parliament in changing Commonwealth law concerning enrolment with insufficient regard to the views of the partners in the Joint Roll arrangements, the States. For no good reason it has brought to an abrupt end a period of reasonably amicable co-operation. Thus this unilateral action has become, and that only recently, the one argument of the original six that now supports the case for a separate State roll.

Background of the Commonwealth legislation

The change of government in 1996 was followed by a change in the political balance of the Joint Standing Committee on Electoral Matters (JSCEM) of the Commonwealth Parliament. The latter change is reflected in the emphasis of the next post-election report of that committee (JSCEM 1997). The substantive part of its report opened:

The inquiry's most contentious topic was the question of whether current enrolment and voting procedures can prevent, or even detect, electoral fraud. Electoral fraud can encompass multiple voting (in the names of existing electors, or in false names deliberately placed on the roll for the purpose), being enrolled for the wrong House of Representatives electorate, or being a foreign citizen or underage. Obviously some of these circumstances can also arise from misunderstanding on the part of electors, rather than deliberate attempts at fraud.

The inquiry did not reveal improper enrolment or voting sufficient to affect any result of the election. However, it is unacceptable that the most fundamental transaction between citizen and the government - the act of choosing the government at a democratic election - is subject to a far lower level of security than such lesser transactions as opening a bank account, applying for a

passport, applying for a driver's licence or registering for social security benefits to name but a few. (JSCEM 1997:5)

The Committee gave a very long list of measures that had been suggested to it, and concluded:

Having examined the evidence to the inquiry, the Committee believes that the witnessing requirement on the enrolment form should be upgraded, that electors should have to produce at least one form of proof of identity for enrolment, that the government should expedite cross-checking of electoral data with information held by other agencies, that new enrolments should cease on the day the writ for an election is issued and that subdivisional voting should be re-examined. (JSCEM 1997:6)

These broad suggestions were operationalised in the following recommendations:

1. that the AEC prepare a comprehensive implementation on the Committee's proposed measures to improve the integrity of the enrolment and voting process, and report back to the Committee by the end of 1997.
2. that as part of the implementation plan recommended above, the AEC nominate a prescribed class of persons eligible to complete the witnessing portion of the enrolment form if upgraded into a proof of identity declaration. The upgraded enrolment form should specify that a witness must be on the Commonwealth electoral roll (rather than merely eligible to be enrolled). Adequate provision should be made for identifiable groups of people who will face unusual difficulties in finding a witness.
3. that the Electoral Act be amended to provide that an applicant for enrolment must produce at least one original item of documentary proof of identity, where such information has not been provided previously (that is, all enrolment transactions initially and new enrolments thereafter). Acceptable documents might include photographic drivers' licences, Birth Certificates or extracts, Social Security papers (such as notices or advice of a pension) or Veterans' Cards, Citizenship Certificates, passports, Medicare Cards, or a written reference for a limited range of clients unable to produce the above documentation.
4. that in co-operation with relevant Commonwealth, State and Territory departments and agencies, the AEC conduct a study identifying costs, benefits, methods of implementation, and requirements for legislative amendment of the following options for the expanded matching of enrolment data"
 - (a) manual provision of data in response to requests for information relating to individual enrolments;
 - (b) bulk comparison of data held by the AEC and other departments and agencies;

- (c) on-line connections between the AEC's Roll Management System (RMANS) and the computer systems of other government departments and agencies, enabling validation of data as an enrolment form is entered onto the system; and
 - (d) such other options as may appear as a result of the study to appear viable.
5. that the Electoral Act be amended to make clear that claims for enrolment from persons who state they have achieved citizenship through naturalisation under the Australian Citizenship Act 1948, but do not provide a date of naturalisation or citizenship number, will not be accepted until such information has been verified by the AEC (see also Recommendation 4 on cross-checking of electoral data against external databases). (JSCEM 1997:7-13)

With one exception, subsequent Recommendations in that Chapter do not directly affect Joint Roll operations, but are primarily Commonwealth-only such as close of roll dates prior to a general election. However there still could be flow-on consequences: for example, someone who enrolled before polling day and was not placed on the roll, and who subsequently went to the poll and was turned away, might suppose they were not on the Joint Roll for the next electoral event, a State election, not having done anything more, and would not attempt to vote again. The exception is:

- 11. that a) sections 95, 99 and 101 of the Electoral Act be amended so that electors are required to re-enrol within one month of changing address anywhere in Australia and b) the AEC be empowered to negotiate with utilities and local government so that documents sent out by those bodies, to persons who have changed address, include reminders to change enrolment details. (JSCEM 1997:20)

It should be sufficient to concentrate on the first five Recommendations, those that are direct in their effect on the Joint Roll.

I think a disturbing element in that list of recommendations is the political philosophy reflected in the use of the word "client" in Recommendation 3. It has become fashionable in public policy, and may be useful in reminding service providers of what is expected of them, but it is highly inappropriate to speak this way of citizens claiming the right to vote. Use of such an expression prepares the ground for viewing enrolment, or indeed voting, as a transaction in which the applicant receives something from the state for which it would not be unreasonable that they have to pay something - like buying a birth certificate or producing something they have already bought, like a passport or a driver's licence.

I think another disturbing element is the initial statement that the Committee had not found evidence of "improper enrolment or voting sufficient to affect any result at the election". That, as I have argued elsewhere (Hughes 1998:480-

83), would have to be on a massive scale, and the finding is not surprising. But did the Committee find any evidence of improper enrolment? It does not say, yet steps have to be taken to change the procedures.

The new legislation

I am unaware of what action was subsequently taken by the AEC in respect of Recommendations 1 and 3, but will turn now to the legislation that was subsequently passed by the Commonwealth Parliament to amend the *Commonwealth Electoral Act 1918 (Cwlth) (CEA)*, the *Electoral and Referendum Amendment Act (No. 1) 1999 (Cwlth)* and to Items 10 and 11 which respectively:

- (10) altered the requirement in s.98(2)(c) of the CEA that an enrolment claim form be witnessed "by an elector or a person entitled to enrolment, who shall sign the claim as witness in his or her own writing" by deleting the words in italics and inserting in their place "in a class of electors prescribed by the regulations";
- (11) added after s.98(2):
 - (2A) The identity of the person making a claim must be verified in the manner prescribed by the regulations, unless the DRO is satisfied that the person has previously been an elector.
 - (2B) The requirement in subsection (2A) does not apply unless regulations are in operation for the purposes of that subsection.
 - (2C) If a claim is made by a person who claims to be an Australian citizen because of the grant of a certificate of citizenship under the *Australian Citizenship Act 1948*, the person's Australian citizenship must be verified in the manner prescribed by the regulations.
 - (2D) The requirement in subsection (2C) does not apply unless regulations are in operation for the purposes of that subsection.

Those Items are to commence on a date to be fixed by Proclamation, and I understand that 1 July 2000 has been spoken of as the likely date. In the meantime the Regulations are under discussion. It will be noted that unless Regulations have been made, the substantive provisions in what will be s.98(2A) and (2C) cannot apply. Thus it would be open to the Senate to reject the Regulations and frustrate the introduction of the changes to the CEA.

What is to be done?

I believe that there are at least five matters to be considered:

- resist or compromise?
- witnesses
- evidence
- costs
- precedent.

Resist or compromise?

For the reasons advanced at the beginning of this submission, I think it would be a great pity if the Joint Roll agreements were to be repudiated and some or all of the States resume maintaining separate rolls, with some amount of co-operation among themselves and to the exclusion of the Commonwealth. With six months to go (if the 1 July 2000 date is correct) there is time to endeavour to secure a compromise solution. To that end, I would recommend that the Legal, Constitutional and Administrative Review Committee consider recommending

- (1) that Queensland's Minister responsible for electoral matters, the Honourable Attorney-General and Minister for Justice, endeavour to convene a conference of responsible Ministers from the Commonwealth, States and Territories to discuss the present situation and effect, if possible, a compromise whereby provisions in the Regulations protect the enrolment, and consequently the right to vote, of inexperienced and disadvantage groups such as those recently turned 18, those with literacy or language problems, those living in remote areas and large electoral districts, &c to the maximum extent;
- (2) that the principle be established that no one should have to pay a poll-tax, which is what requiring purchase of evidence of entitlement effectively is, by allowing an applicant to state certain facts that can be verified (or not) by electoral officials with access to the relevant data bases such as birth records, and that unless that this principle is contained in the Regulations, the Queensland Government should consider terminating the Joint Roll Agreement and re-establishing its own roll in co-operation with other States if possible.

Witnesses:

There may be a justification for deleting the option for a person entitled to be on the roll which, most probably, was intended to preserve the capacity to witness an application for enrolment of electors struck off by mistake in non-voting or habitation review exercises. It may also be undesirable to have A, not on the roll but entitled, be a witness for B's application, and B the witness for A. I would suggest that a reasonable requirement to be introduced would be that the witness have been on the roll for the electoral division for a year prior to the act of witnessing. That would provide sufficient time to eliminate most bogus enrolments, and might also handicap party organisers who sometimes conduct rapid recruitment programs of their own prior to election time.

Unfortunately many of the categories which might be thought suitable to provide witnesses are involved in public affairs to such an extent that the objectivity of some of their members in enrolment matters must be suspect. If it were thought desirable to go down that road, then the best security would be to place a numerical limit on the number of enrolment

applications which a person might witness in, say, a year. The difficulties inherent in restricting the number of possible witnesses can be illustrated by nursing home staff. On the one hand, they are best placed to be helpful to new residents who wish to transfer their enrolments. On the other hand, their interest in government policy affecting nursing homes (which seems to have revived recently) made their natural role in the postal voting process controversial for many years. Likewise the police, the bar, and a great many groups.

Evidence

The JSCEM's Recommendation 3 listed various types of documents which might be suitable evidence of facts contained therein. The trouble with that is the ease with which, and the frequency with which, such documents are forged. As I have pointed out previously, "one of the largest scams in US electoral history was Tammany Hall's manufacture of [naturalisation] papers after the Civil War" (Hughes 1998:488) Boat-people reaching Australia recently were in possession of forged Australian passports. To quote from the local press of the last few weeks "hundreds of fraudulently obtained driver's licences and identifications have been found on the Gold Coast during the past week" (*Gold Coast Bulletin*, 25 November 1999) and "thirty of the 114 teenagers nabbed in pubs and clubs were carrying fraudulently obtained interstate drivers' licences" whilst the Minister spoke of "fake ID ... including keycards, birth certificates, medicare cards and student cards belonging to other people" (*Queensland Times*, 9 December 1999). If that can happen with school kids wanting a drink, what might those much more sophisticated and sinister interests wishing to tamper with "the act of choosing the government" to quote the JSCEM be capable of?

I think what the ease of producing forged documents shows is that the only satisfactory and safe test, if there must be one, has to be conducted by an official accessing a secure data base. Unfortunately the witnesses who fanned the JSCEM's suspicions to produce the present imbroglio have serious reservations about the integrity of the electoral officials as well. But if they could be trusted to inspect (and copy for their records?) a birth certificate posted to them, they ought to be trusted to ask another official in another agency to interrogate a data-base or do it themselves if they have access.

Reluctantly I am compelled to question the real motives which lie behind proposals of this sort, not least in the light of the voluminous record of supposed safeguards for the integrity of the ballot-box which were in fact means of excluding unwelcome elements from the franchise by making the process of getting on the roll or getting a ballot-paper complicated, difficult, expensive, or in the last resort dangerous.

Costs

I have already said that I think that the process of enrolment should be cost free to prospective electors. Just as electoral papers have always been free post, so evidence for enrolment should not be a concealed charge on the franchise. Precedent

On a first reading, the recent amendments may not seem that alarming. But their history starts with a false analogy between the *right* to vote, a concept that is skated around by calling it merely "the act of choosing", and other "transactions" with the state. A century and a half of Australian history went into developing a system whereby every citizen could vote. Secondly, they rest on no proven evidence of electoral malpractice, merely "disquiet in sections of the community" (JSCEM 1997:5), which are in fact very small sections who kept coming back with their disquiet until they finally got a Committee prepared to agree with them. To the extent those individuals have ever produced what they alleged to be evidence, it could be shown to be nonsense (Hughes 1998). There is "potential for fraud" (JSCEM 1997:5) in an electoral system which is open and invites participation, just as there is potential for smash-and-grab in a street in which every shop-window is not covered with a steel grill. The right question to ask is whether the mischief occurs, then whether the remedy recommended produces greater harm to democratic, representative government than the abuse did. The JSCEM have done neither, and depending on the provisions which make it through to the Regulations, there is some capacity for harm already.

What would be much worse would be if this was the thin edge of the wedge for yet another bit of retrogression in the remaking of the Australian political tradition, to use Paul Kelly's phrase, by cutting back on easy enrolment and voting. For example, the same sources that had the Joint Standing Committee's ear on enrolment have been advocating a return to numbered ballot papers which is euphemistically called "vote tracing" (Hughes 1998:491), and already secured endorsement in an editorial in the *Sydney Morning Herald* for that cause. As it happens, the editorial commended the idea because that's how it was done in Britain, and a Select Committee of the House of Commons had just recommended its abolition for the same good reasons that any reasonable person would oppose it in Australia, but such small contradictions do not seem to matter. The effect of numbered ballot papers would be to intimidate some voters who would no longer vote and do their best to get off the roll so long as compulsory voting survived.

My final point therefore is this is the time to draw a line in the sand, which unfortunately means with the Commonwealth because this is where the problem has originated. It should be made clear that open, easy and cost-free arrangements for enrolment and voting for all citizens constitute a settled

policy to which Queensland and, I think, the other States are strongly committed. If they cannot be preserved in co-operation with the Commonwealth, Queensland will be prepared to consider its position and act in concert with those States which agree with it.

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