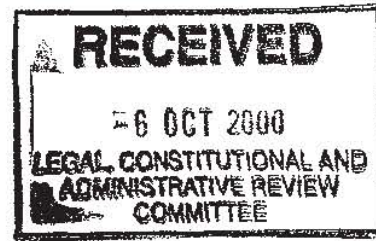


5 October 2000

Mr David Thannhauser
Acting Research Director
Legal, Constitutional and Administrative
Review Committee
Legislative Assembly
Parliament House
George Street
Brisbane Qld 4000



Dear Mr Thannhauser

PREVENTION OF ELECTORAL FRAUD

I enclose herewith my submission to this inquiry.

You will be aware that the Joint Standing Committee on Electoral Matters of the Commonwealth Parliament is also currently conducting an inquiry into the Integrity of the Electoral Roll and has advertised for submissions. I propose making a submission to that inquiry as well, and given the considerable overlap between the two inquiries it is possible that may be some similarities in the content of my two submissions and in remedies or courses of action they recommend. It must be likely that there are other potential submitters who will have the same problem.

Every care will be taken to ensure that the two submissions are quite separate documents, directed to the concerns and responsibilities of each Committee. The injunctions of each committee against publication by a submitter prior to release by the Committee are well known. I would hope that, if it is necessary, some arrangement may be possible between the two Committees to avoid a risk of the earlier release by one Committee rendering a somewhat similar submission unacceptable to the other Committee. I will write in the same terms to the Joint Standing Committee on Electoral Matters when lodging my submission to that Committee.

Yours sincerely

Colin A. Hughes
Emeritus Professor
encl

SUBMISSION

TO

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

INQUIRY INTO
PREVENTING ELECTORAL FRAUD

COLIN A. HUGHES

5 OCTOBER 2000

The Scope of the Inquiry

The Committee has stated in its Issues Paper that it will "focus upon preventing fraudulent practices in relation to enrolment procedures and the casting and recording of votes" (p.2; emphasis in original). This concentrates its inquiry on the mechanics of enrolment and voting, and consequently ignores the purpose of those processes: the election of members of the State Parliament. (My submission will not take up the invitation to include Local Government in its scope.) To restate the point, malpractice which has resulted, or can result, in the appearance of an elector on the roll is to be addressed, and likewise malpractice which has resulted, or can result, in a person receiving a ballot-paper to which they are not entitled, but not malpractice which has resulted, or can result, in the appearance of a candidate on the ballot-paper. But the first may be merely instrumental to the second: enrolment is tampered with primarily to influence whether a candidate gets on the ballot-paper of a quite separate election, not whether that candidate later wins the parliamentary election. Any discussion of "fraudulent practices", such as that on-going in the media at present, risks confusing the two facets. This submission offers evidence as to how misleading such confusion may be. It will refer to parliamentary election enrolment and voting and party election enrolment and voting which is cumbersome

Further, although the immediate occasion for this inquiry arises from state politics and the inquiry's focus must be there, it is possible (and more likely since the introduction of the common roll) for malpractice intended to influence a federal election to produce consequences within the Committee's focus. Questions germane to the inquiry may have variations: What would be the consequences of such-and-such a malpractice for a state election? What would be the consequences for a federal election? For this particular electoral district? For elections at large? And so on.

Enrolment and voting

Specific allegations raised during the current "scandal" have related to the enrolment process, so far as I am aware. Thus the existence of a pool of 20-25 "floating voters" has been mentioned, and the need to increase that number, for the purposes of a party election. The parliamentary voting process might be effected subsequently if someone were voted when the name or address by which they were identified on the parliamentary electoral roll was bogus and that possibility brings it within the scope of this inquiry. However there have also been more general allegations involving rather larger numbers, such as "200", that might suggest malpractice motivated by parliamentary election considerations as well.

If X voted once and only once for a state electoral district in which they were not entitled to be enrolled because they did not comply with the *Electoral Act 1992*, s.64.(1)(b), i.e.

they had switched between state electoral districts (say Townsville and Thuringowa), there would be a breach of state law. But if both addresses, the proper and the improper, were in the same federal electoral division (say Herbert), the position would be different. If X voted more than once at the same election in either of these cases, there would be a breach of the relevant law. Keeping what happened, why it happened, and what consequences followed, or might have followed, sorted correctly among the categories of elections is essential. Elsewhere I have pointed to the dangers of supposing trade union and parliamentary elections are readily comparable¹ - and at the same time to the lack of interest in party pre-selection ballots by critics of the parliamentary election system.

Matters of scale

) In Queensland the high proportion of marginal² seats over the past eight state general elections (av. 54.0%) and nine federal general elections (av. 70.7%), combined with the fact that the 1998 federal election recorded the highest proportion (81.5%) of marginal federal seats for the period (1977-98) and the 1998 state election (56.2%) an above average figure for state seats helps to explain public concern at any allegation of malpractice in enrolment or voting processes. On the other hand, a careful examination of the situation in and around Townsville (the federal electoral division of Herbert and the three state electoral districts - currently Mundingburra, Thuringowa and Townsville - roughly coterminous with Herbert) may provide a quite different perspective.

¹ Hughes, "The Illusive Phenomenon of Fraudulent Voting Practices: A Review Article", *Australian Journal of Politics and History* 44(3) (September 1998), p.472.

² In this submission "marginal" seats are those won with 50.1-55.0 of the two-party preferred vote (highly marginal) and those won with 55.1-59.9% (somewhat marginal). This is a generous definition of "marginal". The two-party-preferred votes used are those calculated and published by Mr David Fraser.

Table 1
Herbert 1977-98
ALP 2PPVote³ Winner's majority

	%	n
1977	42.3	9 419
1980	49.1	1 121
1983	52.2	3 150
1984	53.6	4 247
1987	56.8	8 899
1990	54.9	6 909
1993	52.4	3 666
1996	43.4	9 974
1998	49.9	150

Table 2
3 State Electoral Districts 1977-98

	Mundingburra ⁴		Thuringowa ⁵		Townsville	
	ALP 2PPVote %	Winner's majority n	ALP 2PPVote %	Winner's majority n	ALP 2PPVote %	Winner's majority n
1977	51.0	257	49.1	241	43.7	1 778
1980	57.6	2 080	54.4	1 230	44.0	2 165
1983	56.9	1 919	56.7	1 979	48.5	675
1986	57.5	2 514	50.7	282	45.6	1 547
1989	64.1	5 019	60.9	4 646	56.0	2 371
1992	59.4	3 720	57.1	2 654	61.2	4 388
1995	50.0 ⁶	16	51.4	619	51.8	678
1998	53.8	1 398	51.1	508	57.7	2 779

In Herbert the average winning margin 1977-98 was over 5,200, in Mundingburra over 2,100, in Thuringowa over 1,500 and in Townsville over 2,000. In the 36 electoral contests held in those four electoral districts, only three were decided by fewer than 500 votes: Mundingburra 1977 and 1995, Herbert 1998. The scale of malpractice which is sufficient to get a candidate onto the ballot-paper, state or federal, that is to win their party's nomination, is totally different from the scale required to get them into parliament, state or federal.⁷

³ Two-party-preferred votes for 1977-80 are from the APSA set and for 1983-98 were calculated and published by Mr David Fraser. CMH

⁴ Previously Townsville South, Townsville East

⁵ Previously Townsville West

⁶ At the re-run election (1996) 47.2% and 1 084 respectively.

⁷ Other implications of scale were discussed in Hughes, "The Illusive Phenomenon", pp.480-83. The majorities at the five elections when the ALP won Herbert 1983-93 averaged over 5,300, requiring a substantial workforce of bogus electors.

This distinction is important when considering the second and third alternatives formulated by the Committee in its Issues Paper (p.13; emphasis in original): "Is the *actual incidence* of enrolment and voting fraud at such a level that it warrants reform ..." and "Is the *prospect* of enrolment and voting fraud being perpetrated by some people sufficient to warrant change ..."

A convenient example of whether it is possible to create useful statistics and how difficult it may subsequently be to interpret those statistics is provided by current allegations that the Mundingburra roll was padded after the 15 July 1995 election with a view to influencing the subsequent 9 January 1996 special election. Between the two polling days the Mundingburra roll had a net increase of 817, up 3.7%; the Herbert roll between roughly equivalent dates (30 June 1995 and 31 January 1996) had a net increase of 2 056, up 2.6%. Expressed differently, Mundingburra with approximately 27.7% of the Herbert roll accounted for 39.7% of its growth. In the absence of information about how many were going off the rolls simultaneously it appears Mundingburra grew faster than Herbert at this time to the extent of 250-300 electors. This might be proof that its roll was being padded, or it might be proof that the prospect of another election which could overturn the outcome of the previous general election and change the government made enrolment more attractive to potential, young, newly-arrived or newly-qualified, electors who acted more quickly than usual to enrol so that they could vote in such a momentous election, or it might have been a bit of both. Only the rigorous examination of a large number of individual enrolments at that time to confirm or deny their validity can corroborate or refute the allegations that have been made and provide any degree of certainty.

Against the numbers in Tables 1 and 2 should be set statistics for elector mobility over the preceding inter-censal period of 5 years (taken from Hughes, *Voting for the Australian State Lower Houses 1965-1974* (1981), p.452 and Electoral Commission Queensland, *Statistical Profiles: Queensland State Electoral Districts* (1998), pp.70, 86, 89.

Table 3

3 State Electoral Districts 1966 and 1996 censuses

Residence	Never moved	Same Division
1966 census	%	%
Townsville	31.4	24.8
Townsville South	50.6	19.6
Townsville West	57.1	19.7
1996 census	%	%
Mundingburra	44.9	N/A
Thuringowa	40.0	N/A
Townsville	43.1	N/A

A fuller series (taken from the Legislative Reference Service, Department of the [Commonwealth] Parliamentary Library series, *Comparisons of xx Census Characteristics: Commonwealth*

Electoral Divisions) for persons who had changed residence (= moved) during the preceding inter-censal period is available for Herbert. That division, it should be noted, has consistently had one of the highest rankings in the Commonwealth.

Table 4
Herbert 1981-96 census
Moved Ranking
%

1981	52.6	130 ⁸
1986	55.5	139
1991	51.0	138
1996	55.9	144 ⁹

Herbert has one of the most mobile populations in the Commonwealth, and this mobility now applies more or less equally to the several state electoral districts within it. On the one hand it might therefore be suspected that such roll churning could more easily conceal dubious transactions. On the other hand, so much movement increases uncertainty for anyone wishing to manipulate the rolls: arrivals and departures are on a scale that would swamp any manipulation that was not equally vast. That has not been alleged yet, so far as I am aware, for the Townsville area.

Contamination of the rolls

If, however, the evidence and argument put before it, or adduced elsewhere possibly in the current Criminal Justice Commission inquiry, convinces the Committee that the enrolment process has been seriously abused, that large numbers of names have been placed on the roll which ought not to be there, then the implication must follow that the roll still is seriously contaminated. If the purpose of a false enrolment is to permit a false vote, then the enrolment would have been used, a vote cast, and so no subsequent non-voter action would have been initiated. Had the falsity of such an enrolment been brought into issue by a habitation review, then the mechanisms for validating the false enrolment being talked about presently would presumably have been activated by the notice sent to the address in point, and confirmation of the enrolment would have been returned to the Divisional Office. In other words, the assumptions for there being a false enrolment ensure that it will continue, except for mischance.

⁸ For 1984 boundaries, hence out of 148; generally the data are from the census identified applied to the set of boundaries next used, but the point is of little significance for Herbert which had minor changes over the period.

⁹ Comparison between 1996 census data in Tables 3 and 4 which would show 44.1% "never moved" is affected by inclusion of part of a fourth state electoral district (Burdekin) in Herbert and omission of part of Thuringowa from Herbert.

Moreover most of the critics of the present system attack the ease of enrolment procedures as a fundamental flaw in the electoral system that assists fraudulent practices. A finding that there has been abuse must lead to two conclusions: there are a great many unidentified entries on the roll that should not be there, and new procedures are necessary to put an end to the problem. The Committee will, no doubt, be told of a variety of better procedures: production of documentary evidence of citizenship, of identity, of address, of age; a direct contact either by the would-be elector calling at an electoral office or an electoral official calling back at the applicant's address to confirm whatever evidence is thought essential; an electoral identification card, perhaps with a photograph or some other biometric device; and so on.

It might be expected on the strength of Table 4 that the passage of time would cure any defects in respect of half the enrolment: any change of enrolment would be required to get over whatever the new hurdles might be. But that would still leave half the roll contaminated at the end of five years. The Committee will need to consider an appropriate course of action. A finding that the roll was defective, but nothing was to be done in the immediate future to remedy it, would greatly increase the disquiet already encouraged by the allegations that have been made and are being investigated by the Criminal Justice Commission.

What can be done about the roll?

The existence of a common roll involves both state and Commonwealth law, and a solution is inevitably somewhat complicated. The *Commonwealth Electoral Act 1918*, s.85 provides that a new roll may be prepared when directed by proclamation. The *Electoral Act 1992*, s.62.(1) allows the Governor and the Governor-General to arrange for "the preparation, alteration or revision" of the roll in quite broad terms, which I believe would allow the process proposed below.

Fortuitously Herbert and the three state electoral districts largely contained in constitute a reasonably compact (3 000 sq.km.) and urbanised area suitable for a pilot study with wider implications, as well as being (should the Committee so conclude) itself in need of remedial work.

An initial decision would be required as to what new, tighter enrolment procedures should be, and legislation passed. Current electors of Herbert should be notified that new requirements are in place, and they within a prescribed period they should comply and effect a new enrolment. My guess is that would produce a number between half and two-thirds of the current enrolment of 86,000 would result.

However the *CEA 1918*, s.85.(2) has a proviso that an elector enrolled for the Subdivision in which he or she lives, in pursuance of a claim signed by him or

her, shall not be required to sign and send in any further claim for enrolment in connection with the preparation of a new Roll.

I doubt that the Commonwealth would be prepared to remove that protection even if it were convinced that existing rolls had been contaminated.

That obstacle can be circumvented by reviving the habitation review at this point, and checking at the addresses remaining on the existing roll that have not been verified under the new procedures. If there is confirmation, then s.85.(2) applies and the elector is transferred to the new roll. If confirmation is not possible, then objection action can be commenced. If 30,000 electors do not come forward in the first wave and require one or more visits so confirmation or objection to those enrolments may be settled, at, say, \$25 per head, the likely cost would be \$750,000. However this figure is only a guess and either Electoral Commission could come up with a better figure from their recent experience.

As it would be a pilot project, any difficulties in the new enrolment procedures could be identified at an early stage before other divisions were brought under the new enrolments rules.

What can be done about voting?

There are a number of identification systems from which to choose:

- (1) a universal multipurpose identity card - but this immediately raises the spectre of the Australia Card which comes up whenever any sort of universal database gets mentioned in the media; I doubt that it is politically possible;
- (2) a special electoral identity card - which might require a photograph (or might do so in specified larger urban areas where local knowledge is scarce), or might merely be posted out to every elector prior to each electoral event; the costs of special delivery arrangements (and additional massive costs if a photograph were required) and the lack of security of ordinary posting, currently under attack at the Criminal Justice Commission inquiry, make it difficult to support;
- (3) production of a range of other purpose documents such as passports, driver's licenses, rates notices, Medicare cards, which is probably the most popular solution being proposed by critics of the existing system; all these are easily forged, and their weaknesses are paraded regularly in the media; I do not believe that they would enhance the integrity of voting significantly and would raise the problem of the non-voting defence discussed below;
- (4) some new biometrical system; I would merely call the Committee's attention to a very recent survey of the technology (*The Economist*, 9 September 2000, pp.87-93) which says systems are getting cheaper but the technology "still faces some stiff technical challenges" and "is

still maturing" - which is almost certainly true.

As to the first three options, if there were to be prescribed means of identification consideration would have to be given to its implications for compulsory voting. (Advocates of more rigorous identification are often advocates of the abolition of compulsory voting as well.) An elector who arrived at a polling place without the requisite form of identification could be required to obtain a declaration vote then and there, but would they subsequently have to produce the identification, and where and when? If not, the new system would be readily bypassed.

However there is a ready alternative which would almost entirely¹⁰ eliminate the possibility of multiple voting for the one enrolment and reduce the likelihood of using a false identity to create additional enrolments. It is precinct voting, it is extensively used around the world to promote electoral integrity, and its additional cost would be modest - more polling officials to handle more declaration votes, an initial mailing to allocate electors to their specific polling places, and probably some additional advertising and inquiry costs prior to elections.

I would suggest to the Committee that again the special concern with the Townsville area at the present time affords the opportunity to conduct a pilot project with general implications. The two Electoral Commissions should be asked to use the 1998 elections data to identify the optimum catchment areas for the polling places used in the three state electorates and in Herbert at the state and federal elections held that year, maintaining the integrity of collectors' districts, and then determine for each the numbers of electors who did not vote at their "local" polling place. It would then be possible to approach a sample of those electors by post or otherwise, and try to find out as far as possible how inconvenient it would have been for them to have been required to vote at their "local". Undoubtedly there would be resistance to such a change, but no one knows the extent or intensity of likely opposition. Yet it is the most obvious remedy for strengthening public confidence in the electoral system.

¹⁰ It would not prevent someone going to the prescribed polling place before the elector got there and impersonating him/her.