

LEGISLATIVE ASSEMBLY OF QUEENSLAND

**LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE**

**Implications of the new Commonwealth enrolment requirements**

**March 2000**

**Report No. 19**

## LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

<b>REPORTS</b>	<b>DATE TABLED</b>
1. Annual report 1995-96	8 August 1996
2. Report on matters pertaining to the Electoral Commission of Queensland	8 August 1996
3. Review of the Referendums Bill 1996	14 November 1996
4. Truth in political advertising	3 December 1996
5. Report on the Electoral Amendment Bill 1996	20 March 1997
6. Report on the study tour relating to the preservation and enhancement of individuals' rights and freedoms and to privacy (31 March 1997—14 April 1997)	1 October 1997
7. Annual report 1996-97	30 October 1997
8. The Criminal Law (Sex Offenders Reporting) Bill 1997	25 February 1998
9. Privacy in Queensland	9 April 1998
10. Consolidation of the Queensland Constitution - Interim report	19 May 1998
11. Annual report 1997-98	26 August 1998
12. The preservation and enhancement of individuals' rights and freedoms in Queensland: Should Queensland adopt a bill of rights?	18 November 1998
13. Consolidation of the Queensland Constitution: Final Report	28 April 1999
14. Review of the <i>Report of the Strategic Review of the Queensland Ombudsman</i> (Parliamentary Commissioner for Administrative Investigations)	15 July 1999
15. Report on a study tour of New Zealand regarding freedom of information and other matters: From 31 May to 4 June 1999	20 July 1999
16. Review of the Transplantation and Anatomy Amendment Bill 1998	29 July 1999
17. Annual report 1998-99	26 August 1999
18. Issues of electoral reform raised in the Mansfield decision: Regulating how-to-vote cards and providing for appeals from the Court of Disputed Returns	17 September 1999
<b>PAPERS</b>	
Truth in political advertising (Issues paper no 1)	11 July 1996
Privacy in Queensland (Issues paper no 2)	4 June 1997
The preservation and enhancement of individuals' rights and freedoms: Should Queensland adopt a bill of rights? (Issues paper no 3)	1 October 1997
Upper Houses (Information paper)	27 November 1997
Inquiry into issues of Queensland electoral reform (Background paper)	25 November 1999
The role of the Queensland Parliament in treaty making (Position paper)	25 November 1999
Freedom of Information in Queensland (Discussion paper)	8 February 2000

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# LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

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\* Dr Prenzler was appointed to the committee on 11 November 1998 having replaced Mr Charles Rappolt whose resignation from Parliament was received by the Speaker of the Legislative Assembly on 4 November 1998.

## CHAIR'S FOREWORD

This report, which emanates from our current inquiry into issues of Queensland electoral reform, concerns the new Commonwealth enrolment requirements brought about by October 1999 amendments to the *Commonwealth Electoral Act 1918*.

These new requirements will mean that:

- the identity of a person enrolling for the first time must be verified (the particular forms of proof of identity documentation are still to be prescribed by regulation); and
- all enrolments (including transfers of enrolment) must be witnessed by a person who is currently enrolled and in a class of electors to be prescribed by regulation.

Prior to the amendments (and until such time as the relevant amendments commence and regulations are promulgated), there was no requirement for first-time electors to produce proof of identity to enrol and enrolment claim forms could be witnessed simply by an elector or a person entitled to enrolment.

The Commonwealth amendments directly concern Queensland because essentially a person is entitled to be enrolled for Queensland state (and local government) elections if they are entitled to be enrolled under the *Commonwealth Electoral Act*.

While regulations giving effect to the new provisions are still being finalised, we believe that these amendments have the potential to effectively disenfranchise a significant number of eligible voters through inconvenience and potential cost.

If Queensland does not want the new enrolment requirements to apply, then the safest course of action is for Queensland to amend its electoral legislation to retain enrolment criteria as they stood prior to the amendments (which are yet to commence). This also raises the issue of whether Queensland should (re)establish its own electoral roll. (Since 1992, the Commonwealth has maintained Queensland's electoral roll pursuant to a joint roll arrangement.)

We have prepared this report to the Queensland Parliament on this important issue to highlight our concerns and to recommend that the Queensland Attorney-General undertake certain action.

Issues raised in this report go to the heart of the most substantial issues underpinning our system of government. The integrity of our electoral system and the sovereignty of Queensland are challenged by the Commonwealth legislative amendments which are the subject of this report.

On behalf of the committee I thank those who have assisted the committee with the preparation of this report, namely: submitters for their valuable contribution; officers of the Australian Electoral Commission; the Queensland Electoral Commissioner, Mr Des O'Shea; and the committee's research staff.

I also wish to record my appreciation of the hard work of my fellow committee members in preparing this report.

**Gary Fenlon MLA**  
Chair

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## 1. INTRODUCTION

On 28 October 1999, the committee resolved to undertake an inquiry into certain issues of electoral reform. Most of the issues emanated 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.<sup>1</sup>)

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

- proposed by the commissioner as a result of the conduct of the 1998 State election;
- arising out of the recent amendments to the *Commonwealth Electoral Act 1918*—by the *Electoral and Referendum Amendment Act (No 1) 1999*<sup>2</sup>—concerning:
  - electoral enrolment procedures;
  - enhancement of the accuracy of the electoral roll; and
  - election funding and financial disclosure.

In November 1999, the committee called for public submissions to its inquiry by writing directly to identified stakeholders and advertising in *The Courier-Mail*. To assist potential submitters, the committee prepared and released a background paper to accompany the commissioner's letter.<sup>3</sup>

The committee received 22 submissions to its inquiry, most of which were tabled in the Queensland Parliament on 23 December 1999. Subsequent to tabling, the committee wrote to all submitters providing them with the opportunity to peruse and comment further on matters raised in the tabled submissions. (Those submissions which the committee has tabled—see the list at *Appendix A*—can be viewed at the Bills and Papers Office, Parliament House, Brisbane.)

This report primarily concerns one of the issues raised by the commissioner in his October 1999 letter (issue 10) which the committee considers sufficiently pressing to warrant Parliament's immediate attention. This issue concerns the new electoral enrolment requirements brought about by the 1999 amendments to the *Commonwealth Electoral Act 1918*.

The commissioner's comments on this issue in his 25 October 1999 letter are:

*On 13 October 1999, the Commonwealth Electoral and Referendums 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*

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<sup>1</sup> Available at: <<http://www.parliament.qld.gov.au/comdocs/legalrev/Oshea%20letter.pdf>>.

<sup>2</sup> Available at: <<http://scaleplus.law.gov.au/html/comact/10/6046/rtf/134of99.rtf>>.

<sup>3</sup> A copy of the committee's background paper (together with the commissioner's letter) was sent to identified stakeholders and posted on the committee's website. The background paper is available at: <<http://www.parliament.qld.gov.au/comdocs/legalrev/Qer%20Bpaper.pdf>>.

*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.*

(As explained later, the maintenance of electoral rolls—issue no 11 of the commissioner’s letter—is also relevant to matters raised in this report.)

The committee believes that the new Commonwealth enrolment requirements have the potential to disenfranchise a significant number of eligible voters. While the Queensland Parliament can legislatively do little to change the enrolment criteria and procedures regarding the Commonwealth electoral process, the Queensland Parliament has legislative control over the state electoral process including state enrolment criteria and procedures. As the commissioner observes, if Queensland is not prepared to adopt the new Commonwealth requirements, Queensland’s *Electoral Act 1992* will have to be amended.

If Queensland is not prepared to adopt the new enrolment requirements, there will be consequences for Queensland’s electoral roll keeping arrangements. In particular, Queensland’s current joint roll arrangement with the Commonwealth will need to be re-examined with a view to possibly re-establishing a separate, state-based electoral roll.

Given the importance of the matters under consideration, in this report the committee:

- outlines Queensland’s current electoral roll arrangements and their history (section 2);
- explains the new Commonwealth enrolment requirements and the reasons behind their introduction (section 3);
- details the committee’s major concern with the new enrolment requirements, a concern apparently shared by some other Australian states (section 4);
- summarises comments made in public submissions on this issue (section 5);
- considers the relative merits of Queensland (re)establishing a separate state electoral roll (section 6);
- outlines the results of the committee’s research and deliberations, draws a number of conclusions and recommends that the Queensland Attorney-General take certain action (section 6); and
- discusses alternative ways to enhance the accuracy of the electoral roll and increase current enrolment levels (section 7).

## 2. QUEENSLAND'S CURRENT ELECTORAL ROLL ARRANGEMENTS

While the *Electoral Act 1992* (Qld) requires the Electoral Commission of Queensland (ECQ) to keep an electoral roll for each of Queensland's electoral districts,<sup>4</sup> Queensland does not maintain its own electoral roll. Rather, the Commonwealth electoral authority, the Australian Electoral Commission (AEC), maintains—with ECQ input—the Queensland state roll (which is also used for local government elections and jury districts). This is in accordance with a joint roll arrangement between the Commonwealth and Queensland, such arrangement being permitted by the *Electoral Act 1992*, s 62.

Pursuant to this joint roll arrangement, completed joint enrolment cards are processed into the AEC's Roll Management System (RMANS) by AEC divisional staff. State roll data is then extracted from RMANS and provided to the ECQ. The joint roll procedure is based on almost identical eligibility criteria, a common enrolment form and the single entry into RMANS of enrolments. However, the Queensland and Commonwealth rolls are separate documents.<sup>5</sup>

While RMANS is a national enrolment system, its operation for Queensland purposes is subject to monitoring by a Joint Roll Management Committee constituted by the Queensland Electoral Commissioner (or nominee) and the Australian Electoral Officer (or nominee).<sup>6</sup> Day to day issues are handled by AEC and ECQ liaison officers.<sup>7</sup>

These 'joint roll' arrangements have existed since 1992 following a recommendation of the former Electoral and Administrative Review Commission (EARC)<sup>8</sup> which was endorsed by EARC's parliamentary committee, the Parliamentary Committee for Administrative and Electoral Review.<sup>9</sup>

After considering the arguments for and against adopting a joint electoral roll, EARC concluded that a joint electoral roll (based on the recommendations in its report) was superior to retention of the then roll because it would provide:

- greater integrity of the roll database, and therefore greater public confidence in the legitimacy of electoral outcomes;
- significantly lower cost to the State (even allowing for Queensland's financial contribution to the maintenance of a joint electoral roll), with savings estimated to be about \$1 million per annum;
- greater convenience to electors through uniform eligibility criteria; and
- capacity to support all state systems then provided by the state electoral roll as well as the retention of state input into the management of the roll through: (a) the joint roll management committee; (b) state on-line access to the database and capacity to raise

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<sup>4</sup> *Electoral Act 1992*, s 58.

<sup>5</sup> 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: see section 7.

<sup>6</sup> The Joint Roll Management Committee is established pursuant to clause 16 of the joint roll arrangement.

<sup>7</sup> For further information on the keeping of Queensland's electoral roll see the AEC's submission to this committee's inquiry dated 30 November 1999 at paras 11.1-11.6.

<sup>8</sup> See EARC's *Report on Queensland joint electoral roll review*, Government Printer, Brisbane, October 1990 (at para 7.11) which was preceded by EARC's issues paper *Queensland electoral roll review*, Issues paper no 6, May 1990. See also chapter 5 (Electoral rolls and enrolment) of EARC's subsequent report *Review of the Elections Act 1983-1991 and related matters*, Government Printer, Brisbane, December 1991.

<sup>9</sup> *Report on an Electoral and Administrative Review Commission report on Queensland joint electoral roll review*, Government Printer, Brisbane, November 1990.



objections to names on the roll; and (c) the state retaining responsibility for the updating of fields for state purposes.<sup>10</sup>

All other Australian states and territories also have joint roll arrangements with the AEC although the nature of these arrangements differs among the jurisdictions.<sup>11</sup> For example, both Victoria and Western Australia maintain their own state roll but exchange enrolment data with the Commonwealth.<sup>12</sup>

Maintenance of electoral rolls is discussed further in section 7.

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<sup>10</sup> EARC report, n 8 (1990) at para 7.4. The current validity of this reasoning is discussed in more detail in section 6.

<sup>11</sup> For further background and information regarding the various Commonwealth/state joint roll arrangements see the Joint Standing Committee on Electoral Matters (JSCEM), *The conduct of elections: New boundaries for cooperation*, AGPS, Canberra, September 1992 at chapter 5 and EARC report, n 8 (1990) at paras 4.1-4.5.

<sup>12</sup> As to the operation of Western Australia's electoral roll see the WA Electoral Commissioner's submission to the committee dated 3 December 1999 at 2.

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### 3. THE NEW COMMONWEALTH ENROLMENT REQUIREMENTS

This report primarily concerns two significant amendments to the enrolment provisions in the *Commonwealth Electoral Act* by the *Electoral and Referendum Amendment Act (No 1) 1999* (Cth).<sup>13</sup>

These amendments directly concern Queensland. This is because a person is entitled to be enrolled for an electoral district for the purpose of a Queensland state election<sup>14</sup> if they are entitled to be enrolled under the *Commonwealth Electoral Act* and live in the electoral district and have lived in it for the last month.<sup>15</sup> The Commonwealth enrolment changes therefore automatically change enrolment requirements for Queensland state elections.

Likewise, the Commonwealth enrolment changes also automatically change enrolment requirements for local government elections in Queensland. This is because people are entitled to vote at a local government election if they are entitled to vote at a state election,<sup>16</sup> and the state roll is deemed to comprise the roll for local government elections.<sup>17</sup> The state roll is also the basis of the jury roll,<sup>18</sup> and a person's eligibility to serve as a juror is based on their (state) enrolment.<sup>19</sup>

#### 3.1 WHAT THE NEW REQUIREMENTS DEMAND

The amendments to the enrolment provisions in the *Commonwealth Electoral Act* are as follows.

First, the *Commonwealth Electoral Act* has been amended so that the identity of a person enrolling for the first time must be verified in the manner prescribed by the regulations. Prior to the amendment (and until such time as the relevant amendment commences and regulations are promulgated), there was no requirement for first-time electors to produce proof of identity to enrol. Further, a person who claims to be an Australian citizen because of a grant of Australian citizenship under the *Australian Citizenship Act 1948*, must have their citizenship verified before they can be enrolled. (See new subsections 98(2A), (2B), (2C) and (2D) of the Act.)

The explanatory memorandum to the amending act indicates that:

- the regulations specifying the method of verification of identity where required (that is, for first-time electors) will require production of, at the time of application, at least one original form of proof of identity documentation;
- while the form of documentation will depend on the circumstances of the applicant, it may include an Australian birth certificate, passport or photographic driver's licence;
- in cases where applicants are not in a position to produce an original form of proof of identity documentation, the regulations will provide for, say, a written reference to be produced; and

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<sup>13</sup> The *Electoral and Referendum Amendment Act (No 1) 1999* (Cth)—introduced as the *Electoral and Referendum Amendment Bill (No 2) 1998* (Cth)—was passed by the Commonwealth Parliament on 23 September 1999 and assented to on 13 October 1999.

<sup>14</sup> And state referenda: *Referendums Act 1997* (Qld), s 21.

<sup>15</sup> *Electoral Act 1992* (Qld), s 64.

<sup>16</sup> *Local Government Act 1993* (Qld), s 276.

<sup>17</sup> *Local Government Act 1993* (Qld), s 279.

<sup>18</sup> *Jury Act 1995* (Qld), s 10.

<sup>19</sup> *Jury Act 1995* (Qld), s 4.

- an original proof of identity document may be either posted to or presented in person at an Australian Electoral Office.<sup>20</sup>

The explanatory memorandum also explains arrangements for the appointment of prescribed persons (that is, AEC agents) to receive enrolment applications and verify proof of identity where a person does not wish to send their identity documentation in the post or cannot readily access an AEC office.<sup>21</sup>

In its submission to the committee, the AEC advised that:

*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.*

*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.<sup>22</sup>*

The *Commonwealth Electoral Act* (as amended) specifically provides that neither the identity nor the citizenship requirements apply unless relevant regulations are in operation.<sup>23</sup>

Secondly, witnessing requirements for enrolment cards have been made significantly more stringent. The *Commonwealth Electoral Act* has been amended so that all enrolments<sup>24</sup> including transfers of enrolment must be witnessed by a person who is: (a) currently enrolled; and (b) in a class of electors prescribed by regulation. (See new s 98(2)(c) of the Act.)

Prior to the amendment (and until such time as the relevant amendment commences and the regulations are promulgated), enrolment cards could simply be witnessed by an elector or a person *entitled to enrolment*.

The explanatory memorandum to the amending act provides that the regulations ‘*will specify a range of categories of electors who may witness an enrolment application, and will provide for those electors who are unable to find a witness in the prescribed list*’.<sup>25</sup>

### **3.2 THE COMMENCEMENT AND LIKELY CONTENT OF THE REGULATIONS**

The amendments to the enrolment provisions (described above) commence on a date to be fixed by proclamation.<sup>26</sup> The AEC advised in its submission to the committee that it will be recommending to the (federal) minister that implementation of the new arrangements by regulation be scheduled for 1 July 2000. However, in a recent meeting with the committee<sup>27</sup> AEC officers advised that this date is likely to be postponed and that the regulations may not be in operation before next year. (The committee discusses later in section 6 the possibility of

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<sup>20</sup> Electoral and Referendum Amendment Bill (No 2) 1998, explanatory memorandum, circulated with the authority of the Special Minister of State, Senator the Hon Chris Ellison, House of Representatives, 1998 at paras 15-17.

<sup>21</sup> Note 20 at para 17. See now the *Commonwealth Electoral Act 1918*, s 99 AA.

<sup>22</sup> Submission dated 30 November 1999 at paras 10.4-10.5.

<sup>23</sup> *Commonwealth Electoral Act 1918*, s 98(2B) and (2D).

<sup>24</sup> That is, a claim for enrolment or transfer of enrolment or a claim for age 17 ‘provisional’ enrolment. Provisional enrolment of 17 year olds is permitted under the *Commonwealth Electoral Act 1918*, s 100.

<sup>25</sup> Note 20 at para 14.

<sup>26</sup> *Electoral and Referendum Amendment Act (No 1) 1999* (Cth), s 2(3).

<sup>27</sup> Meeting between the committee and AEC officers on 15 February 2000.

a disallowance motion being moved in the Senate regarding the regulations. Such a motion, even if not successful, would delay implementation of the new arrangements.)

The AEC officers also advised the committee that drafting of the regulations (and associated forms and procedures) is yet to be settled. In particular, the AEC is examining ways to make compliance with the new enrolment requirements easier by:

- broadening the category of witnesses (and reducing any ‘time in service’ requirements that might apply to a particular category of witnesses);
- possibly allowing prescribed witnesses to also verify proof of identity documents; and
- recognising a certificate of identification for people who do not have a proof of identity document.

Consultation with the states and territories regarding the draft regulations is continuing in the forum of the Electoral Council of Australia.<sup>28</sup>

### 3.3 THE IMPETUS FOR THE NEW ENROLMENT REQUIREMENTS

#### 3.3.1 The JSCEM report

The recent amendments to the *Commonwealth Electoral Act* concerning enrolment procedures largely stem from a report of the Joint Standing Committee on Electoral Matters (JSCEM) on the 1996 federal election.<sup>29</sup> (This committee has, since the 1984 general election, publicly inquired into, and reported on, the conduct of each federal election.) One of the substantive issues which the JSCEM considered was the topic of electoral fraud.

*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 through 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 at 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.<sup>30</sup>*

Following consideration of a range of measures suggested to it (to combat electoral fraud), the majority of the JSCEM concluded that:

*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*

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<sup>28</sup> Evidence given by the AEC to the Senate Finance and Public Administration Committee, 8 February 2000 at 130-133 (available at: <<http://www.aph.gov.au/hansard/senate/commtee/comsen.htm>>). In the debate, the minister was unwilling to confirm that the regulations will be publicly released in draft form for comment before being promulgated.

<sup>29</sup> Joint Standing Committee on Electoral Matters (JSCEM), *The 1996 federal election: Report of the inquiry into the conduct of the 1996 federal election and matters related thereto*, AGPS, Canberra, June 1997.

<sup>30</sup> Note 29 at paras 2.1-2.2.

*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.*<sup>31</sup>

These broad suggestions were operationalised in the following recommendations:

1. *that the AEC prepare a comprehensive implementation plan 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 notice 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 cooperation 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).*<sup>32</sup>

Despite the fact that the JSCEM recommendations were aimed at combating electoral fraud, three members of the committee in a minority report stated that:

*The Committee has not been presented with any substantive material indicating the existence of electoral fraud. It has been limited to anecdote and hearsay.*

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<sup>31</sup> Note 29 at para 2.4. The majority report was presented by Liberal Party and National Party members of the committee.

<sup>32</sup> Note 29 at paras 2.7, 2.12, 2.18, 2.32 and 2.37 respectively.

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*Despite a dearth of evidence that alleged loopholes are being abused, there are, in the Majority Report, serious new moves to complicate enrolment. The outcome will be discouragement of prospective and past re-enrolling voters.*<sup>33</sup>

A copy of the JSCEM's report (including the minority reports) and the government's response to the committee's recommendations made in that report can be viewed via the JSCEM's webpage at: <<http://www.aph.gov.au/house/committee/em/elec/elecinde.htm>>.

### 3.3.2 The wider debate regarding electoral fraud

The JSCEM recommendations just mentioned are directed towards electoral fraud. Whether the Australian electoral system is open to, and subject to, fraud has been the subject of speculation for some time.

In 1989, Laurie Oakes made the following observation about the origins of some claims of electoral fraud:

*Since the last Federal election in 1987, a remarkably effective lobby group has been at work exposing alleged rorts which it suggests are part of a widespread conspiracy to fake election results. Among themselves, electoral officials talk of "this strange phenomenon" and speculate that the self-appointed watchdogs draw inspiration from the activities of some fundamentalist organisations in the United States.*<sup>34</sup>

A 1997 publication *Corrupt elections: Recent Australian studies and experiences of ballot rigging*<sup>35</sup> (whose contributors have penned numerous submissions to JSCEM inquiries) is an instance of an attempt to substantiate claims that Australian elections have been subject to fraudulent electoral practices. *Corrupt elections* purports to 'lift the examination of electoral fraud above the common anecdotal level to a substantial basis of evidence'.<sup>36</sup>

Former Australian Electoral Commissioner (now) Professor Colin Hughes in a considered and detailed critique of *Corrupt elections* concluded that, while there are opportunities to abuse elements of the electoral system, the publication had failed 'to produce any significant evidence that such abuses have taken place' and that '[on] the contrary much of what is said misunderstands or misrepresents reality'.<sup>37</sup> (On retiring as Commissioner in 1989, (then) Dr Hughes had acknowledged public concern about electoral fraud but stated that he had not seen any significant evidence to support such allegations.<sup>38</sup>)

In his critique of *Corrupt elections*, Professor Hughes further concluded that care has to be taken when tightening procedures to address possible opportunities for electoral fraud (for example, through tougher enrolment requirements). According to the Professor, such tightened procedures 'would have costs that would operate to the detriment of relatively disadvantaged elements of the community' and that '[a]ny decision to change major elements of the present systems...needs to weigh those costs very carefully'.<sup>39</sup>

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<sup>33</sup> Note 29 at 119. The minority report was presented by the committee's three ALP members: Senator S Conroy, Mr L Ferguson MP and Mr R Mc Clelland MP. A minority report was also submitted by Senator Andrew Murray (Australian Democrats), however, Senator Murray's report did not address the majority's recommendations regarding the new enrolment requirements.

<sup>34</sup> Oakes L, 'Behind the conspiracy theory', *Bulletin*, 28 November 1989 at 29.

<sup>35</sup> Copeman C and Mc Grath A OAM, eds, Towerhouse Publications, Kensington, NSW, 1997. See also Dr Mc Grath's earlier publication, *The frauding of votes?*, Towerhouse Publications, Kensington, NSW, 1996.

<sup>36</sup> Note 35 at 11.

<sup>37</sup> Hughes C A, 'The illusive phenomenon of fraudulent voting practices: A review article' (1998) 44(3) *Australian Journal of Politics and History* 471 at 491.

<sup>38</sup> Note 37 at 474-475.

<sup>39</sup> Note 37 at 491.

The AEC has similarly refuted the statistical, practical and legal basis of the allegations of electoral fraud made to the JSCEM's inquiry into the 1996 federal election. In particular, the AEC (in a supplementary submission to the JSCEM's inquiry) responded to issues related to electoral fraud submitted by Dr Amy McGrath OAM, one of the co-editors of *Corrupt elections*. In its supplementary submission the AEC noted its concern about:

*Dr McGrath's apparent misunderstanding of the legislative framework and detailed operational procedures that relate specifically to federal elections. The AEC has never been formally approached by Dr McGrath for comment on the factual basis of her criticisms of the AEC and its conduct of federal elections.*<sup>40</sup>

At state level, this committee has previously reported the Queensland Electoral Commissioner's views that evidence shows that allegations of multiple voting and 'cemetery voting' are more about speculation than reality.<sup>41</sup>

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<sup>40</sup> AEC, Supplementary submission to the JSCEM, *Allegations of electoral fraud*, Canberra, 23 October 1996 at para 1.5 (available at: <<http://www.aec.gov.au/committee/knet.pdf>>).

<sup>41</sup> Legal, Constitutional and Administrative Review Committee, *Report on matters pertaining to the Electoral Commission of Queensland*, GoPrint, Brisbane, August 1996 at 4-5.

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## 4. THE COMMITTEE'S CONCERN

The committee believes that the changes to the Commonwealth's enrolment requirements have the capacity to effectively disenfranchise a significant number of eligible voters and hence reduce the number of citizens on the electoral roll.

The committee appreciates that the regulations are still to be finalised and that there is scope for the impact of the new requirements to be lessened by, for example, broadening the category of witnesses. However, in the committee's opinion it remains that the inconvenience—not to mention potential cost—to citizens of requiring first-time voters to produce an original form of identification and requiring enrolment cards to be witnessed by certain prescribed persons has the potential to effectively put such significant hurdles in the way of eligible voters as to deter them from (re)enrolling. This is of particular significance in light of recent knife-edge election results in Queensland where one seat has determined the fate of government.

The committee's concern is shared by some submitters (see section 5) and other states.

In this section, the committee elaborates on the disadvantages and difficulties it envisages with the new requirements.

### 4.1 THE NEW VOTER IDENTIFICATION REQUIREMENTS

As noted in section 3, the recent changes to the *Commonwealth Electoral Act* will require persons seeking to enrol for the first time to produce proof of identity. Prior to the amendment (and until such time as the relevant amendment commences and regulations are promulgated), there was no requirement for first-time electors to produce proof of identity to enrol.

Requiring first-time voters to produce at least one original item of documentary proof of identity (or a certificate of identification) is, in the committee's opinion, likely to cause such inconvenience as to act as a significant deterrent to enrolling.

The committee recognises that the 'degree' of deterrent effect of requiring the production of proof of identity documents as a condition of enrolment will depend on the identity documents actually specified in the finalised regulations. However, the deterrent effect will be exacerbated in cases where eligible electors do not already have proof of identity and it will cost them to obtain it. Effectively imposing payment as a pre-condition to the right to vote is antithetical to our democratic system of government.

As the AEC submitted to the JSCEM inquiry:

*Any scheme which required the production by electors of documents such as birth certificates or passports could well constitute a very substantial imposition on the voters themselves. A requirement to produce birth certificates could see voters paying out over \$100 million. It is likely that such a scheme would be strongly – and validly – criticised as making people pay for the right to vote. While the effect this would have on voters could be ameliorated if the Commonwealth were to bear the cost of issuing such necessary documents as birth certificates, this would represent a considerable charge on the federal budget.<sup>42</sup>*

Given that most first-time voters are likely to be 18 year-olds, the new requirements have the potential to further exacerbate existing difficulties in encouraging young people to enrol. (AEC research shows that under current enrolment procedures, only 69% of eligible 18 year-

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<sup>42</sup> AEC, supplementary submission to the Joint Standing Committee on Electoral Matters, *Enrolment and voter identification*, Canberra, 23 October 1996 at para 6.4.4.



old Australians are enrolled to vote with the figure for 19 year-olds being only slightly better at 78%.<sup>43</sup>)

Depending on their final form, the regulations also have the potential to make it more difficult for other groups in the community to enrol. For example, if cost is involved (due to people having to obtain proof of identity documents) then low income earners are likely to be adversely affected. If access to a prescribed witness is difficult (see below), the impact will more likely be felt by people in rural or remote areas, a concern of particular relevance to a state the size of Queensland.

The JSCEM recognised that a proof of identity scheme should incorporate alternatives for specific client groups such as the institutionalised, the disabled, elderly citizens, homeless or destitute persons, some ethnic minorities, transient Aboriginal and Torres Strait Island people, persons in remote areas and persons residing overseas.<sup>44</sup>

In its submission to the committee the AEC advised that:

*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 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.*

*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.<sup>45</sup>*

A further consideration regarding a requirement to produce identity documents, which the JSCEM report did not address, is the reported ease with which such documents can be forged.<sup>46</sup> Presumably those intent on engaging in electoral fraud would have no difficulties in availing themselves of opportunities to produce and trade in forged identity documents.

(Those claiming citizenship under the *Australian Citizenship Act* will also have to have their citizenship verified before they can be enrolled. In this regard, the AEC advises that the new citizenship requirements are not considered to be a serious operational problem as the AEC is well advanced in obtaining current and historical citizenship data available on-line.<sup>47</sup>)

## 4.2 THE NEW WITNESSING REQUIREMENTS

As outlined in section 3, the recent changes to the *Commonwealth Electoral Act* will also upgrade witness requirements for claims for enrolment (that is, claims for first-time enrolment, transfers of enrolment or claims for age 17 'provisional' enrolment). In particular, all enrolment cards must be witnessed by a person who is: (a) currently enrolled; and (b) in a class of electors prescribed by regulation.

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<sup>43</sup> Hallett B, (Director Information, AEC), 'Youth participation in Australia', paper presented at the International IDEA's 1999 Democracy forum—Youth and democracy, Stockholm, June 1999 at 7.

<sup>44</sup> JSCEM, n 29 at para 2.17.

<sup>45</sup> Submission dated 30 November 1999 at paras 10.6-10.7.

<sup>46</sup> See Professor Hughes' submission dated 13 December 1999 at 9. Professor Hughes suggests that the ease of producing forged documents shows that the only satisfactory and safe test (if there must be one) has to be conducted by an official accessing a secure database.

<sup>47</sup> Submission dated 30 November 1999 at para 10.8.

Prior to the amendment (and until such time as the relevant amendment commences and the regulations are promulgated), enrolment cards could simply be witnessed by an elector or a person *entitled to enrolment*.

The requirement to have a 'qualified person' witness an enrolment form places a further obstacle in the way of first-time voters (who must already produce at least one original item of documentary proof of identity). In addition, the new witnessing requirements stand to inconvenience current electors who are required to fill in an enrolment card to change their enrolment information (for example, when they move house). As the JSCEM minority report noted: *'The difficulties are greater with contemporary citizens' more frequent change of residence and locality, the average per Australian now being sixteen moves of residence in their lifetime'*.<sup>48</sup>

The JSCEM's majority report fails to explain why witnesses are more unworthy to witness an enrolment card simply because, while entitled to do so, they are not technically enrolled at that point in time.

Further, while the JSCEM majority recognised that the class of eligible witnesses must be sufficiently wide to ensure that no person qualified to vote could be expected to face difficulties in finding a witness, on current indications it is evident that people will have to go to some trouble to find a qualified person.

The committee notes that the new Commonwealth witnessing requirements are even more onerous than those associated with applying for an Australian passport. The new passport application form simply requires a witness for passport application purposes to be 18 years of age or over, to have known the applicant for the past 12 months and not to be related to the applicant by birth or marriage.<sup>49</sup> There is no longer a requirement that the witness come from a certain prescribed class.

In its submission to the committee, the AEC pointed out difficulties with the bulk witnessing of enrolment cards when new citizens enrol at citizenship 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'*.<sup>50</sup>

### **4.3 THE COMBINED EFFECT OF THE NEW REQUIREMENTS**

A number of past instances illustrate the potential for the new enrolment requirements to reduce the number of people on the electoral roll.

Between 1979 and 1983 the Western Australia government required enrolment applications to be witnessed by a restricted group of people. Over that four year period, the state roll reportedly had 45, 000 fewer voters than its Commonwealth counterpart.<sup>51</sup>

The JSCEM minority report cites another example:

*An indication of the impact of tough registration requirements on voter participation is given in a comparison of turnout amongst various US States with different enrolment regimes in the 1992 Presidential election. The average amongst the twelve, including Ohio, Minnesota and North Dakota, which allow election day registration, registration*

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<sup>48</sup> JSCEM, n 29 at 120.

<sup>49</sup> The witness must also provide information regarding their Australian passport details or their Australian electoral roll registration if they have been on the roll at their current address for the past twelve months.

<sup>50</sup> Submission dated 30 November 1999 at para 10.9.

<sup>51</sup> Contractor A, 'ACT set to adopt tougher electoral processes', *The Canberra Times*, 3 December 1999 available at: <<http://www.canberratimes.com/archive/news/1999/12/03/news4.shtml>>; Pryer W, 'Fewer teens tipped to vote under new law', *The West Australian*, 8 December 1999 at 44.

at drivers' licence bureaux or no registration process at all, was 2.5 percent greater than those that operated registration by mail and 5.2 percent greater than those with even more restrictive registration rules. The difference between the most extreme variants of registration is over 10 percent.<sup>52</sup>

Related to propensity of the new requirements to effectively disenfranchise people is a further concern that the committee has regarding the AEC's ability to process enrolments in accordance with the new requirements in the short period between the issue of a writ and the close of the rolls for an election.<sup>53</sup> 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. Any significant delay could mean an extension of the minimum period between the issuing of a writ for an election and the date of the election.

The AEC in its submission to the committee stated that:

- it is confident that it can continue to meet the existing Queensland state election close of rolls timetable;
- in developing new procedures for close of rolls, the AEC has considered the possibility of delays occurring in the transmission of claims by agents and that therefore the new procedures will include the faxing of claims during roll close where normal methods of dispatch are unsuitable; and
- it has developed operational procedures for the new enrolment process and amendments to the relevant procedural documentation have been drafted but 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 the intentions to adopt the Commonwealth provisions.<sup>54</sup>

The committee recognises that a definitive position on this further concern regarding the AEC's processing ability cannot be reached until the regulations and associated enrolment procedures are finalised.

#### 4.4 CONCERNS RAISED IN OTHER JURISDICTIONS

Queensland is not the only state concerned by the new enrolment requirements' potential to disenfranchise eligible electors. In this context, the new requirements have been described as 'voluntary voting by stealth'.<sup>55</sup>

New South Wales, Victoria and Tasmania have been reported as indicating that they might avoid the new requirements.<sup>56</sup> It has also been reported that the upper houses in Western Australia and South Australia will block legislation necessary in those states to implement the new requirements.<sup>57</sup>

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<sup>52</sup> JSCEM, n 29 at 121.

<sup>53</sup> The AEC itself foreshadowed this problem in its supplementary submission to the JSCEM noting that in the week preceding the close of rolls for the 1996 federal election, 430 955 enrolment cards were processed of which 103 423 were new enrolments and 327 532 were changes of address, reinstatements, re-enrolments and intrastate transfers: *Enrolment and voter identification*, Canberra, 23 October 1996 at para 6.1.2 (available at: <<http://www.aec.gov.au/committee/lnet.pdf>>). Initially, the amending bill provided that rolls would close for new enrolments on the date of the issue of the writ. However, this provision was not included in the amending act as passed. Hence, arrangements for close of rolls remain unchanged.

<sup>54</sup> Submission dated 30 November 1999 at paras 10.10-10.12.

<sup>55</sup> Contractor, n 51.

<sup>56</sup> Contractor, n 51.

<sup>57</sup> Contractor, n 51.

At a recent Senate estimates committee hearing the AEC stated:

*The states at this stage are showing some concerns about the provisions and the tightening of those provisions. But it really depends on the finalisation of the draft regulations, which the government is still considering in relation to those changes. There will be no absolute comment from the states until they see the final form of those draft regulations.*<sup>58</sup>

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<sup>58</sup> Note 28 at 130.

## 5. COMMENTS MADE IN PUBLIC SUBMISSIONS

As noted in the introduction, the committee has called for and received public submissions on its inquiry into issues of Queensland electoral reform. In this section, the committee summarises the position taken in submissions in relation to the new Commonwealth enrolment requirements.

### 5.1 SUBMISSIONS OPPOSED TO THE NEW REQUIREMENTS

A number of submitters share the committee's concerns that the new enrolment requirements are undesirable and suggest that if they are to proceed Queensland has no choice but to establish its own separate electoral roll.

Mr Paul Lucas MLA<sup>59</sup> expressed 'extreme concern' at the new requirements (especially for those electorates with relatively itinerant populations) noting that the new Commonwealth legislation:

*...could very easily place insurmountable barriers before persons wishing to enrol and therefore seriously pervert the democratic process. It makes it less likely that our Electoral roll will contain a complete record of all persons eligible to vote at and above the age of 18 years in this state.*

In this regard, Mr Lucas compared the new requirements with legislation adopted by certain southern US states so as to disenfranchise African Americans by, for example, only permitting enrolment in the town hall (situated in an area without a high African American population) and imposing certain literacy tests.

Mr Lucas further observed:

*One can only calculate that [the new requirements] are deliberately designed to disenfranchise voters. So serious is this proposal that, if implemented, I believe that Queensland would have no alternative but to undertake separate enrolment procedures.*

*It is my understanding that the argument is that it will reduce the potential for electoral fraud. The problem is, however, what is the demonstrated level of this problem at the present time and at what cost will these suggestions deal with it.*

*I know of no case of any election in recent times in Queensland or the rest of Australia where it has been alleged that persons of fraudulent identity have sought enrolment or to cast a vote. The onus is on those who suggest change ... to provide the evidence.*

Mr Lucas suggested that, instead, positive steps be made towards promoting electoral enrolment.<sup>60</sup>

Professor Hughes<sup>61</sup> (former Australian Electoral Commissioner and former member of EARC at the time of its joint roll review inquiry) submitted that the recent amendments are, on close analysis, alarming because:

- the changes reflect a misconception of the right to vote not as a right as such but as merely another transaction between a 'client' and the state: 'A century and a half of Australian history went into developing a system whereby every citizen could vote'; and
- rather than resting on proven evidence of electoral malpractice, the amendments rest merely on "disquiet in the sections of the community" which are in fact very small sections who kept coming back with their disquiet until they finally got a committee

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<sup>59</sup> Submission dated 1 December 1999.

<sup>60</sup> This issue is discussed further in section 7.

<sup>61</sup> Submission dated 13 December 1999.

*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’.*<sup>62</sup>

Therefore, according to Professor Hughes, 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*’.

Professor Hughes further warned of the amendments being the ‘thin edge of the wedge’ in cutting back on easy enrolment and voting.

In so far as what action Queensland should take, Professor Hughes concluded it would be a ‘great pity’ if the joint roll agreements were to be repudiated with some or all of the states resuming maintenance of separate rolls. At the same time, Professor Hughes reiterated that one argument supported the case for a separate state roll, that is, the ‘*unilateral action 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*’.

Hence, Professor Hughes submitted that the committee consider recommending that:

- in the period prior to 1 July 2000, Queensland endeavour to secure a compromise with the Commonwealth by the Queensland Attorney-General (as the minister responsible for electoral matters) attempting to convene a conference with his counterpart 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 disadvantaged groups such as those recently turned 18, those with literacy or language problems, those living in remote areas and large electoral districts etc to the maximum extent.*’; and
- 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 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*’.

The sentiment of Professor Hughes’ submission is summarised in the following extract:

*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 other States which agree with it.*

Cairns City Council<sup>63</sup> supported Professor Hughes’ suggestion that attempts be made by Queensland to negotiate a better outcome with the Commonwealth:

*It would certainly be deemed appropriate to have Commonwealth and State legislation on this matter consistent. It is also important that enrolment procedures be made as simple as possible. The proposal does assist in ensuring people eligible to vote are registered correctly. It is recommended that the State and Commonwealth negotiate the matter to ensure a common a win-win situation is resolved.*

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<sup>62</sup> Referring to his article ‘The illusive phenomenon of fraudulent voting practices: A review article’, n 37.

<sup>63</sup> Submission dated 3 December 1999.

## 5.2 SUBMISSIONS IN SUPPORT OF THE NEW REQUIREMENTS

On the other hand, Dr Macklin<sup>64</sup> strongly urged the committee to maintain the link with the *Commonwealth Electoral Act* so that citizens only have to enrol once in order to appear on both the Commonwealth and state rolls. Dr Macklin submitted that the new enrolment requirements ‘*while tougher than previously, are not unduly onerous and seek to prevent the enrolment process becoming a back door to establishing a false identity*’.

Dr Amy McGrath OAM,<sup>65</sup> President of the HS Chapman Society and co-editor of *Corrupt elections: Recent Australian studies and experiences of ballot rigging*,<sup>66</sup> supported the new enrolment requirements noting that ‘*the Commonwealth Parliament has merely restored a basic principle of our electoral system*’.

Dr McGrath also supported Queensland establishing its own electoral roll as she has ‘*serious reservations about the fact that the Commonwealth roll is outsourced to the Computer Services Corporation, an American company run by Mormons from Salt Lake City with 90 000 employees, and the potential to hack the roll from the US as easily as Australia*’.

Maryborough City Council likewise submitted that there should only be one electoral roll and not a separate electoral roll for the Commonwealth and the State.<sup>67</sup>

Mr Eric Walker while agreeing that the enrolment process should be as simple as possible noted that the privilege of voting should be limited to citizens: ‘*If a copy of a birth certificate is adequate then I believe it is appropriate to require it*’.<sup>68</sup>

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<sup>64</sup> Submission dated 3 December 1999.

<sup>65</sup> Submission dated 9 December 1999.

<sup>66</sup> Note 35.

<sup>67</sup> Submission dated 24 November 1999.

<sup>68</sup> Submission dated 23 November 1999.

## 6. COMMITTEE ANALYSIS

The committee's inquiries so far indicate that the Commonwealth is proceeding with implementation of the new enrolment requirements (via the promulgation of regulations).

Indeed, the only way in which it seems possible that operationalisation of the new requirements might be frustrated is by a disallowance motion being moved in the Senate when the regulations are tabled. (The particular amendments relating to the new enrolment requirements were debated in the Senate prior to 1 July 1999 and therefore the principle behind these new requirements has not been tested in the newly composed Senate.)

The committee acknowledges that the regulations are yet to be finalised and that attempts are being made to reduce their negative impact. However, the committee also notes that, irrespective of when, and in what form, the regulations are finally implemented, the possibility remains that the regulations can be amended (to make them more onerous) at a later stage. Moreover, even if the regulations are disallowed by the Senate later this year, the statutory framework remains for regulations to be promulgated at some later time.<sup>69</sup>

Therefore, if Queensland does not want the new enrolment requirements to apply, the safest course of action is for the Queensland Parliament to amend Queensland's *Electoral Act* to retain enrolment criteria as they stood prior to the 1999 amendments to the *Commonwealth Electoral Act* (which are yet to commence).

If Queensland retained enrolment criteria as they stood prior to the October 1999 Commonwealth amendments, it would mean that, on the introduction of any regulations giving effect to the new provisions, either:

- the AEC would have to maintain an entirely separate Queensland roll (for state and local government purposes) given the different enrolment criteria; or
- Queensland would have to develop its own enrolment process and (re)establish a separate state electoral roll.

In relation to this first option, the AEC stated in its submission to this inquiry:

*If State 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 for their own purposes.*

*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 the ECQ and the AEC would have to be reviewed.<sup>70</sup>*

The committee's concerns about the propensity for the new enrolment requirements to effectively disenfranchise eligible voters are not allayed by the possibility of a joint, two-part enrolment form. The committee firmly believes that the deterrent effect of proof of identity and upgraded witnessing requirements for enrolment on the Commonwealth electoral roll

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<sup>69</sup> This is subject only to the *Acts Interpretation Act 1901* (Cth), s 49 which provides that a regulation of the same substance as a regulation disallowed shall not be made within six months after the date of disallowance other than in certain prescribed circumstances.

<sup>70</sup> Submission to the committee dated 30 November 1999 at paras 10.14-10.15.



will necessarily flow on to state enrolments. Enrolling to vote for state purposes will be inextricably linked to the federal requirements.

The alternative—that a separate enrolment card be developed for Queensland election purposes—will necessitate, as the AEC recognises, separate enrolment procedures for the Commonwealth and Queensland rolls.<sup>71</sup> The AEC's further observation that, if this does occur, the practicalities of the existing roll arrangements between the ECQ and the AEC would have to be reviewed, practically recognises adoption of the second option above, that is, Queensland keeping its own state electoral roll with enrolment criteria as they stood prior to the 1999 Commonwealth amendments.

This being said, the committee recognises that there are a number of additional considerations relating to the relative merits of a separate state electoral roll. These considerations are addressed below.

## **6.1 THE RELATIVE MERITS OF A SEPARATE STATE ELECTORAL ROLL**

### **6.1.1 State control of the electoral roll**

EARC recognised that one of the three arguments in support of a separate state electoral roll was based on the need to maintain state control over state functions, and to avoid conflict between state and Commonwealth priorities.<sup>72</sup>

This argument maintains relevance. As the discussion in this report so far reveals, the new enrolment requirements have been implemented by the Commonwealth Government and Parliament without sufficient consultation with the various states. As Professor Hughes submitted:

*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 ... the one argument of the original six [outlined by EARC in its joint roll report] that now supports the case for a separate State roll.<sup>73</sup>*

The Western Australian Electoral Commissioner, Dr Ken Evans, summarised other advantages/benefits of maintaining a separate state roll as opposed to a joint Commonwealth/state roll as:

- greater control and decision-making flexibility at election times over the printing of rolls and other roll related products (for example, street and town directories);

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<sup>71</sup> In a meeting between the committee and AEC officers on 15 February 2000, the AEC officers stated that if Queensland was not prepared to adopt the Commonwealth enrolment criteria two enrolment cards would be required: one for federal purposes and one for state and local government purposes. The AEC officers also stated that the AEC could process two cards but that this would be at considerable cost because it would involve double processing. See also the discussion on cost in section 6.1.2.

<sup>72</sup> EARC report, n 8 (1990) at para 7.3. The other arguments that EARC cited in support of retention of a separate state electoral roll—based on the need to support state systems and functions and the superiority of the state address-based computer system—are no longer relevant: See Professor Hughes' submission dated 13 December 1999 at 3.

<sup>73</sup> Submission dated 13 December 1999 at 4.

- easier modification of roll programs to produce required reports and to be more responsive to customer data needs;
- increased capacity to generate revenue for the state from the sale of roll-related products and services;
- greater capacity to develop election systems that correspond precisely to the state's requirements (for example, postal vote and general postal vote issuing);
- increased opportunity to apply new technology to roll-related processes, for example, at the next election the WAEC will trial marking electors names off electronic rolls in polling places that have traditionally taken numerous declaration votes—the electors will effectively be issued with an ordinary vote;
- increased potential for continuous roll updating (CRU) activities and data matching with state agency databases;
- easier to monitor AEC data entry standards and to apply quality control mechanisms to regulate incoming enrolment data; and
- the provision of roll data to other state government agencies for various purposes.

Dr Evans submitted that, overall, it is his view that the advantages of maintaining a separate state roll outweigh the disadvantages.<sup>74</sup>

### **6.1.2 Cost**

*The likelihood of increases to current joint roll arrangement costs*

During 1998/99, the Commonwealth/state joint roll arrangement cost Queensland \$1,368,527.12.<sup>75</sup>

The AEC has stated that it is aware that the new requirements will increase costs for enrolment activity, although it is difficult to make a firm assessment in this regard until 'final policy and regulations' are in place and until the provisions become operable.<sup>76</sup> Given the wide-ranging nature of the changes, presumably these costs will relate to staff training, information strategies to inform the public and AEC agents of the changes, and possibly additional staff.

In addition, the AEC has indicated that there will be financial costs associated with the engagement of AEC agents, presumably for receiving enrolment forms, checking proof of identity etc.<sup>77</sup> (Although, the committee's latest advice from the AEC is that it is attempting to draft the regulations in such a way as to obviate the need to rely on agents, despite the fact that the *Commonwealth Electoral Act* (as amended) allows the appointment of agents.)

Even if the Commonwealth pays for the immediate cost of the changes, the committee believes that the changes will inevitably mean an increase to Queensland's annual joint roll

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<sup>74</sup> Dr Evans saw the disadvantages of a state roll as being: a degree of duplication of enrolment processing; considerable investment in human resources, hardware and software to support a separate state roll; and potential confusion for electors caused by two rolls: submission dated 3 December 1999 at 3-4.

<sup>75</sup> This figure comprised arrangement costs of \$1,291,616.55; Electoral Council of Australia costs of \$11,669.00; and 'access and product costs' of \$65,241.57: Electoral Commission Queensland, *Annual Report 1998-99*, Brisbane, 1999 at 27.

<sup>76</sup> Senate Hansard, 8 February 2000, n 28 at 130. Although, the AEC has been reported as estimating that the cost to taxpayers of the new requirements is likely to be at least \$5 million in the first year of operation and an additional \$3.5 million for each year thereafter: Pryer W, 'Fewer teens tipped to vote under new law', *The West Australian*, 8 December 1999 at 44.

<sup>77</sup> Senate Hansard, 8 February 2000, n 28 at 131.

arrangement fees. The states and territories have received no guarantee from the Commonwealth to the contrary.

### *Costs associated with establishing a separate Queensland electoral roll*

As noted at the outset of this section, in the committee's opinion, the more feasible and practical alternative to the AEC processing separate federal and Queensland enrolment cards (presuming Queensland decides to keep enrolment criteria as they stood prior to the 1999 Commonwealth amendments) would be for Queensland to establish and maintain its own electoral roll. (In its meeting with AEC officers on 15 February 2000, the AEC officers acknowledged that the AEC could process the two cards but this would be at considerable cost because it would involve double processing.)

Should Queensland decide to establish and maintain its own electoral roll, Queensland would incur costs associated with:

- printing and distributing new state enrolment cards;
- establishing the necessary computer infrastructure; and
- maintaining the electoral roll (which might include costs of obtaining data from state departments and agencies and the AEC—see section 7 below).

EARC's joint roll report reveals that the average annual expenditure on roll maintenance in Queensland for the final three years of a separate roll (that is, 1987 to 1990) was \$1.84 million.<sup>78</sup> (Although the committee understands that this included significant costs associated with a habitation review conducted during that period.)

Thus, while the cost picture is inconclusive, it is possible that the cost difference between maintaining the current joint roll arrangement and establishing a separate state electoral roll may not be substantial.

### **6.1.3 Accuracy**

Concerns about the accuracy of both the then Queensland roll<sup>79</sup> and the then Commonwealth roll<sup>80</sup> were brought to EARC's attention in its 1990 joint roll review. While recognising that no electoral roll 'will ever be perfect', EARC concluded from its investigations and research that the Commonwealth roll, as administered by the AEC, offered '*significant advantages over the state roll on the criteria of integrity and accuracy*'.<sup>81</sup>

Of course, it is not now possible to compare relative accuracy of the two rolls. However, the committee discusses in section 7 of this report the implementation of continuous roll updating (CRU) in a bid to enhance roll keeping methods and to improve the accuracy of the AEC electoral roll. The committee also discusses in section 7 concerns that the Queensland Electoral Commissioner has expressed about the accuracy of the existing electoral roll from Queensland's perspective.

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<sup>78</sup> EARC report, n 8 (1990) at para 2.13. For some previous attempts to calculate the cost of roll maintenance see JSCem, n 11 at 110. The JSCem noted that at the time of its report (1992) the Commonwealth had recently requested the states to reimburse 50% of the direct costs of roll maintenance.

<sup>79</sup> EARC report, n 8 (1990) at paras 3.57-3.64.

<sup>80</sup> EARC report, n 8 (1990) at para 3.65. In particular, the Liberal Party (Queensland Division), which advocated retention of a separate state roll, raised a number of concerns regarding the AEC's roll maintenance.

<sup>81</sup> EARC report, n 8 (1990) at para 3.79.

Professor Hughes submitted 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 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.*<sup>82</sup>

The committee agrees that the sharing of data among the various Australian electoral commissions is most desirable in order to ensure the highest integrity of all electoral rolls. Indeed, even if Queensland were to establish its own separate electoral roll, the on-going sharing of information between the ECQ and the AEC in the interests of maintaining the highest standards of accuracy and integrity of both rolls would be imperative.

#### **6.1.4 Convenience**

The current joint roll arrangements mean that eligible electors can register for federal, state and local government elections by completing a single registration form available from the Internet, post offices and federal and state electoral offices.<sup>83</sup> As the AEC submitted to the committee: *'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'*.<sup>84</sup>

The creation of a separate state electoral roll with a separate state enrolment form will detract from the convenience offered by the single registration form. Moreover, it has the potential to cause confusion among members of the community as to whether they are enrolled to vote (on both rolls) and/or lead voters to enrol on one electoral roll but not the other.

Overcoming this inconvenience and confusion would require extensive education campaigns by electoral authorities. There would also need to be appropriate information sharing arrangements between the AEC and ECQ, for example, an agreement whereby each has on-line access to the others roll so that persons inquiring whether they are on the roll can be given an answer that relates to both rolls.<sup>85</sup>

## **6.2 COMMITTEE CONCLUSION AND RECOMMENDATION**

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'*.<sup>86</sup>

The committee believes that the Commonwealth's new enrolment requirements far from strike the appropriate balance. Therefore, the committee's position at this stage—preceding finalisation of the regulations and commencement of the relevant provisions—is that the new requirements should not flow on to apply in Queensland.

The new enrolment requirements are purportedly directed towards the reduction of electoral fraud. However, as noted earlier in this report, allegations of any substantial or widespread electoral fraud in Australia have been repeatedly discredited. The JSCEM majority report that

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<sup>82</sup> Submission dated 13 December 1999 at 1-2.

<sup>83</sup> This is feasible as virtually identical registration eligibility criteria exist across Australia at all levels of government.

<sup>84</sup> Submission dated 30 November 1999 at para 10.13.

<sup>85</sup> A point raised by Professor Hughes in his submission to the committee dated 13 December 1999 at 2.

<sup>86</sup> Note 8 at para 2.1.

led to the introduction of the new enrolment requirements itself conceded that it did not uncover substantiated evidence of electoral fraud, admitting: *'the Inquiry did not reveal improper enrolment of voting sufficient to affect any result at the election'*. Nor did the JSCEM majority refer to a litany of challenges to election results based on electoral fraud, something that one would expect to find if corrupt practices are endemic.

The committee appreciates that requiring proof of identity is necessary and acceptable in some circumstances. However, the committee believes that (on present indications) onerous proof of identity requirements as passed by the Commonwealth Parliament are not appropriate as a condition precedent to electoral enrolment. In this regard, the committee agrees with the following reasoning.

*The Australian community accepts proof of eligibility schemes in areas such as social security and other benefit programs, account opening, and in relation to TFNs. In all of these areas, however, the application of a proof of eligibility requirement serves to minimise loss of revenue to the community, particularly from such causes as tax evasion and benefit fraud. A proof of eligibility requirement in relation to electoral matters, whatever its other merits, does not itself have this advantage.*<sup>87</sup>

Moreover, the introduction of complicated enrolment requirements (particularly witnessing requirements) only increases the number of grounds on which an election result might be challenged.

The committee believes that, if electoral fraud is considered to be a real problem, then more effective strategies can be implemented to overcome such activity.

A better and more proportionate means of addressing electoral fraud might be to increase the penalties for existing electoral offences.<sup>88</sup> The Queensland National Party submitted to this inquiry that (substantial) penalties for electoral offences were as relevant to the inquiry as the issue of breach.<sup>89</sup> Although, as the JSCEM minority noted—in relation to the *Commonwealth Electoral Act*, s 342, which provides a penalty of \$1000 for not satisfying oneself in witnessing that the claims are true—that *'[o]ne really has to ask whether with the limited numbers of people now proposed as witnesses, there will be eagerness to attest, given the penalty if it is going to be operative'*.<sup>90</sup>

A second and more potent approach is enhanced continuous roll updating (CRU) with appropriate back-up and audit. The committee discusses CRU further in section 7.

For the reasons outlined in section 4, the only result the committee can see from the new requirements is the effective disenfranchisement of significant groups of the community through what, in most cases, will be inordinate inconvenience and, in some cases, might be a requirement to pay for the right to vote. This is anathema to fundamental concepts underlying our democratic system of government.

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<sup>87</sup> These were comments made by the Department of Social Security to the AEC: AEC submission, *Enrolment and voter identification*, n 42 para 6.2.1. The AEC went on to note DSS comments that the costs associated with administering their proof of identity policy are offset by savings realised from the prevention and detection of fraudulent claims.

<sup>88</sup> See, for example, the following provisions of the *Commonwealth Electoral Act 1918*: (a) s 344 (Forging or uttering electoral papers), penalty: \$1 000 or 6 months imprisonment or both; (b) s 339 (Other offences relating to ballot-papers etc) which makes it an offence to, among other things: make any false or misleading statement in an enrolment claim card, penalty—imprisonment for 6 months; impersonate anyone for the purposes of obtaining a ballot paper and voting, penalty—imprisonment for 6 months; voting more than once at the same election, penalty—10 penalty units; and (c) s 342 (Duty of witness to claim), penalty—\$ 1000.

<sup>89</sup> Submission dated 3 December 1999 at 1-2.

<sup>90</sup> The JSCEM minority went on to state, *'It is highly likely that many Australians would not know a designated person who could genuinely verify their identity and their place and duration of residence'*: JSCEM, n 29 at 120-121.

Enrolment should be cost-free to prospective electors. Just as electoral papers have always been free, so evidence for enrolment should not be a '*concealed charge on the franchise*'.<sup>91</sup>

Rather than new enrolment requirements such as the Commonwealth Parliament has passed the committee would prefer to see effort directed to increasing current enrolment levels by other means. (The committee canvasses in section 7 what some of these other means might be.) In other words, the committee is interested in pursuing avenues that achieve higher enrolment, not ones that will lessen it.

The whole incident of the Commonwealth amendments highlights the undesirability of Queensland, as an independent state, being subject to legislative changes that the Commonwealth Government and Parliament might unilaterally make affecting such a fundamental element of our system of government as the electoral franchise.

Having carefully considered the relative merits of a separate state electoral roll (as outlined above), the committee believes that, overall, it is highly *undesirable* for Queensland to establish a separate roll. (In particular, such an arrangement has the potential to lead to voters enrolling on only one electoral roll. Although, if there was a disparity, the committee suggests that the more onerous and complicated Commonwealth enrolment requirements would mean voters tended to enrol on the state roll rather than the Commonwealth roll.)

However, effective disenfranchisement on a wide scale—which the new requirements have the potential to bring—would force the committee to support the only real option of avoiding the Commonwealth changes to enrolment procedures by amending Queensland's *Electoral Act* to retain enrolment criteria as they stood prior to the 1999 amendments to the *Commonwealth Electoral Act* (which are yet to commence).

Based on the material currently available to it, the committee believes that in practical terms this would require Queensland to (re)establish a separate state electoral roll.<sup>92</sup> (If Queensland were to establish its own electoral roll, Queensland could explore the possibility of sharing set up and maintenance costs with other states and territories that are also not willing to adopt the new Commonwealth enrolment requirements and wish to establish their own electoral rolls.)

On 9 December 1999, the committee met with the Queensland Electoral Commissioner and discussed the possibility of establishing mechanisms to ensure that any potential voters disenfranchised by the new Commonwealth arrangements from 1 July 2000 (the then anticipated date of introduction of the new regulations) are captured on a Queensland electoral roll prior to the next state election. Subsequent to that meeting, and at the committee's request, the commissioner opened discussions with CITEC<sup>93</sup> regarding the development of a state based roll-keeping system. CITEC has reported that it is capable of establishing a state managed roll-keeping system should the Queensland Government decide to take this course of action.

(Both the committee and the Electoral Commissioner have kept the Queensland Attorney-General informed about the reasons for, and the progress of, discussions with CITEC.)

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<sup>91</sup> See Professor Hughes' submission dated 13 December 1999 at 10.

<sup>92</sup> The current joint roll arrangement between the Commonwealth and Queensland can be terminated by not less than 12 months written notice by either side or by mutual agreement. The arrangement also provides that upon termination: (a) the Commonwealth must provide Queensland with the database and copies of all necessary software to establish an independent state roll; and (b) the Commonwealth is deemed to have given Queensland the rights to use the database and programs without fee: clause 18.

<sup>93</sup> CITEC is a Queensland Government information technology services provider.

If Queensland is to establish its own state-based electoral roll, then a decision needs to be made as soon as possible to enable sufficient lead time for a state based roll-keeping system to be developed in time for the 2004 general state election.

Because of other implications for government—such as, the potential use of the electoral roll to enhance the provision of other government services such as fire and ambulance—the committee believes that CITEC would be the appropriate body to develop and maintain any state based roll-keeping system.

Establishing a separate state electoral roll would have the ramification of ensuring that local government elections, which are based on the state roll, likewise avoid the Commonwealth enrolment amendments. The state roll is also the basis of the jury roll.

### **Committee conclusion 1**

- 1.1 Based on current information, the committee understands that the Commonwealth Government intends to operationalise the October 1999 amendments to the *Commonwealth Electoral Act 1918*, s 98 (concerning proof of identity for first-time electors and the witnessing of claims for enrolment) by regulations which are yet to be finalised.**
- 1.2 The amendments to the *Commonwealth Electoral Act 1918* bringing in these new enrolment requirements were developed with little direct consultation with the relevant states with whom joint or other shared roll arrangements exist. This runs counter to the historically cooperative arrangements in place between the Commonwealth and the states with regard to respective roll maintenance and data exchange.**
- 1.3 The new enrolment requirements have the potential to effectively disenfranchise a significant number of eligible voters.**
- 1.4 This result would make it essential for Queensland to retain its enrolment criteria as they stood prior to the October 1999 Commonwealth amendments (which have not yet commenced). In practical terms, this would mean that Queensland should (re)establish a separate state electoral roll. This, in the committee's opinion, would be a necessary but undesirable outcome.**
- 1.5 If electoral fraud is a problem, it should be addressed through a cooperative approach between the Commonwealth and the states. Such cooperative approach might include an enhanced continuous roll updating system with appropriate back-up and audit.**
- 1.6 Rather than the new Commonwealth enrolment requirements, the committee would prefer to see measures in place to increase the quality of the electoral roll and level of enrolment via a cooperative approach between the Commonwealth and the states.**

### **Committee recommendation 1**

**The committee recommends that the Queensland Attorney-General—as the minister responsible for the *Electoral Act 1992* (Qld)—facilitate a meeting with the federal minister responsible for electoral matters in order to:**

- alert the federal minister to the above-mentioned conclusions of this multi-party committee; and**

- **foreshadow the possibility that, if the enfranchisement of Queenslanders is threatened, then Queensland will consider:**
  - (a) amending the *Electoral Act 1992* (Qld) to ensure enrolment criteria, as they stood prior to the October 1999 Commonwealth amendments (which have not yet commenced), are retained for state elections; and**
  - (b) (re)establishing its own electoral roll.**



## 7. INCREASING CURRENT ENROLMENT LEVELS

The committee noted in its conclusion in section 6 that it would prefer to see efforts directed at increasing current enrolment levels rather than the implementation of measures, such as the new Commonwealth enrolment requirements, which have the real potential to reduce overall enrolment numbers. The committee also stated in section 6 that if electoral fraud is considered to be a real problem requiring attention, then more effective strategies, such as CRU, can be implemented to combat such activities.

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).

Whether the Queensland electoral roll is kept pursuant to the current joint roll arrangement or whether Queensland establishes its own separate electoral roll, it appears to the committee that more could be done to ensure the accuracy of the electoral roll used for state electoral purposes. In this section, the committee raises for further discussion what steps could be undertaken in this regard.

### 7.1 ROLL MAINTENANCE ACTIVITIES BY THE AEC

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

In 1995, the then-named Australian Joint Roll Council (now the Electoral Council of Australia<sup>94</sup>) engaged consultants 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 periodic electoral roll reviews.

The CRU concept, used in other countries such as Canada and New Zealand, involves continuous roll maintenance using a variety of mechanisms such as marketing of enrolment at times other than electoral events, direct enrolment approaches including citizenship ceremonies, school and community visits etc, and matching roll records with information (particularly change of address information) recorded in databases of other government agencies ('data matching').<sup>95</sup>

Information gained from external sources using data matching techniques can be used either to: (i) automatically update an electoral roll (as occurs at the federal level in Canada); or (ii) trigger an electoral authority to make further inquiries as to the accuracy of details recorded for a particular elector. (The latter is the only option in Australia as the *Commonwealth Electoral Act* requires the AEC to receive an enrolment form before it can update the roll.<sup>96</sup>)

The AEC, under the oversight of the Electoral Council of Australia, is now in the process of implementing CRU nationally. On 14 February 2000, the Electoral Council of Australia released a report on the CRU program for 1999. In its report, the Council recommended that CRU activities implement the following operations: undertake follow up activities to improve

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<sup>94</sup> This council comprises of electoral commissioners and chief electoral officers from the Commonwealth, state and territory electoral authorities.

<sup>95</sup> For further information on CRU see the AEC's submission dated 30 November 1999 at paras 11.7-11.11.

<sup>96</sup> *Commonwealth Electoral Act 1918*, s 98.

responses to mailing; investigate differences in response rates between state and territories; further develop youth enrolment strategies; access other external national data sources; expand recording of responses to be more comprehensive; and co-ordinate mailing, recording of statistics and reporting of CRU costs between the Commonwealth, state and territories.<sup>97</sup>

The AEC advises that it meets regularly with the Federal Privacy Commissioner to discuss privacy concerns with data matching.

## **7.2 ROLL MAINTENANCE ACTIVITIES BY STATE ELECTORAL AUTHORITIES**

Various Australian state and territory electoral authorities currently engage in CRU activities and share data obtained from state government departments and agencies with the AEC.<sup>98</sup> Such cooperative arrangements are important tools in maintaining overall roll accuracy.

(As explained above, information gained from CRU activities by state electoral authorities is only used as a trigger to make further inquiries as to the accuracy of details recorded for a particular elector and not to automatically amend the roll as the AEC must receive an enrolment form before it can update the roll.)

For example, the Victorian Electoral Commission receives the names and addresses of new drivers' licence holders in the eighteen to twenty-one year old age group from VicRoads in order to send out enrolment forms to those not enrolled at their current address. The VEC has entered into a similar arrangement with an electricity supplier regarding customer requests for electricity connection. The Board of Studies of the Victorian Department of Education also provides the VEC with data concerning year 11 and 12 students which enables the VEC to write and encourage these students to enrol when they become eligible. Further, Victorian electors can initiate enrolment transactions on-line through the Victorian Government's Electronic Service Delivery arrangements (the *maxi* system).<sup>99</sup>

The Western Australian Electoral Commission has also initiated several projects aimed at using data generated or held by state government agencies for CRU purposes. These include a pilot project to use electronic data produced by the Department of Land Administration relating to property transactions to identify residential addresses where there has been a change in occupancy and discussions with the state Transport Department regarding data matching opportunities to seek change of address information and also details of drivers licence registrations by 17 and 18 year olds. The WAEC also proposes to trial this year an initiative which will involve paying schools \$2.00 for every completed electoral enrolment form leading to a valid enrolment.<sup>100</sup>

Queensland currently undertakes few CRU activities despite AEC efforts.<sup>101</sup>

The Queensland Electoral Commissioner suggests in his letter to the committee of 25 October 1999<sup>102</sup> that the accuracy of the roll could be 'greatly enhanced' by making the name, address and date of birth data held by various state government departments and agencies available to the ECQ.

The commissioner states that although the enrolment process to date has been simple and readily available, it is estimated that well over 100 000 eligible Queenslanders are not

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<sup>97</sup> Electoral Council of Australia, *Report of the 1999 continuous roll update activities to update the electoral roll for the commonwealth, state, territories and local government*, December 1999 at 6.

<sup>98</sup> As to state and territory CRU activities in 1999 see n 97 at 21.

<sup>99</sup> Victorian Electoral Commission, *Annual report 1 July 1998 to 30 June 1999*, Melbourne, 1999 at 21-22.

<sup>100</sup> WA Electoral Commissioner's submission to the committee dated 3 December 1999 at 1-2.

<sup>101</sup> Although, the AEC is currently negotiating with the Queensland Department of Transport to print an enrolment form on their change of address form: n 97 at 27.

<sup>102</sup> The history to this letter is explained in section 1.

enrolled. (Given that the average enrolment for each Queensland district in 1999 was 24 545, this equates to about four electorates.) The commissioner continues:

*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.*

(This suggestion is similar to that effected by the United States' *National Voter Registration Act 1993*,<sup>103</sup> widely known as 'motor voter', which provides that an application for, or renewal of, a driver's licence serves as an application for voter registration unless the applicant does not sign the voter registration application portion of the form.)

Hence, the commissioner recommends that Queensland's *Electoral Act* be amended to enable the ECQ to obtain name, address and date of birth data from state government departments and agencies for a '*price that reasonably reflects the cost of producing a copy of the data*'. (Under the current joint roll arrangement the ECQ would pass this data on to the AEC. The AEC could then use this data to verify whether the roll needs updating.)

In its background paper the committee raised for discussion in this regard:

- whether the ECQ should develop a computer system which is integrated with the electronic systems of certain state departments and agencies, that is, some form of 'data matching';
- if 'data matching' is introduced, how that data should 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 or, 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 enrol' forms);
- what privacy concerns data matching raises in this context and how these concerns might be addressed especially given that Queensland does not have a privacy regime equivalent to that at the Commonwealth level;
- what balance needs to be achieved between the right to privacy and the right to vote and which roll updating methods best achieve this balance; and
- what additional/alternative mechanisms and inducements can be used to update the electoral roll (for example, applying for a driver's licence or an 18+ card could cause simultaneous enrolment).

A number of submitters supported the initiative of improving the accuracy of the electoral roll by using data gained from state government databases.<sup>104</sup> Although, there was some concern that the electoral roll should not be *automatically* updated on the basis of this information<sup>105</sup> and that appropriate privacy safeguards be put in place.<sup>106</sup>

On the other hand, the Queensland Law Society opposed CRU (by data matching material from state and federal government agencies), considering it '*indistinguishable from the ill-*

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<sup>103</sup> *National Voter Registration Act 1993* 42 USC Sec 1973 gg.

<sup>104</sup> Paul Lucas MLA, submission dated 1 December 1999 at 2; Cairns City Council, submission dated 3 December 1999 at 2.

<sup>105</sup> Deputy Leader of the Opposition, Laurence Springborg MLA, supplementary submission dated 8 February 2000 at 1-2; H S Chapman Society, submission received 9 December 1999 at 2.

<sup>106</sup> See, for example, R Webber, submission dated 12 November 1999 at 3. Although on this point the HS Chapman Society submitted that '*those who would be most concerned about privacy would be those who had enrolled for social security or false identities or non-citizens who wrongly claimed to be citizens*': submission received 9 December 1999 at 2.

fated *Australia Card proposal which drew widespread community opposition*'.<sup>107</sup> Mr R Sadler<sup>108</sup> suggested that the process '*could be the start of "Big Brother"*'.

There was also support for other CRU mechanisms suggested by the committee in its background paper. Hon Ray Hollis MLA,<sup>109</sup> Speaker of the Legislative Assembly of Queensland, strongly supported information provided by applicants for a driver's licence '*being automatically treated as an electoral enrolment*' and, in light of enrolment being compulsory, questioned why this should only occur "*with the person's consent*". Cairns City Council<sup>110</sup> submitted that completing an enrolment form '*is a good suggestion to pursue as a precondition to applying for a driver's licence*'.

However, the QLS<sup>111</sup> submitted that it would be opposed to '*the creation of electoral compliance as a prerequisite to participation in other aspects of society eg as a prerequisite to entitlement to a driver's licence*'.

Mr R Webber<sup>112</sup> submitted that, if the suggestion that driver's licence data be utilised for enrolment purposes is rejected by privacy advocates, Education Queensland should nevertheless provide education seminars for year 12 students encouraging them to enrol and/or provide year 12 students' mailing details to the ECQ so the Commission can mail them enrolment packages. Mr Paul Lucas MLA<sup>113</sup> additionally suggested that a provision be placed in the *Electoral Act* requiring school principals to take all best efforts to ensure that all 17 year old students at their schools are placed on the electoral roll before they complete the year of schooling.

The committee is keen to ensure that the electoral roll used for state electoral purposes is of the highest accuracy and integrity (that is, regardless of whether it is kept pursuant to current arrangements or whether Queensland establishes its own separate state electoral roll). The use of modern technology offers the opportunity to ensure that this aim is achieved. By the same token, the committee recognises that where data is obtained from other agencies appropriate privacy safeguards must be in place. In this regard, the committee recognises that Queensland does not have privacy legislation equivalent to that at the Commonwealth level.<sup>114</sup>

In recommending that the AEC conduct a study regarding a number of options for the expanded matching of enrolment data (including requirements for legislative amendment),<sup>115</sup> the JSCEM majority acknowledged that Commonwealth privacy legislation '*rightly places considerable restrictions on data-matching exercises*'.<sup>116</sup> The JSCEM minority report also highlighted privacy issues emanating from the recommendation.<sup>117</sup>

There must also be strict guidelines on the use of data obtained from various sources to ensure that the integrity of the electoral roll is not compromised. For example, there are many reasons why a telephone or electricity account might be in the name of a person who does not reside at the address to which the account relates. It would therefore be unacceptable to

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<sup>107</sup> Submission dated 23 November 1999 at 2.

<sup>108</sup> Submission dated 12 November 1999 at 2.

<sup>109</sup> Submission dated 25 November 1999.

<sup>110</sup> Submission dated 3 December 1999.

<sup>111</sup> Submission dated 23 November 1999.

<sup>112</sup> Submission dated 12 November 1999.

<sup>113</sup> Submission dated 1 December 1999 at 3.

<sup>114</sup> The former LCARC recommended that Queensland introduce legislation regarding the protection of information privacy in Queensland's public sector: *Privacy in Queensland*, GoPrint, Brisbane, April 1998. Those recommendations have not been implemented to date.

<sup>115</sup> See recommendation 4 reproduced in section 3.3.1 above.

<sup>116</sup> JSCEM, n 29 at para 2.27.

<sup>117</sup> JSCEM, n 29 at 122.

change details on the electoral roll simply because of information contained in such utility records.

This is not to suggest that data matching is the only form of CRU which can be used in Queensland. As noted, other CRU alternatives include inducements to enrol and direct approaches to schools etc. Arguably, many of these other CRU activities are potentially more cost effective and privacy unobtrusive than data matching.

The committee has not reached a final position on all of the issues associated with the use of data from state departments and agencies to enhance the accuracy of the roll (be it the joint roll or a separate state roll). Nor has the committee reached a final position on other methods of CRU that Queensland might introduce.

### **7.3 COMMITTEE CONCLUSION**

#### **Committee conclusion 2**

**The committee concludes that there is substantial scope for the Commonwealth and the states to enter into cooperative information sharing arrangements which could not only enhance the accuracy of the electoral roll and increase the level of enrolment but also minimise the prospect of any attempts at electoral fraud.**

**The committee is still considering the form that laws and practices in this regard should take.**

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## **APPENDIX A: SUBMISSIONS RECEIVED**

- 1 Confidential
- 2 Webber, Mr R
- 3 Sadler, Mr R
- 4 Redland Shire Council
- 5 Maryborough City Council
- 6 Walker, Mr E
- 7 Speaker – Queensland Parliament (Hon R Hollis MLA)
- 8 Criminal Law Committee, Queensland Law Society Inc.
- 9 Australian Electoral Commission
- 10 State Electoral Office, South Australia
- 11 Wakely, Mr J
- 12 Macklin, Dr M
- 13 Cairns City Council
- 14 Western Australian Electoral Commission
- 15 MacAdam, Mr A
- 16 National Party, Queensland (Mr L Springborg MLA)
- 17 Lucas, Mr P MLA
- 18 Australian Labor Party
- 19 McGrath, Dr A (H S Chapman Society)
- 20 Hughes, Professor C
- 21 Maroochy Shire Council
- 22 Kingaroy Shire Council