LEGISLATIVE ASSEMBLY OF QUEENSLAND

LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

Issues of Queensland electoral reform arising from the 1998 State election and amendments to the *Commonwealth Electoral Act 1918*

May 2000

Report No 23

LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

REPORTS

	REPORTS	DATE TABLED
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 *Report of the Strategic Review of the Queensland Ombudsman* (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
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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
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21.	Meeting with the Queensland Ombudsman (Parliamentary Commissioner for Administrative Investigations) regarding the Ombudsman's *Annual Report to Parliament 1998 – 1999*	19 April 2000
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Privacy in Queensland (Issues paper)	4 June 1997
The preservation and enhancement of individuals' rights and freedoms: Should Queensland adopt a bill of rights? (Issues paper)	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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Review of the Queensland Constitutional Review Commission's recommendations relating to a consolidation of the Queensland Constitution (Position paper)	27 April 2000

COMMITTEE CONTACT DETAILS

Copies of this report and other Legal, Constitutional and Administrative Review Committee publications are available on the Internet via the Queensland Parliament's home page at: <**http://www.parliament.qld.gov.au/committees/legalrev.htm**>.

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LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

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The committee also thanks Ms Sarah Lim of the Parliamentary Service for her assistance in the preparation of this report.

Mr Warren Pitt MLA was appointed to the committee by resolution of the Legislative Assembly of 29 February 2000 replacing Mr Geoff Wilson MLA.

* Dr Peter Prenzler MLA was appointed to the committee by resolution of the Legislative Assembly of 11 November 1998 replacing Mr Charles Rappolt MLA whose resignation from Parliament was received by the Speaker of the Legislative Assembly on 4 November 1998.

CHAIR'S FOREWORD

This report is the final report on the committee's inquiry into certain issues of Queensland electoral reform. The purpose of the committee's inquiry was to consider a number of matters raised by the Queensland Electoral Commissioner ('the commissioner') as a result of the conduct of the 1998 State election, and recent amendments to the *Commonwealth Electoral Act 1918* (Cth). The commissioner initially raised these matters in a memorandum to Queensland's Attorney-General, and subsequently in a letter to the committee dated 25 October 1999.

During its inquiry, the committee considered that one issue—concerning the new enrolment requirements brought about by 1999 amendments to the *Commonwealth Electoral Act*—was sufficiently pressing to warrant Parliament's immediate attention. Accordingly, the committee reported on this issue, in report no. 19 *Implications of the new Commonwealth enrolment requirements,* prior to finalising its report in relation to the other issues. This report has received much attention in all Australian jurisdictions. The regulations to implement the new Commonwealth enrolment requirements are yet to be introduced in the Commonwealth Parliament.

The committee now presents its final report in relation to the remaining issues raised by the commissioner in his October 1999 letter. Primarily, these issues and resulting recommendations are aimed at improving the conduct and administration of elections.

The committee trusts that its recommendations will, if amending legislation is introduced and passed prior to the next general State election, improve the practical operation of Queensland's electoral system.

On behalf of the committee, I thank those who have assisted with the preparation of this report, namely: submitters for their valuable contribution; 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

SUMMARY OF RECOMMENDATIONS

The committee recommends that the Attorney-General—as the minister responsible for the *Electoral Act 1992* (Qld)—amend that Act to provide that where:

- a member represents an electoral district (the 'former electoral district'); and
- following a State electoral redistribution, the member is contesting an electoral district that contains an enrolment of 50% or more of the electors of the former electoral district;

the member is entitled to be enrolled for the electoral district they are contesting.

The committee recommends that the Attorney-General—as the minister responsible for the *Electoral Act 1992* (Qld)—amend that Act to provide that where a candidate (or his or her personal representative) is eligible for return of a nomination deposit in accordance with s 85(3) or (4) of the Act then:

- if the candidate was nominated under s 84(1)(a) of the Act and the deposit was paid by a person other than the candidate, the deposit must be returned to the person who paid it, or to a person authorised in writing by the person who paid it; and
- in all other cases, the deposit must be returned to the candidate, or to a person authorised in writing by the candidate.

The committee recommends that the Attorney-General—as the minister responsible for the *Electoral Act 1992* (Qld)—amend that Act to provide that:

- the Electoral Commission of Queensland may require the officer visiting a declared institution under s 94 of the Act to present how-to-vote material to a declared institution elector and present the material in a particular way; and
- the officer is required to comply with any such requirement.

This new provision should include the same example as that provided for s 111(5) of the Act.

The committee recommends that the Attorney-General—as the minister responsible for the *Electoral Act 1992* (Qld)—amend that Act to authorise mobile polling team leaders to re-schedule mobile polling times and places when circumstances demand. In such event, the relevant officer should be required to:

- take such steps as are practicable and appropriate to give public notice of the substituted place, day or time; and

- inform the relevant district returning officer.

The committee further recommends that the *Electoral Act* specifically provide that any failure by a mobile polling team to make a visit in accordance with the mobile polling provisions does not invalidate the result of the election.

Section 227(6) and (7) of the *Commonwealth Electoral Act 1918* appear to provide an appropriate legislative precedent on which to model equivalent Queensland provisions.

The committee recommends that the Attorney-General—as the minister responsible for the *Electoral Act 1992* (Qld)—amend that Act to give the Electoral Commission of Queensland the discretion to vary the six metre from the entrance requirement in s 166 of the Act in relation to pre-poll voting only.

The committee recommends that the Attorney-General—as the minister responsible for the *Electoral Act 1992* (Qld)—amend that Act to make the registration criteria concerning 'special postal voters' consistent with the criteria prescribed by the *Commonwealth Electoral Act 1918* (Cth) regarding 'general postal voters'.

The committee further recommends that transitional provision be made to ensure all existing Queensland 'special postal voters' who live between 15 and 20 kilometres from a polling booth remain registered as special postal voters for Queensland elections (until such time as they cease to be enrolled at their current address).

The committee recommends that the Attorney-General—as the minister responsible for the *Electoral Act 1992* (Qld)—introduce amending legislation necessary to ensure that:

- the appropriate Magistrates Court in which to commence proceedings for failure to vote is clear; and

- a court in which proceedings for failure to vote have been commenced can adjourn the hearing to another place in Queensland where it appears that the hearing would more conveniently take place in that other place. The court should be able to adjourn the hearing on its own motion or upon the submission of the complainant or defendant made in writing to, or by appearance before, the court.

The committee recommends that the Attorney-General—as the minister responsible for the *Electoral Act 1992* (Qld)—amend that Act to include a definition of 'publish' for the purposes of s 163(2) of the Act to make it clear that the term includes the act of disseminating material on the Internet that is accessible by persons in Queensland.

The committee further recommends the Electoral Commission of Queensland consider obtaining advice from the Crown Solicitor regarding the impact of the Internet on the possible application of the other offence provisions in the Act. The committee would be willing to consider any suggestions for legislative reform as a result of that advice.

The committee recommends that the Attorney-General—as the minister responsible for the *Electoral Act 1992* (Qld)—amend that Act to:

- increase the prescribed amount for the purposes of s 314AC(2) of the schedule of the Act from $500 to $1500;
- amend those provisions of the Act and the *Electoral Regulation 1992* (Qld) which require political parties to categorise receipts and expenditure in their annual returns in order to ensure consistency with the equivalent requirements regarding the detailing of receipts and expenditure in annual returns prescribed by the *Commonwealth Electoral Act 1918* (Cth);
- insert an equivalent provision to the *Commonwealth Electoral Act*, s 305B (Donations to political parties);
- insert equivalent provisions to the *Commonwealth Electoral Act*, s 310 (Returns by broadcasters) and s 311 (Returns by publishers);
- insert 'loan' in the definition of 'amount' in s 314AA of the schedule to the Act;
- insert an equivalent provision to the *Commonwealth Electoral Act*, s 306A (Certain loans not to be received); and
- omit paragraph (b) of the definition of 'associated entity' in s 287 of the schedule to the Act and instead insert:

  (b) operates wholly or to a significant extent for the benefit of one or more registered political parties.

The committee notes that implementation of a number of these recommendations might require additional, consequential amendments to the *Electoral Act*.

The committee supports, in-principle, the concept of continuous roll updating (CRU) as a means of ensuring that electoral rolls are of the highest accuracy and integrity, provided that data obtained from CRU activities is used only to trigger the relevant electoral authority to make further inquiries as to the accuracy of details recorded for a particular elector and not to automatically change details on the electoral roll.

To facilitate 'data matching' as a form of CRU, the committee recommends that the Attorney-General—as the minister responsible for the *Electoral Act 1992* (Qld)—amend that Act so as to enable the Electoral Commission of Queensland 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 that data.

This recommendation is subject to:

- the proviso that, prior to the introduction of data matching, appropriate provision is made either in the *Electoral Act*, or in privacy legislation which might be introduced in Queensland, to ensure the protection of individuals' privacy and additionally, in the case of silent electors, their safety. This should include privacy principles relating to the use, collection, storage and disclosure of data for electoral roll maintenance purposes; and

- the committee's satisfaction with the draft legislation providing for this privacy protection.

The committee also urges the Electoral Commission of Queensland to liaise with the Australian Electoral Commission regarding expansion of the AEC's current arrangement with Queensland Transport whereby an enrolment form is printed on Queensland Transport change of address forms. In particular, the committee suggests that an application for, or renewal of, a driver's licence, 18+ card and other like cards should also serve as an application for enrolment if the applicant signs and has duly witnessed a voter enrolment application portion of the form.

The committee recommends that the Ministers responsible for the following Acts amend those Acts (and relevant regulations) to replicate, where appropriate, the committee's recommendations made in this report in:

- the *Local Government Act 1993* (Qld);

- the *Community Services (Aborigines) Act 1984* (Qld) and the *Community Services (Torres Strait) Act 1984* (Qld); and

- the *Referendums Acts 1997* (Qld).

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1. INTRODUCTION

The Legal, Constitutional and Administrative Review Committee ('the committee' or 'LCARC') is established under the *Parliamentary Committees Act 1995* (Qld). The committee has four statutory areas of responsibility, namely, administrative review reform, constitutional reform, electoral reform, and legal reform.

On 28 October 1999, the committee resolved to undertake an inquiry into certain issues of electoral reform. Most of the issues emanate 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.[1])

Broadly, the 11 issues the commissioner raise 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*[2]—concerning:
  - electoral enrolment requirements;
  - 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.[3]

The committee received 25 submissions to its inquiry. The committee tabled the majority of these submissions in the Queensland Parliament on 23 December 1999 and subsequently wrote to all submitters to that date 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 **Appendix A**—can be viewed at the Bills and Papers Office, Parliament House, Brisbane.)

On 2 March 2000, the committee reported to the Legislative Assembly on one of the issues raised by the commissioner in his October 1999 letter (issue 10).[4] The committee considered that this issue—concerning the new electoral enrolment requirements brought about by the 1999 amendments to the *Commonwealth Electoral Act*—was sufficiently pressing to warrant Parliament's immediate attention.

In particular, the committee reported its concern that the new Commonwealth enrolment requirements have the potential to effectively disenfranchise a significant number of eligible voters and recommended that the Queensland Attorney-General—as the minister responsible

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

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

3 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>.

4 Legal, Constitutional and Administrative Review Committee ('LCARC'), *Implications of the new Commonwealth enrolment requirements*, report no 19, GoPrint, March 2000. The report is available at: <http://www.parliament.qld.gov.au/comdocs/legalrev/lcar019.pdf>.

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 conclusion made by the committee in its report; and
- foreshadow the possibility that, if the enfranchisement of Queenslanders is threatened (by the new requirements), 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.

In its March 2000 report, the committee also discussed, on an interim basis, a further issue the commissioner raised in his letter, namely, the maintenance of electoral rolls (issue 11).

In this report, the committee finalises its consideration of the remaining issues raised by the commissioner in his October 1999 letter. These issues concern:

- the electoral district for which members may enrol (issue 1);
- the return of deposits to accompany nominations (issue 2);
- the distribution of voting material (how-to-vote cards) in declared institutions (issue 3);
- the Electoral Commission of Queensland's authority to re-schedule mobile polling (issue 4);
- canvassing in or near polling places in the case of pre-poll voting (issue 5);
- registration criteria for 'special postal voters' (issue 6);
- certain aspects of the 'non-voter' process (issue 7);
- the impact of the Internet on the offence created by s 163(2) of the *Electoral Act* (Misleading voters) (issue 8);
- certain aspects of the election funding and financial disclosure provisions (issue 9); and
- maintenance of electoral rolls (issue 11).

2. ELECTORAL DISTRICT FOR WHICH MEMBERS MAY ENROL (ISSUE 1)

2.1 THE COMMISSIONER'S COMMENTS

Section 64(3) of Queensland's *Electoral Act 1992* ('the Act') entitles a member of the Legislative Assembly to be enrolled for the electoral district that the member represents rather than the district in which the member lives.

A redistribution of State electoral boundaries was completed in June 1999. The commissioner points out that consequent changes to all electoral boundaries (irrespective of whether the name of a particular electoral district itself has changed as a result of the redistribution) means that, at the time of the next general State election, members will only be entitled to be enrolled for the electoral district in which they live. This arises because existing members will not 'represent' the new electorates.

The commissioner comments that this situation does not cause the Electoral Commission of Queensland ('the ECQ') any difficulties or concerns but submits for consideration that some members may be perturbed by not being enrolled for the district they are contesting.

2.2 COMMENTS MADE IN PUBLIC SUBMISSIONS

A number of submitters who commented on this issue stated that members should only be entitled to be enrolled in the electoral district in which they live.[5]

The National Party (Queensland)[6] accepted that the creation of new electoral boundaries presents a 'one off' situation but proposed that an existing member should appear on the roll for the seat they are contesting, whether or not they physically live in that particular electorate, if the new seat contains an enrolment of 50% or more from the seat the member represented after the 1998 State election. This proposal is based on the notion that '*Members in this situation should be considered an existing representative for the area and therefore appear on the electoral roll for that particular seat'*.

2.3 COMMITTEE ANALYSIS AND CONCLUSION

Like Queensland, the electoral legislation of the Commonwealth and a number of other states and territories specifically provides that members of Parliament can be enrolled for the electoral district they represent (rather than the district in which they live).[7]

Only one Australian jurisdiction seems to make provision for the situation which currently exists in Queensland. Section 17(4) of the Western Australian *Electoral Act* provides:

> *A member-*
>
> *(a) of the Council and his spouse may claim to be enrolled for a district or sub-district that forms part of the region which that member represents; and*
>
> *(b) of the Assembly and his spouse may claim to be enrolled for the district which that member represents,*

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5 See, for example, submissions from: Mr R Webber dated 12 November 1999; Mr E Walker dated 23 November 1999; Cairns City Council dated 3 December 1999.

6 Submission dated 3 December 1999 made on behalf of the National Party by Mr L Springborg MLA.

7 See, for example, the *Commonwealth Electoral Act 1918* (Cth), s 99(4). *Electoral Act 1907* (WA), s 17(4); *Electoral Act 1985* (Tas), s 22(7) and (8); *Northern Territory Electoral Act 1995* (NT), s 28(2). Some of these Acts even provide that members' spouses may enrol in the district which the member represents.

and when so enrolled shall be deemed to live in that region or district and if-

(c) that region or district is wholly or partly included, pursuant to the provisions of any Act, in another region or district, however named, that member and his spouse may claim to be enrolled as an elector in respect of that other region or district; and

(d) that member is a candidate for election in respect of that other region or district, he and his spouse may, while they are enrolled therefor, vote at the general election next following the inclusion of the region or district in another region or district and while so enrolled and while the member is such a candidate they shall be deemed to live in that other region or district.

The situation which the commissioner brings to the committee's attention will only arise infrequently, that is, following a redistribution of State electoral boundaries. Moreover, not all members will be affected. Only those members who, following a redistribution, do not live in the electoral district they are contesting will be unable to enrol for the district they are contesting.

Nevertheless, the committee considers that it would be consistent with the policy reflected in s 64(3) for the *Electoral Act* to also provide for the situation where new electoral boundaries are created. More specifically, the committee supports the suggestion put forward by the National Party (Queensland), namely, an existing member should be entitled to be enrolled for the district they are contesting, whether or not they physically live in that district, if the new district contains an enrolment of 50% or more of the electors the member represented following the previous State election.

2.4 COMMITTEE RECOMMENDATION 1

The committee recommends that the Attorney-General—as the minister responsible for the *Electoral Act 1992* (Qld)—amend that Act to provide that where:

- **a member represents an electoral district (the 'former electoral district'); and**
- **following a State electoral redistribution, the member is contesting an electoral district that contains an enrolment of 50% or more of the electors of the former electoral district;**

the member is entitled to be enrolled for the electoral district they are contesting.

3. DEPOSIT TO ACCOMPANY NOMINATION (ISSUE 2)

3.1 THE COMMISSIONER'S COMMENTS

The second issue the commissioner raises concerns a particular aspect of the statutory process for nominating candidates for election. Section 85(1) of the *Electoral Act* requires a candidate (or another person on the candidate's behalf) to pay a nomination deposit (currently $250) at the same time as a nomination is given to the ECQ.

The commissioner points out that most candidates are nominated by the registered political party to which they belong and that nomination deposits are paid concurrently with the nomination by the party concerned. [Section 84(1)(a) enables the registered officer of a registered political party that has endorsed a candidate for the election to nominate a candidate.] However, s 85(4) provides that, where a candidate is eligible for the return of a nomination deposit, the deposit must be returned to the candidate. This effectively prohibits the ECQ returning a nomination deposit to any person or organisation other than the candidate, irrespective of who paid it.

The commissioner recommends that s 85 be amended to enable nomination deposits to be refunded to registered political parties in respect of endorsed candidates. The commissioner supports this recommendation with the statement that: '*Representations by registered political parties support the view that it is simpler and more satisfactory for all concerned if the Commission refunds to the parties the nomination fees paid to the Commission by the parties*'.

3.2 COMMENTS MADE IN PUBLIC SUBMISSIONS

All submitters who commented on this proposal supported the commissioner's suggestion.[8] The South Australian State Electoral Office indicated that such a provision is administratively efficient in that it allows '*deposits lodged in bulk by party officers to be returned to same if that authorisation has been given*'.[9]

3.3 COMMITTEE ANALYSIS AND CONCLUSION

Section 167(3) of the *Commonwealth Electoral Act* enables the registered officer of a registered political party in a state or territory to make a bulk nomination of all candidates for election to the House of Representatives from that political party for that state or territory. In practice, this means that a bulk nomination deposit is paid by the registered officer to cover all candidates so nominated.

Where a candidate is entitled to have their deposit refunded following a House of Representatives election, s 173(2) provides that the nomination deposit must be returned to the person who paid it (usually the registered officer of a political party) or to a person authorised in writing by the person who paid it. The Australian Electoral Commission ('the AEC') has recently commented that this process for the House of Representatives works well

8 See, for example, submissions from: Mr R Webber dated 12 November 1999; Mr R Sadler dated 12 November 1999; Mr E Walker dated 23 November 1999; Dr M Macklin dated 3 December 1999; Cairns City Council dated 3 December 1999. Dr Macklin also suggested another reform to the provisions regarding nomination of candidates. As this suggestion does not fall within the terms of reference of the committee's current inquiry, the committee has noted but not considered this suggestion as part of this inquiry.

9 Submission dated 29 November 1999.

in practice and has recommended that a similar process for the return of nomination deposits be applied with respect to Senate groups.[10]

In the case of candidates not nominated under s 167(3), the nomination deposit must be returned to the candidate or to a person authorised in writing by the candidate.[11]

The electoral legislation of most other Australian jurisdictions empowers the relevant electoral authority to return nomination deposits to the candidate or to some person authorised (in writing) by the candidate.[12]

The commissioner recommends that s 85 of Queensland's *Electoral Act* be amended to enable nomination deposits to be returned to *registered political parties* in respect of their endorsed candidates. The committee believes that this practical suggestion aimed at ensuring administrative efficiency should be adopted. In addition, the committee believes that, in the case of candidates not nominated by the registered officer of a registered political party, provision should be made for nomination deposits to be returned to a person authorised in writing by the candidate.

3.4 COMMITTEE RECOMMENDATION 2

The committee recommends that the Attorney-General—as the minister responsible for the *Electoral Act 1992* (Qld)—amend that Act to provide that where a candidate (or his or her personal representative) is eligible for return of a nomination deposit in accordance with s 85(3) or (4) of the Act then:

- **if the candidate was nominated under s 84(1)(a) of the Act and the deposit was paid by a person other than the candidate, the deposit must be returned to the person who paid it, or to a person authorised in writing by the person who paid it; and**
- **in all other cases, the deposit must be returned to the candidate, or to a person authorised in writing by the candidate.**

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10 Australian Electoral Committee ('AEC') submission to the Joint Standing Committee on Electoral Matters' ('JSCEM') inquiry into the 1998 federal election, *The conduct of the 1998 federal election*, 12 March 1999 at para 5.6 (available at: <http://www.aec.gov.au/committee/98election.pdf>).

11 *Commonwealth Electoral Act 1918* (Cth), s 173(3).

12 *Parliamentary Electorates and Elections Act 1912* (NSW), s 79(7A); *Electoral Act 1985* (SA), s 57(1); *Electoral Act 1985* (Tas), s 92(2); *Northern Territory Electoral Act 1995* (NT), s 37.

4. VOTING MATERIAL (HOW-TO-VOTE CARDS) IN DECLARED INSTITUTIONS (ISSUE 3)

4.1 THE COMMISSIONER'S COMMENTS

Section 94(4) of the *Electoral Act* enables the ECQ to declare institutions (particular nursing homes, hospitals etc) as mobile polling booths thereby enabling the residents to vote at a predetermined time between 11 days before polling day and 6 pm on polling day.

The commissioner advises that the process works very well except for arguments which arise at every election in relation to the distribution of how-to-vote material:

> *For example, after every election allegations are made to the effect that persons in charge of institutions secretly only distribute the voting material of the party of their own political persuasion. As the institutions are gazetted polling booths, party workers cannot distribute how-to-vote material on the premises whilst voting is taking place and therefore, must arrange for such material to be delivered to the institutions prior to the voting period.*
>
> *A further difficulty arises in that many residents of declared institutions are not enrolled for the electoral district in which the institution is located and accordingly, local how-to-vote material is of no assistance to the elector.*

The commissioner recommends that the Act should be amended to adopt a similar provision to s 226(2A) of the *Commonwealth Electoral Act*, which allows polling officials to make available how-to-vote material to voters in declared institutions. This, the commissioner notes '*would mean polling officials carrying how-to-vote material when visiting institutions for vote taking'*.

4.2 COMMENTS MADE IN PUBLIC SUBMISSIONS

The majority of submitters who addressed this proposal agreed with the commissioner's recommendation for reasons including: responsibility for the distribution of material would be taken off the institutions;[13] it is a right of every citizen to receive electoral information prior to recording their vote;[14] the proposal would help resolve an issue where some candidates feel that electors at mobile polling booths are not being given the opportunity to peruse how-to-vote material for all candidates;[15] and the proposal will ensure fairness of campaigning in declared institutions and, importantly, enable residents of declared institutions to receive how-to-vote material where they are enrolled for a different electoral district.[16]

However, one submitter did not favour the suggestion that polling officials be responsible for the distribution of how-to-vote material, claiming that '*officials should not be put in a position where they could be accused of 'preferential loss' of candidates they did not want to be elected*'.[17]

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13 Redland Shire Council, submission dated 22 November 1999.
14 Dr Macklin, submission dated 3 December 1999.
15 Cairns City Council, submission dated 3 December 1999.
16 Mr Paul Lucas MLA, submission dated 1 December 1999.
17 Mr R Sadler, submission dated 12 November 1999.

4.3 COMMITTEE ANALYSIS AND CONCLUSION

Section 226(2) of the *Commonwealth Electoral Act* provides that literature relating to an election or political parties (including how-to-vote cards) may be supplied to the general office of certain hospitals which are polling places.[18] Any literature so supplied is required to be made available to patients (who are electors) on request. Further, s 226(2A) of the Act requires electoral officials to advise patients that literature relating to the election supplied by candidates or political parties is available and to provide a patient with any such literature they request.[19]

Thus, at the Commonwealth level the onus remains on the parties and candidates to provide election literature to the hospitals. Electoral officials are not formally required to take electoral material such as how-to-vote cards when visiting hospitals for vote taking.[20] The only statutory responsibility on electoral officials is to advise patients that election literature is available and to make it available on request. Placing the responsibility for distribution of electoral material on electoral officials attempts to overcome allegations that hospital staff might be selective in their distribution of material.

An alternative procedure aimed at overcoming the same mischief is that used in South Australia. The SA State Electoral Office issues pre-poll vote issuing officers with books of how-to-vote cards which the officers take to institutions declared to be polling booths. Candidates who wish to have their how-to-vote material included in these books (and in posters prepared for display in polling booths) are required to lodge their how-to-vote cards with the Electoral Commissioner not later than four days after the day for nomination.[21] The committee understands that, in practice, nearly all how-to-vote cards are lodged with the SA State Electoral Office.

The SA State Electoral Office advises that this process '*allows an elector voting in person to sight officially approved how-to-vote material, provided the material was submitted prior to printing deadlines*'.[22] In other words, the electoral authority is responsible for making how-to-vote material available to assist electors in declared institutions.[23] Such material is carried with electoral officials to declared institutions.

The South Australian model essentially relies upon a system of voluntary registration of how-to-vote cards for how-to-vote poster and other purposes. This committee has previously recommended against:

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18 The relevant hospitals are those to which the *Commonwealth Electoral Act 1918* (Cth), ss 224 or 225 applies. 'Hospital' is defined to include a convalescent home or an institution similar to a hospital or convalescent home: *Commonwealth Electoral Act 1918* (Cth), s 4. A similar model applies in Western Australia: *Electoral Act 1907* (WA), s 192.

19 The *Commonwealth Electoral Act 1918* (Cth), s 226(2A) was amended in 1998 by the *Electoral and Referendum Amendment Act 1998* (Cth), s 117 to implement a recommendation of the JSCEM that the section be amended so that during the conduct of mobile polling at special hospitals, electoral visitors be allowed to advise voters that how-to-vote material is available: JSCEM, *The 1996 federal election*, AGPS, Canberra, June 1997 at para 4.71.

20 Although, the committee understands that, in practice, AEC officials carry how-to-vote material with them and, if requested, show this material to any patient on request.

21 *Electoral Act 1985* (SA), s 66.

22 South Australian State Electoral Office, submission dated 29 November 1999.

23 See the *Electoral Act 1985* (SA), s 82(5) which places an onus on officers to make available for the assistance of electors copies of any how-to-vote cards and other electoral materials in their possession that are to be exhibited in the polling booth on polling day.

- how-to-vote posters in voting compartments in the context of either replacing, or supplementing, how-to-vote cards;[24] and
- a system of compulsory or voluntary registration of how-to-vote cards.[25]

While these recommendations were made in the different context of regulating how-to-vote cards, the committee still has reservations with respect to how-to-vote posters given potential difficulties with poster location and size, the policing of posters, and the effect of non-compliance with requirements on the validity of an election.[26]

In the committee's opinion, a simpler solution to the issue at hand would appear to be an extension of the current system which applies in Queensland regarding the provision of how-to-vote material to electoral visitor voters.[27] Section 111(5) of the *Electoral Act* states that the ECQ may require the issuing officer visiting an elector (who is an electoral visitor voter) to present how-to-vote material to the elector and present the material in a particular way.[28] The Act provides an example of the ECQ requiring the issuing officer to give particular how-to-vote material to the elector or to paste the material on a manilla folder and show it to the elector. From committee members' experience, this system—which places the responsibility for distribution of how-to-vote cards on independent electoral officials—works well in practice and does not pose problems such as Mr Sadler suggests.

Therefore, the committee proposes the introduction of a similar provision in relation to declared institution electors. Under this proposal, the ECQ would be given the discretion to require the officer visiting a declared institution to present how-to-vote material to the elector and present the material in a particular way.

However, consideration needs to be given to one additional matter in the case of declared institution voters. As the commissioner notes, many residents of declared institutions are not enrolled for the electoral district in which the institution is located. Therefore, officers would have to carry not only how-to-vote cards for the electoral district in which the institution is located but also how-to-vote material relating to each State electoral district. In practice, this would require parties and/or candidates to lodge with their local returning officer a copy of their how-to-vote card together with the single document traditionally prepared by the political parties collating their party's how-to-vote cards for all electoral districts.

The committee believes that, as far as practicable given the above difference in the volume of how-to-vote material to be supplied, the ECQ should exercise its discretion so that how-to-vote material is presented to declared institution electors in the same manner as how-to-vote material is presented to electoral visitor voters.

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24 LCARC, *Issues of electoral reform raised in the Mansfield decision: Regulating how-to-vote cards and providing for appeals from the Court of Disputed Returns* (the 'Mansfield report'), report no 18, GoPrint, Brisbane, September 1999 at 16. A copy of this report can be viewed and downloaded from <http://www.parliament.qld.gov.au/comdocs/legalrev/lcar018.pdf>.

25 Mansfield report, n 24 at 16-17 and LCARC, *The Electoral Amendment Bill 1999*, report no 20, GoPrint, Brisbane, April 2000 at 18-21.

26 In this regard, the committee repeats many of its concerns expressed in its Mansfield report, n 24 at 15-16.

27 An 'electoral visitor voter' is an elector who, because of illness, disability or advanced pregnancy will be prevented from voting at a polling booth or someone who, because they are caring for a person who is ill, has a disability or is pregnant, will be prevented from voting at a polling booth: *Electoral Act 1992* (Qld), s 105(4).

28 The issuing officer is required to comply with the subsection (5) requirement: *Electoral Act 1992* (Qld), s 111(6).

4.4 COMMITTEE RECOMMENDATION 3

The committee recommends that the Attorney-General—as the minister responsible for the *Electoral Act 1992* (Qld)—amend that Act to provide that:

- **the Electoral Commission of Queensland may require the officer visiting a declared institution under s 94 of the Act to present how-to-vote material to a declared institution elector and present the material in a particular way; and**
- **the officer is required to comply with any such requirement.**

This new provision should include the same example as that provided for s 111(5) of the Act.

5. AUTHORITY TO RESCHEDULE MOBILE POLLING (ISSUE 4)

5.1 THE COMMISSIONER'S COMMENTS

Section 94(6) of the *Electoral Act* provides for the conduct of mobile polling in remote areas of the State at times (determined by the ECQ) during the period beginning 11 days before polling day and ending at 6.00pm on polling day. The commissioner advises the committee that:

> *Although the Commission negotiates and appoints set times for the visits to remote communities, for reasons that are often quite unique to this type of voting, visits are not always able to commence and finish at the times advertised locally.*
>
> *During the recent election, this situation arose when the plane carrying a mobile polling team was unable to land on a Torres Strait Island due to flooding. The Assistant Returning Officer was forced to re-schedule the voting period and to re-visit the Island by way of a helicopter.*
>
> *Section 227(6) of the* Commonwealth Electoral Act *permits the mobile team leader, for reasonable cause or if it is inappropriate to visit at the pre-arranged time, to substitute another place, day or time for the visit.*

The commissioner recommends that the *Electoral Act* be amended to make it clear that the ECQ's officers are authorised to re-schedule mobile polling times and places when circumstances demand. The commissioner also makes the comment that, of course, appropriate notice would need to be given to the areas concerned.

5.2 COMMENTS MADE IN PUBLIC SUBMISSIONS

All submitters who commented on this proposal agreed with it.[29]

5.3 COMMITTEE ANALYSIS AND CONCLUSION

Section 227 of the *Commonwealth Electoral Act* provides for mobile polling in remote divisions. As the commissioner observes, s 227(6) provides that if, for reasonable cause, a mobile polling team is unable, or the leader considers it inappropriate, to visit a polling place (as previously notified), the team leader may substitute another place, day or time for the visit. In such event, the team leader must:

- take such steps as he or she thinks fit to give public notice of the substituted place, day or time; and
- inform the Divisional Returning Officer.

Any failure by a team to make a visit in accordance with s 227 does not invalidate the result of the election: s 227(7).

In a recent submission to an inquiry by the Joint Standing Committee on Electoral Matters ('the JSCEM') into the 1998 federal election, the AEC (in responding to complaints made by the Northern Territory Country Liberal Party regarding mobile polling team 16 in the 1998

[29] See, for example, submissions from: Mr R Webber dated 12 November 1999; Mr R Sadler dated 12 November 1999; Mr E Walker dated 23 November 1999; Cairns City Council dated 3 December 1999.

federal election) stressed the need for procedural flexibility in remote mobile polling because of unexpected changes that may occur in remote areas.[30]

In particular, the AEC made the following comments regarding s 227(6) and (7):

> *It should be clear from the terms of these provisions, that the Parliament recognised that unexpected changes may have to be made to remote polling runs ("for reasonable cause", "unable", "inappropriate") and that such changes may have unavoidable consequences that should not be used to ground an attack on the election. Further, the terms of these provisions make it clear that the team is only required to give public notice of such changes, and notify the DRO, when a place is being "substituted", and not when a place is being revisited or passed by. The AEC understands well the Parliament's careful intent in making these provisions, but it appears that NTCLP scrutineers did not.*[31]

The electoral legislation of some other states and territories also authorises electoral officers to re-schedule mobile polling times and places when circumstances demand.[32]

The *Northern Territory Electoral Act 1995,* s 56(1) empowers the Chief Electoral Officer or mobile polling team leader to substitute another place for an appointed polling place and change the specified dates or hours if the mobile polling team is '*unable to be at the polling place on the specified dates or during the specified hours or, in the opinion of the Chief Electoral Officer, the exigencies of the election require it*'.

When the Chief Electoral Officer or mobile polling team leader so substitutes a place or changes dates or hours, he or she is required to:

- take such steps as he or she considers necessary or convenient to give public notice of the substitution, change or variation; and
- inform the Divisional Returning Officer of the division in which the mobile polling team is authorised to operate of the substitution, change or variation.[33]

Section 56(3) of the Northern Territory Act provides that any election shall not be invalidated on the grounds that a mobile polling team failed to attend at a polling place or on the dates or during the hours initially specified by the Chief Electoral Officer or such place, dates or hours as substituted, changed or varied under s 56 by the Chief Electoral Officer or mobile polling team leader.

South Australia's *Electoral Act 1985* also provides that the times or places for polling at a mobile polling booth may be altered:

- by the Electoral Commissioner publishing in a newspaper circulating generally throughout the state (or taking other specified steps in certain circumstances) no later than the day before the day previously fixed for polling at a particular place another notice advising electors of the alteration in polling times or place; or

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30 AEC supplementary submission to the Joint Standing Committee on Electoral Matters' inquiry into the 1998 federal election, *Further AEC responses to other submissions and to hearings*, 23 July 1999 at paras 37.16-37.20 (available at: <http://www.aec.gov.au/committee/210.pdf>). In response to the complaints regarding various changes made to the itinerary of remote mobile polling team 16, the AEC concluded (at para 37.18) that '*these changes were made properly in response to difficult local conditions in order to ensure delivery of the franchise to as many electors as possible*'.

31 Note 30 at para 37.20.

32 In addition to the jurisdictions mentioned in the text above, see also the *Electoral Act 1907* (WA), s 100B.

33 *Northern Territory Electoral Act 1995* (NT), s 56(2).

- in exceptional circumstances that render compliance with the above impracticable—by the presiding officer taking such steps as are reasonably practicable to notify electors in the particular subdivision of the alteration.[34]

Where the times or places for polling at a mobile polling booth (in a House of Assembly election) are altered, the Electoral Commissioner or presiding officer making the alteration is required to take reasonable steps to inform candidates standing for election in the particular district of the alteration.[35]

The committee recognises the need for procedural flexibility in the conduct of mobile polling in remote areas. It is only sensible that Queensland's *Electoral Act* clearly authorises mobile polling team leaders to re-schedule mobile polling times and places when circumstances demand. In such event, the relevant officer should be required to:

- take such steps as are practicable and appropriate to give public notice of the substituted place, day or time; and
- inform the relevant district returning officer.

The committee further believes that the Act should specifically provide that any failure by a mobile polling team to make a visit in accordance with the mobile polling provisions does not invalidate the result of the election.

Section 227(6) and (7) of the *Commonwealth Electoral Act* appear to provide an appropriate legislative precedent on which to model equivalent Queensland provisions.

5.4 COMMITTEE RECOMMENDATION 4

The committee recommends that the Attorney-General—as the minister responsible for the *Electoral Act 1992* (Qld)—amend that Act to authorise mobile polling team leaders to re-schedule mobile polling times and places when circumstances demand. In such event, the relevant officer should be required to:

- **take such steps as are practicable and appropriate to give public notice of the substituted place, day or time; and**
- **inform the relevant district returning officer.**

The committee further recommends that the *Electoral Act* specifically provide that any failure by a mobile polling team to make a visit in accordance with the mobile polling provisions does not invalidate the result of the election.

Section 227(6) and (7) of the *Commonwealth Electoral Act 1918* appear to provide an appropriate legislative precedent on which to model equivalent Queensland provisions.

34 *Electoral Act 1985* (SA), s 77(3a).
35 *Electoral Act 1985* (SA), s 77(3b).

6. CANVASSING IN OR NEAR POLLING PLACES (ISSUE 5)

6.1 THE COMMISSIONER'S COMMENTS

Section 166 of the *Electoral Act* prohibits canvassing and other activities within six metres of the entrance to a building with voting compartments. The commissioner makes the following comments regarding this section:

> *This provision is essential for the orderly conduct of voting on polling day.*
>
> *However, the section causes real difficulties at pre-polling day voting places. For example, party workers are required to occupy positions outside the Ann Street entrance to the Brisbane City Hall or in King George Square for many days prior to polling day often in unpleasant weather conditions when, in fact, the electors are entering and leaving the polling booth from other entrances. This situation is not unique to the City Hall as similar difficulties arise at other pre-poll centres throughout the State.*
>
> *Many venues could provide for party workers to occupy positions, in some cases inside buildings, without interfering with the free flow of electors to or from the pre-poll booth.*

The commissioner recommends that '*to allow for the unique circumstances that apply to pre-poll voting centres*', the *Electoral Act* be amended to give the ECQ discretion to vary the six metres from the entrance requirement in relation to pre-poll voting only.

6.2 COMMENTS MADE IN PUBLIC SUBMISSIONS

The majority of submitters who addressed this proposal agreed with it.[36] For example, Redland Shire Council stated: '*It is not only inclement weather that cause problems, but there may be instances where it is impossible to stand 6 metres from the entrance in the case of a pre-polling booth being located in an office block for example'*.

Two submitters voiced an objection to the proposal. Mr Sadler proposed eliminating how-to-vote cards which would eliminate canvassing at polling booths in general.[37] (The committee has recently considered and rejected the abolition of how-to-vote cards, a matter which does not fall within the terms of reference for this current inquiry.[38]) Mr Sadler also opposed the proposal on the basis that giving ECQ officials the power to vary the six metre distance could introduce '*political bias in choice of who stands where'* and argued that people handing out how-to-vote material are volunteers '*who know the conditions they face and are not obliged to continue if conditions are unfavourable'*.

Kingaroy Shire Council submitted that the current distance requirements should be maintained because, in the case of local government elections, pre-polling is conducted in the general office of the Council and the presence of candidates and election helpers would be disruptive to both the election process and the normal operations of Council.[39]

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36 See, for example, submissions from: Mr R Webber dated 12 November 1999; Redland Shire Council dated 22 November 1999; Mr E Walker dated 23 November 1999; Cairns City Council dated 3 December 1999.

37 Mr E Walker also submitted that how-to-vote cards should be banned outside polling booths and be replaced with an approved copy of each how-to-vote card placed inside every booth: submission dated 23 November 1999.

38 Mansfield report, n 24 at 15.

39 Submission dated 13 January 2000.

6.3 COMMITTEE ANALYSIS AND CONCLUSION

The committee again sees the commissioner's recommendation as an issue of practicality.

The electoral legislation of most Australian jurisdictions prohibits canvassing within varying distances of the entrance of a polling place.[40] These prohibitions variously relate to polling day and/or during the election period.

The *Commonwealth Electoral Act*, s 340 prohibits canvassing within six metres of the entrance of a polling booth on polling day. This prohibition does not apply to pre-poll voting centres. In its submission to this committee, the AEC stated:

> *Most pre-poll voting centres at federal elections are at Divisional Offices, which are often located in shopping centres or other large, multi-purpose buildings, which may have non-standard access/entrance areas. In relation to canvassing by party workers at the entrance to pre-poll voting centres where canvassing is not prohibited, Divisional Returning Officers liaise with party workers, as necessary, to ensure that there is no inconvenience to voters*.[41]

In a May 1999 submission to the JSCEM, the AEC made the following comments regarding pre-poll voting at shopping centres:

> *The ALP Secretariat recommends that the AEC 'seek agreement, where appropriate, from the owners of the premises on which a pre-poll is located to ensure that no reasonable restriction is placed on the right of persons to distribute the customary election material or for voters to receive that material at or in the vicinity of pre-poll'. The AEC agrees that voters should not be prevented from receiving how-to-vote material as they enter a polling booth, and it is standard practice for DROs to seek the cooperation of private or public owners of any premises wherever polling is conducted*.[42]

An alternative to the Commonwealth approach is to grant the ECQ a statutory discretion—in relation to pre-poll voting only—to vary the six metre from the entrance requirement where circumstances warrant. This approach seems to be preferred by the electoral commissioner.

The committee likewise prefers this approach as it provides the ECQ with more formalised control while allowing the particular circumstances of individual pre-polling venues to be taken into account (thus seemingly addressing Kingaroy Shire Council's concern). Any discretion exercised by the ECQ (a discretion which, in practice, would presumably be delegated to the relevant presiding officer) would apply equally to all political parties and candidates. Accordingly, the committee fails to see how vesting this discretion in an independent electoral official would introduce any political bias as Mr Sadler has suggested might occur.

6.4 COMMITTEE RECOMMENDATION 5

The committee recommends that the Attorney-General—as the minister responsible for the *Electoral Act 1992* (Qld)—amend that Act to give the Electoral Commission of Queensland the discretion to vary the six metre from the entrance requirement in s 166 of the Act in relation to pre-poll voting only.

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40 See the *Constitution Act Amendment Act 1958* (Vic), s 193 (6 metres); *Electoral Act 1907* (WA), s 192 (6 metres); *Electoral Act 1985* (Tas), s 133 (100 metres); *Electoral Act* (ACT), s 303 (100 metres); *Northern Territory Electoral Act 1995* (NT), s 102 (10 metres).

41 Submission dated 30 November 1999 at para 5.3.

42 AEC supplementary submission to the Joint Standing Committee on Electoral Matters' inquiry into the 1998 federal election, *AEC responses to other submissions and hearings*, 4 May 1999 at para 42.23. A copy of this submission is available at: <http://www.aec.gov.au/committee/responses.pdf>.

7. SPECIAL POSTAL VOTERS (ISSUE 6)

7.1 THE COMMISSIONER'S COMMENTS

Section 105(3) of the *Electoral Act* provides for persons living more than 15 kilometres by the nearest practicable route from a polling booth to be registered as special postal voters. In effect, this means that such electors are automatically sent ballot papers without having to apply at each election as ordinary postal voters must.

Special postal voters generally live in remote areas of the State with limited postal services. As the commissioner notes, the automatic despatch of ballot papers early in the election period to such persons ensures they are not disenfranchised by the late arrival of ballot papers.

There are, however, a number of inconsistencies between the provisions relating to Queensland 'special postal voters' and the equivalent type of voters for the purposes of Commonwealth elections, called 'general postal voters' in the *Commonwealth Electoral Act*. As the commissioner explains:

> *The* Commonwealth Electoral Act *has a category of electors called 'general postal voters' which provides a similar arrangement (ie automatic despatch of ballot papers) for persons living in remote areas, although the registration in the case of persons living in remote areas is based upon 20 kilometres from a polling booth rather than 15 kilometres from a polling booth as is the case under State legislation.*
>
> *The Commonwealth legislation is more encompassing than the Queensland Act. The Commonwealth 'General Postal Voter' legislation also provides for: -*
>
> - *some categories of patients at hospitals;*
> - *electors, who because of serious illness or infirmity, are unable to travel to a polling place to vote;*
> - *electors who are carers for persons who are seriously ill or infirm;*
> - *electors in custody; and*
> - *electors who are precluded from attending a polling booth because of their religious beliefs.*
>
> *The necessity for the Australian Electoral Commission to keep both a register of special postal voters for State elections and a register of general postal voters for Commonwealth elections not only causes administrative difficulties, but results in confusion in the minds of many electors who find themselves, for various reasons, on one register but not on the other.*

Accordingly, the commissioner recommends that Queensland adopt the Commonwealth registration criteria to eliminate the duplication and confusion amongst electors, with the proviso that: '*It would be prudent to allow all existing special postal voters who live between 15 and 20 kilometres from a polling booth to remain registered for Queensland elections, so as not to force any electors who are currently eligible to be special postal voters, but who do not meet the Commonwealth criteria, to be de-registered*.'

7.2 COMMENTS MADE IN PUBLIC SUBMISSIONS

The majority of submitters who addressed this proposal supported it.[43] Although, the Cairns City Council suggested that existing electors who live between 15 and 20 kilometres from a polling booth be formally advised of the change: '*This once off communication would then formalise the proposal to ensure there are no future confusions between State and Commonwealth elections'*.

7.3 COMMITTEE ANALYSIS AND CONCLUSION

The *Commonwealth Electoral Act*, Part XV deals with postal voting. In particular, s 184A of that Act prescribes who can apply for registration as a general postal voter. As the commissioner observes, the criteria for registration under the Commonwealth legislation are much wider than under Queensland's *Electoral Act*.

The commissioner's recommendation that Queensland adopt the Commonwealth registration criteria is designed to ensure consistency between Queensland and Commonwealth electoral legislation. The committee believes that such consistency is desirable both from an administrative perspective and to reduce potential confusion among electors.[44]

The committee further agrees with the commissioner's suggestion that all existing special postal voters who live between 15 and 20 kilometres from a polling booth remain registered for Queensland elections (until such time as they cease to be enrolled at their current address). Over time, the number of special postal voters who live between 15 and 20 kilometres from a polling booth will decrease to none. The committee considers this transitional provision preferable to de-registering Queensland electors currently eligible to be special postal voters, but who do not meet the Commonwealth criteria. Such a provision should address the concerns of Cairns City Council.

7.4 COMMITTEE RECOMMENDATION 6

The committee recommends that the Attorney-General—as the minister responsible for the *Electoral Act 1992* (Qld)—amend that Act to make the registration criteria concerning 'special postal voters' consistent with the criteria prescribed by the *Commonwealth Electoral Act 1918* (Cth) regarding 'general postal voters'.

The committee further recommends that transitional provision be made to ensure all existing Queensland 'special postal voters' who live between 15 and 20 kilometres from a polling booth remain registered as special postal voters for Queensland elections (until such time as they cease to be enrolled at their current address).

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43 See, for example, submissions from: Mr R Webber dated 12 November 1999; Mr R Sadler dated 12 November 1999; Mr E Walker dated 23 November 1999; Cairns City Council dated 3 December 1999.

44 The committee also notes that the Tasmanian Electoral Office has proposed that Tasmania adopt the Commonwealth register of general postal voters to obviate the need for postal vote applications for certain electors prevented from attending polling booths for ongoing reasons and '*avoid confusing those automatically receiving postal votes for federal and local government elections but not state elections'*: Tasmanian Electoral Office, *Modernising Tasmania's Electoral Act*, discussion paper, December 1999 at 6.

8. NON-VOTER PROCESS (ISSUE 7)

8.1 THE COMMISSIONER'S COMMENTS

Following the July 1995 State election, the Acting Crown Solicitor sought the advice of Mr Marshall Irwin of Counsel on various aspects of the process where an elector fails to vote at an election without a valid and sufficient excuse (the 'non-voter process'). In his written advice, Mr Irwin suggested that consideration be given to various amendments to the *Electoral Act* to overcome certain difficulties he identified.

The commissioner advises that the amendments suggested by Mr Irwin to increase the prospects of successful prosecution fall into the following three categories: evidentiary aids; place where failure to vote occurs; and onus of proof.

1 Evidentiary aids

Section 164(1)(a) of the Act provides that an elector must not fail to vote at an election without a valid and sufficient excuse.

Section 164(4) provides that in a proceeding for an offence against s 164(1)(a), a certificate purporting to be signed by a member of the ECQ's staff stating any of the following matters is evidence of the matter:

(a) an election happened on a stated day;

(b) an elector failed to vote at the election;

(c) a notice was sent by the ECQ to the elector under s 125 on a stated day (under s 125, the ECQ may send a notice to each elector who appears to have failed to vote at an election requiring the elector to send to the ECQ: a form stating that they intend to pay the penalty (and including payment of the penalty); or, if they do not intend to pay the penalty, a form stating whether they voted and, if not, the reason for failing to vote;

(d) a form mentioned in s 125(1) was not received by the ECQ from the elector by the day stated under the subsection.

Section 164(5) provides that if a form is not received by the ECQ from the elector by the day stated under s 125(1), it is evidence the elector failed to vote at the election without a valid and sufficient excuse.

The commissioner advises as follows:

> *Mr Irwin states that such provision does no more than make certain things 'evidence' in the proceedings and admissible and relevant to those proceedings. It does not make certain forms and certificates conclusive evidence of the matters stated in the absence of evidence to the contrary or evidence in rebuttal thereof. It does not even make the statements referred to, prima facie evidence of the matters stated.*
>
> *Mr Irwin is of the opinion that the evidentiary aids should have their effect strengthened so as to facilitate the proof of any charge brought under section 164(1)(a). He suggests wording similar to that contained in section 91(16) of the repealed* Elections Act 1983-1985*:*
>
> > *"In proceedings against an elector for an offence against subsection (12)-*
> >
> > *(a) the form purporting to be the reply, if any, of that elector to a notice referred to in subsection (5) may be adduced in evidence by the prosecutor and shall be*

conclusive evidence that the elector made to the principal electoral officer the reply set out in that form unless the contrary is proved;

(b) a certificate purporting to be signed by the principal electoral officer and stating that the principal electoral officer did not receive from the elector -

(i) consent to the matter being dealt with by him;

(ii) the sum by way of penalty specified by him (naming such sum); or

(iii) both such consent and such sum

shall be evidence of the matter or matters so stated in such certificate, and in the absence of evidence in rebuttal thereof shall be conclusive evidence of such matter or matters;

(c) a certificate purporting to be signed by the principal electoral officer stating his opinion that the reason contained in the said form is not a valid and sufficient reason for the failure of the elector to record his vote at an election shall be admissible as evidence of the holding of such opinion by the principal electoral officer and that the reason contained in the said form is not a valid and sufficient reason for the failure of the elector to record his vote at the election, and in the absence of evidence to the contrary shall be conclusive evidence of such matters."

2 Place where failure to vote occurs

The commissioner makes the following observation regarding the second issue raised by Mr Irwin:

Mr Irwin expressed concern that an issue could arise concerning the 'Place of Offence', taking into account the likely difference between boundaries of an Electoral District and a Magistrates Courts District. He suggests that because the counting of votes is the responsibility of the Returning Officer for each individual Electorate, the appropriate place to allege the offence of failing to vote as having occurred is at the place, and within the Magistrates Courts District, at which the Returning Officer has his or her headquarters.

So as to leave no doubt as to the place at which a failure to vote occurs, Mr Irwin suggests that it could be specified by a deeming provision, eg deeming the failure to occur at the headquarters of the Returning Officer in the Electoral District for which an elector is required to vote.

3 Onus of proof

The third issue which Mr Irwin considered requires legislative amendment concerns the onus of proof. In this regard, Mr Irwin considered s 76 of the *Justices Act 1886* (Qld) in relation to s 164(1)(a) of the *Electoral Act*. [Section 164(1)(a) provides that an elector must not fail to vote at an election without a valid and sufficient excuse.]

Section 76 of the *Justices Act* provides:

76. *If the complaint in any case of a simple offence or breach of duty negatives any exemption, exception, proviso, or condition, contained in the Act on which the same is framed, it shall not be necessary for the complainant to prove such negative, but the defendant shall be called upon to prove the affirmative thereof in the defendant's defence.*

If 'without a valid and sufficient excuse' were an exemption for the purposes of s 76 and the ECQ, as complainant, could establish that a person failed to vote at an election, the onus would be on the alleged non-voter to prove that they had a valid and sufficient excuse.

The commissioner advises that:

> *Mr Irwin is of the opinion that as a matter of construction of section 164(1)(a) of the* Electoral Act *(Failure to vote) in the context of that Act, section 76 of the* Justices Act *is not clearly applicable and he believes a Court would not decide in the Electoral Commissioner's favour on this issue.*
>
> *In reaching this conclusion, Mr Irwin cited various case law, adding that a Court will not readily shift the onus from the prosecution in the absence of clear words in the legislation.*
>
> *Mr Irwin states, therefore, that if the Commissioner wishes the onus of proof to be reversed in future cases in relation to this issue, it will be necessary to seek a legislative amendment to place the matter beyond doubt.*

The commissioner recommends that the *Electoral Act* be amended to accommodate Mr Irwin's recommendations in each of these three categories.

8.2 COMMENTS MADE IN PUBLIC SUBMISSIONS

Some submitters agreed generally with Mr Irwin's and the commissioner's recommended amendments to increase the prospects of successful prosecution where an elector fails to vote without a valid and sufficient excuse.[45]

However, a number of submitters expressed concern regarding one or more of Mr Irwin's suggested amendments, in particular, proposal 1 and proposal 3 regarding a reversal of the onus of proof.[46]

Specific comments raised by submitters are discussed below where relevant.

8.3 COMMITTEE ANALYSIS AND CONCLUSION

8.3.1 Evidentiary aids

In essence, Mr Irwin's suggestion is that s 164(5) of the Act be amended to make non-receipt of a notice of failure to vote by the ECQ conclusive evidence of a failure to vote until the contrary is proved or, at least, prima facie evidence of that failure. As the commissioner notes, this could be achieved by wording similar to that contained in s 91(16) of the former *Elections Act 1983*.

A number of submissions specifically commented on the suggestion that the evidentiary aids should have their effect strengthened so as to facilitate the proof of any charge brought under s 164(1)(a).[47]

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45 See, for example, submissions from: Mr R Webber dated 12 November 1999; Redland Shire Council dated 22 November 1999; Cairns City Council dated 3 December 1999.

46 See, for example, submissions from: Mr R Sadler dated 12 November 1999; Mr E Walker dated 23 November 1999; Queensland Law Society (Criminal Law Committee) dated 23 November 1999; Mr A MacAdam dated 2 December 1999.

47 See, for example, submissions from: Mr E Walker dated 23 November 1999; Queensland Law Society (Criminal Law Committee) dated 23 November 1999; Mr A MacAdam dated 2 December 1999. In particular, Mr E Walker suggested a specific amendment to s 91(16) of the former *Elections Act 1983* if it is to be adopted in Queensland.

The Criminal Law Committee of the Queensland Law Society[48] expressed concerns with the enhancement of 'evidentiary aids'. The committee stated:

> *The Committee accepts that there appears to be a degree of resistance to compliance with electoral laws, either in relation to enrolment or to voting, but sees a degree of philosophical ambiguity in any proposal that seeks to achieve compulsory universal suffrage by reversal of the onus of proof and other steps which are anathema to the administration of justice generally. Specifically, the Committee is concerned by the enhancement of what are described as 'evidentiary aids' in the Commissioner's letter (s 164) and are opposed to reversal of the onus of proof.*

Mr A MacAdam (Senior Lecturer, Faculty of Law, Queensland University of Technology)[49] similarly pointed out that revival of the repealed *Elections Act 1983* is '*reflective of a by-gone era of Queensland legislation*' and that since 1992 Queensland legislation has been judged against the concept of fundamental legislative principles (FLPs) contained in the *Legislative Standards Act 1992* (Qld).

FLPs are defined in the *Legislative Standards Act*, s 4(1) as '*the principles relating to legislation that underlie a parliamentary democracy based on the rule of law'*. Section 4(2) of that Act provides that FLPs include requiring that legislation has sufficient regard to 'rights and liberties of individuals'.[50]

In s 4(3) there is a non exhaustive list of the factors that determine whether legislation has sufficient regard to the rights and liberties of individuals. One of these factors is that legislation does not reverse the onus of proof in criminal proceedings without adequate justification.

Mr MacAdam went on to make the following observation regarding FLPs:

> *Fundamental legislative principles are not absolutes. They are capable of being overridden by Parliament. However prior to the enactment of the* Legislative Standards Act 1992 *(Qld), Parliament routinely (and often in blissful ignorance) legislated in the manner contrary to what we now call fundamental legislative principles. No doubt that this is what occurred in the original enactment in the* Elections Act 1983-1985 *(Qld) of the provisions that are now recommended for revival.*

The committee notes that Queensland's current electoral legislation—the *Electoral Act 1992*—was passed only two days before the *Legislative Standards Act 1992* and well after EARC's report regarding the then proposed Legislative Standards Act.[51] Therefore, presumably, the *Electoral Act* was drafted with EARC's then proposed FLPs in mind.

The fact that something is 'evidence' means that it is admissible and relevant to proceedings, although it can be rejected by the court on a number of grounds including that evidence to the contrary has been presented to the court. To make something, in the absence of evidence to

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48 Submission dated 23 November 1999.

49 Submission dated 2 December 1999.

50 The Scrutiny of Legislation Committee of the Queensland Parliament ('the Scrutiny Committee') is responsible for considering the application of FLPs to particular bills and particular subordinate legislation. The Scrutiny Committee reports its concerns regarding non-compliance with FLPs to Parliament via the regular preparation and tabling of 'Alert Digests'.

51 The *Electoral Act 1992* was passed on 19 May 1992 and the *Legislative Standards Act 1992* on 21 May 1992. The former EARC made recommendations about FLPs and the then proposed Legislative Standards Act in its *Report on review of the Office of the Parliamentary Counsel*, Government Printer, Brisbane, May 1991.

the contrary, conclusive evidence of a matter substantially raises the threshold. The committee is concerned that such a provision constitutes a general infringement on individuals' rights.

On this basis, the committee agrees with the sentiment of the above submitters that to amend s 164 as suggested by the commissioner would offend the FLPs. For this reason, the committee does not support the proposed amendment.

8.3.2 Place where failure to vote occurs

No submitters raised specific objections to Mr Irwin's suggestion that a provision be inserted into the *Electoral Act* to deem that a failure to vote occurs, for example, at the headquarters of the returning officer in the electoral district for which an elector is required to vote.

The committee considers that the potential procedural difficulty which Mr Irwin's suggestion seeks to overcome should be addressed.

However, the committee makes two observations regarding any such legislative amendment.

First, it must be clear that the hearing can be adjourned to another location more convenient to the defendant. In this regard, the committee notes that s 139(2) of the *Justices Act* provides that a court may adjourn a hearing to another place in Queensland where it appears that the hearing would more conveniently take place in that other place. The court may adjourn the hearing on its own motion or upon the submission of the complainant or defendant made in writing to, or by appearance before, the court. The electoral commissioner has indicated to the committee that he would be amenable to transferring proceedings to a Magistrates Court convenient to the defendant.

Secondly, the committee is not convinced that a deeming provision is the most appropriate mechanism to achieve this objective. However, the committee considers that the means of achieving this objective is a question of legislative drafting, rather than one of policy.

Accordingly, the committee is of the view that appropriate legislative amendments be made to ensure that:

- the appropriate Magistrates Court in which to commence proceedings for failure to vote is clear; and
- a court in which proceedings for failure to vote have been commenced can adjourn the hearing to another to another place in Queensland where it appears that the hearing would more conveniently take place in that other place. The court should be able to adjourn the hearing on its own motion or upon the submission of the complainant or defendant made in writing to, or by appearance before, the court.

8.3.3 Onus of proof

As noted above, a number of submitters objected to Mr Irwin's proposal to effectively reverse the onus of proof in prosecutions under s 164 of the *Electoral Act*.

The sentiments of the Criminal Law Committee of the Queensland Law Society (noted above) were endorsed by Mr MacAdam who stressed that reversal of the onus of proof is contrary to fundamental legislative principles (FLPs) contained in the *Legislative Standards Act 1992*. Mr MacAdam stated:

> *In s 4(3) there is non exhaustive listing of the factors that determine whether the legislation has sufficient regards to the rights and liberties of individuals. One of these factors is that legislation—*
>
> *(d) does not reverse the onus of proof in criminal proceedings without adequate justification.*
>
> *In the High Court of Australia decision in* Chugg v Pacific Dunlop Ltd *(1990) 170 CLR 249 at 257, Dawson, Toohey and Gaudron JJ (with whom Brennan J (at 251) and Deane J (at 253) agreed) said:*
>
> *… the general rule with respect to the onus of proof in a criminal proceeding is clear, namely, that 'it is the duty of the prosecution to prove [a defendant's] guilt subject to the defence of insanity and subject also to any statutory exception':* Woolmington v Director of Public Prosecutions [1953] ACT 462 at 481 [a decision of the House of Lords].
>
> …
>
> *More particularly s 4(3)(d) of the* Legislative Standards Act 1992 *(Qld) explicitly recognises that the onus of proof in criminal proceedings can be reversed if there is adequate justification.*
>
> *Is there adequate justification for reversing the onus of proof where a person is charged with failing to vote? In my submission no adequate justification is given. The only justification advanced is to increase the prospects of successful prosecution. Furthermore the following factors would militate against any adequate justification being established. Firstly the penalty provided for in s 164(1) for failure to vote is one penalty unit (currently $75, see* Penalties and Sentences Act 1992 *(Qld)) thus indicating the offence is regarded as very minor. Secondly there is considerable debate in the community as to whether voting should in any event be compulsory. Thirdly the offence is a 'victimless' offence.*[52]

In its report on a review of the former *Elections Act 1983*, the former EARC considered a number of aspects of the non-voting process. In this context EARC made the following relevant comment:

> *One mechanism for increasing the capacity of the electoral administration to take action against non-voters would be to reverse the onus of proof. However this course would be contrary to one of the legislative principles recommended by this Commission in its Report on the Office of Parliamentary Counsel (91/R1). A compromise would be to provide for a shift of the evidential burden of proof which would make it easier for the [ECQ] to establish its case but placing the overall burden of proof on the [ECQ].*[53]

Consequently, the former EARC recommended that there be an evidential burden on the elector to give reasons for failure to vote or otherwise pay the fine.[54] EARC's proposed s 164—which is substantially reflected in the current Act—presumably reflects what EARC considered to be, in light of FLPs, the appropriate evidential burden on the defendant.

In light of the submitters' concerns noted above, the committee is not prepared to recommend that the Act be amended to reverse the onus of proof. The committee recognises that FLPs are not absolutes. The *Legislative Standards Act* specifically recognises that the onus of proof in

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52 Submission dated 2 December 1999.

53 EARC, *Report on the review of the Elections Act 1983-1991 and related matters*, Government Printer, Brisbane, December 1991 at para 14.113.

54 Note 53 at para 14.115. The PCEAR did not comment adversely on this recommendation: PCEAR, *Review of the Elections Act 1983-1991 and related matters*, Government Printer, Brisbane, March 1992 at para 3.1.3.

criminal proceedings can be reversed if there is adequate justification. However, given the minor and 'victimless' nature of the offence in question, the committee does not believe that there is adequate justification to reverse the onus of proof in this instance.

8.4 COMMITTEE RECOMMENDATION 7

The committee recommends that the Attorney-General—as the minister responsible for the *Electoral Act 1992* (Qld)—introduce amending legislation necessary to ensure that:

- **the appropriate Magistrates Court in which to commence proceedings for failure to vote is clear; and**
- **a court in which proceedings for failure to vote have been commenced can adjourn the hearing to another place in Queensland where it appears that the hearing would more conveniently take place in that other place. The court should be able to adjourn the hearing on its own motion or upon the submission of the complainant or defendant made in writing to, or by appearance before, the court.**

9. MISLEADING VOTERS (ISSUE 8)

9.1 THE COMMISSIONER'S COMMENTS

The commissioner advises that the ECQ recently sought the advice of the Crown Solicitor in relation to the interpretation of s 163(2) of the *Electoral Act* which provides:

> ***(2)*** *A person must not for the purpose of affecting the election of a candidate, knowingly publish a false statement of fact regarding the personal character or conduct of the candidate.*

In particular, the Crown Solicitor was asked to advise whether the word 'publish' included material which may be accessible on the Internet. The Crown Solicitor concluded:

> *Although it is not without doubt, I consider that the word 'publish' within s. 163(2) of the Act is in my view broad enough to include material that is accessible on the internet. I am of the opinion that political advertising material accessible on the internet which is capable of misleading voters, is material that has been published, and is therefore capable of being caught by s. 163(2) of the Act.*
>
> *My only cause for concern is that there may be the basis for a technical legal argument if the relevant internet site used to publish the material in question is based outside of the State.*
>
> *Clearly, the States have power to pass law with an extraterritorial effect. In this regard, it may be prudent to include a definition of 'publish' in the Act that specifically states that the term includes the act of disseminating material on the internet which is accessible by persons in Queensland. This would provide a sufficient connection to ensure that the law has a sufficient extraterritorial nexus and would also make any prosecution action more secure in the future.*

Accordingly, the commissioner recommends that a definition of 'publish' be included in the *Electoral Act* as suggested by the Crown Solicitor.

9.2 COMMENTS MADE IN PUBLIC SUBMISSIONS

Submitters who commented on this proposal generally expressed agreement with the principle it embodies,[55] although some pointed out difficulties with its implementation.[56] Dr Macklin expressed concern that the committee ensure that the definition:

- is purely for the purposes of an election; and
- be limited in application to those who publish material on the Internet, rather than those who may be associated with material being published.[57]

9.3 COMMITTEE ANALYSIS AND CONCLUSION

The committee accepts the advice of the Crown Solicitor (endorsed by the electoral commissioner) regarding the desirability of including a definition of 'publish' for the purposes of s 163(2) to specifically provide that the term includes the act of disseminating material on the Internet which is accessible by persons in Queensland.

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55 See, for example, submissions from: Mr R Webber dated 12 November 1999; Mr E Walker dated 23 November 1999; Cairns City Council dated 3 December 1999.

56 Mr R Sadler, submission dated 12 November 1999; Dr Macklin, submission dated 3 December 1999.

57 Dr Macklin, submission dated 3 December 1999. Dr Macklin stated that thus he did not believe a political party should, for example, be made liable for material published on a party chat room site if the material offends this provision.

Dr Macklin submits that the definition should be limited in its application to those who publish material on the Internet, rather than those who may be associated with material being published. Section 163(2) clearly states that 'a person must not…knowingly publish…'. Whether someone has offended the provision will be a matter of fact depending on the circumstances of each particular case. However, in the committee's opinion, such questions are more appropriately a matter for a court to decide.

As a further general observation, the committee notes that the issue of electoral activity on the Internet (which inevitably will increase) highlights the need for consideration to be given to:

- generally the impact of the Internet on the application of the offence provisions in the Act and whether there is a need to amend provisions other than s 163(2) in the Act; and
- in light of that general consideration, specifically whether the definition of 'publish' as recommended by the Crown Solicitor should apply to all provisions of the Act where that term is used.

In late 1995, the AEC obtained advice from the Commonwealth Director of Public Prosecutions ('the DPP') on the possible application of the offence provisions of the *Commonwealth Electoral Act* to the Internet. The DPP advised that a number of Commonwealth offences do not apply to material distributed over the Internet, although in some cases this was as a result of clear legislative intent to confine the application of the offence to *printed* matter.[58]

In a 1996 submission to the JSCEM, the AEC stated:

> *The JSCEM might consider whether all the offence provisions under the [Commonwealth Electoral Act] should be extended by legislative amendment to apply to the Internet, or whether at this stage it might be worth waiting for further clarification of overall Government policy directions in relation to the Internet. The AEC favours the latter course.*[59]

The committee believes that the ECQ should consider obtaining advice from the Crown Solicitor regarding the impact of the Internet on the possible application of the other offence provisions in the *Electoral Act*. The committee would be willing to consider any suggestions for legislative reform as a result of that advice.

Finally, the committee has considered Dr Macklin's comment that the suggested definition of 'publish' should only apply *for the purposes of an election*. In this regard, the committee notes that s 163(1) and (3) of the *Electoral Act* specifically apply 'during the election period for an election' whereas this phrase is not included in subsection (2).

The explanatory notes to the then Electoral Bill 1992 state:

> *Clause 163 provides an offence for misleading voters* ***during the election period*** *in relation to—*
>
> …

[58] AEC submission to the JSCEM's inquiry into the 1996 federal election, *The conduct of the 1996 federal election*, 29 July 1996 at section 12.7 (available at: <http://www.aec.gov.au/committee/bnet.pdf>).

[59] Note 58 at para 12.7.11. The AEC also addressed the specific issue of Internet advertising in a 1999 submission to the JSCEM: AEC submission to the JSCEM's inquiry into the 1998 federal election, *The conduct of the 1998 federal election*, 12 March 1999 at section 6.3 (available at: <http://www.aec.gov.au/committee/98election.pdf>).

> *knowingly publishing a false statement of fact regarding the personal character or conduct of the candidate (**this also applies before the election period**);*
>
> … [The committee's emphasis added.]

Despite the apparent internal inconsistency in the explanatory notes, the committee notes that a person cannot be a candidate as defined in the *Electoral Act* until such time as a writ for an election has issued.[60] Therefore, it would appear that even if s 163(2) was intended to apply before the election period, the subsection as currently drafted would not give effect to this intention.

The committee brings this matter to the Attorney-General's attention.

9.4 COMMITTEE RECOMMENDATION 8

The committee recommends that the Attorney-General—as the minister responsible for the *Electoral Act 1992* (Qld)—amend that Act to include a definition of 'publish' for the purposes of s 163(2) of the Act to make it clear that the term includes the act of disseminating material on the Internet that is accessible by persons in Queensland.

The committee further recommends the Electoral Commission of Queensland consider obtaining advice from the Crown Solicitor regarding the impact of the Internet on the possible application of the other offence provisions in the Act. The committee would be willing to consider any suggestions for legislative reform as a result of that advice.

[60] 'Candidate' in relation to an election is defined by s 3 to mean a person who has become a candidate under s 88(4). Section 88(4) provides that a person is properly nominated for an election if the provisions of Part 6, Division 2 are complied with. Section 84(5) (in part 6, division 2) provides that the nomination must be given after the day of issue of the writ for the election, and before noon on the cut-off day for nomination of candidates.

10. ELECTION FUNDING AND FINANCIAL DISCLOSURE (ISSUE 9)

10.1 THE COMMISSIONER'S COMMENTS

Requirements regarding the disclosure of political donations and other income received by candidates, political parties and other persons together with electoral expenditure incurred by them were included in the *Electoral Act* in 1994.[61] Essentially, these amendments were designed to: '*eliminate the potential for corrupt practices associated with political donations, especially in those situations where practices connected with the giving of such donations has led to perceptions that government administration may have been inappropriately influenced by them*'.[62]

The 1994 amendments stemmed initially from the Fitzgerald Report[63] and subsequent reports by the former Electoral and Administrative Review Commission ('EARC')[64] and EARC's parliamentary committee, the Parliamentary Committee for Electoral and Administrative Review.[65]

The effect of the amendments was to substantially reproduce in Queensland's *Electoral Act* the relevant provisions of the *Commonwealth Electoral Act* as they then stood regarding election funding and financial disclosure to the extent that the Commonwealth scheme was adopted in Queensland: see Part 7 and the schedule to the *Electoral Act*. (The Commonwealth provisions regarding electoral funding and financial disclosure are contained in the *Commonwealth Electoral Act,* Part XX.)

This approach specifically recognised that many of the persons who will be affected by Part 7 of Queensland's *Electoral Act* receive election funding or are required to disclose financial matters under the *Commonwealth Electoral Act*, Part XX. Therefore, as the Act states, '*To reduce the administrative burden on these persons, the law of the State about these matters is based on the Commonwealth Electoral Act*'.[66] The *Electoral Act* achieves this objective by setting out in the schedule the law about electoral funding and financial disclosure. This schedule is based on the *Commonwealth Electoral Act*, Part XX.[67]

In essence, the provisions regarding financial disclosure place responsibilities upon registered political parties to maintain financial records and to complete and file annual returns regarding receipts and expenditure with the respective electoral authorities.

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61 By the *Electoral Amendment Act 1994* (Qld).

62 Explanatory Notes, Electoral Amendment Bill 1994 at 2.

63 Fitzgerald GE (Chair), *Report of the commission of inquiry into possible illegal activities and associated police misconduct*, GoPrint, Brisbane, 1989.

64 Electoral and Administrative Review Commission ('EARC'), *Report on investigation of public registration of political donations, public funding of election campaigns and related issues*, Government Printer, Brisbane, June 1992.

65 Parliamentary Committee for Electoral and Administrative Review ('PCEAR'), *Report on public registration of political donations, public funding of election campaigns and related issues*, report no 20, Government Printer, Brisbane, November 1993.

66 *Electoral Act 1992* (Qld), s 126A(3).

67 As the schedule is based on the *Commonwealth Electoral Act 1918* (Cth), Part XX, the schedule uses the same numbering as the Commonwealth Act. Changes to the text of the *Commonwealth Electoral Act* in the schedule are noted in italics: *Electoral Act 1992* (Qld), s 126B(2) and (3). However, the schedule is not a mere adoption or application of the *Commonwealth Electoral Act*. For example, a reference in the schedule to regulations is a reference to regulations made under the Queensland Act: *Electoral Act 1992* (Qld), s 126B(4).

Recent amendments to the *Commonwealth Electoral Act* have altered certain provisions in the Commonwealth legislation regarding election funding and financial disclosure.

The electoral commissioner advises that there are now a number of differences between the Commonwealth and State requirements in the following three areas.

1 Annual returns by registered political parties

Under both the *Commonwealth Electoral Act* and Queensland's *Electoral Act*, the agent of each registered political party must, within 16 weeks after the end of each financial year, furnish to the respective electoral authority an annual return detailing:

- the 'amounts received' (receipts) by or for the party during the financial year, together with the details required by s 314AC;
- the 'amounts paid' (expenditure) by or for the party during the financial year (and, in Queensland, together with the details required by s 314AD); and
- the total 'outstanding amount', as at the end of the financial year, of all debts incurred by or for the party, together with the details required by s 314AE.[68]

The commissioner notes two major differences between the Commonwealth and State requirements in relation to the annual returns lodged by registered political parties.

First, under both the Commonwealth and Queensland requirements, if the sum of all amounts received by or for the party from a person or organisation during a financial year is $1500 or more, the return must include the particulars of the sum. However, under the Queensland requirements, in calculating the sum, an amount of less than $500 need not be counted.[69] This differs from the Commonwealth where this threshold sum of $500 has been increased to $1,500.[70]

Secondly, the commissioner notes that the Queensland *Electoral Act* requires receipts to be categorised in annual returns under six headings and expenditure to be categorised under twelve headings. (This is provided for in the *Electoral Regulation 1992* (Qld): see section 10.3.1 below.) In contrast, the *Commonwealth Electoral Act* does not require categorisation of receipts and expenditure in annual returns.

The electoral commissioner states that this means that:

> *persons examining the returns cannot obtain meaningful information relating to the expenditure incurred and, more importantly, cannot discern between donations received and other forms of income. To offset this deficiency in the provision of information, the [Commonwealth Electoral Act] requires donors to political parties who give $1,500 or more in a year to file returns detailing donations made and gifts of $1,000 or more received and used to make donations to political parties. In addition, broadcasters and publishers are required to file returns after each election detailing electoral advertisements broadcast or published by them.*

The commissioner recommends that the threshold amount for reporting in Queensland be increased to the level prescribed in the *Commonwealth Electoral Act*, namely $1,500, but that no change be made to the information currently required to be reported '*especially as it would*

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68 Schedule to the *Electoral Act 1992* (Qld), s 314AB(1); *Commonwealth Electoral Act 1918* (Cth), s 314AB(1) and (2).

69 Schedule to the *Electoral Act 1992* (Qld), s 314AC(1) and (2).

70 *Commonwealth Electoral Act 1918* (Cth), s 314AC(2).

be necessary to impose a duty on donors and publishers to lodge returns to obtain basically the same information'.

2 Loans to parties and candidates

The *Commonwealth Electoral Act* now requires details of loans of $1,500 or more to be disclosed in annual returns.[71] The *Electoral and Referendum Amendment Act (No. 1) 1999* (Cth) brought about this change by amending the definition of 'amount' for the purposes of Division 5A (Annual returns by registered political parties and associated entities) to include 'loan' in addition to 'the value of a gift or bequest'.

A related amendment to the *Commonwealth Electoral Act*—also by the *Electoral and Referendum Amendment Act (No. 1) 1999* (Cth)—is the insertion of a new section which prohibits political parties and candidates from receiving loans of $1,500 or more other than from financial institutions, unless details of the source, terms and conditions of the loan are recorded.[72]

The electoral commissioner advises that the ECQ '*has no reason to support or oppose similar information being made a requirement in Queensland but considers that it is more a policy issue for Government to determine*'. (The purpose of these amendments is explained in section 10.3.2 below.)

3 Definition of 'associated entity'

Both the Commonwealth and Queensland legislation also require 'associated entities' to furnish annual returns.[73]

'Associated entity' is currently defined in the *Electoral Act* to mean an entity that:

(a) is controlled by one or more registered political parties; or

(b) operates wholly or mainly for the benefit of one or more registered political parties.[74]

The 1999 amendments to the *Commonwealth Electoral Act* changed subsection (b) of the definition for the purposes of the *Commonwealth Electoral Act* to read:

(b) operates wholly or to a significant extent for the benefit of one or more registered political parties.[75]

The electoral commissioner recommends that the definition in the *Electoral Act* be changed to the definition used in the *Commonwealth Electoral Act* as '*this should have the effect of making it easier to identify associated entities*'.

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71 *Commonwealth Electoral Act 1918* (Cth), s 314AA(1) and s 314AB(2).
72 *Commonwealth Electoral Act 1918* (Cth), s 306A.
73 Schedule to the *Electoral Act 1992* (Qld), s 314AEA; *Commonwealth Electoral Act 1918* (Cth), s 314AEA.
74 Schedule to the *Electoral Act 1992* (Qld), s 287(1).
75 *Commonwealth Electoral Act 1918* (Cth), s 287(1).

10.2 COMMENTS MADE IN PUBLIC SUBMISSIONS

Generally, submitters who addressed the commissioner's proposals on this issue agreed with them.[76]

Dr M Macklin[77] stressed the need for consistency between the Commonwealth and State laws not only in relation to election funding and financial disclosure but also in relation to electoral administrative laws and regulations generally.

In relation to the detail required to be stated in annual returns, the AEC[78] submitted that '*a breakdown of the receipts and expenditure of political parties does not make any significant contribution to exposing potential political corruption*'. Mr Paul Lucas MLA[79] agreed submitting that the present State requirements lead to unnecessary and costly paperwork. (The AEC's and Mr Lucas' views are expanded upon below.)

The Criminal Law Committee of the Queensland Law Society[80] raised a possible problem with the new *Commonwealth Electoral Act* definition of 'associated entities' (discussed further below).

The committee did not receive any submissions from political parties regarding the specific recommendations made and issues raised by the electoral commissioner relating to election funding and financial disclosure. Given the nature of these issues and their administrative impact on registered political parties, the committee believed that it was important to hear the views of the parties. Therefore, on 3 April 2000 the committee wrote to all registered political parties seeking their views on the recommendations made and issues raised by the commissioner.

The committee also asked the parties to provide comments about the extent to which the provisions of the *Electoral Act* relating to election funding and financial disclosure are clear and user friendly.

Only three parties responded to this call for further input: the Liberal Party of Australia (Queensland Division),[81] the Australian Labor Party (Queensland)[82] and the National Party of Australia (Queensland).[83] The views of these parties on each of the above issues of substantive reform to the *Electoral Act* are noted below where relevant.

No party had any comments regarding whether the current method of presenting the provisions of the *Electoral Act* relating to election funding and financial disclosure are clear

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76 See, for example, submissions from: Mr R Webber dated 12 November 1999; Mr R Sadler dated 12 November 1999; Mr E Walker dated 23 November 1999; Dr M Macklin dated 3 December 1999; Cairns City Council dated 3 December 1999. Mr R Webber agreed with the proposals except in relation to the application of the *Local Government Act 1993* where he submitted the current prescribed amount should be retained. Mr Webber did not give reasons for his position.

77 Submission dated 3 December 1999.

78 Submission dated 30 November 1999.

79 Submission dated 1 December 1999.

80 Submission dated 23 November 1999.

81 Submission dated 10 April 2000.

82 Submission dated 20 April 2000.

83 Submission dated 3 May 2000. The National Party submission was qualified to the extent that it stated the viewpoints expressed in its submission had not been ratified by relevant policy committees of the Party and '*may be subject to amendment when final details of proposed legislation are available*'.

and easy to interpret. In the absence of any adverse comments in this regard, the committee has made no recommendations regarding the current presentation of the provisions.

10.3 COMMITTEE ANALYSIS AND CONCLUSION

10.3.1 Annual returns by registered political parties

Threshold levels for disclosure

The commissioner points out that the *Commonwealth Electoral Act* has increased the threshold level of amounts received for disclosure from $500 to $1500. In Queensland, the threshold for disclosure remains at $500.

In a June 1994 report *Financial reporting by political parties*,[84] the JSCEM recommended a $500 threshold in order to relieve political parties, particularly party volunteers in local branches, from the administrative burden of reporting every minor transaction and hence '*greatly reduce the bureaucracy associated with the Act'*. In that report, the JSCEM specifically rejected a submission that the threshold be set at $1500 '*to avoid opening loopholes for non-disclosure of substantial amounts*'.[85]

The subsequent JSCEM, during the course of its inquiry into the conduct of the 1996 federal election, received submissions from the Liberal Party and ALP that the disclosure threshold be increased to $1500.[86] The AEC expressed the view to the JSCEM that an increase in the $500 threshold would not significantly reduce the workload of party branch volunteers. After considering these submissions, the JSCEM concluded that '*disclosure thresholds should more accurately reflect current financial values*' and recommended that the threshold disclosure level be raised from $500 to $1500.[87]

This increase was subsequently effected by the *Electoral and Referendum Amendment Act (No. 1) 1999* (Cth) which amended s 314AC(2) of the *Commonwealth Electoral Act*.

The difference in the Commonwealth and State threshold levels means that persons required to disclose financial matters under both the Commonwealth and State legislation must comply with two different sets of requirements. As noted above, Queensland's *Electoral Act* explicitly recognises the desirability for consistency between State and Commonwealth requirements regarding electoral funding and financial disclosure to reduce the administrative burden on such persons.

The political parties which commented on this recommendation all agreed that the threshold amount for reporting be increased to the level now prescribed in the *Commonwealth Electoral Act*, that is, $1500.[88]

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84 JSCEM, *Financial reporting by political parties*: *Interim report from the Joint Standing Committee on Electoral Matters on the inquiry into the conduct of the 1993 election and matters related thereto*, The Parliament of the Commonwealth of Australia, Canberra, June 1994 at paras 13 and 14.

85 Note 84 at para 14.

86 Note 19 at para 8.10.

87 Note 19 at paras 8.11-8.15. The JSCEM also recommended that the *Commonwealth Electoral Act*, s 314AC(1) be amended so that political parties are required to disclose a total amount of $5000 or more, rather than $1500, received from a person or organisation during a financial year. This recommendation, while reflected in the Electoral and Referendum Amendment Bill (No 2) 1998 (Cth), was not passed by the Commonwealth Parliament.

88 Liberal Party of Australia (Queensland Division) submission dated 10 April 2000; Australian Labor Party (Queensland) submission dated 20 April 2000; National Party of Australia (Queensland) submission dated 3 May 2000.

The committee does not believe that increasing the threshold in Queensland to accord with that in the Commonwealth would undermine the intent behind the financial disclosure provisions. Further, the committee notes that the electoral commissioner supports increasing the threshold. Accordingly, the committee agrees that, to ensure consistency, the threshold level in Queensland likewise be increased to $1500.

Reporting requirements

As the commissioner notes, Queensland currently has much more onerous requirements than the Commonwealth regarding the categorisation of receipts and expenditure in annual returns.

The *Electoral Regulation 1992 (Qld)*, s 5(1) requires an annual return to set out in relation to receipts by or for the party:

(a) the sum of all donations of amounts less than $1500;

(b) the sum of all amounts received as membership or affiliation fees or subscriptions;

(c) the sum of all amounts of the earnings from assets of the party;

(d) the sum of all amounts of the earnings from the sale of goods or the provision of services, by the party;

(e) the sum of all amounts received not mentioned in paragraphs (a) to (d); and

(f) the sum total of all amounts in paragraphs (a) to (e).

In the case of expenditure, the *Electoral Regulation 1992 (Qld)*, s 5(3) requires an annual return to set out:

(a) the sum of all amounts paid for capital assets of the party;

(b) the sum of all amounts paid for the sale of goods, or the provision of services, by the party;

(c) the sum of all amounts paid for the wages and salaries of staff including the amount of costs directly related to the amounts;

(d) for advertising or public relations, the sum of all amounts paid for radio, television, newspapers, magazines, display advertising, and other forms of advertising or public relations;

(e) the sum of all amounts paid for affiliations, donations and gifts;

(f) the sum of all amounts paid for administration, including expenditure on engaging consultants and conducting opinion polls;

(g) the sum of all other amounts paid; and

(h) the sum total of all amounts mentioned in paragraphs (a) to (g).

The *Commonwealth Electoral Act* no longer requires such detail in annual returns.

The Commonwealth provisions requiring comprehensive disclosure of income and expenditure of political parties and candidates in annual returns were initially passed in 1991[89] and subsequently incorporated into Queensland's *Electoral Act* in 1994.[90] However, not long after the commencement of the new disclosure requirements at the Commonwealth

[89] These provisions were contained in the *Political Broadcasts and Political Disclosures Act 1991* (Cth) which was passed following JSCEM recommendations in its report on its inquiry into the conduct of the 1987 federal election and the 1988 referendums, *Who pays the piper calls the tune – minimising the risks of funding political campaigns*, report no 4, AGPS, Canberra, June 1989. The relevant provisions were amended by the *Commonwealth Electoral Amendment Act 1992* (Cth). The amended requirements took effect from the beginning of the 1992/93 financial year.

[90] *Electoral Amendment Act 1994* (Qld).

level, the political parties made the JSCEM aware of the '*unintended administrative burden'* imposed by the new provisions.[91] The JSCEM concluded that the '*accountability goals of the legislation would be equally well met if total expenditure only was reported*' rather than individual transactions within that total and recommended that the Commonwealth requirements be amended to require annual returns by registered political parties to disclose a total amount of *expenditure* only.[92] This recommendation was subsequently accepted by the Commonwealth Government.[93]

In relation to details of *receipts*, the *Commonwealth Electoral Act* still requires annual returns to detail particulars of a sum (above the threshold level). These particulars include the amount of the sum and details of the source of the sum.[94] However, the Commonwealth regulations requiring the level of categorisation of receipts, such as is required in Queensland, was repealed in 1995.[95]

The commissioner states that this 'deficiency' in the provision of information at the Commonwealth level is offset by two requirements under the *Commonwealth Electoral Act*.

First, if in a financial year, a person makes gifts totalling $1500 or more to the same registered political party, or the same state branch of a registered political party, the person must furnish a return to the AEC within 20 weeks after the end of the financial year detailing those gifts.[96]

Secondly, broadcasters and publishers are required to furnish a return to the AEC where, during an election period, they have broadcast or published political advertising relating to the election with the authority of a participant in the election.[97] The information in these returns is to include the amount charged for the advertisement and state whether or not that charge is at less than normal commercial rates.

The Queensland electoral commissioner supports the current Queensland requirements regarding receipts and expenditure as, he argues, they allow persons examining Queensland returns to obtain meaningful information relating to expenditure and to distinguish between donations and other forms of income. The commissioner also notes that if the Queensland Act was changed to accord with the *Commonwealth Electoral Act* then it would be necessary to impose duties on donors and publishers to lodge returns to obtain '*basically the same information*'. (Although, the committee notes that there would be some differences in the information obtained. For example, currently in Queensland registered political parties' annual returns do not identify whether a party was charged normal commercial rates for broadcasting or publishing political advertising or the names of the broadcasters and publishers. The returns only reveal the total sum of all amounts spent on advertising and public relations.)

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91 Note 84 at para 5.

92 Note 84 at paras 10-11.

93 See the Government response to the JSCEM's interim report tabled on 10 November 1994, available at: <http://www.aph.gov.au/house/committee/em/financ.htm>. Section 314AD of the *Commonwealth Electoral Act 1918* (Cth), which contained the requirement for political parties to report categorised expenditure, was amended by the *Commonwealth Electoral Amendment Act 1995* (Cth) and later repealed by the *Electoral and Referendum Amendment Act 1998* (Cth).

94 *Commonwealth Electoral Act 1918* (Cth), s 314AC.

95 See the *Commonwealth Electoral (Annual returns by registered political parties) Regulations (Repeal) 1995* No 164, s 2.

96 *Commonwealth Electoral Act 1918* (Cth), 305B.

97 *Commonwealth Electoral Act 1918* (Cth), ss 310 and 311.

The AEC made the following comments in its submission to the committee in relation to the detail required to be stated in annual returns:

> *The question of a continued requirement for political parties to categorise their receipts and expenditures under various headings ultimately rests upon the objectives of the disclosure legislation. This detail is, no doubt, of interest to some, providing some insight into the operations of political parties. However, with the exception of separately identifying donations, a breakdown of the receipts and expenditure of political parties does not make any significant contribution to exposing potential political corruption.*
>
> *On the matter of the disclosure of donations, it should be noted that the lodgment of donor returns under the [Commonwealth Electoral Act] not only serves to identify donation from other receipts listed on political party returns, but also plays an important role in ensuring full disclosure. A transaction threshold below which a political party does not need to aggregate receipts when determining whether it must disclose a person can be exploited through a donor making multiple donations, each just under the threshold. Theoretically, any value donation can be made and go undisclosed in the party's return. Monthly donations of $1499 would add up to a total donation of $17, 988 that need not be disclosed, with weekly donations totalling to a $77, 948 undisclosed donation.*
>
> *No transaction limit applies to donors when they are lodging their returns under the Commonwealth Electoral Act. They must disclose donations totalling $1500 or more to the same political party even where no single donation has reached the disclosure threshold.*
>
> *After consideration of the continued relevance of these returns, the JSCEM concluded in its Report on the conduct of the 1996 federal election that donors should be required to lodge separate returns while there remains a threshold below which amounts received by political parties do not have to be aggregated for disclosure purposes*.[98]

Mr Paul Lucas MLA[99] agreed with the AEC's sentiment, submitting that the present State requirements, especially as they relate to detailing expenditure, lead to unnecessary and costly paperwork.

> *Surely the purpose of financial disclosure legislation is to ensure that any donations received by political parties are reported for the sake of transparency and accountability. We have the ludicrous situation at present where State law requires <u>expenditure</u> of any sort to be reported. The Commonwealth legislation does not. For example, this means that if a political party pays more than $500 to purchase a new typewriter, or pay its phone bill, or buy some carpet for the office, or purchase food for a function, then its must declare it. There is no logical reason why this should be.*

The political parties which commented on this issue also urged that Queensland's electoral legislation mirror that of the Commonwealth's with respect to categorising receipts and expenditure.[100] The reasons cited by the parties were based on the administrative burden created by the differing federal and state requirements and the lack of any overwhelming justification for the current level of detail required in Queensland.

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98 Submission dated 30 November 1999.

99 Submission dated 1 December 1999.

100 Liberal Party of Australia (Queensland Division) submission dated 10 April 2000; Australian Labor Party (Queensland) submission dated 20 April 2000; National Party of Australia (Queensland) submission dated 3 May 2000.

The National Party of Australia (Queensland) [101] stated: '*The removal of categorisation would assist in the compilation of returns and would greatly reduce the administrative processes necessary to complete two separate returns satisfying the provisions of both State and Federal legislation*'.

The Australian Labor Party (Queensland)[102] submitted that the '*resource burden by the scheme significantly outweighs the ambiguous public benefit to be derived from disclosure of the information*' and that the '*information produced by the categorisation is of questionable usefulness given the significant issues involved in dividing complex arrangements among six basic headings of expenditure*'. In support of this latter argument, the ALP stated that '*internal management decisions about employing additional full-time staff as opposed to engaging consultants to perform essentially the same functions can distort the information provided between the third category relating to wages and salaries and the sixth category relating to expenditure on consultants*'.

Submissions from the political parties likewise supported Queensland adopting the provisions requiring certain donors, broadcasters and publishers to file returns. The Liberal Party submitted that: '*As donors already lodge a return under the federal legislation, we do not see this as a further imposition'*. [103]

The National Party stated that if the Queensland legislation is amended to mirror the provisions of the *Commonwealth Electoral Act* regarding detail to be provided in annual returns, '*the Party would also suggest that the returns be completed by donors, broadcasters and publishers be identical to those now utilised by the [AEC]'*.[104]

The committee agrees with the AEC that, with the exception of separately identifying donations, the current Queensland disclosure requirements which require parties to return a breakdown of receipts and expenditure does not make any significant contribution to exposing potential political corruption. Rather, the current requirements appear to be imposing an undue administrative burden on political parties who must complete two different returns in order to comply with Queensland and Commonwealth requirements. As the JSCEM remarked of the equivalent Commonwealth requirements regarding expenditure prior to their repeal: '*It is not the intention of the disclosure provisions that unnecessary bureaucracy be created and that political parties be effectively 'defunded'—but that is a consequence of the current Act*'.[105]

The committee therefore concludes that Queensland should adopt the Commonwealth requirements regarding the level of detail required in parties' annual returns. However, the repeal of the Queensland provisions requiring parties to return a breakdown of receipts and expenditure would, in the committee's opinion, necessitate amending Queensland's *Electoral Act* to replicate the *Commonwealth Electoral Act* requirements regarding donor returns and broadcaster and publisher returns.

As the AEC notes, the lodgment of donor returns not only identifies donations from other receipts listed on political party returns but also ensures full disclosure. There is potential for a disclosure threshold to be exploited by a donor making multiple donations, each just under the threshold. (The committee has concluded above that in Queensland the disclosure

101 Submission dated 3 May 2000.
102 Submission dated 20 April 2000.
103 Submission dated 10 April 2000.
104 Submission dated 3 May 2000.
105 Note 84 at para 7.

threshold should be increased to $1500 to accord with that of the Commonwealth.) However, there is no transaction limit with donor returns. Donors must disclose donations totaling $1500 or more to the same political party even where no single donation has reached the disclosure threshold.

Similarly, the committee believes that there should be consistency in the State and Commonwealth requirements placed on broadcasters and publishers.

10.3.2 Loans to parties and candidates

The commissioner raises two policy issues for the committee's consideration regarding recent amendments to the *Commonwealth Electoral Act* regarding loans to political parties and candidates.

First, the *Commonwealth Electoral Act* now includes 'loans' in the definition of 'amount' for the purposes of Division 5A (Annual returns by registered political parties and associated entities).[106]

Secondly, the *Commonwealth Electoral Act* now prohibits political parties and candidates from receiving loans of $1,500 or more other than from financial institutions, unless details of the source, terms and conditions of the loan are recorded.[107] (Separate details are required depending on whether the lender was a registered industrial organisation other than a financial institution, an unincorporated association, a trust fund or foundation or other person or organisation.)

These amendments were introduced by the ALP in the Senate during debate on the then Electoral and Referendum Amendment Bill (No 2) 1998. The introduction of the amendments followed allegations that the Greenfields Foundation, which provided a $4.65 million loan to the Liberal Party in 1996-97, could be an 'associated entity'. Associated entities[108] (being organisations which are closely associated with registered political parties) are basically required to disclose the same detail regarding receipts, expenditure and amounts outstanding as political parties.[109] (The Greenfields Foundation denied that it was an associated entity and therefore had not made any disclosure.)

The purpose of the amendments, according to Senator Faulkner who introduced them, was to:

- tighten the definition of 'associated entity';
- 'close the loophole' in the event of a loan being forgiven and thus ultimately becoming a gift; and
- prevent loans from being received from anyone other than a registered financial institution unless certain information, such as terms and conditions of the loans, is disclosed[110] (such information revealing whether the loan was provided on commercial terms and, if not, indicating that it might have been a gift).

The amendments followed the Government's implementation of an AEC recommendation that the AEC's investigative powers be broadened for the purpose of ascertaining whether an

106 *Commonwealth Electoral Act 1918* (Cth), s 314AA(1).
107 *Commonwealth Electoral Act 1918* (Cth), s 306A.
108 The definition of 'associated entity' is discussed in more detail in section 10.3.3 below.
109 *Commonwealth Electoral Act 1918* (Cth), s 314AEA; schedule to the *Electoral Act 1992* (Qld), s 314AEA.
110 Senator J Faulkner, Electoral and Referendum Amendment Bill (No 2) 1998 (Cth), Second Reading Debate, *Senate Parliamentary Debates*, 15 February 1999 at 1802.

organisation has an obligation to disclose as an 'associated entity'.[111] According to Senator Faulkner, '*While those particular government amendments were sufficient for the purpose of broadening the investigative powers of the AEC in pursuing suspected associated entities, they have not gone far enough in relation to the crucial issue of closing the loophole in the legislation. That is what the opposition wants to do*.'[112] Information as to the terms and conditions of loans received from anyone other than a registered financial institution was seen as being of great assistance to the AEC in their investigation and pursuit of possible or suspected 'associated entities'.

The amendments, which were adopted by the Senate, were subsequently passed by the House of Representatives with some minor refinements to which the Senate agreed.

In its submission to this committee, the Liberal Party stated that, for the sake of mirroring the Commonwealth legislation, the Commonwealth provisions regarding loans to parties and candidates should be replicated in Queensland's *Electoral Act*.[113]

The ALP (Queensland) likewise recommended that Queensland adopt the Commonwealth provisions on the basis that:

> *… the disclosure provisions of the legislation should ensure that registered political parties are required to properly disclose their financial position, and are not able to artificially structure their affairs so as to circumvent the requirement to provide public disclosure of their funding sources.*
>
> *The ALP submits that the relevant Commonwealth provisions inserted to prevent registered political parties obtaining non-commercial loan arrangements from favourable entities to disguise what would otherwise be a disclosable donation. For example, without amending the legislation a political party could obtain a loan of, say, $ 1 000 000 from a favourable entity on terms of 99 years, at interest of $100 per year, with the principal payable at the conclusion of the loan agreement. In substance, of course, such a 'loan' would clearly amount to a donation and should be disclosed as such. The recent Commonwealth amendments ensure that such arrangements are properly disclosed.*

The committee believes that Queensland should likewise adopt the recently inserted Commonwealth provisions regarding loans to political parties and associated entities not only to ensure consistency between the Commonwealth and Queensland legislation but also as a matter of good policy.

10.3.3 Definition of 'associated entity'

The recent amendments to the *Commonwealth Electoral Act* change the definition of 'associated entity' so that rather than including an entity that operates wholly *or mainly* for the benefit of one or more registered political parties, the term includes an entity that operates wholly *or to a significant extent* for the benefit of one or more registered political parties.

The electoral commissioner recommends that the amendments be replicated in Queensland, '*as this should have the effect of making it easier to identify associated entities'*.

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111 The AEC made this recommendation in its report *Funding and disclosure report: Election 1996*, Pirie Printers, Canberra, 1997 at paras 4.16-4.20 and recommendation 10.

112 Senator J Faulkner, Electoral and Referendum Amendment Bill (No 2) 1998 (Cth), In Committee, *Senate Parliamentary Debates*, 17 February 1999 at 2134.

113 Submission dated 10 April 2000.

The political parties which commented on this issue felt that, in the interests of uniformity, Queensland should adopt the new Commonwealth definition of 'associated entity'.[114]

The Criminal Law Committee of the Queensland Law Society[115] submitted that the definition proposed could include an entity which expends money in lobbying for particular policies (of different parties) at different times and in different elections and that this activity could be considered to be 'significant': '*This entity may however have no direct or indirect affiliation with any political party or group and should not be at risk of being treated as if it were a donor to a political party*.'

While the committee appreciates the Society's comments, based on the above discussion the committee does not believe that the new Commonwealth definition would apply to an entity such as the Society describes. This change in definition was inserted as part of amendments designed to close any loophole which might enable political parties to circumvent the current financial disclosure provisions.

Given that the committee has supported provisions designed to achieve this objective above, the committee agrees with the electoral commissioner that the amendment should be replicated in Queensland.

10.4 COMMITTEE RECOMMENDATION 9

The committee recommends that the Attorney-General—as the minister responsible for the *Electoral Act 1992* (Qld)—amend that Act to:

- **increase the prescribed amount for the purposes of s 314AC(2) of the schedule of the Act from $500 to $1500;**
- **amend those provisions of the Act and the *Electoral Regulation 1992* (Qld) which require political parties to categorise receipts and expenditure in their annual returns in order to ensure consistency with the equivalent requirements regarding the detailing of receipts and expenditure in annual returns prescribed by the *Commonwealth Electoral Act 1918* (Cth);**
- **insert an equivalent provision to the *Commonwealth Electoral Act,* s 305B (Donations to political parties);**
- **insert equivalent provisions to the *Commonwealth Electoral Act,* s 310 (Returns by broadcasters) and s 311 (Returns by publishers);**
- **insert 'loan' in the definition of 'amount' in s 314AA of the schedule to the Act;**
- **insert an equivalent provision to the *Commonwealth Electoral Act,* s 306A (Certain loans not to be received); and**
- **omit paragraph (b) of the definition of 'associated entity' in s 287 of the schedule to the Act and instead insert:**

  (b) operates wholly or to a significant extent for the benefit of one or more registered political parties.

The committee notes that implementation of a number of these recommendations might require additional, consequential amendments to the *Electoral Act.*

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114 Liberal Party of Australia (Queensland Division) submission dated 10 April 2000; Australian Labor Party (Queensland) submission dated 20 April 2000; National Party of Australia (Queensland) submission dated 3 May 2000.

115 Submission dated 23 November 1999.

11. MAINTENANCE OF ELECTORAL ROLLS (ISSUE 11)

11.1 THE COMMISSIONER'S COMMENTS

In his letter of 25 October 1999 the commissioner made the following comments regarding maintenance of electoral rolls:

> *Accurate electoral rolls are the foundation of free and democratic elections and the highest standards should exist in their preparation and maintenance.*
>
> *Basically, the current practice for the electoral roll to be updated is by persons completing and lodging enrolment forms which are readily available throughout the State.*
>
> *In accordance with a Joint Roll Arrangement the Australian Electoral Commission (AEC) is responsible for keeping the electoral roll in Queensland. The AEC is in the process of moving from the traditional door-knock review of the electoral roll to the employment of continuous roll updating methods (CRU).*
>
> *CRU involves matching roll records with information recorded in the databases of other organisations (ie Australia Post, CentreLink etc) to check the address of electors and to update the rolls where necessary.*
>
> *The accuracy of the roll could be greatly enhanced by making name and address data held by various State Government Departments and Agencies available to the Electoral Commission.*
>
> *For example, although the enrolment process to date has been simple and readily available, it is estimated that well in excess of 100,000 eligible Queenslanders are not enrolled. 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.*

Accordingly, the commissioner recommends that Queensland's *Electoral Act* be amended to allow 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*'.

11.2 CONTINUOUS ROLL UPDATING

In its background paper[116] to this inquiry and in its report no 19 *Implications of the new Commonwealth enrolment requirements*,[117] the committee provided some information regarding the continuous roll updating (CRU) concept. It is useful to repeat some of the background information from report no 19.

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[118]) engaged consultants to conduct a study of alternative methods of updating the

116 Note 3.
117 Note 4.
118 This council comprises of electoral commissioners and chief electoral officers from the Commonwealth, state and territory electoral authorities.

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').[119]

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.[120])

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 in 1999 implement the following operations': undertake follow up activities to improve 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, states and territories.[121]

The AEC advises that it meets regularly with the federal Privacy Commissioner to discuss privacy issues regarding data matching.

Roll maintenance activities by state and territory 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.[122] 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 ('the VEC') receives the names and addresses of new drivers' licence holders in the 18 to 21 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

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119 For further information on CRU see the AEC's submission dated 30 November 1999 at paras 11.7-11.11.

120 *Commonwealth Electoral Act 1918* (Cth), s 98.

121 Electoral Council of Australia (CRU Implementation Steering Committee), *Report of the 1999 continuous roll update activities to update the electoral roll for the Commonwealth, States, Territories and local government*, December 1999 at 5-6.

122 As to state and territory CRU activities in 1999, see n 121 at 21.

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).[123]

The Western Australian Electoral Commission ('the WAEC') 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.[124]

Queensland currently undertakes few CRU activities despite AEC efforts.[125]

Issues relevant to CRU

In its background paper, the committee raised a number of additional issues for discussion regarding the commissioner's suggestions relating to maintenance of the electoral roll, namely:

- 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).

11.3 COMMENTS RAISED IN PUBLIC SUBMISSIONS

A number of submitters supported the initiative of improving the accuracy of the electoral roll by using data gained from state government databases.[126] Although, there was some concern

123 Victorian Electoral Commission, *Annual report 1 July 1998 to 30 June 1999*, Melbourne, 1999 at 21-22.

124 WA Electoral Commissioner's submission to the committee dated 3 December 1999 at 1-2.

125 Note 121 at 27.

126 See, for example, submissions from: Mr P Lucas MLA dated 1 December 1999 at 2; Cairns City Council dated 3 December 1999 at 2; Australian Labor Party, Queensland dated 10 December 1999.

that the electoral roll should not be *automatically* updated on the basis of this information[127] and that appropriate privacy safeguards be put in place.[128]

On the other hand, the Criminal Law Committee of the Queensland Law Society[129] opposed CRU (by matching data from state and federal government agencies), considering it '*indistinguishable from the ill-fated Australia Card proposal which drew widespread community opposition*'. Mr R Sadler[130] suggested that the process '*could be the start of "Big Brother*"'.

There was support for other CRU mechanisms suggested by the committee in its background paper. The Honourable Ray Hollis MLA,[131] 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[132] submitted that completing an enrolment form '*is a good suggestion to pursue as a precondition to applying for a driver's licence*'.

However, the Criminal Law Committee of the Queensland Law Society[133] 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[134] 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 ECQ can mail them enrolment packages. Mr Paul Lucas MLA[135] 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.

A further suggestion brought to the committee's attention is that birth registration information could be used to verify the enrolment of 18 year olds.[136]

11.4 COMMITTEE ANALYSIS AND CONCLUSION

In its report no 19 *Implications of the new Commonwealth enrolment requirements*, the committee reported on recent amendments to the *Commonwealth Electoral Act* which will mean that:

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127 Mr L Springborg MLA, on behalf of the National Party, Queensland, supplementary correspondence dated 8 February 2000; H S Chapman Society submission received 9 December 1999 at 2.

128 See, for example, Mr R Webber, submission dated 12 November 1999 at 3 and supplementary correspondence dated 8 February 2000 from Mr L Springborg MLA on behalf of the National Party, Queensland. 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.

129 Submission dated 23 November 1999 at 2.

130 Submission dated 12 November 1999 at 2.

131 Submission dated 25 November 1999.

132 Submission dated 3 December 1999.

133 Submission dated 23 November 1999.

134 Submission dated 12 November 1999.

135 Submission dated 1 December 1999 at 3.

136 Correspondence from Mr J Pyke dated 15 March 2000.

- 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.

The requirements emanated from recommendations of the Joint Standing Committee on Electoral Matters aimed at combating electoral fraud, despite the fact that that committee had not been presented with any substantive evidence indicating the existence of electoral fraud. (This committee's recommendation regarding the new Commonwealth enrolment requirements are set out in section 1 of this report.)

In report no 19, this committee also made the following comments relevant to the current discussion.[137]

- 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.
- 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, electoral 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 (as the committee indicated might be the only option if the new Commonwealth requirements threaten the enfranchisement of Queenslanders), it appears to the committee that more could be done to ensure the accuracy of the electoral roll used for state electoral purposes.

Accordingly, the committee concluded:

> *…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.*[138]

The committee has now given further consideration to the broad issue of electoral roll maintenance.

The committee maintains that all efforts should be made 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). Modern technology offers the opportunity to ensure that this aim is achieved.

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137 Note 4 at 26 and 28.

138 Note 4 at 32.

Various forms of CRU, including data matching, will assist in ensuing that the electoral roll used for state electoral purposes is of the highest accuracy and integrity and, as such, the committee supports the concept of CRU in principle.

In terms of legislative reform necessary to implement CRU, the committee agrees with the commissioner's suggestion that Queensland's *Electoral Act* be amended to allow 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*'.

Providing a statutory basis to the exchange of data for CRU purposes is desirable not only from the ECQ's perspective but also from the perspective of departments and agencies which might, in the absence of any clear authority, be hesitant to provide information (particularly if this is contrary to departmental policy regarding the privacy of personal information).[139]

How CRU is to be implemented in Queensland is a matter to be determined at an administrative level between the AEC, the ECQ and relevant state government departments and agencies. The nature and extent of CRU processes used in Queensland will also depend on the direction the Commonwealth takes in implementing the new Commonwealth enrolment requirements and whether, as a result of that direction, Queensland decides to establish its own electoral roll. Although, the committee stresses that even if Queensland were to establish its own electoral roll, a cooperative approach between the AEC and the ECQ towards information sharing would be essential in the interests of both the state and federal rolls.

However, the committee's in-principle support for CRU and, in particular, data matching as a form of CRU, is subject to two provisos.

First, the committee recognises that where data is obtained from other departments and agencies appropriate privacy safeguards must be in place to ensure that public confidence in the electoral enrolment and roll-keeping system is maintained. The use of external databases for electoral roll maintenance purposes should be open and transparent and due regard must be given to individuals' privacy.

The principle of informed consent needs to be applied so that people are aware that when they provide their information to certain agencies, some of that information might be supplied to electoral authorities for roll maintenance purposes.

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), the JSCEM majority acknowledged that Commonwealth privacy legislation '*rightly places considerable restrictions on data-matching exercises*'.[140] The JSCEM minority report also highlighted privacy issues emanating from the recommendation.[141]

As noted above, the AEC advises that it meets regularly with the federal Privacy Commissioner to discuss privacy concerns with data matching. The federal Privacy Commissioner has issued guidelines with respect to data matching by Commonwealth government agencies.

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139 The Western Australian Electoral Commissioner made a similar observation in his submission dated 3 December 1999. The committee understands that the AEC relies upon the *Commonwealth Electoral Act 1918* (Cth), s 92 for much of its data matching activities.

140 Note 19 at para 2.27.

141 Note 19 at 122.

Queensland currently does not have a privacy regime equivalent to that at the Commonwealth level. However, this committee's predecessor made recommendations regarding a privacy regime for Queensland.[142] In responding to those recommendations, the Attorney-General stated that the government is committed to introducing legislation to protect personal privacy.[143]

How specifically due recognition would be given to privacy issues in the case of data matching for electoral roll maintenance purposes would depend on the scope and form of any final privacy legislation for Queensland. Until such time as privacy legislation is introduced, appropriate amendments would need to be made to the *Electoral Act* to ensure the protection of individuals' privacy. This should include privacy principles relating to the use, collection, storage and disclosure of data for electoral roll maintenance purposes.

Provision would also need to be made to protect the identity of 'silent' electors, that is, electors whose personal safety might be at risk if certain of their personal details are publicly available.[144]

The committee's support for data matching as a form of CRU is dependent on the committee's satisfaction with the draft legislation providing for this privacy protection.

The second proviso on which the committee gives its in-principle support for CRU is that the committee believes that data obtained from CRU activities should only be used to trigger an electoral authority to make further inquiries as to the accuracy of details recorded for a particular elector and not to automatically change details on the electoral roll. (As noted above, this is currently the only option in Australia as the *Commonwealth Electoral Act* requires the AEC to receive an enrolment form before it can update the electoral roll.) 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 change details on the electoral roll simply because of information contained in such records.

Of course, data matching is only one of a number of forms of CRU which might be employed in Queensland to maintain the electoral roll. Noted in section 11.2 above are a number of other CRU mechanisms used by the AEC and various state electoral authorities. Other suggestions were also made in submissions.

Arguably, many of these other CRU activities are potentially more cost effective and privacy unobstrusive than data matching. In accordance with the committee's comments above, the committee sees it as an administrative matter for the ECQ to determine what other forms of CRU might be usefully employed in Queensland. However, the committee does wish to comment on one particular suggestion made by the commissioner in his submission, namely, that: '*Perhaps, once a person establishes their bona fides for licence purposes, electoral enrolment should become an automatic consequential process with the person's consent*'.

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142 The former LCARC recommended that Queensland introduce legislation regarding the protection of information privacy in Queensland's public sector: *Privacy in Queensland*, report no 9, GoPrint, Brisbane, April 1998. Those recommendations have not been implemented to date. This report is available at: <http://www.parliament.qld.gov.au/committees/LCARC/LCARC%20reports%20list.htm>.

143 Hon Matt Foley MLA, Attorney-General, Minister for Justice and Minister for The Arts, response to LCARC report no 9 *Privacy in Queensland*, tabled 20 October 1998.

144 Section 58(4) of the *Electoral Act 1992* (Qld) provides that if the ECQ is satisfied that the inclusion on a roll of a person's address would place at risk the personal safety of the person or another person, the person's address must not be set out in the publicly available part of the roll.

The committee expanded upon this suggestion in its background paper with the proposal that a number of additional/alternative mechanisms and inducements could be used to update the electoral roll, for example, applying for a driver's licence or an 18+ card could cause simultaneous enrolment.

The commissioner's suggestion is similar to that effected by the United States' *National Voter Registration Act 1993,*[145] 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.

As noted above, the Speaker of the Legislative Assembly strongly supports the concept that information provided by applicants for a driver's licence should be automatically treated as an electoral enrolment. Mr Speaker further questioned why this should only occur with the person's consent given that enrolment is compulsory.

On the other hand, the Criminal Law Committee of the Queensland Law Society[146] 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*'.

The committee believes that an appropriate middle ground is reached by the adoption of a system similar to the US motor voter scheme. That is, an application for, or renewal of, a driver's licence could serve as an application for enrolment (or transfer of enrolment or claim for age 17 enrolment), if the applicant signs and has duly witnessed a voter enrolment application portion of the form. This portion of the form would essentially replicate the current enrolment card. In other words, failure to enrol would not preclude a person from obtaining their driver's licence.

In this regard, the committee notes that the AEC has recently negotiated with Queensland Transport to print an enrolment form on Queensland Transport change of address forms.[147] The committee believes that this concept could be expanded to applications for driver's licences as well as 18+ cards and other like cards.

11.5 COMMITTEE RECOMMENDATION 10

The committee supports, in-principle, the concept of continuous roll updating (CRU) as a means of ensuring that electoral rolls are of the highest accuracy and integrity, provided that data obtained from CRU activities is used only to trigger the relevant electoral authority to make further inquiries as to the accuracy of details recorded for a particular elector and not to automatically change details on the electoral roll.

To facilitate 'data matching' as a form of CRU, the committee recommends that the Attorney-General—as the minister responsible for the *Electoral Act 1992* (Qld)—amend that Act so as to enable the Electoral Commission of Queensland 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 that data.

145 *National Voter Registration Act 1993* 42 USC Sec 1973 gg.
146 Submission dated 23 November 1999.
147 Note 121 at 27.

This recommendation is subject to:

- **the proviso that, prior to the introduction of data matching, appropriate provision is made either in the *Electoral Act,* or in privacy legislation which might be introduced in Queensland, to ensure the protection of individuals' privacy and additionally, in the case of silent electors, their safety. This should include privacy principles relating to the use, collection, storage and disclosure of data for electoral roll maintenance purposes; and**
- **the committee's satisfaction with the draft legislation providing for this privacy protection.**

The committee also urges the Electoral Commission of Queensland to liaise with the Australian Electoral Commission regarding expansion of the AEC's current arrangement with Queensland Transport whereby an enrolment form is printed on Queensland Transport change of address forms. In particular, the committee suggests that an application for, or renewal of, a driver's licence, 18+ card and other like cards should also serve as an application for enrolment if the applicant signs and has duly witnessed a voter enrolment application portion of the form.

12. CONCLUSION

The committee recommends in this report a number of amendments to Queensland's *Electoral Act* essentially to facilitate the administration and conduct of State elections.

In a number of instances, the committee has recommended amendments to provisions which are substantially replicated in other legislation relating to the conduct of local government elections (including Aboriginal and Torres Strait Island Council elections) and referendums. As a matter of general policy, the committee believes that there should, where appropriate, be consistency in such administrative provisions.

12.1 COMMITTEE RECOMMENDATION 11

The committee recommends that the Ministers responsible for the following Acts amend those Acts (and relevant regulations) to replicate, where appropriate, the committee's recommendations made in this report in:

- **the *Local Government Act 1993* (Qld);**
- **the *Community Services (Aborigines) Act 1984* (Qld) and the *Community Services (Torres Strait) Act 1984* (Qld); and**
- **the *Referendums Acts 1997* (Qld).**

APPENDIX A: SUBMISSIONS RECEIVED

1 Confidential

2 Mr R Webber

3 Mr R Sadler

4 Redland Shire Council

5 Maryborough City Council

6 Mr E Walker

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 Mr J Wakely

12 Dr M Macklin

13 Cairns City Council

14 Western Australian Electoral Commission

15 Mr A MacAdam (Senior Lecturer, Faculty of Law, Queensland University of Technology)

16 National Party, Queensland (Mr L Springborg MLA)

17 Mr P Lucas MLA

18 Australian Labor Party, Queensland

19 Dr A McGrath (H S Chapman Society)

20 Emeritus Professor C A Hughes

21 Maroochy Shire Council

22 Kingaroy Shire Council

23 Liberal Party of Australia, Queensland Division

24 Australian Labor Party, Queensland (supplementary submission)

25 National Party, Queensland (supplementary submission)