QUEENSLAND

ELECTORAL AND ADMINISTRATIVE REVIEW COMMISSION

REPORT

ON

THE REVIEW OF THE ELECTIONS ACT 1983-1991 AND RELATED MATTERS

VOLUME ONE
(CHAPTERS 1 TO 10)

DECEMBER 1991

9th Floor, Capital Hill
85 George Street
BRISBANE QLD 4000

P O Box 349
NORTH QUAY QLD 4002

Tel: (07) 237 1998
(008) 177 172
Fax: (07) 237 1990

Serial No. 91/R7

ELECTORAL AND ADMINISTRATIVE REVIEW COMMISSION

REPORT

ON

THE REVIEW OF THE ELECTIONS ACT 1983-1991 AND RELATED MATTERS

VOLUME ONE
(CHAPTERS 1 TO 10)

DECEMBER 1991

Electoral and Administrative Review Commission
ISBN 0 7242 4720 3

91/R7

PREVIOUS EARC REPORTS

1.	90/R1	Review of Guidelines for the Declaration of Registrable Interests of Elected Representatives of the Parliament of Queensland (August 1990)
2.	90/R2	The Local Authority Electoral System of Queensland (September 1990)
3.	90/R3	Queensland Joint Electoral Roll Review (October 1990)
4.	90/R4	Queensland Legislative Assembly Electoral System (November 1990)
5.	90/R5	Judicial Review of Administrative Decisions and Actions (December 1990)
6.	90/R6	Freedom of Information (December 1990)
7.	91/R1	Public Assembly Law (February 1991)
8.	91/R2	Review of the Office of Parliamentary Counsel (May 1991)
9.	91/R3	Review of Public Sector Auditing in Queensland (September 1991)
10.	91/R4	Whistleblower Protection (October 1991)
11.	91/R5	External Boundaries of Local Authorities (November 1991)
12.		Determination of Legislative Assembly Electoral Districts (November 1991) (1)
13.	91/R6	Information and Resource Needs of Non-Governmental Members of the Legislative Assembly (November 1991)

(1) This determination was notified in the Queensland Government Gazette of 27 November 1991 as required by the *Electoral Districts Act 1991* (Qld). It does not form part of the numbered series of EARC Reports.

CONTENTS

LIST OF APPENDICES

LIST OF ABBREVIATIONS

the Act or the current Act	Queensland Elections Act 1983-1991
AEC	Australian Electoral Commission
AEO	Australian Electoral Officer
ALP	Australian Labor Party
ARO	Assistant Returning Officer
ATSI	Aborigines and Torres Strait Islanders
ATSIC	Aborigines and Torres Strait Islanders Commission
CE Act	Commonwealth Electoral Act 1918
CJC	Criminal Justice Commission
the Commission	Electoral and Administrative Review Commission
Cundy Report	Inquiry into the Operations and Processes for the Conduct of State Elections (1989)
CRO	Chief Returning Officer
CPI	Consumer Price Index
DEVETIR	Department of Employment, Vocational Education, Training and Industrial Relations
DJCS	Department of Justice and Corrective Services
The Draft Bill	Draft Bill for an Electoral Act
DRO	Divisional Returning Officer (for AEC)
EA Act	Elections Amendment Act 1991
EARC	Electoral and Administrative Review Commission
ED Act	Electoral Districts Act 1991
EV	Electoral Visitor
Fitzgerald Report	The Report of the Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct conducted by Mr G.E. Fitzgerald QC and furnished on 3 July 1989
GP Vote	General Postal Vote
ICAC	Independent Commission Against Corruption
IO	Issuing Officer
JP	Justice of the Peace

JSCEM	Commonwealth Joint Standing Committee on Electoral Matters
JSCER	Commonwealth Joint Select Committee on Electoral Reform
LA Act	Legislative Assembly Act 1967-1978
LG Act	Local Government Act 1936-1991
MLA	Member of the Legislative Assembly
NZRCR	Report of the New Zealand Royal Commission Report on the Electoral System "Towards a Better Democracy" (New Zealand 1986)
OPV	Optional Preferential Voting
Parliamentary Committee	Parliamentary Committee for Electoral and Administrative Review
PE & E Act	Parliamentary Electorates and Elections Act 1912 (NSW)
PEO	Principal Electoral Officer
PO	Presiding Officer
PV	Postal Vote
QEC	Queensland Electoral Commission
RO	Returning Officer (for State Electoral Districts)
SEO	State Electoral Office
SSCPBPD	Senate Select Committee on Political Broadcasting and Public Disclosure
TAB	Totalisator Administration Board of Queensland

NOTE:

1. Pecuniary penalties for electoral offences quoted in this Report have been converted in accordance with the *Penalty Units Act 1985-1988* (Qld).

2. References to numbered submissions in this Report are in brackets preceded by the letter "S". For example a reference to submission no. 280 will be "(S280)". References to Public Hearing Transcript pages are similarly abbreviated, for example, a reference to page 280 of that transcript will be "(T280)". Exhibits are documents furnished to the Commission at public hearings. They are referred to by their number with the prefix "E". For example, Exhibit 30 is referred to as "E30".

3. References to published material are in the form of the Harvard Citation System.

LIST OF TABLES

CHAPTER ONE

INTRODUCTION

Background

1.1 The Electoral and Administrative Review Commission ("EARC" or "the Commission") was established by the *Electoral and Administrative Review Act 1989-90*. The Commission's object is to provide reports to the Chairman of the Parliamentary Committee for Electoral and Administrative Review, the Speaker of the Legislative Assembly and the Premier with a view to achieving and maintaining:

> *"(a) efficiency in the operation of the Parliament; and*
>
> *(b) honesty, impartiality and efficiency in -*
>
> *(i) elections;*
>
> *(ii) public administration of the State;*
>
> *(iii) Local Authority administration"* (s.2.9(1) of the *Electoral and Administrative Review Act 1989-90*).

1.2 Section 2.10(1) of the *Electoral and Administrative Review Act 1989-90* states that the functions of the Commission include:

> *"(a) ... to investigate and report from time to time in relation to -*
>
> *(i) ... the whole or part of the Legislative Assembly electoral system;*
>
> *(b) ... to investigate and report from time to time in relation to -*
>
> *(i) ... the whole or part of the Local Authority electoral system;"*

1.3 Section 2.10(1)(a) authorises the Commission to investigate and report on:

> *" ... any matters pertaining thereto specified in the Report of the Commission of Inquiry ... "* (ie. the Fitzgerald Report).

1.4 Section 2.10(2) states:

> *" ... the Commission may investigate and report in relation to all or any of the matters specified in the Schedule."*

1.5 Item 8 in the Schedule refers to the *"Registration of donations to political parties and other donations of political significance."*

The Fitzgerald Report

1.6 The *Report of the Commission of Inquiry Into Possible Illegal Activities and Associated Police Misconduct* ("the Fitzgerald Report") made the following comments on the Queensland Legislative Assembly Electoral System:

> *"A fundamental tenet of the established system of parliamentary democracy is that public opinion is given effect by regular, free, fair elections following open debate.*

A Government in our political system which achieves office by means other than free and fair elections lacks legitimate political authority over that system. This must affect the ability of Parliament to play its proper role in the way referred to in this report. The point has already been made that the institutional culture of public administration risks degeneration if, for any reason, a Government's activities ceased to be moderated by concern at the possibility of losing power.

The fairness of the electoral process in Queensland is widely questioned." (p.127).

1.7 The Report also commented:

"The Elections Act 1983-85 should similarly be reviewed in an impartial manner to ensure that more effective means are developed to guarantee the accuracy of electoral rolls, to prevent fraudulent voting practices and to maintain the confidentiality of individual voters, particularly in the case of absentee and postal votes.

In addition, regulations governing the distribution of electoral material at polling booths should be reviewed with the object of determining whether they should be wholly contained within the Elections Act, rather than the Traffic Regulations 1962. It is arguable that the Police and the Government have no legitimate role in determining who is permitted to hand out how-to-vote cards at polling booths. If there is a dispute or difficulty about the distribution of political materials, it could be heard and determined by a member of the Judiciary, who would be independent and impartial." (p.127).

1.8 These recommendations were made in the context of proposals for a review of the whole electoral system. The first, and most urgent, review was to be an examination of the system under which electoral boundaries are determined.

1.9 The Fitzgerald Report specified that the *" ... inquiry* [by EARC] *must be totally open with public access to the evidence and submissions received by it ... "* and *" ... it should report directly to Parliament."* (p.127).

1.10 The Fitzgerald Report also drew attention to the possibility that persons or organisations had made donations to a political party in return for favours granted by the Government or Government instrumentalities. The Report concluded:

"While no finding of misconduct is made, there were other occasions when persons or organisations engaged in business with the Government or seeking business from it, made substantial donations to its political party. There was no disclosure of that and the attitudes and practices adopted allowed such donations to remain hidden." (p.86).

1.11 The Report maintained furthermore that:

"The possibility of improper favour being shown or being seen to have been shown by the Government to political donors must also be eliminated.

There is a legitimate entitlement, ordinarily, to privacy in respect of membership of or loyalty to political organisations. It may be that, however, that private right should be subservient to the public interest in proper standards in public administration.

Evidence before the Commission indicates that there is an urgent need to consider establishing a public register of political donations. Lack of such a register has given rise to community suspicion and lack of confidence in the political process.

The requirement for disclosure should extend far beyond those who because of their public positions, ought to disclose financial, political and any other relevant interests. Arguably, there should be disclosure of all donors, and the amounts they give. Alternatively all donations above a minimum sum could be disclosed." (pp.137 - 138).

1.12 Two of the priority matters recommended *in the Fitzgerald Report* for consideration by the Commission were:

> *"(c) a review of the electoral system, especially the fairness of electoral boundaries, the basis of representation, the processes of registration and counting and the distribution of electoral material at polling booths;*
>
> *(m) a report on the considerations relevant to the registration of political donations."* (pp.144, 145).

1.13 The recommendations of the Fitzgerald Report which are of most relevance to this Report are:

> *"11. the Commission* [EARC] *consider and, where appropriate, make recommendations for electoral and administrative reform otherwise identified in or arising out of this report, including:*
>
> ...
>
> *(c) the establishment of a public register of donors to all political parties, or of such donations in excess of a minimum amount;*
>
> *(d) review of the Elections Act 1983-85 ... "* (p.371).

Scope of the Review

1.14 In discharging its responsibilities under the *Electoral and Administrative Review Act 1989-90* the Commission has carried out its Review in four stages:

(a) Stage 1 was an investigation of the Zonal Electoral System and Queensland's voting system and methods. This stage established the principles and legislation for the subsequent electoral distribution and review of Queensland's electoral law and administration. The publication of the Commission's *Report on Queensland Legislative Assembly Electoral System* (Serial No. 90/R4), in November 1990 which contained a Draft Bill for an Electoral Districts Act, (Draft Bill) marked the completion of Stage 1. The ED Act (*Electoral Districts Act 1991*) became law on 15 April 1991 substantially in the form recommended by the Commission.

(b) Stage 2 was the electoral distribution carried out on principles identified during Stage 1 and under the provisions of the ED Act. The final distribution was notified in the Gazette on Wednesday 27 November 1991.

(c) Stage 3 was an investigation of whether Queensland should adopt a common electoral roll with the Commonwealth, as other States have done, or continue to maintain its own roll. The Commission's Report on Joint Electoral Roll Review (No. 90/R3) was published in October 1990. The Joint Roll Arrangement was subsequently signed by Queensland and the Commonwealth on 4 November 1991.

(d) Stage 4 is an investigation of Queensland electoral laws generally, particularly the *Elections Act 1983-1991*. This stage focuses mainly on the conduct and administration of Queensland Legislative Assembly elections. It culminates in the publication of this Report and the accompanying Draft Bill for an Electoral Act.

1.15 The Stage 4 Review and this Report bring together the issues and themes identified in earlier stages and provide the legislative framework for future electoral administration in Queensland. The Report builds particularly on the recommendations of Stages 1 and 3, Reports of the Parliamentary Committee for Electoral and Administrative Review, and Resolutions of the Parliament arising from those Reports.

1.16 The Stage 4 Review was conducted in two parts which have been drawn together in this Report because of their dependence on a common administrative structure. The first part of the Review was concerned with the issues of: public funding of election campaigns; disclosure of political donations; disclosure of electoral expenditure; political advertising; and registration of political parties and candidates. The Commission will report on funding and disclosure during the first half of 1992.

1.17 The Commission had intended to provide a single Report but the passage of the Commonwealth's *Political Broadcasts and Political Disclosures Bill 1991* when compilation of that Report was nearing completion substantially altered the relevant circumstances and required reconsideration of the Commission's previous intentions. The need to secure each passage of other parts of the legislation to enable the Electoral Commission to commence preparations of new operational procedures and preparing materials in adequate time for an election in the latter part of 1992 outweighs any advantages of a single Report.

1.18 The second part of the Stage 4 Review dealt with the legislative and administrative regime for the conduct of Legislative Assembly elections in Queensland, specifically the *Elections Act 1983-1991,* the Elections Regulations and associated legislation.

1.19 Consequently the scope of this Report encompasses directly or indirectly a wide range of matters, namely:

(a) Queensland electoral legislation comprising:

(i) *Elections Act 1983-1991;*
(ii) *Electoral Districts Act 1991;*
(iii) *Referendums Act 1989;*
(iv) *Community Services (Aborigines) Act 1984-1986;*
(v) *Community Services (Torres Strait) Act 1984-1986;*
(vi) *Local Government Act 1936-1990, especially Schedule Three;*
(vii) *City of Brisbane Act 1924-1990;*
(viii) *Criminal Code;*
(ix) *Legislative Assembly Act 1867-1978.*

(b) Electoral administration comprising:

(i) the Queensland Electoral Commission;
(ii) the office of Electoral Commissioner and associated support staff;
(iii) the appointment of electoral officials (Returning Officers, Electoral Registrars, Presiding Officers and Poll Clerks);
(iv) the maintenance of the Joint Electoral Roll with the Commonwealth, and regulation of access to roll information;
(v) the periodic redistribution of electoral boundaries;

(vi) Legislative Assembly general elections;
(vii) Legislative Assembly by-elections;
(viii) Local Authority elections;
(ix) Local Authority internal boundaries;
(x) Community Council elections;
(xi) conduct of referendums;
(xii) industrial elections;
(xiii) political advertising;
(xiv) registration of political parties and candidates; and
(xv) ongoing review of the Queensland electoral system.

(c) The structure and content of a Draft Bill for an Electoral Act and any necessary amendments to associated legislation.

The Conduct of the Review

PRINCIPLES GOVERNING THE REVIEW PROCESS

1.20 The procedures for this Review were developed to comply with the Commission's statutory responsibilities set out in s.2.23 of the *Electoral and Administrative Review Act 1989*:

> *"(1) The Commission is not bound by rules or the practice of any court or tribunal as to evidence or procedure in the discharge of its functions or exercise of its powers, but may inform itself on any matter and conduct its proceedings in such manner as it thinks proper.*
>
> *(2) The Commission -*
>
> *(a) shall act independently, impartially, fairly, and in the public interest;*
>
> *(b) shall make available to the public all submissions, objections and suggestions made to it in the course of its discharging its functions, and otherwise act openly, if to do so would be in the public interest and fair;*
>
> *(c) shall not make available to the public, or disclose to any person, information or material in its possession, if to do so would be contrary to the public interest or unfair;*
>
> *(d) shall include in its reports -*
> *(i) its recommendations with respect to the relevant subject-matter;*
> *(ii) an objective summary and comment with respect to all considerations of which it is aware that support or oppose or are otherwise pertinent to its recommendations."*

1.21 In complying with these requirements EARC has endeavoured to provide every opportunity for public input on the matters before the Commission.

ISSUES PAPERS

1.22 The Review commenced with the release of two Issues Papers for public comment.

Issues Paper No. 12 - Public Registration of Political Donations, Public Funding of Election Campaigns and Related Issues

Issues Paper No. 13 - Review of the Elections Act 1983-1991 and Related Matters

1.23 On 27 April 1991 advertisements were placed in the *Weekend Australian, the Courier Mail* and 25 regional newspapers throughout Queensland advertising the availability of the Issues Papers. Copies of the advertisements appear as Appendix A to this Report.

1.24 The advertisements:

(a) invited public submissions on specific issues connected with the review; and

(b) advised that copies of the Issues Papers could be obtained from the Commission.

1.25 Approximately 550 copies of each of the Issues Papers were distributed to libraries, court-houses, government instrumentalities, community organisations and members of the public.

1.26 The closing date for public submissions was 7 June 1991. All public submissions received by that date were bound and placed on display at the same libraries and court-houses with an invitation for comments on the submissions to be lodged with EARC by 5 July 1991.

1.27 Issues Paper No. 12 attracted 34 public submissions and comments. A list of persons and organisations who made submissions and/or comments is contained in Appendix B.

1.28 There were 110 public submissions and comments made in connection with Issues Paper No. 13. The list of persons and organisations who made submissions and/or comments is contained in Appendix C.

CHAPTER TWO

PRINCIPLES UNDERLYING THE ELECTORAL SYSTEM

Introduction

2.1 In its *Report on Queensland Legislative Assembly Electoral System* the Commission drew attention to the importance of identifying principles on which to base the legislation governing the operations of the electoral system. In that Report the Commission defined the scope of such a set of principles when it stated:

> *"An electoral system provides an electoral process which includes voter qualification, candidate eligibility, apportionment of seats, rules for the conduct of elections, and laws which govern the mechanics of converting votes into seats."* (p.4).

2.2 The principles identified in that Report were used by the Commission to develop its recommendations for the Queensland electoral system and the conduct of future electoral redistributions.

2.3 In its Issues Papers on electoral law in Queensland the Commission was equally concerned to identify the appropriate principles for new legislation and administration. The first issue raised in Issues Paper No. 13 was:

> ***Issue 1 What principles should be reflected in the new Elections Act to guide the conduct and administration of elections for the Legislative Assembly?***

Free and Democratic Elections

2.4 The Queensland Legislative Assembly electoral system is designed to provide for "free and democratic" elections. For an electoral system to be considered free and democratic it must satisfy a set of criteria which bestow a number of fundamental rights:

> *"1. Substantially the entire adult population has the right to vote for candidates for office.*
>
> *2. Elections take place regularly within prescribed time limits.*
>
> *3. No substantial group in the adult population is denied the opportunity of forming a party and putting up candidates.*
>
> *4. All the seats in the major legislative chamber can be contested and usually are.*
>
> *5. Campaigns are conducted with reasonable fairness in that neither law nor violence nor intimidation bars the candidates from presenting their views and qualifications or prevents the voters from learning and discussing them.*
>
> *6. Votes are cast freely and secretly; they are counted and reported honestly; and the candidates who receive the proportions required by law are duly installed in office until their terms expire and a new election is held."*
>
> (Butler, Penniman and Ranney cited in HF Rawlings 1988, p.1.)

2.5 These criteria provide the broad foundations for all aspects of this review of existing Queensland electoral legislation and the Draft Bill for an Electoral Act.

2.6 The term "electoral system" has been given a detailed definition in s.1.3(1) of the *Electoral and Administrative Review Act 1989-90*. The definition refers to the legal and administrative realities of voter registration and electoral administration, as well as the precise rules for translating votes into seats.

2.7 Section 1.3(1) states:

> *" ... 'electoral system' means the laws, rules, procedures and practices relating to elections and, without limiting the generality thereof, includes the laws, rules,procedures and practices relating to -*
>
> *(a) any division of the State or any part of the State into electoral zones, districts, areas, divisions or wards;*
> *(b) the location of electoral boundaries;*
> *(c) the compilation and maintenance of complete and accurate rolls of persons entitled to vote;*
> *(d) voting, including absentee and postal voting;*
> *(e) counting votes;*
> *(f) declaring polls;*
> *(g) the observance of secrecy;*
> *(h) the exclusion of fraud and other misconduct; and*
> *(i) the regulation of behaviour, including the distribution of any documents, at or near any place appointed or provided for voting."*

Principles for the Electoral System

2.8 In a representative democracy, public confidence that elections are free and fair is essential because elections confer legitimacy on those elected and on the policies they implement.

2.9 The importance of principles for the future development of Queensland electoral law was underlined in the Commission's *Report on Queensland Legislative Assembly Electoral System* and in Issues Paper No. 13. In these two documents the Commission argued that any new electoral legislation should be based on a set of consistent and complementary principles which had public acceptance. Future amendments to electoral law should likewise be guided by these principles.

2.10 Issues Paper No. 13 provided a draft list of principles and called for public comment on them.

2.11 The list which appeared in the Issues Paper read:

> *"1. FREE, HONEST, REGULAR AND FAIR ELECTIONS*
>
> *(a) Protection of the right to vote or to be a candidate. The legislation should ensure that all those who have the right to vote or to be a candidate have that right preserved, and that all electors have only one vote.*
>
> *(b) Maximum opportunity to exercise the right to vote. Electors should be provided with maximum opportunity to cast their vote.*
>
> *(c) Preservation of the secret ballot. No one should be able to ascertain for whom an elector voted.*

(d) *Freedom from influence. Electors must be free to cast their votes without coercion or improper influence.*

(e) *Assistance and information for voters. Electors should have access to information and assistance to aid them in selecting candidates and casting votes.*

(f) *Maximisation of the formal vote count. Ballot-papers should be admitted to the count where the voters' intentions are clear.*

(g) *Accurate counting of votes. Once admitted to the scrutiny, each elector's vote must be counted accurately to the candidate of their choice.*

(h) *Protection of the rights of candidates. The rights of candidates to be represented at polling and at the scrutiny, and to disseminate information promoting their candidacy must be protected.*

2. A SIMPLE VOTING SYSTEM

(a) *Simplicity of procedures. Procedures at polling-booths should be simple and straightforward.*

(b) *Commonality of Voting Methods. There should be the maximum level of compatibility practicable between ballot marking methods in Federal, State and Local Authority electoral systems.*

(c) *Efficiency of administrative procedures. Administrative mechanisms and procedures, including administrative paperwork, should be efficient and economical.*

(d) *Speedy results. Election results should be made available as soon as possible. Counting procedures, and the resources available to count the vote, should reflect the need to count all classes of votes without delay. Delay due to legal proceedings arising from elections should be minimised.*

3. LEGITIMACY

(a) *Public confidence in elections must be preserved. Election procedures should be open and subject to review so that public confidence in the integrity of the electoral system and election outcomes can be maintained.*

(b) *Neutrality of election officials. The conduct and administration of elections should not be influenced by political considerations. Persons responsible for conducting elections should be politically neutral in their dealings with electors.*

(c) *Competency of electoral officials. Electoral officials should have a level of competency sufficient to command the respect of voters.*

(d) *Prevention of electoral fraud. All possible steps should be taken to eliminate electoral fraud. Penalties for electoral offences should be set at levels which discourage fraud.*

(e) *Recognition of political parties. Political parties play an important part in the election process, and their place in the electoral system should be recognised.*

(f) *Right to query or dispute an election. Judicial and administrative review procedures should be available to all candidates and electors who wish to query or dispute the conduct or outcome of an election.*

(g) *Ongoing review of electoral matters. Electoral legislation and administrative procedures should be reviewed regularly to ensure that they remain relevant to changing community expectations."*

2.12 These principles constitute a more detailed statement of the fundamental criteria for democratic elections stated at the beginning of this chapter.

EVIDENCE AND ARGUMENTS

2.13 Relatively few public submissions received during the review offered comments on the nature of the principles which should underlie any new Queensland electoral legislation. However among those that did comment, there was general support for the principles proposed in the Issues Paper:

(a) The National Party (S76) stated that the fundamental principle was that public confidence in elections must be preserved, and that all other principles are supported as an application of that principle.

(b) *"A fundamental principle in a democratic society is the right of all citizens to participate in the process of electing a government. ... the guiding principle of electoral administration must be to assist individuals in the exercise of their rights ... "* (Department of Justice and Corrective Services (DJCS) (S77)).

(c) The ALP (Australian Labor Party (S70)) submitted that in addition to the principles of

> *". free, honest, regular and fair elections;*
> *. a simple voting system; and,*
> *. legitimacy.*
>
> ...
>
> *Labor would wish to add a fourth principle, which, while implicit (at least partly) in the above, is sufficiently important to merit separate emphasis, namely:*
>
> *an enrolment and election system which extends the franchise to the full extent required in a democratic system, enables votes to be exercised without confusion or complication, and judged as formal by an electoral administration which seeks earnestly to give effect to the voter's intention."*

(d) The Australian Democrats (S62) argued strongly in favour of commonality of State and Federal procedures:

> *"In general it is suggested throughout that, unless there are good reasons to the contrary, attempts should be made for the majority of procedural matters for State elections in Queensland to be consistent with Federal elections."*

(e) A number of local government organisations explicitly or implicitly proposed that commonality of electoral procedures as far as practicable throughout the three levels of government should be accepted as a general principle for new electoral legislation:

(i) *" ... what needs to be addressed is the uniformity of standards which could be achieved by compatability of legislation and by close working relationships between local government officers and the State Electoral Office."* (Institute of Municipal Management (S86)).

(ii) *"To the extent that the need for consistency in electoral procedures is considered necessary this can be achieved through commonality in legislative requirements for elections as well as in common voting procedures. ... Common legislative requirements within the Elections Act and the Local Government Act will significantly reduce inconsistencies."* (Local Government Association (S96)).

(iii) *"It is considered that the Electoral Commission has a role to play in the following areas:-*

(i) Recommend on measures necessary to achieve greater uniformity of legislative provisions and compatability of procedures at Federal, State and Local Authority elections.

(ii) Recommend on measures necessary to achieve greater uniformity of legislative provisions and compatability of procedures as between Brisbane City and other Local Authorities in Queensland." (Boonah Shire Council (S68)).

ANALYSIS OF EVIDENCE AND ARGUMENTS

2.14 The Commission's public consultation process showed that there is general support for the adoption of a set of principles to underpin the development of new and amending electoral legislation. The submissions received by the Commission broadly supported the list of principles contained in the Issues Paper.

2.15 The National Party's concern for public confidence in the electoral system is addressed in principle 3(a) above. The concern of the Department of Justice and Corrective Services (DJCS) in relation to voter assistance is addressed in principle 1(a) above. The ALP's fourth principle, maximum extension of the franchise by simplicity and avoidance of confusion, is substantially covered by principles 1(e) and (f). The Commission agrees with comments from Local Government that the State and Local Government electoral systems should be as consistent as possible. The harmony principle is addressed in principle 2(b).

2.16 It is the Commission's intention in this Report and the proposed Draft Bill to use the above principles in developing its proposals for changes to Queensland electoral law.

CHAPTER THREE

ELECTORAL ADMINISTRATION

Introduction

3.1 In its *Report on Queensland Legislative Assembly Electoral System* EARC recommended that a Queensland Electoral Commissioner should be appointed as soon as possible (Recommendation 12.32, p.231). The Commission also recommended the establishment of a Queensland Electoral Commission (QEC) and a range of functions for it, and proposed that the QEC be established in accordance with legislation to be put forward by EARC in this Report (Recommendation 12.33, p.231).

3.2 The Parliamentary Committee endorsed the Commission's recommendation in its Report to the Legislative Assembly. Subsequently the Legislative Assembly considered both the Commission's Report and the Report of the Parliamentary Committee and by Resolution on 11 April 1991 accepted the recommendations with additions to the list of functions for which the QEC would be responsible (Votes and Proceedings of the Legislative Assembly, 11 April 1991).

3.3 On 15 April 1991 the EA Act received Royal Assent and established the office of Electoral Commissioner. Mr Des O'Shea was appointed as Queensland's first Electoral Commissioner under the provisions of the Act on 5 September 1991.

3.4 The Commission's *Report on Queensland Legislative Assembly Electoral System* identified the need for changes to Queensland's electoral administration. The Report identified a need for and made proposals in relation to four main bodies:

(a) the Queensland Electoral Commission;

(b) the Electoral Commissioner;

(c) Redistribution Commissions; and

(d) a Standing Committee on Electoral Matters (in the event that the Parliamentary Committee for Electoral and Administrative Review should cease to exist or change its functions).

3.5 There is a further component needed to complete this structure: a judicial and administrative review system to resolve electoral disputes. This matter is dealt with in Chapters Twelve and Thirteen.

3.6 For these bodies to be effective they need to be supported by legislation. It is also important that the legislative framework assist in developing public confidence that the bodies operate openly, independently, impartially, fairly, and in the public interest in carrying out their respective functions. EARC is required under the *Electoral and Administrative Review Act 1989* to act similarly in the discharge of its functions.

3.7 Central to public confidence in the new electoral administration is its independence from political influence. In the past there have been repeated accusations that the electoral system, particularly in respect of electoral redistributions, has been partisan or influenced by government. In any event, this Commission's Reports on the Legislative Assembly and Local Authority Electoral Systems concluded that previous redistributions produced unacceptable levels of malapportionment.

3.8 In Issues Paper No. 13 the Commission posed a direct question about independence:

> ***Issue 1 What should be done to ensure that the Queensland Electoral Commission acts independently, free from political influence?***

3.9 A considerable part of this chapter is concerned with the answer to that question and a number of strategies are proposed to counter improper influence.

Matters for Consideration

3.10 This chapter deals primarily with the QEC. It is concerned with its constitution, reporting relationships, functions, structure and means to keep it independent of improper influence.

Constitution of the Queensland Electoral Commission

> ***Issue 2 What should be the structure of the Queensland Electoral Commission?***
>
> ***Issue 3 What should be done with the resources of the current State Electoral Office?***

3.11 The organisational structure of the QEC will be largely determined by the functions it has to fulfil. For example there may be a need for a number of functional units to deal with: the conduct of Legislative Assembly, Local Government and Union elections; research; public information and education; and Joint Roll administration. However such functional units do not need to be prescribed by specific legislation; their number and composition should be determined by the QEC as a matter of administration.

3.12 On the other hand there are a number of structural issues which ought to be settled in the legislation: for example, whether the Commission is to be a corporation sole (ie. a corporation constituted by a single person) or is to be managed by a Board; whether there should be a statutory office of Deputy Electoral Commissioner; and the extent to which it is necessary to specify functions for other electoral officials (eg. Electoral Registrars, Returning Officers (ROs), Presiding Officers (POs), etc.) in the legislation.

CURRENT SITUATION

3.13 At the Federal level, s.6 of the CE Act (*Commonwealth Electoral Act 1918*) establishes the Australia Electoral Commission (AEC), a corporation aggregate, which consists of:

(a) A part-time Chairperson, who is a Judge;

(b) The Electoral Commissioner; and

(c) A part-time non-judicial appointee, who must be a permanent head in the Federal public service or hold an equivalent position.

3.14 Powers and functions in relation to electoral matters in the CE Act are vested in the AEC (s.7). The AEC may delegate its powers, other than those relating to redistribution, to a Commissioner, an electoral officer or a member of the staff of the Commission (s.16). Electoral Commissions in the other States, except South Australia which has an Electoral Department, are constituted as corporations sole in the office of the Electoral Commissioners. Tasmania has a Chief Electoral Officer in the Department of Administrative Services and Consumer Affairs.

3.15 Only the Commonwealth provides for a Board structure to administer its Electoral Commission; other States provide for a position of Electoral Commissioner heading the Electoral Commission (Electoral Department in South Australia) which in all these cases is a corporation sole.

EVIDENCE AND ARGUMENTS

3.16 The structure of the QEC was not considered in detail in any submission to the Commission. Two submissions dealt with whether the QEC should be constituted as a corporation sole or corporation aggregate (ALP (S70) and National Party (S76)). Both recommended that the QEC should be a corporation sole headed by the Commissioner rather than a corporation aggregate.

3.17 The ALP suggested:

> *" ... the Queensland Electoral Commission should be constituted as a sole corporation and does not need to be provided with a separate Board."*

3.18 The National Party (S76) recommended; *"Queensland should adopt the corporation sole model used in other States."*

ANALYSIS OF EVIDENCE AND ARGUMENTS

3.19 The QEC could be set up as a corporation sole with all authority vested in the Electoral Commissioner or Chief Electoral Officer. This is the model in the other States. Under this model the Electoral Commissioner would administer the electoral legislation, but would be responsible to a particular Minister.

3.20 Alternatively the QEC could be established as a corporation aggregate as in the Commonwealth model. Powers and functions would remain with a Commission (eg. a Judge, the Electoral Commissioner and a non-judicial appointee) which would delegate administrative powers and responsibilities to the Electoral Commissioner and other officers of the QEC.

3.21 The Commission sees a number of advantages in a board structure. Firstly, it would enhance the independence of the QEC if only for the reason that it would be more difficult to bring undue influence to bear on three persons as distinct from one. Secondly, with more minds being brought to bear on major problems, better solutions should result. Thirdly, the appointment of a judicial chairperson is likely to give the public more confidence in the independence of the Commission. The Electoral Commissioner will be assisted by other colleagues on the QEC in running the electoral administration. Finally, as discussed later in this Report, the Commission would be capable of conducting redistributions and there would be no need to establish a separate redistribution mechanism.

3.22 As it is proposed that the other members be part-time and one of those would already be a public official, the Commission does not expect that the board structure will be expensive and believes it can be justified on cost effectiveness grounds.

3.23 The Commission notes that there are a number of issues arising from the relationship between the QEC and the Government which need to be considered. The Government of the day must ensure that the electoral system's administrative structures are adequately funded and resourced and their functions subject to periodic review. However the Government should not be in a position where it can influence the decisions made by this body, either directly or indirectly - the QEC must operate independently of any party political considerations.

3.24 Various mechanisms can be employed to enhance the independence of statutory bodies such as the QEC. For example, appointments of senior officials can be made contingent on consultation with Parliamentary party leaders; junior staff can be appointed directly by the QEC rather than by the Governor in Council; and the Electoral Commission can be made responsible for its own policy development and have an independent budget appropriation.

3.25 The Commission considers that these kinds of strategies are essential, given that it has not always been clear that the operations of the bodies which have previously carried out these functions in Queensland have been sufficiently independent of government influence. They also underline the onerous task which would be placed on the Electoral Commissioner if that office carried all the responsibility for the electoral system, particularly if election funding and disclosure systems become part of the Commission's functions in the future.

3.26 This factor has led the Commission to the conclusion that it is inappropriate to vest all responsibilities for electoral matters in Queensland in an Electoral Commissioner. It considers that there are a number of significant powers, particularly in relation to policy development and quasi-judicial functions, which would benefit from consideration by a Commission rather than consideration by an individual officer. It further considers that the Commonwealth model provides a useful precedent for Queensland.

3.27 The Commission proposes that all powers under the new legislation should be vested in the QEC but that it be given the power to delegate certain of its functions, for example functions in connection with the conduct and administration of elections and roll maintenance, to the Electoral Commissioner and other QEC staff. However, there are a range of significant operations and decisions, including internal review functions, which should remain the responsibility of the QEC. These functions will be highlighted in the course of this Report.

3.28 In respect of the appointments of the members of the QEC and the Deputy Electoral Commissioner (see recommendations in para.3.34 and 3.41) the Commission considers that further independence can be achieved by requiring that there be consultation with non-Government Parliamentary leaders in relation to appointments to these two positions. This mechanism will ensure that if any of the leaders have any concerns with the proposed appointment(s) there will be public awareness and discussion of such concerns.

3.29 On the question of the resources now committed to the State Electoral Officer (SEO) the Commission was generally advised in submissions that these should be directed to the new QEC. The Commission considers that the disposition of the manpower and technical resources of the SEO are a matter for the DJCS and does not make a recommendation on the matter except to point out that any resources should follow functions. This means that if functions of the SEO are transferred from the DJCS to the QEC the resources employed in discharging those functions should also be transferred.

3.30 The Commission is concerned to ensure that the administration of the QEC should be independent and have an appropriate level of status. To this end it believes that the Electoral Commissioner should have the status of Chief Executive and be responsible to the QEC for the administration of the Electoral Act.

RECOMMENDATIONS

3.31 **The Commission recommends that:**

(a) The Queensland Electoral Commission should be constituted as a corporation aggregate consisting of the following members:

(i) the Chairperson who is a current or former Judge;

(ii) the Electoral Commissioner; and

(iii) the non-judicial Commissioner who is the holder of the position of chief executive officer within the meaning of the *Public Sector Management and Employment Act 1988*, or an equivalent position in other public sector agencies.

(b) All powers which are conferred by the new electoral legislation should be vested in the Queensland Electoral Commission. The Queensland Electoral Commission should have the power to delegate functions to the Queensland Electoral Commissioner, except duties specified in the Act as being its sole responsibility.

(c) Nominations for members of the Queensland Electoral Commission and Deputy Electoral Commissioner should be discussed with the leaders of all Parliamentary parties before such appointments are made.

3.32 Provisions have been incorporated in the Draft Bill for these recommendations in Part 2, s.7-8.

Electoral Commissioner

3.33 The position of Electoral Commissioner was created by the EA Act. The Act contains provisions dealing with:

(a) powers and functions of the Electoral Commissioner;

(b) appointment of the Electoral Commissioner;

(c) terms and conditions of employment;

(d) leave of absence;

(e) resignation;

(f) termination of appointment;

(g) delegations by Electoral Commissioner; and

(h) Acting Electoral Commissioner.

RECOMMENDATIONS

3.34 **The Commission recommends that the Electoral Commissioner should be the Chief Executive of the Queensland Electoral Commission and have the powers and functions delegated by the Queensland Electoral Commission.**

3.35 **The provisions also cover the terms and conditions of appointment and employment, and have been modeled on the provisions of the *Elections Amendment Act 1991*.**

Deputy Electoral Commissioner

3.36 The Commission is concerned to ensure that the Electoral Commissioner should have an appropriate level of support within the administrative structure of the QEC. It is also important that, in the event of the absence of the Electoral Commissioner, there is a suitably qualified person to act in that position forthwith.

3.37 The Commission has noted that every State, which has an Electoral Commission, has made provision in its electoral legislation for a statutory position of Deputy Electoral Commissioner. The Commission has also noted that the ALP (S70) recommended that a Deputy Electoral Commissioner should be provided for in legislation so that *"in all circumstances there is a statutory officer to administer the Commission"*.

3.38 The Commission notes that in its Report on Public Sector Auditing it recommended the discontinuation of the office of Deputy Auditor-General on the grounds of organisational flexibility (see Report on Review of Public Sector Auditing in Queensland (September 1991), paras.7.147-7.149, p.180). The Parliamentary Committee did not support this recommendation in its Report dated December 1991; in any event, the Commission sees the situation in electoral administration as being quite different from public sector auditing.

3.39 Under electoral legislation a wide range of statutory functions and powers are exercised often with short notice in the context of elections. If the Electoral Commissioner is unavailable it will be important that the Electoral Commissioner's powers and functions can be exercised by the Deputy at extremely short notice.

3.40 Comparable terms and conditions of employment, with the exception of salary, should apply to the Deputy Electoral Commissioner as apply to the Electoral Commissioner because of the requirement that the Deputy should act for the Commissioner in his or her absence.

RECOMMENDATIONS

3.41 **The Commission recommends that:**

(a) Provision be made in the new electoral legislation to create the position of Deputy Electoral Commissioner to:

(i) perform duties as delegated by the Electoral Commissioner; and

(ii) act in the position of Electoral Commissioner in the absence of the Electoral Commissioner.

(b) Comparable terms and conditions of employment (except salary), should apply to both the Deputy Electoral Commissioner and the Electoral Commissioner.

3.42 The Commission has included provisions in the Draft Bill (Part 2 s.22) to create the position of Deputy Electoral Commissioner consistent with these recommendations.

Other Polling Officials

3.43 In addition to the Electoral Commissioner and the Deputy Electoral Commissioner the QEC will require a number of other full-time and part-time staff for its operations, particularly at election time.

3.44 The Act refers to a number of positions which are required to carry out the electoral functions specified in the Act. These are shown in Table 3.1 below.

TABLE 3.1

POSITIONS CREATED BY ELECTIONS ACT 1983 - 1991

POSITION	SECTION
Assistant Returning Officer	96(1)
Assistants to Returning Officers and Electoral Registrars	11(1)
Chief Returning Officer	8
Deputy Returning Officer	9(4)
Electoral Registrar	7
Electoral Visitor	85(3)
Interstate Officer	83
Overseas Officer	83
Acting Principal Electoral Officer	6(3)
Poll Clerks	63
Prescribed Electoral Registrar	84(2)
Presiding Officers	62
Electoral Commissioner (1)	6
Returning Officer	9
Scrutineers	70
Substitutes for Returning or Presiding Officer at Polling-booth	64

(1) The Elections Amendment Act 1991 substituted the newly created position of Electoral Commissioner for references to the Principal Electoral Officer in the Elections Act 1983.

3.45 Elsewhere in this Report the Commission has concluded that similar positions will be required to implement the proposed legislation. In particular it has made recommendations to maintain the functions currently carried out by Returning Officers (ROs), Assistant Returning Officers (AROs), Presiding Officers (POs), and Interstate and Overseas Officers. It has made alternative recommendations in respect of the role currently carried out by Electoral Visitors.

3.46 The Commission has also concluded that generally there would be no particular benefit obtained from recommending changes to the names of the various positions. The roles have been traditionally known under these names. An exception is the Issuing Officer. In this Report and in the Draft Bill, an Issuing Officer is any person authorised to issue ordinary or extra-ordinary votes by the QEC. Therefore Interstate Officers, Overseas Officers and Presiding Officers would also be termed Issuing Officers.

Appointment of Polling Officials

3.47 In Queensland at present the Act requires ROs, their Deputies and Assistants, and Electoral Registrars to be appointed by the Governor in Council. The Commission is of the opinion that the QEC should have the power to appoint persons to all these positions as is the case in other States. The submissions from the Department of the Premier, Economic and Trade Development (S79), the ALP (S70) and the National Party (S76) agreed that the authority to appoint electoral officials should reside with the Electoral Commissioner.

3.48 The Commission has sought legal advice from the Crown Solicitor as to whether the responsibility for appointing these officers could be transferred to the QEC. The advice given was that the Crown Solicitor was of the opinion that it was likely that Returning Officers and Electoral Registrars would not be considered as "minor" appointments and therefore should still be appointed by the Governor in Council because of the requirements of s.14 of the *Constitution Act 1867-1988*. The Commission has included provisions in the Draft Bill (Part 2, ss.31-33) for appointment of ROs by the Governor in Council in consequence of this advice. A copy of the advice from the Crown Solicitor is at Appendix E.

3.49 Nevertheless the Commission believes that it is important that the QEC should ultimately have direct responsibility for the appointment of all of its staff. This is considered important because it would further raise the level of the QEC's independence and remove such appointments from possible accusations of political influence. The Commission proposes that the QEC be given a statutory responsibility to recommend to the Governor in Council the names of persons suitable for appointment to the positions of RO and ARO.

3.50 The Commission has included powers for the QEC to appoint directly other officials needed to carry out delegated responsibilities in Part 2, s.18 of the Draft Bill.

RECOMMENDATION

3.51 **The Commission recommends that the Queensland Electoral Commission be given a statutory responsibility to provide to the Governor in Council, the names of persons suitable for appointment as Returning Officers, Assistant Returning Officers and Electoral Registrars.**

3.52 A provision to effect this recommendation has been included in the proposed Draft Bill, Part 2, ss.31-33.

Minister Responsible for the Electoral Commission Legislation

Issue 5 Which Minister should be responsible for Electoral Commission legislation?

CURRENT SITUATION

3.53 The maintenance of the electoral roll and the conduct of elections in Queensland have previously been the responsibility of the State Electoral Office in the DJCS. The SEO has therefore been responsible to the Minister for Justice and Corrective Services.

3.54 Electoral Commissioners are responsible to a Minister in the other States. In Victoria, the Electoral Commissioner is responsible to the Minister of Finance; in New South Wales the Electoral Commissioner is responsible to the Premier; in Western Australia the Commissioner is responsible to the Minister for Parliamentary and Electoral Reform; and in South Australia the Commissioner reports to the Attorney-General. In Tasmania the Chief Electoral Officer is responsible to the Minister for Administrative Services and Consumer Affairs. At the Commonwealth level, the Minister for Administrative Services is the responsible Minister.

EVIDENCE AND ARGUMENTS

3.55 Submissions were divided as to which Minister should be responsible for electoral legislation in Queensland.

(a) *"It is not practicable, or proper, for the Act establishing the Commission to spell out which Minister is to assume responsibility. It is sufficient for successive Premiers to be aware of their obligation to protect the independence of the Commission through the appointment of a responsible Minister committed to that task."* (ALP (S70)).

(b) *"Electoral Commission legislation should be the responsibility of a bipartisan Parliamentary Committee, to which the Electoral Commissioner is responsible. The electoral process should not come under the control of the government of the day."* (National Party (S76)).

(c) The Miriam Vale Shire Council argued (S52) that the QEC should be directly responsible to the Parliament with the Attorney-General having responsibility for electoral legislation because *"he is the Chief Law Officer of the State and is theoretically independent of the government."*

ANALYSIS OF EVIDENCE AND ARGUMENTS

3.56 In its *Report on Queensland Legislative Assembly Electoral System*, EARC argued for an all-Party Standing Committee on Electoral Matters to monitor and review electoral law and administration (p.229). It was acknowledged that the Parliamentary Committee for Electoral and Administrative Review would continue to fulfil this role while it is in existence.

3.57 However it is not appropriate under Responsible Government for the QEC to be directly responsible to the Committee as proposed by the National Party, or for the Committee formally to administer the electoral legislation. Under Responsible Government a Minister must be charged with overall responsibility for electoral law and its administration. This is in the nature of our parliamentary system. Parliament must still be responsible for approving annual appropriations for electoral purposes, including those for periodic elections and redistributions. Parliament must continue to play a fundamental role in considering legislative proposals, the functions of the current Parliamentary Committee or proposed Standing Committee notwithstanding.

3.58 The ALP suggestion that the nomination of an appropriate Minister should be left to the Government now appears to be the appropriate course of action, particularly since the status of the Electoral Commissioner is defined as Chief Executive Officer in legislation and cannot be downgraded without legislative amendment.

3.59 The greater the level of administrative integration into and dependence of the QEC on a departmental structure, the less independence the Commission will have. This has been the experience of the SEO while it has been with the Department of Justice. Further independence of the QEC can be achieved by writing into the new electoral legislation that the QEC will be funded by direct appropriation of the Consolidated Revenue Fund rather than allocation from within a Department's budget. This would ensure guaranteed funds. Western Australia has taken this course of action and the ALP (S70) supported it when it recommended that *" ... the legislation should contain a provision appropriating the necessary funds for the Commission to carry out its functions."*

RECOMMENDATIONS

3.60 **The Commission recommends that**

(a) The Minister to be responsible for the Queensland Electoral Commission and its legislation should be decided by the Government of the day.

(b) Funds for the Queensland Electoral Commission should be provided by way of a direct appropriation from the Consolidated Revenue Fund.

3.61 A provision to this effect has been included in the Draft Bill in Part 2, s.20.

Functions of the Queensland Electoral Commission

Issue 6 What should be the functions of the Queensland Electoral Commission?

Issue 7 In the event that schemes for election funding and financial disclosure are established, should the Queensland Electoral Commission assume responsibility? Should the legislation for the schemes be contained in the new Elections Act or a special Act?

3.62 As mentioned in the introduction to this chapter the functions of the QEC have already been the subject of a Parliamentary Resolution (11 April 1991). The functions resolved for the QEC by Parliament were:

> *"(a) administering Queensland electoral laws;*
>
> *(b) conducting elections and by-elections for the Legislative Assembly;*
>
> *(c) joint administration with the Commonwealth of the Joint Electoral Roll;*
>
> *(d) considering, and reporting to the Minister on, electoral matters referred to it by the Minister and such other electoral matters as it sees fit;*
>
> *(e) providing information and advice on electoral matters as requested;*
>
> *(f) conducting programs of publicity and public education to ensure that the public are informed of their democratic rights and obligations;*
>
> *(g) conducting and promoting research into electoral matters;*
>
> *(h) assisting the Redistribution Commission in the discharge of its duties; and*
>
> *(i) as permitted by or under an Act, conducting:*
>
> - *local government elections; and*
> - *the redistribution of ward and division boundaries; and*
> - *union elections."*

(Votes and Proceedings of the Legislative Assembly, 11 April 1991).

3.63 This list differs from the list proposed by EARC in its Legislative Assembly Report and endorsed by the Parliamentary Committee in that (i) was added by the Parliament. The House however gave no direction as to the extent to which the QEC would be responsible for these additional functions.

EVIDENCE AND ARGUMENTS

3.64 The issue that raised most debate in submissions was the role of the QEC in relation to Local Government elections and their internal boundaries. This matter is discussed in Chapter Fifteen. Other submissions concerning QEC functions included:

(a) The ALP (S70) suggested that the QEC should also be responsible for the administration of *" ... any schemes for the registration of parties and candidates, the disclosure of donations, and public funding, etc."* This suggestion was supported by R McKinnon (S56).

(b) The National Party (S76) supported the list of functions provided in Issues Paper No. 13.

(c) The Australian Democrats (S62) emphasised the educative role proposed for the Commission.

ANALYSIS OF EVIDENCE AND ARGUMENTS

3.65 The functions of the QEC have already been recommended by EARC in its Legislative Assembly Electoral System Report and been the subject of a resolution by the Parliament. The Commission does not intend to canvass those recommendations again.

3.66 However the Commission believes that additional sets of functions may have to be added to the responsibilities of the QEC. If public funding and disclosure schemes are recommended in 1992 there will be a need for some organisation to administer them. This organisation should be the QEC.

3.67 The Commission does not believe that a separate funding authority, on the New South Wales Election Funding Authority model, would be justified. The Commission considers that any Queensland scheme would require limited administrative resources and that these resources should be placed in the QEC. It further considers that the QEC itself should be responsible for approving the payment of any public funds.

3.68 In the light of the possibility that the QEC should also be responsible for any election funding and financial disclosure schemes, the Commission is of the opinion that the legislation concerning the funding and disclosure schemes would preferably be included in the same Act as provisions for the conduct and administration of elections. The CE Act provides a model for the implementation of this recommendation. The Commission proposes that the legislation should be known as the Electoral Act. A Draft Bill for the Electoral Act is at Appendix H.

3.69 The Commission proposes that the QEC should be charged with the responsibility of carrying out future electoral redistributions. It should be constituted as the Redistribution Commission when carrying out these functions. This recommendation is dealt with in more detail in Chapter Six.

RECOMMENDATIONS

3.70 **The Commission recommends that the functions of the Queensland Electoral Commission should be:**

(a) To perform functions that are required by or under the Act, and administration of any future public funding and disclosure schemes.

(b) To report to the Minister on electoral matters.

(c) To promote public education and awareness of electoral matters.

(d) To provide information and advice on electoral matters.

(e) To conduct and promote research into electoral matters.

(f) To perform electoral redistribution functions required of it in its capacity as the Redistribution Commission.

3.71 **The Commission also recommends that all electoral legislation including that concerned with redistributions and any legislative changes that may be recommended in the Commission's report on public funding of campaigns and disclosure of expenditure in 1992, should be incorporated into the one Act. That Act should be known as the Electoral Act.**

3.72 These provisions are reflected in Part 1 s.1 and Part 2 s.8 of the Draft Bill.

Future Electoral Review in Queensland

Issue 8 What is the appropriate mechanism for future electoral review in Queensland, and what matters need to be further reviewed?

3.73 In its *Report on Queensland Legislative Assembly Electoral System* EARC referred to the possible establishment of a Standing Committee on Electoral Matters at some future time. Matters raised in the report as possible topics for investigation were:

(a) different divisional systems which would meet the needs of different political situations;

(b) permissible tolerances and the general principle of electoral equality; and

(c) improvement of electoral law and administration.

3.74 The Parliamentary Committee, in its report on EARC's Legislative Assembly Electoral System Report, agreed that electoral reform in Queensland should be an ongoing process and that additional research and consideration needs to be directed to a number of matters. The Committee did not recommend any particular review mechanism but acknowledged it could be a Standing Committee of the Legislative Assembly, the Legislative Assembly or EARC itself. Topics highlighted by the Parliamentary Committee as priorities for further review were:

> *"Queensland's electoral obligations under international law.*
>
> *Further facilities and services for members to overcome problems of electors prejudiced by remoteness, poverty, language difficulties, ill-health or otherwise.*
>
> *Entrenchment of the electoral system."* (Parliamentary Committee 1991, p.30).

3.75 Parliamentary Committees can be powerful agents for change. For example, at the Federal level the Joint Select Committee on Electoral Reform (JSCER) which was formed in 1983 instituted a complete overhaul of Federal electoral law and administration. The need for ongoing reform was recognised in the Federal arena following the JSCER's report, and subsequently the Joint Standing Committee on Electoral Matters (JSCEM) was established. The JSCEM reviews the conduct of each Federal election and makes recommendations for change.

3.76 At the State level Select Committees operate from time to time. For example, in South Australia the Select Committee on the Constitution (Electoral Redistribution) Bill recently reported and that State has conducted a referendum on issues identified by the Committee.

3.77 The Commission considers that the Parliamentary Committee on Electoral and Administrative Review is the appropriate body to continue the review of the Queensland Electoral System while it still has a legislative mandate for doing so. If the Committee's role should change as a result of the completion of EARC's electoral review program then it would be appropriate for a successor Parliamentary Committee to be established with a clear function of monitoring and reviewing the Queensland electoral system, including local government and union elections. The Committee should be an all-Party Standing Committee.

3.78 The Commission has noted that the functions and powers of the Parliamentary Committee in respect of reviewing the electoral system are largely limited to matters previously reviewed by EARC. If the Committee is to continue, but with an independent review function, including reviews of the number of Members of the Legislative Assembly as recommended later in this Report, s.5.8 of the *Electoral and Administrative Review Act 1989-90* may need to be amended.

RECOMMENDATIONS

3.79 **The Commission recommends that:**

(a) Monitoring and review of the Queensland Legislative Assembly Electoral System should continue to be a function of the Parliamentary Committee for Electoral and Administrative Review while it exists.

(b) If the Parliamentary Committee for Electoral and Administrative review should cease to exist, then an All-party Parliamentary Standing Committee on Electoral Matters should be established to monitor and Review the Legislative Assembly and Local Authority Electoral Systems.

CHAPTER FOUR

REGISTRATION OF POLITICAL PARTIES AND INDIVIDUAL CANDIDATES

Introduction

4.1 Registration of political parties and candidates is a process whereby the central role of parties and candidates is given a more official electoral status. This formal recognition enables the electoral system to confer certain privileges and benefits on parties, candidates and electors. At the same time it provides a means of achieving greater accountability in the electoral system.

4.2 This chapter considers whether there should be provisions in the new Queensland electoral legislation to require parties and candidates to register with the QEC before they can compete in elections. It explores the reasons why registration may be necessary for the smooth operation of the electoral system.

4.3 A number of the issues raised and recommendations made in other sections of this Report (eg. showing party descriptions on ballot-papers) place greater emphasis on the role of political parties in our electoral system. Systems are proposed which require that parties and candidates nominate persons who then can be the main point of official contact with the electoral system. It is in this context that consideration must be given to implementing formal registration.

4.4 As pointed out by the *Report of the New Zealand Royal Commission Report on the Election System "Towards a Better Democracy", New Zealand 1986*(NZRCR):

> *" ... registration of parties is comparable to the official recognition by registration of other legal persons, such as companies or incorporated societies. Registration of this kind does not threaten the essentially voluntary character of those bodies."* (p.267).

Current Situation

4.5 The present Queensland electoral legislation does not provide for the registration of either political parties or individual candidates. By and large the legislation ignores the existence of political parties except for references in ss.79, 86 and 111. Sections 79 and 86 permit electoral officials to:

> *" ... state in accurate terms without comment or further elaboration the name of the political party in the interest of which each or any candidate is standing."*

4.6 This may only be done in response to a request by certain classes of incapacitated voters. Section 111 provides that all materials produced on behalf of any candidate or political party must be endorsed with the author's name and address.

4.7 Parties play a central role in the operations of the electoral system but for historical reasons the current legislation is based exclusively on individual candidates. For example, the Act requires that candidates: be nominated by electors, not by their parties; campaign as individuals; nominate their own scrutineers; and file their own applications for recounts and petitions.

4.8 Registration of political parties is provided for by the Commonwealth (ss.123-141 of the CE Act), New South Wales (ss.66A-66N of the *Parliamentary Electorates and Elections Act 1912* (NSW) (PE & E Act)), Victorian (ss.148A-148U of the Constitution Amendment Act), Tasmanian (ss.53-65 of the Electoral Act) and South Australian legislation (ss.36-46 of the Electoral Act).

4.9 At the present time there are 61 political parties registered federally by the AEC; 17 political parties are registered in New South Wales.

4.10 New South Wales legislation requires that all candidates, whether endorsed by a political party or independent, must register to be eligible to claim public funding. Failure to register precludes a candidate from receiving any public funding.

4.11 In most Australian jurisdictions there is no requirement for independent candidates to register. The primary focus of registration legislation in the other States and at the Commonwealth level is on the parties because of special conditions which apply to candidates who have organisational affiliations and backing.

4.12 Between 1984 and 1987 the CE Act contained provisions for the registration of individual candidates. These provisions were inserted for the purpose of placing party names on ballot-papers and funding and disclosure purposes. However, it was apparent that registration of individual candidates served no useful purpose and was very confusing for candidates who had to nominate and register separately. The provisions were subsequently repealed.

General Issue

Should political parties and candidates be registered in Queensland?

EVIDENCE AND ARGUMENTS

(a) The National Party (S23) stated that it was in favour of party registration, but suggested that:

" ... a party registered with the Australian Electoral Commission should be deemed to be registered for State purposes and not required to file any documents."

It went on to state that there should be no requirement for individual candidates, whether endorsed or independent, to register.

(b) *"The Labor Party supports the introduction of registration not only to assist the introduction of public funding and disclosure schemes, but also to assist:*

- *the introduction of party affiliations on ballot papers;*
- *the posting of how-to-vote cards in polling booth compartments;*
- *in improving accountability of parties and candidates in issuing election material and in the general conduct of elections; and*
- *the central nomination, where relevant, of candidates."* (ALP (S21)).

It agreed that there need be no requirement for an individual candidate to register.

(c) *"Parties and candidates should be registered in Queensland for the purpose of having their donations and expenditure declared and/or handled by a 'Funds Authority'. They should also be registered so that the names of parties and the word 'independent' can appear on the ballot paper."* (Queensland Watchdog Committee (S24)).

(d) Not everyone supported registration. The Liberal Party (S25), for example, took a different view. It did not agree with registration for either parties or candidates:

"Generally the Liberal Party does not believe that parties and candidates should be registered in Queensland but that if a system of registration is to be applied then it should be applied to all political parties and any other groups which expend funds during election campaigns.

Accordingly individual independent candidates should also be required to register under that system."

(e) Mr Ray Sargent (S20), Convenor of the Australian Republican Party, was of a similar opinion:

"I would encourage EARC to make a recommendation that no provision be required for political parties to be registered on the following grounds:

The notion of registration of political parties seems to be the means by which the large existing incumbent secular political parties can plunder the public treasury, and so creating an environment where no new fresh political pluralism has opportunity to germinate and grow through the decay of the old, by natural selection of the voters.

Restrictive laws such as having 500 or 200 members to qualify for registration disenfranchises embryonic parties who are not independent candidates, but do not at an early stage qualify for registration; and so lose the opportunity to have their party's name beside their candidates on the ballot ticket. If such would be the case, then we should continue to have no party names on ballot. That way at least the ballot paper would be impartial to all candidates, and because the constituency suffers a compulsory voting system they would have to inform themselves a little more as to who they are voting for."

ANALYSIS OF EVIDENCE AND ARGUMENTS

4.13 Registration of political parties was supported in the majority of submissions which addressed the issue. Candidate registration was supported less frequently.

4.14 Registration of political parties and candidates also has important electoral purposes in relation to ballot-papers, advertising material, and central nomination of election candidates by the parties. As previously stated, registration of political parties and candidates can play a major role in the administration of public funding and disclosure systems operating in other jurisdictions and would play a similar role if such systems were introduced in Queensland.

4.15 Public funding aside, the registration of political parties and individual candidates would also enable:

(a) the party name or the word "independent" to appear on the ballot-paper (this has been recommended in Chapter Seven of the Report;

(b) the authorised agent of a party to nominate centrally all candidates endorsed by that party; and

(c) the level of accountability for any advertising material put out by parties or candidates to be increased.

4.16 The National Party (S23) suggestion that parties registered with the AEC should automatically be registered for State purposes is not supported because of the administrative difficulties this would cause for the QEC. Problems are likely to arise if the party is not a Parliamentary party and the eligibility criteria of the two jurisdictions are different, if the provisions about acceptable names are different, or if a party loses its registration for inactivity at one level of government but wishes to continue to contest elections at another level.

4.17 The NZRCR drew attention to the main criticism against registration of political parties. This is the argument that parties are essentially private voluntary organisations which should not have their members' privacy invaded by registration requirements. The Royal Commission pointed out that political parties in fact have long had a critical public function in the political system as they provide the major policy and program alternatives for electors choosing their future government. Registration serves to provide parties with an officially recognised status akin to companies and incorporated bodies.

4.18 The Commission has a range of options:

(a) Recommend against registration. This would maintain the status quo in Queensland.

(b) Recommend registration of political parties only. Such registration would remain current until deregistration procedures were undertaken by the registering authority.

(c) Recommend registration of candidates only. Such registration would need to occur prior to each election because of the turn over of candidates between elections. It would primarily be for public funding.

(d) Register both candidates and political parties.

4.19 The Commission believes that registration requirements should be introduced. If the other recommendations in this Report concerning administration of the electoral system are accepted, then it would be difficult to implement certain of them without registration. Registration facilitates electoral administration included in the preparation for elections, especially preparation of ballot-papers.

4.20 The Commission considers that two registers should be established:

(a) Register of Political Parties This Register should be permanent and any changes to the information held on the Register would need to be updated by parties as changes occur in the stored information. The benefits of registration for a party would be to enhance the party profile by allowing the party name to appear on the ballot-papers alongside the name of their endorsed candidate. Party registration would also permit the central nomination of all party candidates standing at that election.

(b) Register of Candidates Because the majority of candidates nominate for only one election such a register would operate on an election-to-election basis. Nomination and registration should occur simultaneously, on the same form to avoid any unnecessary administrative burden. The nomination form should be drafted to include the information required for both purposes. The registration of individual candidates would also ensure, upon request of that candidate, the word "independent" not appear opposite their names on the ballot-paper.

RECOMMENDATIONS

4.21 **The Commission recommends that:**

(a) A system of registration of political parties and candidates be introduced.

(b) A register of political parties should be established. This register should be a permanent document and amended when updating information is provided by a political party.

(c) A register of candidates should also be established. Such a register should be compiled for each election or by-election.

4.22 This recommendation is incorporated in Part 5 s.69 and Part 6 s.96 of the Draft Bill.

FURTHER MATTERS FOR CONSIDERATION

4.23 If a scheme of registration of political parties and individual candidates is established as recommended, then there are a number of other important matters which require investigation:

(a) What should be the criteria for registration?

(b) Should there be a fee for registration?

(c) What information should be provided by applicants for registration and how much of this information should be made publicly available?

(d) Should there be any restrictions on the name a party may register?

(e) What processes should be followed for registration? What mechanisms should be available for appeals in respect of decisions by the QEC?

(f) What penalties should apply for breaches of registration provisions and the enforcement of the relevant legislative requirements?

(g) What criteria and procedures should be applied for deregistration?

(h) What privacy considerations should be taken into account in considering membership matters?

(i) What reporting mechanisms should apply in respect of the registration system?

Criteria for Registration

Issue 1 If political party registration is introduced, what should be the definition of a "political party"? What criteria must an organisation meet to be registered as a "political party"?

Issue 2 When lodging its membership list in support of an application for registration, should a political party be required to submit the names and addresses of members who are electors?

Issue 3 Should there be a requirement for individual candidates, whether endorsed or independent, to register? If so, under what circumstances? With respect to an independent candidate seeking registration, what extra information, if any, should be provided in addition to that required to be supplied by an endorsed candidate?

EVIDENCE AND ARGUMENTS

4.24 Submissions received indicated general support for a definition similar to that of the Commonwealth or New South Wales legislation. Of the two, the most favoured was the Commonwealth's as a model for Queensland.

(a) The National Party (S23) submitted that the Commonwealth provisions would be appropriate.

(b) Mr A Conway-Jones (S13) suggested that the Commonwealth criteria be applied and that a party seeking registration should require at least 500 members.

(c) *"The criteria for registration should fit the Federal and NSW models. We suggest that a minimum membership of 200 should be sufficient to prevent a proliferation of minuscule 'pseudo parties' whilst not excluding significant groupings. Given that NSW has a higher population than Queensland, it would seem incongruous to have a higher minimum membership requirement in Queensland. It would be advisable for parties to be required to have a written Constitution."* (Australian Democrats, (S18).

(d) The ALP (S21) stated that: *" ... a version of the Canadian legislation be adopted for Queensland, namely that registration not be effected until the party has nominated candidates for at least 10% of Assembly districts - at present 9 out of 89."*

and then went on to say:

"It is important that the Electoral Commission, the appropriate body to administer registration, not register any party until the names and addresses of at least 250 members, who are entitled to be enrolled in Queensland, have been submitted."

ANALYSIS OF EVIDENCE AND ARGUMENTS

4.25 The submissions received in relation to the qualification criteria for registration indicated support for a definition of a "political party" similar to that of the legislation contained in the Commonwealth and New South Wales legislation. The definition in the Commonwealth legislation was the more favoured. Such a proposal is appropriate in that, in the interests of uniformity, political parties seeking registration for Queensland elections would be required to follow the same qualification requirements as those set down in Commonwealth legislation.

4.26 The criteria favoured in other jurisdictions are that:

(a) a political party must be a Parliamentary party, (ie. have at least one member in any Parliament in Australia); or

(b) if not a Parliamentary party, a political party must have a minimum number of members.

4.27 The Australian Republican Party (S20) drew attention to a potential problem for small, new parties if the minimum number of members required for registration is set too high. On the other hand the number must also not be so small that groups of virtually any size can form a party and be eligible for registration, if it is unlikely that such organisations have significant electoral support.

4.28 The registration process is designed to confer a level of electoral status and official recognition on a political party. The electoral system may be downgraded by a proliferation of very small "political parties".

4.29 The Commonwealth legislation requires a minimum of 500 members; in New South Wales the minimum is 200 members. Other States range in their requirements from 100 members in Tasmania to 500 in Victoria.

4.30 In addition, Commonwealth legislation (s.126(2) of the CE Act) and most other States require that political parties have a written constitution and a statement of party objectives which is submitted with the application for registration. The Commission believes that the Queensland system should also seek such documents from applicants for registration. They are a measure of the organisation's commitment to the task of seeking election.

4.31 Commonwealth legislation requires that members be "entitled to enrolment" (s.123(3)(b) of the CE Act). Section 66A of the New South Wales PE & E Act requires members to be enrolled voters. The New South Wales requirement is preferable as it would simplify the process of verifying membership through checking the electoral roll.

4.32 The Commission is more impressed with the New South Wales definition. It is important that political parties seeking registration in Queensland should have demonstrable support among Queensland electors prior to registration.

4.33 Two major alternatives are available for use as eligibility criteria for party registration:

(a) a system similar to those of New South Wales and the Commonwealth whereby an applicant party must either:

(i) be a Parliamentary party (a Parliamentary party is generally referred to as a party which has at least 1 member in any Parliament in Australia); or

(ii) if it is not a Parliamentary party, have a certain number of members.

(b) a system similar to the Canadian system as recommended by the ALP (S21). In that case registration would not be effected until the party had nominated candidates for at least 10% of electoral districts.

4.34 Whilst the Canadian criterion has merit, it may be preferable for Queensland to adopt a model similar to that of the Commonwealth and New South Wales to avoid confusion as to statutory requirements.

4.35 The question remains as to the minimum number of members required for party registration in Queensland. As stated in the submission by the Australian Democrats (S18) this number should not be greater than is required to register in New South Wales (ie. 200). On the other hand because of Queensland's larger population, it should probably exceed the 100 required for the registration of a political party in Tasmania.

4.36 The Commission believes that a non-parliamentary party seeking registration should have at that time a minimum of 150 members who are enrolled electors. This would seem to be a reasonable requirement. The figure would show that the organisation has a degree of electoral support and is similar to the numbers required by comparable jurisdictions.

4.37 The Commission suggests that applicants for registration as political parties should in practice provide a few more names than the statutory number required. This would provide a buffer to avoid the problem that some of the supplied names could not be located on the electoral roll and consequently the party was ineligible for registration. In the period before an election such an eventuality could have serious consequences for a party.

4.38 The Commission is aware of the argument that there may be some persons who do not wish to have their names associated with a political party as members. This matter is dealt with in more detail later but the Commission believes that it is a matter for the member to ensure that his or her name is not one which is submitted to the registering authority. There need be no requirement that the names of all the party's members be provided.

4.39 Recently in the ACT one person, Emile Brunoro registered six political parties including "the Sun-Ripened Warm Tomato party", "the Party! Party! Party! party" and "the Surprise Party". The Commission believes actions of this kind serve to bring discredit on the electoral system and such a possibility should be avoided in this State. It recommends that multiple applications for part registration from one individual or organisation should be considered defective.

RECOMMENDATIONS

4.40 **The Commission recommends:**

(a) Political Parties

Any party applying for registration in the *Register of Political Parties* should meet the following eligibility requirements:

(i) be a Parliamentary party (ie. have at least one member in any Parliament in Australia); or

be a political party with a minimum of 150 members (being electors); and

(ii) possess a constitution governing the operations and objectives of the party.

(b) Individual Candidates

Individual candidates should be registered automatically upon nomination for each election. Provision should be made on the nomination paper for the candidate to provide any information required and to indicate whether the word "Independent" should appear on the ballot paper alongside their name.

4.41 **The Commission also recommends that a person or organisation should not be permitted to register more than one political party in Queensland.**

4.42 The provisions in the Draft Bill which implement these recommendations are in Part 5 s.70 and Part 6 s.96.

The Need for a Registration Fee

Issue 4 Should there be a fee for registration and, if so, what is the appropriate level of the fee? Should the fee be payable upon application for registration only or on a continuing basis (eg. annually or at each general election)?

EVIDENCE AND ARGUMENTS

4.43 A Sandell (S11), the ALP (S21), and the Liberal Party (S25) recommended against any fee being payable on registration.

4.44 A Conway-Jones (S13) stated that:

> *"Yes, a nominal fee for registration as the candidate still has to lodge a deposit to stand for election."*

ANALYSIS OF EVIDENCE AND ARGUMENTS

4.45 Applications for registration lodged with the Commonwealth and those States that provide for registration of political parties and/or candidates, are not required to be accompanied by a fee, nor is there any fee imposed to cover ongoing administration costs. The majority of submissions received on this topic recommended against the imposition of any such fees in Queensland.

4.46 The cost of maintaining Registers for either political parties or individual candidates would not be high. Public purposes would be served by the existence of registers. The Commission does not believe that a registration fee should be levied in Queensland.

RECOMMENDATION

4.47 **The Commission recommends that there should be no fee required for registration of political parties or candidates.**

Information Required To Be Submitted With Applications for Registration

Issue 5 If a political party or an individual candidate is to be registered, what information should be supplied to the registration authority? The names of State office bearers only? The names of all branch office bearers? The names of all members? Full financial details of the organisation or individual (assets, liabilities and income), or only those details required for any funding and disclosure legislation? How much of this information should be public? How often should it be updated - annually or prior to each election?

EVIDENCE AND ARGUMENTS

(a) *"When applying for registration a political party should supply full details of office bearers and its business address. Full details of members should not be a pre-requisite. The application would include a number of members in the form of a sworn statement by the President."* (A Sandell (S11)).

(b) A Conway-Jones (S13) suggested that the names of State office bearers and branch office bearers only be supplied.

(c) *"Each party would be required to supply the names of State office bearers, and this information should be updated annually. Financial details would not be required for registration, but only in relation to public funding and donation disclosure requirements."* (ALP (S21)).

(d) The National Party (S23) was of the opinion that the Commonwealth provisions should apply. These include the following:

(i) the name of the party;

(ii) abbreviation (acronym) of the party (if required by the party);

(iii) name and address of the registered officer;

(iv) advice as to whether the party requires public funding;

(v) names and addresses of applicant(s) and the capacity in which they make the application; and

(vi) a copy of the constitution of the party.

(e) *"Given our view that there should be no registration but accepting that the Commission might otherwise determine, we are of the view that if registration is to occur then only the names of State office bearers should be provided. To require more detailed information on a continuous basis would be onerous when in our view the only basis for registration should be to assist in the maintenance of proper records and in the administration of any public funding."* (Liberal Party (S25)).

(f) *"If a party has to provide membership details, there should be every effort to ensure that names and other details of members should not be publicly available. Many members of political parties have in the past been discriminated against because of their known political affiliations, particularly in their area of employment."* (Australian Democrats (S18)).

ANALYSIS OF EVIDENCE AND ARGUMENTS

Political Parties

4.48 All electoral administrations in Australia with registration requirements ask for certain common information from applicants:

(a) the name of the party;

(b) abbreviation (acronym) of the party (if required by the party);

(c) name and address of the registered officer of the party;

(d) names and addresses of office bearers;

(e) in the case of a non-parliamentary party, evidence that the party's membership exceeds the prescribed minimum number; and

(f) a copy of the constitution or rules governing the operations of the party.

4.49 Submissions received indicated support for the lodging of the names and addresses of office bearers of political parties when applying for registration. The National Party (S23) was in favour of the use of the Commonwealth system as a model. This is broadly the same as the list provided above.

4.50 The Commission believes that similar information should be submitted by parties seeking registration in Queensland. The information will be needed either to check the eligibility of the party for registration, to identify an accountable officer in the party, or to provide the QEC with a point of contact for further dealings with the party organisation.

4.51 However the Commission does not believe that the names of office bearers should be supplied with applications for registration. The titles of offices vary among the parties making it difficult to define in legislation which particular offices should be included in applications. There is also the problem that the persons holding the various offices change regularly and the Register would be frequently inaccurate. Only the name of the registered officer should be required since this the main point of contact between the electoral administration and the party organisation.

Candidates

4.52 No submissions were received suggesting the type of information that should be provided with applications for registration by individual candidates. However, bearing in mind the proposed temporary nature of the Register of Candidates (election period only) and the limited applications for the information, the amount of information required would not be great.

4.53 The Commission considers that the only information that should be obtained from candidates to effect their registration before an election should be:

(a) candidate's name and address;

(b) name and address of agent of candidate (if any); and

(c) whether the candidate requires that the word "independent" not be on the ballot-paper beside their name.

4.54 All this information should be obtained from each candidate at the time of nomination on the nomination form.

RECOMMENDATIONS

4.55 **The Commission recommends:**

(a) The information to be submitted with an application for registration by a political party should be:

(i) the name of the party;

(ii) abbreviation (acronym) of the party (if required by the party);

(iii) name and address of the registered officer of the party;

(iv) in the case of a non-parliamentary party, the names and addresses of at least 150 members, all of whom are electors enrolled in Queensland;

(v) copy of the constitution or rules governing the operations of the party.

(b) The information to be submitted upon nomination by candidates for registration should be:

(i) the candidate's name and address;

(ii) name and address of the candidate's agent (if any); and

(iii) whether the word "Independent" is not to appear on the ballot-paper alongside the candidate's name.

4.56 The provisions in the Draft Bill which would implement these recommendations are in Part 5 s.70 and Part 6 s.84.

Restrictions on Party Names

Issue 6 What restrictions, if any, should there be on the registration of names of political parties?

EVIDENCE AND ARGUMENTS

4.57 All submissions received on this issue referred the Commission to either the New South Wales or Commonwealth legislation or both.

4.58 The ALP (S21) argued that the Commonwealth provisions are the most appropriate but suggested that:

> *"To these requirements might be added a prohibition on the registration of party names designed to bring the electoral system into disrepute."*

ANALYSIS OF EVIDENCE AND ARGUMENTS

4.59 Submissions indicated that there is a need to provide legislative restrictions on party names to ensure that offensive names and names too similar to existing registered names are not used. This is particularly the case when party names appear on ballot-papers, signs, "how-to-vote" cards, and advertising (electronic and print media).

4.60 Restrictions on the names of political parties provided in New South Wales, Victorian and Commonwealth Acts include the following:

(a) the name cannot be obscene or, as is the case in New South Wales, otherwise offensive;

(b) the number of words in the name cannot exceed a certain number (typically six);

(c) the name cannot resemble that of another parliamentary party or a registered political party; and

(d) the use of the words "Independent Party" or the words "Independent" together with the name or abbreviation or acronym of a Parliamentary party or a registered political party is precluded.

4.61 The South Australian legislation includes a further provision prohibiting the use of the name or an abbreviation or acronym of the name of a prominent public body.

4.62 The Commission considers that Queensland electoral legislation should contain restrictions on names of parties which are acceptable for registration. The Commonwealth provisions with a few additions form the most appropriate model even though all jurisdictions are generally similar.

4.63 The Commission recommends that to the Commonwealth criteria should be added the South Australian provision regarding prohibition on the use of the name, abbreviation or acronym of a prominent public body.

4.64 The argument raised by the ALP (S21) that an additional clause be inserted regarding a *" ... prohibition on the legislation of party names designed to bring the electoral system into disrepute ... "* should also be included in Queensland legislation. The New South Wales legislation, whilst very similar to that of the Commonwealth also includes the phrase "is obscene or offensive" and should also be included to meet the ALP's suggestion.

RECOMMENDATIONS

4.65 **The Commission recommends the legislation provide a prohibition on certain words as party names. The restrictions which should apply are:**

(a) The name cannot be obscene, offensive or otherwise likely to bring the electoral system into disrepute.

(b) The number of words in the name cannot exceed six.

(c) The name cannot resemble that of another parliamentary party or a registered political party.

(d) The use of the words "Independent Party" or the words "Independent" together with the name or abbreviation or acronym of a Parliamentary party or a registered political party cannot be used.

(e) The name cannot be the name, abbreviation or acronym of the name of a prominent public body.

4.66 The provisions in the Draft Bill which give effect to this recommendation are in Part 5 s.73.

Registration Processing and Enforcement

Issue 7 What processes should be followed to ensure that any registration requirements are not misused? What are the appropriate appeal mechanisms for both registration and deregistration?

Issue 8 What penalties, if any, are appropriate for breaches of registration requirements?

EVIDENCE AND ARGUMENTS

(a) *"It is also recommended that the application be advertised inviting comments and objections. An appeal system should be available should registration be refused. However the authority must realize it should help applicants should an application lack required information.*

Fraud or misleading statements should be punished by refusal to register. Appeals against this action should not be permitted. Should the controlling authority consider fraud is really serious it must have recourse to the Courts against the Office Bearers." (A Sandell (S11)).

(b) Submissions received from the ALP (S21), the National Party (S23), Australian Democrats (S24) and A Conway-Jones (S13) indicated support for the procedures adopted in the federal legislation.

(c) W Swan of the ALP (S21) also recommended that an appeal against a decision of the registering authority be to a Magistrate in lieu of the Administrative Appeals Tribunal.

ANALYSIS OF EVIDENCE AND ARGUMENTS

4.67 The majority of registration systems in Australia are required by legislation to publicly advertise the receipt of an application for registration, inviting objections to such registration.

4.68 For example, s.132 of the CE Act provides that specific procedures should be followed by the AEC in processing an application for the registration of a political party. This includes publication of the notice of an application, inviting objections and making objections and any reply available to the public, and consideration of any objections and reply in making a determination. An appeal against a decision of the Commissioner to register or deregister a party may be made to the Administrative Appeals Tribunal.

4.69 New South Wales legislation has no such requirement. If the Electoral Commissioner refuses to register a political party, the applicant is advised that the application may be amended and re-submitted.

4.70 Both New South Wales and Commonwealth legislation provide for deregistration in the event that registration is obtained by fraud or misrepresentation and make it an offence to knowingly make a false or misleading statement in an application. In the case of false or misleading statements, deregistration is in addition to a penalty of 100 penalty units ($10,000) in New South Wales and $1,000 or imprisonment for six months or both, in the Commonwealth legislation.

4.71 Submissions received on this topic favoured, in the main, the registration procedures adopted by the Commonwealth.

4.72 The Commission endorses these comments and considers that the Commonwealth procedures are superior to those of New South Wales due to the openness of the process. An application for registration should be advertised seeking objections to such registration being effected. Most submissions argued in favour of this practice being adopted.

4.73 The Commission agrees that provision should be made for appeals against a decision of the QEC. The ALP suggested that such appeals should be to a Magistrate in lieu of the Commonwealth's Administrative Appeals Tribunal. However as it is proposed that the Chairperson of the QEC will be a Judge that would not be appropriate. Instead any appeal should be to the Supreme Court. The Commission considers that should an Administrative Appeals Tribunal be established in Queensland, consideration should be given to transferring this jurisdiction to that body.

4.74 Penalties that are to be imposed for breaches of registration provisions should be severe enough to deter would-be offenders. A penalty similar to that imposed by the Commonwealth seems appropriate (ie. $1,000 or 6 months imprisonment or both).

RECOMMENDATIONS

4.75 **The Commission recommends:**

(a) The registration of political parties be carried out by an open process. The process recommended involves public advertising of the receipt of an application for registration and seeking objections to such registration proceeding.

(b) An appeal be available against a decision of the Electoral Commission in relation to the refusal of an application for registration by a political party.

(c) Any such appeal should, in the absence of a body such as an Administrative Appeals Tribunal, be to the Supreme Court.

(d) It should be an offence to provide false or misleading statements to the registering authority, the Queensland Electoral Commission. The penalty for this offence should be 20 penalty units ($1,200) or six months imprisonment or both.

(e) It should also be an offence to obtain registration through fraud or misrepresentation. The penalty for such an offence should be deregistration.

4.76 The provisions in the Draft Bill which would implement these recommendations are in Part 5 s.71, Part 9 s.180, Part 8 s.153 and Part 5 s.75.

Criteria for Deregistration

Issue 9 If a registration system is introduced, what should be the criteria for deregistration?

EVIDENCE AND ARGUMENTS

(a) The National Party (S23) submitted that deregistration procedures should be the same as those provided by the Commonwealth legislation.

(b) The Commonwealth legislation (ss.135-138) provides for deregistration on the following grounds:

(i) if the party ceases to exist;

(ii) if the membership falls below the specified number of members (for a non-parliamentary party);

(iii) if such registration was obtained by fraud or misrepresentation; and

(iv) if a four year period has elapsed since the polling-day of the last election for which the party endorsed a candidate.

(c) *"Deregistration as a general rule should not occur unless that group or a body clearly ceases over a number of elections to expend funds."* (Liberal Party (S25)).

(d) *"Deregistration should follow if registration has been obtained by fraud or misleading statements and if:*

A. the party ceases to exist;

B. the membership falls below 250; and

C. no endorsed candidate stands at a general election." (ALP (S21)).

(e) A Conway-Jones (S13) submitted that deregistration procedures should follow those of the NSW legislation.

(f) The New South Wales legislation (s.66I) provides for deregistration on the same grounds as the Commonwealth, but adds a further criterion: if a party does not stand at least one endorsed candidate at a general election it can be deregistered.

(g) *" ... a show cause notice should be served on a party when it does not stand at least one candidate at a State election."* (A Sandell (S11)).

ANALYSIS OF EVIDENCE AND ARGUMENTS

4.77 If registration of political parties and individual candidates is implemented as recommended, then a means to effect deregistration must also be provided.

4.78 The submissions received on this issue were in agreement that a formula for deregistration would be required. Most favoured the procedures in use by the Commonwealth and New South Wales jurisdictions.

4.79 The Commonwealth legislation has a provision (s.136 of the CE Act) whereby deregistration can occur if a four year period has elapsed since the polling day in the last election for which the party endorsed a candidate. It would therefore appear that the AEC cannot deregister a party if the party had never stood a candidate after initial registration. Deregistration would have to proceed on other grounds if applicable (s.137 of the CE Act). This is not a problem with the New South Wales legislation because of the additional criterion for deregistration.

4.80 A Sandell (S11) was of the opinion that *"... a 'show cause' notice should be served on a party where it does not stand at least one (1) candidate at a State election"*. This suggestion may be rather severe in that a party should not be penalised for an absence at one election only. It would be more appropriate to provide this penalty when a political party has failed to stand a candidate for a period of two elections. The main purpose of any political party is to contest elections.

4.81 It would also be desirable to empower the QEC to check party eligibility for registration by, in the first instance, comparing the names of members submitted with the application for registration with names on the electoral roll, and taking action at various intervals to determine if the party is still eligible for registration.

4.82 A similar public notification procedure as recommended for registration applications should be introduced whereby the QEC is required to publish a notice of intention to deregister a party and call for public objections.

RECOMMENDATIONS

4.83 **The Commission recommends that**

(a) The grounds for deregistration of political parties should be:

(i) the registered political party has ceased to exist;

(ii) the number of members has fallen below the required threshold (non-parliamentary party);

(iii) the party did not stand at least one (1) candidate in two (2) successive elections;

(iv) registration was obtained by fraud or misrepresentation.

(b) The Electoral Commission be given the necessary power to carry out investigations into a party's continuing eligibility for registration.

4.84 The provisions in the Draft Bill to implement these recommendations are in Part 5 s.75.

Privacy Considerations

Issue 10 What safeguards, if any, need to be in place to protect individual and group political freedoms/civil rights/privacy if registration is introduced?

EVIDENCE AND ARGUMENTS

4.85 Three relevant submissions are as follows:

(a) *"Safeguards must be provided to address privacy considerations in providing membership details. If a party has to provide membership details, there should be every effort to ensure that names and other details of members should not be publicly available."* (Australian Democrats (S18)).

(b) The National Party (S23) and A Conway-Jones (S13) submitted that provisions under Commonwealth legislation should apply. The Commonwealth scheme provides that membership details do not form part of the public register.

(c) *"This submission does not recommend details of members should be submitted with applications for registration. This is not merely to protect the privacy of the members. It is not considered that members details are in any way helpful. However, all members must accept the fact that to move into the political arena in even a small way is to invite publicity. Privacy and politics are not compatible."* (A Sandell (S11)).

ANALYSIS OF EVIDENCE AND ARGUMENTS

4.86 Privacy concerns arise primarily in relation to possible access to the list of members of the political party submitted with the party's application for registration.

4.87 Submissions received were all conscious of concerns over the privacy rights of individuals and groups. Particular mention was made of public access to names and addresses of members of political parties submitted with an application for registration.

4.88 The Commission believes that the names of members must be supplied to the QEC as a means of verification of an organisation's eligibility for registration as a political party, but agrees that these details should not form part of any public register.

4.89 While it can be argued that the persons who make donations to political parties should be identified (a question which will be the subject of a later Report by this Commission), there is no persuasive case for disclosing publicly the names of a limited number of members of political parties applying for registration. A recommendation that the names not be disclosed will also go part of the way to satisfying the concerns of persons who wish to be members of parties but not have their name publicly associated with them. This information would be protected under freedom of information confidentiality exemptions.

RECOMMENDATION

4.90 **The Commission recommends that the names and addresses of party members submitted with applications for registration not form part of a public register.**

4.91 A provision in respect of this recommendation has been included in the Draft Bill at Part 5 s.72.

Reporting Mechanisms

Issue 11 What reports/information, if any, should a registered party or individual supply to the registration authority on either a recurrent or an ad hoc basis? How often should such reports/information be supplied?

EVIDENCE AND ARGUMENTS

4.92 The National Party (S23) submitted that parties should:

> *"(i) advise of any change in registration details within one month; and*
>
> *(ii) file an annual return containing the information."*

4.93 The ALP (S21) and A Conway-Jones (S13) indicated that each registered party should be required to provide an annual update of the requested information.

> *"The controlling authority would need to update its information on all parties prior to a State election, or even a by-election."* (A Sandell (S11)).

ANALYSIS OF EVIDENCE AND ARGUMENTS

4.94 The Commission is concerned that information stored on the public registers of parties and candidates should be kept up to date. A procedure will be required to update the details held on the Registers.

4.95 The problem of inaccuracy will not be significant for the Candidate Register because the information is really only relevant for the current election. Hence the reporting mechanisms dealt with in this section refer chiefly to the Register of Political Parties which is a permanent document. It must be updated as information changes.

4.96 In the case of political parties, advice would be required whenever a change was to occur in relation to:

(a) the name of the party or an abbreviation or acronym of the party; and

(b) the name of the registered officer of the party;

4.97 The submissions received on this issue varied in regard to the frequency with which updated information should be supplied to the Register. The suggestions ranged from changes to be advised within one month of the change occurring; annual returns updating all information; and updating only prior to an election or by-election.

4.98 The Commission accepts that all the suggested updating timetables would be effective, but to differing degrees. However, it is considered that any reporting less than annually may not be frequent enough to provide current information in the event of an unexpected election.

4.99 The Commission considers that system should impose the least administrative burden consistent with the public interest. It may therefore be more appropriate for political parties to provide notice only of any changes to details on the Register of Political Parties. Information which does not change should not be re-supplied.

RECOMMENDATIONS

4.100 **The Commission recommends:**

(a) Political parties should be required to furnish a notice of any change to particulars held on the Register of Political Parties.

(b) The notice should be lodged with the Queensland Electoral Commission within 30 days of such change.

(c) A candidate whose name appears on the Register of Candidates must notify within 30 days of any change of name of their appointed agent.

4.101 The provisions in the Draft Bill to implement these recommendations are in Part 5 s.74 and Part 6 s.96.

Application of Registration of Political Parties and Individual Candidates to Local Government and Aboriginal and Torres Strait Islander Community Council Elections

4.102 This chapter has dealt with registration of political parties and candidates in the context of State general elections and by-elections. The Commission also considered the relevance of such matters to Local Government and Community elections.

4.103 It is considered that, apart from certain of the larger Local Authorities (eg. Brisbane City Council), party politics plays a lesser role than in Legislative Assembly elections.

4.104 The majority of political parties which contest local authority elections in Queensland will already have registered for Legislative Assembly elections.

4.105 For this reason, the Commission considers that action should be taken by the appropriate authorities to amend the relevant Acts relating to the conduct of Local Authority and ATSI (Aborigines and Torres Strait Islanders) elections to provide that registration of a party on the State Register would entitle that party to the same benefits as though it were a Legislative Assembly election; for example, the printing of a party's name on ballot-papers if it wishes.

4.106 The Commission was reluctant to draft legislation in this area because of the current review of the Local Government Act. It considers that any system to register individual candidates for Local Government and Community Council elections should be a matter for the authorities directly concerned.

RECOMMENDATIONS

4.107 **The Commission recommends that:**

(a) Its proposals for registration of political parties should apply at the local government and community council levels; and

(b) Any decision to introduce registration of candidates for local elections should be left to the Local Authority concerned in consultation with the Department of Housing and Local Government.

CHAPTER FIVE

ELECTORAL ROLLS AND ENROLMENT

Introduction

5.1 Electoral rolls are a fundamental component of any voting system. Rolls constitute the official list of electors and are prima facie evidence of electors' right to vote. Enrolment procedures therefore need to strike the right balance between the need to be rigorous to ensure integrity of the rolls, and the need for flexibility to ensure that peoples' rights to enrol and vote are protected.

5.2 The Commission has previously recommended the establishment of a joint electoral roll with the Commonwealth and the alignment of State and Commonwealth enrolment qualifications.

5.3 This chapter deals with the legislative provisions and administrative arrangements necessary to establish and maintain the joint electoral roll and to manage access to roll information.

Matters for Consideration

5.4 In addition to the negotiation and implementation of the Joint Roll Arrangement, the following matters were raised in Issues Paper No. 13:

(a) issues in relation to the publication and availability of electoral rolls;

(b) enrolment procedures; and

(c) objections to names on electoral rolls

Joint Roll Arrangement

5.5 In its *Queensland Joint Electoral Roll Review Report* (October 1990), the Commission recommended that Queensland enter into a Joint Roll Arrangement with the Commonwealth. The report was subsequently endorsed by the Parliamentary Committee, and enabling legislation, the *Elections Amendment Act 1991* (EA Act), has been assented to. A Joint Roll Arrangement has been negotiated with the Commonwealth for introduction on 1 July 1992 or at an earlier date, but has not been gazetted to date.

5.6 The Commission's joint roll recommendations are attached to this Report as Appendix E. The main features of the recommendations were:

(a) Queensland to adopt Commonwealth enrolment eligibility criteria with the proviso that any British subjects who are not Australian citizens currently entitled to be on the State roll will be retained on the roll for State purposes only.

(b) The Joint Electoral Roll to be based on the Commonwealth Roll, and to be managed by a Management Committee consisting of senior Federal and State officials.

(c) The published rolls should only contain the elector's name, address and the notation Justice of the Peace (JP) when applicable.

(d) State government departments to continue to have access to roll data, for administrative functions such as Health Department programs, jury lists, and Justices of the Peace Register.

(e) Suitable arrangements, including performance criteria, to be negotiated between the State and the Commonwealth for the establishment and operation of the joint roll.

Enactment of Previous Recommendations

ENROLMENT

5.7 Part V, Enrolment, ss.25-45 of the Act specifies the enrolment process that currently exists in the State. Section 29A was replaced by s.7 of the EA Act, and establishes the authority for the joint roll. This section was proclaimed on 14 July 1991.

5.8 Implementation of the joint roll has been slower than had originally been anticipated by EARC. The Arrangement provides for an implementation date of 1 July 1992 or an earlier date if agreed between the parties.

5.9 Terms of the Arrangement include:

(a) the Commonwealth is to make available a copy of the roll in electronic format 7 days after the close of the roll for elections;

(b) new rolls are to be completed within 3 months of a redistribution;

(c) procedures to resolve differences between competing State/Commonwealth needs; and

(d) formulas for determining costs.

5.10 The EA Act (s.5) repealed Part IV of the Act (ss.21-24) and substituted a new Part IV (ss.21-22) detailing entitlements to vote and enrol.

5.11 Persons are now entitled to vote (s.21, EA Act) if they are either entitled to vote at, or be enrolled for, Commonwealth elections, or were entitled to vote at Legislative Assembly elections under the Act at the commencement of ss.5 and 6 of the EA Act. Sections 5 and 6 of the EA Act have not yet been proclaimed. Advice from DJCS is that proclamation and commencement of the sections will occur on 1 January 1992.

5.12 Section 22 of the Elections Act, as amended by the EA Act, reflects EARC's recommendations to align State enrolment eligibility with the Commonwealth provisions. This section states:

"22. Persons entitled to enrolment. (1) A person who -

(a) has lived in a district for a continuous period of one month; and

(b) is entitled to be enrolled under the Commonwealth Electoral Act 1918;

is also entitled to be enrolled for the district.

(2) Any other person who is entitled to vote at an election of members of the Legislative Assembly is entitled to be enrolled for the district in which the person lives.

(3) A Member of the Legislative Assembly is entitled, if the member wishes, to be enrolled for the district that the member represents instead of the district in which the member lives."

5.13 A potential problem with sub-section (1) drafted in this way is that individuals cannot ascertain their enrolment eligibility without referring to the CE Act as well as the State Act. All other Australian jurisdictions specify in detail the State's enrolment eligibility criteria. However, enrolment eligibility criteria are specified in detail on the enrolment claim card and in literature distributed by the AEC and the SEO. Individuals would be much more likely to check their enrolment eligibility against a claim card rather than obtaining a copy of the Electoral Act.

5.14 A disadvantage of specifying State enrolment criteria in the new Electoral Act is that if the Commonwealth were to change its eligibility criteria, and the State does not, there would again be divergence, making a joint roll more difficult to maintain. A change in Commonwealth criteria is however, unlikely to eventuate. Moreover, if such a change were contemplated, there should be ample time for the State to consider introducing matching legislation to maintain Commonwealth/State enrolment eligibility commonality.

5.15 Sub-section (2) is not entirely satisfactory because it establishes an entitlement to enrol based on an entitlement to vote. This is quite the reverse of usual Australian legislation which accepts enrolment as prima facie evidence of an entitlement to vote.

5.16 The purpose of this sub-section is to enact previous recommendations protecting the franchise of persons correctly enrolled in the State, but not the Commonwealth. This would be best achieved by providing for any person who was entitled to be enrolled under the *Elections Act 1983-1991*, and who is not entitled to be enrolled under the CE Act, to be enrolled under the new Electoral Act for elections conducted under the laws of the State.

5.17 Such a provision is necessary to protect the franchise of the unknown number of persons correctly enrolled on the State roll, but who are not entitled to be enrolled for the Commonwealth. This relates mainly to British subjects who are not Australian citizens.

5.18 A common feature of Australian electoral law is a provision which allows Members of lower houses to be enrolled in the district they represent, although they may be resident elsewhere. In Chapter Seven of this Report it is recommended that candidates do not need to be resident in the district of nomination. Also in Chapter Seven it is argued that the question of whether a Member should be a resident of the district is one that is best left to the electors of that district to decide at the ballot-box.

RECOMMENDATIONS

5.19 **The Commission recommends that:**

(a) The Electoral Act should specify enrolment eligibility criteria as being equivalent to the Commonwealth Electoral Act 1918.

(b) British subjects who are not Australian citizens who were entitled to be enrolled under the *Elections Act 1983-1991* but who are not entitled to be enrolled under the Commonwealth Electoral Act 1918, be entitled to be enrolled for State purposes.

(c) The present provisions allowing Members of the Legislative Assembly to enrol in the district they represent, although resident elsewhere, should continue.

5.20 Provisions to implement these recommendations have been included in the Draft Bill in Part 4 s.64.

ITINERANT ELECTORS

5.21 Under s.96 of the CE Act, electors who do "not reside in any subdivision", that is have no fixed address, may apply to be enrolled for the Subdivision in which they last had an entitlement to be enrolled, or if they never had such an entitlement the Subdivision in which any of their next of kin are enrolled, or in which the applicant was born, or with which the applicant "has the closest connection". There are approximately 300 such electors, known as "Itinerant electors" on the Commonwealth roll for Queensland electoral divisions. (As the Commonwealth has not maintained Subdivisions in Queensland since 1984, each Division is in effect a single Subdivision for this and other purposes).

5.22 Upon the Commonwealth roll becoming also the Queensland roll, it will be necessary to allocate each of these itinerant electors to a State electoral district, or else disfranchise them for State elections. Similarly it will be necessary to allocate them to a Local Authority Area for Local Government elections. As many of the larger Local Government Areas are divided among two or more electoral districts, it will be necessary to allocate each itinerant elector. This can be done initially by establishing the address for which they were enrolled to allocate them to an electoral district and a Local Authority. However if they are not currently on the State roll, and in the absence of an itinerant elector facility this may well be the case, it will be necessary to examine their most recent application for itinerant elector status and if sufficient information is provided then, use that as a basis for allocation. Should insufficient information be available there, the individual itinerant electors will have to be contacted, so far as is possible, to obtain the necessary information. In future applications for itinerant elector status will have to be modified to obtain the additional particulars for electoral district and Local Authority areas.

ANTARCTIC VOTERS

5.23 Part XVII of the CE Act makes provision for the polling of Commonwealth electors who are located in the Australian Antarctic Territory on the polling-day for an election, or at sea on a ship transporting research personnel to or from Antarctica. There are approximately 13 "Antarctic electors" on the Commonwealth roll for Queensland electoral districts who will now also be electors for the State elections. However the QEC would not have access to the facilities for transmission of electoral information including votes, to and from Antarctica, and given the relatively small number of electors involved there would appear to be no need to seek to make such provision.

5.24 It might be desirable to explicitly exclude such Antarctic electors from the provisions relating to compulsory voting in the Act, and leave it to the QEC to re-open the question should this appear appropriate at a later date.

Recommendations

5.25 **The grounds on which an itinerant elector should be able to claim enrolment of a particular electoral district and Local Authority Area should be the same as for the Commonwealth's electoral divisions, first the applicant's last enrolment, then if that cannot be used, enrolment of next of kin, place of applicant's birth or "closest connection".**

5.26 **Electors enrolled as Antarctic electors under Part XVII of the Commonwealth Electoral Act should be excused from compulsory voting.**

5.27 These provisions have been included in Part 8 s.164 of the Draft Bill.

Access to Roll Information By State Authorities

5.28 In relation to use of roll information by State authorities, EARC recommended in its *Queensland Joint Electoral Roll Review* (p.33):

> *"Use of Roll Information by State Authorities*
>
> *(a) State Government Departments should continue to have unrestricted access to published roll data and the enrolment claim card should be suitably amended to indicate to electors that these uses of roll data are being allowed.*
>
> *(b) Provision should also be maintained for the Health Department to access the electronic roll for the purposes of its public health programs such as the TB program.*
>
> *(c) Provisions should be made for on-line access to the database by the Sheriff for the purpose of compiling jury lists.*
>
> *(d) The use of the electoral roll to maintain a register of State Justices of the peace should be continued."*

5.29 The term "published roll" in para.(a) above includes all information on the database whether printed or not.

5.30 There will need to be a provision in the new Electoral Act to enable the QEC to negotiate suitable arrangements, including fees/charges, with State and Local Authorities. The Joint Roll Arrangement has a clause which allows the State to recover costs from agencies requiring data from the joint electoral roll. The arrangement also guarantees the State access for its own administrative needs, including jury lists, JP Register maintenance and Health Department programs.

RECOMMENDATION

5.31 **The Commission recommends that the Queensland Electoral Commission be authorised to negotiate access to roll information by State and Local Authorities, including appropriate fees and charges.**

5.32 Provision has been made in the Draft Bill to reflect these recommendations in Part 4 ss.61-62.

Electoral Rolls

Issue 1 Should rolls for each electoral district continue to be printed every two years, or should the timing of the printing of rolls be coincident with State elections or should the production of State rolls be at the discretion of the Queensland Electoral Commission?

Issue 2 Should printed rolls for each district continue to be available for purchase by individual electors and private persons?

Issue 3 Should the cost of a printed roll be nominal or should it fully reflect the cost of production?

Issue 4 Should Electoral Registrars continue to make printed rolls available for public inspection?

Issue 5 Should electoral rolls be available for purchase in electronic format by political parties, and if so, what restrictions (if any) should be imposed on the use of roll information by political parties?

Issue 6 Should printed rolls be provided to Members of the Legislative Assembly?

Issue 7 Should printed rolls be made available to Local Authorities?

CURRENT SITUATION

Publication and Sale of Printed Rolls

5.33 The Commission has previously recommended that any published roll contain details of electors' names and addresses and the notation JP, if applicable. (Refer Appendix E for full details).

5.34 Currently copies of the electoral roll for a district and any published additions/deletions are available for public inspection at times and places directed by the Principal Electoral Officer (PEO). Individuals may purchase a copy of the roll for an electoral district at a place within that district as nominated by the PEO.

5.35 Table 5.1 sets out the details of the publication and availability of electoral rolls in Australian jurisdictions.

TABLE 5.1

PUBLICATION AND AVAILABILITY OF ELECTORAL ROLLS

Jurisdiction	PUBLICATION		AVAILABILITY	
	Frequency	Format	Inspection	Purchase
Commonwealth	*	Microfiche	Yes	Yes
New South Wales	*	**	Yes	Yes
Victoria	*	Printed	Yes	Yes
Queensland	Election, 2 Years	Printed	Yes	Yes
Western Australia	*	Printed	Yes	Yes
South Australia	*	Printed	Yes	Yes
Tasmania	*	Microfiche	Yes	Yes

* As determined by Electoral Commissioner or Minister or for each election and/or each redistribution. Commonwealth, in addition, in the period up to 2 Years after first session of Parliament after last general election

** As proclaimed in Gazette

5.36 A significant difference between Queensland on the one hand and the other States and the Commonwealth on the other is the frequency of roll printing.

5.37 The requirement that a roll be printed at least every two years in Queensland imposes a substantial cost on the State. The DJCS has advised that the printing of rolls at the time of the 2 December 1989 election cost $283,992.

5.38 Without a fixed-term Parliament and a prescribed election date, there can be difficulties in ensuring that complete and up-to-date roll information is available when required for campaigning and other pre-election activities. New technology, including a computerised roll data-base and laser printing, greatly expedites the production of complete rolls once the decision to print has been taken, but the unexpected calling of an early election can occasion temporary difficulties for parties and candidates who want a comprehensive list of electors as soon as the election date is known.

5.39 A change in printing frequency would not inconvenience individuals wishing merely to inspect the rolls, as prints of additions and deletions to the roll are available.

5.40 The DJCS advises that, since the last general rolls were printed on 31 August 1989, the SEO has sold 2,990 rolls and a further 4,105 rolls have been supplied to State Electoral Registrars throughout the State for sale by them when required.

5.41 The demand for printed rolls from the public is very small. Advice from GOPRINT (the State Government Printer) is that 30 copies of the roll for each district are made available for general sale for each print. The principal demand for printed rolls is thought to be from insurance and other sales representatives.

5.42 The cost of purchasing a printed roll is currently $10.50 ($8.50 for the general roll, $2.00 for supplemental roll). That cost is currently set by regulation. In other jurisdictions the price of a printed roll is set at the level considered appropriate by the Electoral Commissioner.

5.43 Electoral Registrars currently make a copy of the latest printed roll, together with subsequent additions and deletions, available for public inspection. Because of the low demand for this service from members of the public, it may be appropriate that ROs continue to make their district's roll available for public inspection. It should be noted that the Commonwealth Divisional Returning Officers have up to date copies of the local Divisional roll and this facility satisfies some of the demand for information.

5.44 In other jurisdictions rolls are compiled for each election and/or redistribution. In addition, Electoral Commissioners or the Minister have discretion to order the printing of rolls at other times. In the Commonwealth, there is a further requirement to produce a roll for Parliamentarians in the period up to 2 years after the first session of Parliament after the last general election.

Availability of Roll Information to Members of the Legislative Assembly and Political Parties

5.45 There is no provision in the Act to provide a copy of the electoral roll for a district or the State to political parties directly. Section 37B allows Members of the Legislative Assembly (MLAs) to purchase the roll in electronic format for their own districts, and candidates to purchase the roll for districts in which they have nominated.

5.46 Both Commonwealth and Western Australian electoral laws provide for their respective Electoral Commissioners to give registered or Parliamentary political parties copies of the rolls and habitation indexes. (A habitation index is a roll in street order rather than elector name order).

5.47 Section 25A of the Western Australian Act authorises the Electoral Commissioner to provide on request and without charge two copies of the roll for each district to any Parliamentary party, and two copies of the roll to each MLA for their district. There is no limit on the number of times a Member or party can request rolls. The Western Australian Act also authorises the Commissioner to provide two copies of the habitation index for each district to each Parliamentary party, without charge, once each Parliamentary term.

5.48 The CE Act specifies that individual Members and registered political parties must receive copies of habitation indexes after each general election and not later than two years after the first session of Parliament after the last general election.

5.49 The Western Australian Act only requires the Commissioner to provide electoral information to a party for districts in which that party is organised. The CE Act does not require registered parties to be provided with electoral information for a State unless that party is organised in that State.

5.50 There is no restriction in the Western Australian Act on the information to be provided to Members or parties from the roll. The CE Act contains sections to prevent the AEC from disclosing to any person details of an elector's gender, age and occupation. Also, ss.91A and 91B of the CE Act clearly define the uses to which electoral information supplied to Members and parties may be put, and prohibits commercial use of electoral information.

Printed Rolls for Local Authorities

5.51 The Act requires that rolls be made available to the Brisbane City Council for Local Authority elections. Furthermore the Local Government Act (s.7.(7)(iii)) requires Electoral Registrars to make all their enrolment records available to Local Authority ROs to enable them to compile voters rolls. Also s.37B of the Act allows Local Authorities to purchase the rolls in electronic format.

5.52 This provision works well and should be continued in the new Act. The provision could be retained by adding Local Authorities to State authorities in the section above dealing with access to roll information by State authorities.

EVIDENCE AND ARGUMENTS

Publication and Sale of Printed Rolls

5.53 A number of submissions commented on this matter:

(a) *"The Democrats believe it would be more efficient and economic to only print the rolls to coincide with a State election, but there should always be the power for the Electoral Commissioner to order a print at his or her discretion."* (Australian Democrats (s62)).

(b) *"... that the electoral commission should be able to produce the electoral roll as and when it is needed rather than each two years. Each other State and the Commonwealth produce the electoral roll when determined by the Electoral Commissioner, or the Minister for each election and/or each redistribution. It is submitted that Queensland would make better use of its resources if that procedure was followed. Such a savings in resources would allow the Electoral Commission to better circulate the rolls which it does print."* (Ipswich City Council (S72)).

(c) *"So long as additions to the roll are available, and the full roll printed prior to an election, there seems to be no reason to retain the requirement for a reprint every two years."* (ALP (S70)).

(d) *"The timing of the printing of rolls should be at the discretion of the QEC having regard to the substantial cost on the State. However, the Commission should ensure that rolls are available for public inspection at convenient centres throughout the State."* (Boonah Shire Council (S68)).

5.54 Electoral laws in all jurisdictions specify that rolls must be available for purchase. In Queensland the price is set by regulation. In all other Australian jurisdictions, the price is set by the Commissioner, or Chief Electoral Officer.

5.55 Submissions generally argued that electoral rolls should be available for purchase and inspection:

(a) The National Party (S76) submitted that the rolls should continue to be available for purchase, that the cost be nominal and that the rolls continue to be available for public inspection.

(b) *" ... such rolls should be available for purchase by members of the public at the actual printing cost. It is further submitted that such rolls should be provided at no cost to each local authority and magistrates court for inspection by members of the public. Naturally, only the applicable rolls for the electorates in that area would be available. This would ensure that the rolls were readily accessible through Queensland."* (Ipswich City Council (S72)).

(c) *"Council is of the opinion that printed rolls should be available to all persons for purchase at a price which reflects the cost of production. The rolls must be available, free of charge, for public inspection within various centres in all electoral districts, eg. court houses, libraries, local authority office etc."* (Miriam Vale Shire Council (S52).

Availability of Roll Information to Members of the Legislative Assembly and Political Parties

5.56 Both the Commonwealth and Western Australian Acts provide for the roll and habitation index to be made available in electronic format to political parties. As stated above, EARC has previously recommended that Members, candidates, and local authorities continue to be able to purchase rolls in electronic format. There is no provision in the current Act for political parties to purchase electronic rolls. The fact that there are no restrictions on the use of electronic information by MLAs however, has given political parties de facto access to electronic roll data.

5.57 Submissions included:

(a) *"It is essential that selected information from electoral rolls ... be regularly available to Members of the Legislative Assembly, and therefore, to political parties."* (ALP (S70)).

(b) The National Party (S76) wanted parties to be able to purchase electronic rolls, and suggested that no restrictions be placed on the use of the information.

(c) The Institute of Municipal Management (S86) questioned whether there needs to be different controls on the use of roll information in printed and electronic form:

"As to restrictions on use of the information, the data provided, whether electronically or in print, is surely merely that - data - and it can be used in exactly the same way whether it is received in print or on disc or tape. Any restrictions which are placed on its use should be common to all forms of media."

ANALYSIS OF EVIDENCE AND ARGUMENTS

Publication and Sale of Printed Rolls

5.58 Electoral rolls should continue to be made available for inspection and purchase. This is a facility that has traditionally been available in Queensland and all other Australian jurisdictions. Making the rolls readily available to the public adds to the confidence the public have in the electoral system.

5.59 The timing of the printing of rolls needs to be brought into line with the normal electoral timetable. Because of the cost of producing the rolls in printed form, and the fact that their primary function is to facilitate the conduct of elections, they should only be produced after the close of rolls for each election, after each redistribution and to meet the needs of Local Authority elections. The certified lists produced for elections should be the basis of the printed roll.

5.60 It is also necessary to take into account changing technologies for the production and dissemination of information. The QEC should have the discretion of determining how rolls are to be made available for inspection and purchase.

5.61 The QEC also should have the authority to determine the cost of rolls made available for purchase of a printed copy by the public. Because the roll information is readily available, purchase is not required to ascertain who is enrolled in a district which is the primary purpose of public access to the rolls. The cost of purchase therefore should reasonably reflect the cost of production.

Recommendations

5.62 **The Commission recommends that:**

(a) Electoral rolls for a district should be available for inspection at the office of Electoral Registrars, Returning Officers and any other location, including Local Authorities, considered appropriate by the Queensland Electoral Commission.

(b) The Queensland Electoral Commission should have discretion to determine the form of the production of electoral rolls and the price of purchase of the rolls, on a cost recovery basis.

(c) Electoral rolls should be produced as soon as possible after the close of rolls for an election, after a redistribution, and for the needs of Local Authority Elections and at other times determined by the Queensland Electoral Commission.

5.63 Provision has been made in the Draft Bill to reflect these recommendations in Part 4 ss.59-61.

Availability of Roll Information to Members of the Legislative Assembly and Registered Political Parties

5.64 The Commission considers that the current provisions for access to printed rolls for MLAs are adequate. The only matter that needs to be addressed is that there are no restrictions on how often Members may request a copy of the roll for the purposes of servicing their electoral districts; obtaining three copies of the printed roll during the term of the Parliament would appear to be adequate to service electoral requirements.

5.65 The Commission also considers that access to the roll by registered political parties needs to be formalised. Not surprisingly, political parties argued for access to roll information in a usable form. They generally supported the view that this information should not be provided free of charge.

5.66 There may be some concern amongst the public over such access by political parties. However, by including a provision similar to s.91A of the CE Act into the legislation, adequate protection can be provided against such concerns. Section 91A of the CE Act states:

> *"91A(1) Where a tape or disk has been provided to a political party under subsection 91(5), a person shall not use information obtained by means of the tape or disk except for a purpose that is a permitted purpose in relation to that party.*
>
> *Penalty: $1,000*
>
> *(2) The permitted purposes in relation to a political party are:*
> *(a) any purpose in connection with an election or referendum;*
> *(b) monitoring the accuracy of information contained in a Roll; and*
> *(c) the performance by a senator or member of the House of Representatives who is a member of the party of his or her functions as a senator or member in relation to a person or persons enrolled for the Division to which the index relates.*
>
> *(3) In subsection (2):*
> *'election' means*
> *(a) a Senate election;*
> *(b) a House of Representatives election;*
> *(c) a State election;*
> *(d) a Territory election; or*
> *(e) a local government election;*
> *'referendum' means a referendum conducted under a law of the Commonwealth or of a State or Territory."*

5.67 One consequence of making rolls available to registered parties in advance of the close of nominations is to advantage candidates endorsed by the parties over those who are independents and become eligible only on nominating. However to provide the rolls in electronic form to anyone who claims to be contemplating standing at the next election would make this information too widely available to control against commercial or other abuse.

Recommendations

5.68 **The Commission recommends that:**

(a) Members of the Legislative Assembly should receive without change three copies of the printed roll for their district at the start of the Parliamentary term, and any other time during the term that the rolls are printed.

(b) Registered political parties, Members and candidates should also be able to purchase electronic rolls. Members' and candidates' access should be restricted to the district they represent or for which they have nominated. Registered political parties should be able to purchase rolls for all districts.

(c) The cost of providing the service to the Members and registered parties should be determined by the Queensland Electoral Commission and reflect the cost of production.

(d) Provisions similar to s.91A of the Commonwealth Electoral Act 1918 which make it an offence for Members and parties to use roll information for any purpose other than electoral matters should be included in the Electoral Act.

5.69 Provisions have been included in the Draft Bill to implement this recommendation in Part 4 s.61 and Part 8 s.152.

Enrolment Procedures

Issue 1 Under a Joint Electoral Roll Arrangement should Queensland authorise Australian Electoral Commission Divisional Returning Officers to be Electoral Registrars for State purposes?

Issue 2 Should some categories of electors be able to be removed from the electoral roll?

Issue 3 Should there be provision for the issue of voter identification cards in the new Elections Act?

5.70 In relation to enrolment procedures discussed below, and objections, (discussed in the next section), the ideal situation under a Joint Roll Arrangement will be that nearly all enrolments and objections procedures would be handled by Commonwealth officers acting under Commonwealth legislation.

5.71 However, there are an unknown number of British subjects who are not Australian citizens who are eligible to enrol for the State and not the Commonwealth, as discussed earlier in this chapter. Commonwealth officials would not be authorised by Commonwealth legislation to administer State only enrolments and objections. Therefore there needs to be some provision in the Act for enrolment and objection procedures, so that those enrolled for State only purposes have the same rights as other electors.

CURRENT SITUATION

5.72 Section 7 of the Act currently authorises that:

(a) Electoral Registrars be appointed by the Governor in Council;

(b) Electoral Registrars may be appointed for more than one electoral district; and

(c) holders of specified offices under the crown may be Registrars.

5.73 Under Joint Roll Arrangements in other States, Commonwealth Divisional Returning Officers (DROs) have been appointed as Registrars for State purposes.

5.74 Current practice in Queensland is that a number of Clerk of the Court positions across the State have been designated by Order in Council so that whoever holds the position is automatically an Electoral Registrar.

EVIDENCE AND ARGUMENTS

5.75 Submissions generally supported the idea that DROs be Electoral Registrars. Opinion was divided however on whether certain groups should be exempted from compulsory enrolment. There was little comment on whether the current provisions for voter identification cards should be retained or removed.

(a) The National Party (S76) stated that DROs should be registrars. the party also stated that certain voters should be able to apply to be removed from the roll, but presented no arguments to support its position. Similarly it stated there should not be a provision for voters' identification cards, but presented no evidence on the point.

(b) *"It is submitted that the Elections Act provide for the Electoral Commissioner to appoint electoral registrars, as required, including the right to nominate AEC divisional returning officers for the purpose. By legislating the appropriate enabling provision, the detailed administration can be left to the Queensland Electoral Commission."* (ALP (S70)).

(c) *"If there is to be total co-operation between the Commonwealth and the State it is clear that Queensland should authorise Commonwealth officials to be Electoral Registrars.*

It is essential that provision be made for some categories of electors to be able to apply to be removed from the electoral roll. Provision should be made for the recognised next of kin (irrespective of whether such person holds a power of attorney) to make such application in certain circumstances, eg. due to health, very old age etc." (Miriam Vale Shire Council (S52)).

(d) *"Brisbane would support the idea of excusing certain electors (eg. certain physically handicapped persons or the very old) from compulsory voting. Many of the elderly in particular, find it extremely stressful to have to go to the trouble of organising a vote. It is agreed that provisions would need to be introduced to ensure this process is not abused."* (Brisbane City Council (S88)).

(e) *"This submission recommends that Commonwealth officers may be permitted to act as Electoral Registrars for State purposes. This would be subsequent to conditions being accepted by all concerned.*

While there may be moral arguments for certain groups of persons to be granted exemption from the rolls all other arguments would be against such action. The position should remain as is until agreement can be reached between all States and the Commonwealth.

It is understood at least one religion advises its members not to enrol, and consequently do not vote.

Voter identification should not be included in the proposed legislation." (A Sandell (S61)).

(f) However, Queensland Advocacy Inc. (S84) argued strongly against any special provision for the disabled or elderly in relation to exemptions:

"QAI opposes the exemption of people from complying with compulsory electoral requirements on the basis of disability. If the legislature wishes to make voting compulsory, it must ensure that voting procedures do not discriminate and handicap people with disability by making it more difficult for them to comply with that requirement.

If someone has sufficient understanding to vote, QAI believes that they should be treated no differently from others in this respect, except where they require assistance to enable them to exercise that right. If someone does not have sufficient understanding, the provisions relating to disqualification should be sufficient.

Section 33 of the Act includes no safeguards to ensure that the person with disability consents (where possible) or is aware of the medical certification. Nor does Form x. QAI is aware of allegations that medical practitioners have provided certificates at the request of other family members, and effectively disenfranchised people with disability against their will. We see no place for this provision in this legislation.

If someone who fails to enrol or to vote is found not to be qualified to vote, all offence provisions in the legislation should be worded to exclude them from liability. If someone is qualified to vote, we do not believe that they should be patronised by being treated differently just because they have a disability."

ANALYSIS OF EVIDENCE AND ARGUMENTS

5.76 Under a Joint Roll Arrangement, the AEC will be performing roll maintenance, ie. receiving enrolment claims and applications for transfers, processing these and instituting and processing objections. Following the current federal redistribution, there will be 25 DROs (Divisional Returning Officers (for AEC)) located in offices spread across the State.

5.77 For elector convenience especially in non-urban areas, it has been necessary to appoint other registrars. Those registrars provide the service of checking claim cards and noting their date of receipt before forwarding the cards on for processing.

5.78 Endorsing the date received on a claim card becomes important when an election writ is issued. Cards received and dated by registrars up to the date for the close of rolls are included in the roll for that election. It could happen that a claim card posted to a DRO by an elector in a rural area some days before the close of rolls for an election may not be received until after the close of rolls. That claim would not be processed, and the elector disenfranchised for that electoral district. Were it still possible to deliver the card to an Electoral Registrar more readily accessible to the elector, this risk would be avoided.

5.79 The Commission does not believe that any special enrolment exemptions should be included in the new Act. As stated by Queensland Advocacy Inc. (S84), if enrolment and voting are compulsory the Act should apply equally to all citizens. There are no exemptions to enrolment for particular groups of citizens in any Australian legislation. In South Australia however, enrolment is not compulsory for the State roll even though there is a common claim card with the Commonwealth roll which is compulsory.

5.80 The current provision for the issue of voter identification cards has fallen into disuse. Also as there were no arguments for it to be continued, and no need for voters to produce identification when presenting at the polling-booth (see recommendations in Chapter Seven), the provision should not be included in the new Act. There seems to be no reason to revive the identity card system.

RECOMMENDATIONS

5.81 **The Commission recommends that:**

(a) Subject to the Commonwealth's agreement, Divisional Returning Officers should be appointed as Electoral Registrars for State purposes.

(b) The holders of specified Public Service offices should be appointed as Electoral Registrars.

(c) The Queensland Electoral Commission should be authorised to appoint other persons as registrars as it considers necessary.

(d) There should not be exemptions from compulsory enrolment for any groups of citizens.

(e) There be no provision for an elector identity card.

5.82 The above recommendations have been included in Part 2 s.33 and Part 8 s.164 of the Draft Bill.

Objections to Names on Electoral Rolls

Issue 1 What is the appropriate appeal process to ensure adequate redress to those electors who have been removed from the roll following objection?

Issue 2 Should Queensland legislate so that appeals to Commonwealth authorities and the outcomes of those appeals are valid for State purposes?

CURRENT SITUATION

5.83 Currently ss.38-43 of the Act describe objection procedures. Basically these provisions are:

(a) An elector or the PEO may institute an objection.

(b) The PEO issues a notice of objection.

(c) The elector may answer orally or in writing.

(d) The PEO determines the objection.

(e) It is an offence to lodge an objection without reasonable cause.

(f) There is a right to appeal to the Magistrates Court.

5.84 As noted in para.5.71 there will be a need to provide objection procedures in the new Act so that the enrolment of electors enrolled for State only purposes can be objected to. Commonwealth officials would not be able to institute objections to these electors under Commonwealth legislation.

5.85 All other Australian States provide for an objection process in their electoral legislation.

EVIDENCE AND ARGUMENTS

5.86 Submissions that canvassed these issues generally agreed that AEC objection and appeal processes were adequate for State purposes.

(a) The DJCS (S77) stated:

"It is suggested that the objection procedures in the Commonwealth Electoral Act are adequate and that there is no need to provide a duplicate procedure in the Queensland Act. The avoidance of duplication will enable substantial savings to be made. It is recommended that no alternative objection procedure be set out in the Queensland Act. Instead that Act should impose a duty on the Electoral Commissioner, or his deputy, to lodge objections according to the procedures of the Commonwealth Act, on the receipt of information that, in his opinion, warrants further consideration. The Electoral Commissioner should also have the power to lodge an appeal to an Australian Electoral Officer, or the Administrative Appeals Tribunal (as the case may be), should he believe that such action is warranted."

(b) The National Party (S76) stated that Commonwealth appeal processes should apply and that Queensland should legislate to validate Commonwealth appeals for State purposes.

(c) The ALP (S70) also supported this idea:

> *"With a common enrolment procedure there is no need to duplicate the Commonwealth objection and appeal procedures. It is submitted that it would be a waste of resources to do so. However, the Elections Act should authorise the Commissioner, or his delegate (which may include a district returning officer or electoral registrar) to lodge an objection under the Commonwealth Electoral Act.*
>
> *It is agreed that the Queensland Elections Act be amended so that objections and appeals, and their outcomes, under the Commonwealth Act are valid for State purposes."*

(d) A Sandell (S61) also supported a single objection and appeal process.

(e) The Miriam Vale Shire Council (S52) advocated appeals to Magistrates Courts, with the proviso that appeals determined by the Commonwealth should also apply to the Queensland roll.

ANALYSIS OF EVIDENCE AND ARGUMENTS

5.87 The Commission accepts the need for a separate State objection process in connection with State only enrolees. The current process, as specified in ss.38-43 of the Act is adequate, as it gives the elector opportunity to reply to an objection, and also provides for an appropriate appeal mechanism through the Magistrates Court.

RECOMMENDATION

5.88 **The Commission recommends that the Act should provide an objection process that is similar to the provisions in the current Act, including an appeal to the Magistrates Court.**

5.89 Provisions for objections to enrolment are included in Part 4 s.67 of the Draft Bill.

CHAPTER SIX

DETERMINATION OF ELECTORAL DISTRICT BOUNDARIES

Introduction

6.1 In Chapter Eleven of its *Report on Queensland Legislative Assembly Electoral System* the Commission recommended the principles and processes to govern the 1991 distribution and future redistributions of Queensland electoral districts, namely:

(a) elector enrolments to be the statistical basis for redistributions;

(b) the level of tolerance between electoral districts;

(c) the redistribution criteria;

(d) the frequency of redistributions;

(e) the redistribution machinery and procedures; and

(f) the review of the number of Members of the Legislative Assembly.

6.2 The recommendations were substantially accepted by the Parliamentary Committee for Electoral and Administrative Review and subsequently adopted by the Parliament.

6.3 The ED Act 1991 (the ED Act) was passed in April 1991. It required EARC to carry out the distribution according to the processes and timetable set out in that Act. The ED Act was intended for the 1991 distribution but in its Report EARC proposed that similar provisions should apply to future redistributions.

6.4 It is not EARC's intention in this chapter to reconsider the recommendations concerned with redistributions made in its earlier Report. Instead the Commission will discuss how the recommendations should be incorporated into the new electoral legislation.

Matters for Consideration

6.5 One issue identified in the *Report on Queensland Legislative Assembly Electoral System* which requires more consideration is the question of the mechanisms for reviewing the number of members to sit in the Legislative Assembly. It is the Commission's view that this matter requires further discussion to ensure that such reviews fit appropriately within the normal timetable for redistributions.

6.6 Issues Paper No. 13 identified three other issues connected with redistributions which required further public input and analysis by the Commission:

(a) Whether decisions of Redistribution Commissions should be final or subject to judicial review.

(b) Whether bringing undue influence to bear on a Redistribution Commission should be an offence.

(c) Any principles which should apply to the choice of names for electoral districts.

6.7 These three matters will be considered before the Commission discusses how its recommendations on these matters and on previous aspects of redistributions should be included in the new Act.

Judicial Review of Redistribution Commission Decisions

Issue 1 Judicial Review of Redistribution Commission Decisions

(a) Should the decisions of the Redistribution Commission be conclusive and final or subject to judicial review?

(b) If subject to judicial review, what (if any) restrictions should be placed on when an appeal can be lodged?

(c) Should the appeal be to the full court?

(d) Should the legislation specify that the appeal should be held as a matter of urgency?

6.8 The Commission's *Report on the Legislative Assembly Electoral System* drew attention to the considerable number of submissions received by the Commission which advocated that the final decision on boundaries should be the province of the Redistribution Commission and should not be the subject of Parliamentary assent prior to acceptance. The basic thrust of this argument was that Parliament should be divorced from the redistribution process because, as the Commission's *History of the Queensland Zonal Electoral System* showed, it has not always been apparent that successive Queensland Governments honoured the independence of the Commissioners.

CURRENT SITUATION

6.9 In New South Wales the Redistribution Commissioners report their determinations of the boundaries for the Legislative Assembly electoral districts to the Governor who causes a proclamation to be made and published (PE & E Act, ss.13-15). The Commissioners' decision is final - there is no appeal against the determination.

6.10 Under the provisions of the Victorian *Electoral Boundaries Commission Act 1982* the Commission is required to forward to the Minister for Property and Services a set of the final boundaries. The Minister is required to lay this material before Parliament. The final boundaries are not subject to any variation or veto by the Parliament.

6.11 Redistributions by the Commissioners in Western Australia similarly are not subject to appeal. Under the provisions of the *Electoral Distribution Act 1947* the final determination has the force of law.

6.12 In South Australia the Constitution Act 1934, ss.85 and 86, allows any elector to appeal to the Full Court of the Supreme Court against an order making an electoral redistribution on the grounds that the order has not been duly made in accordance with the Act. The appeal must be set down for hearing within one month and determined as a matter of urgency.

6.13 In Tasmania there is no formal process of appeal. The Assembly district boundaries are the same as the Commonwealth divisional boundaries. The Tasmanian Parliament formally adopts the Commonwealth boundaries for the purposes of State elections. Legislative Council district boundaries are determined by the Parliament.

6.14 At the Commonwealth level, electoral divisions for the House of Representatives are provisionally drawn by a Redistribution Committee for each State. An augmented Redistribution Commission considers objections before making a final determination. Under the provisions of the CE Act decisions of the Redistribution Commission are final and conclusive and may *"not be challenged, appealed against, reviewed, quashed, set aside or called in question in any court or tribunal on any ground"* (CE Act, s.77) and they are not subject to administrative appeal on any ground in any court. However this does not oust the prerogative writ jurisdiction of the High Court under s.75(v) of the Australian Constitution.

6.15 In Queensland up to the present a new Electoral Districts Act has been passed for each redistribution. These Acts have all contained provisions which have made the determination of district boundaries by successive Commissioners final and conclusive and not subject to any appeal. The *Electoral Districts Act 1985* stated in s.24(5):

> *"Any division by the Commissioners of the State ... into electoral districts ... shall be final and conclusive, and shall not be impeachable for any informality or want of form or be appealed against, reviewed, quashed or in any way called into question in any court whatsoever".*

6.16 In sharp contrast the ED Act contains a provision allowing judicial review of the Commissioners' determination on limited grounds. Section 3.7 states in part:

> *"The electoral districts so notified are the electoral districts in the State until the State is again distributed into electoral districts in accordance with law".*

6.17 However s.4.5 provides:

> *"4.5 Appeals against determination of Commission etc. (1) A person who is entitled to vote at an election of members of the Legislative Assembly may appeal to the Full Court of the Supreme Court against a determination made by the Commission under section 3.7(1), on the ground that the determination has not been duly made in accordance with this Act.*
>
> *(2) The appeal must be made:*
> *(a) within 21 days of the publication of the determination in the Gazette;*
> *and*
> *(b) in the manner prescribed by the Rules of the Supreme Court*
>
> *(3) The Commission is the respondent to the appeal.*
>
> *(4) If more than one appeal is instituted against the determination, every appeal may be dealt with in the same proceedings.*
>
> *(5) Any person having an interest in the appeal may apply to the Court to be joined as a party to the appeal.*
>
> *(6) If an appeal is instituted under this section, the determination does not take effect until the appeal has been disposed of by the Court.*

(7) On the hearing of an appeal under this section, the Court may, in its discretion

(a) quash the determination and, subject to such directions as it thinks fit, order the Commission to made a fresh determination under section 3.7(1); or
(b) dismiss the appeal;

and may make any ancillary order as to costs or any other matter than it thinks expedient.

(8) The validity of the determination may only be called in question in an appeal under this section.

(9) An appeal against the determination is to be set down for hearing by the Court as soon as practicable after the expiry of 21 days from the publication of the determination in the Gazette, and is to be heard and determined by the Court as a matter of urgency.

(10) Except as provided in this section, a decision or determination made, or appearing to have been made by the Commission, or any member of the Commission, under or for the purposes of this Act -

(a) is final and conclusive; and

(b) cannot be challenged, appealed against, reviewed, quashed, set-aside or otherwise called in question in any court or tribunal on any ground; and

(c) is not subject to mandamus, prohibition, certiorari, injunction or any declaratory or other order of any court on any ground.

(11) A reference in subsection (10) to a decision includes reference to a refusal or failure to made a decision."

6.18 This section makes provision for appeals to the Full Court of the Supreme Court (now the Court of Appeal) against the electoral district boundary determinations by EARC during the 1991 determination. Appeals must be based on the ground that the determination was not duly made in accordance with the ED Act.

6.19 Section 4.5 was not in the original Bill as EARC had been concerned about the possibility of delay to the completion of the redistribution process. However the Parliament's readiness to make the provision of s.4.5 of the ED Act indicates that this risk has been accepted.

EVIDENCE AND ARGUMENTS

(a) *"The decisions of the Redistribution Commission must be conclusive and never subject to judicial review. The terms of reference will be laid down either in legislation or in special instructions to each separate undertaking. The members of the Commission will be persons of integrity and quite capable of carrying out their task without any political bias."* (A Sandell (S61)).

(b) *"The Labor Party might well prefer, at some future stage, that the decisions of a Boundaries Commission be final and conclusive and not subject to judicial review. After all, when new boundaries were incorporated in an Act of Parliament, the details became law and were not subject to the judicial review process. Now that boundaries are not to be an Act of Parliament (for very good reasons) there is no reason to believe that the judicial review can make any constructive contribution.*

At this stage the Labor Party is willing to support the continuance of the provisions of Section 4.5 of the Electoral Districts Act 1991. After all, those provisions are designed to avoid litigation designed purely to delay new boundaries, and they are worded in a way which prevents effectively a Court from determining that an alternative result could be sustained by the criteria. The Labor Party would be strongly opposed to any recommendation which provided a process of judicial review more extensive or prolonged than that envisaged by Section 4.5." (ALP (S70)).

(c) *"1.1 Should the decisions of the Redistribution Commission be conclusive and final or subject to judicial review?*

They should be subject to judicial review.

1.2 If subject to judicial review, what (if any) restrictions should be placed on when an appeal may be lodged?

No restrictions should be placed additional to those which are contained in the legislation applicable to other matters.

1.3 Should the appeal be to the Full Court?

No, unless the Court otherwise orders.

1.4 Should the legislation specify that the appeal should be held as a matter of urgency?

Yes." (National Party (S76)).

ANALYSIS OF EVIDENCE AND ARGUMENTS

6.20 There are a number of reasons why it is essential that the decisions of Redistribution Commissions should be final and conclusive. There is a proper public expectation that the Parliament should not be in a position to contest the boundaries proposed by such independent bodies. Parliament must also not be able to substitute its own boundaries once the Redistribution Commission has made its final decision.

6.21 However it is equally true that the public must be able to have confidence that Redistribution Commissions have acted within the requirements of the redistribution legislation. This is the purpose of the provisions in the South Australian legislation and the ED Act which allow appeals on the grounds that a redistribution has not been carried out in accordance with law. The Commission supports the ALP's submission on this point.

6.22 The Commission does not recommend any broadening of the appeal grounds which would reopen the merits of the determination.

6.23 EARC believes that the boundary determinations of future Redistribution Commissions should be final and conclusive whilst subject to an appeal on the grounds that a Commission has not complied with the relevant law. Inserting an appeal provision in the Draft Bill is also consistent with EARC's recommendation in its *Report on Judicial Review of Administrative Decisions and Actions* (December 1990) that privitive clauses should be avoided wherever possible.

6.24 EARC agrees with the National Party that the legislation should require that any appeals should be heard as a matter of urgency so that boundary determinations are not unduly delayed. EARC also recommends that, in the event of a successful appeal, the court should order the Redistribution Commission to make a new determination.

RECOMMENDATIONS

6.25 **The Commission recommends that the provisions of the *Electoral Districts Act 1991* concerning appeals against determinations of Redistribution Commissions should be incorporated into the Draft Bill, specifically:**

(a) That the only ground for appeal be that the determination was not duly made in accordance with the Act.

(b) That appeals must be lodged within 21 days of publication of the determination in the Gazette.

(c) That the Queensland Electoral Commission be made a party to the appeal.

(d) That the Court of Appeal hear the appeal as quickly as possible.

(e) That if the appeal is successful the Court may order the Commission to make a fresh determination.

6.26 The provisions in the Draft Bill which give effect to these recommendations are Part 3 s.57.

Undue or Improper Influence

Issue 2 Should there be an offence of bringing undue influence to bear on a Redistribution Commission? If so, what is the appropriate penalty for the offence?

6.27 There have been allegations that Queensland Redistribution Commissioners might have been influenced by previous governments. These allegations have been made because of the secretive nature of earlier redistributions whereby the Commissioners reported directly to the Premier. Previous Electoral Districts Acts have not included any provisions making undue influence an offence.

CURRENT SITUATION

6.28 Section 78 of the CE Act specifies a penalty of $2,000 or 12 months imprisonment or both, for improperly seeking to influence Redistribution Commissioners.

6.29 In New South Wales, South Australia and Western Australia, the provisions of their Royal Commission Acts apply to Redistribution Commissions, the Chairmen of the Commissions and the Secretary of the Commissions. Redistribution Commissions in these States therefore operate as and have the same legal powers and protections as, Royal Commissions.

6.30 In Queensland s.4.3 of the ED Act creates an offence of improper influence during the course of the 1991 distribution. The penalty prescribed is approximately $2,100 (35 penalty units):

> *"**Improper influence an offence**. A person is not to influence, or attempt to influence, a member of the Commission in the performance of the member's duties under this Act, unless the person does so by means prescribed.*
>
> *Penalty: 35 penalty units, or imprisonment for 12 months, or both."*

EVIDENCE AND ARGUMENTS

(a) *"Public scrutiny and input should have maximum facilitation.*

Penalty should reflect amount of intended profit - eg. more penalty on developer company than householder imprisonment inappropriate, but heavy fines."(R Mc Kinnon (S56)).

(b) *"2.1 The allegations against previous Redistribution Committee(s) are well remembered, with some disgust. This submission recommends Queensland legislation be amended to incorporate a provision similar to that described in paragraph 3.13, viz. section 78 of the C.E. Act.*

2.2 It is assumed that should the Commissioners suspect or be subject to undue influence they would contact the Police or the C.J.C. who would investigate and institute proceedings where necessary." (A Sandell (S61)).

(c) *"2.1 Should there be an offence of bringing undue influence to bear on a Redistribution Commission? If so, what is the appropriate penalty for the offence?*

(a) Yes

(b) The penalty should be very much greater than that than in the Electoral Districts Act. The Party suggests four thousand penalty units, or imprisonment for five years, or both, coupled with disqualification from the right to vote at, or be a candidate at, any future election in the State." (National Party (S76)).

ANALYSIS OF EVIDENCE AND ARGUMENTS

6.31 The history of the conduct of Queensland electoral redistributions has shown how important it is to provide for offences and penalties in respect of improper influence on Redistribution Commissioners. Prior Electoral Districts Acts have not created such offences and there has been concern that Commissioners might have been influenced their determinations.

6.32 Other States have constituted their Redistribution Commissions with the powers of Royal Commissions. If a similar situation were to apply in Queensland, no specific penalty for undue or improper influence would be required. The Queensland *Commission of Inquiry Act 1950-1989*, in general terms, applies the law of contempt of court to proceedings before Commissions of Inquiry. Accordingly if a person sought to improperly influence a Commissioner conducting an inquiry that person could be dealt with as if the person sought to improperly influence a Judge in ordinary court proceedings. A Chairperson of an inquiry, if a Supreme Court Justice, can deal with the matter directly. If the Chairperson is not a Supreme Court Justice, the matter may still be dealt with by the Chairperson, in which case the maximum penalty that can be imposed is $100. Alternatively a non-judicial Chairperson may refer the matter to the Supreme Court.

6.33 In Queensland the penalty for contempt of the Supreme Court is at the discretion of the court and can be either a financial or custodial penalty. Introduction of a specific offence with a substantial penalty, such as the one in the ED Act, would confirm the seriousness of undue or improper influence. The submissions which addressed this issue were supportive of such a course of action.

6.34 The Commission believes that there should be a specific offence in the new legislation dealing with improper influence. This offence should carry a substantial penalty as a deterrent to attempts to improperly influence Redistribution Commissioners. In combination with the public nature of future redistributions in Queensland, the offence and associated penalty would help to ensure that redistributions are carried out in a scrupulously independent manner. Because the QEC will have the conduct of redistributions as one of its functions, the offence of undue influence should extend to the QEC, not be specific to the QEC where it is conducting a redistribution.

RECOMMENDATION

6.35 **The Commission recommends that a specific offence of improperly influencing a Queensland Electoral Commission member should be incorporated into the Act. The offence should attract a substantial penalty.**

6.36 The provisions in the attached Draft Bill which implement this recommendation are in Part 8 s.156.

Principles for the Naming of Electoral Districts

Issue 3 Should the current system of naming districts by locality or place names be retained or should a new system for naming districts be introduced?

CURRENT SITUATION

6.37 Queensland's current 89 electoral districts, with the exception of Nicklin, were named after places, localities or physical features. Section 3.7 of the ED Act required EARC to provide names for the districts but gave no directions or criteria for the selection of appropriate names for the 1991 distribution. A similar situation prevailed for earlier redistributions.

6.38 The December 1986 Joint Select Committee on Electoral Reform (JSCER) Report proposed the following guidelines for naming Federal Divisions:

(a) Generally divisions should be named after citizens who rendered outstanding service to their country and every effort should be made to retain the names of original Federal divisions.

(b) The names of former Prime Ministers should be considered when naming new electoral divisions.

(c) Locality or place names should generally not be used unless geographical features are appropriate.

(d) There must be very strong reasons to transfer the names of Divisions to new areas. Otherwise they should not be transferred or changed.

(e) Where there is a redistribution and the names of two or more Divisions are partially combined, the name of the new Division should be, as far as possible, the name of the old Division which has the greatest number of electors within the new boundaries (JSCER 1986, pp.17-8).

EVIDENCE AND ARGUMENTS

6.39 There was considerable support in the submissions for accepting principles comparable to those the Commonwealth follows.

(a) *"3.1 For the sake of continuity and clarity, we believe that names of electoral districts should not be changed without good reason. The only obvious reason would seem to be a redistribution substantially altering the boundaries of an electorate.*

3.2 Naming districts after noteworthy Queenslanders, particularly people from the area in question, is a good way of retaining a sense of history. If a decision is made to name districts on a basis other than a locality name, these would have to be phased in only when new naming opportunities arose following redistribution.

3.3 Another criterion which we believe the Commissioners should consider is the naming of electoral districts after the name of the original indigenous tribe or people from the area, or the name which those people gave to the area. This would be a small but symbolically significant way of recognising that the history of the area goes back beyond the European settlement. It may even help in a small way in giving Aboriginal and Islander people a greater sense of identification with the electoral system." (Australian Democrats (S62)).

(b) *"The naming of future electoral divisions should definitely honour Australians. If possible the choice should be an Australian from the electorate itself. In these instances the name chosen need not be famous in the national or State arenas, merely famous or having served in a way justifying permanent recognition."* (A Sandall (S61)).

(c) *"I believe that the current system of naming districts by locality or place name should be retained as it readily identified the general area of the State covered by a particular district. This would facilitate voter/polling official communication when discussing the likely district of an absent voter. A check of the Street Directory would then confirm the district."* (R Wood (S74)).

(d) *"2.12 A new system of electoral boundaries is normally a 'fluid' time for political parties with Parliamentary members. There is a natural opposition to the introduction, unnecessarily, of new names which may make a member's re-endorsement more difficult. The Labor party would prefer, therefore, for existing names to be retained where they provide a reasonable description of the new district.*

2.13 Where a new name must be introduced, the Labor party can accept a geographical name which provides a reasonably accurate description.

2.14 The names of distinguished Queenslanders certainly provide an attractive option. The Labor Party believes, however, that a substantial proportion of such names, if introduced, should be selected from famous Queensland women. Such an approach is not only consistent with modern attitudes to the role of women, but is an important way of redressing the lack of public recognition of the role of women in previous generations. It is also worth noting that, for good or ill, the selection of names of distinguished Queenslanders, who are no longer alive, will produce less controversy." (ALP (S70)).

(e) *"Many famous Queenslanders are, indeed, women, and the Branch looks forward to seeing this reflected in the selection of electoral district names.*

It is worth noting, also, that many pioneer women made a significant contribution to the development of the State, but that these women may not necessarily be famous. Perhaps their contribution might also be recognised in the naming of electoral districts." (Women's Policy Branch, Dept of the Premier, Economic & Trade Development (S33)).

(f) The Liberal Party (S100) argued for the retention of a geographic naming system only.

(g) *"Where an electorate comprises areas substantially within an existing electorate, it should as a general rule take the name of the former electorate. Where this does not apply, the name of the electorate should be closely connected with the area contained within the electorate. There is no reason why that connection should not be with a person rather than a geographical location."* (National Party (S76)).

(h) *"Consideration should be given, when chosing names for Queensland's electoral districts to using appropriate Aboriginal and Torres Strait Islander names where possible. It should be noted that the original land holders were Aboriginal and Torres Strait Islanders. This principle should be extended to Local Authority Areas covering tracts of significant Aboriginal land."* (ATSIC, (Aborigines and Torres Strait Islanders Commission) Cairns Regional Office (S92)).

ANALYSIS OF EVIDENCE AND ARGUMENTS

6.40 The Commission has reached the conclusion that it would not be appropriate to impose a set of legislated requirements on a Redistribution Commission for the naming of electoral districts. It has reached this conclusion after careful consideration of the proposals in submissions and of the guidelines suggested by the JSCER. The Commission sees merit in all the proposals.

6.41 However it considers that on balance geographic place names provide the most useful basis for naming electoral districts where the selected name gives a clear identification of the district. It also seems appropriate to retain district names between redistributions if new districts are substantially similar to previous districts of the same name.

6.42 This suggestion is not meant to limit in any way future Redistribution Commissions which may be of the opinion that a geographic place name or existing district name is no longer suitable. When such circumstances arise, consideration should be given to using the names of prominent Queenslanders of either gender and traditional Aboriginal and Islander names.

RECOMMENDATION

6.43 **The Commission recommends that the choice of names for Queensland electoral districts should be left to the discretion of future Redistribution Commissions who, in the course of their determination, should seek public suggestions for electoral district names.**

New Electoral District Redistribution Legislation

QUEENSLAND REDISTRIBUTION COMMISSION

6.44 In its *Report on Queensland Legislative Assembly Electoral System* the Commission recommended that future redistributions should be carried out be a three-person Redistribution Commission (Recommendation. 11.244, p.223) consisting of:

(a) a current or former Judge (Chairperson);

(b) the Queensland Electoral Commissioner; and

(c) the Queensland Surveyor-General.

6.45 In considering this recommendation the Parliamentary Committee stated that it had concerns about the proposed constitution of the Redistribution Commission (*Report of the Parliamentary Committee for Electoral and Administrative Review*, February 1991, para.3.83). In particular, it was concerned about the inclusion of a currently serving judge in commissions or inquiries as this may lead to accusations of politicisation of the judiciary. The Committee recommended instead that the Chairperson of the Redistribution Commission should be a former Judge.

6.46 The Legislative Assembly considered the Report and the Parliamentary Committee's Report on 11 April 1991 and in connection with the constitution of the Redistribution Commission resolved:

> *"That the recommendation be noted ... and that consideration be deferred pending receipt of a further report from the Electoral and Administrative Review Commission and the Parliamentary Committee for Electoral and Administrative Review."*

6.47 The Commission has reconsidered this matter in the light of the Parliamentary Committee's comments and maintains that its original recommendation should stand. Redistribution Commissions should be chaired by current or former judges. There are a number of reasons why the Commission maintains its original view:

(a) There are historical and current precedents in Queensland for the appointment of current Judges to be the President or Chairperson of non-judicial bodies, many of which have dealt with very sensitive issues. For example:

(i) Commission on Allegations of Corruption relating to dealings with Certain Crown Leaseholds in Queensland (1956) - the Hon Mr Justice KR Townley.

(ii) The Law Reform Commission Chairperson is Justice McPherson.

(iii) The proposed Litigation Reform Commission which is an executive body will consist of Court of Appeal Judges.

(b) Redistribution Commissions in other States include current Judges. New South Wales - a Judge or ex Judge of the Supreme Court or the Country Court (Chairperson); Victoria - Chief Judge of the Country Court (Chairperson); Western Australia - Chief Justice of Western Australia (Chairperson); South Australia - a Judge of the Supreme Court (Chairperson); Tasmania - not applicable because of the use of federal divisional boundaries for the Government and Parliamentary action for the Legislative Council. The Commonwealth Redistribution Committee for a State does not contain a judicial appointee but the augmented Redistribution Commission does.

(c) A fair redistribution system is fundamental to democratic government in Queensland. The lack of public confidence in past redistributions arose, at least in part, from the fact that redistribution commissioners were appointed by government on an ad hoc basis. Providing for a Judge or former Judge as Chairperson and ensuring the independence of the Electoral Commission will go a considerable distance in restoring public confidence in the redistribution system.

6.48 However, in reviewing this matter the Commission has reached the conclusion that there are strong arguments for assigning the redistribution functions to the QEC itself. This proposal will ensure that the electoral expertise of the QEC members is brought to bear on redistributions.

6.49 The Commission has already recommended in Chapter Three of this Report that the QEC should consist of three officials: a current or former Judge of the District Court as the Chairperson; the Electoral Commissioner; and a non-judicial appointee who holds a position of (or equivalent to) chief executive of a department within the meaning of the *Public Sector Management and Employment Act 1988*. The Commission is of the opinion that there is considerable merit in the three members of the QEC also serving as the Redistribution Commission in an ex officio capacity.

6.50 The Commission is conscious of and respects the concerns of the Parliamentary Committee but on balance maintains its original recommendation, particularly since members of the QEC are now also recommended to be the Redistribution Commission. This means that the chairperson of the Redistribution Commission will be a current or former judge as recommended in Chapter Three. The Commission notes that it would be a matter for the judgement of the individual judge concerned whether this appointment would impair his or her capacity to carry out judicial functions.

RECOMMENDATION

6.51 **The Commission recommends that the Queensland Electoral Commission should be charged with the responsibility of carrying out future electoral redistributions. The Queensland Electoral Commission should be known as the Redistribution Commission when it is carrying out these functions.**

6.52 The provisions in the Draft Bill which effect this recommendation is Part 2 s.9.

ENROLMENT AS THE BASIS FOR REDISTRIBUTIONS

6.53 In its *Report on Queensland Legislative Assembly Electoral System* the Commission recommended that the 1991 distribution and future redistributions should be carried out using elector enrolments as the basis for defining electoral districts boundaries (Recommendation 11.39, p.181). The Commission also recommended that the enrolment figures which should be used were those derived from the Commonwealth electoral roll rather than the State roll (Recommendation 11.40, p.181).

6.54 The 1991 distribution of electoral districts was carried out using enrolment figures provided by the Australian Electoral Commission. This course of action was authorised by the ED Act. Section 3.2(3) of that Act stated:

> *"For the purpose of determining the quota the roll under and within the meaning of the Commonwealth Electoral Act 1918, as amended and for the time being in force, is to be used for ascertaining the number of electors enrolled for the State."*

6.55 The Commission's *Report on Queensland Joint Electoral Roll Review* recommended that Queensland should enter an arrangement with the Commonwealth for a joint electoral roll based on the Commonwealth electoral roll. The Parliamentary Committee supported EARC's reasoning and recommendations on this matter (*Parliamentary Committee Report, February 1991*, p.26) and Parliament adopted the recommendation by resolution on 11 April 1991. Subsequently a Joint Roll Arrangement has been negotiated and signed by the Commonwealth and the Queensland governments.

6.56 The adoption of the Joint Electoral Roll as the Queensland roll means that all redistributions will in future be carried out using the joint roll. There is no need for specific provisions in the Act to ensure that this is done since the joint roll has become the Queensland roll.

LEVEL OF TOLERANCE BETWEEN ELECTORAL DISTRICTS

6.57 In the *Report on Legislative Assembly Electoral System* EARC recommended *" ... that the permissible degree of tolerance between electoral districts should be 10% above or below quota"* (Recommendation 11.90, p.190). The Commission also recommended

> *" ... that, where a proposed electoral district is 100,000 square kilometres or more in area, Redistribution Commissions (including EARC in the first instance) may add a number that expresses the value of 2% of the area in square kilometres of such a proposed electoral district to the number of electors in that proposed electoral district, in order to achieve an enrolment within the 10% allowable tolerance of the quota."* (Recommendation 11.91, p.190).

6.58 Both these recommendations were accepted by the Parliamentary Committee (Parliamentary Committee Report, pp.24, 31-37). The latter was accepted with the qualification that it should be supported because of a tripartisan agreement by the leaders of the Parliamentary political parties to support EARC's recommendations on "electoral matters". The Committee's position was accepted by the Parliament by resolution on 11 April 1991 and provisions incorporated into the ED Act 1991.

6.59 The Commission has included similar provisions in the Draft Bill to implement its recommendations on the level of tolerance between electoral districts in Part 3 s.45.

REDISTRIBUTION CRITERIA

6.60 In connection with the criteria to be applied to the conduct of future redistributions after the 1991 distribution, the Commission recommended that, subject to the quota and the 2% formula, Redistribution Commissions should give consideration to:

> *"(a) community of interests within the proposed electoral district including economic, social and regional interests;*
>
> *(b) means of communication and travel within the proposed electoral district;*
>
> *(c) the physical features of the proposed electoral district;*
>
> *(d) demographic trends within the State with a view to ensuring, as far as practicable, on the basis of these trends, that electoral districts remain within the permitted tolerances above or below the State average until the next periodic redistribution;*
>
> *(e) the boundaries of the existing electoral districts in the State; and*
>
> *(f) the boundaries of existing Local Authorities and their divisions and wards."* (Recommendation 11.151, p.201).

6.61 This recommendation was accepted without amendment by both the Parliamentary Committee and the Parliament and the ED Act included provisions requiring EARC to consider these criteria in its distribution. The Commission has included similar provisions in the Draft Bill in Part 3 s.46.

FREQUENCY OF REDISTRIBUTIONS

6.62 In its *Report on Queensland Legislative Assembly Electoral System* the Commission made recommendations on the circumstances which should "trigger" electoral redistributions. The Commission recommended that redistributions be held automatically:

> *"(a) if there is an alteration to the number of Members to be chosen for the Legislative Assembly; or*
>
> *(b) (i) after State redistribution boundaries have been in force for three (3) General Elections of Members of the Legislative Assembly (if the parliamentary term remains at three years);*
>
> *or*
>
> *(ii) after State redistribution boundaries have been in force for two (2) General Elections of Members of the Legislative Assembly (if the parliamentary term is changed to four years);*
>
> *provided that such a redistribution should be commenced a year after the return of the writ for the last relevant General Election; or*
>
> *(c) whenever more than one-third of the electoral districts in the State are, and have been for a period of more than 2 months, at variance from the average State electoral district enrolment by greater than the tolerance level of 10%".* (Recommendation 11.185, p.211).

6.63 The Commission further recommended:

> *" ... that the task of monitoring the average electoral district enrolments and the extent to which each electoral district's enrolment varies above or below the State average be the responsibility of the Queensland Electoral Commissioner, that the monitoring be undertaken on a monthly basis and the results be published in the Gazette."* (Recommendation 11.186, p.211).

6.64 The Parliamentary Committee and the Parliament endorsed these recommendations. Provisions concerning the triggers for redistributions have been included in the Draft Bill in Part 3 ss.36-40. A provision requiring the Electoral Commissioner to publish monthly enrolment statistics and the deviation of each district from the average enrolment in the Gazette appear in the Draft Bill in Part 4 s.63.

6.65 A further timetabling problem may arise if a redistribution is commenced before an election and is incomplete when the election is held. The Commission believes that it is undesirable that a new set of electoral districts should be announced shortly after an election has been held. Wherever possible redistributions should be completed prior to elections.

6.66 There are two solutions to this problem. The Commission proposes that redistributions should not be commenced within 12 months of the scheduled date for the completion of a Parliamentary term. It further proposes that, in the event that an election is called during a redistribution, work on the redistribution should cease between the issue of the writ and the return of the election writ.

RECOMMENDATION

6.67 **The Commission recommends that:**

(a) Redistributions may not be commenced within 12 months of the scheduled date for the completion of a Parliamentary term.

(b) In the event that a redistribution is incomplete when the writ is issued for an election, work on the redistribution must cease until the election writ has been returned.

6.68 The question of redistributions being triggered by changes to the number of Members of the Legislative Assembly is considered later in this chapter.

REDISTRIBUTION MACHINERY AND PROCEDURES

6.69 At page 223 of its *Report on Queensland Legislative Assembly Electoral System* the Commission made a recommendation (Recommendation 11.243) detailing the process to be followed by redistributions after the 1991 distribution. The recommended process involved the Redistribution Commission:

(a) inviting written public submissions and allowing 30 days for lodgement;

(b) making submissions publically available and calling for comments on them for a period of 21 days;

(c) considering the submissions and comments and developing a set of boundary proposals;

(d) publishing the proposed redistribution and allowing 30 days for lodgement of written objections;

(e) consideration of objections (including public hearings) and preparation of a final determination;

(f) calling for a further round of objections if the Commission believes its final determination differs significantly from its proposals; and

(g) Gazetting the final determination within 60 days of the closing date for the lodging of written objections.

6.70 The Parliamentary Committee suggested three amendments to the Commission's recommendations. Firstly, it proposed that 10 days be allowed during the course of the redistribution for public comments on written objections to the redistribution proposals. It did not propose that an additional 10 days be added to the timetable.

6.71 Secondly the Committee was concerned to ensure that residents of regional centres should have maximum opportunity to be informed about the redistribution process and timetable. The Committee recommended that the requirement to advertise for submissions should extend to include " ... *such regional newspapers circulating in any part of the State as the Commission considers appropriate*" (Parliamentary Committee Report, pp.27-8).

6.72 Thirdly the Parliamentary Committee recommended that the final determination of the Redistribution Commission should be subject to judicial review on the sole ground that the redistribution was not carried out in accordance with the law. This matter has already received consideration in this chapter (paras.6.16 - 6.27).

6.73 Parliament resolved to adopt the recommendations of the Parliamentary Committee on these issues and the amended provisions were included in the legislation for the 1991 distribution.

6.74 However, in the light of its recent experience in carrying out the distribution under the ED Act 1991 the Commission proposes that two amendments should be made to redistribution machinery provisions.

6.75 Firstly, the Commission believes that the 60 days after the close of objections to redistribution proposals is insufficient for the preparation and publication of the final determination. The Commission's experience has been with the extra requirement that 10 days be allowed for comments on objections, the pressure to finalise the distribution in the remaining 50 days placed considerable pressure on the cartographers preparing the maps and detailed descriptions of electoral districts. As a result there was a considerable extra cost involved in overtime payments which could have been avoided had the period been slightly longer. The total cartographic cost of EARC's distribution was $329,955 including $44,099 for overtime.

6.76 Secondly the Commission is concerned to ensure that the public have the maximum opportunity to be aware of the distribution process. To this end the Commission proposes that the locations at which the maps of the final determination are displayed should be advertised widely. This should be a requirement under the redistribution legislation.

RECOMMENDATIONS

6.77 **The Commission recommends that:**

(a) The redistribution timetable should be extended to allow 90 days from the final day for the receipt of objections for the preparation of the final determination by the redistribution Commission.

(b) There should be a statutory requirement on redistribution Commissions to advertise in the press the locations where maps of the final determination of electoral districts can be examined.

6.78 The Commission has included amended redistribution provisions on all these matters in the Draft Bill in Part 3 ss.52-53.

Number of Members of the Legislative Assembly

6.79 In its *Report on Queensland Legislative Assembly Electoral System* the Commission concluded that the number of Members of the Legislative Assembly should remain at 89 for the present. However, the Commission was aware that a number of demographic factors are operating which mean that reviews of the numbers of Members should be made from time to time. The Commission recommended that:

> *" ... a periodic review of the number of Members of the Legislative Assembly be undertaken by an independent electoral authority every seven years."* (Recommendation 7.64, p.71).

6.80 The Report also drew attention to the link between changes to the number of Members and the need for a consequent redistribution. It showed that in all other States (apart from Tasmania) and at the Commonwealth level there must be a redistribution if it is determined that there should be an alteration to the number of representatives. The Commission recommended that a redistribution is to be held automatically:

> *" ... if there is an alteration to the number of Members to be chosen for the Legislative Assembly".* (Recommendation 11.185, p.211).

6.81 These two recommendations were endorsed by the Parliamentary Committee and adopted by the Parliament.

MATTERS FOR CONSIDERATION

6.82 However, as a result of acceptance of these two recommendations there remain a number of substantial issues to be resolved. The three main issues are:

(a) Which independent authority should carry out the review of the number of Members?

(b) How should redistributions caused by changes in the number of Members fit in with the redistributions caused by the other triggers?

(c) What administrative and procedural requirements, if any, should be imposed on the review?

Independent Electoral Authority

6.83 At para.12.27 (p.229) of its *Report on Queensland Legislative Assembly Electoral System*, the Commission concluded that the electoral process should be shielded from partisan interventions which put public confidence in the fairness of elections at risk. The Commission concluded that one device for achieving this objective is an all-Party Parliamentary Committee to monitor and make recommendations for the improvement of electoral law and administration.

6.84 The Commission was of the opinion that as long as EARC remains in existence the Parliamentary Committee for Electoral and Administrative Review is the appropriate body to discharge such responsibilities. However if the Parliamentary Committee's role changes as a result of the completion of EARC's review program, it is important that consideration be given to establishing a Standing Committee of the Parliament to continue the monitoring and review functions.

6.85 The Commission considers that the Parliamentary Committee, while it is in existence, and any successor Standing Committee on Electoral Matters would be the appropriate body to conduct the regular reviews of the number of Members.

6.86 It is possible that there could be criticism of this recommendation on the grounds that a Parliamentary Committee is not sufficiently independent to carry out such a review in the public interest. To counter this argument the Commission points out that ultimately it is the Parliament which determines the number of Members through the legislative process. The Commission believes that if it is a requirement that the review should be carried out with maximum public involvement and scrutiny of the process, then any opportunities for abuse of the system will be considerably curtailed.

RECOMMENDATION

6.87 **The Commission recommends that the body responsible for the review of the number of Members of the Legislative Assembly should be the Parliamentary Committee for Electoral and Administrative Review and, in the event of that Committee ceasing to exist or changing its role, a successor Parliamentary Committee, being an all-party Standing Committee on Electoral Matters would be the appropriate body to conduct such a review.**

6.88 The Draft Bill in Appendix H to this Report contains Part 10 s.193 to implement this recommendation.

Timing of Reviews

6.89 The Commission has already recommended that reviews of the number of Members should occur automatically every seven years. This recommendation has been accepted. However the Commission is concerned that this recommendation implemented by itself may cause timetabling problems with the other triggers for redistributions.

6.90 Redistributions should be held in future:

(a) one year after the return of the writ for the third general election after the previous redistribution;

(b) if more than one-third of the electoral districts have enrolments which are more than 10% above or below the average electoral district enrolment; and

(c) whenever there is a change in the number of Members.

6.91 The situation may arise that a redistribution carried out because either (a) or (b) above has required it. These redistributions will necessarily be carried out on the existing number of electoral districts at the time. If such a redistribution occurs six years after the previous redistribution then the review of the number of Members may force yet another redistribution in the following year. The second redistribution based on a new number of districts would make the redistribution of the previous year useless.

6.92 To overcome this problem the Commission proposes that the initiation of a review of the number of Members should be an automatic preliminary to the conduct of every redistribution. Whether the review is actually carried out or not should be a matter for the Parliamentary Committee or its successor to decide. The seven year requirement should remain as a mandatory trigger to ensure regular reviews, but the count of the seven years should recommence at the completion of each redistribution.

6.93 The Commission further proposes that it should be a responsibility of the QEC, arising from its role of monitoring and publishing district enrolments on a monthly basis, to advise the Parliamentary Committee that a redistribution is likely to be triggered within six months. This preliminary advice is necessary so that the Parliamentary Committee could conduct its review without prolonging the normal time required for a redistribution.

RECOMMENDATIONS

6.94 **The Commission recommends that**

(a) A review of the number of Members of the Legislative Assembly should be initiated prior to each anticipated redistribution of electoral districts.

(b) It should be the responsibility of the Queensland Electoral Commission to advise the Parliamentary Committee or its successor that, on the basis of information available to the Commission, a redistribution will be required in approximately six months.

(c) The count of the seven year period for the review of the number of Members should recommence if the Parliamentary Committee or its successor determines that a review is to be carried out. If no review is conducted the seven years continues from the completion date of the previous review.

6.95 The Draft Bill in Appendix H contains provisions in Part 2 s.8 and Part 10 s.193 to implement these recommendations.

Administrative and Procedural Requirements of the Review

6.96 EARC is concerned to ensure that the review of the number of Members should be a public process. To this end it proposes that procedures similar to those of the redistribution should be adopted. There should be requirements that:

(a) advertisements be placed seeking public submissions and comments on public submissions;

(b) public hearings should be held;

(c) all material placed before the Committee for its review should be public; and

(d) the Committee must report its findings and recommendations to the Legislative Assembly within 90 days of the initial advertisement otherwise the redistribution will be held on the pre-existing number of districts.

RECOMMENDATION

6.97 **The Commission recommends that the review of the number of Members should be a public process involving public submissions and public hearings. The Committee should be required to report to the Legislative Assembly its findings within 90 days, otherwise the following redistribution must be carried out using the previous number of districts.**

6.98 The Draft Bill contains a provision in Part 10 s.194 to implement this recommendation.

CHAPTER SEVEN

PREPARATIONS FOR ELECTIONS

Introduction

7.1 The first event leading up to a general election is the dissolution of the Legislative Assembly upon expiration of the Parliament's term, or earlier if the Parliament does not serve a full term. The procedures which precede the dissolution of the Parliament prior to an election are initiated by the Premier who recommends to Executive Council that writs for an election should be issued on a certain date. That recommendation also includes dates for close of nominations, polling and the return of the writs.

7.2 At the same Executive Council meeting the Governor signs a proclamation dissolving the Legislative Assembly. Notification of the dissolution and the dates associated with the election are published in the Government Gazette. For the purposes of electoral administration preparations for the election can be taken as starting with the issue of the election writs.

Matters for Consideration

7.3 This chapter deals with the legal processes that initiate an election, the preliminary administrative arrangements that must be made, and the resources to be marshalled. These processes, arrangements and resources are important because they trigger the formal machinery and technology associated with the election. They must be handled efficiently and effectively because they are the first step in establishing public confidence that the election is being conducted according to acceptable democratic standards.

7.4 The processes, arrangements and resources necessary for an election which are the focus of this chapter are:

(a) triggers for the issue of writs;

(b) issue of writs for elections;

(c) the election timetable;

(d) qualifications and appointment of polling officials;

(e) polling resources, including the establishment of polling places and the preparation of rolls and ballot-papers for the election;

(f) eligibility criteria for candidates;

(g) the nomination process; and

(h) official advertising and public notices.

7.5 Each of these matters is discussed in detail in the remainder of this chapter.

Triggers for the Issue of Writs

CURRENT SITUATION

7.6 The Act does not specify events which will trigger the issue of writs for an election. For instance, s.46(1) states that:

> *"Writs for the election of members to serve in the Legislative Assembly shall be sent to the Minister directed to the proper returning officers respectively ... ".*

Similarly ss.9-11 of the *Legislative Assembly Act* 1867-1978 authorise the issue of writs, but do not specify when writs are to be issued.

7.7 The term of the Legislative Assembly is set at three years by the *Constitution Act Amendment Act 1890.* Additionally, s.4 of the *Constitution Act Amendment Act 1934* entrenches the three year term, so that it can only be changed by referendum. Although these Acts set the maximum term of Parliament at three years, or any other term which may be decided by referendum, they do not contain any provision specifying when writs are to be issued.

EVIDENCE AND ARGUMENTS

7.8 The situation is different in most other Australian State jurisdictions:

(a) Section 68 of the PE & E Act provides:

> *"All writs for Assembly general elections shall be issued within four clear days after the publication in the Gazette of the proclamation dissolving the Assembly, or after the Assembly has been allowed to expire by effluxion of time, and every such writ shall be made returnable on a day not later than the sixtieth clear day after the date of the issue thereof or on such later day as the Governor may by proclamation in the Gazette direct."*

(b) The *Constitution Act Amendment Act 1958* (Vic) s.149 provides:

> *"Writs for -*
>
> *(a) every periodical election of members of the Council; and*
>
> *(b) every general election of members of the Assembly -*
>
> *shall be issued by the Governor within seven days after the expiration or dissolution of the Assembly (as the case requires)."*

(c) Section 64(1) of the *Electoral Act 1907* (WA) provides:

> *"Whenever an Assembly expires or is dissolved the Governor shall, not later than 21 days after the dissolution or expiry, by warrant under his hand in the prescribed form direct the Clerk of the Writs to issue writs for elections in all the districts."*

(d) The *Electoral Act 1985* (Tas), s.69 states:

> *"Whenever -*
>
> *(a) a proclamation dissolving the Assembly is published in the Gazette; or*
>
> *(b) the terms for which members of the Assembly have been elected expire by effluxion of time,*

writs for the holding of an Assembly general election in accordance with this Division shall be issued by the Governor within 10 days after that publication or the expiry of those terms."

7.9 The *Electoral Act 1985* (SA) like the current Queensland Act, does not specify when writs are to be issued.

ANALYSIS OF EVIDENCE

7.10 Where triggers are specified in the various Acts of the other States, two events initiate the issue of writs. These events are the expiration of the term of the Parliament and the dissolution of the Parliament. However, there is little commonality as to when writs are to be issued after a trigger. The specified period varies from a minimum of 4 days in New South Wales to a maximum of 21 days in Western Australia.

7.11 In the absence of a specific period in the Queensland legislation, it could be argued that the initiation of an election through the issue of writs is left to a political decision and the timing of an election could therefore be manipulated by the government of the day. The alternative view is that so far there appear to have been no politically motivated delays and the constitutional conventions in relation to the issue of writs have worked well. Unless a government chooses to serve out its full three year term, the timing of an election is determined by its choice of a day rather than deferring the issue of writs.

7.12 Even though the matter was not raised in Issues Paper No. 13, the Commission considers that specifying a legislative timetable for the issue of writs is desirable. In saying so it acknowledges that there has been no apparent manipulation of the electoral timetable because of the lack of this provision.

7.13 Nevertheless, any democratic electoral system requires that public confidence in the system be preserved. Confidence will be greatest if opportunities for possible influence over the system are removed. The Commission believes that a timetable should be included in electoral legislation for the issue of writs after a dissolution.

7.14 The Commission draws attention to the recommendations elsewhere in this chapter for the timetabling of electoral events generally. It would be curious if timing of electoral events such as the close of poll, nomination day, etc. were to be specified in detail in the Act, but the events initiating the issue of writs and therefore the election itself, were not.

7.15 The period allowed in the legislation for the issue of a writ should be as short as possible so that the election process begins with the least delay once the Parliament expires or is dissolved. On the other hand, sufficient time needs to be allowed overall for administrative procedures to be carried out.

RECOMMENDATION

7.16 **The Commission recommends that the Electoral Act should specify that writs for an election are to be issued no later than four days after the date of expiry of the Parliament or the date of proclamation of the dissolution of Parliament.**

7.17 Provisions to effect this recommendation have been included in Part 6, s. 78 of the Draft Bill.

The Issue of Writs

Issue 1 Issue of Writs for Elections

(a) In the case of a general election should the Governor issue a writ for each electoral district or issue a single writ covering all electoral districts?

(b) Should the writ/s be issued to individual Returning Officers or centrally to the Electoral Commissioner alone?

CURRENT SITUATION

7.18 Writs are fundamental to the election process and serve a number of purposes including:

(a) authorising conduct of an election in an electoral district;

(b) advising the election timetable; and

(c) providing a means for the RO to officially advise the Governor of the winning candidate for the electoral district.

7.19 The Act (s.46) requires the Governor in Council to issue a separate writ for each electoral district and to send the writs (which are addressed to individual ROs) to the Minister (at present the Minister for Justice and Corrective Services). It is then the responsibility of the Minister to ensure that each RO receives a copy of the writ on the day it is issued.

7.20 Since 1983 the Commonwealth has used a different procedure whereby the Governor-General issues a single writ for general elections of the House of Representatives and directs it to its Electoral Commissioner. The Electoral Commissioner then advises each DRO of the details of the writ.

7.21 The procedure varies among the Australian States. South Australia and Victoria require that the Governor issue a single writ for all electoral districts to the Electoral Commissioner. In New South Wales, as in Queensland, writs are issued for each district and are addressed to the ROs.

7.22 The *Electoral Act 1907* (WA) follows a different process. In that Act an Office of Clerk of the Writs is established and the Governor issues a warrant authorising the Clerk of the Writs to issue writs for each district. The Act does not specify whether the writs are directed to the Commissioner or to the ROs. For by-elections, the Speaker issues a warrant to the Clerk of the Writs.

7.23 The established practice in Western Australia is that the Electoral Commissioner is appointed Clerk of the Writs. The Commissioner, on receipt of the Governor's warrant, issues individual writs to each RO.

7.24 In Queensland, and for all lower houses in Australia except Western Australia, the Speaker issues writs for by-elections. There is also a provision in all Acts except Western Australia that if the officer of Speaker is vacant, then the Governor is empowered to issue a writ for a by-election.

7.25 The form of writs is similar in all Australian jurisdictions. Appendix F shows, as a sample, the form of the writs for Queensland and House of Representative elections. In all Australian jurisdictions the form of the writ is prescribed either in the regulations of the principal Act or in a schedule to the Act.

EVIDENCE AND ARGUMENTS

7.26 (a) *"It is considered appropriate that provision be made in the new Elections Act for the Governor to issue a single writ covering all electoral districts when a general election is to be held. The writ should be issued to the Electoral Commissioner since the Commissioner will be responsible for the conduct of the election. This system would streamline the paperwork involved during the pre-poll period."* (Department of the Premier (S79)).

(b) *"Efficiency and clarity would seem to suggest that a single writ, issued centrally is the best procedure to use for issuing writs."* (Australian Democrats (S62)).

(c) The National Party (S76) and M Passmore (S45) also favoured a single writ in the case of general elections.

ANALYSIS OF EVIDENCE AND ARGUMENTS

7.27 Public submissions generally favoured that a single writ for a general election be issued by the Governor directly to the Electoral Commission.

7.28 The argument against a single writ for all districts is that the RO will be the person traditionally responsible for the conduct of the election in that electoral district. The responsibility of the QEC, according to this view, is to provide support for ROs in the form of the necessary administrative resources to facilitate the conduct of the elections in the 89 districts, including the payment of electoral officials, production of ballot-papers and administrative forms, payment of rent for polling places, etc, but not to conduct the election itself.

7.29 However, arguments in favour of a single writ addressed to the Electoral Commission are persuasive. They accord with the principles of simplicity of procedures and uniformity of standards. For such a system to work efficiently, however, some further issues need to be addressed, namely:

(a) the need for a speedy and reliable means of communication between the Electoral Commission and the 89 ROs; and

(b) if an election for a district is postponed or voided by, for example, natural disaster or the death of a candidate, suitable provisions would need to be available to initiate a by-election for that district or allow for a late return from that district.

7.30 In relation to (a) above, the situation would not differ materially from that which currently exists, ie. the 89 individual writs are notified to the Minister who then communicates with the individual ROs.

7.31 The Commonwealth in each State or Territory, which utilises a single writ for all House of Representatives electoral divisions, makes a provision which allows a late return for an individual Division. Section 286 of the CE Act states:

> *"Notwithstanding any other provision of this Act, before or after the day appointed for any election the person causing the writ to be issued may, by notice published in the* Gazette, *provide for extending the time for holding the election, or for holding the election in a specified Division, or for returning the writ, or meeting any difficulty which might otherwise interfere with the due course of the election; and any provisions so made shall be valid and sufficient and any date provided for in lieu of a date fixed by the writ shall be deemed to be the date so fixed:*

Provided that -

(a) public notice shall be immediately given in the State, Territory or Division for which the election is to be held of any extension of the time for holding the election."

7.32 The *Electoral Act 1985* (SA), which also provides for a single writ for all districts, contains at s.49 a provision similar to that of the CE Act.

7.33 Suitable provisions can be made to accommodate the event of a delayed or voided election in a district in a single-writ regime.

7.34 On the subject of the form of the writ, it has been argued elsewhere in this chapter (paras.7.163-170) that administrative forms should generally not be prescribed by regulations. Removal of forms from the regulations allows them to be more readily amended by the QEC when necessary rather than having to be submitted to the Governor in Council for approval each time an amendment is needed.

7.35 However, writs for elections are not administrative forms to facilitate the conduct of elections by the QEC. They are legal documents issued by the Governor and they command and authorise certain actions by the QEC and its staff. Writs are also the primary documents which determine the membership of the Legislative Assembly. Accordingly, the Commission believes that it would be undesirable for the format and content of the writ to be altered merely by a decision of the QEC.

7.36 As already stated, all Australian jurisdictions prescribe the format of their election writs either in regulations or in a schedule to the principal Act. This is the appropriate course given the fundamental nature of the writ.

7.37 The text of the Commonwealth House of Representatives writ (Appendix F) as a model for Queensland is preferred because of its clarity and more contemporary language.

RECOMMENDATIONS

7.38 **The Commission recommends that:**

(a) In the case of a general election, the Governor should issue a single writ for all electoral districts, addressed to the Queensland Electoral Commission.

(b) In the case of a by-election, the current provisions authorising the Speaker to issue the writ, or in the absence of the Speaker, the Governor, should continue.

(c) The text of the writ should be prescribed in a schedule to the Act.

(d) The text of the Commonwealth House of Representatives writ should be the model for the State writ.

(e) A provision which allows for a late return for an individual district should be included to accommodate the chance of delay or voided election in a district.

7.39 These recommendations are incorporated in Part 6 ss.77-82 of the Draft Bill.

Election Timetable

Issue 2 Election Timetable

(a) What is the appropriate period between the issue of the writs and the close of rolls?

(b) What are the appropriate minimum and maximum periods between the issue of the writs and nomination day, and nomination day and polling day?

7.40 The appropriate period between polling-day and return of the writ is discussed at paras.7.55-59.

CURRENT SITUATION

7.41 The major events in an election are: the issue of writs; the close of rolls; the close of nominations (nomination day); polling day; and the return of the writ. The question arises as to whether the timing of these events should be incorporated in legislation.

7.42 The issue of writs for State elections determines the election timetable. Section 46(2) of the Act requires that the writs contain details of:

(a) the nomination day and the place of nomination;

(b) the day for taking the poll in the event of the election being contested; and

(c) the day on which the writ is returnable to the Governor or the Speaker, as the case may be.

7.43 No maximum or minimum periods are specified between the day of the issue of the writs and polling-day. However, s.34 specifies that the electoral roll for any district may not be altered later than 5.00pm on the day of the issue of a writ so rolls effectively close on the same day as the writs are issued. All other jurisdictions, except New South Wales, allow at least seven days from the issue of writs before the rolls close.

7.44 The other events in the electoral timetable need to be adequately separated for the electoral process to run efficiently. For example: political parties and individual candidates and their supporters require sufficient time to organise nominations; the electoral authorities require adequate time to print and distribute rolls, ballot-papers, Postal Vote (PV) applications, etc.; and ROs require enough time to prepare to receive nominations, arrange polling-booths, and recruit and train other polling officials.

7.45 There is little agreement in the different jurisdictions as to what constitutes appropriate timing of electoral events. For instance, the delay for nomination after the issue of writs varies from 7 to 11 days, and the time allowed between the issue of the writ and polling-day varies between 24 and 33 days.

7.46 Table 7.1 below shows the extent to which the periods differ for electoral events in the legislation of the States and Commonwealth. It is worth noting that the timetable for the last three Queensland elections, except for the closing of rolls which is a statutory requirement, have shown some variation (see Table 7.2).

TABLE 7.1

ELECTION TIMETABLES FOR LOWER HOUSES OF AUSTRALIAN PARLIAMENTS (DAYS FROM DAY OF ISSUE OF WRITS)

Jurisdiction	Close of Rolls	Nomination Date		Polling Day		Return of Writ
		Minimum	Maximum	Minimum	Maximum	Maximum
COMM	6 pm 7 Days After	11	28	33	58	100
NSW	6 pm Day of Issue	*	*	*	40	60**
VIC	6 pm 7 Days	11	28	33	58	79
QLD	5 pm Day of Issue	*	*	*	*	*
WA	6 pm 8 Days After	7	45	28	90	90
SA	7-10 Days After	10	24	24	54	*
TAS	As per Commonwealth					

* No Time Specified in relevant Act

** Or as proclaimed by Governor

TABLE 7.2

ELECTION TIMETABLE QUEENSLAND LEGISLATIVE ASSEMBLY 1983-1989

	Close of Rolls and Issue of Writs	Nomination Date	Polling Day	Return of Writ
1983	13 Sep 83	22 Sep 83 (9 Days)	22 Oct 83 (39 Days)	18-Nov-83 (66 Days)
1986	30 Sep 86	9 Oct 86 (9 Days)	1 Nov 86 (32 Days)	8-Jan-87 (100 Days)
1989	2 Nov 89	9 Nov 89 (7 Days)	2 Dec 89 (30 Days)	13-Feb-90 (103 Days)

NOTE: Time periods in brackets expressed as number of days after issue of writ

EVIDENCE AND ARGUMENTS

7.47 Providing for a statutory period between the issue of the writ and the close of the roll ensures that electors have the opportunity to enrol or correct their enrolments after an election is called. Such a provision is particularly important when an early election is called. It may happen, as it did at the Federal election in 1983 before a period between issue of the writ and close of rolls was introduced, that electors find it impossible to enrol in time and are thereby disfranchised. This is especially likely to affect young citizens who may be enrolling for the first time.

7.48 New South Wales has moved in the opposite direction. In New South Wales, recent amendments to the electoral legislation, based on recommendations in the *Inquiry into the Operations and Processes for the Conduct of State Elections 1989*, (Cundy Report) turned back the date of the close of roll to coincide with the date of the issue of the writ (as in Queensland at present). The rationale given for the change was to prevent last minute roll stacking in the period between the issue of the writ and the date of roll closure. It was argued in the Cundy Report that people should have been on the roll anyway and there should never be a need for a last minute rush to enrol.

(a) *"Queensland and New South Wales legislation involve the closure of rolls on the same day as the writs for an election are issued. The New South Wales provision was re-introduced following the report of the Cundy Committee of Inquiry established by the New South Wales Government in 1989.*

The Committee was concerned that political parties and others could obtain bulk supplies of enrolment cards, and that the closure of rolls 7 days after the issues of writs could facilitate attempts to stack certain rolls. With an election following within a month it was argued that normal procedures would not cover the fraudulent enrolments in time.

It is submitted that the conclusions of the Committee are not soundly based, and that the 'same day' closure of rolls in fact restricts the franchise, more particularly for those who are not in direct contact with political parties.

The effective protection against roll-stacking arises in a number of ways. First, normal administrative arrangements will show up doubtful enrolments within a few weeks and well before the return of writs.

Secondly, evidence of this nature would lead automatically to a Court of Disputed Returns.

The Department of Justice is not aware of any post-war election that was perverted by roll stacking. It is aware, however, of a very substantial impact on outcomes arising from restrictions on the franchise, and more recently from confusion about the method of registering a formal vote.

It is recommended, therefore, that the Queensland Elections Act be amended that the rolls be closed 7 days after the issue of writs." (DJCS (S77)).

(b) *"Closing the rolls on the same day as the issue of writs has been widely criticised for providing insufficient time for unenrolled electors to put themselves on a roll, or to verify their status. Bringing Queensland into line with the Federal requirement of providing seven days until the closure of the rolls would be the simplest way of redressing this problem.*

It is Australian Democrat policy that the issue of writs for an election should be at least 45 days before the due date set for the election, and the close of nominations should be 30 days before the election date. We suggest that the minimum and maximum days required should be at least equivalent to the relevant periods at the Federal level. This would lessen confusion about differences between Federal and State level. We strongly believe that some minimum and maximum periods should be set in order to lessen the ability of the incumbent government to manipulate pre-election conditions to their own advantage." (Australian Democrats (S62)).

(c) *"The importance of the fourth principle* [the need for an enrolment and election system which extends the franchise] *set out in 1.2 above is amply demonstrated by recent examples of excessive numbers of informal ballot papers, and the early closure of rolls, brought about by legislation which requires closure immediately on the issue of writs. At normal times, new enrolments or alterations in Queensland amount to some 4,000 per week. If polls were closed 7 days after the issue of writs for an election, one would expect some 12,000 additional enrolments - 0.5% of the total enrolment for the State of Queensland."* (ALP (S70)).

(d) Other submissions which supported a seven day period or longer between the issue of the writ and the close of roll included J Dettori (S4), M Passmore (S45). The National Party (S76) also supported the need for a legislated electoral timetable and suggested that the timetable specified in the CE Act should be adopted.

(e) Queensland Advocacy Inc. (S84) saw benefits for people with a disability in closing rolls some time after the issue of writs:

> *"QAI supports the proposed change to the requirement that the rolls be closed on the day of issue of the writs for an election. We believe that voters should have sufficient opportunity to enrol after an election is called.*
>
> *For many people with disability this additional period of time will be essential. There is often little public debate surrounding the issue of enrolment and voting until prior to an election. For those who have recently turned eighteen, they may not be aware of the requirement to enrol and vote. QAI's experience is that many people with disability are discouraged from voting, on the assumption that they cannot, or because the voting process is perceived to present access difficulties.*
>
> *Many people with disability require more time than others to arrange matters such as this. For example, those who have access to stretch taxis (in Brisbane and some larger regional centres) sometimes need to make bookings days in advance. If they are aware of the requirement to enrol prior to 5pm on the day the writ is issued, they may not be able to make arrangements to do so.*
>
> *QAI believes that a period of seven days should be the minimum time required to enable people to enrol. Given that this appear to approximate the norm in other States, it should not be considered so long after the issue of a writ as to create administrative difficulties in preparation of rolls for polling day."*

(f) The National Party submission (S76) was the only submission which addressed the general question of election timetables:

> *"Many of the mechanical provisions relating to elections, e.g., time limits, have no underlying philosophy but are simply administrative choices based on what seemed reasonable to those fixing them at the time when they were originally determined.*
>
> *The co-existence of two electoral systems whose procedural requirements widely differ is potentially productive of confusion and error on the part of those (particularly political parties) which have to operate under both systems.*
>
> *Accordingly, the Party has proposed in such instances that State law should make provision identical to the provisions of the Commonwealth Electoral Act."*

7.49 During November/December 1990, the Commission held meetings with ROs in Brisbane and Toowoomba. These meetings were designed to ascertain the opinions of ROs on electoral procedures generally. At these meetings, it was generally agreed by ROs that there should be a period of time specified between the issue of a writ and the close of the rolls to enable electors to enrol after an election is called.

ANALYSIS OF EVIDENCE AND ARGUMENTS

Close of Rolls

7.50 The general support in the submissions for extending the close of rolls to some time after the issue of writs was in direct opposition to the arguments of the Cundy Committee of Inquiry in New South Wales (p.21):

> *"Enquiries undertaken by the Committee have revealed very little evidence of fraudulent enrolment but it must be recognised that it could occur to the detriment of the democratic process.*

Preventing fraudulent enrolment under the existing system is extremely difficult if not impossible. A person merely has to complete an electoral enrolment form in the presence of a witness and forward it through the post to the Divisional Returning Officer. No specific proof of identity is required.

While the Committee did not discover any factual cases of fraudulent enrolments for the purpose of influencing the result of an election the possibility appears to be of concern to some of those who made submissions to the Inquiry. The possibility of moving 'blocks' of electors from one electorate to another to influence the result of an election was seen by some to be a possibility but no evidence of it actually happening was produced.

The State Electoral Office is aware of several cases where false enrolment has been effected for mischievous reasons but there is no evidence to suggest that this practice is widespread. A case has also come under notice where a change of address was attempted by an elector in the period immediately prior to a recent by-election. It was detected by an alert Divisional Returning Officer who was aware that the address given was a business, not residential address. It is understood that in this case charges have been laid under the Commonwealth Electoral Act."

7.51 However in its introduction the Cundy Committee of Inquiry Report (pp.8-10) noted:

"That the electoral system as it presently exists is open to manipulation is beyond question but the deliberate perpetration of electoral fraud on a major scale is much less certain. In fact there is no real evidence that it has been practised to the extent that it has affected the result in any electorate.

Over the years the public's confidence in the electoral system has been eroded due largely to misinformation which is peddled in the media and otherwise and to lack of information as to the checks and balances which do exist. The Committee's view is that, generally speaking, it is the public's perception rather than the reality which influences its opinion."

7.52 The Commission considers that one of the most important principles of the electoral system is that the right to vote must be protected and that every opportunity to exercise the right to vote should be offered. The Cundy Report identified some concerns about the possibility of fraudulent enrolment, but the evidence of that report is at best inconclusive. The DJCS submission and others argued strongly against the Cundy Report's conclusions.

7.53 Moreover the question remains why, if there are conspirators who seek to subvert democratic elections by roll stacking, they would not act prior to the issue of the writ. Unless there is a premature dissolution of the Parliament there would be ample time, and the proposition that false entries could be discovered with more time is unrealistic. The remaining evidence, suggests that protecting the right to vote is more important than guarding against the very remote possibility that the rolls might be stacked.

Timetable for Nomination, Polling and Return of Writs

7.54 The comments on the timing of the close of nominations, polling day and the return of writs in the evidence submitted by the National Party has been noted. Although commonality of procedures between the State and the Commonwealth is desirable where possible, there are some problems with the Commonwealth timetable. For example, it is possible according to the CE Act to allow only five days between nomination day and polling-day. In practice, such a period would never be used because it would be practically impossible to arrange ballot-papers, postal ballots etc. in this time. If such a period was used in an election, there may be insufficient time to ensure all polling places had sufficient ballot-papers to conduct the elections. During the 1990 Federal election, the period between nomination day and polling day was 22 days (2 - 24 March 1990).

7.55 The timetable for recent Commonwealth House of Representatives elections is summarised in Table 7.3.

TABLE 7.3

COMMONWEALTH HOUSE OF REPRESENTATIVES ELECTIONS

EVENT	1984	1987	1990
Issue of Writs	26-Oct	5-Jun	19-Feb
Close of Roll	2-Nov	12-Jun	26-Feb
Close of Nominations	6-Nov	18-Jun	2-Mar
Polling Day	1-Dec	11-Jul	24 Mar**
Return of Writs	27 Dec *	20-Aug	3-May

* Qld 2 January

** Adjournment at 9 booths in Herbert and Kennedy to 25-27 July, due to flooding.

7.56 The Commission proposes a timetable which allows a minimum period of 14 days and a maximum period of 42 days between nomination day and polling day. This allows sufficient time for the production and distribution of ballot-papers to voting places throughout the State.

7.57 The timetable also sets polling-day a minimum of 35 days from the issue of the writ. During the 1991 New South Wales election, polling-day was only 3 weeks after the issue of the writ. There was some criticism that this did not allow sufficient time for the production and distribution of election material, especially to interstate and overseas polling places. Subsequently, a number of electors had difficulty voting.

7.58 A period of 28 days would be the absolute minimum period between the issue of the writ and polling-day that would ensure adequate time for the production and distribution of polling materials. However, if there were any unforseen delays problems could occur. A minimum period of 35 days however, ensures that there is ample time for the production and distribution of polling material, and also provides some capacity to deal with unforseen circumstances without unduly delaying the election.

7.59 Under the current system ROs return the writ as soon as possible after determining the winning candidate. In many cases this is only one or two weeks after polling. There is a need to specify a maximum period for the return of the writ to the Governor by the Electoral Commission, principally so that the public can be informed of the result of the election and the constitution of the Legislative Assembly by a specific date. It is anticipated that the writ will be returned to the Governor well before the 84 days in most circumstances.

RECOMMENDATION

7.60 **The Commission recommends the following timetable for electoral events:**

(a)	**Close of Rolls**	**7 days from issue of writ;**
(b)	**Nomination Day**	**minimum 14 days; maximum 21 days from the issue of writ;**
(c)	**Polling Day**	**minimum 35 days; maximum 56 days from the issue of writ;**
(d)	**Return of Writ**	**maximum 84 days from the issue of writ.**

7.61 The Commission also recommends in Chapter Ten of this Report, Scrutiny and Determination of Results, that the final day for receipt of declaration votes by post be 10 days after polling day.

7.62 The Commission also recommends elsewhere in this chapter (para.7.159) that nominations be accepted by facsimile.

7.63 Provisions to give effect to the recommendations have been included in the Draft Bill in Part 6 s.80.

7.64 Under the provisions of the *Acts Interpretation Act 1954-1989*, if the seven day period recommended for the close of rolls expires on a Saturday, Sunday or Public Holiday, the seven day period will not expire until the end of the next working day.

The Appointment of Polling Officials

Issue 3 Qualifications of Polling Officials

(a) What qualifications should be required for the appointment of:

- ***Returning Officers***
- ***Presiding Officers***
- ***Electoral Visitors***
- ***Poll Clerks?***

(b) Should Returning Officers or other polling officials be allowed to be members of a political party?

(c) Should Returning Officers and other polling officials be required to be clearly identified on polling-day by wearing official cards/badges or some other means of identification?

CURRENT SITUATION

7.65 The present Act contains very little on the qualifications and appointment of polling officials. Section 9(1) gives the Governor in Council power to appoint ROs; s.9(3) puts ROs under the direction and control of the CRO (Chief Returning Officer). The only qualification specified in the Act for the appointment of an RO is that the appointee must be over the age of 18 years (s.9(1)).

7.66 The electoral legislation in other States similarly contains little on the appointment and qualifications of ROs. For example, in New South Wales an RO must be an elector; in Western Australia and South Australia no qualifications at all are specified; and in Victoria, ROs may not be candidates for the election.

7.67 The Act is also silent about the process of recruitment of ROs. Advice from the DJCS and some ROs is that Clerks of the Court, and some Magistrates in non-metropolitan areas, are traditionally appointed as RO for the electoral district in which their court is located. In all the other States, except Tasmania, advertisements are placed to recruit ROs. Electoral officials in Queensland, New South Wales and Western Australia tend to be recruited from the public service. In Victoria, however, the Electoral Commission sometimes employs retired professional and business persons as electoral officials.

7.68 Similarly, the Act specifies very little about the appointment of other polling officials such as POs, Electoral Visitors and Poll Clerks. The Act merely states that such officials must be over 18 years of age and responsibility for their recruitment rests with the RO (ss. 63, 67).

7.69 A related issue raised in Issues Paper No. 13 was whether ROs or other polling officials should be allowed to be members of a political party. At present the Act does not preclude any polling official from being a member of a political party. The DJCS however, has implemented an administrative decision which excludes members of political parties from being appointed as ROs.

7.70 In relation to POs, Electoral Visitors (EVs) and poll clerks, the DJCS allows ROs to decide whether political party membership should disqualify an individual from being an polling official. This discretion is not applied uniformly: some ROs do not employ any people who are members of political parties; other ROs do not employ members of political parties if they are actively involved in a candidate's campaign at that election.

7.71 There are different approaches to this question in the other States and the Commonwealth. For example, the AEC provisions are similar to the arrangements in Queensland. Party membership of polling officials is not prohibited in the CE Act, but through administrative decisions DROs are not allowed to be members of political parties. DROs have discretion as to party membership of other polling officials though *"active participation in the affairs of a party"* precludes appointment. The Western Australian legislation, on the other hand, specifically disqualifies polling officials who are members of political parties.

7.72 A further issue raised in Issues Paper No. 13 was whether ROs and other polling officials should be required to wear official badges or some other form of identification on polling day. The present Act has no provision in this regard.

EVIDENCE AND ARGUMENTS

7.73 The Commission received a large number of submissions regarding the qualifications of ROs and other polling officials.

(a) *"As long as adequate training is provided for electoral officials, there seems no reason for specific qualifications to be required for such positions."* (Australian Democrats (S62)).

(b) *" ... the position of Returning Officer should not be restricted to any particular section of the community."*

"Problems have arisen in the past where Magistrates and/or Clerks of the Court are unable to undertake their duties as Returning Officers as expeditiously as possible due to forward commitments on their court calendars." (R Hall (S10)).

(c) *"With regard to the recruitment of Returning Officers, I would submit that it would be difficult to find some person other than the Clerk of the Court to handle the function of R.O. in this District, as it is a country area and unless some retired person was prepared to be appointed, I feel the position would have to be taken by a School Teacher or some person with clerical knowledge and be able to interpret the Act etc. The Clerk of the Court has some expertise in interpreting the Acts, doing necessary amendments etc."* (P Connor (S8)).

(d) *"The position of returning officer is an onerous task at election time and requires a person who is not frightened of hard work, prepared to work long hours to meet deadlines, and has an ability to interpret the Electoral Act and is able to deal with people impartially and courteously. If a person meets that requirement he probably belongs to an elite group.*

Stipendary Magistrates and Clerks of the Court were sought in the past because in most cases it was expected that they would have these qualifications.

Most magistrates are very busy and have little spare time to perform these duties. ... Whilst it may not be necessary to have Stipendary Magistrates and Clerks of the Court as Returning Officers it would be wise to select persons of proven ability, such as senior public servants." (J Dettori (S4)).

(e) On the question of whether members of a political party should be allowed to be ROs or other polling officials, the Miriam Vale Shire Council (S52) commented:

" ... justice must be seen to be done as well as being done. Because of this, Council holds very strongly to the view that no person who is a member of a political party should be appointed to any polling position for electoral purposes. In addition, the legitimacy question must also be taken into account. Council believes that most persons would question the validity of any election where it was known that party political members had acted as polling officials."

(f) *"The Labor Party has no difficulty with the proposition that returning officers should not be members of political parties, but that restriction need not apply to other polling officials so long as they behave professionally."* (ALP (S70)).

(g) *"The existing situation should prevail. The Act does not at present preclude any polling official from being a member of a political party. All officials are required to give a declaration under oath and adequate safeguard procedures are in place to ensure secrecy and impartiality."* (Boonah Shire Council (S68).

7.74 The submissions from P Connor (S8) and J Dettori (S4) refer to a necessary capacity to interpret electoral legislation and drew attention to the relative lack of advice and support given to ROs in the past.

7.75 Generally, the following points appeared in many of the submissions:

(a) The position of RO requires a certain degree of knowledge of electoral processes and ability to interpret the statutory requirements of the Elections Act, hence not everyone is suitable.

(b) The RO's task tends to be a very time-consuming and may well require the position to be "full-time" for the term of the election.

(c) As long as proper training is provided for ROs and other electoral officials, no further qualifications would seem necessary for these positions.

(d) Problems may arise where Magistrates and Clerks of the Court are unable to undertake their duties as ROs continuously due to other commitments.

(e) The closure of court houses in Queensland over recent months means that some electoral districts may not have a Clerk of the Court available to undertake electoral duties.

7.76 The majority of submissions, were not in favour of allowing ROs or other polling officials to be members of political parties (eg. R Hall (S10), Australian Democrats (S62), Mount Isa City Council (S69) and the Brisbane City Council (S88)).

7.77 A few submissions raised the matter of polling officials being candidates in an election. At present, the Act does not preclude such persons from holding office as polling officials. Submissions received on this point called for the legislation to make provision for the disqualification of persons holding office as polling officials where they are candidates in the election.

7.78 With regard to the issue of whether polling officials should be required to wear badges or some other means of identification, the majority of submissions were in favour of officials being required to wear some form of identification (Australian Democrats (S62), Boonah Shire Council (S68), ALP (S70), Institute of Municipal Management (Queensland Division) (S86), Brisbane City Council (S88) and Aboriginal and Torres Strait Islander Commission (Cairns)(S92)).

ANALYSIS OF EVIDENCE AND ARGUMENTS

7.79 The principles that the Commission has been particularly concerned with in this area are the need for polling officials to be politically impartial and the need for adequate security on polling day.

7.80 As mentioned earlier, the only qualification specified in the Act for ROs and other polling officials is that they must be over 18 years of age. The Commission considers that it is desirable for ROs and POs to be aged over 18 years. This is because of their statutory duties which bring them into contact with adult electors: issuing and receiving ballots, advising electors about procedures, opening ballot-boxes, etc.

7.81 On the other hand poll clerks assist with general administration; they have no specific statutory responsibilities. Therefore it does not seem appropriate to exclude persons from the age of 16 from being poll clerks if they are sufficiently mature and motivated to involve themselves in public affairs. Such early experience constitutes a recruiting pool for more senior positions after the age of 18 and ought to be encouraged. However, these are administrative matters and should be a matter for the QEC, and not contained in the legislation.

7.82 It is arguable that further restrictions on the qualifications of ROs may tend to make the recruitment process too inflexible. While Magistrates and Clerks of the Court may be favoured because of their past knowledge of the electoral process and ability to understand electoral legislation, many have other commitments which are likely to interfere with their duties as ROs.

7.83 Conversely, retired citizens may have more time to devote to their duties as ROs, but may not immediately have the degree of knowledge of electoral matters that Magistrates and Clerk of the Court may possess. However, comprehensive training courses before each election for new recruits could alleviate any problems in this area. Such courses appear to work well in other States.

7.84 The DJCS has previously directed that the position of RO is part of the normal duties of Clerks of the Court and Magistrates in country areas. Staff resources and office facilities located at Court Houses, therefore, are available to ROs and indeed used by them in carrying out their duties. The recent closure of a number of Court Houses may cause a change to this policy.

7.85 The recruitment of ROs by advertisement in other States adds a degree of openness to the process and ensures that ROs do not become a closed group. Some of the submissions noted that the volume of work undertaken by some ROs renders the position full-time for the duration of the election including the scrutiny. Where this is the case, the QEC should be able to appoint ROs on a full-time basis for any period between the issue and return of the writ if it is considered that a full-time RO is required to ensure the efficient administration of the election.

7.86 However matters of this kind are essentially administrative and not appropriate for inclusion in legislation and they should, therefore, be left to the QEC to determine.

7.87 The Commission believes ROs should be provided with comprehensive manuals to assist in the performance of their duties and have ready access to expert advice from more senior electoral officials should the need arise. Provision of such support should be an urgent priority for the QEC. Moreover management skills in assembling and managing human and other resources required for the conduct of an election are just as important as the legal skills of Clerks of Courts if the election is to be successful.

7.88 On the issue of whether there should be provisions in the Act to prohibit membership of registered political parties by ROs and other polling officials, the majority of public submissions took the view that the Act should contain provisions which prohibit membership. The main reason given for this view was to ensure that the public perceive that electoral administration is politically neutral or that *"justice must be seen to be done."* (Miriam Vale Shire Council (S52)).

7.89 A number of questions arise as to the extent of such a disqualification on the basis of political party membership. Should it cover all polling officials? Should it extend to exclude persons who have previously been members of political parties? Should such a limitation apply only to QEC staff directly involved in the administration of elections and thus exclude corporate services officers of the QEC from party membership?

7.90 It would be appropriate to confine the disqualification on political party membership to those officials who play an integral and public role in the conduct of elections. To do otherwise could place unreasonable restrictions on the range of persons who are eligible to be polling officials and trespass unnecessarily on their civil liberties. Clearly, if a limitation on the grounds of political party membership were to be imposed, ROs and certain permanent staff of the QEC, such as the Commissioner, the Deputy Commissioner, and senior officers who are directly involved in the conduct of elections would be the most appropriate to have such a limitation imposed upon them.

7.91 Previous political party membership should not be a disqualifying factor. Many persons at some stage of their life are likely to be members of a political party; they should not be disqualified from being involved in the conduct of an election if their membership has ceased.

7.92 In considering the issue of whether ROs and other polling officials should be required to wear official badges or some other means of identification on polling day, the Commission has identified a number of advantages with the proposal:

(a) Identification of some form would help electors identify those persons in attendance on the day as polling officials and may serve to reassure the elector that those in attendance are duly authorised as well as identify those who should be approached for assistance.

(b) A requirement that polling officials wear identification would help the Presiding Officer (PO) in charge of a booth to maintain the security of the ballot.

7.93 The question of whether scrutineers should also be required to wear identification is dealt with in Chapter Eight.

RECOMMENDATIONS

7.94 **The Commission recommends:**

(a) Returning Officers and other polling officials other than poll clerks, should be aged over 18 years and should be electors on the Queensland roll.

(b) Returning Officers and permanent senior Queensland Electoral Commission staff involved in the conduct of elections should not be members of a political party at the time of the election. This statutory prohibition should not extend to other polling officials involved in the conduct of the election, but should be a matter for the Queensland Electoral Commission to decide.

(c) Returning Officers and other polling officials should be clearly identified on polling day by wearing cards, badges or some other means of identification.

7.95 The provisions in the Draft Bill for implementing these recommendations are in Part 2 ss.32 and 33.

Polling Resources

Issue 4 Should candidates' names be listed on the ballot-papers in alphabetical order of surname, be rotated in order on the ballot paper, or be determined by a draw for positions? If a draw for positions is preferred, what procedure should be followed?

Issue 5 Should political affiliations of candidates be shown on ballot-papers?

Issue 6 Should there be any changes to the current provisions relating to the design of ballot-papers?

Issue 7 Should there be a requirement in the legislation concerning the means by which a voter marks a ballot-paper? Should a ballot-paper be marked in pen or pencil or either?

Issue 8 Should the certified roll be directly supplied to the ordinary vote issuing officers (Presiding Officers)or to the Officer-in-Charge of the particular polling-booth for subsequent distribution to those officers?

Issue 9 In those polling-booths with two or more ordinary vote issuing officers (Presiding Officers), should full A-Z or split certified rolls be issued to each ordinary vote issuing Presiding Officer?

Issue 10 Should booths for State elections be at the same locations as booths for Commonwealth and Local Government elections wherever practicable?

Issue 11 Should all or some polling-booths within an electoral district provide special access for physically incapacitated electors?

Issue 12 What are the appropriate guidelines for the abolition, creation or change of name of polling-booths?

Issue 13 Should disposable ballot-boxes be introduced?

Issue 14 If disposable ballot-boxes are introduced, what security arrangements are necessary to ensure the integrity of the ballot?

Issue 15 Should the current re-usable voting compartments be maintained in Queensland or should disposable cardboard voting compartments be introduced?

Issue 16 Should forms required for electoral administration be prescribed in the Act, or should the Electoral Commissioner have full discretion regarding the content of forms?

CURRENT SITUATION

Ballot-Papers - Design, Format and Marking

7.96 The present Act contains a number of provisions regarding the format and design of ballot-papers. Section 68(2) specifically provides for the order of candidates' names and the colour, layout and content of ballot-papers.

7.97 In Queensland and the Northern Territory, the order of names on ballot-papers is alphabetic; in New South Wales, South Australia and Western Australia, a system of single randomisation is used; the Commonwealth and Victoria use a double randomisation system. Randomisation has been introduced in other jurisdictions to overcome the possibility that candidates appearing at the top of the ballot-paper may benefit from the so called "donkey-vote", when electors mark the ballot-paper 1, 2, 3 ... from the top.

7.98 In Tasmania, in addition to randomisation, candidates' names are rotated on the ballot-paper (the "Robson Rotation" system) to further reduce the influence of the "donkey-vote".

7.99 No provision is made in the Act for the inclusion of party affiliation on ballot-papers. However, this information is obtained by the RO at the nomination stage and passed on to polling officials.

7.100 The Commonwealth and the other States authorise the printing of party labels alongside candidates' names on ballot-papers. Queensland and the Northern Territory are the only jurisdictions in which printing political affiliation on ballot-papers is not yet authorised.

7.101 The Act makes specific provision regarding the colour, opacity, layout and content of all ballot-papers, and that ballot-papers should be attached to butts; which do not form part of the ballot-paper; are easily detached by perforation; and which are numbered in regular arithmetic sequence for each district. Section 68(2)(d) provides that ballot-papers must be distinguished by different colour from that used at any previous election (general election or by-election) within the period of six years prior to the election in question.

7.102 The legislation of the other States contains no specific provision regarding the colour of ballot-papers. The CE Act, however, provides that ballot-papers shall be printed on green paper for House of Representatives elections and on white paper for Senate elections and shall use black type face of a kind ordinarily used in Commonwealth government publications (s.209(3)).

7.103 Currently candidates' surnames appear first followed by their first given name or names. Where two or more candidates have the same surname and first name or names, the Act allows for the addition of those candidates' residences, occupations and other matter, if necessary, to distinguish between them (s.68(2)(f)).

7.104 Instructions as to the method of recording a formal vote appear at the top of the ballot-paper. The current wording of the instructions is:

> *"Record your vote by placing the figure 1 in the square opposite the name of the candidate for whom you vote as your first preference; then place the figure 2 in the square opposite the name of the candidate of your second choice and continue numbering the squares opposite the names of the other candidates, if any, so that the order of your preference for every candidate is shown."* (Form 12, Elections Regulations 1989).

7.105 Section 79 of the Act requires an elector to place numbers on the ballot-paper but does not stipulate whether a pen or pencil should be used for this purpose. At the present time pencils are provided in the voting compartments at the polling-booths. This system is used for both Commonwealth and State elections and is justified by the ease with which polling officials can verify that a pencil still "writes" whereas testing a pen is more time-consuming.

Distribution of Certified Rolls to Polling Officials

7.106 Section 62(1)(c) of the Act requires the RO to *" ... supply a copy of the roll certified by him under his hand to each presiding officer ... "* The RO for an electoral district currently supplies a copy of the certified roll (either full or split) to each PO. If there are four POs appointed to issue ordinary votes at a particular polling-booth the RO supplies their copy of the certified roll directly to each of them.

7.107 For Commonwealth elections, however, the Electoral Commissioner provides the certified lists (equivalent to the certified roll) to the Officer in Charge of each polling-booth who is responsible for supplying each Issuing Officer, the Commonwealth equivalent of a PO at the booth with a copy.

7.108 In Queensland, a full A-Z certified roll for the District is provided if a polling-booth has only one PO to issue ordinary votes. Split certified rolls (split alphabetically by electors' names eg. A-D, E-K, L-Q and R-Z) are used where more than one PO is allocated to a polling-booth.

7.109 At Commonwealth elections one full certified roll is supplied to each ordinary vote issuing officer. Therefore, in the previous example four full A-Z certified rolls would be issued to a polling-booth which has four issuing officers (POs) appointed to issue ordinary votes.

Polling-booths - Location, Access, Creation, Abolition and Change of Name

7.110 The only provision contained in the Act regarding the location of polling-booths is contained in s.13(2) of the Act which provides that:

> *"A polling booth for a district may be either within or outside the limits of that district, and one and the same place may be appointed as a polling booth for two or more districts."*

7.111 In Queensland the level of commonality of location of booths with the Commonwealth is not as high as has been achieved in the other States.

7.112 The current legislation contains no provisions regarding criteria, including accessibility for physically incapacitated electors, for the selection of premises for use as polling-booths. The principal criterion presently used by an RO to select premises for use as polling-booths is availability.

7.113 In Queensland, it is possible to create, abolish or change the name of a polling-booth at any time up to eight days before polling-day. Section 13(3) of the Act states:

> *"Every appointment, alteration or abolition of a polling booth shall be notified in the Gazette ... and shall not be valid unless so notified no less than eight clear days before the day appointed for taking the poll ... "*

7.114 The CE Act provides that no polling-booth may be abolished after the issue of the writ for an election and before the time appointed for its return. This ensures that no polling-booth can be abolished during the election period. The Commonwealth, however, does not impose any restrictions on when a polling-booth can be created.

Ballot-Boxes and Voting Compartments

7.115 At present, metal and wooden ballot-boxes are used for State elections, although the Act was amended in December 1990 to allow the use of non-lockable ballot-boxes that are able to be sealed. The Act does not provide for the storage of ballot-boxes between elections, although it is the usual practice for ROs to make their own provisions in this regard, either storing the boxes in their homes or in schools and community halls in the area. The SEO has recently offered ROs who store ballot-boxes and compartments at their homes a storage allowance of $200 per year.

7.116 Queensland currently uses, in the vast majority of cases, wooden voting compartments. A number of Australian jurisdictions, including the Commonwealth, have introduced or are intending to introduce disposable, recyclable cardboard voting compartments as an option to the more durable wooden compartments.

Electoral Forms

7.117 Currently forms relating to enrolment and the conduct of elections are prescribed in the First and Second Schedules of the *Elections Regulations 1989*. These forms can only be revised by Order-in-Council. The issue here is whether the forms should be removed from the Regulations, so that any redesigning or revision can be arranged simply and quickly by the QEC.

EVIDENCE AND ARGUMENTS

Ballot-Papers - Design, Format and Marking

7.118 Most submissions received by the Commission on the method for determining the order of candidates' names on ballot-papers were in favour of a system of single or double randomisation being employed.

(a) *" ... a minimum requirement for the layout of ballot papers must include a random ordering of candidates' names. Alphabetical ordering is no longer used in any other State in Australia. This has obviously been introduced because there is perceived to be an advantage in being at the top of a ticket. Given that this is accepted as an advantage, we believe that to be properly fair, a system of rotation should be used. Otherwise, the unfair advantage to one candidate still applies; the only thing which would change would be the way the ordering is determined."* (Australian Democrats (S62)).

(b) R Wood (S74) submitted that the rotation of candidates' names was not necessarily a democratic option, as it would be confusing to voters, particularly elderly voters. Mr Wood noted that:

"Many elderly people enter a polling booth repeating in their minds that they want to vote a particular way, say 2, 1, 5, 3, 4 from the top down. They would be confused if they were handed a ballot-paper with the names in a different order to the one they expected. They might not even notice the different order and end up voting a completely different way to their intention."

As an alternative to the present system of alphabetical listing, Mr Wood proposed that:

" ... a draw for positions would be the fairest method. However, it is essential that the order be determined promptly after nominations close to enable printing of the ballot-papers. I would suggest therefore that a public drawing be held by the Queensland Electoral Commission on the day following nomination day and that each district be dealt with in alphabetical order by drawing "names from a hat". By dealing with each district in alphabetical order, members of the public or candidates would be able to regulate their attendance in accordance with the district or districts of interest to them."

(c) *"The effect of the so called 'donkey' vote on the outcome of elections can be somewhat overstated. There would certainly seem to be no good reason why the system of voting should be so complex or made more complex merely to obviate what may not even be a significant factor in the election. Any action taken to limit this effect should not produce more than one form of ballot paper. In other words, the rotation of candidates' names is not favoured as it incurs a great deal more administrative difficulty and only creates further opportunities for error in the dispersal of papers, thereby opening avenues of possible legal challenge and further necessity for greater controls. If the current system of alphabetical order of names is seem to be open to manipulation, then the only practical alternative is positioning by the drawing of lots, whether this is by a simple draw or by the double randomisation process described in the Issues Paper, although there would seem to be no distinct advantage in the latter."* (Institute of Municipal Management (S86)).

(d) *"Ballot-papers should be very simple, clear and consistent at Federal, State and LA elections."* (R McKinnon (S56)). Ms McKinnon further submitted that the *" ... difficulties of ethnic voters, visually impaired, poor readers and those of low intelligence should be considered."*

(e) K Partlett (S36) proposed a circular ballot-paper to eliminate the "donkey vote" and the advantage that some candidates have from an alphabetical listing.

(f) *" ... Council desires to place on record that all ballot papers should be rectangular as distinct from circular. Circular ballot-papers would be a total nightmare in the counting and scrutiny. Council believes that all instructions need to be in bold print and written in simple (plain) English. All extraneous printing should be removed."* (Miriam Vale Shire Council (S52)).

(g) *" ... instructions should also be printed in a variety of non-English languages, either on the ballot-paper or on a poster in each voting compartment"* and that *" ... larger type size on the ballot-paper is also advisable."* (Australian Democrats (S62)).

7.119 Submissions received by the Commission were generally in favour of political affiliation being shown on ballot-papers. It was generally argued that this would help voters make a more informed choice Toowoomba City Council (S53), Australian Democrats (S62), Mount Isa City Council (S69), P Soper (S78), A Bambrick (S80), and Brisbane City Council (S88). It was also argued that placing political affiliations on ballot-papers would further decrease the need for candidates and parties to waste time and energy on the production of how-to-vote-cards (E Berry (S37)).

7.120 On the issue of whether there should be any change to the current design of ballot-papers, submissions received by the Commission were generally in favour of the ballot-paper containing short and simple instructions.

7.121 A specific matter which was not raised in Issues Paper No. 13 or by public submissions was the current practice of numbering ballot-paper butts in regular arithmetic sequence. This is done primarily to assist those handling ballot-papers, from the Government Printer to the RO conducting the scrutiny, to account for ballot-papers in their custody.

7.122 Submissions received by the Commission on the question of whether pens or pencils should be used to mark ballot-papers favoured both pens and pencils. The Institute of Municipal Management (S86) submitted that:

> *"The marking of ballot papers by pens or pencils would seem to be of no great significance. There is no evidence to suggest that there is a widespread practice of fraudulently changing pencil markings and in local government elections the use of heavy booth pencils generally precludes this action in any event. In practice also, the ballot papers are continually under scrutiny, both at the polling place and at the tally room and adequate controls are in place such that opportunity does not exist for numbers of ballot-papers to be withdrawn, altered and readmitted to the count."*

Distribution of Certified Rolls to Polling Officials

7.123 Submissions received by the Commission were divided on the issue of to whom the certified roll should be supplied. However, the only submission which gave reasons in support of its proposal was that of the Institute of Municipal Management (S86) which recommended that:

"The practicalities of conducting the poll, particularly at very busy polling places, dictate that the presiding officer in charge should have responsibility for distribution of rolls and ballot papers to presiding officers at that place. The issue of the certified rolls should coincide with the issue of ballot papers such that where an individual presiding officer is required to account for a set of ballot papers in the sense that he must issue, receive, count and reconcile the ballot papers, then the certified roll should be issued to that presiding officer. However, where the ballot papers are balanced to the booth or to the polling place where multiple presiding officers are operating, then both the ballot papers and the rolls should be issued to the presiding officer in charge."

7.124 A related issue raised in Issues Paper No. 13 was whether full A-Z certified rolls should be issued to POs or whether the rolls should continue to be split. The majority of submissions received by the Commission on this point were in favour of POs being issued with full A-Z certified rolls. The Miriam Vale Shire Council (S52) identified the following advantages associated with the use of full certified rolls:

"People are easily confused as they enter the polling place, when faced with large masses of people, tables, signs, and officials. Certainly, it takes some little time before people become orientated, are able to zero in at a particular sign and eventually deduce (sometimes wrongly) which table they have to go to obtain their ballot-papers. A lot of Returning Officers use the A-Z certified rolls to overcome this problem and it works well. Council therefore believes that full A-Z certified rolls should be issued to Presiding Officer rather than having split certified rolls."

Polling-Booths - Location, Access, Creation, Abolition and Change of Name

7.125 Issues Paper No. 13 addressed the issue of where polling-booths should be located and whether they should provide special access for physically incapacitated persons.

7.126 The majority of submissions received by the Commission addressing the location of polling-booths were in favour of maximum commonality of polling-booths for Commonwealth and State elections.

(a) *"People are creatures of habit and they do become easily confused on where to go to cast their vote. The people do not quickly differentiate between a Commonwealth election, a State election or a Local Authority election."* (Miriam Vale Shire Council (S52)).

(b) *"As the main buildings used for polling booths for Federal, State and Local Government elections are State Schools, Church Halls, School of Arts etc, it follows that in most areas they will be used for all three elections."* (A Sandell (S61)).

(c) Concerning whether polling-booths should provide special access for physically incapacitated electors, the Australian Democrats (S62) noted that:

"It is also obviously advisable for as many booths as possible to have disabled access and facilities. However, this is clearly not going to be possible in all locations without great expense. As a minimum requirement, all booths with disabled facilities should be widely advertised as such."

(d) R McKinnon (S56) proposed that a portable ramp should service one polling-booth in each district.

(e) The Boonah Shire Council (S68) and the National Party (S76) submitted that facilities for disabled access should be provided wherever practical, but that provisions should allow the PO to cater for incapacitated voters where access cannot be provided.

7.127 The principal criterion presently used by an RO to select premises for use as polling-booths is availability. The availability of premises is generally not a problem when government buildings such as schools are used and this is the situation in the great majority of cases. However, when non-government premises such as private halls must be hired in particular areas, not all necessary facilities (eg. telephones) may be available in the hall. It is sometimes the case that the particular hall chosen is the only one in the area, and therefore no flexibility exists for the RO in making a choice between locations.

7.128 Further issues raised in Issues Paper No. 13 related to appropriate guidelines for the abolition, creation or change of name of polling-booths.

(a) The Miriam Vale Shire Council (S52) proposed that the RO should have power to alter polling places, but added that there was:

" ... no good or valid reason for advertising these changes in the Government Gazette ... However, Council believes that all such changes must be advertised in a newspaper circulating in the area."

(b) *"The approval of new polling booths or their abolition should remain a matter for the Governor-in-Council. An occasion could arise where an Electoral Commission, under pressure from Treasury, attempted to economise by closing some polling booths. While the matter has to go to Cabinet, the financial pressure from Treasury will be highlighted and if Cabinet considers closure unnecessary it will be rectified."* (ALP (S70)).

(c) *"These matters should come within the discretion of the Queensland Electoral Commission, provided that it should not be permitted to abolish a polling-booth or create one in the period from the issue of the writ for an election until the time appointed for its return."* (National Party (S76)).

It was further noted by the National Party that in the Commonwealth and all other States except Tasmania, this power is vested in the Electoral Commissioner.

(d) The Department of the Premier, Economic and Trade Development (S79), like the National Party, argued that matters relating to the creation, abolition and naming of polling-booths should come within the jurisdiction of the Electoral Commissioner.

"This would seem to be an appropriate system, as the location of polling-booths should be free from possible political influence."

Ballot-Boxes and Voting Compartments

7.129 It was mentioned earlier that both lockable ballot-boxes and disposable ballot-boxes are currently in use for Queensland State elections. The Commission received the following submissions on the issue as to whether disposable ballot-boxes should replace the wooden boxes currently in use and if so, what security arrangements would be necessary to ensure the integrity of the ballot.

(a) *"The cost factor, including purchase, storage and transport, together with the findings of the New South Wales Government Committee of Inquiry into the Operations and Processes for the Conduct of State Elections, which indicates there is no security risk, together with their use by the A.E.C., should indicate that disposable boxes properly sealed are acceptable. Security arrangements need not differ to those at present made."* (Boonah Shire Council (S68)).

(b) *"The decision on the composition of ballot boxes should be based predominantly on what is most economic and efficient. Storage and transportation costs and convenience should be balanced against the expense in constructing and providing them. The same would apply with voting compartments."* (Australian Democrats (S62)).

(c) With regard to security, A Sandell (S61) noted that:

"Having been involved as a scrutineer with both types of ballot boxes, disposable boxes do not necessarily incur greater security than metal boxes ... Ballot boxes are in full view of the Returning Officers and the voting public during voting hours. Immediately voting ceases the scrutineers move in and from then on supervise every action."

7.130 A related issue is whether disposable cardboard voting compartments should be introduced for Queensland elections. Submissions received by the Commission on this issue tended to be in favour of disposable voting compartments if it was less expensive to do so.

(a) *"The existing alleged permanent prefabricated structures are not particularly secure when mounted in the centre of a Hall. It is suggested they need considerable repairs between elections. If disposal types can be shown to incur less expense they should be introduced."* (A Sandall (S61)).

(b) *"Cost, together with assured privacy of the elector, should determine the issue."* (Boonah Shire Council (S68)).

Electoral Forms

7.131 Issues Paper No. 13 raised the issue as to whether forms required for electoral administration should be prescribed in the Act or whether the Electoral Commission should have discretion over the design and content of forms.

7.132 Submissions generally favoured giving the QEC full discretion regarding the content of forms (eg. Burleigh Heads Group (S56), Boonah Shire Council (S68), National Party (S76), Department of the Premier, Economic and Trade Development (S79), Queensland Advocacy Inc. (S84)).

(a) *"It is clear that the forms have rarely been redrafted or improved over the years, most probably because an Order-in-Council was necessary to achieve any modification, however slight. The clear advantage of removing the forms from the Act would be that the Electoral Commissioner could modify the forms at any time in the light of feedback from election officials such as Returning Officers who use the forms, are aware of their design faults, and may have useful suggestions as to how they might best be modified. Research into electoral matters, which will be one of the functions of the new Electoral Commission, should also reveal deficiencies in the forms and options for their improvement.*

It is therefore considered desirable that the forms relating to elections which are currently contained in the Elections Regulations should be removed from those Regulations. The forms are essentially administrative and their design should be a responsibility of the Electoral Commissioner." (Department of the Premier, Economic and Trade Development (S79)).

(b) The Institute of Municipal Management (S86), on the other hand, argued:

"The prescription of forms by schedule or regulation and their alteration only by Order-in-Council is a means by which uniformity is preserved. Whilst in principle, the redesigning of forms by the Electoral Commission would seem a step toward greater efficiency, adequate controls would need to be in place to ensure that the promulgation of those revisions to Returning Officers was both timely and comprehensive. Once again, referring back to the possibility of registering Returning Officers the revisions to forms may be promulgated by newsletter or bulletin to registered Returning Officers. On the question of forms in general, action should be taken to reduce the amount of paper work required to a minimum, relying more on performance oriented legislation in many respects to obviate the need for more bureaucratic recording."

ANALYSIS OF EVIDENCE AND ARGUMENTS

Ballot-papers - Design, Format and Marking

7.133 It was noted earlier that the majority of submissions were in favour of randomisation to determine the order of candidates' names on ballot-papers. The Commission agrees with this proposition. However, the Commission does not believe that a system of double randomisation would serve any significant additional purpose which is not provided by a single random draw. Single randomisation adequately ensures that each candidate has an equal chance of the first position on the ballot-paper, and therefore an equal chance of any benefit there may be in being placed in that position. Double randomisation introduces a further element of complexity to the system for minimal additional benefits.

7.134 The Institute of Municipal Management (S86) noted that the method of rotating candidates' names on the ballot-paper would create administrative difficulties and further opportunities for error in the distribution of ballot-papers which might increase the occasion for legal challenges to election results. The Commission agrees that rotation of candidates' names has definite advantages in reducing the impact of the "donkey vote", but believes that the disadvantages of the system are significant and the addition of party labels to the ballot-paper should reduce the incidence of "donkey voting" significantly.

7.135 The main arguments in favour of showing political affiliations on ballot-papers are as follows:

(a) it would inform voters; and

(b) it would decrease the demand for how-to-vote cards.

7.136 It should be noted that placing political affiliations on ballot-papers requires a system of political party registration (see Chapter Four) being introduced. Only candidates who belong to registered political parties should have their party's name placed beside their own on the ballot-paper.

7.137 A candidate who does not belong to a registered political party would have the option of the word "Independent" being placed beside his or her name or leaving the space blank. If no request is made by a candidate, under the Commission's proposal the word "Independent" would appear.

7.138 Submissions received from the public on the size, shape and colour of ballot-papers generally recommended that instructions should be clear and simple in large type-set. Many of these issues are administrative and should be left to the discretion of the QEC. As to the requirements concerning colour, there seems to be no good reason to continue to vary the colour from one election to the next when the possibility of introducing a ballot-paper from a previous election into the scrutiny is remote.

7.139 Similarly, the means by which a voter marks a ballot-paper (pen or pencil) is a matter for administrative decision and should also be left to the discretion of the Electoral Commission.

7.140 The main complaint against the use of pencils is that pencil marked votes can be tampered with relatively easily. On the other hand, those in favour of pencils being continued argue that ballot-papers are under constant scrutiny by polling-officials and scrutineers and there is therefore very little opportunity for any ballot-paper to be tampered with.

7.141 The traditional justification for the use of pencils is that it is relatively easy for polling officials to check that they are not blunt during the day by glancing into each voting compartment at regular intervals, whereas it would be necessary to try every pen to be certain that they were still working.

7.142 The Commission believes that the current system of producing ballot-papers attached by perforation to numbered butts should be retained. The system provides a means to simplify accounting for ballot-papers by various officials, and also provides an additional protection against introducing forged ballot-papers into the count.

7.143 Ballot-papers do not presently contain the date of the election to which they relate. Theoretically, therefore, persons could attempt to use ballot-papers from previous elections in subsequent elections if the ballot-papers were of the same colour. Although the chances of having a ballot-paper from a previous election and furthermore containing the same list of candidates who contended the earlier election are very small, it would be an added safeguard against interference with the ballot to have the date of the election appear on the ballot-papers.

RECOMMENDATIONS

7.144 **The Commission recommends:**

(a) The order of candidates' names should be determined by a draw for positions using a single randomisation method.

(b) There should be no change to the current provisions relating to the shape or opacity, or the butt numbering system, of ballot-papers though those relating to colour should be deleted. However, the wording of the directions to electors should be amended to reflect optional preferential voting (OPV). There is a need for clear and concise instructions to electors.

(c) Candidates' political party affiliation should be shown on ballot-papers if their political party is registered. Other candidates should have the option of having either nothing or the word "Independent" appear after their name.

(d) There should be no requirement in the legislation concerning the means by which a voter marks a ballot-paper. The question of whether pencils or pens should be used should be left to an administrative decision of the Queensland Electoral Commission.

(e) Ballot-papers should bear the date of the election to which they relate.

7.145 The Draft Bill in Appendix H contains provisions for these recommendations in Part 6 ss.97-98.

Distribution of Certified Rolls to Polling Officials

7.146 Section 62(1)(c) of the Act requires the RO to provide a copy of the certified roll to each PO. If certified rolls must be issued by ROs to individual POs rather than to the Officers-in-Charge of polling-booths then there is a significantly increased amount of work for ROs.

7.147 For example, an electoral district with 12 polling-booths may have as many as 40 POs. The Commission believes it would be preferable for an RO to arrange for the parcelling and distribution of certified rolls to 12 officials instead of 40. Greater control can be exercised by the RO during their dispatch and there is less likelihood of any parcels being lost.

7.148 Security of election material would be enhanced by this change in the period leading up to polling-day because, in this example, only 12 polling officials rather than 40 are responsible for the safe custody of the certified rolls for the electoral district.

7.149 This is another matter which should be left to the discretion of the RO who is best placed to decide how to distribute voting materials in an electoral district based on the characteristics of the district.

7.150 On the matter of whether POs should be issued with full A-Z or split certified rolls, a number of advantages would derive from the use of full certified rolls, namely:

(a) Full rolls provide a more even workload distribution between issuing officers because electors go to the PO who has the fewest voters queuing for a vote at that point of time. As a result the queuing problems which exist under the present system might be diminished.

(b) Full rolls provide more flexibility in polling-booth layout.

7.151 The disadvantages have been described as:

(a) It takes longer to find a name in the longer list.

(b) It is easier to commit multiple voting at the same polling-booth by appearing before different POs.

7.152 On balance, the Commission favours the distribution of full A-Z rolls to each issuing officer.

RECOMMENDATIONS

7.153 **The Commission recommends:**

(a) The issue of whether certified rolls should be directly supplied to the Issuing Officer or to the Officer-in-Charge of the particular polling-booth is an administrative matter which should be left to the discretion of the Queensland Electoral Commission.

(b) Full A-Z rolls should be issued to each Issuing Officer.

Polling-Booths - Location, Access, Creation, Abolition and Change of Name

7.154 Submissions received by the Commission argued in favour of commonality of polling-booths for State and Commonwealth elections because voters become confused with different polling-booths for different elections. It is arguable that commonality of booths, where practical, may encourage a higher voter turnout for elections as confusion as to where polling-booths are located is minimised.

7.155 The issue of whether all or some polling-booths should provide special access for physically incapacitated electors received a number of responses from the public. While some submissions suggested special facilities (ie. portable ramps) to accommodate incapacitated voters, the Commission believes that a cheaper and more sensible option is to simplify the voting procedure for incapacitated electors.

7.156 Provisions have been recommended in Chapter Nine of this Report for polling officials to be authorised to take the ballot-paper to the disabled voter if the voter has access to the grounds of the polling-booth but not the building itself.

7.157 As mentioned earlier the chief criterion used for selecting polling-booths is availability. In many cases the RO is not in a position to "shop around" for a more suitable site because there may only be a limited number of buildings or a single building available in the area concerned.

7.158 In any case, if polling-booths which have access for physically incapacitated electors are available in a district, the QEC should notify the public of their location by identifying them as such in advertisements placed in the local paper. There would seem to be no need for legislation on this issue which is more appropriately an administrative matter for the QEC. Identification of those which have access for physically incapacitated electors, and those which have been opened since the last election (and also identification of those which should be abolished) is part of the normal advertising of polling-booth locations.

7.159 Similarly, it is arguable that guidelines relating to the creation, abolition or changing of names of polling-booths should be left to the QEC. However, one limitation on this discretion is necessary: the QEC should not be able to abolish a polling-booth between the time of the issue of the election writ and the holding of an election. If the original building has been damaged or destroyed or otherwise become unavailable in that time it has to be replaced by another which is designated as the original and the replacement given maximum publicity.

RECOMMENDATION

7.160 **The Commission recommends:**

(a) As far as possible there should be commonality of polling-booths for Commonwealth, State and Local Authority elections. Polling-booth location should be a matter for the discretion of the Queensland Electoral Commission.

(b) One factor which should be taken into account by the Queensland Electoral Commission in determining polling-booth location is accessibility of the site for physically disabled voters.

(c) **Decisions about the creation, abolition or changing of names of polling-booths should be left to the discretion of the Queensland Electoral Commission. The Commission, however, should not abolish a polling-booth between the time of the issue of the writ and the holding of an election unless the booth has been severely damaged or destroyed or is otherwise unavailable.**

7.161 A provision empowering the QEC to make decisions on polling-booth locations has been included in the Draft Bill in Part 6 s.94.

Ballot-boxes and Voting Compartments

7.162 It has been put to the Commission that the use of disposable ballot-boxes would be a cheaper alternative to the metal and wooden boxes currently in use. A recent New South Wales inquiry found that the cost of metal ballot-boxes was approximately 12 times greater than the cost of cardboard boxes (New South Wales Electoral Inquiry Committee 1989, p.52). Storage and repair costs outweigh the longer life of the durable boxes of metal and wood.

7.163 In considering this issue the Commission is concerned with the security of the ballot. The New South Wales Committee of Inquiry into the Operations and Processes for the Conduct of State Elections concluded after their investigation that criticisms about the security of cardboard ballot-boxes were not justified (1989, p.52). Cardboard boxes can be much larger than wooden or metal boxes, and therefore at all but the largest polling-booths a single box may suffice for the whole of polling-day and is constantly subjected to public observation. Small metal and wooden boxes are quickly filled and have to be kept securely stored in the polling-booth until the close of the poll.

7.164 Cardboard is also being used for voting compartments elsewhere. Arguments in favour of the use of cardboard compartments are:

(a) They are cheaper to produce and to transport.

(b) They are clean when they come from the manufacturer, whereas durable boxes and screens are frequently dirty when they come out of storage.

(c) They are easier to erect and move and thus facilitate equal employment opportunity policies for polling officials.

(d) They can be readily incorporated in kits of electoral material for dispatch to ROs and POs.

7.165 The major arguments against their use have been that they may not be as strong as traditional wooden or metal compartments and that they use forest products. However they have proven satisfactory elsewhere and cardboard recycling facilities exist.

RECOMMENDATIONS

7.166 **The Commission recommends that disposable ballot-boxes and voting compartments should be introduced for Queensland elections. However, this should not be a matter for legislation; it should be left to the discretion of the Queensland Electoral Commission to implement at an appropriate time.**

Electoral Forms

7.167 A number of arguments were offered in favour of electoral forms being prescribed in the Act:

(a) Prescription of forms in the Schedule or Regulations and their alteration only by Order-in-Council ensures stability in their content and format.

(b) Prescription reduces the likelihood of format or content being changed in the political interest of a candidate or political party.

(c) The writ for an election in particular is a vital legal document issued by the Governor which should not be subject to change by any lesser authority such as the QEC in the exercise of its administrative duties.

7.168 However, a number of arguments were made in submissions in favour of the Electoral Commission being given discretion over the design and content of forms. For example:

(a) The Electoral Commission would be able to modify forms quickly after receiving feedback from polling officials and other electoral jurisdictions.

(b) The administrative process of modifying or substituting forms would be simplified.

(c) Most questions about the content of forms are largely administrative and therefore need not be the subject of legislation.

7.169 The Commission has concluded that there are certain forms (eg. ballot-papers and writs) which should be prescribed in the Act because they are especially significant. Their contents should not be changed without due regard to the political and/or legal consequences of such action. Other forms, such as declarations and application forms, can be modified with minimal legal or political consequence arising out of such changes. There appears no good reason why changing these documents should require the approval of Executive Council.

7.170 Submissions received by the Commission generally tended to be in favour of giving the Electoral Commission full discretion regarding the content of forms (Burleigh Heads Group (S56), Boonah Shire Council (S68), National Party (S76), Department of the Premier, Economic and Trade Development (S79), Queensland Advocacy Inc. (S84).

7.171 The Department of the Premier, Economic and Trade Development (S79) stated:

> *"It is clear that the forms have rarely been redrafted or improved over the years, most probably because an Order-in-Council was necessary to achieve a modification, however slight. The clear advantage of removing the forms from the Act would be that the Electoral Commissioner could modify the forms at any time in the light of feedback from election officials such as Returning Officers who use the forms, are aware of their design faults, and may have useful suggestions as to how they might best be modified. Research into electoral matters, which will be one of the functions of the new Electoral Commission, should also reveal deficiencies in the forms and options for their improvement.*

It is therefore considered desirable that the forms relating to elections which are currently contained in the Elections Regulations should be removed from those Regulations. The forms are essentially administrative and their design should be a responsibility of the Electoral Commissioner."

7.172 Whilst EARC generally agrees to more flexibility, it is essential that orderly forms control be maintained and that the whole of the electorate have access at all times to all decisions regulating the conduct of elections. For this reasons, forms should be notified by publication in the Gazette.

7.173 Another important consideration in relation to forms that was not raised in Issues Paper No. 13 or in the submissions is how the QEC should receive applications and communications in order to fulfil its various statutory obligations such as receiving nominations (this chapter), applications for extra-ordinary votes by post (Chapter Nine), and applications, and objections for party registration (Chapter Four).

7.174 Facsimile transmissions over the telecommunications network are generally accepted in both commerce and public administration. Advantages of facsimile include that it is faster than postal delivery, and also that there is an inbuilt acknowledgement of receipt in the system.

7.175 The Commission therefore considers that the QEC should accept all applications and correspondence in relation to its functions under the new Electoral Act by post, personal delivery or by facsimile.

RECOMMENDATIONS

7.176 **The Commission recommends that:**

(a) The Queensland Electoral Commission should have discretion over the design and content of electoral forms with the exceptions of the ballot-paper and the writ but in all cases, the forms shall be notified by publication in the Gazette.

(b) Ballot-papers and writs should be prescribed in a Schedule to the Electoral Act.

(c) All forms and communication should be accepted whether delivered by post, personal delivery or facsimile.

(d) The writ and ballot-paper appear on Schedule 1 & 2 of the Draft Bill.

7.177 The provisions in the Draft Bill which implement these recommendations are in Part 9 s.178, and Schedules 1 and 2.

Eligibility Criteria for Candidates

Issue 17 Candidate Eligibility

(a) What qualifications should a candidate have in order to be able to be nominated for an election?

(b) Should Australian citizenship be a necessary qualification for candidacy?

(c) Should the qualifications for nomination be the same as qualifications for being elected and for sitting?

CURRENT SITUATION

7.178 All Electoral Acts specify criteria which persons must meet in order to be a candidate for a district or to be elected. These criteria relate to qualifications and disqualifications such as citizenship, enrolment eligibility, age, residency, bankruptcy or criminal conviction.

7.179 Sections 49-50 of the current Act specify the basic criteria for nomination:

> *"**49. Qualification of a candidate.** Any person who is not prevented from being elected as a member of the Legislative Assembly by any cause of disqualification prescribed by law and who under this Act is enrolled for any electoral district is qualified to be nominated as a candidate and to be elected a member of the Legislative Assembly for any electoral district.*
>
> ***50. Undischarged bankrupt incapable of being nominated or elected.***
> *(1) Any person -*
> *(a) who under the Bankruptcy Act 1966 is a bankrupt in respect of a bankruptcy from which he has not been discharged;*
> *(b) who has executed a deed of arrangement under Part X of the Bankruptcy Act 1966 where the terms of the deed have not been fully complied with;*
> *(c) whose creditors have accepted a composition under Part X of the Bankruptcy Act 1966 where a final payment has not been made under that composition.*
>
> *is incapable of being nominated or elected.*
>
> *(2) In subsection (1), a reference to the Bankruptcy Act 1966 is a reference to the Bankruptcy Act 1966 of the Commonwealth as amended."*

7.180 In relation to the exclusion provisions of s.49, ss.161-163 of the Act and s.104 of the Criminal Code preclude certain candidates from being elected to, or sitting in, the Legislative Assembly. Sections 161-163 state that:

> *"**161. Candidate found, on petition, guilty personally of corrupt practices.** If upon the trial of a petition the Judge reports -*
>
> *(a) that any corrupt practice other than treating or undue influence has been proved to have been committed with reference to the election to which the petition relates by or with the knowledge and consent of any candidate at the election; or*
>
> *(b) that the offence of treating or undue influence has been proved to have been committed with reference to the election by any candidate at the election,*
>
> *that candidate shall not be capable of being elected to or sitting in the Legislative Assembly for a period of three years, and, if he has been elected, his election shall be void.*
>
> ***162. Candidate found, on petition, guilty by agents of corrupt practices.** If upon the trial of a petition in which a charge is made of any corrupt practice having been committed with reference to the election to which the petition relates the Judge reports that a candidate at the election has been guilty by his agents of any corrupt practice with reference to the election, that candidate shall not be capable of being elected to or sitting in the Legislative Assembly for the district in question during the Parliament for which the election was held, and, if he has been elected, his election shall be void.*
>
> ***163. Connivance of candidate at illegal practice.** (1) If upon the trial of a petition the judge reports that any illegal practice is proved to have been committed with reference to the election to which the petition relates by or with the knowledge and consent of any candidate at the election, that candidate shall not be capable of being elected to or sitting in the Legislative Assembly for the district in question for three years next after the date of the report, and, if he has been elected, his election shall be void.*

(2) In addition, he shall be subject to the same incapacities as those to which he would be subject if at the date of the report he had been convicted of such illegal practice."

7.181 Section 104 of the Criminal Code states:

> *"**104.** Any person convicted of any of the offences defined in the five last preceding sections committed with respect to a parliamentary election becomes incapable, for three years from the date of the conviction, of being registered as an elector or of voting at any parliamentary election or of holding any judicial office; and, if he holds any such office, the office is vacated.*
>
> *He also becomes incapable for the like period of being appointed to or of sitting in the Legislative Council, and of being elected to or of sitting in the Legislative Assembly; and, if at the time of the conviction he is a member of either House, his seat is vacated.*
>
> *Any person convicted of any such offence committed with respect to a municipal election becomes incapable, for two years from the date of the conviction, of holding any municipal office, and, if he holds any such office, the office is vacated."*

7.182 Chapter Fourteen, Electoral Offences, discusses whether other electoral offences punishable by fine and/or imprisonment should also impose a further penalty such as disfranchisement or disqualification to be a candidate or sit as a Member.

7.183 The requirements for candidate eligibility vary in the other States and the Commonwealth. In all jurisdictions candidates must be enrolled electors (or qualified to be electors). The Acts of the other States and the CE Act provide that undischarged bankrupts either cannot nominate for election or sit in Parliament. Australian citizenship is required for candidates only in Commonwealth elections. (In the other States, as in Queensland, British subjects who are enrolled may nominate as candidates.)

7.184 Provisions covering those who hold an office or place of profit under the Crown vary, although generally such persons may nominate but must resign that office once elected. Western Australia and Tasmania have special residency requirements for prospective candidates.

7.185 In Victoria provision exists to disqualify a judge of a court of Victoria from being elected. Other persons who are disqualified in Victoria include:

> *"An elector who has been convicted or found guilty of an indictable offence which by virtue of any enactment is punishable upon first conviction by imprisonment for life or for a term of five years or more committed by him when of or over the age of 18 years under the law of Victoria or under the law of any other part of the British Commonwealth of Nations."* (*Constitution Act* 1975, s.44(3)).

7.186 Additionally, ss.7A, 7B, 7C and 7D of the Local Authority Act (LA Act) prevent a Member of the Legislative Assembly from holding certain offices and perform certain services. These sections provide in part:

> ***"7A. Eligibility of members to hold offices etc.** (1) A member of the Assembly is not eligible to accept or hold any office or place of profit under the Crown or any position of the prescribed description.*
>
> *(2) If a member of the Assembly is appointed to an office, place or position to which subsection (1) applies his appointment to such office, place or position shall be null and void.*
>
> *(3) If a person becomes a member of the Assembly while he is appointed to an office, place or position to which subsection (1) applies his appointment to such office, place or position shall terminate on the date of his election to the Assembly ... "*

*"**7B. Eligibility of members to perform services.** (1) If a member of the Assembly in any capacity transacts any business or performs any duty or service for the Crown or a Crown instrumentality or a body representing the Crown (excluding the State Government Insurance Office (Queensland)) -*

(a) neither he nor any other person shall be entitled to or receive any fee or other reward or any expenses on account of such transaction or performance; and

(b) the question whether he should continue as a member of the Assembly shall be determined by the resolution of the Assembly.

(2) If pursuant to subsection (1) the Assembly resolves that a person should not continue as a member of the Assembly the seat of that person in the Assembly shall become vacant on the date on which the resolution is taken ... "

***7C. Exclusion of positions from s.7A** (1) If at any time it is resolved by the Assembly that any position of the prescribed description should be one to which section 7A (1) shall not apply, the Governor in Council may, by Order in Council, specify that position accordingly ... "*

***7D. Meaning of expressions**. (1) The expression 'position of the prescribed description' in sections 7A and 7C means a position on a Crown instrumentality or a body representing the Crown or on any authority, corporation, board or other body appointment to which is made -*

(a) on the nomination of a Minister of the Crown;
(b) by the Governor in Council or a Minister of the Crown; or
(c) subject to the approval of the Governor in Council or a Minister of the Crown.

(2) A reference to the Crown in sections 7A and 7B and in subsection (1) is a reference to the Crown in right of Queensland.

(3) The expression 'fee or other reward' in section 7A does not include any amount due or paid for recoupment of or on account of out of pocket expenses reasonably incurred."

7.187 Also, once elected, Members must continue to meet certain criteria. Section 7 of the LA Act describes the provisions which make a Member's seat vacant:

*"**7. Vacating seats of members of Assembly in certain cases. 18 and 19 Vic. c. 54.** If any member of the Assembly*

shall for one whole session of the Legislature without the permission of the Assembly entered upon its journals fail to give his attendance in the said House or

shall take any oath or make declaration or acknowledgement of allegiance obedience or adherence to any foreign prince or power or

do or concur in or adopt any act whereby he may become a subject or citizen of any foreign state or power or become entitled to the rights privileges or immunities of a subject of any foreign state or power or

shall become bankrupt or an insolvent debtor within the meaning of the laws in force within the said colony relating to bankrupts or insolvent debtors or

shall become a public contractor or defaulter or

be attainted of treason or be convicted of felony or any infamous crime

his seat in such Assembly shall thereby become vacant."

7.188 Finally, Sections 7(1) and (2) of the Local Government Act denies membership of the Legislative Assembly to persons elected or appointed as members of a Local Authority.

EVIDENCE AND ARGUMENTS

7.189 It can be argued that anyone who has a right to vote should also have the right to nominate as a candidate. During the campaign the backgrounds of the various candidates would come to light and would be one of the factors electors considered when casting their vote.

7.190 On the other hand, it can also be argued that all Australian jurisdictions preclude one or more classes of electors from being candidates (eg. bankrupts in all jurisdictions; non-Australian British subjects in the Commonwealth). Restrictions on candidacy do not prevent policies and ideas being presented to the electorate, as any other elector (who is not disqualified) with the same or similar views can still freely nominate. Rather, the limited restrictions that currently exist reflect community views as to who should be eligible for public office.

7.191 Wide ranging views on candidate eligibility were expressed in the submissions.

(a) *"Council believes that the eligibility criteria should be as follows:-*

(i) be an Australian citizen,
(ii) be an adult,
(iii) be a resident of the area,
(iv) be actually enrolled on the Electoral Roll for the area,
(v) not be insane within the meaning of the laws relating to insanity,
(vi) not have his affairs under liquidation by arrangement or be an undischarged bankrupt, or insolvent,
(vii) not be undergoing a sentence of imprisonment, whether suspended or not,
(viii) not having any convictions for any offence (not including minor offences - e.g. parking offences) within 5 years of the date of the election,
(ix) not have any convictions relating to any investigation and/or charge arising from either the Criminal Justice Commission or the Office of the Public Prosecutor.

The qualifications for nominating should be the same as for being elected and sitting." (Miriam Vale Shire (S52)).

(b) *"I urge you to establish a policy that requires all candidates be officially resident in the electorate at the time of the election. It would be better if the candidate were required to be resident in the electorate for thirty, sixty or ninety days or longer preceeding the election. A one year period of previous residence would not be at all unfair or unreasonable. I do not see how any nonresident can be seen to be a suitable representative of the electorate."* (H Duncan (S24)).

(c) *"Australian citizen with no mental instability or record of an inditable offence of any kind in last 10 years."* (M Passmore (S45)).

(d) The Boonah Shire Council (S68) supported the proposal that candidates should be Australian citizens:

"One standard of eligibility for nomination, elections and sitting should apply. Candidates must be enrolled electors (or qualified to be electors or wrongfully omitted). Australian citizenship should be a necessary qualification as in Commonwealth elections."

(e) As well as Australian citizenship R McKinnon (S56) stated that:

"Electoral fraud or any corrupt electoral practice should exclude nomination of candidate for 10 years."

(f) The Australian Democrats (S62) raised the difficulty that Crown employees face when nominating for elected office:

"The Democrats believe that requirements for nomination and election should be basically the same as at the Federal level, including the requirement for Australian citizenship. However, we suggest the Commissioners may like to look at the eligibility requirements for people employed by the Crown. The provisions and the way these provisions are enacted for such people in regard to their nominating for elections are not particularly clear. The Democrats have had a number of difficulties with some of our potential candidates who have been employed by the Crown. In most cases it appears that such people have to take leave without pay, or resign for the period between close of nominations and election day, and these people are then re-employed if their candidature is unsuccessful. We have had examples of candidates who were employed as teachers who had to stand aside to run for Parliament, and could not be guaranteed that they would regain their jobs at the same school after the election. Such an unfair situation clearly makes it more difficult for public servants to run for Parliament than for most other people. We believe that, as a minimum, there should be a guarantee that such people are re-employed in the same job."

(g) *"3.1 What qualifications should a person have in order to be able to nominate for an election?*

In addition to the qualification referred to in the answer to 3.2, a person must be enrolled for an electoral district, not an undischarged bankrupt or a person who has not complied with the terms of a Part X arrangement or composition under the Bankruptcy Act 1966, have been convicted within the previous five years of an offence relating to the conduct of elections as discussed in response to the matters raised in Chapter Twelve, or be currently serving a custodial sentence.

3.2 Should Australian citizenship be a necessary qualification for nomination for an election?

Yes.

3.3 Should the qualifications for nomination be the same as the qualifications for being elected and for sitting?

Yes." (National Party (S76)).

(h) The Liberal Party (S100) did not state what criteria candidates should meet but were opposed to extending the criteria in certain directions.

"We are opposed to any qualifications being imposed on candidates by way of residence or educational level."

(i) *"It would seem, in the interests of democracy, that candidature should be available to the widest range of prospective candidates, commensurate with their relationship with and interest in the community. Disqualifications both for candidature, election and remaining in office should be as few as possible and it would seem that the only restrictions on the candidate should be that:*

(a) the candidate should reside within the electorate for which he proposed to nominate,
(b) the candidate should be an Australian citizen,
(c) the candidate should not be undischarged bankrupt
(d) the candidate should not be undergoing a sentence of imprisonment; and,
(e) the candidate should not be certified insane.

The question of residence is one that requires further consideration in that there is presently no real check to confirm the residential qualifications of candidates and, in fact, enrolment on the electoral rolls is not securely covered by any appropriate check on residential qualifications.

For example, it is possible for a person living in electorate 'A' to lodge an electoral enrolment form professing to reside at an abode in electorate 'B'. Under present arrangements it appears that no checks are made in the processing of the application at either Commonwealth or State level to verify the accuracy of the information supplied on the enrolment form. This means also that the legislative requirements prescribing a minimum residential qualification prerequisite to enrolment are a nonsense in that there is no real means of confirming whether the applicant has in fact resided at the nominated location for the prescribed period or not.

Qualifications of this type can only be supported if they can be enforced or there is some mechanism for practical challenge. If the legislation is not enforceable or administratively defective, it should be repealed or replaced with some more viable qualifications." (Institute of Municipal Management (S86)).

ANALYSIS OF EVIDENCE AND ARGUMENTS

7.192 Among the characteristics of free, honest, regular and fair elections are the right to vote and the right to be a candidate. This topic was addressed in a number of submissions, and the matters of citizenship, residency and imprisonment were raised consistently.

7.193 In respect of citizenship, only the Commonwealth currently requires candidates to be Australian citizens. This requirement has been in place since 1983. The effect of this provision is that non-Australian British subjects who are enrolled cannot be elected to the Federal Parliament. At the 1987 NSW Senate election one candidate was elected who was not an Australian citizen and who was subsequently disqualified by the High Court.

7.194 Removal of the right of enrolled British subjects who are not Australian citizens to stand for election could be considered to diminish the right of electors to elect who they choose. However, Australian citizenship is an accepted requirement in connection with other public offices, for example permanent appointment to both the Commonwealth and State Public Services. Citizenship for candidates has been accepted for Commonwealth elections by both the public and political parties.

7.195 Several submissions suggested that insanity should be a specific exclusion for candidacy. However, in order to be a candidate, an elector must be enrolled. The enrolment disqualification criteria in the CE Act specify that if a person *" ... by reasons of being of unsound mind is incapable of understanding the nature and significance of enrolment and voting"* then that person is not entitled to be enrolled. With the introduction of the Joint Roll Arrangement this disqualification will apply for Queensland elections and the Commission is of the opinion that the disqualification achieves the object sought in submissions.

7.196 The question of a residency qualification is more problematical. Some merit can be seen in the argument that candidates should be resident in the district of nomination. However amending the provision to enforce enrolment in the electoral district of nomination would not ensure that candidates are established residents familiar with the affairs of that district. They would only have to be residents in the district for one month before the close of rolls in order to enrol in that district. Following a distribution a sitting member may wish to nominate for a district adjacent to the district currently resided in because boundary changes may have located the member's residence in a different district. Finally, many electoral districts, especially in urban areas, are somewhat arbitrary parts of a larger whole. A candidate acquainted with the characteristics and needs of that large whole can adequately represent a part and may be quite acceptable to its electors on that basis. The Commission believes that the criterion should be merely that the nominee must be an elector of Queensland. The issue of residency in the district is a matter best left for the electors.

7.197 The current Act is silent on the question of whether prisoners may be candidates. It does however have provisions which would make it difficult for a prisoner to be a candidate. For example, any person sentenced to and serving a term of 6 months or more of imprisonment is not entitled to be enrolled and therefore is ineligible to be a candidate.

7.198 With the adoption of Commonwealth enrolment criteria through the EA Act, prisoners serving sentences for offences for which the penalty is less than 5 years imprisonment may now be enrolled. Therefore, without a specific provision barring them, such prisoners could become candidates.

7.199 The situation arose in the United Kingdom where members of the Irish Republican Army serving prison sentences nominated for election to the House of Commons and were subsequently elected. In response the *Representation of the People Act 1981* (UK) was passed. It included a provision preventing persons from nominating:

> *"... in respect of election to the House of Commons or to the European Parliament, for those convicted of any offence and sentenced to be imprisoned either indefinitely or for more than one year. Such persons are disqualified from membership of the House of Commons during the period of their sentence. Further, and uniquely in respect of Parliamentary candidacies, any nomination of such a person is deemed to be void. These provisions were introduced in response to the election of members of the Irish Republican Army while imprisoned in Northern Ireland. The effective prohibition on nomination of such individuals as candidates is intended to deny them the propaganda benefits which candidacy, and possible election and subsequent disqualification, may bring."* (Rawlings, 1988, p.115).

7.200 The Commission recognises that it would be difficult for prisoners to become Members. For example, it is unlikely that a prisoner could adequately represent a constituency while in prison and electors would appreciate that fact and vote accordingly. There are substantial practical difficulties associated with a prisoner's ability to sit in the Legislative Assembly while imprisoned. Section 7 of the Legislative Assembly Act states:

> *"If any member of the Assembly:*
>
> > *shall for one whole session of the Legislature without the permission of the Assembly ... fail to give his attendance in the said House ... his seat in such Assembly shall thereby become vacant."*

7.201 It may be that parole and early release schemes could mitigate the practical problems, but the possibility of return to prison until the sentence has been served or reduced would remain a danger.

7.202 The Commission has previously recommended that persons in prison for offences which attract penalties of less than five years should be entitled to vote. It believes that maintaining this entitlement preserves some link with the community, but it does not accept the same argument in respect of candidacy for election.

RECOMMENDATIONS

7.203 **The Commission recommends:**

(a) That the eligibility criteria for candidacy in Legislative Assembly elections should be:

(i) Australian citizenship; and

(ii) enrolment (in any electoral district) in the State.

(b) Any person:

(i) who under the Bankruptcy Act 1966 is a bankrupt in respect of a bankruptcy from which he has not been discharged; or

(ii) who has executed a deed of arrangement under Part XX of the Bankruptcy Act 1966 where the terms of the deed have not been fully complied with; or

(iii) whose creditors have accepted a composition under Part XX of the Bankruptcy Act 1966 where a final payment has not been made under that composition; or

(iv) who is serving a sentence of imprisonment or subject to a periodic detention order; or

(v) who is excluded from nominating or sitting as a Member by this or any other Act.

should not be eligible to be a candidate for a Legislative Assembly election.

7.204 The provision of the Draft Bill which implements this recommendation is Part 6 s.83.

Nomination

Issue 18 Nomination

(a) Should political parties be able to nominate their candidates centrally, or should all candidates nominate individually?

(b) If candidates should nominate individually, should this be with the Electoral Commissioner or the RO for their electoral district?

(c) How many persons should be required to nominate a candidate?

(d) What are the appropriate criteria for the return of a candidates' deposit?

CURRENT SITUATION

7.205 When the writ for an election is issued, the RO is required to give public notice of the place of nomination and time and day when nominations close. Section 48 of the Act stipulates that the place of nomination should be:

> *"A convenient place, to be named by the returning officer, within the district or within 10 kilometres of the district by the nearest practicable route ... "*

7.206 The RO must be present at the place of nomination between 9.00 am and 12 noon on nomination day to receive nomination papers. However, nominations may be delivered to the RO at any place or time after the day the writ is issued.

7.207 At the 1989 general election, the place of nomination for all districts with the exception of Cook was within the district. In the case of Cook, the place of nomination was in Cairns, which under the then existing redistribution was within 10 kilometres of the district.

7.208 Persons who wish to become candidates cannot nominate themselves. Section 51 requires that a candidate must be nominated by not fewer than 10 persons entitled to vote at the election in respect of the electoral district concerned.

7.209 In Western Australia candidates can nominate themselves. In the other States and the Commonwealth, a candidate must be nominated by a number of electors that varies from two (in South Australia) to 15 (in New South Wales). Generally the nominators are not required to be enrolled in the electoral district for which the candidate is being nominated. However, in New South Wales and South Australia, as in Queensland currently, the nominators must be on the roll of the district for which the candidate nominates.

7.210 In New South Wales, Victoria and the Commonwealth a candidate may be nominated by the registered officer of the political party which has endorsed that candidate. This centralised nomination process is convenient for the parties for it ensures that all endorsed candidates are correctly nominated by the close of nomination. This process streamlines the nomination process, as the lists of party nominations are lodged directly with the Electoral Commission and thus available for distribution to the media and for immediate production of ballot-papers for postal voting.

7.211 Currently in Queensland a deposit of $250 must be paid by the person nominated or by some person on his or her behalf. If the level of deposit is too high, it may discourage some candidates, especially those not supported by mainstream political parties. However, if the deposit is too low, it may encourage frivolous candidatures. In the other jurisdictions the deposit varies from $100 to $250. Recently New South Wales lowered the deposit from $500 to $250.

7.212 The variations in Australian jurisdictions in relation to where a candidate can nominate, the number of nominators required and the level of deposit are summarised in Table 7.4.

TABLE 7.4

SUMMARY OF NOMINATION PROVISIONS

Jurisdiction	Central Nomination	Number of Nominators	Nominators on District Roll	Deposit	Deposit Return
Commonwealth	Yes	6*	No	$250	4%
New South Wales	Yes	15*	Yes	$250	4%
Victoria	Yes	6*	No	$250	4%
Queensland	No	10	Yes	$250	1
Western Australia	No	Self	No	$100	10%
South Australia	No	2	Yes	Prescribed amount	4%
Tasmania	No	2	Yes	$200	2

* Can also be nominated by Registered Officers of Party
(1) 20% of winning candidate's primary vote
(2) 20% of quota.

7.213 All Australian Electoral Acts make provision for official advertising of electoral events and for procedures to be applied in the event of the death of a candidate or only one candidate nominating.

EVIDENCE AND ARGUMENTS

Place of Nomination

7.214 The place of nomination was not raised in either the Issues Paper No. 13, or in public submissions.

7.215 The argument for providing a place of nomination outside the electoral district is purely one of administrative convenience. For example in Cook, the City of Cairns, although not within the district is the centre for administration of far north Queensland.

7.216 Under the distribution completed by EARC under the Electoral Districts Act 1991, the district of Cook is now not within 10 kilometres of Cairns.

Central Nomination and Number of Nominators

7.217 In Chapter Four of this Report, it was recommended that a system of registration of political parties be instituted. One of the reasons for this recommendation was that there should be appropriate recognition of political parties in electoral administration.

7.218 On the issue of central nomination of candidates by parties, most submissions argued in favour of the proposal (eg. F Albietz (S17), M Passmore (S45), Mount Isa City Council (S69), ALP (S70), the National Party (S76) and the Liberal Party (S100)).

7.219 The Australian Democrats' (S62) submission summarised the issues in relation to central nomination:

> *"Our position on nomination procedures is that political parties should be able to nominate all their candidates centrally. This is more efficient both for the party and for electoral officials. If candidates are to nominate individually, they should be able to do so in their local electoral district. If candidates are nominated by a party, we believe they should be able to be nominated by the registered officer of the political party. Independent candidates could collect ten signatures from electors in their district as applies presently."*

7.220 However, ROs are responsible for the conduct of elections in each district, and some candidates, especially independents, may prefer to lodge their nominations personally in their own electoral district with the RO. Also, on or near nomination day, persons wishing to lodge a late nomination may not be able to arrange for delivery of the nomination form and deposit to the Electoral Commission.

7.221 R Wood (S74) stated:

> *"I believe that candidates should be required to nominate individually with the relevant Returning Officer as at present. Such action affords the candidates and the Returning Officer the opportunity to meet each other and discuss any matter of concern in the procedures. Returning Officers need to build a certain amount of rapport with candidates and to gain their confidence that they can be relied upon to perform their duties efficiently and unbiased."*

Nomination Deposits and Refunds

7.222 In relation to nomination deposits and refunds, the following points were made:

(a) *"We believe the current figure of $250 for a nomination deposit is appropriate. The criteria for refunding the deposit should definitely be changed. In order for it to be equitable between electorates, the deposit should be refunded if a set percentage of the total vote is achieved. The logical level to set would be 4% as this is currently the level for Federal elections."* (Australian Democrats (S62)).

(b) *" ... the nomination deposit should be $250 and should be indexed to inflation. The current level of 20% of the least successful Candidates number of votes may still be appropriate. Council, whilst not taking a strong position, feels that perhaps 25% should be considered in lieu of the 20%."* (Miriam Vale Shire Council (S52)).

(c) *"If public funding is introduced, it is submitted that the minimum deposit required for nomination should be $1,000, with deposits returned for all candidates receiving at least 4% of the formal vote."* (ALP (S70)).

(d) The National Party (S76) stated that the deposit should be $250, and that it should be returned if the candidate receives 5% of the valid first preference vote.

(e) The Liberal Party stated they disagreed with the ALP proposal of a $1000 nomination deposit, but did not specify any alternative amount.

Death of a Candidate

7.223 Section 57 of the Act specifies that if a candidate dies between noon two days prior to nomination day and polling day itself, the writ for that election is void, and a new writ for that district must be issued. The election for that district is subsequently conducted as a by-election at a later date. In all other jurisdictions, the writ is declared vacant and a new writ is issued only if the candidate dies at any time after noon on nomination day.

7.224 Three submissions addressed this matter:

(a) The National Party (S76) argued for retention of the current Queensland provision:

> *"The Party considers that the Queensland provision is preferable, since it would enable political parties and independent candidates to re-consider their position in relation to an electorate if a nominated candidate died prior to the time of nomination. A political party would need time to select another candidate, and independent candidates may, on the basis of the unavailability of someone who had nominated, wish either to withdraw from the contest or alternatively to nominate. Specifying a period of time shortly before the time of close of nominations as the date from which the death of a nominated candidate will result in the electoral process having to be started again enables that to occur."*

(b) M Passmore (S45) stated that the Commonwealth provisions should apply. The Mount Isa City Council (S69) made a similar recommendation.

7.225 Section 180(2) of the CE Act states:

> *"(2) If after the nominations for an election for the House of Representatives have been declared, and before polling day, any candidate dies, the election shall be deemed to have wholly failed."*

No Candidate Nominated

7.226 Currently the Act makes no provision for dealing with cases where no candidate is nominated for an election. Such cases are likely to be extremely rare. However, if they were to occur, difficulties could arise unless the electoral legislation makes a clear statement on the procedures to be followed in such cases.

7.227 The CE Act (s.181) provides that if no candidate is nominated an election has failed and a new writ must be issued for a supplementary election. The same provision exists in the electoral laws of some of the other States (eg. s.89 of the *Electoral Act 1907* (WA)).

Official Advertising and Public Notices

7.228 Sections 48 and 55 of the Act require an RO to publicly notify or publish certain matters. When an RO receives a writ or notification of a writ, the RO must forthwith give public notice of:

(a) the nomination day;

(b) the place of nomination;

(c) the day of polling;

(d) the several polling-booths;

(e) the date up to which additional polling-booths may be appointed or existing polling-booths may be cancelled;

(f) a convenient place, to be named by the RO, within the district or within 10 kilometres of the district by the nearest practicable route, as the place of nomination at which the RO will be present between the hours of 9 o'clock in the morning and 12 o'clock noon on nomination day to receive nomination papers; and

(g) any polling-booth appointed after the issue of the writ.

7.229 Once nominations have closed, and two or more candidates have nominated, s.55 requires the RO to publish the names of all candidates.

7.230 These provisions are currently met by the 89 ROs arranging 89 individual public notice advertisements in newspapers.

7.231 It is necessary to give official public notice of electoral events to ensure that the maximum number of electors are advised. In the absence of advertising, the media can be expected to report some of this information, but not all of it.

7.232 A number of submissions dealt with this matter:

(a) F Albietz (S17) suggested that advertising be centralised:

"I would suggest that it would be more efficient if a standard 'Notice of Poll' could be advertised by the Chief Returning Officer for all electoral districts rather than 89 individual Returning Officers arranging for a separate notice of poll to be publicly advertised. With one date of election applying to all 89 electoral districts, it would make sense for the same notice to be publicly given. The present form provides for location of polling places but I feel this could be omitted at this stage as this information must be provided with the subsequent 'Notice of Election' which is to be publicly given by each Returning Officer."

(b) The Boonah Shire Council (S68) and the Mount Isa City Council (S69) favoured the current provisions of ss.48 and 55 remaining.

(c) The National Party (S76) stated that nomination day, the place of nomination, the day of polling and names and locations of the several polling-booths needed to be advertised. Its submission further stated that determining who should lodge the advertisements was *" ... an administrative matter to be determined by the Electoral Commissioner."*

(d) The Institute of Municipal Management (S86) thought current arrangements satisfactory:

"The public statutory notices provided for in the current legislation would appear to be adequate with the main focus being upon nomination day and the events surrounding it, the publication of the field of candidates, the location of polling places, together with any additions or deletions that may occur between nomination day and polling day, the availability of postal voting and voting at the office and eventually the result of the election."

ANALYSIS OF EVIDENCE AND ARGUMENTS

Place of Nomination

7.233 The Commission does not consider that the current provision of allowing a place of nomination for a district to be outside the district should continue.

7.234 It does not seem too much to ask candidates who wish to be elected for a district, or the RO for the district to be at a certain place within the district on nomination day.

Central Nomination and Number of Nominators

7.235 There was little opposition in submissions to central nomination of candidates by political parties. A number of supporting arguments were offered. Adoption of the proposal will impose some additional administrative burden on the QEC but will also provide some advantages.

7.236 If central nomination was introduced, the QEC would need to advise all 89 ROs of the details of candidates nominated centrally for their district. Similarly the QEC would need to be advised by each RO of the details of candidates nominated locally. These processes could proceed as nominations are received. The QEC needs to have both telephone and fax communication with all ROs once election preparations begin. There would need to be a final communication after close of nominations to confirm final lists.

7.237 Although imposing some minor additional administrative burden, the Commission is of the opinion that this would not be excessive and is outweighed by the advantages for political parties. There would be very little additional burden on ROs.

7.238 Central nomination recognises the important role of political parties in the electoral process, and introduces further consistency between State and Commonwealth arrangements.

7.239 The Commission believes that central nomination should be introduced but any candidate who wishes to nominate locally with their RO should still be able to do so. It accepts that the administrative and convenience arguments for central nomination by parties are convincing enough for the facility to be introduced.

7.240 In relation to the required number of nominators, public comments were limited. The National Party (S76) stated that there should be 10 nominators who were electors in the district of nomination.

7.241 Traditionally the argument in favour of a number of nominators is that a prospective candidate needs to demonstrate some level of support, however small, within the electoral district. As stated by Rawlings (1988, p.117) in respect of elections to the House of Commons and the European Parliament:

> *"The nomination paper must be subscribed by two electors as proposer and seconder, and by eight other electors as assenting to the nomination, save in the case of European elections where nominees must provide 28 assentors in support. This requirement appears to be designed to show that the candidate has sufficient local support to merit inclusion on the ballot paper. It is a minimal qualification (which has not been changed since the Ballot Act 1872, when the electorate was much smaller) but in the case of parliamentary and European Assembly elections is supplemented by the requirement of a deposit."*

7.242 The Commission is of the view that six nominators represents the bare minimum of local support which is traditionally acceptable for nomination purposes.

Nomination Deposits and Refunds

7.243 There was universal support for a deposit, with the level of deposit recommended varying between $250 and $1000. The level of primary vote required by a candidate for the deposit to be returned varied in the submissions from 4% to 25%.

7.244 Table 7.4 showed that $250 and 4% are the most common levels of deposit and level of support required for refund respectively. The Commission believes that these are appropriate levels for the Queensland electoral system.

7.245 The Commission is of the view that the imposition of a nomination deposit is a useful device for reducing the number of frivolous candidatures even though it may not eliminate them. It is also cognisant of the argument that a deposit may deter some prospective candidates with limited funds. Accordingly the Commission has recommended the relatively modest sum of $250. The Commission considers that 4% of valid first preferences is the appropriate minimum level of support for return of deposit.

Death of a Candidate

7.246 There are several reasons why a definite date and time need to be specified in the legislation after which the election is voided in the event of the death of one of the candidates. Firstly, official electoral material such as printed ballot-papers must carry the correct names of all candidates. Secondly, once nominations close, postal and pre-poll ballots will be issued. Allowing subsequent nominations for that district would mean that some electors may have already voted for the deceased candidate, and others would have voted for a replacement candidate if one is allowed to nominate late.

7.247 Therefore the latest time that can be specified is the close of nominations. Before that time, any candidate can withdraw and new nominations can be received.

7.248 The Commission does not agree with the arguments put forward by the National Party. Firstly, if a candidate dies before close of nomination, the party's interests are preserved because another candidate can be nominated. Secondly, if a candidate dies after nominations have closed, the election is voided and another writ is issued, again preserving the interests of the party. Thirdly, a party may have to accept a situation in which its candidate fails to nominate in time.

7.249 It is conceivable but unlikely that a candidate could die so soon before the close of nominations that a new candidate from a political party could not be selected and nominated in time, but that would also be the case if the cut off time was two days before the close of nominations. All other Australian jurisdictions specify the close of nominations as the cut-off point for voiding an election if a candidate dies subsequently.

7.250 The Commission proposes that if a candidate dies after noon on nomination day, the time appointed for the close of nominations, the election for that district should be declared void. If the candidate dies prior to close of nomination then it is a matter for the parties to substitute another candidate in whatever time remains.

No Candidate Nominated

7.251 Such an event is unlikely to occur. A provision needs to exist however to prevent a legislative impasse if it did happen.

7.252 The provision in s.180(2) of the CE Act is appropriate, and also would cover the equally unlikely situation in which one or more candidate nominates only to be disqualified before polling-day.

> *"(2) An election shall be deemed to have wholly failed if no candidate is nominated or returned as elected."*

Official Advertising and Public Notices

7.253 There was general agreement in the submissions to continue advertising the events currently specified in the Act. The rationale which is accepted by the Commission is that the public needs to be fully informed concerning all stages of the electoral process.

7.254 There is also merit in the suggestion that some advertising can be authorised and arranged locally by the ROs. However making the QEC ultimately responsible for advertising gives it scope to make the most suitable arrangements to co-ordinate advertising throughout the State. Responsibilities for particular advertisements can then be delegated to ROs if necessary.

RECOMMENDATIONS

7.255 **The Commission recommends:**

(a) The place of nomination for an electoral district should be located within the district.

(b) Registered political parties should have the option of nominating their endorsed candidates directly with the Queensland Electoral Commission or with the Returning Officer for a district through the party's registered officer. Independent candidates should also be able to nominate either with the Queensland Electoral Commission or the Returning Officer.

(c) Nominations for candidates who are not endorsed by a registered political party must be supported by 6 electors resident in the electoral district of nomination.

(d) The nomination deposit should remain at $250. The deposit should be returned if the candidate receives 4% or more of the valid first preference votes for that district.

(e) If a candidate dies between noon on nomination day and polling day, the election for that district is void and a new writ for that district is to be issued.

(f) **The provisions for the withdrawal of a candidate, and automatically declaring an only candidate returned, are common in all Australian jurisdictions and should be retained.**

(g) **In the event of no candidate nominating, the election for that district is void and a new writ for that district is to be issued.**

(h) **The Queensland Electoral Commission is to be responsible for advertising details of nomination day, place of nomination, day of polling, names and locations of polling-booths, and the date up to which polling-booths may be appointed or existing booths cancelled.**

7.256 The provisions in the Draft Bill which implement these recommendations are Part 6 ss.84-85, 87-88, 90.

CHAPTER EIGHT

ORDINARY VOTING

Introduction

8.1 The culmination of any election campaign for electors is the exercise of their right to vote. Fundamental principles for free, regular and fair elections outlined in Chapter Two of this Report include: the protection of the right to vote; maximum opportunity to exercise the right to vote, and assistance and information for voters. Also, to maintain the legitimacy of the system, electoral malpractices must be discouraged, through effective procedural arrangements and by the prosecution and punishment of electoral offenders. A balance needs to be struck between provisions which encourage electors to exercise their right to vote and provisions which protect the system from malpractice.

8.2 In its *Report on Queensland Legislative Assembly Electoral System*, the Commission considered and made recommendations on the issues of compulsory voting and the mode of voting. The recommendations were that:

> *" ... voting in Queensland Legislative Assembly elections should also continue to be compulsory.* (p.49).
>
> and for
>
> *" ... the introduction of optional preferential voting for Queensland Legislative Assembly elections whereby a vote will be formal if it shows only a single preference, or it shows contingent votes for some or all of the candidates ranked in order of preference.* (p.59).

8.3 For the purposes of this Report, an "ordinary" vote is a vote cast by an elector on polling-day in the electoral district in which the elector is enrolled. An "extra-ordinary" vote refers to a vote made by an elector: on polling day outside the district in which the elector is enrolled; before polling day, either within or outside the district of enrolment; or by post.

8.4 Historically, approximately 85% of votes cast at an election are cast by ordinary voting procedures. This chapter examines the matters raised in Issues Paper No. 13 about ordinary voting. Extra-ordinary voting is addressed in Chapter Nine.

Matters for Consideration

8.5 In Issues Paper No. 13 the following matters were raised for public comment in relation to ordinary voting:

(a) Day/Hours of Voting;

(b) Voter Identification;

(c) Prescribed Questions;

(d) Issue of Ballot-Papers;

(e) Spoilt Ballot-Papers;

(f) Mode Of Voting;

(g) Assistance to Voters;

(h) How-To-Vote Cards;

(i) Canvassing at Polling-Booths; and

(j) Scrutineers.

Day/Hours of Voting

Issue 1 Should the day and hours of polling be retained as at present?

CURRENT SITUATION

8.6 Currently elections for the Queensland Legislative Assembly must be held on a Saturday (s.47), and voting takes place between the hours of 8 a.m. and 6 p.m. (s.69). Saturday is the prescribed polling-day in the electoral legislation of the Commonwealth and the other Australian States, except New South Wales. In New South Wales the legislation provides that " ... *the day appointed for polling-day shall be a public holiday, as from twelve o'clock, noon, of such day*", but a Saturday is always chosen for the election. The polling hours in all other States and the Commonwealth are also 8.00 am. to 6.00 pm.

EVIDENCE AND ARGUMENTS

8.7 Choice of the day and hours of voting has been based partly upon a desire to ensure that electors have the maximum opportunity to get to a polling-booth in order to cast an ordinary vote. In recent years the time for closing the poll has been brought forward from 8.00 pm to 6.00 pm because few votes were cast after 6.00 pm and an earlier closing permitted earlier provisional results. Special provisions exist in the current Act for electors who are precluded from attending a polling-booth on a Saturday during daylight hours by reason of their religious beliefs or membership of a religious order. They are able to take advantage of a Postal Vote (PV) (s.84) or a pre-poll vote in person (s.87).

8.8 All submissions dealing with the issue were in favour of retaining the current provisions for the day and hours of polling.

8.9 This is not a contentious issue. The Commission believes that Queensland should maintain the current provisions. The current provisions are known to the community and are also consistent with the Commonwealth Electoral Act.

RECOMMENDATION

8.10 **The Commission recommends that polling day should continue to be a Saturday and polling hours should continue to be 8.00 am - 6.00 pm.**

8.11 Provision has been included in the Draft Bill to effect this recommendation in Part 6 s.94.

Voter Identification

Issue 2 Should voters be required to provide some evidence of identity at the time of voting? If so, what form should such evidence take?

CURRENT SITUATION

8.12 There is no requirement in the Act that persons wishing to vote should provide documentary evidence of their identity. Indeed the Act does not stipulate how POs should ascertain whether persons presenting themselves at a booth to vote are actually the electors they claim to be. Documentary evidence is not required to identify electors in the other Australian States or in the Commonwealth.

8.13 If a PO is in any way doubtful of a person's entitlement to vote, a series of questions, detailed in s.73 of the Act and discussed in the next section, can be asked.

EVIDENCE AND ARGUMENTS

8.14 The majority of submissions dealing with this point were not in favour of voters being required to provide some evidence of identity at the time of voting. Most submissions were opposed to identification provisions, on the grounds that such a procedure would result in delays, or that abuses were minimal. For example:

(a) *"Identification is not necessary. Wilful multiple voting would not be avoided in this way. Undue delay and queuing at polling booths would result. The cost of an identification card system (which could be open to fraud) could not be justified."* (Boonah Shire Council (S68)).

(b) *"Unless an 'Australia Card' is introduced, this would be a waste of time in Council's opinion. People are still going vote more than once if they are that determined. Identification will merely stop most of the dead from voting. There are ways and means available to stop the dead from voting at far less cost than some identification card."* (Miriam Vale Shire Council (S52)).

(c) Other submissions which argued that formal identification procedures should not be introduced were: A Sandell (S61), R McKinnon (S56), Australian Democrats (S62), Mount Isa City Council (S69), Queensland Advocacy Inc. (S84), and the Brisbane City Council (S88) which stated:

"The Council does not support any provision that an elector produce a form of identification. The problems that could be experienced on the day of polling with electors arriving at the polling booth without identification but demanding a vote would only result in delays for every elector that attends a polling booth."

(d) *"A non-exclusive list of means of identification should be prescribed by the Act or by-laws, including driver's licence, medicare card, passport or credit card. The Presiding Officer should have a discretion to accept any other form of identification which he regards as sufficient."* (National Party (S76)).

(e) In a submission received from P Vale an RO (S32), it was proposed that the introduction of a "voting card" would eliminate s.45 voting (a category of extra-ordinary votes discussed in detail in the next chapter), simplify the process entailed in existing ordinary and absent votes, and reduce the time element in marking the official roll enabling earlier declaration of results. The voting procedure was explained as follows:

"The system is founded on a 'Voting Card' which would display the full name and address of the elector entitled to vote for any district as at closure of the rolls, the electoral district and division enrolled and the Roll Number for that particular elector.

This 'Voting Card' would be posted to each and every elector after closure of the rolls preceding any election and upon production on polling day would be exchanged for a ballot-paper whether in the form of an ordinary or absent vote. The Presiding Officer would not be required to check any official roll [enabling faster processing of electors] and, in the case of an absent vote, would not be required to attempt to ascertain the proper electorate of the elector as this would already be available to him/her from the 'Voting Card'."

ANALYSIS OF EVIDENCE AND ARGUMENTS

8.15 The issue of voter identification highlights the tension between the principle of protecting an elector's right to vote and maintaining the integrity of the electoral process by making malpractices more difficult.

8.16 As discussed in the election timetable section of Chapter Seven, there is minimal evidence of electoral malpractice in the form of double voting or personation. Those cases which are confirmed more usually arise from a misunderstanding of the electoral system than an attempt to abuse it. Therefore there appears to be little need for voter identification on the grounds that it would prevent malpractice.

8.17 A number of submissions highlighted the potential for significant delays in voting if an identification system was introduced. Delays would stem from two main causes. Firstly, processing each elector would take longer in order to check the identification provided. Secondly, if an elector could not produce satisfactory evidence appropriate procedures would need to be in place to take a provisional vote which would be accepted in the scrutiny only after checks had been conducted after polling-day. It is probable that the number of declaration votes would increase significantly as a result.

8.18 The delays above could be overcome by employing more officials on polling-day. Such an approach might make the conduct of elections unduly expensive, and it should be noted that POs handling declaration votes can generally issue fewer than those issuing ordinary votes.

8.19 Another undesirable effect of requiring positive identification for electors is that of alienating the electorate and further reducing participation in the electoral process. Many electors would be offended at having to establish their identity to discharge a duty imposed on them by the State, and POs would bear the brunt of this indignation. Also, significant numbers of electors may be disfranchised if they do not produce an "approved" form of identification.

8.20 The proposal by P Vale (S32) has merits and is practised, for example, by many European countries: however a number of shortfalls also exist similar to other voter identification systems. Firstly, the system would not guarantee that the person presenting the card is the elector named on the card unless it bears a photograph (as some countries require). Secondly, procedures would also need to exist for taking provisional votes if electors for any reason could not produce their card to the PO.

8.21 The Commission considers the disadvantages of identification systems such as increased delays, additional costs and alienation of the electorate far outweigh any claimed benefits such as a decrease in fraud. There is no particular evidence of systematic malpractice whereas historically stringent identification requirements and other restrictions have been abused in attempts to restrict the franchise and pursue party advantage.

RECOMMENDATION

8.22 **The Commission recommends that there should be no requirement for electors to produce personal identification at the time of voting.**

Prescribed Questions

Issue 3 Should the form of the prescribed questions be altered in any way? Should election officials be required to put the prescribed questions to all electors claiming a vote?

CURRENT SITUATION

8.23 Section 73 of the Act lists a number of questions which may be put to persons claiming a vote. Unlike the Commonwealth and other States with the exception of Tasmania, such questions are not mandatory. The questions at present are as follows:

> *"(1) Are you the same person whose name appears as (A.B., number ...) in the roll for this electoral district?*
>
> *(2) Have you already voted, either here or elsewhere, at the present election for this electoral district or any other electoral district?*
>
> *(3) Are you disqualified from voting for the reason that (here state the ground for this question)?"*

8.24 A person required to answer such questions must do so in writing and sign the declaration. If it appears to the PO upon putting the questions that the person is not entitled to vote, or if the person refuses to answer any of the questions or to sign a declaration, the person may be denied a vote (s.76).

8.25 These questions are designed to assist in ascertaining whether the person's claim to vote is in fact valid. Section 229 of the CE Act requires that the following questions be put to each person claiming a vote:

> *"(a) What is your full name?*
> *(b) Where do you live?*
> *(c) Have you voted before in this election? or Have you voted before in these elections?"*

EVIDENCE AND ARGUMENTS

8.26 The Commission received only a few submissions dealing with this point:

(a) The National Party (S76) recommended that the questions prescribed under s.229 of the CE Act quoted above should be put to voters.

(b) Submissions received from M Passmore (S45) and the Miriam Vale Shire Council (S52) were of the opinion that the present provisions should not be changed. The Miriam Vale Shire Council wrote that:

> *"Council can see no real purpose in changing the form of the prescribed questions. Council also does not see that any real purpose will be gained by requiring election officials to put the prescribed questions to all electors claiming a vote."*

ANALYSIS AND EVIDENCE OF ARGUMENTS

8.27 A necessary requirement for free, regular and fair elections is that persons requesting ballot-papers are entitled to vote at that election. The Commission does not believe there should be a provision in the new Act for electors to produce identification documents at elections for the reasons discussed in the previous section. However mechanisms should be retained in the new Act to allow Electoral Officers issuing ballot-papers to satisfy themselves as to the bona fides of those requesting ballot-papers.

8.28 The argument for questions being mandatory is that they act as a protection against attempts to corrupt the electoral process, eg. by double voting and personation. Given that electors are not required to produce documentary evidence of identification, mandatory questions reassure the issuing officer of the vote claimant's bona fides.

8.29 It can be argued that those intent on corrupting the election process would certainly not answer such questions truthfully, and thereby avoid detection. Asking the questions of every elector therefore achieves no practical purpose and only increases the time required to issue the ballot-paper, adding to delays. Some electors are annoyed by being questioned and especially by the question as to possible multiple voting.

8.30 The Commission accepts the need for provisions in the Act for officers issuing ballot-papers to be able to ask questions to establish the bona fides of electors. No evidence has been put to the Commission to suggest that the incidence of malpractice was higher in Queensland than in other jurisdictions where questions are mandatory. Therefore there seems no purpose in instituting a change.

RECOMMENDATION

8.31 **The Commission recommends that the provisions in the current Act relating to the questions which may be put to persons claiming a vote to determine their identity are adequate and should be retained in the new legislation.**

8.32 The provisions have been incorporated into the Draft Bill in Part 6 s.111.

Issue of Ballot-Papers

Issue 4 Should ballot-papers be signed or initialled by the issuing officer before being delivered to electors?

8.33 A further protection against electoral malpractice are provisions designed to ensure that only genuine ballot-papers are admitted to the count.

CURRENT SITUATION

8.34 The legislation of the other States and the Commonwealth requires that the PO or poll clerk must sign or initial the back of the ballot-paper prior to issuing it to an elector. This is intended to prevent introduction of forged, stolen or otherwise unlawful ballot-papers to the scrutiny. There is no such provision in the Queensland legislation at present, although it did exist in earlier legislation.

8.35 Although officials do not have to initial ballot-papers in Queensland, the current Act does have provision in s.68 to prevent the introduction of bogus ballot-papers, such as opacity, colour and numbering of butts of ballot-papers. In Chapter Seven recommendations were made that certain of these provisions continue.

EVIDENCE AND ARGUMENTS

8.36 It would appear that the requirement to initial ballot-papers in all other Australian jurisdictions derives from British legislation dating back to 1872. As recorded by Rawlings (1988; p.215):

> *"The new legislation* [Ballot Act 1872 (UK)] *established instead a set of rules which in substance continue to determine voting procedure today.*
>
> *Voters should be presented with ballot-papers which exhibit an official mark. This is to prevent the introduction into the ballot-box of additional forged papers, and it has recently been decided that this safeguard should be retained, notwithstanding the difficulties which ensue when the mark is inadvertently omitted. Furthermore, voters are instructed to exhibit the official mark to the Presiding Officer before placing their completed papers in the ballot-box. This requirement, which dates from the 1872 Act, is intended to defeat the so-called 'Tasmanian Dodge'. As O'Leary explains:*
>
> *'The 'Tasmanian Dodge' worked as follows: A voter smuggled in a piece of paper of the same size as a ballot-paper, put it into the box, brought the actual ballot out of the booth and gave it to an agent, who marked it as he pleased and gave it to another voter (for a consideration). The second voter would smuggle out another ballot, and so on.' (O'Leary (1961), p.66 n.1).*
>
> *By stipulating that the voter exhibit the official mark on the paper placed in the box, it was intended to prevent the initial deception."*

8.37 The majority of submissions received by the Commission on this point were not in favour of ballot-papers being signed or initialled by the issuing officer.

(a) *"Whilst the initials of the issuing officer being placed on the back of a ballot paper may provide some small added precaution, the question must be asked as to whether the extra time and effort in doing this and in checking to ensure that it has been done is going to be of benefit to the public at large, bearing in mind that any paper not bearing such initials would have to be declared informal. Council acknowledges that whilst there would be some added precaution, it cannot accept that the defranchising of electors as a result of oversight of polling officials (who are human beings) warrants such a requirement."* (Miriam Vale Shire Council (S52)).

(b) *"The likelihood of ballot-papers not being signed (inadvertently) by an official is real and the likelihood of the paper being rejected at the scrutiny outweighs the likelihood of forged ballot-papers being introduced."* (Boonah Shire Council (S68)).

8.38 Judicial interpretation of the formality of votes tends towards the view that if a ballot-paper is informal only because of a mistake or omission by an official, then that ballot-paper should be admitted to scrutiny. (*Nightingale v Alison* (1984) 2 Qd.R 214). Therefore the lack of initials would not on its own invalidate a vote, making such a requirement of little practical value.

RECOMMENDATION

8.39 **The Commission recommends that there should not be a requirement for officials to initial or sign ballot-papers when they are issued.**

Spoilt Ballot-Papers

Issue 5 Should voters be required to make a written declaration when seeking a new ballot-paper in substitution for a spoilt one?

8.40 Occasionally electors make mistakes when completing their ballot-papers. Appropriate procedures therefore need to be available to enable electors who have made a mistake to receive a fresh ballot-paper.

CURRENT SITUATION

8.41 Section 80 of the Act provides for the issue of a new ballot-paper in substitution for a spoilt one, and requires that electors sign a declaration before the PO that the original ballot-paper has been spoilt.

> *"(2) Before being handed a new ballot-paper, the elector shall duly complete and sign a declaration in the prescribed form, endorsed upon an envelope, before the presiding officer that the original ballot-paper has been spoilt by accident or mistake, as the case may be, and shall give such envelope endorsed with the prescribed declaration to the Presiding Officer with the spoilt ballot-paper.*
>
> *(3) Before handing the new ballot-paper to the elector, the presiding officer shall place the spoilt-ballot paper in the envelope which is endorsed with the prescribed declaration, fasten the envelope and set it aside for separate custody."*

8.42 In the Commonwealth and in other States a voter's declaration is not required to secure a new ballot-paper. In contrast to the Queensland provision, the *Electoral Act 1985* (SA) simply states:

> *"75. If a person to whom voting papers have been issued satisfies the officer by whom they were issued, or some other officer with authority to issue voting papers, that the voting papers have been inadvertently spoiled, he shall, on delivering up the spoiled voting papers to the officer, be entitled to fresh voting papers."*

8.43 In South Australia, a voter who claims to have spoilt a ballot-paper and requests another, must be issued with a new ballot-paper upon bringing back the spoilt ballot-paper to the Issuing Officer. The Issuing Officer then cancels the spoilt ballot by writing the word "SPOILT" on the front. The spoilt ballot is put aside until voting ceases at 6.00 pm when it is handed to the Issuing Officer in charge of the booth who places all such ballot-papers in an envelope and the envelope is then forwarded to the RO.

EVIDENCE AND ARGUMENTS

8.44 The main argument against requiring a declaration from an elector who has spoilt a ballot-paper is that the process is unnecessarily complex, time-consuming and embarrassing. Electors who have spoilt a paper may be put off by the requirements for a declaration and instead place the spoilt paper in the ballot-box, and thus waste their vote.

8.45 On the other hand, it might be thought that the requirement to complete the declaration adds extra protection to the integrity of the election process by securing the fullest documentation for any unusual activity.

8.46 The majority of submissions received by the Commission dealing with this point were not in favour of voters being required to make a written declaration for the reasons outlined above.

8.47 The arguments were summarised by the Institute of Municipal Management (S86):

> *"The current procedures requiring a declaration to be completed in order to obtain a new ballot paper are completely redundant. It would seem to serve no good purpose for this paper work to be required. Surely the return of the spoilt paper to be securely set aside by the Presiding Officer and accounted for appropriately is sufficient control over the reconciliation of ballot-papers."*

8.48 The question of secrecy also needs to be considered. Section 80(3) of the Act protects secrecy as the old ballot-paper is sealed into an envelope and set aside "for separate custody". This is done in the presence of the voter and before the new paper is issues.

8.49 Envelopes so set aside are not opened at the scrutiny.

ANALYSIS OF EVIDENCE AND ARGUMENTS

8.50 There appears to be little justification for a formal declaration in the case of spoilt ballot-papers. It is not required in any other Australian jurisdiction, and there is no evidence to suggest that there are any adverse consequences in other States resulting from the lack of formal declarations.

RECOMMENDATIONS

8.51 **The Commission recommends that:**

(a) A voter's declaration should not be required where a voter has spoilt a ballot-paper and requests a new one. The provisions of the *Electoral Act 1985* (SA), which require an Issuing Officer to cancel a spoilt ballot-paper by writing the word "spoilt" on the front and to replace the ballot-paper with a new ballot-paper should be adopted in Queensland. Statistics as to the numbers of spoilt ballot-papers in each electoral district should be included in the official returns.

(b) The current direction to preserve secrecy (by setting aside the spoilt paper in a sealed envelope for separate custody), should be retained.

Mode of Voting

Issue 6 What should be the grounds for establishing the validity of a vote in an optional preferential system?

CURRENT SITUATION

8.52 Compulsory preferential voting has been used in Queensland Legislative Assembly elections since 1962.

8.53 Section 79 of the Act requires that electors mark their ballot-papers by placing the number '1' against the name of the candidate of their first choice, and give contingent votes for all the remaining candidates in order of their preference by writing the consecutive numbers 2, 3, 4 etc. Section 102 provides for the rejection of ballot-papers at the count if preferences are not marked against all candidates or against all but one (since the voter's intention would in this case be clear).

8.54 EARC in its *Report on Queensland Legislative Assembly Electoral System* recommended the introduction of OPV whereby a vote would be formal if it shows only a single preference or if it shows a first preference and contingent votes for some or all of the candidates ranked in order of preference. This recommendation has since been endorsed by the Parliamentary Committee and by Resolution of the House on 11 April 1991.

8.55 The introduction of OPV necessitates a re-definition of the grounds for acceptance and rejection of ballot-papers. (The issues which arise in the counting of ballot-papers under this system, and those to do with the general determinants of formality and informality, are dealt with in Chapter Ten of this Report).

8.56 New South Wales is the only other Australian jurisdiction which currently has OPV. Section 122A of the PE & E Act states:

> *122A. (1) Notwithstanding anything to the contrary in this Act, a ballot-paper shall not, by reason of any marking thereon that is not authorised or required by this Act, be treated as informal, or be rejected or disallowed at the scrutiny, if, in the opinion of the returning officer, the voter's intention is clearly indicated on the ballot-paper.*
>
> *(2) Notwithstanding anything to the contrary in this Act, a ballot-paper on which the voter has recorded his vote by placing in one square the number "1" shall not be treated as informal by reason only that -*
>
> *(a) the same preference (other than his first preference) has been recorded on the ballot-paper for more than 1 candidate; or*
>
> *(b) there is a break in the order of preferences recorded on the ballot-paper.*
>
> *...*
>
> ***(4) For the purposes of determining the voter's intention under subsection (1), a tick or a cross placed in a square on a ballot-paper is not sufficient by itself to indicate that the voter intends to give a first preference vote to the candidate concerned.***
>
> *(5) Notwithstanding anything to the contrary in this Act, a ballot-paper shall not be informal by reason only that the voter has recorded a vote by placing the number '1' in a square and placing a cross in (or a line through) all or some of the other squares on the ballot-paper, but the ballot-paper shall be treated as if the marks in those other squares did not appear on the ballot-paper."* (emphasis added)

8.57 South Australia, while not having OPV, allows ticks and crosses as valid expressions of first preference. Section 76 of the *Electoral Act 1985* (SA) states:

> *"(2) In a House of Assembly election, a voter shall mark his vote on his ballot paper by placing the number 1 in the square opposite the name of the candidate for whom he votes as his first preference, and consecutive numbers in the squares opposite the names of the remaining candidates so as to indicate the order of his preference for all candidates.*
>
> *(3) For the purposes of this Act, where a voter places a tick or a cross on a ballot paper, the tick or cross shall be deemed equivalent to the number 1."*

8.58 The Acts of all other Australian jurisdictions which have compulsory preferential voting, specify that all preferences are to be expressed using numbers. Ticks and crosses generally do not constitute valid marks in lower house elections.

EVIDENCE AND ARGUMENTS

8.59 There are good reasons why the legislation needs to clearly and unambiguously state what constitutes a valid vote. Otherwise the situation would be that 89 ROs would be making their own determination of what constitutes a valid vote, leading to inconsistencies across the State.

8.60 A number of submissions commented on this matter.

(a) *"The provisions contained in section 122A of the Parliamentary Electorates and Elections Act 1912 (New South Wales) should apply."* (National Party (S76)).

(b) *"As we have a system of optional preferential voting, we believe that the eligibility requirements as outlined in 8.15 of the Issues Paper* [ie. S.122A of the New South Wales Act] *would be acceptable. We have reservations about accepting a tick as a valid vote, and completely oppose the acceptance of a single cross as a valid vote. Given that a cross is often associated with a negative opinion, a single cross is just as likely to be an indication that the candidate is the voter's least favoured rather than the most favoured."* (Australian Democrats (S62)).

(c) The Miriam Vale Shire Council (S52) also argued for the New South Wales model.

(d) An alternative view was expressed by the ALP (S70):

"Unnecessary informal votes act to limit voters rights. The electoral system should provide a uniform method of voting which is consistently applied in all elections and referenda. The only way consistency can be achieved is through the use of numbers, because of the need to provide for preferences.

While the Act can provide for the use of numbers, it should not specifically bar ticks and crosses. The requirement on returning officers should be to give effect to a voter's intention up to the point at which a voter's intention can be reasonably ascertained. For example a tick followed by the numbers 2, 3 and 4 would normally show a clear intention. With optional preferences a vote containing the numbers 1, 2, 3, 3, 4 and 5 should be valid up to and including the second preference. The Act must reflect the Australia-wide tradition in electoral administration, namely that every attempt is made to find in favour of the elector's expressed intention, and to avoid a single-minded bureaucratic approach.

The traditions in electoral administration, while often not pleasing to partisan scrutineers, is fully consistent with the approach taken by the Courts, namely to find in favour of the elector exercising the franchise to the extent that conclusion can be reasonably sustained."

(e) *"Optional preferential voting should be brought in, with a (1) or a tick or a cross or any other clear indication of first preference to be acceptable as a valid vote, whether or not second and further preferences are shown."* (N Bird (S16)).

(f) The DJCS (S77) advocated that the legislation should require numbers, but that administrative arrangements be made to allow ticks and crosses:

"The only way in which uniformity can be achieved is by the use of numbers. Once uniformity is achieved, any publicity prior to any election day as to the correct method of voting can produce a cumulative effect. It will not be contradictory to publicity prior to other election days.

It is submitted that 'crosses' and 'ticks' should not be explicitly barred by legislation. Instead the legislation would require numbers, allowing for the proposed system of optional preferences, and instruct returning officers that, in determining the 'formality' of a vote, his duty is to give effect to the voter intention to the extent that intention can be reasonably ascertained.

The determination of the voter's intention should be on the 'balance of probabilities', and not 'beyond all reasonable doubt'. In any event, when a dispute on the validity of votes goes to a Court of Disputed Returns, the legal precedent is to hedge on the side of a vote's formality, rather than declare all votes informal which are not completed strictly 'according to Hoyle'.

The tradition of electoral authorities throughout Australia, is, and should continue to be, to give effect to a voter's intention even to the extent of placing a favourable interpretation on the ballot paper markings. For example, a tick instead of a number 1 should not produce informality. On the other hand, a cross followed by numbers would still create a problem."

8.61 Section 122A of the PE & E Act was amended shortly before the last New South Wales election. The recent amendment deleted Subsection (3) and rewrote Subsection (4) by largely removing the acceptance of a tick or a cross. The earlier provisions for OPV in s.122A of the New South Wales Act had been:

"122A. (1) Notwithstanding anything to the contrary in this Act, a ballot-paper shall not, by reason of any marking thereon that is not authorised or required by this Act, be treated as informal, or be rejected or disallowed at the scrutiny, if, in the opinion of the returning officer, the voter's intention is clearly indicated on the ballot-paper.

(2) Notwithstanding anything to the contrary in this Act, a ballot-paper on which the voter has recorded his vote by placing in one square the number '1' shall not be treated as informal by reason only that -

(a) the same preference (other than his first preference) has been recorded on the ballot-paper for more than 1 candidate; or

(b) there is a break in the order of preferences recorded on the ballot-paper.

(3) Notwithstanding anything to the contrary in this Act, a ballot-paper shall not be informal by reason only of the fact that it is not duly signed or initialled by the returning officer or deputy, or it is not duly signed by the postal voting officer, if it bears such mark as is prescribed as an official mark.

(4) Notwithstanding anything to the contrary in this Act, a ballot-paper shall not be informal by reason only that the voter has recorded his vote by placing a cross or a tick in a square and not placing any mark or writing in any other square, but the ballot-paper shall be treated as if the cross or tick were the number '1'.

(5) Notwithstanding anything to the contrary in this Act, a ballot-paper shall not be informal by reason only that the voter has recorded a vote by placing the number '1' or a tick in a square and placing a cross in (or a line through) all or some of the other squares on the ballot-paper, but the ballot-paper shall be treated as if the marks in those other squares did not appear on the ballot-paper and any such tick were the number 1." [Emphasis added].

8.62 Introducing the NSW legislation amendments, the Honourable Tim Moore, Minister for Environment, stated in part:

"A further provision has been included in the bill which clarifies the position in relation to incorrectly marked ballot papers. Currently where a voter uses a tick or a cross on a ballot paper it is up to the returning officer to decide whether or not the vote is formal. The new provision will make it clear that a tick or a cross, by itself, will not be sufficient to constitute a formal vote." (NSW Legislative Assembly Debates, 28 November 1990, p.10186.)

8.63 The amendments to the New South Wales Act have been extensively criticised. Following the recent general election in that State there were allegations by the Labor opposition that a substantial proportion of its supporters' votes were ruled informal because ticks and crosses were no longer accepted.

8.64 Several Labor Opposition members spoke strongly against the amendment arguing that not allowing ticks and crosses would disfranchise a significant number of electors, particularly those from ethnic backgrounds and those with literacy handicaps.

8.65 B Carr, the Opposition leader, stated:

> *"A simple fact of life is that in our multicultural society some voters are unfamiliar with the electoral system. Despite all worthy attempts to familiarise them with our complex electoral laws -- they are complex and there is a gap between State and Federal electoral requirements -- they respond to that complexity by registering their preference by use of a tick or a cross. For no reason other than a spiteful attempt to harm the Labor side of politics by disenfranchising voters from other cultures, this Government seeks to change that method of casting a vote. Under our electoral system of optional preference voting that system ought to be a valid indication of a voting preference, to mark a paper with a single cross or tick. That is a commonsense proposition.*
>
> *It is well known that many countries accept a cross as the accepted method of showing one's voting preference. This measure will discriminate against people from ethnic backgrounds, which is truly repugnant in our multicultural society. Under a system of optional preferential voting there is simply no justification for this amendment. The Opposition will move amendments to this clause and other clauses in Committee. The Government has been caught out badly on this. The reaction in the community to one of the provisions of the bill has already provoked the Government to back down. The Government should take public responses into account and review what are truly repellent features of this legislation and respond constructively to the Opposition's amendments."* (NSW Legislative Assembly Debates, 28 November 1990, pp.11037-8).

8.66 A more light-hearted approach was taken by Mr Knight, the ALP Member for Campbelltown:

> *"This means that only those people who can place a number 1 in a box will be entitled to vote. We have often seen members of the National Party displaying a fetish for tick eradication, but this is making tick eradication an art form by including it in the Electoral Act. This certainly disadvantages foreign-born people, the semi-literate and those people who have difficulties with forms. Despite what the Minister might smugly think, this provision will not disproportionately disadvantage Labour Party voters. We win Federal elections under exactly that system. We do not have a problem winning when the ticks and crosses are not counted. What we have a problem with is the fact that many citizens are disfranchised, that the vote which they value dearly and which they make an effort to cast does not count."* (NSW Legislative Assembly Debates, 28 November 1990, p.11045).

8.67 In reply, Mr Moore's argument for the elimination of ticks and crosses was basically that there was a need to ensure similar voting procedures for Commonwealth and State elections.

> *"I ask the honourable member for Ashfield to tell me what would happen if one of his constituents at Malvern Hill went to the local booth in a Federal election and marked the ballot paper with a tick or a cross. What would happen to that ballot paper? It would go down the tube; it would be out the door. If a tick or a cross is used on a federal ballot paper, that ballot paper is out; it is classed as informal. Ticks and crosses without numbers are banned because they do not express all preferences. We are saying to people that the way in which they mark their ballot papers, the symbols or the indicia that they use should be consistent between the two systems of voting. It is the party of the honourable member for Ashfield which feels that there is some sort of short-term political gain in introducing optional preferential voting.*
>
> *A Labor Government introduced optional preferential voting. This Government has been pleased to believe that that is an acceptable form of voting which is now accepted by the people in this State. We do not believe that there is one way of making a valid mark on a ballot paper that will enable that paper to be counted in a vote for this Chamber but which will not allow that paper to be counted in a vote for the House of Representatives. It is the same polling booth, the same subdivision, but for a different tier of government."*

8.68 Evidence that the amendments caused confusion among voters is provided in the following two extracts from the *Sydney Morning Herald* of 21 May and 24 May respectively:

> *"With three ballot papers to be coped with on Saturday - for the Assembly, the Legislative Council, and a referendum on the size of the Legislative Council - confusion could arise because a tick will suffice for the Legislative Council and the referendum."*
>
> *"But while a tick is required for voting on the referendum ballot paper, only numbers should be used for both the Legislative Council and Legislative Assembly ballot papers."*

8.69 Critical comments on the changes to the mode of voting were also reported in the article of 21 May 1991.

> *"The change has been labelled a trick by Malcolm Mackerras, an electoral analyst. Confusion caused by the different tick/number rules was bound to increase the informal vote significantly, particularly in Labor-held seats where the informal vote invariably was higher, Mr Mackerras warned."*

8.70 At the 1991 NSW election, the informal vote in the Legislative Assembly rose steeply to 9.21%. A summary of the informal vote in the last two NSW elections is presented in Table 8.1 below.

TABLE 8.1

INFORMAL VOTING
1988 AND 1991 NEW SOUTH WALES LEGISLATIVE ASSEMBLY ELECTIONS

PARTY	Number of Districts		Informal	
	1988	1991	1988	1991
Australian Labor Party	43	47	4.16%	11.32%
Liberal Party of Australia	39	32	2.89%	7.96%
National Party of Australia	20	17	2.24%	6.15%
Independent	7	3	3.13%	6.35%
Total State	**109**	**99**	**3.28%**	**9.21%**

8.71 The proportion of informal votes was especially high in the electoral districts in which only two candidates stood. In Bankstown the informal vote as a percentage of all votes cast was 23.5%, in Burrinjuck 13.9% and in Londonderry 20.2%, whereas in the contiguous electoral districts with more candidates and therefore, usually, a likelihood of a higher informal vote, the average informal votes were 14.4%, 8.9% and 8.3% respectively, which points strongly to the greater use of ticks or crosses when only two candidates are offered.

ANALYSIS OF EVIDENCE AND ARGUMENTS

8.72 The important principle to be considered here is the maximisation of the formal vote count, particularly in circumstances where a change in voting methods is taking place. Ballot-papers should be admitted to the count where the voter's intentions are clear. There is also the principle of maintaining compatibility among ballot-marking methods for Federal, State and Local Authority elections as far as practicable. A further requirement is that scrutiny standards must be defined tightly enough so that all ROs will admit the same votes - the use of individual discretion must be minimised.

8.73 It is difficult to make predictions for Queensland from the NSW data on informality for the 1991 elections for a number of reasons. Several factors were significant at the New South Wales election including the concurrent Legislative Council election and a referendum with different voting methods, and a changed voting method disallowing ticks and crosses for the Legislative Assembly.

8.74 In order to make an accurate assessment of the NSW situation, it would be necessary to examine all the ballot-papers ruled informal because of ticks and crosses; allocating these to the appropriate candidates and then adding these votes to the candidates' primary vote totals. Following the allocation of these votes, it would then be necessary to ascertain which if any districts would have been won by a different party. If after this process a party would have won an increased number of districts then it could be genuinely argued that that party had been disadvantaged by the change. The AEC made such calculations following the unexpected increase in informal votes for the House of Representatives in 1984 and found that no outcome would have been different.

8.75 It would appear from Table 8.1 that the ALP may have been disproportionately adversely affected by the voting changes in NSW. As the informal vote was significantly higher and rose proportionately more in ALP-won districts, it could be argued that the majority of votes declared informal because of ticks and crosses would have favoured the ALP. If this were so, it could have been a significant factor in those districts won by a narrow margin by either the Liberal or National Parties. In the absence of a survey of the informal ballot-papers it is only possible to speculate.

8.76 The Commission does not accept the argument that a cross is necessarily a negative statement about a candidate. As stated in the NSW Parliamentary Debates, ticks and crosses are accepted in many non-preferential electoral systems. Ticks and crosses are also accepted on many forms in both the public and private sector. The AEC studies of informal voting for the House of Representatives suggest that in contests involving only two candidates there is a special propensity to use ticks and crosses, rather than numbers, on ballot-papers. The recent New South Wales results further support this belief.

8.77 Some arguments against accepting ticks and crosses are based on the premise that by accepting them the OPV system will tend towards the first past the post voting system. However, under OPV a vote is defined as valid if the elector expresses only a first preference and so that consequence is already there - each elector has a choice of using only a first preference. Accordingly a single tick or a single cross should be acceptable as a valid indication of a first preference.

8.78 From the above discussions the options available are:

(a) Adopt current New South Wales provisions. (Allow a "1" only).

(b) Adopt previous New South Wales provisions. (Allow ticks and crosses on their own)

(c) Make a more general provision than (b) by allowing a tick to be read as a number 1 if it is marked on a ballot-paper with other preferences, and that vote is valid in all other aspects, eg. tick, 2, 3.

(d) As per (c), but allow a cross also as long as no tick is also present.

(e) Allow the number "1", or a tick or a cross to be a valid indication of first preference in all cases.

(f) As per (d), but also allow other clear expressions of preference, eg. a candidate's name circled, or all but one candidates' names crossed out.

8.79 As previously stated in the introduction to this section, a balance needs to be struck between accepting the maximum number of votes for scrutiny in Queensland and maintaining as much similarity of voting methods at the State and Commonwealth level as possible.

8.80 One result of the controversy over the change of voting method and the subsequent close election result in New South Wales was a series of challenges in the Courts over the validity of the amendments and also the administration of the election. It could therefore be argued that the legitimacy of and public confidence in the electoral system in that State have been adversely affected.

8.81 Options (a) - (d) above are seen as too restrictive, in that some electors' votes, even where their first preference is clear, would not be admitted to the scrutiny. Option (e) appears to achieve a balance between the conflicting principles stated above, because it would maximise the number of votes admitted to the scrutiny without introducing too many variations of symbols and marks which are acceptable.

8.82 Acceptance of this option would make the provisions for Legislative Assembly ballot marking different from House of Representatives ballot marking. However, the principle of maximising the number of votes admitted to the scrutiny when the elector's intention is clear is more fundamentally important than the principle of compatability of the systems, especially since optional preferential voting anyway is quite a different system to the compulsory preferential voting system which operates at the Commonwealth level.

8.83 The following are examples of marks on ballot-papers which would be accepted as formal votes under this proposal:

(a) a tick or a cross or a "1" alone;

(b) a "1" (or a tick or a cross), 2, ... ;

(c) a "1" (or a tick or a cross), 2, 2, ... (exhausted after first preference); (NB. "1" or tick or cross followed by 2, 3, 3 ... would exhaust after the second preference, etc.);

(d) a "1" (or a tick or a cross), 3, 4, ... (exhausted after first preference);

8.84 Examples of informal votes would include:

(a) any combinations of ticks, crosses and "1", with or without other numerals;

(b) any combinations of ticks and crosses, with or without numerals;

(c) any ballot-paper which did not include either a "1", a tick or a cross to indicate a first preference.

8.85 No other marks (eg. circles around candidates' names) should be accepted as formal because this would introduce too much discretion into the process of determining formality. The other determinants of formality (eg. names and initials on ballot-papers) are dealt with in Chapter Ten.

RECOMMENDATIONS

8.86 **The Commission recommends that:**

(a) A tick or a cross on the ballot-paper should be accepted as equivalent to the number "1" for the purposes of the Electoral Act.

(b) A break in the numerical sequence of preferences or a duplication of a number (except the first preference) should not invalidate a vote.

(c) Any combination of "1", a tick or a cross should invalidate a vote.

8.87 Provisions concerning the validity of a vote are contained in the Draft Bill in Part 6 s.112.

Assistance to Voters

Issue 7 Should the current provisions regarding assistance in ordinary voting to certain incapacitated voters be altered in any way? If so, in what respects? In particular, should a person assisting an incapacitated voter necessarily be a relative of the voter?

8.88 A small proportion of electors are unable to complete ballot-papers without assistance. This section addresses the problem and discusses alternatives that serve to overcome it.

CURRENT SITUATION

8.89 Section 79 of the Act allows for assistance to voters who are blind, illiterate, whose sight is impaired, or who are physically incapacitated that they are unable to vote without help. The Act entitles such persons to appoint a relative to assist them and the PO must be satisfied that they are an immediate relative.

8.90 If the elector does not appoint another such person, the PO, in company with a poll clerk or another PO, marks the ballot-paper as required by the elector and deposits it in the ballot-box. Section 79 also provides that, if an incapacitated elector makes the request, the PO must state " ... *in accurate terms without comment or further elaboration* ... " the names of the candidates in the order they appear on the ballot-paper and the political parties which they represent. Section 86 allows for assistance of the type described above to incapacitated electors who are casting an extra-ordinary vote.

8.91 Assistance to incapacitated voters in Local Government elections is regulated by Rules 47(2) (for ordinary voting), 30A (for claim voting) and 62A(6) (for pre-poll office voting). In the case of Rule 47(2), if the voter is assisted by a PO, a further witness must be present, ie. a scrutineer, a poll clerk or a person appointed by the voter.

8.92 There is no stipulation in the legislation of the other States or the Commonwealth that the person appointed by the elector to assist in the voting should be an immediate relative; neither is there such a stipulation relevant to Queensland Local Authority elections. In Western Australia the person assisting the voter must be a PO or other polling-booth official.

8.93 Section 79 of the Act authorises the person assisting to " ... *enter an unoccupied compartment with the elector and mark, fold and deposit the elector's ballot-paper for him; ...* "

8.94 The CE Act (s.234) allows a similar level of assistance.

8.95 The *Electoral Act 1985* (SA) (s.80(3)) also allows the assistant to act as an interpreter and explain the ballot-paper.

> *"(3) The assistant may assist the voter in any of the following ways:*
>
> *(a) he may act as an interpreter;*
>
> *(b) he may explain the ballot-paper, and the voter's obligations under this Act in relation to the marking of the ballot-paper, to the voter;*
>
> *(c) he may assist the voter to mark the ballot-paper, or may himself mark the ballot-paper at the voter's direction;*
>
> *(d) he may fold and deposit the ballot-paper in the ballot-box."*

EVIDENCE AND ARGUMENTS

8.96 Most submissions received by the Commission on this point were in favour of the current provisions being amended to include any person nominated by the voter to assist them in casting their vote.

(a) *"QAI with one exception, supports the current procedure outlined in Section 79 of the Act. The one aspect of that procedure which we do question is the requirement in Section 79(3)(c)(i) that the person authorised to accompany an elector be "an immediate relative of the elector".*

We believe that a person covered by the provisions in Section 79(3) should be able to appoint any person to assist them. Often an individual will not wish to have a relative present. Like many voters, they may wish to keep their voting decision private from their family. While Section 79(3)(i) allows the PO to assist the elector if the elector 'does not appoint another person', unless that is clearly pointed out to the elector, they will not know of that option. Alternatively, even if they are aware of that choice, they may be reluctant to tell an immediate relative to stay outside.

We see no reason why an elector cannot choose whoever they wish. There may need to be requirements that they be people of eighteen years or over. We note that the 'immediate relative' has no age restriction. If there was any doubt as to the voter actually choosing the person who attends at the polling booth with them, the provision under section 79(3)(c)(ii) could be interpreted to allow the presiding officer also to attend in the voting compartment." (Queensland Advocacy Inc. (S84)).

(b) *"The present requirement that only a relative can enter the voting compartment with certain incapacitated voters should be altered. It is not always possible for incapacitated voters to be accompanied by a relative. Often the person accompanying the incapacitated voter will be a friend or a neighbour. The legislation should be amended to allow any person who the incapacitated voter may choose to accompany them into the voting compartment."* (Brisbane City Council (S88)).

ANALYSIS OF EVIDENCE AND ARGUMENTS

8.97 This matter is relatively straightforward. The principle of protecting the elector's right to vote suggests that disabled electors should be able to nominate any person of their own choice to assist them, and there seems to be no justification for the present restriction that the person assisting must be a close relative.

8.98 In cases where the elector nominates the PO or a poll clerk, there does not appear to be any compelling reason to impose the presence of an additional witness - as in the case of Rule 47(2) of the Third Schedule to the Local Government Act.

8.99 The current South Australian provisions allow a more effective means of assistance than currently exists in the Act, and the Commission proposes that a similar system should be adopted in Queensland.

RECOMMENDATIONS

8.100 **The Commission recommends that:**

(a) Any electors who are unable to vote without assistance should be able to nominate a person of their choice to assist them to exercise their right to vote.

(b) The assistant may assist the voter in any of the following ways:

(i) they may act as an interpreter;

(ii) they may explain the ballot-paper, and the voter's obligations in relation to the marking of the ballot-paper, to the voter;

(iii) they may assist the voter to mark the ballot-paper, or may mark the ballot-paper themselves at the voter's direction; and

(iv) they may fold and deposit the ballot-paper in the ballot-box.

8.101 Provisions for these recommendations are included in Part 6 s.103 of the Draft Bill.

How-To-Vote Cards

Issue 8 Should the current provisions regarding how-to-vote-cards be altered?

8.102 This issue drew one of the most extensive responses in the public submissions. On the one hand there are arguments about the rights of candidates, especially the right to actively promote their candidacy and to persuade electors to vote for them. On the other hand, many electors perceive the distribution of how-to-vote cards at the entrance to a polling-booth as harassment and/or a waste of resources.

CURRENT SITUATION

8.103 The major activity of party workers on polling-day is distributing how-to-vote cards. Sections 111-114 of the Act require that how-to-vote cards bear the name and address of the author and not contain material which is incorrect or likely to mislead any elector in or in relation to the casting of his or her vote. As canvassing is not allowed within polling-booths or within a prescribed distance of polling-booths, how-to-vote cards are normally distributed at the entry to the grounds of polling-booths.

8.104 In South Australia how-to-vote cards are displayed inside each individual voting compartment as well as being distributed by supporters outside the polling-booth. How-to-vote cards appear in the voting compartment in the form of printing upon a large placard. Lots are drawn to determine the order in which the cards appear. The cards are reduced to a standard size (90mm x 190mm) and are in the form of replicas of the cards distributed outside the polling-booth.

8.105 The how-to-vote cards also appear in the same colour as the cards being distributed outside. Electoral Visitor cards are black and white photocopies of the placards in the polling compartments.

8.106 The South Australian Electoral Office has advised that the current system of how-to-vote cards being distributed outside the polling-booth and also on display in voting compartments confuses voters and still leaves a litter problem in the grounds around the booth.

EVIDENCE AND ARGUMENTS

8.107 The Commission received a large number of responses to this issue (eg. C Parker (S55), the Mount Isa Branch of the ALP (S2), the Logan Branch of the ALP (S40), R Hall (S10), the Dalveen Branch of the National Party (S44), H Ball (S51), and R McKinnon (S56)).

(a) The Australian Democrats (S62) argued strongly for the banning of how-to-vote cards on election day:

> *"With the growing awareness in our society about the need to reduce wasteful consumption of resources, there seems to be no logical argument why the massive paper wastage caused by how to vote cards should not be curtailed.*

The problem of harassment of voters on polling day is also a valid one. Many of our booth workers have felt most uncomfortable having to be part of a 'scrum' of people thrusting paper at every voter who approaches. When there is a large number of candidates, which often occurs at by-elections, there can be material for eight or more different candidates, with two or more people working for each candidate, all trying to give cards to any number of voters who may be converging on one doorway. If one adds to this scenario a few media crews and hopeful candidates and party bigwigs making use of a photo opportunity, the congestion and discomfort to voters are obvious.

Our experience has shown that not distributing how to vote cards when other candidates do has led to a significant reduction in our total vote. Therefore, political parties will always be reluctant to abandon the use of how to vote cards voluntarily or unilaterally.

We favour the placing of posters containing details of the how to vote recommendations of each candidate in every voting compartment. However, the alternative of having all how to vote cards available on tables inside the polling booth would be acceptable. We suggest that each candidate be required to register their how to vote card with the Electoral Office, and those cards be the only material available on polling day, either displayed in the booths, or in receptacles inside the door.

The argument that the current method of distributing how to vote cards should be retained in order to provide something for the rank-and-file party supporters to do is absurd. We suggest that party members should have more substantial roles to play than this. Perhaps if members were no longer able to be used in this way, it might prove an incentive for other parties to consider ways of giving their members meaningful involvement in the party. Certainly the experience of many of our members who have worked on polling day is that many workers from all the parties repeatedly comment on the pointlessness and wastage of handing out how to vote cards, as do many of the electors as they pass through on their way to vote."

(b) The DJCS (S77) supported the continued use of how-to-vote cards on the following grounds:

"The use of how-to-vote cards clearly assists voters in achieving formality. The Department is therefore opposed to any proposal which would ban such material. Indeed, the Department favours the display of how-to-vote posters in all compartments of polling booths, provided such material is supplied by parties and candidates according to straightforward prescribed rules ... the specification of the party affiliations of candidates and the provisions of how-to-vote cards all provide information that an elector is entitled to possess. They assist in the process of ensuring formality of votes and an informed electorate. In this way they extend the franchise and assist the democratic process."

(c) The ALP (S70) claimed that how-to-vote cards help to decrease the level of informal voting, thus effectively extending the franchise. It noted:

"The South Australian experience with how-to-vote posters in polling booths demonstrates that voters are assisted, but that the need for how-to-vote cards outside polling booths does not disappear. Many of the latter display photographs of candidates and/or leaders. These features would not be appropriate for posters inside polling booths."

(d) The Liberal Party (S100) argued against the abolition of how-to-vote cards on the grounds that abolition would interfere with the democratic process:

"We are opposed to any suggestion that the distribution of how-to-vote cards at polling-booths be banned. In our view, it is essential to the democratic process that persons have the right to solicit votes on polling-day."

(e) The National Party (S76) submitted that the current how-to-vote card arrangements were adequate.

(f) The main arguments against how-to-vote cards in the submissions were summarised by A Harrison (S26). Referring to the Local Authority elections held earlier this year:

> *" ... one item I would like to draw to your attention is that on Saturday when I was voting the entire area was awash with 'How to vote' brochures from all the different parties. I was really furious to see that not one of them appeared to be printed on re-cycled paper. Can't something be done about this terrible waste of trees. After all most people know who they are going to vote for before they leave home, so why this un-necessary and excessive waste."*

8.108 The majority of submissions were in favour of stopping how-to-vote cards from being handed out outside polling-booths. Most of these submissions, however, recommended that how-to-vote cards should be displayed in individual voting compartments instead or made available on tables in the polling-booth. A few submissions calling for the abolition of how-to-vote cards said that the appearance of political affiliations on ballot-papers beside candidates' names would reduce the need for how-to-vote cards. The three major political parties and the DJCS were against the abolition of how-to-vote cards.

ANALYSIS OF EVIDENCE AND ARGUMENTS

8.109 How-to-vote cards serve two important functions in the election process. Firstly they provide information regarding the party affiliations of the candidates. However, following the recommendation in Chapter Seven that political affiliation be shown on ballot-papers, this function is somewhat reduced. Secondly, how-to-vote cards provide information on how to allocate preferences in order to advantage the party or candidate which the elector wishes to support.

8.110 There are a number of problems associated with the distribution of how-to-vote cards. They are costly for parties and candidates to produce, and they generate a great deal of waste paper. Distribution to all electors requires that large numbers of supporters be available on polling-day. Some electors object to being confronted with lines of party workers offering how-to-vote cards at the polling-booth.

8.111 The Commission notes the concerns about waste raised in the submissions. However, it is possible to provide collection bins and recycle a high proportion of the cards, other waste paper and cardboard. This is done by the AEC for Commonwealth elections. The Report by the JSCEM on the 1990 Federal election recommended that:

> *" ... the Australian Electoral Commission ensure that cardboard litter bins are provided at all polling places for the disposal of waste paper generated from elections, including how-to-vote cards, and that all bins are subsequently collected by recycling firms for the recycling of that paper."* (p.42).

8.112 If there were to be a statutory requirement that a general poster or posters in every voting compartment were displayed, consideration would have to be given to the effect on the validity of the election of a failure to discharge the responsibility. If the poster was not displayed, or was placed in a position where it was difficult to read, would this be a ground for challenging and overturning the election? Where a large number of candidates are standing, and some recommend alternative distributions of preferences, the size of the poster required could be a problem, as could the additional time required by each elector to find their preferred option. With separate cards it is relatively simple to take only the desired one, or to take all of them but use the preferred one in the compartment.

8.113 Given that suitable arrangements can be made for recycling electoral material, and using recycled paper for electoral material (see Chapter Fifteen), the Commission considers that banning how-to-vote cards would be an unwarranted restriction on freedom of expression of candidates and parties. Electors have the right to refuse them if they so desire.

RECOMMENDATIONS

8.114 **The Commission recommends:**

(a) Candidates and political parties should continue to be free to print and distribute how-to-vote cards, subject to the restrictions on canvassing detailed in the next section.

(b) There should be no provision to require the display of how-to-vote cards in polling-booths or voting compartments.

Canvassing at Polling-Booths

Issue 9 Should canvassing at polling-booths be allowed? If canvassing is allowed at polling-booths, should the restrictions on these activities remain as at present, or should they be modified in some way?

8.115 This issue is closely related to the issue of how-to-vote cards discussed in the previous section. There it was recommended that candidates should retain the right to distribute how-to-vote cards freely. Some restrictions need to be placed on the distribution of how-to-vote cards near polling-booths to ensure that entrances are not obstructed and that voters are protected from harassment or intimidation. Voters have a right of free access without threat or badgering.

8.116 The unauthorised erection of political advertising signs on or close to the building or fences is also relevant.

CURRENT SITUATION

8.117 Section 93 of the Act prohibits the following activities within 6 metres of the entrance to a polling-booth:

(a) canvassing for votes;

(b) soliciting the vote of any elector;

(c) inducing any elector not to vote for any particular candidate;

(d) inducing any elector not to vote at the election; and

(e) loitering or obstructing the free passage of voters.

8.118 Comparable provisions can be found in the legislation of the Commonwealth and the other States.

8.119 Previously the SEO instructed its officials that canvassers should not be prevented from canvassing at or near their stands, provided that they do not enter the grounds or obstruct the gates to the booth.

8.120 Confusion arises because s.93 differs from the standard Local Government elections (refer Rule 54, 3rd Schedule Local Government Act (LG Act)) and from s.340 of the CE Act. Each specifies that canvassing is not allowed within 6 metres of the entrance to the polling-booth, but they have differing definitions of what constitutes the limits of the polling-booth. It can happen that a polling place used for Federal, State and LA elections, has three different notional "entrances" for the purpose of determining the 6 metre limit.

8.121 Furthermore, when State School premises are used, the *Education Regulations of 1971* (which governs non-educational use of State School premises) can produce further complications. For example, some Principals do not allow vehicle access to school grounds.

EVIDENCE AND ARGUMENTS

8.122 Candidates and their workers feel the need to carry out such activities both on polling-day and throughout the campaign period. Some voters find it convenient to have assistance and information available at the entrance to the polling-booth on the day of polling. However, other voters consider the presence of party and candidates' workers a nuisance and their approaches unwelcome. There is also confusion in interpreting the 6 metre rule.

8.123 A number of submissions addressed this matter:

(a) *" ... canvassing at polling places should be barred. It is very difficult, if not impossible, to control the six metre rule. I have heard of the party faithful interpreting this rule to mean canvassing can take place between the entrance to a polling booth and the booth itself provided it was not within six metres of the entrance."* (Miriam Vale Shire Council (S52)).

(b) *"Should how-to-vote cards be eliminated the desire for canvassing may be increased and supervision may become more imperative."* (A Sandell (S61)).

(c) *"Electors have a fundamental right to exercise their franchise on polling day in a calm environment - without being subject to any pressure, or undue influence, of any kind. The Department supports fully the current prohibitions of s.93.*

It is suggested that while certain activities must be prohibited within a polling booth, or within 6 metres of the entrance, it is not practicable for polling booth officials to be required to control activities beyond those limits." (Department of Justice and Corrective Services (S77)).

(d) A Bambrik (S80) suggested a solution which would appear to overcome many of the problems outlined above:

"It should ... be permissible for any party or independent to have an information table at the polling place. The table could carry the appropriate party's name and/or logo and the official be required to refrain from approaching electors unless requested to do so. This type of service would assist electoral staff in their duties and avoid delays at point of issue of ballot papers from people seeking information."

(e) The National Party (S76) called for the Queensland provisions to be harmonised with the CE Act but to otherwise remain unchanged.

(f) Similarly the Boonah Shire Council (S68) recommended that the provisions of s.93 remain unchanged but that the interpretation of the 6 metre rule should be standardised with Federal and Local Government interpretations.

8.124 Submissions identified the problems of the current provisions as being:

(a) litter and wastage of paper;

(b) difficulty in enforcing and interpreting the 6 metre rule;

(c) obstruction of traffic;

(d) tension and conflict between voters and booth workers; and

(e) pressure or undue influence by booth workers upon voters.

ANALYSIS OF EVIDENCE AND ARGUMENTS

8.125 The Commission recognises the litter problem associated with how-to-vote cards. This problem is addressed in paras.8.104-106 above.

8.126 The other problems identified in submissions can be resolved by making suitable provisions and placing limits on where how-to-vote cards can be distributed. The Commission believes a total ban on canvassing would be an extreme infringement of the rights of candidates. Furthermore, many electors rely on canvassers to provide them with information on how to cast their votes.

8.127 An obvious source of the problem are the inconsistencies in the various Acts. The Commission therefore believes that Queensland provisions should correspond to the provisions in the CE Act. Section 340 of the CE Act states:

> *"340. (1) The following acts are, on polling day, and on all days to which the polling is adjourned, prohibited at an entrance of or within a polling booth, or in any public or private place within 6 metres of an entrance of a polling booth, namely:*
>
> *(a) canvassing for votes; or*
>
> *(b) soliciting the vote of any elector; or*
>
> *(c) inducing any elector not to vote at the election; or*
>
> *(c) exhibiting any notice or sign (other than an official notice) relating to the election.*
>
> *Penalty: $500.*
>
> *(2) Where -*
>
> *(a) a building used as a polling booth is situated in grounds within an enclosure; and*
>
> *(b) the appropriate Divisional Returning Officer causes to be displayed throughout the hours of polling at each entrance to those grounds a notice signed by the Divisional Returning Officer stating that those grounds are, (for the purposes of sub-section 91), part of the polling booth,*
>
> *those grounds shall, for the purposes of that sub-section, be deemed to be part of the polling booth."*

8.128 In addition the QEC should ensure that all candidates and parties are aware of the canvassing rules and that those rules are enforced.

8.129 The question of unauthorised signs erected on footpaths and roads (outside the 6 metre limit) is presently one for regulation under the Traffic Act or Council by-laws and can only be monitored by the Police or by Council officers.

RECOMMENDATION

8.130 **The Commission recommends that candidates and parties should continue to be allowed to canvass for votes in the vicinity of a polling-booth. The provisions of s.340 of the *Commonwealth Electoral Act 1918* which prohibit canvassing and soliciting votes, inducing any elector not to vote or exhibiting a notice or sign relating to the election within 6 metres of an entrance of a polling-booth, should be incorporated into the new Act.**

8.131 Provision to implement this recommendation has been incorporated into the Draft Bill in Part 9 s.166.

Scrutineers at the Polling

Issue 10 Should scrutineers be required to wear a form of identification at the polling-booth?

Issue 11 What should be the rights of scrutineers before and on polling-day?

Issue 12 What should be the permissible number of scrutineers at a polling-booth or during pre-polling?

CURRENT SITUATION

8.132 All Australian electoral legislation make provision for scrutineers, giving them the right to be present at all times at places where ballot-papers are issued and counted. These provisions make a fundamental contribution to public confidence in the legitimacy of the electoral processes.

8.133 A scrutineer is defined in the Act as *" ... a person appointed by the candidate to act as scrutineer on his behalf during the election at which he is a candidate."* (s.5). Scrutineers are the personal representatives of the candidate, and on his or her behalf they observe the polling and counting of votes during elections.

8.134 Each candidate may appoint a number of people as scrutineers at each polling-booth. However, during the hours of polling a candidate is entitled to have only one scrutineer for each ballot-box in a polling-booth (s.70). A candidate is also entitled to have one scrutineer at any other place where a vote is being cast (s.70) (eg. see s.85(8)(b) and s.85(14)(c) for application to Electoral Visitor (EV) voting.

8.135 At the scrutiny, each candidate is entitled to one scrutineer in attendance (s.99(1)(b) of the Act).

8.136 The only qualification for scrutineers stipulated in the Act is that they must be aged 18 years or more (s.70(6)).

8.137 Candidates must complete an appointment form for each scrutineer. Scrutineers present these to the POs and make a written declaration. Official DJCS instructions to POs state that the correctly completed Scrutineer's Declaration should be retained by the PO and forwarded to the RO. While in attendance at the booth scrutineers are not required to wear any labels identifying them as scrutineers. As previously discussed in Chapter Seven, scrutineers are precluded by s.94 from wearing any party emblem or badge.

8.138 The Act sets out the rights of scrutineers as follows:

(a) The right to be present in the polling-booth. A scrutineer may enter and leave the polling-booth at any time during the hours of polling (s.70(5)).

(b) The right to observe and require. A scrutineer has the right to:

(i) Inspect the empty ballot-box before it is locked and sealed for receiving the ballot-papers (ss.71 and 85).

(ii) Require that the prescribed questions (see para.8.23) be put to any person claiming to vote. In such cases the scrutineer must state why he/she suspects that the elector is not the person the elector claims to be; has already voted; or is disqualified from voting (s.73).

(iii) Call upon the Presiding Officer to require any person claiming to vote to make a solemn declaration against bribery (s.74).

(iv) Observe the Presiding Officer enclosing and sealing in a declaration envelope the ballot-paper of a voter under ss.81, 82 or 45.

(v) Observe voting by an elector who is unexpectedly incapacitated (s.82A). Only one scrutineer per candidate is entitled to be present at the voting place in this case. The scrutineer may require that the prescribed questions be put to such an elector.

(vi) Observe the taking of EV (Electoral Visitor) votes (s.85). Scrutineers of s.85 votes are appointed under this section, and must make a declaration before the RO or an EV. Only one scrutineer per candidate is permitted under this section. The scrutineer may require that the prescribed questions be put to a s.85 voter.

(vii) Observe the taking of votes under ss.79(3) and 86 (assistance to certain incapacitated voters).

(viii) Observe the taking of pre-poll votes in person (s.84).

8.139 The rights of scrutineers at the counting of votes, the scrutiny, are discussed in Chapter Ten of this Report.

8.140 Scrutineers under the Commonwealth legislation have the following rights in addition to those provided in Queensland:

(a) To object to the right of any person to vote and have that objection noted.

(b) To note details of electors who record votes and to take this information out of the booth.

(c) To observe the Presiding Officer enclosing and sealing in a declaration envelope a ballot-paper of a silent listing elector whose name only is shown on the certified list of voters.

(d) To enter a voting compartment to witness the Presiding Officer marking the ballot-paper of a person who is blind, illiterate or physically incapable of marking the ballot-paper without assistance.

EVIDENCE AND ARGUMENTS

8.141 Only a limited number of submissions were received on this issue. The matters raised in the submissions generally re-inforced the important nature of the role of scrutineers during the polling process, and the need for them to be identified.

(a) *"It can be quite embarrassing to collect a ballot paper, proceed to a booth and to see other persons looking at all aspects of the procedures and not knowing just who they are and why they are there. It could also happen in a large polling place in a capital city that the Presiding Officer may not be sure that all the extra persons wandering around are in fact genuine scrutineers. So this submission recommends all scrutineers wear a prominent identification tag. This need carry no more than one word 'SCRUTINEER'."*

No problems are apparent with the rights and duties of scrutineers before and on polling day. Persons who have been scrutineers more frequently than the writer may make submissions.

The current provision for the number of scrutineers permissible requires revision. This submission recommends a move to the Federal System, i.e. one scrutineer per candidate per Presiding Officer. The role of scrutineer is rather misunderstood by many voters and is generally considered to be limited to oversee the counting of votes once voting has concluded." (A. Sandell (S61)).

(b) The ALP (S70), the Australian Democrats (S62) and the National Party (S76) all supported the broadening of the rights of scrutineers to correspond to the Commonwealth provisions. The ALP submitted:

"The Labor Party supports the continued use of scrutineers and considers that the rights of scrutineers should be extended to include those specified in the Commonwealth Act. It should be noted that activity as a scrutineer is an important educative process for party members, and that in any close poll, or in a formal re-count, the returning officer's task is assisted greatly by competent scrutineers."

8.142 Currently in Queensland one scrutineer per candidate per ballot-box is allowed on polling-day. If the nature of ballot-boxes changes (eg. a single larger box per booth is introduced), then the formula might be inappropriate. In the Commonwealth one scrutineer per candidate for each issuing officer (the equivalent to a PO in Queensland) is allowed at each booth on polling-day. In the other States the quota varies from one scrutineer per booth to two per booth to one per issuing table.

ANALYSIS OF EVIDENCE AND ARGUMENTS

8.143 The Commission considers that scrutineers perform a vital role in maintaining the legitimacy of the electoral process. Their rights therefore should be as broad as possible to ensure they have access to all facets of polling. The rights of scrutineers in the current Act should therefore be augmented by the additional rights in the CE Act outlined above.

8.144 The number of scrutineers allowed under the Act is therefore an important determinant of how well the function can be performed. Each candidate should be allowed one scrutineer per issuing officer (including officers issuing extra-ordinary votes, as discussed in the next chapter).

8.145 The identification of scrutineers at polling-booths is also desirable, so that both polling officials and the public can be certain that all present in the booth are duly authorised.

8.146 The current provisions for the appointment of scrutineers by candidates seems to be adequate and should continue. This however, is basically an administrative matter the details of which should be left to the QEC, other than the Act authorising that candidates may appoint scrutineers.

RECOMMENDATIONS

8.147 **The Commission recommends:**

(a) The rights of scrutineers should be extended to include the provisions in the current Act and the additional rights set out in the Commonwealth Electoral Act 1918, namely,

(i) To object to the right of any person to vote and have that objection noted.

(ii) To note details of electors who recorded votes and to take this information out of the booth.

(iii) To observe the Issuing Officer enclosing and sealing in a declaration envelope a ballot-paper of a silent listing elector whose name only is shown on the certified list of voters.

(iv) To enter a voting compartment to witness the Issuing Officer marking the ballot-paper of a person who is blind, illiterate or physically incapable of marking the ballot-paper without assistance.

(b) Each candidate should be entitled to one scrutineer per issuing officer.

(c) Scrutineers should be adequately identified at all times when performing their duties.

(d) The current prohibition on party emblems, badges etc. inside polling-booths should continue.

(e) The current procedures for the appointment of scrutineers are adequate. The Act only need specify that candidates may appoint scrutineers.

8.148 Provisions in respect of these recommendations have been incorporated into the Draft Bill in Part 6 s.99.

CHAPTER NINE

EXTRA-ORDINARY VOTING

Introduction

9.1 For a variety of reasons it is not possible for all electors to vote on polling-day at a polling-booth within the electoral district for which they are enrolled. Hence provisions for extra-ordinary voting must be in electoral legislation in order to maximise the opportunities for electors to cast their vote and to make certain that electors vote only once.

9.2 The major issue to be addressed in this chapter is whether the current provisions in the Act for extra-ordinary voting are adequate in ensuring that the maximum number of electors can cast their vote when they are unable to attend a polling-booth in their electoral district on polling-day. In order to assist the discussion in this chapter the current provisions for extra-ordinary voting in Australian jurisdictions have been summarised in Table 9.1.

9.3 It is the Commission's view that in a compulsory voting system, access to voting by those entitled to vote should be as simple as possible in order to preserve the right to vote and encourage participation in the electoral process.

Matters for Consideration

9.4 A large number of different types of extra-ordinary votes were raised in Issues Paper No. 13. These are:

(a) Postal Voting;

(b) General Postal Voting;

(c) Electoral Visitor Voting;

(d) Interstate/Overseas Voting in Person;

(e) Voting By Electors Unexpectedly Incapacitated;

(f) Pre-Poll Voting in person;

(g) Absent voting on polling-day;

(h) Vote by person not named as an elector on the roll;

(i) Voting where elector appears to have already voted;

(j) Mobile polling in hospitals and institutions;

(k) Voting in remote areas; and

(l) Voting in prisons.

TABLE 9.1

EXTRA-ORDINARY VOTING - COMPARISON OF PROVISIONS

VOTE TYPE & QUEENSLAND SECTION NO.	ELIGIBILITY					
	COMMONWEALTH *	NEW SOUTH WALES	VICTORIA	QUEENSLAND	WESTERN AUSTRALIA	SOUTH AUSTRALIA
POSTAL(s.87)	Travelling or working or Interstate or 8kms from booth or Religious belief or Illness, infirmity or pregnant or Caring for ill, infirm or pregnant elector or Hospital patient or Silent enrollee	Similar to Commonwealth Provisions	Similar to Commonwealth Provisions	Travelling or working or Interstate or 10kms from booth or Religious belief	Similar to Commonwealth Provisions	Declaration vote eligibility: 8 kms from booth or Travelling or Ill, infirm or disabled or Advanced pregnancy or Religious belief or Prescribed reason or Inmate of declared institution or Not on roll or Appears to have already voted or Silent enrollee Commissioner also keeps register of declaration voters who must be: physically disabled or resident in a remote area
GENERAL POSTAL (s.88)	Resides at least 20kms from nearest polling place or Hospital patient and can not travel or Illness or infirmity or Physically incapacitated and unable to sign name or In custody or Enrolled under s.98(3) or Silent enrollee	Resides in declared remote area and at least 20 kms from polling place or Remaining provisions similar to Commonwealth	Similar to Commonwealth Provisions	Enrolled in declared area as determined by Governor in Council	Similar to Commonwealth Provisions	
ELECTORAL VISITOR (s.85) (Individual elector)	No equivalent	No equivalent	No equivalent	Illness, infirmity or pregnant and Ineligible under s.87 for postal vote	No equivalent	No equivalent
PRE-POLL VOTING IN PERSON(s.84)	As per postal voting	As per postal voting	As per postal voting	Travelling or working or 10Kms from booth or Religious belief	As per postal voting	Declaration voting as above
REMOTE AREA AND MOBILE POLLING	Hospitals Prisons Declared remote divisions	Hospitals Nursing homes	No provision	No provision	Hospitals Remote areas	Declared Institutions (includes prisons)

* TASMANIA: Similar to Commonwealth except no provision for carers or silent enrollees.

9.5 In addition to these specific matters, consideration also needs to be given to the appropriate legislative framework for extra-ordinary voting. The important principles here are maximising the opportunities for electors to vote and admitting the greatest possible number of votes to the scrutiny, while maintaining the integrity of the vote and keeping the system administratively as simple as possible.

Legislative Model for Extra-ordinary Voting

9.6 This section discusses the options available to the Commission as legislative models of extra-ordinary voting. The Commission will consider which model best suits the State's needs before specific provisions enabling extra-ordinary voting in particular circumstances are discussed.

CURRENT SITUATION

9.7 In Australian jurisdictions there are two basic legislative models, the prescriptive and the general. The Act is an example of the prescriptive model, characterised by:

(a) separate sections dealing in detail (and repetitiously) with each extra-ordinary voting method (eg. ss.45, 84, 85, 87, 88);

(b) distinct eligibility criteria for each voting method; and

(c) separate application forms, certificates and administrative forms for each voting method.

9.8 The *Electoral Act 1985* (SA) utilises the general model, characterised by:

(a) voting, other than in person on polling-day for the elector's district, is called declaration voting;

(b) eligibility for declaration voting is set out in one section of the Act (s.71); and

(c) there is a single application form, with only two versions of the voter's declaration, and common administrative arrangements for all declaration votes.

EVIDENCE AND ARGUMENTS

9.9 The advantages of the prescriptive model is that the elector's entitlement to vote under specific circumstances is protected. However, there are disadvantages.

9.10 It is administratively complex. It causes confusion and/or frustration for electors, POs and ROs. There is little or no room left for electoral officials to exercise discretion to facilitate voting.

9.11 The general model has the advantage that it protects the elector's entitlement to vote in specific circumstances. In addition it is:

(a) simpler to administer; and

(b) easier to communicate to electors.

9.12 Section 71 of the *Electoral Act 1985* (SA) states that:

> *"71. (1) An elector who is entitled to vote at an election may exercise that vote -*
>
> *(a) by attending at a polling place for the district for which he is enrolled and voting in the manner prescribed by this Act;*
>
> *or*
>
> *(b) in the case of an elector entitled to do so by virtue of subsection (2) - by making a declaration vote.*
>
> *(2) An elector -*
>
> *(a) who attends on polling day at a polling booth outside the district for which he is enrolled as an elector;*
>
> *(b) who -*
>
> *(i) will not, throughout the hours of polling on polling day, be within 8 kilometres by the nearest practicable route of any polling booth;*
>
> *(ii) will, throughout the hours of polling on polling day, be travelling under conditions that preclude voting at a polling booth;*
>
> *(iii) is, by reason of illness, infirmity or disability, precluded from voting at a polling booth;*
>
> *(iv) is, by reason of caring for a person who is ill, or disable, precluded from voting at a polling booth;*
>
> *(v) is, by reason of advanced pregnancy, precluded from voting at a polling booth;*
>
> *(vi) is, by reason of membership in a religious order, or religious beliefs, precluded from attending at a polling booth or precluded from voting throughout the hours of polling on polling day or the greater part of those hours;*
>
> *or*
>
> *(vii) is, for a reason of prescribed nature, precluded from voting at a polling booth;*
>
> *(c) who is an inmate of a declared institution;*
>
> *(d) whose name, as a result of an official error, does not appear on the certified list of electors for a district;*
>
> *(e) who appears from a record erroneously made under this Act to have voted already in the election;*
>
> *or*
>
> *(f) whose address has been suppressed from publication under this Act,*
>
> *is entitled to make a declaration vote."*

9.13 Several of the submissions made by experienced ROs commented on the problems associated with the current Queensland system.

(a) *"... it is recommended that voting before Election day needs to be overhauled. The several types of voting available (eg. Postal, absent, Electoral visitor) be amalgamated into one pre-election vote. A central area, such as the Court House, be used to accept the votes and mobile ballot boxes be available to visit hospitals, nursing homes and other incapacitated people. One declaration envelope be used to cover all reasons for a pre-election vote, (distance, illness, incapacity, absence, religious purposes)."* (C Williamson (S6)).

(b) *"There does seem some confusion between Applications for EV's and PVs. In some cases PV's should be meant really for E.V. People get confused with Commonwealth Elections where it is mainly postal votes that prevail. I prefer processing the PV's, as country people prefer to use them. The EV's are harder to handle in a country area, more distance for P.O. to cover, with properties hard to locate at times, also rough roads etc."* (P Connor (S8)).

(c) *"There is I believe a need to simplify the provisions for the Elections Act 1983-1989 in relation to the manner of voting I would suggest that the different types of votes be simplified. Once again I would refer to the Commonwealth System where Electoral Visitor and Postal Votes are placed in the one category which is (as I am led to believe) 'postal voting'. I realise that Returning Officers do have an objection to issuing PVs under current provisions of the Act. I believe that this could be simplified. ... I believe that the current method of issuing postal votes is not necessarily the optimal method and may even produce errors by virtue of the number of pieces of paper work that have to be completed by a Returning Officer before dispatch of voting material to eligible voters. The forms, etcetera defined in the Regulations of the Act are so poorly designed that they pre-dispose users to errors anyway."* (J Hall (S9)).

(d) *"Firstly, Queensland should discard the 'special' methods of voting such as Electoral Visitor Voting and Drive-in Voting where any 'special' method of voting is not permitted by the Australian Electoral Commission. Doing anything like this in Queensland different to and inconsistent with the Federal system creates widespread confusion."* (P Hardcastle (S18)).

9.14 The administration of elections under the current legislation is complex. For example, 61 forms relating to the conduct of elections are described in the Second Schedule of the Act. Twenty-nine of these relate directly to extra-ordinary voting. Additionally, a further 55 forms, (dealing with envelopes, tags, instructions etc.) not specified in the Act have been devised by the DJCS to facilitate elections.

9.15 A significant proportion of electors utilise extra-ordinary voting provisions. At the 1989 State election approximately 230,000 or 14.1% of all votes cast were extra-ordinary votes.

ANALYSIS OF EVIDENCE AND ARGUMENTS

9.16 The Commission considers that the evidence available suggests that the declaration voting system as utilised in South Australia, provides a suitable model for the new Queensland Act. It will provide significant benefits to electors as eligibility rules will be more uniform and the process easier to understand. From the QEC's point of view, the declaration voting system is also advantageous because it will make administration of extra-ordinary voting simpler by reducing the numbers of forms and procedures.

9.17 The Commission notes that a system of declaration voting will mean that State electoral administration will differ from the Commonwealth administration. However, some of the problems can be overcome by aligning eligibility for State declaration voting to match Commonwealth eligibility criteria for extra-ordinary voting. These matters are addressed in the subsequent sections of this chapter.

9.18 Earlier in this Report (Chapter Seven) it was recommended that the QEC should have full authority to design and amend forms with the exception of the writ and ballot-papers. The QEC should closely examine the forms and methods used by the South Australian Electoral Commission, as the system is well designed and apparently works well.

RECOMMENDATION

9.19 **The Commission recommends that Queensland should adopt a system of declaration voting for extra-ordinary votes, based on the provisions of s.71 of the *Electoral Act 1985* (SA). This system allows persons to make a declaration vote where that person is unable or precluded from voting at a polling-booth, erroneously marked as having already voted at the election or whose name, as a result of an official error, does not appear on the roll or whose address has been suppressed from publication under the Act.**

9.20 Provisions to implement this recommendation are contained in Part 6 s.105-106 of the Draft Bill.

Postal Voting

Issue 1 Are the current provisions for postal voting adequate, or are they too restrictive?

Issue 2 Is the provision which enables electors who will be more than 10 kilometres from a polling-booth on polling-day to apply for a postal vote too restrictive?

Issue 3 Should ROs be empowered to issue postal votes for any electoral districts in addition to their own electoral district?

Issue 4 Should the grounds upon which an application for a postal vote can be made under Queensland legislation be extended? Should eligibility for postal votes be extended to include:

(a) persons who because of serious illness, infirmity, or approaching childbirth are unable to attend a polling-booth;

(b) persons caring for a person who is ill, infirm or expected shortly to give birth;

(c) persons serving a sentence of imprisonment or otherwise under detention; and

(d) persons who would suffer loss in their employment if they took leave on polling-day?

Issue 5 Should postal vote applications be accepted once the election has been announced or only after the election writ has been issued as at present?

Issue 6 Should the cut-off time for receipt of postal vote applications be changed from 6.00 pm the day before polling-day?

CURRENT SITUATION

9.21 Section 87 of the Act presently states that Postal Votes (PV) may be granted to any elector who:

(a) on the day of the polling will be travelling or engaged in work and unable to vote at any polling-booth; or

(b) on the day of the polling will not be within the State or within 10 kilometres of any polling-booth; or

(c) is a Defence Force member on service outside the Commonwealth (such a person must also be over 18 years old, not enrolled, an Australian citizen, have lived in an electoral district for 3 months and have the intention of returning to live there, as per s.22); or

(d) by reason of religious beliefs or membership of a religious order is precluded from attending at a polling-booth during the hours of polling.

9.22 An elector who satisfies one of these criteria may at anytime after the day of the issue of the writ and up to 6 p.m. of the day before polling day apply in the prescribed form for a PV to the RO for the electoral district for which he or she is enrolled. The application must be signed by the elector and witnessed by an elector of the State or the Commonwealth.

9.23 The RO must deliver or send a postal ballot-paper and certificate to the elector. The elector must vote in the presence of a witness whose duty in this process is to attest the signature of the elector on the certificate and to fill in the date on which the vote was made. The PV must be:

(a) delivered by close of poll to the RO, ARO or a PO for the district; or

(b) received by post by the RO before 6.00 pm on polling-day; or

(c) received by post by the RO within 10 days immediately succeeding the close of poll.

9.24 Since postal voters in Queensland elections are likely to have to vote by post in Commonwealth elections as well, it is useful to compare the provisions governing postal voting in these two jurisdictions. The CE Act, Schedule 2, provides that PVs may be granted if the elector:

(a) will be absent from the State or Territory in which they are enrolled throughout the hours of polling on polling-day;

(b) will not be within 8 kilometres of a polling-booth in the State or Territory for which they are enrolled throughout the hours of polling on polling-day;

(c) will be travelling under conditions that will prevent their attendance at a polling-booth in the State or Territory for which they are enrolled;

(d) will be unable to attend a polling-booth because of serious illness, infirmity, or approaching childbirth (and if an elector will be a patient at a hospital on polling-day);

(e) will be unable to attend a polling-booth because they will be at a place caring for a person who is seriously ill, infirm, or expected shortly to give birth;

(f) on polling-day will be a patient at a hospital and unable to vote at the hospital;

(g) is precluded from attending a polling-booth on polling-day due to religious beliefs or membership of a religious order;

(h) on polling-day will be serving a sentence of imprisonment or otherwise under detention;

(i) has a silent enrolment; or

(j) throughout polling-day is engaged in their employment, and is not entitled to leave of absence, or would suffer loss in their occupation if leave was taken.

9.25 As can be seen from Table 9.1, the jurisdictions in all other Australian States have similar provisions to the Commonwealth.

EVIDENCE AND ARGUMENTS

9.26 Table 9.2 shows that 17,819 or 1.09% of ballot-papers received at the last State election were postal or general postal (GP) votes. Of these, all but the votes from the 1,452 registered PVs (discussed in the next section) were PVs under s.87.

TABLE 9.2

1989 QUEENSLAND LEGISLATIVE ASSEMBLY ELECTION: EXTRA-ORDINARY VOTES BY NUMBER AND TYPE

Type of Vote	Section	**Ballot Papers Received**	
		Number	% (of Votes Recorded)
Vote by person not named on roll	s.45	19,063	1.18%
Absent Voting (in the State)	s.82	131,654	8.10%
Elector unexpectedly incapacitated	s.82A	282	0.01%
Voting from Interstate/overseas	s.83	2,901	0.17%
Pre-poll in person	s.84	33,707	2.07%
Electoral Visitor	s.85	24,787	1.52%
Postal and General Postal	s.87,s.88	17,819	1.09%

Source: State Electoral Office

(a) The National Party submitted that Commonwealth provisions should apply to PV eligibility and close of PV applications, and that ROs should be empowered to issue PVs for all districts.

(b) *"The current provisions for postal voting are too restrictive. Many difficulties are experienced with elderly people who may be entitled to an electoral visitor but not to a postal vote. The elderly can often be frightened by the thought of strangers entering their home. If a postal vote were made available to those people it may assist those people who would normally not vote even though they are entitled to vote. The Council would support the restrictions being extended to include those people listed in point 1.4 on page 65 of the Issues Paper".* (Brisbane City Council (S88)).

(c) The Institute of Municipal Management (S86) argued strongly in favour of easing PV eligibility:

"Postal voting, particularly at local government elections, is not only restrictive but is complex and unduly bureaucratic. The restrictions on qualifications to apply for a postal vote appear to be linked closely with the legislations determination that other than in exceptional circumstances, all voters will vote on the Saturday prescribed for the poll. It is felt that these restrictions should be eased so that persons may easily acquire a postal vote should they choose not to or be prevented for any reason from attending a polling place on the Saturday

The disadvantage of the completely open qualification to apply for a postal vote would be in relation to the volumes that might be generated. However, if the administrative processes concerning postal votes were reformed considerably so as to ease the burden on Returning Officers in relation to postal votes, then the onerousness of greater numbers may be removed."

(d) Queensland Advocacy Inc. (S84) saw benefits in having common criteria with the Commonwealth:

"QAI agrees with the general principle that there should be commonality between Queensland and Commonwealth provisions. N.P. QAI supports the extension of grounds for application for a postal vote to include people who are unable to attend a polling booth because of serious illness or disability. However, we would not wish to see the extension of the grounds for applying for postal votes as an alternative to making polling booths properly accessible. We believe that the first priority should be in making the ordinary polling processes accessible in all respects.

In extending the grounds upon which an application for a postal vote could be made, we would prefer to see language other than 'infirmity'. That is not a term that is generally considered to be appropriate or positive in referring to people with disability. We would therefore want to see a provision which stated, for example, "persons who because of the lack of an accessible polling booth in their residential location, or because of serious illness or because of their degree of disability ... are unable to attend a polling booth. QAI also supports the extension of grounds for eligibility for a postal vote to persons caring for persons who are seriously ill or have a disability."

(e) *"In relation to issues associated with extraordinary voting, we again suggest that unless there are good reasons to the contrary, provisions should be equated with current Federal procedures."* (Australian Democrats (S62)).

(f) *"The most economical method of voting, other than through a polling booth, is postal voting. The Department considers that the reasons for the granting of a postal vote should be extended to cover the grounds specified in Paragraph 9.9 of EARC's Issues Paper No 13, namely:*

- *persons who because of serious illness, infirmity, or approaching childbirth are unable to attend a polling booth;*
- *persons caring for a person who is ill, infirm or expected shortly to give birth;*
- *persons serving a sentence of imprisonment or otherwise under detention; and*
- *persons who would suffer loss in their employment if they took leave on polling day.*

In general, the Department believes that the wider grounds specified in the Commonwealth Act are preferable to the current Queensland rules, once the basic principle, that every assistance must be given to electors to exercise their franchise, is accepted." (DJCS (S1)).

(g) The Boonah Shire Council (S68) argued that the current provisions are adequate:

" ... current provisions for postal voting are adequate; the distance of 10 kilometres from a Polling Booth is reasonable."

9.27 There was general support in the submissions for the proposal to close applications for PVs at an earlier time than the current provision of 6.00 pm on the Friday before polling-day.

(a) *"This is an area that needs review. The suggestion that applications for postal votes close 48 hours before polling day is a very sensible one and should be acted upon."* (J Dettori (S4)).

(b) *"I agree with the suggestion that the closing time for P.V.'s should be brought forward to at least 6.00 pm on the Wednesday before the election day to at least give some reasonable time for the processing and mailing procedures."* (R Hall (S10)).

(c) *"In my view it is anomalous that an elector can apply to a Returning Officer for a postal vote certificate at any time prior to 6.00p.m. in the afternoon of the day immediately preceding polling. In practical terms, I would suggest that an elector be required to apply to the Returning officer for a postal vote certificate before 6.00p.m. in the afternoon of the day, that is two days before polling day, as is provided for in Section 85(1) of the Elections Act in respect of electoral visitor voting."* (F Albietz (S17)).

(d) The Institute of Municipal Management (S86) suggested that the RO have some discretion:

"Concerning the cut-off time for receipt of postal vote applications, this should be left to the discretion of the Returning Officer where, in his opinion, the dispatch of the postal vote ballot paper is such that it would not reach the applicant in time to be filled out and posted back before the close of polling day. This would obviate the need to wait upon late postal votes where it was obvious that the ballot papers could not possibly be returned in a condition so as to be admitted count."

(e) *"We see no problem in bringing the cut off time for the receipt of the postal vote applications in line with the Commonwealth provision, that is, by the Thursday before polling day."* (Queensland Advocacy Inc. (S84)).

(f) *"There can be serious problems if postal votes are posted by returning officers on the Friday immediately prior to election day. The electors concerned cannot possibly receive the ballot paper prior to the following Monday, and it is conceivable that such postal votes could still be counted if they were completed and returned in an envelope where the post-mark was indecipherable.*

As the post office is still capable of delivering some letters the following day, a cut-off time for postal vote applications could be 6p.m. on the Thursday immediately prior to polling day. However, this could lead to some votes being admitted, improperly, to the count. A balance must be struck between providing opportunities to exercise the franchise and protecting the integrity of the count. The Department considers that either a Wednesday 6p.m., or Thursday 6p.m., cut-off can be justified." (DJCS (S77)).

(g) The Boonah Shire Council (S68) took an opposing view:

"The present provisions are satisfactory although ballot papers are in some cases received after polling day and are therefore disallowed."

ANALYSIS OF EVIDENCE AND ARGUMENTS

Eligibility

9.28 There was general acceptance in the public comment that PV eligibility criteria should match the Commonwealth's. The Commission accepts this argument on the principle of commonality of State and Federal practice. There are no conflicting principles which suggest that commonality should not be accepted. Acceptance of the CE Act criteria would also make postal voting more widely available to State electors and reduce unnecessary confusion.

When Applications May Be Lodged

9.29 Table 9.3 below shows details of PV administration provisions in Australian jurisdictions. The time after which applications for PVs may be accepted is a relatively minor matter. Most electors base their actions on information in the mass media. The great majority would therefore be quite unaware whether a writ has been issued or not. On the principle of simplicity of procedures, the Commission accepts the argument that applications for PVs should be accepted from the day of the election announcement. It will of course be impossible for electoral officials to process applications and issue ballot-papers until after nominations have closed and ballot-papers have been printed.

TABLE 9.3

POSTAL VOTE PROCESSING PROVISIONS

JURISDICTION	FIRST DAY APPLICATION TAKEN	LAST APPLICATIONS TAKEN	DEADLINE FOR RECEIPT BY RO
Commonwealth	(a) Not until after issue of writ, or (b) When Public Announcement	6.00 pm Friday	13 days after Poll
New South Wales	9 days preceding Issue of Writ	(a) 6.00 pm Wednesday (Australia) (b) 6.00 pm Monday (Overseas)	7 days
Victoria	After Issue of Writ	6.00 pm Friday	13 days (1)
Queensland	After Issue of Writ	6.00 pm Friday	10 days after Poll
Western Australia	After Announcement made publicly	6.00 pm Thursday	9.00 am Tuesday following Poll (2)
South Australia	As determined by Electoral Commissioner	9.00 pm Thursday	7 days
Tasmania	9 days preceeding Issue of Writ	(a) 6.00 pm Thursday (Tasmania) (b) 6.00 pm Wednesday (Australia) (c) 6.00 pm Monday (Overseas)	10 days

1. Must also be post marked NOT after polling day.
2. Postal Votes for all districts sent to Electoral Commission.

Close of Application

9.30 There were cogent arguments in the submissions which suggested that applications for PVs should close earlier than 6.00 pm on the Friday before the election.

9.31 Clearly ballot-papers and certificates posted by ROs on the Friday night would not reach the elector before the Monday after the poll at the earliest. These ballot-papers would clearly be informal, and the time of the RO and the elector's vote would have been both wasted.

9.32 Closing PV applications earlier in the week is a more sensible proposition. Six pm on the Thursday is the latest time an application could be received in time for the RO to dispatch a ballot-paper and certificate, and for the elector to receive it and post it back before the close of poll. Closing applications earlier in the week might unnecessarily disfranchise some electors.

9.33 As can be seen in Table 9.3, some States close applications for overseas and interstate electors at different times from intrastate applicants. There is some merit in these provisions, as ballot-papers posted interstate and overseas obviously need more time. However the Commission has no information of how many applications are received from interstate and overseas, the day they are received and the number of ballots dispatched.

9.34 The issue of interstate and overseas close of applications may warrant further investigation by the QEC. Because of the lack of information, the Commission does not consider it appropriate to specify a different application closing time for interstate and overseas electors.

9.35 The provision that PV certificates must be signed by the elector and witnessed by another elector is common to all Australian jurisdictions. These provisions should continue in the new Act.

9.36 The question of whether ROs should be able to issue PVs for any district is addressed in the section on pre-poll voting.

9.37 Under a regime of declaration voting, electors would be applying officially for a declaration vote by post.

RECOMMENDATIONS

9.38 **The Commission recommends:**

(a) Eligibility for declaration voting by post should match the Commonwealth Electoral Act criteria for postal voting; namely, a declaration vote by post may be granted where the elector will be:

(i) absent from the State;

(ii) more than 8 kilometres from a polling-booth;

(iii) travelling;

(iv) seriously ill, infirm or approaching childbirth;

(v) caring for someone seriously ill, infirm or approaching childbirth;

(vi) a patient at a hospital and unable to vote at the hospital;

(vii) precluded from voting at a polling-booth due to religious beliefs;

(viii) in prison or otherwise detained;

(ix) has a silent enrolment; or

(x) throughout polling day is engaged in their employment and is not entitled to leave of absence or would suffer loss in their occupation if leave was taken.

(b) Application for declaration votes by post should be accepted from the time of the announcement of the election.

(c) Applications for declaration votes by post should not be accepted after 6.00 pm on the Thursday before polling-day.

(d) The Queensland Electoral Commission should conduct further research into whether applications from overseas and interstate voters should close earlier than 6.00 pm Thursday before polling.

9.39 Provisions have been included in the Draft Bill in Part 6 ss.105 and 110 to give effect to these provisions.

General Postal Voting

Issue 7 Should the grounds of application to be registered as a general postal voter be extended?

Issue 8 Should the Electoral Commissioner be empowered to issue ballot-papers to general postal voters?

CURRENT SITUATION

9.40 Section 88 of the Act provides for the registration of certain electors in declared remote areas as general postal voters (GPVs), so that they may be automatically issued with a PV whenever an election is called. To qualify for a General Postal Vote (GP Vote) such voters must make application for that purpose, and must live distantly from a polling-booth, not have access to adequate transport, or be likely to be hampered by rain or flood on the day of the poll. As soon as possible after noon on nomination day the RO must send a ballot-paper and PV certificate to each GPV registered for the district.

9.41 The electoral districts of Auburn, Balonne, Cook, Flinders, Gregory, Mount Isa, Peak Downs, Roma and Warrego as determined by the *Electoral Districts Act 1985* are currently classified as remote areas. At the time of the last general election in December 1989 there were 1,452 voters registered as GPVs.

9.42 Under the Commonwealth legislation (s.184A) general PV applications must be made on one of the following grounds:

(a) the applicant's real place of living is not within 20 kilometres of a polling-place;

(b) the applicant:

(i) is a patient at a hospital (other than a special hospital or a hospital that is a polling-place); and

(ii) because of serious illness or infirmity, is unable to travel from the hospital to a polling-place;

(c) because of serious illness or infirmity, is unable to travel from the place where he or she lives to a polling-place;

(d) the applicant is detained in custody;

(e) the enrolment of the applicant was obtained by means of a claim signed under subsection 98(3) (that is, the applicant was so physically incapacitated that he or she could not sign the claim);

(f) a registered medical practitioner has certified, in writing, that the applicant is so physically incapacitated as to be incapable of signing his or her name;

(g) the applicant is a silent enrolee; or

(h) because of the applicant's religious beliefs or membership of a religious order, the applicant cannot attend a polling-booth during the hours of polling.

9.43 There were 3,500 voters registered as GPVs in Commonwealth electoral divisions in Queensland as at December 1990. The difference between the State and Commonwealth figures is due to the differing eligibility criteria discussed above, though some of it may be to lack of knowledge of the State entitlement.

9.44 In both jurisdictions, an elector who is registered as a GPV remains on that register until he or she lodges another claim for a transfer of enrolment or removed by the PEO (s.88(7) of the Act).

EVIDENCE AND ARGUMENTS

9.45 Submissions were generally in favour of accepting the CE Act provisions for GP Voting:

(a) Mr Passmore (S45), Boonah Shire Council (S68), Mount Isa City Council (S69) and the National Party (S76) all argued that GPV provisions should be aligned with those of the Commonwealth.

(b) *"The Department has no objection to an extension of the grounds for a voter being registered as a general postal voter, and for silent enrolees to be categorised, if they wish, in the same way. However, it is important that resources be available for a general check on the validity of the roll of general postal voters during the period from 9 to 15 months prior to the 'scheduled' date of the next general election. Without regular checking, the opportunity for 'cemetery' voting or voting for those who have moved elsewhere may be too tempting."* (DJCS (S77)).

(c) *"With respect to the proposal to extend grounds of applications for general postal voting, we make similar comments as above in relation to ordinary postal voting. Again, the extension of those grounds should not be at the expense of ensuring proper access to ordinary voting procedures through polling booths. For example, there seems no need for a ground such as in the Commonwealth legislation cited under the Issues Paper, Paragraph 19.16(f), if polling booths are accessible and work or provisions exist to enable assistance to those people who are unable to mark ballot papers without that assistance (c) para 6.2 above."* (Queensland Advocacy Inc. (S84)).

9.46 The Commonwealth does not issue ballot-papers automatically to registered GPVs, instead DROs forward applications for PVs. This process has the potential to disfranchise a number of electors because of delays in: DROs mailing out applications; electors returning applications; DROs mailing out ballot-papers; and finally electors returning ballot-papers. These delays may result in electors' votes not meeting statutory time limits.

9.47 In South Australia the Commissioner, and in Queensland the RO, automatically mails out PVs directly to registered GPVs as soon as possible after nomination day and without the need for application forms. The advantage of this approach is that double handling is avoided, but this should be weighed against the cost of some extra difficulty in reconciling ballot-papers used in each district.

9.48 (a) The Boonah Shire Council (S68) and the National Party (S76) stated that the Electoral Commission should issue ballot-papers directly.

(b) *"The Department would also support the issue of ballot papers to general postal voters by the Electoral Commissioner rather than the district returning officers as a means of speeding up delivery."* (DJCS (S77)).

ANALYSIS OF EVIDENCE AND ARGUMENTS

Eligibility

9.49 The Commission can see no reason why the CE Act eligibility criteria should not apply in the State. As in the section on postal voting, the principle of commonality of provisions in the State and Commonwealth systems argues for Queensland to accept the CE Act provisions.

9.50 Adoption of the CE Act provisions will make GP voting for the State available to approximately another 1,600 electors at least.

9.51 Under a declaration voting regime these electors would be called Registered Declaration Voters.

Procedures For Dispatch of General Postal Votes

9.52 The current practice of issuing ballot-papers and certificates directly to registered PVs works well, and no evidence was submitted by either the DJCS or ROs that the system was open to abuse.

9.53 The Act should specify that the dispatch of ballot-papers and certificates be the responsibility of the QEC. The QEC can then either dispatch these ballot-papers directly, or use its delegatory powers to enable ROs to dispatch the papers.

RECOMMENDATIONS

9.54 **The Commission recommends:**

(a) The provisions for eligibility for general postal voting in the Commonwealth Electoral Act be accepted for the new Queensland Electoral Act; namely, where the applicant:

(i) lives more than 20 kilometres from a polling-place;

(ii) **is a patient at a hospital (other than a special hospital or a hospital that is a polling-place); and because of serious illness, disability, incapacity or infirmity, is unable to travel from the hospital to a polling-place;**

(iii) **because of serious illness or infirmity, is unable to travel from the place where he or she lives to a polling-place;**

(iv) **is detained in custody;**

(v) **obtained enrolment by means of a claim that the applicant was so physically incapacitated that he or she could not sign the claim;**

(vi) **is so physically incapacitated as to be incapable of signing his or her name;**

(vii) **is a silent enrolee; or**

(viii) **cannot attend a polling-booth during the hours of polling because of the applicant's religious beliefs.**

(b) The Queensland Electoral Commission should be responsible for the dispatch of ballot-papers as soon as possible after nomination day and without the need for a further application form process.

9.55 The provisions in the Draft Bill for these recommendations are included in Part 6 s.105.

Interstate/Overseas Voting in Person

Issue 9 Are present arrangements for voting interstate or overseas in person adequate? Should they be more extensive?

Issue 10 Should polling-places and election officers outside the State be appointed by the Governor in Council? If not, should the Electoral Commissioner be responsible for the appointments?

CURRENT SITUATION

9.56 Electors who are interstate or overseas on polling-day may vote in the presence of appointed officers in some cities outside the State as prescribed by Order in Council (s.83). The prescribed cities are: Sydney, Melbourne, Perth, Adelaide, Hobart, Darwin and London (Canberra is not a prescribed city). At present the SEO sends PV application forms to Australian embassies and consulates in other cities overseas to enable electors to apply for a PV if they wish.

9.57 Overseas and interstate electors may vote at any time not earlier than 72 hours after the hour of noon on nomination day and not later than 6.00 pm on the day next preceding polling-day (Friday). A declaration is required. Interstate or overseas voters unable to vote in person may also apply instead for PVs.

9.58 Table 9.2 shows that 2,901 or 0.17% of voters at the 1989 election were cast by voters interstate or overseas. By contrast, at the 1987 Commonwealth election 36,991 overseas votes were taken, 0.38% of the total.

EVIDENCE AND ARGUMENTS

9.59 The National Party (S76) made the only comments on this issue. They suggested that overseas voting be extended to all Australian diplomatic posts. This would be a major expansion of the current arrangement which restricts voting in person overseas to London. Other residents and visitors overseas may, of course, apply for PVs.

9.60 Under s.94 of the CE Act, electors who intend to reside overseas for up to three years can apply to remain on the roll as "eligible overseas electors". Commonwealth enrolment criteria including s.94, adopted in the EA Act, now apply for the State. This provision would, in conjunction with GPV, provide a mechanism to ensure that electors who travel overseas have their entitlements to vote protected.

9.61 The Department of the Premier (S79) proposed that the appointment of Overseas and Interstate Officers should be a power of the Electoral Commissioner:

> *"The following election officials might be appointed by the Electoral Commissioner:*
>
> ...
>
> *The transfer of appointment powers for these positions would bring Queensland in line with the rest of Australia. In the majority of the States the appointment of Returning Officers and Electoral Registrars is the responsibility of the Electoral Commissioner and, in the Commonwealth, Divisional Returning Officers are appointed by the Australian Electoral Officer for the State by virtue of power delegated by the Electoral Commissioner.*
>
> ...
>
> *It would appear that there are no legislative impediments to the transfer of responsibility for such appointments to the Electoral Commissioner."*

ANALYSIS OF EVIDENCE AND ARGUMENTS

9.62 The Commission believes that all electors classified as "eligible overseas electors" under s.94 of the CE Act should also be eligible for general declaration voting. This provision would protect the right to vote of those electors temporarily overseas, as well as reduce demand on facilities overseas.

9.63 The appointment of interstate and overseas polling-places is an administrative matter. The power to appoint these places should therefore rest with the QEC and not the Governor in Council.

RECOMMENDATIONS

9.64 **The Commission recommends:**

(a) All Queensland electors registered pursuant to s.94 of the Commonwealth Electoral Act which allows electors who intend to reside overseas for up to three years to apply to remain on the roll as "eligible overseas electors" should automatically also become registered declaration voters for State purposes.

(b) The Queensland Electoral Commission should have the power to appoint interstate and overseas polling-places as it thinks appropriate.

9.65 The Draft Bill contains provisions in Part 6 ss.105 and 109 to give effect to these recommendations.

Electoral Visitor Voting

Issue 11 Should Electoral Visitor voting for electors with health problems be continued or should such electors be able to apply for postal votes instead? If not, should the provisions concerning Electoral Visitor voting be amended in any other way?

9.66 This matter is discussed later in this chapter.

Voting By Electors Unexpectedly Incapacitated

Issue 12 Should the existing provisions for voting on polling-day by unexpectedly incapacitated voters be continued?

CURRENT SITUATION

9.67 Section 82A of the Act applies to an elector who, although intending to vote in a polling-booth on polling-day, is on or shortly before polling-day unexpectedly physically incapacitated to the extent that they are unable to enter a polling-booth to vote. In such cases, the elector must arrange to be brought to a place in close proximity to a polling-booth by motor vehicle or some other means before 5.00 pm on polling-day. The elector must complete an application for a s.82A vote and have it witnessed by an elector. The PO, having notified scrutineers of the voting place and the time when the vote will be taken, must go to the elector and take the vote. A declaration by the elector is required.

9.68 Section 82A votes, sometimes referred to as "Drive-In Votes", are rarely taken. As Table 9.1 shows, at the 1989 election only 282 votes of this type were cast (.01 percent of the votes recorded). The taking of these votes is very time-consuming, due mostly to the complicated paperwork required.

9.69 No provision for the taking of votes in this fashion exists in the legislation of the other States or the Commonwealth. In Commonwealth elections, electoral officials are authorised to arrange for an ordinary vote by electors who are unexpectedly incapacitated, by taking the voting materials to the elector's vehicle. This does not pose a problem when the building in which ordinary votes are being taken is located within enclosed grounds which form part of the polling booth pursuant to a declaration to that effect by the DRO. By this means, the elector is able to bring his or her vehicle into the polling-booth. However, if the building is not attached to grounds so classified, the elector needs to travel to another booth which complies.

9.70 The existing provisions for Drive-in Votes were introduced in 1985 as an amendment to the *Elections Act 1983*. Prior to 1985, ROs allowed unexpectedly incapacitated voters to cast an ordinary vote, following procedures similar to the current Commonwealth provisions. The practice of the RO taking voting materials to the elector's vehicle may have been illegal. Section 71 of the Act stated, until it was amended in December 1990:

> *"**71. Ballot-box to be opened for inspection.** A ballot-box shall be opened to be inspected by the poll clerks, candidates and scrutineers before being locked and sealed for receiving the ballot-papers, and shall stand upon the table at which the presiding officer presides."* [Emphasis added].

9.71 Section 71 now merely states:

> *"**71. Ballot-box to be opened for inspection.** A ballot-box shall be opened to be inspected by the poll clerks, candidates and scrutineers before being sealed for receiving ballot-papers."*

EVIDENCE AND ARGUMENTS

9.72 Public submissions, especially those from ROs, generally argued that the provision was unnecessary (eg. P Hardcastle (S18), P Connor (S3), R Hall (S10)). The National Party (S76) stated that the Commonwealth provisions should apply.

9.73 However, Boonah Shire Council (S68) suggested that the existing provisions should continue.

9.74 The major criticism identified by ROs was that the provision was unnecessarily time consuming and complex to administer. The small number of votes taken under the Section suggests that there may be a simpler process which would protect the entitlement to vote of those electors who do become unexpectedly incapacitated and still preserve security of the ballot.

9.75 The Commonwealth provisions do have a weakness. If the DRO has not declared the grounds on which the building where ordinary votes are taken as part of the booth, then the PO cannot legally take the voting materials to the elector's vehicle. These instances can happen where the grounds are not enclosed and where the building fronts directly onto the street and there is no vehicular access.

9.76 On the other hand, it could be argued that the provision protects the right to vote of all but a small number of electors who are unable to cast an ordinary vote and who have missed the statutory time limits for applying for a EV Vote.

9.77 Queensland Advocacy Inc. (S84), were of the opinion that incapacitated electors should be able to cast an ordinary vote as a matter of course. They suggested that facilities such as access to polling-booths and procedures generally should be in place in order to achieve this. This matter has been addressed previously.

ANALYSIS OF EVIDENCE AND ARGUMENTS

9.78 It appears to the Commission that the present system is overly complex. An appropriate balance between protecting the right to vote, security and simplicity of procedures has not been achieved.

9.79 The rights of all disabled electors, not just those incapacitated shortly before an election, need to be protected. Procedures also ought to be simplified so that officials and electors are not discouraged from administering the provisions.

9.80 A possible solution to this problem is to have a provision which authorises the PO to take the voting materials to the elector's vehicle which is adjacent to or near the polling-booth, and take an ordinary vote. The current provision of s.82A(1) would, with some modification, allow this. If references to "unexpected" are removed, the provision would then apply to all disabled persons who are unable to gain access to the building.

9.81 Procedures under such a system would be:

(a) An incapacitated elector is able to approach the vicinity of a booth, but unable to enter it.

(b) The PO advises all scrutineers that the necessary voting materials will be taken to the elector.

(c) The elector makes an ordinary vote and the vote is folded, placed in an envelope and sealed.

(d) The PO in the presence of scrutineers takes the envelope and ballot-paper to the booth, opens the envelope and without unfolding the ballot-paper, places it in the ballot-box.

(e) The elector is able to use the assistance described in Chapter Eight; namely where the assistant may assist the voter in any of the following ways:

(i) they may act as an interpreter;

(ii) they may explain the ballot-paper, and the voter's obligations under the Act in relation to the marking of the ballot-paper, to the voter;

(iii) they may assist the voter to mark the ballot-paper, or may themselves mark the ballot-paper at the voter's direction;

(iv) they may fold and deposit the ballot-paper in the ballot-box.

9.82 Each candidate may have one scrutineer present during the process.

9.83 The only possible problem with this proposal is that it is difficult to assess how many disabled electors would make use of such a provision. If a large number of electors were to demand the service, it would strain the capacity of polling officials to meet the demand as well as continue to provide the normal ongoing service at the booth.

9.84 However, elsewhere in the chapter, it is recommended that the eligibility for postal declaration and general declaration voting be amended to match those of the Commonwealth. A large proportion of disabled electors will probably choose this option instead of physically attending the booth. Experience in the Commonwealth suggests that relatively few disabled electors present themselves at any booth so as to cause administrative problems.

RECOMMENDATIONS

9.85 **The Commission recommends that all electors who are disabled to the extent that they are unable to enter a booth, but are able to bring themselves into close proximity to a booth, should be able to cast an ordinary vote. This should be achieved by the following process:**

(a) An incapacitated elector is able to approach the vicinity of a booth, but unable to enter it.

(b) The Issuing Officer advises all scrutineers that the necessary voting materials will be taken to the elector.

(c) The elector makes an ordinary vote and the vote is folded, placed in an envelope and sealed.

(d) The Issuing Officer in the presence of scrutineers takes the envelope and ballot-paper to the booth, opens the envelope and without unfolding the ballot-paper, places it in the ballot-box.

(e) The elector is able to use the assistance described in Chapter Eight; namely where the assistant may assist the voter in any of the following ways:

(i) they may act as an interpreter;

(ii) they may explain the ballot-paper, and the voter's obligations under this Act in relation to the marking of the ballot-paper, to the voter;

(iii) they may state the names of the candidates and the political party in whose interests each or any of them is standing.

(iv) they may assist the voter to mark the ballot-paper, or may himself mark the ballot-paper at the voter's direction;

(v) they may fold and deposit the ballot-paper in the ballot-box.

9.86 These recommendations have been incorporated into Part 6 s.103 of the Draft Bill, Appendix H.

Pre-Poll Voting in Person

Issue 13 Should pre-poll voting in person be made accessible to a wider group of electors? If so, what grounds of application should apply and should immediate deposit of the vote in a ballot-box be provided in the legislation?

Issue 14 Should Prescribed Electoral Registrars be required to post pre-poll votes to ROs?

Issue 15 Should electors wishing to cast a pre-poll vote in person be allowed to do so any time after noon on nomination day, rather than being required to wait 72 hours?

CURRENT SITUATION

9.87 Under s.84 of the Act an elector may vote in person prior to polling-day in the presence of the RO for the electoral district in which the elector is enrolled, or a Prescribed Electoral Registrar if:

(a) the elector has reason to believe that on polling-day they will be absent from Queensland or travelling or working under conditions which will preclude their voting at any polling-booth; or

(b) throughout the hours of polling on polling-day the elector will not be within 10 kilometres of any polling-booth; or

(c) by reason of membership of a religious order or religious beliefs the elector is precluded from attending a polling-booth on polling-day or from voting throughout the hours of polling on polling-day.

9.88 Such an elector may attend to vote no earlier than 72 hours after noon on nomination day and no later than 6.00 pm on the day preceding polling-day. The elector must sign a declaration on the envelope in which the ballot-paper is placed. Where the vote is cast in the presence of an Electoral Registrar, the elector is required to post or deliver the ballot-paper and declaration (sealed in a second envelope) to the relevant RO. It must be posted before midnight on polling-day, or delivered before 6.00 pm on polling-day.

9.89 The central issue with pre-poll voting in person concern its availability. The grounds on which to apply for this type of vote are very limited. In some of the other States, the grounds of application for pre-poll votes include illness, approaching childbirth, caring for the ill, and the nature of the elector's employment. In the Commonwealth and in Queensland Local Authority elections, the grounds for pre-poll voting in person are the same as those for postal voting. In Local Authority elections the ballot-paper is not mailed back to the RO but is deposited by the voter in a separate ballot-box (refer Rule 62A(4) of 3rd Schedule of LG Act).

9.90 In the case of Brisbane City Council, the provisions of the Qld Elections Act are applied, ie., a ballot box is not used, but the ballot paper is enclosed in the declaration envelope and delivered to the relevant RO.

EVIDENCE AND ARGUMENTS

9.91 As shown in Table 9.1 all other Australian jurisdictions have the same eligibility for pre-poll voting in person and Postal Voting.

9.92 Submissions received on this matter included:

(a) ROs generally agreed there was little, if any, abuse of existing pre-poll voting provisions (A Armitage (S7), P Connor (S8), R Hall (S10)).

(b) The National Party (S76) and the Australian Democrats (S62) stated that Commonwealth provisions should apply.

(c) The ALP (S70) argued that pre-poll voting was an effective method of overcoming any difficulties which may arise from restricting the application time for PVs.

(d) The Woongarra Shire Council (S46), and the Mirani Shire Council (S54) suggested simpler procedures for pre-poll voting.

(e) The Boonah Shire Council (S68) suggested that pre-poll voting should not be more accessible than present.

(f) The Mount Isa City Council submitted that pre-poll voting criteria should be widened if possible and that such votes should be placed in a ballot-box when cast, and that they should be available as soon as ballot-papers are available.

(g) *"As mentioned previously, the ability to exercise the right to vote prior to polling day could be extended with advantage to many people. In addition, the administrative provisions should be relaxed markedly in relation to the filling out of forms in order to obtain such a vote. The same requirements that exist on polling day should be available, that is, merely for the voter to be marked off on a voters roll and be issued with a ballot paper, rather than the necessity to fill out forms and declarations as a pre-requisite."* (Institute of Municipal Management (S86)).

(h) *"Pre-poll voting in person should not be made more accessible. The present system already allows for those people who are unable to cast a vote on polling day. It is considered that there is no need to extend this service any further.*

Ballot boxes should be provided at the pre-poll voting place. At the recent Council election many envelopes were found outside voting places. If ballot boxes could be provided this would help to ensure that votes were not lost before reaching the R.O." (Brisbane City Council (S88)).

(i) *"Appropriate arrangements for pre-poll voting in person, or the use of an electoral visitor, will provide a more effective method for an elector to exercise the franchise than applying for a postal vote on the Thursday or Friday immediately prior to polling day."* (DJCS (S77)).

9.93 It might be argued that if pre-poll voting was made more widely available it would encourage abuse in the sense that electors who are not genuinely entitled to the facility could succeed in being granted a vote under this section. However, an extension of the grounds of application for pre-poll voting might also make voting more convenient for electors who currently find it quite difficult to get to a polling-booth. Since voting is compulsory, every effort needs to be made to render the act of voting as convenient as possible.

9.94 An anomaly in the current provisions for pre-poll voting in person is that if the issuing officer is not an RO, then that issuing officer is not empowered to receive the completed ballot-paper from the elector. The elector must post or deliver the ballot-paper to the RO.

9.95 The primary reason for the 72 hour delay between nomination day and being able to cast a pre-poll vote in person is to allow time for printing of ballot-papers. There is no reason why blank ballot-papers could not be available from nomination day. With central nomination and drawing of positions on ballot-papers (see Chapter Seven) ROs may not know final ballot-paper details until either late on nomination day or the day after nomination day.

9.96 It is also necessary to raise the question of where electors may cast a pre-poll vote. In the metropolitan area this is not a problem as electors would be able to cast their vote with either the RO for that district or at the QEC. However in non-metropolitan areas an electoral district may have a number of towns dispersed over considerable distances, making access to pre-poll voting difficult. To overcome the problem the Electoral Commission would need to be empowered to appoint electoral officials in locations considered necessary by the Commission to facilitate pre-poll voting.

9.97 Currently electoral registrars are authorised to issue pre-poll votes, and this provides a decentralised service accessible to a significant proportion of the electorate. Local Government offices could provide further opportunities to extend the service.

ANALYSIS OF EVIDENCE AND ARGUMENTS

Eligibility

9.98 The principle of simplicity of procedures suggests that eligibility for a pre-poll vote in person should be the same as for postal declaration voting as it is in all other Australian jurisdictions. Aligning eligibility for pre-poll voting with the wider criteria recommended for postal declaration voting, will mean that electors who foresee that they would be unable to vote at a booth in their district on polling-day can make suitable arrangements to vote either in person or by post before polling-day,.

9.99 Such a provision would ensure that electors' rights to vote are protected by maximising the opportunities for declaration voting.

Procedures

9.100 The Commission can see no reason why the current practice whereby pre-poll votes are posted by the elector to the RO should continue. This can lead to the situation where the votes are either not posted, for whatever reason, or are posted after polling-day, or are received later than 10 days after polling. All these events mean that votes of electors may have been wasted.

9.101 A far simpler procedure would be to require that pre-poll declaration votes are completed immediately and are placed in a ballot-box held by the issuing officer. All pre-poll votes would therefore be in the custody of an electoral official, and would be admitted to scrutiny, as these votes are not subject to the 10 day limit for receipt discussed in Chapter Ten, Scrutiny and Determination of Results. The QEC should make suitable dispatch arrangements to ensure that these votes are received by the appropriate RO as soon as possible.

Who May Issue Pre-Poll Votes

9.102 Currently ROs may only issue postal and pre-poll votes for electors in the RO's district. Prescribed electoral registrars may issue pre-poll votes for all electoral districts.

9.103 Currently electoral registrars provide a decentralised pre-poll voting service. Availability of pre-poll voting in person should be available to as large a proportion of the electorate as possible, but within budgetary limits. The QEC therefore should have discretion in appointing persons as pre-poll declaration vote issuing officers. The QEC should also have discretion to appoint these Issuing Officers for one or more or all electoral districts.

9.104 A significant number of pre-poll votes are made at the various interstate and overseas offices authorised for this purpose. Traditionally, these places have been the Electoral Commissions/Departments in the other States and the Australian High Commission and/or the Queensland Agent-General's Office in London. It seems appropriate to the Commission that these arrangements continue. However, the QEC should monitor the origin of all votes made overseas and obtain information about Queensland electors voting overseas at Commonwealth elections to determine whether more overseas polling places need to be made available.

9.105 The Commission considers that the current delay in availability of pre-poll voting in person, 72 hours after close of nominations, is appropriate. This allows sufficient time for printed ballot-papers to be dispatched to Issuing Officers. Pre-poll electors are not disadvantaged by this delay. Electors making declaration votes by post, who have the same eligibility as pre-poll voters, also have to wait a number of days after nominations to receive their ballot-papers.

RECOMMENDATIONS

9.106 **The Commission recommends that:**

(a) Eligibility for making a pre-poll declaration vote in person should be equivalent to the eligibility for declaration voting by post; namely where the elector will be:

(i) absent from the state;

(ii) more than 8 kilometres from a polling-booth;

(iii) travelling;

(iv) seriously ill, disabled, incapacitated or approaching childbirth;

(v) caring for someone seriously ill, disabled, incapacitated or approaching childbirth;

(vi) a patient at a hospital and unable to vote at the hospital;

(vii) precluded from voting at a polling-booth due to religious beliefs;

(viii) in prison or otherwise detained;

(ix) has a silent enrolment; or

(x) throughout polling day is engaged in their employment and is not entitled to leave of absence or would suffer loss in their occupation if leave was taken.

(b) The procedures for pre-poll voting in person should be:

(i) The elector completes the declaration in the presence of the issuing officer and receives a ballot-paper.

(ii) The Issuing Officer witnesses the declaration.

(iii) The elector then completes the ballot-paper in a compartment, folds the ballot-paper and places the folded ballot-paper in the declaration envelope.

(iv) The Issuing Officer places the declaration envelope containing the ballot-paper in a ballot-box.

(v) Pre-poll declaration votes are then dispatched to ROs according to procedures and schedules to be determined by the Queensland Electoral Commission.

(c) Pre-poll declaration votes for all districts should be available from:

(i) all Returning Officers; and

(ii) other offices in locations determined by the Queensland Electoral Commission to ensure equitable availability across the State.

(d) Pre-poll votes in person should continue to be available from 72 hours after close of nominations to allow some time for the dispatch of ballot-papers to Issuing Officers.

9.107 Provisions for pre-poll declaration voting have been included in the Draft Bill in Part 6 ss.105 and 109.

Absent Voting on Polling-Day

Issue 16 Should the provisions regarding absent voting on polling-day be altered in any way? Specifically, should the declaration be simplified?

CURRENT SITUATION

9.108 An elector who is absent from his or her electoral district but within Queensland may attend a polling-booth in another electoral district on polling-day and cast an absent vote (s.82). Such an elector is required to answer a number of questions:

(a) For what electoral district are you qualified to vote?

(b) What is your surname?

(c) What are your christian names in full?

(d) What is your occupation?

(e) What is your full address on the roll for the electoral district for which you claim to vote?

(f) What is your present address?

9.109 The elector must endorse the answers to these questions on a form, then sign it.

9.110 If the ballot-paper does not contain a printed list of the candidates, the PO must write a list of the names of the candidates on it. When the vote has been cast, the ballot-paper is placed inside the endorsed envelope which is then deposited in the ballot-box.

9.111 One of the problems occurring with absent votes is where electors are not sure of or are mistaken about the electoral district in which they are enrolled. In such cases they sometimes secure a ballot-paper and vote for the wrong district. This is, however, not a problem which can be addressed in the legislation; it is an administrative matter which requires the issue of "user friendly" street lists and effective training of POs.

9.112 The full procedures for taking absent votes are set out in s.82:

(a) The elector completes a declaration (printed on an envelope) by answering statutory questions.

(b) The envelope is returned to the PO who then checks it.

(c) The PO enters the candidates' names on a ballot-paper with the candidates' names and gives it to the elector,whilst retaining the envelope.

(d) After completing the ballot-paper in a voting compartment, the elector returns it to the PO and places the ballot-paper in the envelope. The PO seals the envelope.

(e) The RO records the elector's name, address and electoral district on a prescribed form while the elector is completing the ballot-paper.

(f) The envelope is then placed in the ballot-box.

(g) At the close of poll the PO sorts all absent votes into separate bundles for each district and forwards them to the RO.

(h) The RO collates bundles of absent votes for each district from all POs and forwards them to the RO for that district.

9.113 Absent voting provisions do not vary greatly throughout Australia.

9.114 South Australia uses a different system where the declaration envelope has a self-copying counter-foil which the Commonwealth now follows also. This saves the PO considerable time as the name, address and electoral district for each absent voter do not have to be manually transcribed by POs.

EVIDENCE AND ARGUMENTS

9.115 Absent voting is by far the most used of all the extra-ordinary voting provisions. At the 1989 election 131,554 of 230,213 extra-ordinary votes were absent votes (57.1% of extra-ordinary votes and 8.1% of the total vote). There is always a high number of absent votes because elections are held on Saturdays, commonly during holiday periods, and because some electors may not have altered their enrolment following a change of address.

9.116 Perhaps the most common problem with absent votes is when electors either do not know the district in which they are enrolled and it is not possible to ascertain accurately the district from the Street list, or the elector mistakenly gives the PO the incorrect district name. These voters are disfranchised because the RO cannot admit their votes to the scrutiny because they are not enrolled in that district. Other than providing more effective Street lists, and conducting better training there would appear to be little that can be done to reduce this problem.

9.117 A number of submissions dealt with this matter:

(a) P Connor (S8), C Williamson (S6), F Albietz (S17), Wongarra Shire Council (S46), Mirani Shire Council (S54), Mount Isa City Council(S69)) all argued that present absent voting procedures need to be simplified.

(b) The Australian Democrats (S62) suggested that State provisions should be in line with Commonwealth provisions.

(c) The National Party (S76) and the Boonah Shire Council (S68) stated that the current provisions should prevail.

ANALYSIS OF EVIDENCE AND ARGUMENTS

9.118 Under a declaration voting system, absent voting would be declaration voting on polling-day.

9.119 As outlined above, a significant problem associated with absent voting occurs with electors voting for the incorrect district. Following the 1991 distribution of electoral districts recently completed by the Commission, a large proportion of electors will be enrolled in either a different district or a new district, so significant problems can be anticipated.

9.120 The QEC will need to address this issue by conducting an educational program to ensure that electors are advised of their correct district of enrolment. This cannot be done until after the joint electoral roll is coded with the distribution details. Advice from the AEC and the Queensland Electoral Commissioner is that this information will not be available until February 1992. Probably the most opportune time for such a campaign will be fairly close to the next general election when the information about electoral districts will seem more relevant to the average elector.

9.121 A significant proportion of the delays currently experienced with absent voting can be overcome by redesigning the administrative forms to simplify procedures, without disturbing electors' rights or ballot security. This is something that is left appropriately for the QEC to determine.

RECOMMENDATIONS

9.122 **The Commission recommends that:**

(a) The Queensland Electoral Commission should investigate the forms and procedures used in South Australia to process declaration voting on polling-day (absent voting) to determine their suitability as a model for Queensland declaration voting.

(b) Other than the legislative provisions authorising declaration voting on polling-day, the Act should not specify the administrative details. These should be left to the discretion of the Queensland Electoral Commission.

Vote By Person Not Named as an Elector on the Roll

Issue 17 Is the existing provision regarding a vote by a person not named as an elector on the roll adequate? What, if any, changes are needed?

CURRENT SITUATION

9.123 Section 45 of the Act provides for voting on polling-day by an elector whose name is not (or apparently not) on the roll of electors entitled to vote for that district before the date of the issue of the writ for the election because of some official mistake or error of which he or she had no knowledge. This section was designed to ensure that qualified electors are not disfranchised as a result of an error in the processing of enrolment applications or in the compilation or printing of the rolls. The greater variety in names resulting from immigration in the postwar period also contributes to the total when POs are unable to locate an unfamiliar name spoken by an elector with an unfamiliar accent.

9.124 In Chapter Seven it is recommended that the QEC have full discretion on the content of forms, other than the writ or ballot-paper. However in drafting forms for declaration voting the QEC should be mindful of the fact that Australia is a multicultural society and terms such as "given names" may be preferable to or need to be used as well as terms such as "christian names."

9.125 Electors cannot vote under s.45 unless they have sent a claim for enrolment or application for transfer or change of enrolment to an Electoral Registrar, an RO, or the PEO, and it was received before 5.00 pm on the day on which the writ for the election was issued. Such electors must also have retained their entitlement to be on the roll for the district in question since sending in the enrolment application. If such electors have had their names removed from the roll by objection, transfer or disqualification, they cannot vote under this section.

9.126 Electors who believe they are entitled to a vote under s.45 must complete a declaration on the envelope in which the ballot-paper will be placed.

9.127 Votes by persons not found on the roll are called variously Provisional Votes, Disputed Votes or Declaration Votes in other States and the Commonwealth. In Queensland they are sometimes called Section Votes or, claim votes, in the case of LA elections. In all cases, a declaration is required of the elector. Table 9.1 shows that at the 1989 general election in Queensland 19,163 votes were cast under s.45. Only 1,123 of those votes were admitted to the scrutiny. The large number of these sorts of votes may be a reflection on the accuracy of the electoral roll, an indication of attempted abuse of this section, or the result of errors by polling officials and mistakes by electors. At the 1990 Commonwealth election 13,882 provisional votes were issued in Queensland; of these 9,705 were admitted to the scrutiny.

EVIDENCE AND ARGUMENTS

9.128 Electoral rolls establish a person's right to vote, and all Australian electoral laws have provisions which declare that the rolls are final and conclusive evidence of an elector's entitlement to vote. Therefore any elector who claims a vote for a district, and whose name is not on the roll for that district, is not entitled to vote in that district. However, the electoral laws of all Australian jurisdictions recognise that mistakes in the enrolment process do occur, and make provision for electors, who believe they are not shown on the roll because of an official mistake or error, to complete a declaration or certificate and to cast a vote. After the polls have closed, the details of those electors are checked against enrolment records and a decision is then made whether or not to admit their vote to the scrutiny.

9.129 There are several reasons why an elector's name may not be on the roll for the district at which the elector claims a vote. The main reasons for this occurring are:

(a) an official mistake (eg. a name taken off the roll in error, or an enrolment claim inaccurately processed); and

(b) electors mistakenly believing that they are on the roll for that district, when in fact they are enrolled elsewhere, or not enrolled at all.

9.130 The provisions of the various electoral laws in relation to this matter are there to protect those electors in category (a) above.

9.131 Section 45 of the Act contains lengthy definitions of "official mistakes or error" and a detailed description of procedures for electors and officials.

9.132 The Commonwealth Act has less complex procedures: one section makes provisions for voters whose names are not on the roll, voters who have apparently already voted, silent enrolees, and voters whose name has been marked as having previously received a PV.

9.133 The South Australian provisions are simpler again as this category of voter is eligible for a declaration vote. This will also be the case in Queensland under the new Queensland Electoral Act if the recommendations made earlier in this chapter are accepted.

9.134 Public responses to this issue varied considerably:

(a) *"I would agree that Section 45 application form envelopes require too much paperwork and need redesigning. The enrolment card would be a good idea. Applications should be completed in Biro. I feel the use of S.45 voting is abused by voters who are probably unsure of what they are declaring as few votes of this type are allowed at scrutiny."* (P Connor (S8)).

(b) *"Whilst I agree with the provisions of Section 45 of the Elections Act, I nevertheless feel that its provisions should be tightened so that the section is not abused by electors whose names do not appear on the electoral roll on election day. It is very easy for people to claim that they are entitled to a Section 45 vote without producing any evidence to support that claim. It may be a bit harsh to insist that an elector should present his notification of enrolment from the Electoral Office, but he should be obliged to provide some details as to when and where he lodged his claim for enrolment.*

All too often a person whose name is not on the electoral roll and has not lodged a claim for enrolment will demand a Section 45 vote on the advice of a party official." (F Albietz (S17)).

(c) *"No person who is not listed as an elector on the roll should be permitted to vote under any circumstance. Those not listed on the roll should be able to list themselves as present for voting."* (H Duncan (S24)).

(d) *"Existing provisions are adequate and it is difficult to see how they could be modified."* (Boonah Shire Council (S68)).

(e) The National Party (S76) submitted that existing provisions were adequate.

ANALYSIS OF EVIDENCE AND ARGUMENTS

9.135 Differences between the number of votes taken under the respective legislation in the last State and Commonwealth elections in Queensland and the number admitted to the count were mentioned at the start of this section. Possible explanations for these differences are the relative accuracy of the rolls, the differing procedures of the State and Commonwealth to check the validity of votes cast, any follow up and remedial actions.

9.136 Under a Joint Roll Arrangement differences due to the relative accuracy of the rolls will disappear. The enquiries conducted internally by the Australian Electoral Commission will determine the number of votes admitted to the scrutiny. The higher number of votes admitted in the Commonwealth system suggests that the Commonwealth's procedures are more thorough than the State's and that DROs have more discretion to rule in the elector's favour. Again the Commonwealth requirement that a voter whose vote is excluded from the scrutiny must be advised of the decision provides an opportunity to correct any enrolment problems which may exist, and this encourages careful consideration of the claims of such voters and reduces the recurrence rate.

9.137 As a system of declaration voting is being recommended, this category of extra-ordinary voting will be a declaration vote on polling-day. The procedural issues in relation to issuing a vote to this category of electors, checking the rolls and deciding whether the vote should be admitted to the scrutiny are administrative and thus for the QEC to determine. The question of protecting voter's rights in the event that their vote is not admitted is addressed in Chapter Ten.

RECOMMENDATIONS

9.138 **The Commission recommends that:**

(a) The Electoral Commissioner should institute an elector education program at an appropriate time during 1992 to inform electors of their district of enrolment.

(b) The administration arrangements to determine whether an elector who claims a vote when apparently not on the roll, is in fact correctly enrolled, or entitled to enrolment is an administrative matter and need not be included in legislation. The current Commonwealth procedures offer an appropriate model.

Voting Where Elector Appears to Have Already Voted

Issue 18 Should the provision for voting where an elector appears to have already voted be changed in any way?

CURRENT SITUATION

9.139 Electors who go to a polling-booth and find that their names have already been crossed off the certified roll as having voted are entitled to claim a vote under s.81 of the Act. Such an elector must answer the prescribed questions in writing on an envelope. The completed ballot-paper is then placed inside that envelope which is sealed and deposited in the ballot-box.

9.140 Section 81 provides a mechanism for an elector to cast a vote if his or her name has previously been crossed off the roll as having voted through an error on the part of an electoral official.

9.141 Similar provisions can be found in the legislation of the other States and the Commonwealth. In the Commonwealth legislation, however, provisional vote provisions (s.235) cover votes by persons not named as electors on the roll (s.45 in Queensland) as well as votes where electors appear to have already voted (s.81 in Queensland). In the case of Local Authority elections, such votes, although permitted, are not counted except by order of the Supreme Court (refer Rule 48, 3rd Schedule, LG Act).

EVIDENCE AND ARGUMENTS

9.142 This is a similar problem to that discussed in the previous section for electors who are apparently not on the roll. Under a declaration voting system, these electors would complete a declaration vote on polling-day.

9.143 None of the public submissions addressed this issue. This is mainly an administration problem that arises because of errors by officials in marking off electors' names on the certified roll as votes are issued. However, adequate provision must be made to ensure that electors do not vote more than once.

9.144 This is achieved by checking the marked or scanned roll (see discussion in Chapter Ten, Scrutiny and Determination of Result). Usually if an elector appears to have voted twice, and the marked/scanned roll shows that an elector with a similar name has not been marked off the roll, then it is assumed that the elector had not already cast a vote and the declaration vote is admitted to the scrutiny.

ANALYSIS OF EVIDENCE AND ARGUMENTS

9.145 This is a relatively straightforward matter. Very similar provisions apply in all jurisdictions. This category of vote under the recommended system will be a polling-day declaration vote.

9.146 This provision would protect both the elector's rights and also the integrity of the system.

RECOMMENDATION

9.147 **The Commission recommends that provision should be made for electors who have apparently already voted to be included in declaration voting procedures.**

9.148 The Draft Bill provisions which effects this recommendations is in Part 6 s.106.

Mobile Polling in Hospitals and Institutions and Remote Areas

Issue 19 Should mobile polling be introduced at hospitals and institutions which are not designated as polling-booths, in place of Electoral Visitor voting in such establishments?

Issue 20 Should Section 61 of the Act be expanded to include a clear statement of the duties of the Presiding Officer in taking a vote under this section?

Issue 21 Should mobile polling for remote areas be introduced for Queensland elections?

CURRENT SITUATION

Hospitals and Institutions

9.149 Currently Queensland electors who are resident in hospitals or institutions cannot vote prior to polling-day except under s.85 EV voting. These votes are arranged on an individual basis, that is, only those electors in the institution who apply for an EV vote are provided with the opportunity.

9.150 In the next section of this chapter, the matter of whether EV voting for electors with health problems should be abolished in favour of broadening the eligibility for declaration voting is discussed in detail.

9.151 Mobile polling (prior to polling-day) exists for Commonwealth elections which applies only to hospitals and institutions which are not designated as polling-places. There an "Electoral Visitor" accompanied by a Poll Clerk may visit patients with a ballot-box and ballot-papers on polling-day or any of the five days preceding polling-day, and may make several visits to one of these institutions. Scrutineers may accompany the EV. How-to-vote material is available from the mobile polling team upon request. The vote is taken in the normal fashion.

9.152 Section 61 of the current Act allows for a form of mobile polling in hospitals and charitable institutions. This section provides that if a part of a hospital or charitable institution is appointed as a polling-booth, every room or ward in which there is an elector *" ... unable by reason of ill-health to present himself to record his vote and deposit it in a ballot-box at the polling-booth ... "* shall be deemed to be part of the polling-booth and *" ... a presiding officer presiding in respect of a ballot-box may take the ballot-box to any such elector for the purpose of receiving the vote recorded by him."*

9.153 Similar provisions exist for elections under the Local Government Act (Rule 32 of Schedule 3).

9.154 This Section contains no detail regarding how the vote must be taken. While scrutineers may attend any place where a vote is being taken, there is no provision for scrutineers to be notified of the time and place of the voting. The Commonwealth legislation on this type of mobile voting states clearly that the PO should be *" ... accompanied by a polling official and such scrutineers (if any) as wish to attend."* (CE Act s.224).

Remote Areas

9.155 There is no provision in the current Act for mobile polling in remote areas.

9.156 Section 227 of the CE Act provides for mobile polling in remote subdivisions for Commonwealth elections. Mobile polling teams appointed under this section may visit places which are temporarily treated like polling-booths on polling-day on any of the 12 days preceding polling-day. The AEC determines which divisions are to be declared "remote". In Queensland three divisions have been declared: Kennedy, Leichhardt and Maranoa. During the last Federal election only Kennedy ran mobile polling in remote areas, and 50 votes were taken in this fashion.

9.157 Mobile polling in remote areas was introduced following the recommendation of the JSCER. In its *First Report (1983)* the JSCER stated:

> *"In terms of Aboriginal voters in particular, this may guard against alleged electoral malpractices associated with postal voting."* (p.128).

9.158 The system avoids some of the potential problems of postal voting in remote areas where mail services are infrequent. However, the provision of the facility has proved to be relatively expensive on a dollar cost per vote basis and there are difficulties in advising electors in such areas when the mobile polling team will fly in.

EVIDENCE AND ARGUMENTS

9.159 Mobile polling (taking the booth to the electors) exists in other Australian jurisdictions, including the Commonwealth, South Australia, and New South Wales. Only the Commonwealth Act currently makes provision for mobile polling in remote areas. The SEO used mobile polling for one Island community during the last State referendum which was authorised by s.8.6 of the Referendums Legislation Amendment Act 1990.

9.160 All submissions addressing these issues argued that mobile polling should be introduced (Mount Isa City Council (S69), C Williamson (S6), National Party (S76), Queensland Advocacy Inc. (S84), the ALP (S70), the DJCS (S77) and the Brisbane City Council (S88)).

9.161 Queensland Advocacy Incorporated (S84) however had some reservations about making mobile polling too freely available:

> *"QAI favours any procedure which makes it easier for people who are unable to comply with ordinary voting requirements to exercise their rights to vote. Again, any introduction of mobile polling should not be at the expense of making ordinary voting procedures properly and fully accessible.*
>
> *There will always be people who are unable to exercise an ordinary vote, and the use of mobile polling in hospitals particularly could be a worthwhile alternative to postal voting and electoral visitor voting.*
>
> *QAI would not favour the introduction of mobile polling in large institutions for people with disability who reside in such places because there is no suitable accommodation, not because they are sick. The introduction of mobile polling in large institutions would only serve to further segregate those residents by providing a special and different process to enable them to exercise their vote. If the criteria under any expanded postal voting procedures or under the existing electoral visitor voting procedures are not met, then we believe that such residents should be assisted to exercise an ordinary vote at any ordinary polling booth.*
>
> *Where mobile polling is introduced we believe that sufficient resources should be brought to bear to enable voters to vote on polling day rather than before polling day. This will enable people to make their vote with all the information available to other voters. If a patient in hospital knows that they will be unable to vote on polling day, due, perhaps to an operation on that day, they may exercise their right to use a postal or elector visitor vote."*

ANALYSIS OF EVIDENCE AND ARGUMENTS

9.162 The Commission considers it appropriate that mobile polling be introduced in hospitals and declared institutions, and in remote areas. In relation to hospitals and declared institutions mobile polling as conducted, for example, for Commonwealth elections, provides a more efficient service than the present system of EV, and provides adequate protection of individual electors' rights.

9.163 The periods typically allowed in the legislation (up to five days before polling-day in hospitals and institutions and 12 days in remote areas) also is more than adequate. These periods would allow the QEC to conduct mobile polling from the Monday or the second Monday before polling-day.

9.164 Under the recommended declaration voting system, votes obtained from mobile polling in hospitals and declared institutions could be ordinary votes if the hospital/institution is in the elector's district or a declaration vote otherwise.

RECOMMENDATIONS

9.165 **The Commission recommends:**

(a) Mobile polling should be introduced into hospitals, declared institutions and remote areas.

(b) The Queensland Electoral Commission should be authorised to declare the institutions, such as nursing homes, and the remote electoral districts, in which mobile polling may be conducted.

(c) Mobile polling should be able to be conducted from eleven days before polling-day and on polling-day in the case of hospitals and declared institutions, and from eleven days prior to and on polling-day in the case of remote areas.

9.166 Provisions to implement these recommendations appear in Part 6 s.95 of the Draft Bill.

Voting in Prisons

Issue 22 Should prisoners who are enrolled be entitled to vote?

Issue 23 Should provision be made for mobile polling in prisons for eligible voters?

CURRENT SITUATION

9.167 Currently s.23 of the Act disqualifies from enrolment and therefore voting, any person who has been convicted and is serving a term of imprisonment of six months or longer. Prisoners serving less than six months are therefore entitled to be enrolled. Section 91 requires every enrolled elector to vote. However s.44(b)(i) disqualifies from voting any person who, on polling-day, is under sentence of imprisonment. This disqualification is unique to Queensland.

9.168 It should be noted that EARC in its *Report on Queensland Joint Electoral Roll Review* recommended that State enrolment qualifications should be the same as the current Commonwealth qualifications. The recommendation was accepted by the Parliament and a Joint Roll Arrangement subsequently signed with the Commonwealth.

9.169 This arrangement now allows prisoners under sentence for an offence punishable by imprisonment for less than five years to enrol (of the 2,215 persons under sentence of imprisonment in Queensland at June 1991, 1,199 were serving sentences for offences punished by imprisonment for less than five years, and 244 of those less than six months). Consequently, a larger number of prisoners in Queensland would be entitled to enrol. If prisoners who are enrolled are to be allowed to vote then some provision for voting in jail will need to be included in the new elections legislation. This could be achieved by declaring certain prisons as polling-places (as has been recommended for some hospitals and institutions) or by extending provisions for PVs to eligible prisoners.

9.170 The Commonwealth recently legislated (September 1990) to provide for mobile polling in prisons at Commonwealth elections. Through s.226A of the CE Act, the Electoral Commissioner *" ... may make arrangements with the Controller-General of Prisons for a State or Territory for the taking of the votes of persons confined in prisons in the State or Territory."* EVs may then be appointed for this purpose. These officers must take a ballot-box and ballot-papers to a prison on an agreed day. They may provide how-to-vote-cards to electors who request them. Scrutineers may also attend. At the end of the visit, the EV must seal the ballot-box and forward it to the ARO designated by the DRO.

9.171 Of the other Australian States, only South Australia provides mobile polling in prisons. Under s.83 of the *Electoral Act 1985* (SA) corrective institutions may be "declared" and EV teams may then arrange to visit these institutions anytime between the expiration of three days from the date fixed for the nomination and the close of poll on polling-day. Scrutineers may attend the voting, and how-to-vote booklets (containing photo-reduced how-to-vote-cards) may be shown to the electors. Wardens are normally present while the votes are being cast.

EVIDENCE AND ARGUMENTS

9.172 With the adoption of a joint roll and common enrolment criteria with the Commonwealth, all prisoners in Queensland imprisoned for offences punishable by imprisonment for less than 5 years are now entitled to be enrolled.

9.173 However the current s.44(b)(i) disqualifies any person imprisoned from voting. Queensland is currently the only jurisdiction in Australia which automatically excludes any imprisoned person from voting.

9.174 Submissions offering differing viewpoints:

(a) *"The other area of principle where the Party opposes the Commonwealth provisions is the issue of voting by prisoners. The Party opposes this for two reasons.*

In the first place, deprivation of the right to vote has traditionally been a consequence of imprisonment. Imprisonment is, after all, intended to be a punishment which takes the form of depriving the imprisoned person of the right to exercise what would normally be the rights of movement and participation in a free society. It is consistent with these notions that the right to vote should be one of the rights lost when a person is imprisoned.

Secondly, persons imprisoned for more than a short period of time presumably would be required to re-enrol in the electorate in which the prison is located. That raises the possibility, in the context of large correctional facilities, that they may not withstanding that they form no part of the community of interest of the electorate generally (in the sense that the prisoners would not ordinarily be residing there) their votes might affect the result of the vote.

If, contrary to the Party's submission, it is considered that prisoners ought to be afforded the right to vote, there should be special provisions as to enrolment so that a prisoner is neither obliged nor entitled to change his place of enrolment on account of his being imprisoned." (National Party (S76)).

(b) Also opposed were the Miriam Vale Shire Council (S52), and Gladstone City Council (S67).

(c) On the other hand the Prisoner's Legal Service (S83) argued strongly for voting rights for prisoners:

"It is universally recognised that some restrictions on the right to vote must apply, (e.g. on the basis of immature age or unsoundness of mind). But the criteria for disqualifying a citizen from voting should be confined to matters relating to capacity to exercise voting rights thoughtfully and responsibly. Criminal conviction does not impair a citizen's capacity to make rational and responsible voting choices. Yet in Queensland, citizens 'under sentence of imprisonment' are disqualified from voting.

The denial of the right to vote to citizens 'under sentence of imprisonment' is a disqualification on the grounds of legal status. It is a disqualification of the same kind which operated in previous times to deny voting rights to African Americans, women and Australian Aborigines. It is an act of discrimination on arbitrary grounds which is offensive to human dignity and repugnant to prevailing community standards.

The punishment associated with imprisonment is removal from the community and the deprivation of liberty. However, it is socially dysfunctional to alienate prisoners from the community to which they will eventually return and in which their families remain.

Modern corrections policy includes the basic principle that management of prisoners and offenders should emphasise their continuing part in the community not their exclusion from it (Guiding principle No. 5 of the Minimum Standard Guidelines for Corrections established at Conference of Ministers for Corrections, Melbourne 1987). This principle has been specifically adopted by the Queensland Corrective Services Commission (Q.C.S.C. Policy and Procedure Manual, issued 22.2.90, page 4).

According to modern conceptions, prisoners, though necessarily deprived of free association in the community, remain part of the community and should retain as many of their rights as citizens as possible. The right to vote is a basic civil right. By exercising the right to vote, a citizen makes a positive contribution to community life and affirms her/his identification with the community. Whereas, by depriving a citizen of the right to vote, that citizen is alienated from the community and identified as an outsider.

Loss of voting rights by reason of conviction or imprisonment is an archaic leftover from the concept of 'civil death' and has no place in modern correctional systems whose reform policies aim to encourage the prisoner's identification with, rather than alienation from, the community at large (Report of Royal Commission into N.S.W. Prisons (Nagel Report), N.S.W. Government Printer, (1978), 304).

Appropriate electoral machinery must be put in place to ensure a prisoner's right to vote (once given) can in fact be exercised. Prisoners must be clearly informed of their right to vote and be actively encouraged to register to vote. The most effective method of allowing prisoners to vote is to place a polling booth in the prison. The Commonwealth Government recently provided for mobile polling in prisons. See Section 226A of Commonwealth Electoral Act. This would ensure a maximum number of voters and would reduce the possibility of allegations of interference by prison authorities with the polling process.

The enrolment address of prisoners may present some problems, however. The prevalence of prisoner transfers and the possibility of the development of a 'prison electorate' means that the address of the prison should not be used for enrolment purposes. Instead prisoners could be enrol in the electorate in when they were enrolled prior to being sentenced. Failing this, they could enrolled in the electorate in which they were entitled to enrol prior to sentencing."

(d) *"It is suggested that the electoral visitor system be extended to prisons rather than institute mobile polling booths.*

In a sense, an 'Electoral Visitor' team, as provided for in Commonwealth legislation, is equivalent to a mobile polling booth, but provides a more flexible approach and more effective coverage." (DJCS (S77)).

9.175 Others expressing support for prisoners having the right to vote were the Boonah Shire Council (S68), Mount Isa City Council (S69), ATSIC, Cairns (S92) and the Australian Democrats (S99) who stated:

> *"The Democrats wish to express our support for the submission of the Prisoners' Legal Service, which calls for the right of prisoners to vote. It was an unfortunate oversight on our part that we did not address this issue in our original submission, as it deals with an important principle. The right of prisoners to vote should be clearly defined in legislation. Once this is done, provision has to be made to enable prisoners to exercise this right, preferably via mobile polling booths. However, if costs obviate against this, postal votes should be permitted."*

ANALYSIS OF EVIDENCE AND ARGUMENTS

9.176 The Commission is aware that the question of voting rights for prisoners is a contentious issue. There are many in the community who believe that prisoners should have most if not all their civil rights removed. Conversely others argue that retention of rights is a significant component of rehabilitation.

9.177 Elsewhere in this Report (Chapter Fourteen) it is recommended that those convicted of certain electoral offences should not be disfranchised, as this would mean a penalty in addition to the fine/imprisonment imposed. The Commission believes this argument should also apply to prisoners. The Commission has also noted that prisoners are entitled to be enrolled if serving a sentence for a conviction which attracts a penalty of less than five years.

9.178 The Commission agrees with the arguments put forward by the Prisoners Legal Service (S83) that entitlement to vote would be an important link with the community for prisoners on relatively short sentences.

9.179 If some prisoners are allowed to vote then the question of which seat they should be enrolled in needs to be addressed. The CE Act s.96A makes suitable provision and should be adopted in the new Act. This section allows eligible prisoners to enrol in the district with which they have some ties:

> *"Enrolment of prisoners*
>
> *96A (1) A person who is serving a sentence of imprisonment is entitled to remain enrolled for the Subdivision (if any) for which the person was enrolled when he or she began serving the sentence.*
>
> *(2) An eligible person who is serving a sentence of imprisonment but who was not enrolled when he or she began serving the sentence is entitled to be enrolled for:*
>
> *(a) the Subdivision for which the person was entitled to be enrolled at that time;*
>
> *(b) if the person was not so entitled, a Subdivision for which any of the person's next of kin is enrolled;*
>
> *(c) if neither of paragraphs (a) and (b) is applicable, the Subdivision in which the person was born; and*
>
> *(d) if none of the preceding paragraphs is applicable, the Subdivision with which the person has the closest connection.*
>
> *(3) In subsection (2), 'eligible person' means a person who, under section 93, is entitled to enrolment."*

9.180 Prisoners entitled to vote would be eligible for a declaration vote by post. However, it is considered appropriate that the QEC have the authority to "declare" prisons and institutions for the purposes of mobile polling. This would allow mobile polling in prisons where the number of eligible voters was considered by the QEC to be high enough to warrant the resources necessary.

RECOMMENDATIONS

9.181 **The Commission recommends that:**

(a) Prisoners who are eligible to be enrolled electors (ie. imprisoned for offences punishable by imprisonment for less than five years) be eligible to vote.

(b) Prisoners should enrol in an electoral district with which they have ties, such as prior residence.

(c) The Queensland Electoral Commission should have discretionary power to "declare" prisons for the purposes of mobile polling.

9.182 The Draft Bill contains provisions to implement these recommendations in Part 6 s.94.

Electoral Visitor Voting

CURRENT SITUATION

9.183 Section 85 of the Act provides for an elector to vote before an EV who brings a ballot-paper and a ballot-box to the voter prior to polling-day. To qualify, an elector must be precluded from attending any polling-booth by reason of serious illness, infirmity, a medical condition or approaching maternity. Any time after the day of the issue of the writ an elector may forward an application to the RO for the electoral district in which the elector is living. The application is invalid if it is not received prior to 6.00 pm on the day that is two days before polling-day (Thursday). It must be signed by the applicant in the presence of any elector of the State or a legally qualified medical practitioner or registered nurse who is in attendance on the applicant. When the vote is taken, the elector must also sign the envelope into which the completed ballot-paper is placed. No provision is made to cater for people who are too infirm to sign an application or the declaration.

9.184 EV votes may be taken in hospitals and institutions as well as in private homes. If an applicant is an inmate of a hospital or institution part of which is appointed as a polling-booth, the application must be accompanied by a statement signed by a medical practitioner or registered nurse attesting the fact that the applicant is incapable of voting therein on polling-day. For Commonwealth elections no provision exists for taking votes in electors' homes; such persons must apply for PVs in the normal way. However, EVs may take votes in hospitals that are not polling-places and in prisons (CE Act ss.225-226).

EVIDENCE AND ARGUMENTS

9.185 There are a number of problems associated with EV voting. Firstly, some electors may be unhappy at the intrusion associated with this voting procedure, especially since the Act allows for a scrutineer for each candidate to be present when an EV vote is taken. Secondly, Electoral Visitor votes are relatively costly to take, since they require staff who are paid on an hourly basis. If electors with health problems were required to cast PVs instead, there would be a saving in administrative costs. Thirdly, EV votes cannot always be successfully organized. For example, if the applicant cannot be contacted by the EV at the prearranged time (or within one half hour of the time), or if the applicant is unable or unprepared to vote on or about that time, then the EV may terminate the visit and need not make a further visit (s.85(15)(b)). The end result is that the elector might have no further opportunity to cast a vote in the election. EV voting is particularly difficult to organize in the large country electorates because of their size and the distances to be travelled.

9.186 There are however certain advantages to EV voting. All EV voting ballot-papers are returned (which is not always the case with PVs). Voters who receive an EV are guaranteed assistance, should they need it, in recording their vote and completing their declaration in a proper manner. These voters may find postal voting papers confusing. Advice to EARC from experienced ROs is that EV voting appears to have been introduced in Queensland to guard against alleged malpractices associated with postal voting.

9.187 There was support for the retention of EV voting in public submissions, either in its present format or a modified format.

(a) The Liberal Party (S100) and the National Party (S76) both stated that they supported the retention of EV voting but provided no elaboration of their position.

(b) A number of ROs argued for retention of EV voting, either in its present format or with stricter enforcement of eligibility criteria to prevent abuse. This included J Dettori (S4), A Armitage (S7) and R Hall (S10).

(c) A number of other submissions suggested that EV voting procedures should be simplified (eg. Mirani Shire Council (S54)).

(d) *"Electoral visitor voting is of considerable assistance to some people with disability, but this may be due to the restricted eligibility grounds for postal votes in State elections.*

QAI agrees with the problems outlined in the Issues Paper. On the other hand, our experience is that some people with disability prefer the assistance that an electoral visitor can provide, to the procedures of postal voting under the Commonwealth legislation.

Again, QAI believes that if polling booths were properly accessible and it was well known that adequate assistance was provided to voters exercising a vote under the ordinary voting procedures, electoral visitor voting and postal voting would not be such an issue.

Perhaps a solution would be to extend the grounds for postal voting to include those people with disability who currently enjoy electoral visitor voting, but to allow an option for people to seek assistance from the Electoral Commissioners Office if required. Thus, those people who could not call on the assistance that they wished to have in voting by postal vote could make a special request for that assistance." (Queensland Advocacy Inc. (S84)).

(e) The Brisbane City Council suggested that incapacitated electors should have the choice of EV voting or postal voting.

9.188 However a number a submissions argued against EV voting:

(a) Some ROs suggested the current EV voting provisions should be dispensed with including C Williamson (S6) and J Hall (S9).

(b) *"I would like to see the elimination of the electoral visitor. In this area scrutiny of the electoral visitor is not possible. I hear too many stories about corrupt electoral visitors. There is no valid reason for that position."* (H Duncan (S24)).

(c) The Australian Democrats (S62)) position was that Commonwealth provisions should apply.

(d) *"Electoral Visitor votes. All parties should provide the Returning Officer with a list of people who may require an electoral visitor vote. These people could then be contacted by the Returning Officer and advised to apply for a postal vote. When the postal ballot is sent to the elector a separate advice would list each party's preference list (as displayed in each voting compartment of the polling booth). This change would stop insensitive and pushy party workers from pressurising sick and incapacitated electors into voting for their candidate."* (R Collins (S81)).

9.189 The objective of the recommendations in respect of all the declaration voting provisions has been to make voting more accessible for the members of the community who are disabled. In summary the recommendations are:

(a) wider postal declaration voting eligibility criteria to match the Commonwealth;

(b) wider General Postal declaration voting criteria to match the Commonwealth and therefore include disabled persons;

(c) provisions to allow POs to take an ordinary vote from an incapacitated elector in the vicinity of the polling-booth;

(d) greater availability of pre-poll declaration voting in person; and

(e) introduction of mobile polling in hospitals and institutions.

ANALYSIS OF EVIDENCE AND ARGUMENTS

9.190 In Chapter Eight of this Report, it was recommended that disabled electors could nominate any person to give them assistance to cast an ordinary vote, and in Chapter Seven access for disabled electors was proposed as a consideration when assessing a site for a polling-booth. These modifications to existing procedures significantly reduce the need for EV voting. Also no evidence has been found that incapacitated electors are unable to cast a vote in other jurisdictions where EV voting on an individual basis is not available.

RECOMMENDATION

9.191 **The Commission recommends that electoral visitor voting should not be retained in the new Electoral Act. Disabled electors needs have been addressed by making ordinary and declaration voting more accessible to disabled electors.**

9.192 The Commission is aware that this recommendation is inconsistent with its recommendation in *The Local Authority Electoral System of Queensland* (90/R2 September 1990), that EV voting be extended to all local government elections and not restricted to Brisbane City Council elections. The Commission has now examined the matter further and considers that, in the light of adequate alternative provisions, EV voting is superfluous. If these alternative provisions are also applied in LG elections, EV voting would be equally superfluous there.

Summary of Extra-Ordinary Voting Recommendations

9.193 Table 9.4 below summarises the Commission's recommendations in relation to declaration voting:

TABLE 9.4

COMPARISON OF EXTRA-ORDINARY VOTES

NEW PROVISION	OLD PROVISION
Declaration Voting Before Polling-Day	
By post	Postal voting (s.87)
In person	Pre-poll voting (s.84)
	Interstate/Overseas (s.83)
Registered declaration voting	Registered postal voting (s.88)
On Polling-Day	
Elector not in district of enrolment	Absent voting (s.82)
Elector not enrolled	(s.45)
Elector who has apparently already voted	(s.81)
Mobile Polling On or Before Polling-Day	
In declared institution	No provision
In remote areas	No provision
No provision	Electoral visitor voting
Provision for ordinary voting by all disabled electors	Unexpectedly incapacitated electors

CHAPTER TEN

SCRUTINY AND DETERMINATION OF RESULTS

Introduction

10.1 The term "scrutiny" is not formally defined in the Act. It is generally accepted by ROs, other polling officials, candidates and political parties to mean the process of counting the votes from the time polling closes at 6.00 p.m. to the declaration of the poll, the formal result. In the CE Act, however, the relevant Part, Part XVIII, is entitled "The Scrutiny" and the term is used extensively. The scrutiny begins immediately after the close of polling. Only ordinary votes are examined and counted on polling-night by POs. The count by POs is provisional and all votes are later examined and recounted by the RO. The ROs in each district complete the count in the period following election day. Depending upon the closeness of the outcome, counting may continue for several weeks before the result in each district is officially declared.

10.2 In Chapter Eight, recommendations were made on what constituted a valid expression of preferences under OPV. In Chapter Nine the Commission recommended the introduction of declaration voting with common procedures for different types of declaration voting, to replace the various types of extra-ordinary voting in the current Act.

10.3 These substantial changes in voting methods and procedures require that scrutiny provisions also be adapted to ensure that all eligible votes are admitted, and that electors' rights are preserved.

Matters for Consideration

10.4 In Issues Paper No. 13 the matters raised for public discussion related to:

(a) Scrutineers;

(b) Scrutiny on polling-night and determination of formality;

(c) Marked rolls and scanning;

(d) Scrutiny after polling-night;

(e) Determination of the result;

(f) Whether the count should be continued to obtain a two-party preferred vote;

(g) Re-counting of ballot-papers;

(h) Tied elections;

(i) Declaration of the poll and the return of the writ;

(j) Storage and disposal of ballot-papers;

(k) Post-poll reporting to the Electoral Commission; and

(l) Delays in the scrutiny and obtaining a result.

Current Situation

10.5 Sections 97 and 98 of the Act deal with the initial scrutiny on polling-night. The PO at each booth (and the RO if in charge of a booth) must examine the ballot-papers for formality; count the first preference votes for each candidate; make out a statement indicating the results of that count; parcel up the counted ballot-papers and make a separate parcel of ballot-papers set aside for separate custody (spoilt ballot-papers); and deliver the parcels and the marked certified rolls and other electoral material to the RO. The statement must be signed, and the parcels sealed. Absent votes taken at the polling-booth must also be delivered to the RO.

10.6 Section 96 deals with cases where an Assistant Returning Officer (ARO) has been appointed for a group of polling-booths (because at such booths no more than 50 votes are likely to be polled and therefore a separate count will not be held). The POs at the smaller booths must parcel up the unopened ballot-box, the roll and the separate custody votes, and deliver these sealed parcels to the ARO. A written statement containing the number of votes placed in the ballot-box must also be delivered. Having received the parcels, the ARO opens the ballot-boxes and counts and records the number of ballot-papers (but does not examine or count the votes). The ballot-papers from all the ballot-boxes are then mixed in together, and counting proceeds as per ss.97 and 98.

10.7 In addition, each of the sections in the current Act which makes provision for extra-ordinary voting contains details as to how the certificate envelopes, are to be dealt with. This is necessary to determine whether the vote in each envelope should be admitted to the scrutiny or whether the envelopes should be set aside unopened.

10.8 Following the recommendation that declaration voting be introduced, consideration also needs to be given to how declaration envelopes are to be examined to determine which votes should be admitted. This matter is dealt with in the section dealing with scrutiny after polling-night.

Scrutineers

Issue 1 Should scrutineers have the right to object to the formality decisions of election officials at any stage of the scrutiny? If so, should the result of the decision be marked accordingly on the ballot-paper?

Issue 2 What should be the permissible quota of scrutineers present during the scrutiny:
(a) on polling-night?
(b) at the RO's counting centre after polling-night?

Issue 3 Should provision be made for the scrutiny on polling-night to proceed to a two-candidate-preferred result?

CURRENT SITUATION

10.9 On polling-night scrutineers are entitled to observe the count; to countersign the returns (the statement containing the aggregate number of the votes received for each candidate); and to seal the parcels containing the ballot-papers, rolls and other materials after they have been sealed by the PO (ss.96-98). Unlike the Commonwealth legislation, there is no provision in the Act for scrutineers to object to the admission or rejection of a ballot-paper. In the Commonwealth, the officer conducting the scrutiny decides whether the vote is formal or informal and marks the paper "admitted" or "rejected" accordingly. In all other States scrutineers can object to the admission or rejection of ballot-papers.

10.10 In the days following polling-day scrutineers may also be present at the RO's counting centre to observe the checking and counting procedures. Once the name of the winning candidate has been ascertained, scrutineers may endorse the seals on the parcels of election material prepared by the RO.

10.11 Section 70 of the Act states that a maximum of one scrutineer per candidate per ballot-box is entitled to be present in a polling-booth during polling-hours. No specific mention of the number of scrutineers allowed in the polling-booth after polling-hours is made in the Act, although s.99 stipulates that at the count on the days after polling-day only one scrutineer per candidate may attend. Limits on the numbers of scrutineers allowed at the count vary in the other States from one per candidate per polling-booth to one per candidate per counting table. In the Commonwealth one scrutineer per candidate per officer conducting the count is allowed. Regarding the issue of number of scrutineers, it is important to consider how many representatives a candidate needs in order to ensure that their interests are adequately protected during the count.

10.12 In Commonwealth scrutinies demands have been made for the count on polling-night to proceed at a pace to allow scrutineers to note second and subsequent preferences marked on the ballot-papers with a view to calculating a likely two-candidate-preferred vote at the earliest opportunity, thereby ascertaining the result. The JSCEM recently recommended:

> *"The Committee recommends that the Commonwealth Electoral Act 1918 be amended to add a new step to the House of Representatives scrutiny process to guarantee that scrutineers would have the opportunity to readily observe a 'two candidate preferred vote' in each polling place on election night."* (JSCEM, 1990, p.35)

10.13 To meet this problem at Commonwealth elections recent practice has been for the DRO and divisional staff to conduct a preliminary distribution of preferences early in the week following polling-day, but in a close election the demand for more information on polling-night appears to make even that delay unacceptable. Slowing the scrutiny in each polling-place delays receipt of first preference votes figures, and that is normally a matter of complaint, so a choice has to be made whether it is justified by giving the opportunity to make a better informed estimate of the likely outcome in that electoral district as early as possible.

10.14 The Western Australian Electoral Commission has experimented with the notional distribution of preferences in four by-elections. The procedure followed is that the Commission advises the RO which two candidates are predicted to be the last two remaining candidates. After the primary vote count at the polling-booth and after the RO has been advised of the primary vote count, each polling-place allocates the votes of the provisionally excluded candidates. The rule used for the allocation is that the minor candidate's votes are allocated to whichever of the two major candidates has the lowest preference number opposite their name.

10.15 The Western Australian Commission is of the opinion that provisional allocation of preferences gives an early indication of any two-party preferred swing.

EVIDENCE AND ARGUMENTS

10.16 In Queensland if a vote is challenged, either on polling-night or at the ROs counting centre, the counting officer makes a decision and then simply allocates the vote to a candidate or to the informal category consistent with the decision. The practice on polling-night in Queensland is that if the PO has any doubt about a ballot-paper, that ballot-paper is put with the informal votes.

10.17 A problem with this procedure is that the RO is unaware which votes have been challenged by scrutineers when conducting the official full count of the vote. Also, if the result for a district is challenged in the Courts at a later date, the disputed votes are not readily identifiable.

10.18 The Mount Isa City Council (S69) and the National Party (S76) stated that scrutiny provisions should be consistent with Commonwealth procedures.

10.19 Under s.70 of the Act, one scrutineer per candidate per ballot-box is allowed at each polling-place. Section 99 authorises one scrutineer per candidate at the RO's counting centre. Sections 96, 97 and 98 authorise the attendance of scrutineers at polling-booths after the close of the poll but do not specify the number of scrutineers who may be present.

10.20 There are differing provisions regulating the number of scrutineers in other jurisdictions. The CE Act, s.217 allows each candidate one scrutineer per candidate at each issuing point during polling, and s.264 allows one scrutineer per candidate per counting officer at the scrutiny after polls close. In South Australia, a candidate is not allowed more than two scrutineers at a polling-place or at a counting centre, irrespective of the number of issuing officers or counting officers.

ANALYSIS OF EVIDENCE AND ARGUMENTS

10.21 The Commission considers that scrutineers should be able to object to the formality of a vote at any stage in the scrutiny and that the officer counting the votes should endorse "accepted" or "rejected" on the reverse of the ballot-paper. This provision would bring Queensland into line with all other Australian jurisdictions. Such a procedure will enable the RO and other scrutineers to readily identify which votes are causing concern.

10.22 If polling officials were to be required to continue the scrutiny on polling-night to a two candidate preferred result, several difficulties could arise. Firstly, if the vote is close, candidates would be ranked in different orders at the various booths. The distribution of preferences would therefore be difficult as candidates would not be eliminated in the same order at each booth. Secondly, costs would be higher because officials who have already worked from 7.30am to approximately 9.00pm would have to remain at the booth even longer. Thirdly, because of extra-ordinary voting, any total reached on polling-night would not necessarily be an accurate indication of the final result, as only about 75-80% of the count is concluded on the night. Fourthly, such a procedure would only be meaningful in assisting with estimating the final outcome in a marginal district. Experience of the last several State and Federal elections has shown that it is often very difficult to predict with accuracy which seats will be marginal.

10.23 Another argument against provisional allocation of preferences is that the Electoral Commission should not be placed in the position of predicting which candidates will remain, and of giving interpretations of likely outcomes. The official responsibility of the Commission is to ensure that a completely accurate result is achieved as quickly as possible.

10.24 Competent scrutineers can estimate with reasonable accuracy the trend in preferences on election night and demand for a slower count reflects in part the decline in experienced and capable scrutineers as party membership has shrunk.

RECOMMENDATIONS

10.25 **The Commission recommends that:**

(a) Scrutineers should have the right to object to the formality decisions of electoral officials at any stage of the scrutiny. The result of the official's decision, either "accepted" or "rejected" should be endorsed on the reverse of the ballot-paper.

(b) Each candidate should be entitled to one scrutineer per Presiding Officer during all stages of polling, and one scrutineer per counting officer during scrutiny after polls have closed.

(c) There should be a provision which allows scrutiny to proceed to a two-candidate preferred result. However the timing of this is a matter the Queensland Electoral Commission may wish to explore in more detail in the future having regard to other demands on the time and attention of officials at the polling-booths and the counting centres.

10.26 Provisions to implement these recommendations have been included in the Draft Bill in Part 6 s.99.

Scrutiny on Polling-Night and Determination of Formality.

Issue 4 What should be the determinants of formality and informality of votes?

CURRENT SITUATION

10.27 Subject to the clear intention rule (s.103(3)), votes are rejected as informal if they do not conform to the prescriptions regarding numbering in ss.79 and 102 of the Act. Under Optional Preferential Voting (OPV) a new regime for determining what constitutes a valid expression of preference is required. This matter was addressed in Chapter Eight, where it was recommended that a first preference could be expressed as "1" or a tick or a cross. That chapter also made recommendations on repeated preferences and missing preferences.

10.28 Section 103 of the Act also deals with informality. This section states that a ballot-paper shall be rejected if:

(a) it has no vote on it;

(b) it bears any mark or writing by which the voter can be identified; or

(c) it has upon it any reference to a political party for or in the interest of which a candidate is standing.

10.29 In relation to (c) above, in Chapter Seven the Commission recommended that political affiliation be shown on ballot-papers.

10.30 Originally the prohibition against identifying marks was to prevent corruption. A corrupt elector needed to establish that he had voted a particular way to secure the reward promised. However, this identification can be made by methods other than setting out the elector's name or initials, and if the risk of bribery of voters remains serious the prohibition has to be drawn widely to catch all and any attempts to link a particular elector with a particular ballot-paper. If, however, this is regarded as a serious risk no longer, and the most likely explanation for initials or a signature is absent-mindedness on the part of an elector filling in what may seem to him or her just one more form, then should the disqualification remain?

10.31 One aspect of the problem of additional writing on the ballot-paper that has had prominence lately is the writing of well-publicised political slogans to secure publicity for the cause in question. Scrutineers can then claim: *"A third of electors marked their ballots 'More X', 'Less Y' or 'No Z'."* There have been instances of gummed labels, bearing such slogans, being supplied to electors to affix to their ballot-papers for this purpose. Consideration should be given to whether ballot-papers may be permitted to be used as vehicles of this sort, or whether the addition of any extraneous words by whatever means should be treated as a ground for disqualification.

10.32 Clearly, voters cannot be readily identified unless their names or perhaps initials can be seen on the ballot-paper. Consideration might be given, then, to altering this provision in the Act to read *" ... if it bears the initials or signature or name of a voter and the voter can therefore be identified."* This might save the rejection of ballot-papers which contain writing that is comprehensible but which does not identify the voter. Another option is to remove the provision altogether, taking the view that if an elector is not concerned about having his or her vote identified, then this should not concern those who count the votes and should not be the cause of rejection of a vote.

10.33 Further, if the voter has signed or initialled the ballot-paper, it is seen by scrutineers and polling officials only. At no stage does it become a public document (unless in the event of appeal to the courts) and apart from scrutineers and officials would not be seen by anyone else and the secrecy provisions preclude both scrutineers and officials from any disclosure.

10.34 In *Nightingale v. Alison*, (Re Maryborough Election Petition) 2 Qd.R. 214 it was held that where the elector's name was placed on a ballot-paper by official error, then that ballot-paper was valid. In the same judgement, it was also held that any mark, other than an official error or marks authorised under the Act invalidated that ballot-paper, even though the elector may have indicated a valid vote in all other respects. The same judgement allowed votes where the elector had marked the ballot outside the box, ruling that the provision in the Act was directory not mandatory.

10.35 Other jurisdictions have specific provisions which do not invalidate a vote merely because there is an unauthorised mark which does not identify the elector. (eg. New South Wales, the Commonwealth and South Australia)

EVIDENCE AND ARGUMENTS

10.36 On this issue, the submissions were as follows:

(a) The Miriam Vale Shire Council (S52) argued for legislation that clearly spelt out the determinants of formality:

"The most important aspect at present is despite several leading cases, there is little or no commonality in the practice of what is and what is not an informal vote. It is time that the issue was resolved once and for all and that the Parliamentary Draughtsman drew legislation that is very clear and which is in precise language."

(b) *"'No Dams' etc does not effect the intent, and if it embarrasses the candidate that is not a concern."* (M D Passmore (S45)).

(c) *"The only criteria for informality should be failure to record a valid vote."* (National Party (S76)).

(d) The Mount Isa City Council (S69) suggested that a ballot-paper should be informal *"only if it has no vote recorded there-on."*

(e) The ALP (S70) supported the argument that any marks on the ballot-paper should not invalidate that vote.

ANALYSIS OF EVIDENCE AND ARGUMENTS

10.37 The principal matter for consideration is at what point should an unauthorised mark on a ballot-paper invalidate the vote. At one extreme all ballot-papers with a valid preference indicated should be admitted. On the other is the proposition that ballot-papers should only be admitted if completed within a strict interpretation of the legislation with no other marks upon them.

10.38 The principles that should be used to determine this matter are the maximisation of the number of votes admitted, the secrecy of the ballot, and the protection of the integrity of the electoral system.

10.39 The Commission believes that the best way to achieve this is to allow all ballots that express a valid preference to the scrutiny, save for those with a mark that could identify the elector.

10.40 This raises the somewhat problematical question of what constitutes a mark which could identify the elector. The CE Act contains a provision which gives the DRO discretion in determining which marks are identifying marks. Section 268(1)(d) states that a ballot-paper shall be deemed informal if:

> *"(d) it has upon it any mark or writing (not authorised by this Act or the regulations to be put upon it) by which, in the opinion of the Divisional Returning Officer, the voter can be identified:*
>
> *Provided that paragraph (d) shall not apply to any mark or writing placed upon the ballot-paper by an officer notwithstanding that the placing of the mark or writing upon the ballot-paper is a contravention of this Act;"*

10.41 This discretion has the advantage of allowing additional evidence to be considered. An isolated case of a mark is not suspicious; a number of cases may be. It is then open to any candidate to challenge the decision and pursue the point through the courts.

RECOMMENDATIONS

10.42 **The Commission recommends that:**

(a) A vote should be informal if:

(i) it has no vote on it;

(ii) it does not comply with the provisions for completing a ballot under Optional Preferential Voting as recommended in Chapter Eight;

(iii) it contains a mark or writing not authorised by this Act by which, in the opinion of the Returning Officer, the elector can be identified.

(b) A vote should not be informal merely because it contains a mark or writing not authorized by the Act.

10.43 Provisions about the formality of votes have been included in the Draft Bill in Part 6 s.113.

Marked Rolls and Scanning

Issue 5 Should the present provision for consolidating the certified rolls into a single key roll be revised to facilitate electronic scanning of marked certified rolls?

CURRENT SITUATION

10.44 Because a large number of ballot-papers will be issued at a number of polling-places and from a number of issuing tables at the larger polling-places, a number of certified rolls will have to be used to record who has received a ballot-paper and so, by implication, who failed to attend to obtain a ballot-paper or obtained more than one. Section 91 of the Act requires that after polling-day these several lists be consolidated into a single record by "calling back" the marked names from each list to be re-recorded on a single marked roll called in the Act the "Marked Roll".

10.45 The process is slow, labour intensive, and adds the second risk of human error in mistranscribing that information onto the master roll to the initial risk of human error in crossing off the name of an elector to whom a ballot-paper was issued. Because it is slow there might be some time before apparent instances of multiple voting can be established, as, when a name is "called back" for a second time, it is time-consuming to go back to the separate lists already transcribed onto the master roll to establish where the other apparent instance of voting by that person took place.

10.46 To remedy these disadvantages, the AEC has developed a system of electronic scanning of the pages of certified rolls so that the information may be copied more quickly and accurately. The computer system can then produce form letters to electors who appear, from the information then available, to have voted at two or more places or not to have voted at all, and continue to support the enforcement of compulsory voting and other requirements. Further, by computer matching of the age data available from the roll, it is possible to establish an age profile for each polling-place and allocate resources more effectively to meet the special requirements of older voters who may require additional assistance at the poll.

10.47 Under the Joint Roll Arrangement Queensland will have access to the certified roll format and scanning technology developed by the AEC. This technology removes the need for supplementary rolls and the need for the manual compilation of the "marked roll" as discussed above as the certified lists are produced only when all claims have been processed after the close of rolls,

10.48 There is a slight risk in using the Commonwealth system in that postal and absent vote certificates will not be checked against the marked roll prior to being admitted to the scrutiny. This check is currently conducted under the present State system. However, in the Commonwealth where certified lists and scanning have now been used for three elections, there has been no increase in the incidence of double voting. But should it be considered preferable to check postal and absent votes before admission, scanning can complete the task as quickly as the manual call back. It was developed with such a use in mind.

EVIDENCE AND ARGUMENTS

10.49 Submissions, especially those from ROs, supported the introduction of certified lists and scanning to eliminate the manually compiled certified rolls and marked rolls in current procedures (D Currier (S3), P Dwyer (S5), P Connor (S8), M Passmore (S45) and the National Party (S76)).

ANALYSIS OF EVIDENCE AND ARGUMENTS

10.50 The Commission considers that the State should introduce the computerised certified roll and scanning technology used by the AEC. Introduction of the technology would make the administration of elections simpler and more effective and allow the direction of resources to other parts of the electoral process.

10.51 Currently under s.91(4)(d), an RO must make available to any candidates who apply within 14 days after polling-day a copy of the marked roll. The scanning system will produce reports which show the equivalent information. The Commission considers that this information should be freely available to any candidate for the district contested.

10.52 It should be an administrative matter for the QEC as to whether such reports should be available without charge or issued at the cost of production when requested. Moreover the information would also be available under freedom of information legislation when this has been passed. In Chapter Five, Electoral Rolls and Enrolment, the Commission recommends that candidates have advance access to the certified roll of electors for the district contested.

RECOMMENDATIONS

10.53 **The Commission recommends that:**

(a) The Queensland Electoral Commission should adopt the certified roll and scanning technology as used by the Australian Electoral Commission.

(b) Candidates should have access to reports generated by the system showing possible non-voters and multiple voters, postal voters, etc.

Other Matters

Issue 6 Should absent votes be transmitted to the Electoral Commission for collating and forwarding to the relevant ROs?

Issue 7 Should the closing date for receipt of postal votes be changed?

Issue 8 Should the Act impose a duty to inform electors who cast a s.45 vote of the fact that their ballots have been rejected? Should this duty to inform also apply to other votes requiring a declaration or certificate?

Issue 9 What processes should be included in the Act to ensure the secrecy of extra-ordinary votes cast at an election?

10.54 In Chapter One, para.1.7, attention was drawn to the Fitzgerald Report recommendation of the need to review the procedures in electoral legislation that protect the security of absent and postal ballots. Under the declaration voting system recommended in Chapter Nine, these votes would be declaration votes by post, and polling-day declaration votes.

10.55 This section deals with matters that relate to various types of declaration votes identified in the Issues Paper. The procedures relating to security are dealt with in the final part of this section.

TRANSMISSION OF ABSENT VOTES

Current Situation

10.56 A major priority for ROs on the Sunday after polling-day is the collation of absent votes from all the polling-booths into separate bundles for each district. The votes are dispatched on the following Monday. Therefore hypothetically each RO could receive absent votes from each of the 88 other ROs.

10.57 Because absent votes are lodged with a polling official, usually a PO, they are admitted to initial scrutiny when they are received by the RO, up to the declaration of the poll.

10.58 An alternative to this procedure is for the ROs to dispatch absent votes to the Electoral Commission which would then collate the absent votes for all districts and dispatch the absent votes for any district to the RO for that district.

10.59 Under the present procedures ROs usually receive most of their absent votes by the Tuesday after polling, and certainly by Wednesday. It is not a requirement that ROs send a nil advice if no absent votes are taken for a particular district.

Evidence and Arguments

10.60 No submissions were received on this matter.

Analysis

10.61 The Commission can see no benefit in changing the current system. A centralised system would not reduce the time of delivery of absent votes to ROs. The Act need only specify that absent votes be dispatched as expeditiously as possible. This would leave the QEC free to determine how this would be best done.

10.62 Under the present system, there is no requirement for ROs, if they do not receive any absent votes for a district, to advise the RO for that district accordingly. If an RO does not receive any votes from a district by the Wednesday after polling, the RO assumes that there will not be any votes from that district.

10.63 This is not satisfactory as it introduces some uncertainty into the system. There may have been no ballot-papers to be forwarded, or they may have gone astray in the transmission; there is currently no way of knowing which ROs should advise other ROs if they have not received any votes for a district. This is an administrative matter that does not need to be incorporated into legislation.

Recommendations

10.64 **The Commission recommends that:**

(a) The Act should only specify that absent votes are to be dispatched to Returning Officers as expeditiously as possible after the close of polls.

(b) The Queensland Electoral Commission should require Returning Officers, if they have not received any absent votes for a district, to advise that district's Returning Officer accordingly. This is an administrative matter that need not be included in the legislation.

10.65 Provision for recommendation (a) is contained in Part 6 s.118 of the Draft Bill.

CLOSING DATE FOR RECEIPT OF DECLARATION VOTES BY POST

Current Situation

10.66 Table 9.3 summarises postal vote processing provisions in all Australian jurisdictions. That table shows that the closing date for the receipt of postal votes by ROs varies from 9.00 am on the Tuesday after polling-day (WA) to 13 days after the close of the poll (Commonwealth and Victoria). The current provision in Queensland allows 10 days for the receipt of postal votes (ie. 6.00 pm on the second Tuesday after polling-day).

Evidence and Arguments

10.67 No submissions were received on this matter as the question was not raised in Issues Paper No. 13.

Analysis

10.68 The principal argument for reducing the period allowed for the receipt of postal votes is that in a close election the result is delayed as the distribution of preferences can not be finalised until all votes have been received.

10.69 On the other hand it can be argued that by reducing the period allowed for the receipt of postal votes, electors in the more remote areas of the State and electors interstate and overseas, would be disfranchised.

10.70 Postal votes are only admitted to scrutiny if the declaration by the voter is dated on or before polling-day and the vote is delivered or posted before 6.00 pm on polling-day.

10.71 Resolution of the issue requires that an appropriate balance be achieved between the principles of requiring an early determination of a result and protecting the right to vote and having votes admitted to scrutiny.

10.72 Some of the more remote areas of the State only have a weekly mail service, and shortening the period for receipt of postal votes to less than 10 days after the poll may disfranchise a number of electors. Also in Chapter Nine it was recommended that "eligible overseas electors" should automatically be eligible for a general postal vote. Shortening the period to less than 10 days may disfranchise a number of these electors as there would be insufficient time for the receipt of their votes.

10.73 The closing date for receipt of postal votes can also affect the finalisation of the ballot in a district because preferences can not be allocated until the time for receipt of postal votes has expired if it is possible for the number of outstanding postal votes to affect the result.

10.74 The options available for the closing date for the receipt of postal votes are:

(a) maintain existing provision for 10 days;

(b) extend the existing provision to 13 days as in Victoria and the Commonwealth;

(c) reduce the existing provisions to 7 days as exists in South Australia and New South Wales;

(d) adopt Western Australia's provision of 9.00 am Tuesday following a poll, and require that all postal votes be returned to the Electoral Commission.

10.75 The Commission considers on balance that the current provision allowing 10 days for the receipt of postal votes is appropriate. Reducing the period may disfranchise a number of electors, while extending the period would tend to unnecessarily delay the determination of a result.

10.76 There is also the remote possibility that because of natural disaster or industrial dispute, transmission of a significant number of postal votes might be delayed. In these circumstances the Commission considers it would be desirable if there were to be some provision in the Act to allow extension of the 10 day period.

Recommendations

10.77 **The Commission recommends that:**

(a) The new Act should specify that any declaration votes received by the Returning Officer by post up to 6.00 pm on the second Tuesday after polling-day be admitted to preliminary scrutiny.

(b) The Queensland Electoral Commission also be authorised to extend the period in the event of natural disaster or industrial disputation which would delay the transmission of declaration votes by post to the Returning Officer. Details of any extension should be published in the Gazette.

10.78 Provision for these recommendations have been included in the Draft Bill in Part 6 s.115.

ADVISING ELECTORS WHOSE DECLARATION VOTES HAVE NOT BEEN ADMITTED TO SCRUTINY

Current Situation

10.79 Currently there is no provision in the Act to advise any elector who has cast a vote requiring a declaration or certificate whether that vote has been admitted to the scrutiny. At the 1989 State election a large number of votes cast under various sections were not admitted to the scrutiny.

10.80 As shown in the Table 10.1, 41,641 or 17.89% of all extra-ordinary votes were not admitted to scrutiny, with the proportion rejected ranging from 1.3% for pre-poll voting in person to 94% for votes cast under s.45. 2.6% of all votes cast were not admitted to scrutiny.

TABLE 10.1

SUMMARY OF EXTRA-ORDINARY VOTES REJECTED

SECTION	VOTES	REJECTED	ADMITTED	REJECTED
45	19,063	17,840	1,123	94.00%
82	131,654	20,761	110,893	15.80%
82A	282	24	258	8.50%
83	2,900	203	2,593	7.00%
84	35,712	452	33,260	1.30%
85	25,893	449	25,444	1.70%
87 & 88	17,823	1,912	15,911	10.00%
TOTAL	233,327	41,641	189,482	17.89%

10.81 The CE Act, since 1984, has required that persons making provisional votes (equivalent to ss.45, 73, 76 and 81 of the State Act), whose votes are not admitted to scrutiny must be advised of the fact, and the reason why the vote was rejected (eg. enrolled in another district, not on roll, etc.). The elector can then take the appropriate action to ensure that he/she is correctly enrolled in time for the next election.

10.82 The main reasons extra-ordinary votes are rejected are that the elector is either not enrolled, or is enrolled in a different district to the one for which the vote was cast.

10.83 The argument for officially advising electors whose declaration votes are not admitted to scrutiny and the reasons for the decision is that the public must have confidence in elections conducted through open procedures subject to review.

10.84 Arguments against advising electors whose extra-ordinary votes were not admitted are that such a requirement would impose an unnecessary workload on the QEC: it is the QEC's role is to administer the election; it is the responsibility of the electors to ensure their enrolment is up to date.

Evidence and Arguments

10.85 Only a limited number of submissions commented on this issue. The National Party (S76) supported the idea that all certificate and declaration voters be informed if their vote is not admitted, and the Mount Isa City Council (S69) supported the idea for s.45 voters.

Analysis of Evidence and Arguments

10.86 By far the highest number of votes rejected at the last State election were absent votes and votes by persons not on the roll. These votes also had the highest proportion of rejected ballots.

10.87 The Commission is concerned about the high number of extra-ordinary votes not admitted to scrutiny, especially those electors who have made votes under s.45 of the current Act because their name was not on the roll. A problem with the current system is that many electors are unaware that their vote has been rejected and that they need to rectify their enrolment to prevent problems at subsequent elections.

10.88 The Commission does not accept the argument that advising electors whose extra-ordinary votes were not admitted would impose too much workload on the QEC. The function of the QEC is to administer all State electoral law, including enrolment provisions. Such notification is a task that could be performed after the election has been finalised and the writ returned to the Governor. This workload, needs to be balanced against the rights of electors to know the result of decisions made by electoral officials so that appropriate action can be taken.

10.89 A general theme of EARC's recommendations in various reports has been that State administration generally must be made more open and that citizens be advised of administrative decisions and reasons for the decision where affected. The particular problem that needs to be addressed here is that of persons whose names do not appear on the roll. It is not the Commission's view that such a high proportion of rejected votes for these electors necessarily means that they have been incorrectly disfranchised. Rather it is unacceptable that nothing is done to prevent repetition at the next election.

10.90 Moreover return as undelivered of any such written advices to the QEC would bring into issue the bona fides of those persons who had sought to vote and be a useful additional check in the possibility of attempted malpractices.

Recommendation

10.91 **The Commission recommends that the Act should specify that the Queensland Electoral Commission must advise all voters whose vote was rejected because they were not named on the roll of (a) the fact; and (b), the reason for their vote being rejected.**

10.92 Part 6 s.125, in the Draft Bill contains a provision which gives effect to this recommendation.

PROTECTING THE SECRECY OF DECLARATION VOTES

10.93 The Fitzgerald Report raised concerns about the secrecy of the ballot. This is a fundamental requirement if electors are to cast their votes without fear of intimidation.

10.94 Some concerns over secrecy of declaration votes might arise because at some stage, the ballot-paper must be removed from the envelope containing the declaration and placed in a ballot-box. Theoretically, there is an opportunity in this process to ascertain how an elector has voted.

10.95 Preliminary scrutiny of declaration vote envelopes is important for a number of reasons:

(a) the declaration needs to be checked to ensure it has been signed and dated by the elector and the witness;

(b) the RO must be satisfied that the ballot-paper was completed before the close of the poll, and in the case of postal votes posted; and

(c) the roll needs to be marked.

Current Situation

10.96 All Australian jurisdictions have similar provisions for inspecting extra-ordinary vote envelopes before they are opened. In relation to postal votes s.87(18) of the current Act states:

> *"(18) At the scrutiny the returning officer shall produce, unopened, all postal voters' envelopes in respect of his district received by him by post or delivered to him or to an assistant returning officer or to any presiding officer for the district and every outer envelope that was -*
>
> *(a) delivered on polling-day before six o'clock in the afternoon to such returning officer or to any assistant returning officer or presiding officer for the district;*
>
> *(b) received by post by such returning officer before six o'clock in the afternoon of polling-day; or*
>
> *(c) received by post by such returning officer within 10 days immediately succeeding the close of the poll,*
>
> *shall be opened and the enclosure shall be deal: with as follows:-*
>
> *(i) the returning officer shall produce the postal voters' application;*
>
> *(ii) **the returning officer, without opening the envelope endorsed with the certificate**, shall compare the signature of the voter with the signature to the application and allow each candidate or his scrutineer who is present to inspect the same and shall determine whether the signature on such envelope is that of the applicant;*
>
> *(iii) if the returning officer is satisfied that the voter (other than a voter entitled to vote pursuant to section 22) is enrolled and voted on or before the polling day but not after six o'clock in the afternoon of polling day and if the vote is allowed, the returning officer shall, before the opening the envelope, place a mark against the name of the voter concerned (other than a voter entitled to vote pursuant to section 22 as aforesaid) in the roll used by him at the election in question, and, **after so doing, open the envelope containing the ballot-paper and, without then unfolding the ballot-paper, place it in a ballot-box.** Forthwith upon so doing he shall attach the said envelope by gum or other suitable means to the application relating thereto;*
>
> *(iv) if the returning is not satisfied, in the case of a person purporting to be an elector pursuant to section 22, that such person is an elector pursuant to that section, he shall disallow the vote;*
>
> *(v) subject to section 89, no postal ballot-paper shall be allowed at the scrutiny which is not enclosed in an envelope endorsed with the certificate duly signed, attested and dated under this Act;*
>
> *(vi) if the returning officer disallows a vote, the unopened envelope endorsed with the certificate and the application relating thereto shall be attached one to the other by gum or other suitable means and shall be set apart for separate custody."* (emphasis added)

10.97 The important provision here is the emphasised portion of (c)(ii) and (c)(iii). Subsection (c)(ii) does not authorise the RO to open the envelope containing the ballot-paper when checking signatures, and c(iii) forbids the unfolding of the ballot-paper once it has been removed from the envelope.

10.98 The ballot-paper must be folded, since the envelope bearing the certificate is smaller than the ballot-paper.

10.99 Section 91 of the South Australian Electoral Act makes similar provision for the preliminary scrutiny of declaration votes:

> *"91(1) At the scrutiny, the returning officer or a deputy returning officer shall produce all applications for declaration voting papers and shall produce unopened all envelopes containing declaration ballot papers received up to the end of the 10 days immediately following the close of the poll by him, or received up to the close of the poll by any other officer and shall -*
>
> *(a) if satisfied -*
>
> *(i) that the voter is entitled to vote at the election and has not voted at the election otherwise than by making a declaration vote;*
>
> *and*
>
> *(ii) in the case of declaration voting papers of voters whose votes were not taken before an officer -*
>
> *(A) that the signature of the declarant corresponds with the signature on the application for declaration voting papers;*
>
> *and*
>
> *(B) that the vote was recorded before the close of poll,*
>
> *accept the ballot paper for further scrutiny, but, if not so satisfied, disallow the ballot paper* ***without opening the envelope in which it is contained;***
>
> *(b) having determined that a ballot paper is to be accepted for further scrutiny, withdraw it from its envelope and,* ***without inspecting or unfolding it or allowing any other person to do so, place it in a locked and sealed ballot box*** *reserved for such ballot papers;*
>
> *(c) seal up in separate parcels and preserve -*
>
> *(i) all envelopes endorsed with declarations relating to declaration ballot papers accepted for further scrutiny;*
>
> *and*
>
> *(ii) all unopened envelopes containing declaration ballot papers disallowed;*
>
> *and*
>
> *(d) proceed with the scrutiny of the declaration ballot papers which have been accepted for further scrutiny.*
>
> *(2) Where two or more declaration ballot papers in respect of the same election are received for the same elector, the first to come into the hands of the returning officer or deputy returning officer shall, subject to this section, be accepted for further scrutiny and the remainder shall be rejected."* (emphasis added)

10.100 All other Australian jurisdictions have similar provisions.

10.101 Section 99 of the Act authorises candidates and one scrutineer per candidate to be present at the scrutiny after polling-night. Elsewhere in this Report the Commission has recommended that each candidate be allowed one scrutineer for each officer counting votes.

10.102 Although not included in the legislation, a further protection for the secrecy of extra-ordinary votes is the instructions sent to ROs by the SEO. Briefly these are that if only a small number of votes are outstanding any uncounted votes and all new votes admitted to the scrutiny should be kept in a ballot-box to be counted together to preserve anonymity.

10.103 The secrecy factor regarding spoilt ballot papers has already been dealt with in Chapter Eight.

10.104 Rule S3 of the Third Schedule of the LG Act requires ROs to give candidates 24 hours notice in writing before opening any sealed packets.

Evidence and Arguments

10.105 The submissions did not address this issue.

Analysis

10.106 There is significant systematic protection of the secrecy of extra-ordinary ballot-papers. This protection includes:

(a) the presence of scrutineers at all stages of the scrutiny; and

(b) operational procedures where there are only a small number of outstanding votes.

10.107 During the course of its review the Commission received no evidence from submissions, political parties, ROs or any other source that breaching of the secrecy of extra-ordinary votes was a problem or even had occurred.

10.108 The reason for the recommendation in the Fitzgerald Report relates to a specific case. During the inquiry, evidence was heard that it became known how a Supreme Court Judge had voted, and that this information was used in a manner detrimental to the Judge (Coaldrake, 1989, pp86-87).

10.109 It is beyond the Commission's powers to investigate particular cases of malpractice, unless the Commission considers that it is an indication of a systemic problem. In any event little would be achieved in this case as both the Justice and the RO concerned are now deceased.

10.110 The Commission is convinced there has been no systematic corruption of the secrecy of extra-ordinary votes.

10.111 Situations could arise where a breach of secrecy was possible. For example, if there was little interest in an election in a district because it was clear who would win, but there were outstanding declaration votes, and candidates or their scrutineers did not present themselves for the scrutiny, the RO could easily ascertain how declaration voters had voted. The RO is bound by a solemn declaration of office to keep secret any knowledge that comes to notice as to how an elector votes (Section 10 and Form 2).

10.112 The greatest protection against breach of secrecy of declaration votes is the presence of scrutineers. A possible weakness in the current Act is that it does not specifically require ROs to advise all candidates when extra-ordinary votes are to undergo initial scrutiny. The inclusion of such a provision in the Act would ensure that all candidates are aware of when declaration votes are to be checked and opened, and enable them to make suitable arrangements for the attendance of scrutineers.

10.113 There is little more that can be done to protect the secrecy of extra-ordinary votes other than specifying procedures for preliminary scrutiny and giving candidates every chance to ensure that scrutineers are present during the process.

10.114 An additional protection allows a candidate who has evidence that extra-ordinary votes have not been dealt with according to the Act to petition the Court of Disputed Returns.

RECOMMENDATION

10.115 **The Commission recommends that Section 91 of the South Australian Electoral Act 1985 should be adopted as the model for the preliminary scrutiny of declaration votes. The Act should also specify that ROs are to advise candidates of when declaration votes are to undergo preliminary scrutiny so that candidates can make arrangements for scrutineers to be present.**

10.116 The provisions in the Draft Bill which deal with these matters are in Part 6 s.115.

Determination of the Result

Issue 10 If Optional Preferential Voting is introduced, should the current method of distributing preferences be modified?

CURRENT SITUATION

10.117 Having completed the count as described above, if the RO finds that one candidate has received an absolute majority of first preference votes, then that candidate is declared elected (s.101). If no candidate has received an absolute majority of valid first preference votes, a second count must be made.

10.118 Section 101 provides that on the second count the candidate who has received the fewest first preference votes is excluded, and each ballot-paper counted to him or her must be counted to the candidate next in the order of the voter's preference. If no candidate has an absolute majority even then, the process of excluding the candidate who has the fewest votes continues along with the distribution of preferences to the unexcluded candidate next in order of the voter's preference until one candidate has received an absolute majority of votes and can be declared elected.

10.119 Because the expression of additional preferences is optional under OPV, provision would need to be made that when at any stage of the scrutiny it is found that a ballot-paper expresses no next available preference for any candidate, the ballot-paper is set aside as exhausted. Calculation of whether a candidate now had an absolute majority would have to be made on the total number of votes remaining in the scrutiny. This provision existed previously between 1892-1942 when Queensland applied "contingent voting", as OPV was then known.

10.120 Section 101 also deals with the situation where on any count two or more candidates have an equal number of votes and one of them has to be excluded. In this case, that candidate who had the least number of votes at the last count at which they did not have an equal number of votes must be excluded (s.101(6)). Further, if such candidates had an equal number of votes at all preceding counts or there was no preceding count, the RO must determine by lot which of them is to be excluded. The matter of tied elections is discussed in detail in a later section in this chapter.

10.121 New South Wales is the only Australian jurisdiction currently with OPV. Part two of the *Seventh Schedule of the Constitution Act 1902* (NSW) describes in detail how counting is to be conducted under OPV in that State:

> *"PART 2 - COUNTING OF VOTES AT ELECTIONS*
>
> *2. (1) In this Part of this Schedule -*
>
> *"continuing candidate", in relation to a count, means a candidate not excluded at a previous count;*
>
> *"returning officer" means a person for the time being appointed by law to conduct an election of a Member of the Legislative Assembly.*
>
> *(2) A reference in this Part of this Schedule to an exhausted ballot-paper in relation to any count is a reference to a ballot-paper on which there is not recorded a vote for a continuing candidate.*
>
> *(3) For the purpose of subclause (2) of this clause, where -*
>
> *(a) the same preference (other than a first preference) has been recorded on a ballot-paper for more than 1 candidate, the ballot-paper shall be treated as if those preferences and any subsequent preferences had not been recorded on the ballot-paper; or*
>
> *(b) there is a break in the order of preferences recorded on a ballot-paper, the ballot-paper shall be treated as if any subsequent preference had not been recorded on the ballot-paper.*
>
> *(3) The method of counting the votes to ascertain the result of an election of a Member of the Legislative Assembly shall be as provided in this Part of this Schedule.*
>
> *(4) At the close of the poll the returning officer shall ascertain the total number of first preference votes recorded for each candidate on all ballot-papers not rejected by him as informal.*
>
> *(5) If a candidate has a majority of the first preferences votes, he shall be elected.*
>
> *(6) If no candidate is elected under clause 5, the returning officer shall make a second count.*
>
> *(7) (1) On the second count, the candidate who has the fewest first preference votes shall be excluded, and each of his ballot-papers that is not exhausted shall be transferred to the candidate next in the order of the voter's preference and counted to him as a vote.*
>
> *(2) If, on the second count, a candidate has a majority of the votes remaining in the count, he shall be elected.*
>
> *(8) (1) If, on the second count, no candidate has a majority of the votes remaining in the count, the process of excluding the candidate who has the fewest votes, transferring each of his ballot-papers that is not exhausted to the continuing candidate next in the order of the voter's preference and counting it to him as a vote shall be repeated by the returning officer until 1 candidate has a majority of the votes remaining in the count.*

(2) The candidate who, in accordance with subclause (1) of this clause, has a majority of the votes remaining in the count shall be elected.

(9) Notwithstanding clause 7(1) or 8(1), the process of transferring to a continuing candidate each of the ballot-papers that is not exhausted and counting it to him as a vote shall not be repeated where there is only 1 continuing candidate, but that 1 continuing candidate shall be elected.

(10) (1) Where, on any count at which the candidate with the fewest number of votes has to be excluded, 2 or more candidates have an equal number of votes (that number being fewer than the number of votes that any other candidate has or those candidates being the only continuing candidates) -

(a) such one of those candidates as had the fewest number of votes at the last count at which they did not have an equal number of votes shall be excluded; or

(b) if they had an equal number of votes at all preceding counts, the candidate whose name is on a slip drawn in accordance with subclause (2) of this clause shall be excluded.

For the purpose of subclause (1) of this clause, the names of the candidates who have an equal number of votes having been written on similar slips of paper by returning officer and the slips having been folded by him so as to prevent the names being seen and having been mixed, 1 of those slips shall be drawn at random by him."

10.122 In Chapter Eight of this Report, the Commission made recommendations on what constituted valid expressions of preference under OPV. The new Act will therefore need to contain provisions to match those recommendations.

10.123 An alternative method of distributing preferences was used in Queensland from 1892 until 1942. Under that system, if more than two candidates were standing for election in a district and no candidate obtained an absolute majority of primary votes, all candidates, except the two with the greatest number of votes, were considered defeated. The votes cast for the defeated candidates were then distributed (where a preference had been indicated) between the remaining two according to the next preference indicated on the ballot-paper. The candidate who, with the addition of these "contingent" votes, received the greatest total, was elected. This could produce a different outcome from the New South Wales procedures described in para.10.115 which in the Commission's view, more correctly follows the spirit of preferential voting and gives second and subsequent preference votes equal weight with first preferences.

EVIDENCE AND ARGUMENTS

10.124 There was no support in the public submissions for the re-introduction of the previous Queensland system. All submissions making comment on this issue expressed support for the sequential elimination of each candidate with the lowest vote until only two remain.

10.125 The Australian Democrats (S62) stated:

"We strongly urge the maintaining of the current method of distributing preferences. The method described in para 10.40 of the Issues Paper is clearly less democratic than the method currently used. Distributing preferences right though to the final two candidates would be convenient for candidates, parties and those who study political matters, and may give a clearer indication of the level of support of the government. However, we recognise that this may require the use of a large amount of resources, so we would not oppose any decision not to count preferences beyond the absolute majority mark if was felt to be an inefficient use of resources."

ANALYSIS OF EVIDENCE AND ARGUMENTS

10.126 The counting method for OPV in New South Wales works well in that State, and should work equally well in Queensland. The provision for eliminating tied candidates also is appropriate for use in Queensland, except in the case when the final candidates are tied. Resolution of tied elections is discussed in a later section of this chapter.

RECOMMENDATION

10.127 **The Commission recommends that the method of counting optional preferential voting votes as authorised in Part 2 of the Seventh Schedule of the Constitution Act 1902 (NSW) should be adopted in Queensland, except for when the final candidates are tied.**

10.128 A provision to authorise this method of counting has been included in the Draft Bill in Part 6 s.119.

Whether the Count Should be Continued to Obtain a Two-Party Preferred Vote.

Issue 11 Should provision be made in the Act for the full distribution of preferences to determine a two-party-preferred result?

CURRENT SITUATION

10.129 With the exception of Queensland (and Tasmania where it is not applicable), it has become general practice in Australia to extend the full distribution of preferences to all electoral districts, not just those where distribution of preferences is necessary to secure an absolute majority for one candidate. This yields a two-candidate preferred result in every electoral district and in most cases this will be the two-party preferred result.

10.130 However, in a few cases the two final candidates may be a candidate from a major party and an independent candidate, or come from the two parties of a Liberal-National coalition, and such figures could not readily be added to a statewide or national total of either the Liberal-National coalition or the ALP, which is what most users of two-party-preferred votes appear to want.

10.131 The two-party-preferred statistic can be relatively easily and cheaply secured because it requires little additional counting and is a useful experience for ROs and their staff in safe seats where a distribution of preferences is not ordinarily required - but may become necessary because of exceptional circumstances.

10.132 The electoral situation in Queensland is currently different from other States because of the absence of a formal coalition between the Liberal and National parties. At the 1989 Queensland election preferences were fully distributed in 33 electoral districts and to have obtained an equivalent ALP versus National or Liberal outcome would have required the counting of an additional 130,171 votes (all those to be excluded) in the remaining 56 electoral districts. However, to have provided two additional figures, an ALP versus National option and an ALP versus Liberal option, would have entailed a much greater volume of additional counting.

10.133 Under OPV the two-party-preferred vote does not have as much utility as an indication of overall levels of support between alternative governments. Exhausted ballots reduce the validity of the figure but the statistic has become so popular and widely used that there may still be a demand for it.

EVIDENCE AND ARGUMENTS

10.134 Few submissions made any comment on the issue. The National Party (S76) stated that it should be obtained, but the Mount Isa City Council (S69) stated that it served political purposes only and was an added expense.

10.135 The ALP (S70) argued that:

> *" ... it is suggested that the final count be continued in all electorates (after postals and absentees) to determine a two-party preferred result. While too much weight cannot be placed on the concept, the figure is estimated, by many people, if all preferences have not in fact been allocated. In view of this, it would be preferable to discover the exact result. This would also assist political analysis of the changing patterns of preference allocation."*

ANALYSIS OF EVIDENCE AND ARGUMENTS

10.136 Continuing the vote to the last two remaining candidates or parties in all districts should be an option available to the QEC. Continuation of the vote would provide a source of information for debate and analysis. It is also compatible with the QEC's function in relation to research and publication of information as mentioned in Chapter Three of this Report.

10.137 The QEC may require access to ballot-papers after declaration of results for this purpose.

RECOMMENDATIONS

10.138 **The Commission recommends that:**

(a) The Queensland Electoral Commission should have the discretion to continue the counting of votes in all districts to the last two remaining candidates or parties.

(b) There should be a provision in the Act authorising Queensland Electoral Commission access to the ballot-papers to conduct any such count or other research.

10.139 A provision to authorise this practice has been included in the Draft Bill in Part 6 s.142.

Re-counting of Ballot-Papers

Issue 12 Should the provision for re-counting of ballot-papers be changed in any way?

CURRENT SITUATION

10.140 Section 104 of the Act provides for a compulsory recount in the following circumstances:

> *"104. Re-counting of ballot-papers. (1) At any time before the public notification by the returning officer of the result of an election, the returning officer -*
>
> *(a) shall, if the difference between the number of votes counted to constitute for a candidate an absolute majority of votes pursuant to section 101 and the number of votes received at the count by the candidate receiving the next highest number of votes at that stage represents or appears to the returning officer likely to represent a difference of less than one quarter of one per centum of the total number of valid votes cast in respect of the election in the district in question;*
>
> *(b) may at the request of any candidate (who shall give the reasons for his request);*
>
> *(c) may, if in the circumstances he considers it appropriate so to do, of his own motion*
>
> *re-count the ballot-papers."*

10.141 In practice, in an electoral district of 20,000 electors, this would mean a compulsory recount if the difference between the two leading candidates is 50 or less.

10.142 There are different provisions for the recount of votes in the various Australian jurisdictions. In Western Australia the RO *" ... may, if he thinks fit, at the request of any scrutineer, or of his own motion, recount the ballot papers contained in any parcel."* (s.146). The CE Act has a similar provision but adds that the Electoral Commissioner or the AEO may direct a recount. South Australia, New South Wales and Victoria all have similar provisions to the Commonwealth Act.

10.143 The matters that need to be determined in this section are:

(a) whether there should be a trigger which automatically requires a recount;

(b) if not then what the appropriate mechanism should be;

(c) if a recount is not conducted by the RO, whether the losing candidate should be able to apply to the QEC for a recount.

10.144 Section 101 also allows ROs to choose to conduct a recount where they consider it appropriate or because a candidate requests it. In the event that a recount is not allowed, under current provisions a dissatisfied candidate is forced to lodge a petition with the Elections Tribunal. It should be noted that the provisions in the electoral legislation of the other States and the Commonwealth make no allowance for review of an RO's decision not to conduct a recount.

10.145 There are no provisions dictating or triggering recounts in Local Government elections, but the RO could do so of his own decision.

EVIDENCE AND ARGUMENTS

10.146 The National Party (S76) submitted that:

> *"A re-count should be mandatory and conducted by the Electoral Commission if the accuracy of the count is challenged in an appeal."*

10.147 The Mount Isa City Council (S69) suggested that no changes be made to the current provisions.

ANALYSIS OF EVIDENCE AND ARGUMENTS

10.148 It is interesting to note that although the Act does contain a provision which automatically requires a recount, it also allows the RO discretion to authorise a recount if this is considered appropriate.

10.149 All other Australian jurisdictions make this a discretionary decision on the part of the RO subject to a direction from the Electoral Commissioner or in the case of the Commonwealth, the AEO. They also provide that the Commissioner, and the AEO in the case of the Commonwealth, may direct a recount be conducted.

10.150 The discretionary provisions work well in other Australian States and should be adopted in Queensland.

10.151 The principle of protecting the rights of candidates needs to be considered here. The Commission considers that allowing a losing candidate to appeal to the QEC if a recount has not been granted locally by the RO is an appropriate mechanism to protect the rights of candidates. The QEC will therefore need the authority to direct a recount if it considers it necessary.

RECOMMENDATIONS

10.152 **The Commission recommends that:**

(a) The Returning Officer should have discretion to conduct a re-count if it is considered necessary following a request from a candidate at the initiation of the Returning Officer, or if directed by the Queensland Electoral Commission.

(b) If a candidate is refused a re-count by the Returning Officer, that candidate may apply in writing to the Queensland Electoral Commission at any time before the declaration of the poll.

(c) During a recount, all the provisions relating to scrutineers, objections and counting that apply to the initial scrutiny should also apply.

10.153 Provisions to implement these recommendations have been included in Part 6 s.121 of the Draft Bill.

Tied Elections.

Issue 13 What method should be used to choose the winning candidate in the event of a tied election?

CURRENT SITUATION

10.154 In a situation where there are two candidates only and they have an equal number of first preferences votes, or where in a final count (after distribution of preferences) between two candidates they have an equal number of votes, s.105(6) of the Act provides that the RO shall decide by casting vote which candidate is elected. Provision for a casting vote by the RO also exists in the Tasmanian and Victorian electoral legislation.

10.155 Section 106 of the Act precludes an RO from voting at elections. This provision is to ensure that, in the event of a tied election, an RO does not vote twice.

10.156 A number of criticisms have been directed at these provisions. Firstly, it has been argued that the casting vote by the RO is not secret. Secondly, the system places enormous responsibility on the RO. Thirdly, the system effectively disfranchises the RO because of the small likelihood of a tied election - ROs may not be members of political parties but they are entitled to exercise their right to vote. Fourthly, the outcome of an election is too important to leave to the known vote of one individual when other procedures are available for dealing with the problem. Finally, an election that ends up in a tie will be extremely vulnerable to being overturned by a Court of Disputed Returns for some defect in its conduct - and the loser is very likely to take the matter to the Court of Disputed Returns.

10.157 The provisions in other Australian jurisdictions vary. In the Commonwealth when an election is tied, the DRO must notify the Electoral Commission which then files a petition disputing the election in the Court of Disputed Returns. A similar provision exists in the Western Australian and South Australian legislation.

10.158 In New South Wales, however, on any count where two or more candidates have an equal number of votes and one needs to be excluded, the candidate who had the fewest votes at the last count at which they did not have an equal number of votes is excluded. If they had an equal number of votes on all preceding counts, exclusion is decided by lot.

10.159 A tied election is a highly improbable result, and has been known to occur only once in recent years, in Nunawading Province Legislative Council election in Victoria.

EVIDENCE AND ARGUMENTS

10.160 There was a mixed response in the submissions:

(a) P Connor (S8) and F Albietz (S17) favoured the drawing of lots.

(b) The Miriam Vale Shire Council (S52) suggested that a casting vote be used, but the criteria for using a casting vote be incorporated in the legislation.

(c) The ALP suggested either an appeal to the Elections Tribunal or a by-election.

(d) A majority of submissions favoured that the candidate with the highest vote at the next preceding stage be elected (L Balchin (S63), Mount Isa City Council (S69), National Party (S76), and the Institute of Municipal Management (S86)).

ANALYSIS OF EVIDENCE AND ARGUMENTS

10.161 A number of options are available to decide the result in the case of a tied election:

(a) A casting vote by the RO who is otherwise prohibited from voting.

(b) Referral to the Court of Disputed Returns by the Electoral Commission.

(c) A count back to a stage where one candidate is ahead of the other.

(d) Determination by lot.

(e) Declaration of the candidate with the highest first preference vote of the two as the winner.

(f) An automatic by-election.

10.162 Option (a) is not appropriate for a number of reasons. In particular it unnecessarily disfranchises 89 ROs, and if an RO had to cast a deciding vote, it could not be secret.

10.163 Options (c), (d) and (e), are all undesirable because of their arbitrary nature. The objective of OPV is to eliminate minor candidates and separate those remaining.

10.164 Automatically conducting a by-election would let the electors determine the issue but would be an expensive option.

10.165 Option (b) enhances the legitimacy of the final result, as the Courts will determine the winning candidate, or declare the election void, based on the facts of the case. Such a result is likely to be more readily accepted as legitimate by electors than if the RO had made a casting vote.

10.166 The current prohibition on ROs voting at the election is necessary to prevent an RO from having two votes in the event of a tied election. This recommendation would remove the need for this prohibition, thereby restoring the franchise to 89 ROs.

10.167 In the extremely unlikely event of a tied election, it is probably irrelevant what other provision there is, as one or more of the candidates will almost certainly appeal to the Court of Disputed Returns.

RECOMMENDATIONS

10.168 **The Commission recommends that:**

(a) In the event of a tied election the Queensland Electoral Commission should refer the matter to the Court of Disputed Returns (previously the Elections Tribunal).

(b) If the result is still tied, after determination by the Court, the Court should declare the election void and order a by-election.

(c) There should be no prohibition on Returning Officers voting.

10.169 Provisions to implement these recommendations have been included in Part 6 s.119 of the Draft Bill.

Declaration of the Poll and the Return of the Writ.

Issue 14 Should the provisions concerning declaration of the poll and return of the writs be amended in any way?

10.170 Once the result of the election has been ascertained by the RO, the name of the candidate who has been elected can be publicly notified (s.105). The RO is not required under the Act to delay the count or the declaration of the poll due to the absence of certain votes. Sections 100 and 105 state that if the RO is satisfied that the votes on any outstanding ballot-papers (absent votes, votes from remote booths, and so on) could not possibly alter the outcome of the election, the count may proceed to a declaration of the poll.

10.171 The writ (endorsed with the name of the person elected) must be returned not later than the date named upon it, notwithstanding the fact that some absent votes have not then been received, examined and counted by the RO (s.46(3)). Counting may continue up to but excluding the second day preceding the day named in the writ for its return (s.105(3)).

10.172 Section 105 of the current Act provides that the RO notifies the result of the election and the candidate who has been elected by publication of a notice in the Gazette.

10.173 In Chapter Seven, Preparations For Elections, the Commission recommended that the Governor issue a single writ for all districts in the case of a general election. The official notification of results will have to reflect this amended writ procedure, that is, the Electoral Commissioner will need to inscribe 89 names on the writ together with the electoral district for which each was returned.

10.174 This is largely an administrative issue and does not affect the conduct of the election or the scrutiny. It merely provides the means for the official notification of election results.

10.175 Under a single writ regime, ROs would advise the Electoral Commission of the result in their district. Once the Commission has been advised of the results in all the districts, the writ would be endorsed accordingly by the Commission and returned to the Governor.

RECOMMENDATION

10.176 **The Commission recommends that the Electoral Commission should publicly notify the results of general and by-elections by the publication of a notice in the Gazette. The notification in the Gazette should occur no later than the day prescribed for the return of the writ.**

10.177 The Draft Bill has a provision to implement this recommendation in Part 6 ss.122-123.

Storage and Disposal of Ballot-Papers

Issue 15 Should the current provisions regarding storage and disposal of ballot-papers be amended in any way?

CURRENT SITUATION

10.178 Section 107 of the Act deals with the storage and disposal of ballot-papers. It provides that the RO should seal up the ballot-papers and declarations and label them with a contents description before transmitting them to the Clerk of the Parliament. This must be done within 30 days after the expiration of the day named in the writ for its return.

10.179 The packets must be stored at Parliament House for two years after the date of their delivery. Within three months after the expiration of the two year period the Clerk must have the sealed packets destroyed. Prior notification of the destruction must be given to the Speaker, the Attorney-General, and the Leader of the Opposition. The ballot-papers can be made available by the Clerk of the Parliament to the Elections Tribunal, any court or the police prior to their destruction if required during the two year period.

10.180 The CE Act (s.393(a)) provides that ballot-papers and materials need only be kept for six months after the day for the return of the writ, or until they are no longer required for the Court of Disputed Returns. However, administrative practice now is that ballot-papers are kept until after the next election in case of challenge to the eligibility of a candidate in the courts which could require a recount of the ballot-papers as was ordered in the case of Senator Robert Wood.

EVIDENCE AND ARGUMENTS

10.181 The first issue of importance here is the period of time for which the ballot-papers should be stored. Since any challenge to the election will occur sometime during the term of Parliament following the election, the ballot-papers should perhaps be kept for the period of Parliament's term rather than for two years only.

10.182 The second issue concerns the location of the ballot-papers during the storage period. Currently s.107 of the Act specifies that they must be stored *" ... in a room in or within the precincts of parliament house."* However, it might be more appropriate if in the future they remained in the custody of the QEC. This would allow the QEC ready access for the purpose of collecting statistical information relating to the election.

10.183 In view of the QEC's responsibility for all electoral matters including research, access to the ballot-papers would be advantageous. The Commission would therefore be the appropriate body to arrange for storage, and submissions received support this view.

10.184 A limited number of submissions were received on this topic.

(a) *"The ballot papers should be retained by the Commission for the life of the parliament concerned."* (National Party (S76)).

(b) The Mount Isa City Council (S69) submitted that the ballot papers should be retained by the Electoral Commission.

(c) *"Because the Act requires that ballot papers be sealed as soon as the poll is declared and then destroyed 12 months later (unless used as evidence in court) there is no possibility of statistical research upon them. Yet for those interested in the conduct of elections the papers are a valuable resource. They have already been analysed by scrutineers in a garbled fashion.*

If nothing else, I suggest that the burying of papers has inhibited thought about the ongoing disgrace of rejected votes.

there are many possible safeguards: -

* *the delay before access;*
* *limited period of access;*
* *application to minister?*
* *limited to candidates and scrutineers?*
* *sample of papers only?*
* *on controlled premises;*
* *copies only of papers to be handled (paper or screen)?*
* *some restriction on publication of findings?"* (M Bryan (S34)).

ANALYSIS OF EVIDENCE AND ARGUMENTS

10.185 The Commission supports the arguments for keeping ballot-papers and voting materials for the term of the Parliament. The primary reason is that matters relating to the election may come before the courts, and the ballot-papers and voting materials used in the election could be material evidence. Another reason is that it would allow research on such matters as informal votes.

10.186 As the QEC will be responsible for the conduct of elections, it is also the appropriate body for the storage of ballot-papers and voting materials after the election. This is currently the case with the AEC. There does however need to be access to the material by the police to conduct investigations into allegations of electoral malpractice.

RECOMMENDATIONS

10.187 **The Commission recommends that:**

(a) Ballot-papers and voting materials should be stored by the Queensland Electoral Commission for the term of the Parliament.

(b) After dissolution of Parliament the ballot-papers relating to that Parliament should be destroyed.

(c) The Queensland Electoral Commission should make ballot-papers and voting material available to the police on request from the Police Commissioner, or from the Chairman of the Criminal Justice Commission, in the course of their investigations into any alleged electoral malpractice.

(d) The Queensland Electoral Commission should control access to ballot-papers and voting materials for its own or any other purpose.

10.188 Provision has been made to implement these recommendations in Part 6 s.126 of the Draft Bill.

Post-Poll Reporting to the Electoral Commission

Issue 16 Should post-polling Reports by Returning Officers (and by Presiding Officers in charge of a booth) be required under new electoral legislation?

Issue 17 What procedures, if any, should be specified in the Act in relation to post-poll audits?

CURRENT SITUATION

10.189 Currently ROs are not required under the Act to report on the conduct of the election in their districts. Nor are any formal de-briefing sessions conducted after an election.

10.190 There is no provision for post-poll auditing in the legislation of the Commonwealth or any of the other States. However, at the Commonwealth level post-poll audits have been made an administrative practice. The AEC has a policy which audits 20-25 divisional offices after each Federal election. This audit involves an official from the AEC's central administration and an experienced DRO or operational staff member visiting a divisional office, with little prior warning. During the visit a sample of formal and informal ballot-papers, PV applications and certificate envelopes, provisional absent and section vote envelopes for accepted and rejected ballots, and the documentation of the conduct of the election for that division are examined. The initial inspection may be accompanied by interviews of the DRO and divisional staff in relation to the management of the election.

10.191 Polling-day problems such as queuing, shortage of voting materials, and lack of information are not uncommon. Post-poll incidence of and reasons for reporting would aid in identifying such problems and lead to improvements in electoral law and practice. An argument might also be mounted that the public has a right to post-poll reports, since it is in their interest to understand and be aware of the activities associated with the election of their representatives to the Parliament. However it should be unnecessary to make such reports a statutory requirement; the Electoral Commission should introduce such measures administratively, as is the case in other Australian jurisdictions.

10.192 Since the QEC will be charged with the conduct of all future State Legislative Assembly elections, it will be responsible for ensuring that elections are conducted efficiently, consistently and according to statutory requirements and prescribed administrative standards. Post-poll reporting by electoral officials is one way of achieving this. The question arises as to whether there is a need for other election monitoring strategies, such as post-poll auditing.

10.193 Auditing is a much more formal process. The administration of an election in a district would be examined in detail by an officer appointed by the QEC for that purpose. This could be a senior officer from within the QEC, an experienced RO not involved in the election in that district, or some other person appointed specifically for that purpose. The AEC's scale of auditing approximately one district in seven per general election appears appropriate, though it may take two or more elections to build up to that level.

EVIDENCE AND ARGUMENTS

10.194 At a meeting of ROs convened by the Commission in November 1990, many of the ROs present saw benefit in post-poll reporting. The major identified anticipated by ROs was the identification of the causes of the problems experienced at the election. ROs also thought that they would gain from each other's electoral experience at post-poll debriefing sessions.

10.195 D Currier (S3), the Mount Isa City Council (S69), and the National Party (S76) supported the idea of post-poll reporting and auditing. The National Party commented that these were purely administrative items and should accordingly be left to the Electoral Commissioner.

ANALYSIS OF EVIDENCE AND ARGUMENTS

10.196 In a previous section of this chapter, the Commission recommended that the QEC publish in the Gazette the results of general elections and by-elections. There should also be a provision which requires the QEC to publish promptly details of the polling in each booth in each electorate. This will ensure that the public has access to as much detailed information as possible. Ready availability of such detailed information helps to preserve confidence in the electoral system.

10.197 In addition to making available as much detailed polling information as possible, the QEC should also establish appropriate post-poll reporting and audit procedures.

10.198 In relation to post-poll reporting, other than the publication of individual booth voting details discussed in para.10.187 above, the Commission considers that this is primarily an administrative matter best left for the QEC to determine.

10.199 For post-poll auditing, the Commonwealth model where a senior official and an experienced DRO conduct audits jointly would appear to be an appropriate model to follow. The QEC should investigate the possibility of using electoral officials from another State for this purpose. Using interstate officials would add a further degree of independence to the audit.

10.200 Again this is not a matter that needs to be included in the legislation and one which should be left to the discretion of the QEC.

10.201 There are additional measures that will bring any shortcomings in electoral administration to public scrutiny. Firstly, the Commission recommends in Chapter Three, Electoral Administration, that the QEC Report to the Parliamentary Committee after each election. In addition to any internal procedure the QEC may introduce, scrutiny by the Parliamentary Committee, the media, political parties and candidates are likely to ensure that any problems associated with the conduct of an election will be made public.

10.202 Finally, in this regard, it should be noted that in its *Report on Review of Public Sector Auditing* (EARC 1991), the Commission has recommended a wide efficiency audit mandate for the Queensland Auditor-General (see recommendations in Chapter Five of that Report). If this recommendation is implemented, there is scope for the Auditor-General to conduct audits of the activities of the QEC.

RECOMMENDATIONS

10.203 **The Commission recommends that:**

(a) The Queensland Electoral Commission be required to publish polling details for each polling-booth in each electoral district as soon as practicable after the return of the writ. The information should be published in the Queensland Electoral Commission's Report to the Parliament on the conduct of each election.

(b) The Queensland Electoral Commission should institute appropriate post-poll reporting and auditing procedures.

10.204 These matters are largely administrative and need not be included in the proposed legislation.

Delays in the Scrutiny and in Obtaining a Result

Issue 18 Are the current procedures in obtaining a result unacceptable, and if so, what are the appropriate strategies to reduce them?

CURRENT SITUATION

10.205 Delays in determining the result of an election are inevitable if no candidate receives a majority of primary votes. Mechanisms must be in place to ensure all electors are able to cast a vote and have their vote counted, and these mechanisms inevitably slow down the determination of a final result.

10.206 As the Commission stated in its *Report on Queensland Legislative Assembly Electoral System* (1990, p.32):

> *"Australian electoral laws are exceptionally generous in their provision of facilities to electors who are outside the electoral district for which they are enrolled on polling-day (or indeed outside the country), in allowing a period of time in which ballot-papers marked outside the electoral district can travel to a counting place in that district.*
>
> *Should it be wished to make an immediate start on the scrutiny following polling-day, it would be necessary to require that all ballot-papers to be admitted to the scrutiny be in the hands of polling officials for that electoral district at the close of voting on polling-day or to fix such shorter period for their return as would achieve the desired mix of early results and preservation of franchise rights."*

10.207 In Chapter Nine of this Report, Extra-ordinary Voting, the Commission has recommended the adoption of a declaration voting system for all extra-ordinary votes.

10.208 The main causes of delay when no candidate receives a majority of votes are caused by absent votes (declaration votes on polling-day), postal and general postal votes (declaration vote by post and general declaration vote). These votes usually are delivered to the RO in the days following polling-day.

10.209 Earlier in this chapter, the Commission recommended that 10 days after polling-day be retained as the time for receipt of declaration votes by post. In a close election therefore preferences cannot be officially allocated until after the 10 days allowed for delivery of postal votes.

EVIDENCE AND ARGUMENTS

10.210 In the Issues Paper No. 13 (para.10.66, pp.90-91) the following options were listed as possible solutions to delays in obtaining a result:

(a) a reduction in the statutory period for the receipt of postal votes and other extra-ordinary votes by the RO to allow the distribution of preferences to commence earlier;

(b) the provisional distribution of preferences before the closing date for the receipt of postal votes;

(c) the provisional distribution of preferences by polling officials on polling-night;

(d) polling officials counting the primary vote on polling-night at a speed which allows scrutineers to accurately gauge the flow of preferences;

(e) recruiting ROs who are available on a full-time basis for a specified time after polling-day;

(f) recruiting extra polling officials to assist with the scrutiny after polling-day;

(g) ensuring that all polling officials are adequately trained to ensure the expeditious counting of the vote and to eliminate non-statutory delays;

(h) reviewing the conduct of each election to identify procedural and legislative causes of delays; and

(i) requiring that absent votes be dispatched within a set period of time after polling-day.

10.211 Public submissions generally supported the view that delays in obtaining results could be reduced. A large proportion of these submissions (eg B McCoy (S21), V Bowles (S28), P Soper (S28)) suggested that electronic voting or scanning of ballot papers would reduce delays. The issue of electronic voting is more fully discussed in Chapter Fifteen, Miscellaneous.

10.212 Some submissions however argued that delays were not a concern:

> *"It is of no great importance to the electorate. Care is more important than expediency. The media should be ignored."* (M Passmore S45).

10.213 The Brisbane City Council (S88), which conducts its elections under the existing Elections Act, answered each of the options raised:

> *"(a) The statutory period for the receipt of postal votes could not be reduced. The time frame presently used allows just enough time for postal votes to be received.*
>
> *(b) The provisional distribution of preferences before the closing date for receipt of postal votes would allow for an earlier result. This would also involve a considerably heavier workload for ROs.*
>
> *(c) If provisional distribution of preferences by polling officials on polling night would not be appropriate. In the recent Brisbane City Council elections some primary results were not received until 11pm. If preferences were to be counted on polling night even greater delays could be expected.*

(d) If polling officials counted the primary vote on polling night at a speed which allows scrutineers to accurately gauge the flow of preferences further delays in receiving primary vote results could be expected. To gauge the flow of preferences would not produce an accurate result and preferences would still have to be counted again.

(e) The Council already recruits R.O.'s who are available on a full time basis for up to one week after the election.

(f) The Council presently employs up to four extra polling officials to assist each RO with the counting of votes after polling day.

(g) Agreed - all polling officials should be adequately trained prior to the election. Each Council RO already conducts a training session for polling officials.

(h) The Council would support a review of the conduct of each election to identify procedural and legislative causes of delay providing there was an opportunity for the Council to provide input.

(i) The Council already has a procedure to facilitate the direct exchange of absent votes to the appropriate RO the day after polling day."

ANALYSIS OF EVIDENCE AND ARGUMENTS

10.214 The Commission's response to each of the options suggested above is:

(a) This option was rejected earlier in this chapter in order to protect the franchise of the maximum number of electors.

(b) This is an option that should be available to the ROs subject to direction by the Electoral Commission. However the priority for ROs should remain the completion of the initial scrutiny. Therefore any provisional distribution of preferences would need to wait perhaps until absent votes have been processed. This usually occurs by the Thursday after polling day, by which time a majority of postal votes have also been received and processed. It would also be necessary to issue a disclaimer when releasing any figures after the provisional allocation of preferences, as the official result could be different after all the votes have been scrutinised.

(c) The provisional allocation of preferences on polling-night was discussed earlier in this chapter and was rejected because of the need to predict who would be the last two candidates. This was felt to be an unnecessary intrusion into the functions of the Electoral Commission.

(d) Polling officials counting the primary vote on polling-night at a speed which allows scrutineers to accurately assess the flow of preferences might delay the primary vote count unduly. However this is an option that QEC might investigate further.

(e) This option was supported in Chapter Seven, where it was recommended that the Commission have discretion to appoint full time ROs where it was considered necessary.

(f)-(h) These options are all administrative items and the Electoral Commission will be able to implement one or more of these options if it is considered necessary.

(i) At para.10.63 it was recommended that the new Act state that absent votes be dispatched to ROs by the most expeditious means practicable.

10.215 Taken together, the above options would reduce the delays in obtaining a result only marginally. There are two conflicting principles here: the need for a speedy result; and the maintenance of the public's confidence in the electoral process. Legitimacy and public confidence are more important than a speedy result. A delay of, at most, a few extra days to determine accurately which party forms the government after a close election is a small price for the electorate's confidence that the result was obtained fairly and accurately.

10.216 Given these principles, the Commission does not consider that there are any major systematic causes of delays in obtaining the result in a close election that could be altered without unduly compromising the rights of electors or the integrity of the electoral process.

10.217 There are however some procedural options discussed in this section that the QEC may wish to investigate in more detail.

RECOMMENDATIONS

10.218 **The Commission recommends that the Queensland Electoral Commission should continuously monitor the scrutiny process and the administration of elections to identify any procedures that could be improved either by administrative action or legislative amendment. Administrative change should be implemented when necessary and the Queensland Electoral Commission should include in its report of each election any legislative impediments to the efficient conduct of the election and the scrutiny.**

V. R. Ward, Government Printer, Queensland—1991

129503