QUEENSLAND

ELECTORAL AND ADMINISTRATIVE REVIEW COMMISSION

REPORT

ON

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

VOLUME TWO - THE REPORT (CHAPTERS 11 TO 17 AND THE APPENDICES)

DECEMBER 1991

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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 ELEVEN

POLITICAL ADVERTISING

Introduction

11.1 The impact of political advertising on the conduct and outcome of elections has come under increasing public scrutiny, particularly in the way in which advertising is used to make electors aware of the policies and programmes of parties and candidates. It is in this context that controls over political advertising need to be carefully considered.

11.2 The prevention of misleading and inaccurate advertising is of particular importance in the light of the damage that may be done to the electoral prospects of both political parties and individual candidates and it is this matter which is substantially dealt with in this chapter.

Current Situation

11.3 The Queensland legislation and that of all States except South Australia do not provide for controls over advertising in the electronic media (ie. radio and television). It is often said that electronic advertising falls wholly within Placitum 51(v) of the Australian Constitution which vests in the Commonwealth power to make laws with respect to "Postal, telephone and other like services."

11.4 Nevertheless the *Electoral Act 1985* (SA) provides at s.113:

> *"113 (1) Where-*
> *(a) an electoral advertisement contains a statement purporting to be a statement of fact;*
>
> *and*
>
> *(b) the statement is inaccurate and misleading to a material extent, a person who authorised, caused or permitted the publication of the advertisement shall be guilty of an offence. ...*
>
> *(3) This section applies to advertisements published by any means* ***(including radio and television).*** [Emphasis added].

11.5 The Commission has sought advice from the Crown Solicitor on whether the Queensland Parliament may validly enact similar legislation to include a prohibition on misleading electoral advertisements appearing in the electronic media in Queensland. A copy of the Crown Solicitor's advice is contained in Appendix G.

11.6 The advice was that:

> *" ... there is nothing in these sections [of the Broadcasting Act] which would be inconsistent with [Queensland] State legislation prohibiting the broadcasting of misleading and deceptive election material."*

11.7 This advice was subject to any future Commonwealth legislation with which Queensland law may be inconsistent. On 5 December 1991 the Senate passed a modified version of the *Political Broadcasts and Disclosures Bill 1991* which bans all paid electoral advertising during an election period and introduces a free-time system of political advertising (see paras.11.12-20 for further details).

11.8 As a result, there may be a gap in Queensland legislative controls over misleading advertising outside election periods. This will be given further consideration as part of the Commission's Review of Public Funding of Election Campaigns and Disclosure of Political Donations other Income and Electoral Expenditure in 1992.

11.9 The Act contains provisions relating to political advertising in print as set out in Table 11.1 below.

TABLE 11.1

SECTIONS OF THE QUEENSLAND ELECTIONS ACT RELATING TO POLITICAL ADVERTISING IN PRINT

Section	Provision
111	Authorisation of political articles
112	Any person who prints, publishes electoral material intended or likely to mislead is guilty of an offence
113	Constitution of proceedings for offences under ss.111 and 112
114	Granting of an injuction by a judge of the Supreme Court of Queensland for failure to comply with any provision of ss.111 and 112.

11.10 Section 106 of the Criminal Code provides a penalty for the printing, publishing and posting of any bill, placard, or poster having reference to an election which does not bear the name and address of the printer or publisher.

11.11 Although Queensland legislation relating to printed electoral advertising is broadly similar to that of the Commonwealth and other States, a deficiency of the current Act is the level of penalties that can be imposed for breaches of the legislation. Comparisons and recommendations for increased penalties are set out later in this chapter.

11.12 On 9th May 1991 a Bill entitled *Political Broadcasts and Political Disclosures Bill 1991* was introduced into the Federal House of Representatives. It passed the Senate in an amended form on the 5 December 1991.

11.13 The amendments made by the Bill to the *Broadcasting Act 1942* prohibit the broadcasting of political advertisements at all times. The ban, if implemented, would apply to all three levels of government and to the Australian Broadcasting Corporation (ABC) and Special Broadcasting Service (SBS) as well as to commercial broadcasters.

11.14 The Bill would also ban advertising by Commonwealth departments and authorities immediately before a Commonwealth election or referendum, and by Territory departments and authorities prior to Territory elections. All governments would be subject to the ban on political advertising. It would also prevent broadcasters showing, on their own initiative, advertisements which contained political matter.

11.15 The Bill is not intended to restrict bona fide reporting or commentary on political events by broadcasters.

11.16 The Bill was initially passed in the House of Representatives. However, the Senate failed to pass the Bill and instead the Bill was referred on 14 August, 1991 to the Senate Select Committee on Political Broadcasts and Political Disclosures.

11.17 The Select Committee sought public submissions and public hearings were held on the 24, 26 and 27 September, 11, 14, 16 and 23 October, and 7 November 1991.

11.18 The Report of the Senate Select Committee on Political Broadcasts and Political Disclosures was released in November 1991 and made several recommendations in regard to the proposed ban on political advertising.

11.19 Such recommendations included:

(a) Allocation of free time in two minute blocks across all stations to registered political parties on television and radio for elections in Australia to operate during an "election period" as defined in the Bill.

(b) Broadcasts must follow a "talking heads" format with no jingles or additional video footage.

(c) Free time will only be granted to those States and Territories that have enacted full disclosure legislation in line with that proposed by the Commonwealth.

(d) Free time will not be available during election periods for by-elections.

(e) The AEC should have the responsibility of allocating free time to parties and candidates on advice from a Parliamentary Committee.

(f) The amount of free time made available by television or radio should be 17 minutes per day as allocated by the AEC. (pp.xiv-xv)

11.20 Most of these recommendations were incorporated as amendments to the *Political Broadcasts and Political Disclosures Bill*, which was passed by the Senate on 5 December, 1991.

11.21 In addition to those recommendations proposed by the Select Committees Report, the following major amendments were made:

(a) The Bill would not affect broadcasting of programs which include items of news, current affairs or any comment upon the same or to talk-back radio programs.

(b) Exemptions are provided for the following:

(i) radio services provided for the visually impaired including the reading of political advertisements from newspapers as part of newspaper or journal reading programs.

(ii) Advertising by charitable organisations where the advertisement promotes the object of the organisation and does not explicitly advocate voting for or against a political party, candidate or group of candidates is exempt.

(iii) Matters relating to public health, the definition of which does not include matters which promotes or criticises a particular public health system or which explicitly advocates voting for or against a candidate in an election or a political party.

(c) The Bill proscribes the broadcasting of any matter for or on behalf of an encumbent Commonwealth government department or authority during the three months preceeding the last due date for the expiry of the House of Representatives and similar provisions relating to the broadcasting of Territory Government matter.

(d) Instead of the AEC having the responsibility for the allocation of free time election broadcasts as recommended by the Senate Select Committee, the Bill proposes that the Australian Broadcasting Tribunal be responsible for allocation as well as the days and times upon which television broadcast are to be made.

(e) Television broadcasting should be of two minutes duration, and radio broadcasting one minute, other than a broadcast made by the ABC under certain circumstances.

(f) As recommended in the Senate Select Committee report election broadcasts must be of words spoken by one speaker who is a candidate in the election concerned or a Senator whose term will not have expired at the end of the next month of June following the election.

(g) Political parties that comprise of the Government and the official opposition immediately before the last sitting of the relevant Parliament or legislature shall be entitled to an automatic grant of 40% each of the total free time allocated.

(h) A further automatic grant is provided for political parties that held official party status in the relevant Parliament or legislature immediately before the end of the relevant sitting. Such party should be allocated 10% of the total allocated free time.

(i) Senators who are contesting elections and are not members of political parties should be granted free time (upon application) of not less than 5% of the total allocated time.

(j) Provision is to be made for the distribution of the remaining allocation of free time election broadcasts to any other applicant.

(k) A minimum number of election broadcasts is prescribed for each election. For Federal elections three election broadcasts on each day are required; for State two election broadcasts; for Territory elections the exact number of broadcasts is unclear and is referred to "as prescribed".

11.22 Other amendments refer to appeals against the refusal by the Australian Broadcasting Tribunal to allocate free time; the requirement that broadcasters make election broadcasting free of charge; the non-requirement for a broadcaster to make a particular broadcast in certain circumstances; and provisions to allow licencees required to make election broadcasts to be able to broadcast other material including advertisements and station promotions as determined by regulation.

General Issue

Should legislative controls be imposed on political advertising? Are the existing provisions governing political advertising in Queensland adequate? What are the arguments in support of, or against, controls on political advertising?

EVIDENCE AND ARGUMENTS

11.23 Most of the major parties agreed that there should be legislative controls over political advertising in Queensland which should provide some protection against misleading and inaccurate advertising. For example:

> *"The Democrats believe that more enforceable regulation of political advertising in Queensland. We wish to make it clear that we do not support the banning of advertising, but rather more effective controls on its nature."* (S18).

11.24 Other submissions also indicated support for such action.

(a) *" ... any effort to eliminate political advertising in the media does not address the fundamental problems in the political process and is itself too draconian a measure in removing basic rights of freedom of speech and expression. Regulation and disclosure are in order but not total elimination."* (K Wiltshire (S8)).

(b) *" ... controls are necessary and are presently inadequate."* (R MacKinnon (S16)).

11.25 The Liberal Party (S25), however, did not support legislature controls in political advertising:

> *"The Liberal Party is of the view that legislative controls should not be imposed upon political advertising save that such advertising should be subject to a requirement of truth in advertising."*

ANALYSIS OF EVIDENCE AND ARGUMENTS

11.26 As indicated there was general consensus that there should be some legislative controls over political advertising.

11.27 In view of the important role that political advertising plays in the conduct of election campaigns some control on advertising is acceptable to prevent misleading or false advertising which may adversely and unfairly affect the electoral opportunities of political parties. Electronic and printed advertisements are equally capable of generating such harm.

11.28 A political party or candidate which considers that they have been affected by misleading advertising should be able to seek redress, possibly through injunctive relief. Such relief must be available quickly due to the brevity of election campaigns. At the same time, penalties for offences under such legislation should be substantial in order to discourage abuse of democratic processes.

11.29 Issues Paper No. 12 (Issue 6.12) raised the possibility of government advertising being treated as political advertising. There has been considerable criticism of government practice in the past and it has been the subject of a number of submissions. Most submissions recommended that there should be a ban on government advertising other than that which is purely informational during the election period (ie. between the day of issue of the writ and the end of polling-day).

11.30 As mentioned above (para.11.15), the Commonwealth Government has proposed in the *Political Broadcasts and Political Disclosures Bill* that there be limitations on the type of material which government departments and instrumentalities can broadcast during election periods. Anything with a political reference is banned. The proposed exemptions are:

> *"(a) a matter directly relating to warnings of impending natural disasters or military or civil disorders;*
>
> *(b) matter relating to measures (including relief measures) taken to deal with such disasters or disorders and with their consequences;*
>
> *(c) matter provided by the authorities responsible for the conduct of an election to a Parliament or a local government authority, or of a referendum, including material relating to the procedures and polling-places for the election or referendum and the promotion of participation in the election or referendum;*
>
> *(d) advertisements of goods and services offered for sale by or on behalf of:*
> *(i) the government, or a government authority, of the Commonwealth; or*
> *(ii) the government, or a government authority, or a Territory; or*
> *(iii) the government, or a government authority, or a State;*
>
> *being advertisements that do not contain a political reference;*
>
> *(e) advertisements relating to vacant positions or calling for expressions of interest in appointment to public offices;*
>
> *(f) advertisements calling for tenders;*
>
> *(g) announcements of the kind mentioned in paragraph 31(2)(a) of the Australian Broadcasting Corporation Act 1983, or announcements carried by the Service relating to any activity or proposed activity of the Service;*
>
> *(h) announcements relating to any public inquiry or public hearing conducted under a law of the Commonwealth or of a State or Territory;*
>
> *(i) any notice or announcement required to be broadcast by or under any law of the Commonwealth or of a State or Territory, other than a prescribed notice or announcement.*
>
> *(j) any other advertising which has been approved by the leaders of non-Government parties in the election."*

11.31 As previously mentioned the *Political Broadcasts and Political Disclosures Bill* passed recently by the Senate has included additional exemptions in regard to radio services for the visually impaired; advertising by charitable organisations promoting the objects of the organisations only and matters relating to public health, the definition of which does not include matters which promotes or criticises a particular public health system or which explicitly advocates voting for or against a candidate in an election or a particular party.

11.32 In view of the submissions and criticisms directed at past governments on this matter, it is considered that a ban should be placed on advertising of a political nature by government agencies during the State election period. A list of exemptions can be drawn up so as not to interfere with the normal information operations of agencies.

RECOMMENDATION

11.33 **The Commission therefore recommends that:**

(a) Controls over political advertising be established to prevent misleading or false advertising which may adversely affect political parties and individual candidates. These controls should apply to both electronic and printed advertisements.

(b) A ban should be placed on advertising of a political nature by government agencies during the State election period unless such advertising falls within the Commonwealth's exemption categories and was agreed to by the leaders of the Parliamentary parties.

11.34 Provisions to implement recommendation (a) are contained in the Draft Bill in Part 8 s.163.

FURTHER MATTERS FOR CONSIDERATION

11.35 If controls on political advertising are to be imposed as recommended, then there are a number of other important matters which require investigation:

(a) definition of political advertising;

(b) definition of election commentary;

(c) restrictions on political advertising;

(d) authorisation of political advertising;

(e) third party advertising; and

(f) misleading advertising.

Definition of Political Advertising

Issue 1 Is it necessary for "political advertising" to be formally defined in Queensland electoral legislation? If so, how should such a definition be formulated?

EVIDENCE AND ARGUMENTS

11.36 The majority of submissions on this topic were in favour of a formal definition but opinions varied on the model to be followed.

(a) A Conway-Jones (S13) and the Australian Democrats (S18) favoured the definition in the Commonwealth legislation.

(b) A Sandell (S11) suggested that the words in 6.31 of the Issues Paper would be appropriate:

"ie. 'matter which is intended or likely to affect voting at an election' was the simplest yet adequate definition."

(c) On the other hand, the Liberal Party (S25), the National Party (S23) and the Queensland Watchdog Committee (S27) were of the opinion that the New South Wales legislation was a broader definition and as such was preferable to that of the Commonwealth.

(d) R MacKinnon (S16) was of the opinion that no formal definition of political advertising was required, stating:

"No need for formal definition. Leave to QEC and regular public review."

ANALYSIS OF EVIDENCE AND ARGUMENTS

11.37 In order to control the content of printed political advertising, there is a need for a suitable definition of "political advertising" in the new Electoral Act. The existing Queensland legislation does not define this term.

11.38 The CE Act does not directly address the issue of political advertising but deals rather with "electoral advertisements". An advertisement is treated as an electoral advertisement if it contains electoral matter whether or not payment was made for the publication or broadcasting of the advertisement. Section 4(1) of the CE Act defines "electoral matter" as *" ... matter which is intended or likely to affect voting in an election."* An electoral advertisement is defined as *"an advertisement, handbill, pamphlet or notice that contains electoral matter."* (s.328(5)) but no definition of "advertisement" is provided.

11.39 Matter containing an express or implicit reference to or comment on an election, political party, the Government, the Opposition or an issue submitted to the electors in connection with the election would be included in such electoral matter.

11.40 Tasmanian and New South Wales legislation refer to political advertising only within the context of the term "electoral matter". Section 244(7) of the *Electoral Act 1985* (Tas) defines "electoral matter" as -

"(a) a matter relating to a candidate at the election;
(b) a matter relating to a political party involved directly or indirectly in the election; or
(c) a political issue that is before, or submitted to, the electors at the election."

11.41 Similarly, the PE & E Act s.151B(6) of New South Wales defines "electoral matter" as

" ... any matter which is intended or calculated or likely to affect or is capable of affecting the result of any election held or to be held under this Act or of any referendum of the electors which is intended or calculated or likely to influence or is capable of influencing an elector in relation to the casting of his vote at any such election or referendum."

11.42 Sub-rule 5(4) of Schedule 3 to the *Local Government Act 1936-1990* (Qld) defines "election matter" as follows:

"(a) matter commenting on, or soliciting votes for, a candidate at an election;
(b) matter commenting on, or advocating support of, a political party to which a candidate at an election belongs;
(c) matter commenting on, stating or indicating any of the issues being submitted to the electors at an election or any part of the policy of a candidate at an election or of the political party to which such a candidate belongs; and
(d) matter referring to meetings held or to be held in connexion with an election."

11.43 The Commission feels that the best options for a definition of "political advertising" are those contained in the Commonwealth and New South Wales legislation. These definitions attempt to differentiate between "election matter" and "political advertisements". These differences are significant because there is a body of published material (eg. editorials and political commentaries) which contain election matter which cannot be defined as bona fide advertisements and should not be subject to legislative control.

11.44 A broad definition is required for this area to cover all aspects of political advertising. The preferred model appears to be a modified version of that in the PE & E Act with a small modification (see Issue 1.2 below for the suggested modification).

11.45 The NSW model is suggested in preference to the Commonwealth model which tends to be somewhat unwieldy.

11.46 A definition of "electoral matter" similar to the NSW definition could be adopted for the new Electoral Act. However, this definition would similarly need to be followed by a definition of political advertising.

RECOMMENDATION

11.47 **The Commission recommends that:**

(a) The definition of "electoral matter" should include anything able to, or intended to -

(i) influence an elector in relation to voting at an election; or

(ii) affect the result of an election.

(b) The definition should include a further definition which relates to "political advertisements."

11.48 The provisions of the Draft Bill which implement this recommendation are Part 1 s.3.

Electoral Commentary

Issue 2 Should newspaper editorials or other similar publications which contain editorial commentary of a partisan nature be considered a form of "political advertising"? Should such material be controlled?

EVIDENCE AND ARGUMENTS

11.49 There was a general consensus in the submissions that this type of commentary should not be considered a form of political advertising. However, it was suggested that some form of control should be imposed to prevent inaccurate or misleading statements being made.

(a) The Australian Democrats (S18), the Liberal Party (S25) and National Party (S23) all stated that newspaper editorials containing electoral commentary should not be considered political advertising.

(b) *"Newspaper editorials or other similar publications should not be considered to be a form of political advertising. In any case, it would be extremely difficult to determine whether an editorial was deemed to be political advertising!"* (Rockhampton City Council (S33)).

(c) *"The Labor Party considers that there should be no interference with 'the freedom of the press' to comment on policies and candidates. However, the law with respect to misleading advertisement should apply quite generally. If it is an offence for a candidate to publish misleading information about an opponent, it should also be an offence for a newspaper to do the same thing."* (ALP (S21)).

(d) *"A proposal to ban or control newspaper editorials would, if implemented, set a dangerous precedent and would be contrary to the principle of freedom of the press. We believe newspapers should continue to print editorials and opinion pieces containing partisan electoral commentary even though these pieces may sometimes be ill-conceived and written to benefit the newspaper rather than to voice a public interest. However we believe there is a case for requiring these pieces to carry a qualifying message when they are published during an election campaign to the effect: 'This editorial/opinion piece represents the personal views of the editor and management'. We believe such pieces should be footnoted with the name(s) of those taking responsibility for the views presented. We believe this might overcome EARC's concern that editorials could unduly influence an election's outcome. It should also be remembered that the days of 'Citizen Kane' are over - newspapers are no longer the influential beasts they once were; television is the medium most likely to influence public opinion, and some research suggests the stereotyped swinging voter is an apathetic animal whose views are more likely to be swayed by impressions on TV rather than by the intellectualism of newspaper editorials. We believe EARC should seek out and consider any available research on the influence of editorials and the current readership of newspapers before considering any controls."* (Queensland Watchdog Committee (S27)).

(e) *"Freedom of the press dictates editorial freedom, but this is not a freedom to distort."* (M Passmore (S9)).

(f) *"Those electoral commentaries that are completely free from bias would be a small percentage of the total. Until satisfactory definition of both editorials and electoral commentaries can be drafted and accepted by all concerned no recommendations are made."* (A Sandell (S11)).

(g) On the other hand, A Conway-Jones (S13) argued that political commentary in newspaper editorials and other publications should be considered "political advertising". In his submission he stated:

"I think it was Lord Beaverbrook that boasted with the power of his newspapers he could bring down any government. With our present situation, we have press 'Barons' who not only own newspapers, but TV stations as well. This power over the peoples' minds is a direct threat to good government and this power feared by many politicians. We already have newspapers politically biased, with the Gold Coast Bulletin, it has stated it supports the conservatives, indeed letters to the Editor are censored in a shameful way if they veer from editorial objectives."

(h) *"Main worry is manipulation of both voters and parties by media moguls. Partisan comment should be regarded as advertising and regulated as such - perhaps by provision of equal space/prominence for contrary view if claimed by other party or QEC."* (R. McKinnon (S16)).

ANALYSIS OF EVIDENCE AND ARGUMENTS

11.50 No electoral legislation in Australia defines electoral commentary in newspaper editorials or similar publications as being a form of "political advertising". (It should be noted that whilst this issue arises primarily in the context of newspapers and other print media, it is relevant to the electronic media as well for the spoken word may well become "commentary of a partisan nature," eg. by talkback radio comperes.)

11.51 This issue raises a number of sensitive questions. First is the question of the "freedom of the press". Intervention into this area of the media by the introduction of legislative controls would probably prompt concern that "freedom of the press" may be compromised. In fact this has been the case in editorial comment in the *Courier-Mail* (of 10 May 1991) after the release of the Issues Paper.

11.52 Secondly there is the question of the definition of political advertising. Most definitions of "election matter" or "electoral matter" are so broad that they can be interpreted to cover editorials, and political commentary articles because they are *"likely to affect or capable of affecting the result of any election ... "* It is not intended that such publications should fall under the controls of the new Electoral Act.

11.53 As already indicated the majority of submissions showed little support for including newspaper editorials or other similar publications which contain electoral commentary of a partisan nature within the meaning of "political advertising". Whilst A Conway-Jones (S13) and R MacKinnon (S16) quite validly argue that electoral commentary in newspaper editorials could be viewed as a form of "political advertising", the Commission considers that newspapers and other publications should have the freedom to comment on political matters and to restrict commentary on these matters would disadvantage the public who rely on such publications for information on electoral matters.

11.54 Clearly commentary in editorials does fall within the broad definition of "electoral matter" proposed previously. However such commentary cannot be described as advertisements in the real sense of the word. There is therefore a need for a definition of political advertising which excludes such commentary. Recent amendments to the Commonwealth Broadcasting Act may provide a useful model for legislation in this area.

11.55 The definition of political advertising adopted for Queensland legislation should therefore expressly exclude editorials and political commentary articles published in newspapers and journals or otherwise. The wording of such an exclusion will need to be chosen carefully to limit opportunities to publish "advertisements" as commentary articles.

11.56 A possible definition would be as follows:

> *"'electoral matter' means any printed matter which is intended or calculated or likely to affect or is capable of affecting the result of any election or referendum held or to be held under this Act or which is intended or calculated or likely to influence or is capable of influencing an elector in relation to the casting of that electors vote at any such election or referendum.*
>
> *'Political advertisement' means an advertisement containing electoral matter. The term advertisement does not include bona fide editorial comment or published political commentaries."*

RECOMMENDATION

11.57 **The Commission recommends that:**

(a) Electoral commentary in newspaper editorials, similar publications or otherwise should not be regarded as political advertising and should not be subject to legislative control.

(b) The definition of political advertising adopted for Queensland legislation should expressly exclude editorials and political commentary articles published in newspapers and journals or otherwise.

Restrictions on Political Advertising

Issue 3 What restrictions, if any, should be placed upon party, candidate and third party printed political advertising? Are current provisions in Queensland adequate?

EVIDENCE AND ARGUMENTS

11.58 The relevant submissions are as follows:

(a) *"(a) There should be a prohibition of all electoral matter which is, in the words of the Trade Practices Act, misleading or deceptive or likely to mislead or deceive.*

(b) There should be a prohibition of publication of electoral matter by:

(i) the State Government or any instrumentality thereof; or

(ii) a local authority

(c) The matters covered by Section 112 of the Election Act are too narrowly confined but the enforcement procedures are adequate except that they should be available against any person who publishes the matter in question." (National Party (S23)).

(b) *" ... the State should not fund nor permit false or very misleading political propaganda."* (M Passmore (S9)).

(c) *"We support a restriction on political advertising being published or transmitted on polling day. Consideration should also be given to restricting advertising by Government instrumentalities during the election period, other than material providing electoral information."* (Australian Democrats (S18)).

(d) *"The existing restrictions are considered to be adequate. However, it is considered that a two day complete blackout before the election and also the day of the election should be implemented to ensure no political advertising takes place. This will provide a respite period from such advertising for the public to determine the party or individual for whom they wish to vote."* (Rockhampton City Council (S33)).

(e) *"Apart from the requirement of truth in political advertising there should be no restrictions upon political advertising in Queensland."* (Liberal Party (S25)).

(f) *"Queensland should adopt a provision similar to Section 383 of the Commonwealth Electoral Act to enable injunctions to be granted against potential breaches of the Act."* (ALP S21).

ANALYSIS OF EVIDENCE AND ARGUMENTS

11.59 The Act imposes only limited controls on the printing and publishing of electoral material which is "intended or likely to mislead" (s.112). This section provides a penalty of $100.

11.60 Other electoral legislation in Australia provides similar restrictions on published political advertising. However, there would seem to be a deficiency in the current Queensland legislation regarding threatened breaches of advertising restrictions.

11.61 Section 383 of the CE Act permits candidates or the Electoral Commissioner to seek an injunction not only against any person engaging in conduct but also any person intending to engage in conduct which might constitute a contravention of the Act.

11.62 Section 253 of the *Electoral Act 1985* (Tas) also allows for injunctions to be granted for breaches or possible breaches of the Act. Section 114 of the present Queensland legislation does not allow for the granting of injunctions against threatened breaches of the Act.

11.63 The majority of submissions argued that restrictions on political advertising were necessary but proposed that the existing provisions should be extended to include such items as banning political advertising by the Government and Local Authorities; use of black-out periods on political advertising before elections; and, as suggested by the ALP (S21), the imposition of injunctions to prevent intended breaches of the Elections Act.

11.64 The Liberal Party (S25) argued that there should be no restrictions upon political advertising other than "truth in political advertising". The Commission believes "truth in advertising" would need to be adequately defined if this were to be the sole protection.

RECOMMENDATION

11.65 **The Commission recommends that while current legislation is generally regarded as adequate, provision should be made to deal with advertising that may be false or misleading and including a remedy for threatened breaches of the legislation.**

11.66 A suitable provision is contained in the Draft Bill in Part 8 s.163.

Authorisation of Political Advertisements

Issue 4 Are current provisions relating to the authorisation of political advertisements adequate? Should the penalties for non-authorisation or incorrect authorisation of electoral material be increased?

EVIDENCE AND ARGUMENTS

11.67 The Australian Democrats (S18) and the Liberal Party (S25) stated that the current provisions relating to authorisation of political advertising are adequate. The Democrats also commented that:

> *"Again for consistency's sake, requirements and penalties should be broadly consistent with the Federal level. For reasons of accountability, we would support the introduction of a system such as that described in para 6.46 which requires any published item on electoral matters to include the author's name and address."*

(a) *"All newspaper electoral material should carry the name and address of the person authorising the material, and for defamation reasons other printed material should also carry the name and place of business of the printer."* (Queensland Watchdog Committee (S27)).

(b) *"The Queensland provision should be strengthened to require the name and place of business of the printer to be shown on any electoral material printed other than in a newspaper. Furthermore, the maximum penalty should be raised to $1,000 or $5,000 for a body corporate."* (ALP (S21)).

(c) A Conway-Jones (S13) and the National Party (S23) suggested that the current provisions relating to the authorisation of political advertisements, were not adequate in that any penalties imposed for the absence of authorisation or incorrect authorisation should be increased. Similarly R MacKinnon (S16) suggested that penalties should be increased.

(d) Authorisation requirements in relation to advertising on electronic media are provided in s.117 of the *Broadcasting Act 1942*. Section 117 states:

> *"117. (1) The Commission or the licensee concerned, as the case may be, shall cause to be announced the true name of every speaker who, either in person or by means of a sound recording device, delivers an address or makes a statement relating to a political subject or current affairs for broadcasting or televising..*
>
> *(2) If the speaker is not the author of the address or statement, the name of the author shall be included in the announcement.*
>
> *(3) If the address is delivered or the statement is made on behalf of a political party, the name of the party shall be included in the announcement.*
>
> *(4) The announcement shall be made after the address or statement if it contains one hundred words or less ore before and after the address or statement if it contains more than one hundred words.*
>
> *(5) The Commission or the licensee, as the case may be, shall keep a record of the name, address and occupation of the author of each such address or statement and shall furnish to the Board any particulars of the record which the Board by notice in writing requires."*

ANALYSIS OF EVIDENCE AND ARGUMENTS

11.68 In order to provide remedies against misleading political advertisements of an electoral nature, there must be a clear authorisation shown as part of the advertisement.

11.69 Section 111 of the Act provides that:

> *"111. Political articles to be signed. (1) Every article, report, letter or other matter commenting upon any candidate or political party or the issues being submitted to the electors, printed and published in any newspaper, circular, pamphlet, placard, sign, poster, bill or 'dodger' at any time during the period shall be signed by the author or authors, giving his or their true name and address or true names and addresses, at the end of the said article, report, letter or other matter or, where part only of the article, report, letter or other matter appears in any newspaper, circular, pamphlet, placard, sign, post, bill or 'dodger', at the end of that part.*
>
> *Penalty: $100*

(2) Any newspaper editor or proprietor who permits, in any newspaper that he edits or owns, the publication of any unsigned article, report, letter or other matter commenting upon any candidate or political party or the issues being submitted to the electors at any time during the period is guilty of an offence.

Penalty: $100

(3) In this section the term 'the period' means the period commencing on the day of issue of the writ for an election and ending at the close of the poll in respect of that election.

11.70 Authorisation provisions across Commonwealth, State and Territory Acts are broadly similar. Where the printed media are concerned, electoral advertising and other material must include the name and address of the authorising person, and the name and place of business of the printer. Table 11.2 lists the penalties imposed by other States' legislation on incorrect authorisation of electoral material. These penalties are substantially higher than those of Queensland.

TABLE 11.2

AUTHORISATION OF ELECTORAL MATERIAL

	Details Required	Section	Maximum Penalty
Commonwealth (C)	a p	328	$1,000; Body corporate $5,000
Queensland (Q)	a	111	$120
Queensland Local Government (QLG)	a	Sch. 3, R5(2)	$120
New South Wales (N)	a p	151E	$500 or 6 Months
Victoria (V)	a p	267A	$1,000; Body corporate $5,000
Western Australia (W)	a p	187(1)&(2), 188	$200 or 6 Months
South Australia (S)	a p	112	$1,000; Body corporate $5,000
Tasmania (T)	a p	243(1)	$1,000 or 3 Months or both
Northern Territory (NT)	a p	106	$1,000 or 6 Months

(a) = name(s) and address(es) of author(s) or authorising person
(p) = name and place of business of printer required for electoral material printed other than in a newspaper

(C) = Commonwealth Electoral Act 1918
(V) = The Constitution Act Amendment Act 1958
(N) = Parliamentary Electorates and Elections Act 1912
(S) = Electoral Act 1958
(W) = Electoral Act 1907
(T) = Electoral Act 1985
(NT) = Electoral Act 1984
(Q) = Elections Act 1983-1991
(QLG) = Local Government Act 1936-1990

11.71 The electoral legislation of South Australia and the Commonwealth provides exemptions from authorisation for such articles as car stickers, T-shirts, lapel badges and buttons, pens, pencils or balloons etc.

11.72 Commonwealth legislation and most of the States require that the name and place of business of the printer should be included on any material published or printed other than in a newspaper.

11.73 At present in Queensland this matter is covered by s.106(2) of the Criminal Code 1901 which states, inter alia:

> *"106. Any person who -*
>
> > *(2) Prints, publishes, or posts, any bill, placard, or poster, which has reference to an election, and which does not bear on the face of it the name and address of the printer and publisher ...*
>
> *is guilty of an offence."*

11.74 The existing legislation relating to the authorisation of political advertisements would seem generally to be appropriate. However, s.106 of the Criminal Code which requires the printer's name and place of business to appear on electoral matter should be repealed for Legislative Assembly elections and a similar section inserted into the new Electoral Act as is the case elsewhere in Australia.

11.75 It should be noted that the Criminal Code Review Committee in its First Interim Report (1991) recommended that any electoral offences of strict liability or involving breaches of duty where there is no intention on the offender's part to corrupt or interfere with the election or its result should be removed from the Criminal Code 1901 to a *Simple Offences Act*.

11.76 The Commission in Chapter Fourteen of this Report has recommended that provisions relating to electoral offences should be contained in the Electoral Act with the exception of a general offence appearing in the Criminal Code. The general offence should contain the element of intending to interfere with the lawful conduct of, or improperly influencing the result of, an election. The current provisions in the Criminal Code relating to electoral offences should be repealed for Legislative Assembly elections and equivalent provisions should be inserted in the Electoral Act.

11.77 The Commission also considers that articles such as car stickers, T-shirts, lapel buttons and badges, pens, pencils, balloons, etc. should be exempted from authorisation requirements. Due to the size or physical nature of these articles it is considered that no worthwhile purpose is achieved by imposing authorisation requirements on them.

11.78 Penalties in relation to breaches of the provisions requiring authorisation of political advertisements should be severe enough to deter would-be-offenders. Further detailed discussion on this matter is included in Chapter Fourteen on Electoral Offences.

RECOMMENDATION

11.79 **The Commission recommends that:**

(a) Section 106 of the Criminal Code which requires the printer's name and place of business to appear on electoral matter should be repealed for Legislative Assembly elections and a similar section inserted into the new Electoral Act.

(b) Provision should also be made to exempt certain articles such as car stickers, T-shirts, lapel buttons and badges, pens, pencils, balloons, etc. from the authorisation requirements of the Act.

(c) Penalties for misleading advertising should be increased to that equivalent to 20 penalty units for an individual and 100 penalty units for a body corporate.

11.80 Relevant provisions appear in Part 8 s.161 of the Draft Bill.

Third Party Advertising

Issue 5 What statutory restrictions, if any, should apply to electoral advertising by third parties?

EVIDENCE AND ARGUMENTS

(a) *"No advertising should be permitted without authorisation by a candidate. Any organisation is free to nominate a candidate, but must pay the penalty if they do not attract sufficient voter support."* (M Passmore (S9)).

(b) *"The current provisions relating to the authorisation of political advertisements are considered to be adequate."* (Rockhampton City Council (S33)).

(c) *"Third party advertising should be included in general controls. Penalties for both third party and candidate/party."* (R MacKinnon (S16)).

(d) *"Should public funding be instituted there is a great likelihood that some form of limits will also be imposed. Advertising by them is virtually the same as a straight out donation. The same control as already recommended to cover donations should be applied to their advertising. It may be incumbent upon officers of the Electoral Commission to monitor newspapers etc. looking for these advertisements. If and when public funding comes in this section will require revision."* (A Sandell (S11)).

(e) *"Any restrictions which are placed upon electoral advertising should also be applied to third party advertising in the interests of equity, as well as to avoid an obvious loophole."* (Australian Democrats (S18)).

(f) *"The Liberal Party believes that advertising by third parties should be subject to the same restrictions as placed upon the political parties and organisations."* (Liberal Party (S25)).

(g) *"It should be subject to the same controls. In addition, if such parties have received grants from governments during the period since the preceding election they should be required to disclose the amount of such grants in each item of electoral matter published."* (National Party (S23)).

ANALYSIS OF EVIDENCE AND ARGUMENTS

11.81 Other States and the Commonwealth have no specific legislation covering electoral advertising by interested persons and, as in Queensland, interested persons must comply with general legislative requirements under their respective electoral Acts.

11.82 The Federal ban on all paid political advertising would also restrict political advertising by third party groups on radio and television - and thereby place greater emphasis on the print media.

11.83 As the majority of submissions on this topic suggested, no specific restrictions should be imposed on third party organisations or interested persons in relation to political advertising. They should, however, be subject to the same restrictions as apply to political parties.

RECOMMENDATION

11.84 **The Commission recommends that advertising by third party organisations should be subject to the same controls as apply to political parties and candidates.**

Misleading Advertising

Issue 6 Should legislative sanctions apply to cases of misleading advertising? What should be the nature of these sanctions and to what types of cases should they apply? What penalties should apply?

EVIDENCE AND ARGUMENTS

(a) *"Misleading advertising should be treated as fraud under the CC or the Trade Practices Act. However the Zinoviev affair must be remembered, because of this I favour a two day blackout."* (M Passmore (S9)).

(b) *"Misleading advertising should be much more heavily penalised. Penalties should include disqualification of candidate and Bad Points system for party, regulated by QEC."* (R MacKinnon (S16)).

(c) *"Our major concern in this whole area is to ensure that misleading advertising and electoral material are effectively controlled. In terms of this review, this relates primarily to printed material. This should include material such as misleading or deceptive how to vote cards or similar material. There have been examples in the past of parties trying to distribute 'bogus' cards or literature in an attempt to capture the vote or the second preferences of electors. Requiring all such material to be registered with the State Electoral Office before election day may be one way of helping to control this, but it is still essential for there to be strong controls on misleading material.*

The potential impact of advertising is undeniable, and the fact that the political variety is sometimes deliberately misleading is also unquestionable. One needs to look no further than the recent Brisbane City Council elections, when the ALP's advertisements were considered misleading enough to be temporarily removed from the air. These ads undoubtedly had a significant effect, and arguably were the vital factor in providing victory for the ALP. The advantage which groups with extra money already have in the area of advertising is multiplied if they can lie with impunity. For this reason, penalties should also be sufficiently high to provide a disincentive." (Australian Democrats (S18)).

(d) *"It is considered that in relation to misleading advertising there are provisions in the Election Act for the aggrieved party to take appropriate legal action as necessary."* (Rockhampton City Council (S33)).

(e) In their initial statement, the Queensland Watchdog Committee (S24) commented:

"We advocate strong penalties for factually untrue and misleading advertising. EARC's suggestion of $12,000 or imprisonment of up to two years seems reasonable. We believe the $12,000 penalty should be indexed."

(f) In a later submission the Queensland Watchdog Committee (S27) expanded on their initial suggestion and stated:

"We recommend a statutory body to enforce 'truth provisions' in political advertising, and strong penalties for factually untrue misleading advertising. EARC's suggestion of $12,000 or imprisonment of up to two years seems reasonable. We believe the $12,000 penalty should be indexed. Of course, this body may be restricted to dealing with statements in newspaper and pamphlet advertising, or those publications subject to state law."

(g) *"The Liberal Party is of the view that legislative controls should not be imposed upon political advertising save that such advertising should be subject to a requirement of truth in advertising.*

This should be done in such a way as to allow candidates and others of appropriate standing to seek injunctive relief to prevent false advertising.

The existing provisions under the Elections Act have been interpreted by the Courts so as to provide a protection that is so narrow as to be close to worthless.

Political advertising should be defined in legislation which would provide the basis for relief for false advertising." (Liberal Party (S25)).

(h) *"None of the above discussion should detract from the need to impose severe penalties on the printing, publication or distribution of material which is intended, or is likely, to mislead or improperly interfere with the elector's decision when casting a vote.*

It is submitted that the current Queensland provisions do not go far enough. They do not cover material 'published' by radio or television, and may not extend effectively to grossly misleading material in newspaper articles or editorials." (ALP (S21)).

(i) The National Party (S25) stated that legislative sanctions should apply to cases of misleading advertising with penalties as per the CE Act. They recommended that injunctive relief should be available.

(j) At the public hearings D Russell QC (T69) for the National Party proposed broad controls over misleading political advertising:

"We would agree with the Democrats that the provisions should be put together modelled on section 52 of the Trade Practices Act. The question arose previously of how do you cope with what lawyers call promissory representations? The answer we would say is imply that section 52 of the Trade Practices Act has had to deal with that in a commercial context."

(k) A Sandell (S11) referred to para.6.17 of the Issues Paper where it was stated that no charges have ever been laid for misleading information and commented:

"Unless there are circumstances warranting further investigation and revision of penalties no change can be recommended."

ANALYSIS OF EVIDENCE AND ARGUMENTS

11.85 The present Queensland legislation contains provisions with regard to misleading advertising. Section 112 of the Act states:

"112. Printing, publishing, etc, material intended or likely to mislead.
(1) Any person who-
(a) prints, publishes or distributes any electoral advertisement, notice, handbill, pamphlet or card containing any representation of a ballot-paper or any representation apparently intended to represent a ballot-paper, and having thereon any directions intended or likely to mislead or improperly interfere with any elector in or in relation to the casting of his vote; or

(b) prints, publishes or distributes any electoral advertisement, notice, handbill, pamphlet or card containing any untrue or incorrect statement intended or likely to mislead or improperly interfere with any elector in or in relation to the casting of his vote

is guilty of an offence.

Penalty: $100

(2) Nothing contained in subsection (1) prevents the printing, publishing or distributing of any card, not otherwise illegal, that contains instructions on how to vote for any particular candidate, provided those instructions are not intended or likely to mislead any elector in or in relation to the casting of his vote."

11.86 However the seemingly broad application of the Statute has been given a narrow interpretation by the High Court in *Evans v Crichton Browne* (1981) 147 CLR 169 when the Court chose:

" ... the natural meaning of the words ... which, we hold, refer to the act of recording or expressing the political judgment which the elector has made rather than to the formation of that judgment."

11.87 Thus misleading the elector about the process of voting will constitute the offence, but not misleading the elector about the policies or records of parties or candidates.

11.88 The Queensland Criminal Code (s.105(4)) states that a person who *"knowingly publishes a false statement of fact respecting the personal character or conduct of the candidate"* is liable to imprisonment for one year or can be fined $480. The same offence in Commonwealth legislation (s.350 of the CE Act) carries a penalty of $1,000 or six months imprisonment or both, and a penalty of $5,000 for a body corporate.

11.89 Provisions governing misleading advertising are contained in legislation of each of the other States, the Territories and the Commonwealth. The approach of the legislation is each case is broadly similar to the Queensland legislation, except for the severity of penalties for offences.

11.90 In each case, the printing, publication or distribution of any electoral material or a representation of a ballot-paper intended to mislead or *"improperly interfere"* with an elector *" ... in or in relation to the casting of a vote."* constitutes an offence. In other jurisdictions penalties for disseminating false or misleading electoral information range from $1,000 to $2,500 or six months imprisonment for an individual. In those Acts where the conduct of a body corporate is specified, penalties range from $5,000 to $10,000. In Queensland, however, maximum penalties are $120 (State) and $100 (Local Government) regardless of the source of the offence. Such penalties in Queensland would not appear to correspond to gravity of the offence.

11.91 Table 11.3 details penalties imposed for misleading advertising in the Commonwealth and other States and Territories.

TABLE 11.3

**MISLEADING ADVERTISING -
PUBLISHED ELECTORAL MATTER OR REPRESENTATION OF A BALLOT PAPER
INTENDED TO DECEIVE OR MISLEAD**

		Section	Maximum Penalty
Commonwealth (C)	a b	329	$1,000 or 6 Months or both; Body corporate $5,000
New South Wales (N)		151(A)	$1,000 or 6 Months or both; Body corporate $5,000
Victoria (V)	a b	267B	$1,000 or 6 Months or both; Body corporate $5,000
Queensland (Q)		112(1)	$120
Queensland Local Government (QLG)		Sch.3, R5A	$120
South Australia (S)	a	113	$1,000; Body corporate $10,000
Western Australia (W)	a b	191A	$1,000 or 6 Months or both; Body corporate $5,000
Tasmania (T)		209	$2,500 or 6 Months or both
Northern Territory (NT)		106	$1,000 or 6 Months

(a) = includes publish by radio or television
(b) = during the "relevant period"

(C) = Commonwealth Electoral Act 1918
(V) = The Constitution Act Amendment Act 1958
(N) = Parliamentary Electorates and Elections Act 1912
(S) = Electoral Act 1958
(W) = Electoral Act 1907
(T) = Electoral Act 1985
(NT) = Electoral Act 1984
(Q) = Elections Act 1983-1991
(QLG) = Local Government Act 1936-1990

11.92 Federally there have been calls for an increase in penalties for misleading advertising and the JSCEM has recommended that such penalties be raised to $12,000 or imprisonment of not more than two years in lieu of the existing penalty of $1,000 or six months imprisonment or both for an individual and $5,000 for a body corporate.

11.93 It is considered that current provisions regarding misleading advertising are generally adequate. However, such provisions would be enhanced by the insertion into the Electoral Act of a section similar to s.105(4) of the Criminal Code which relates to misleading statements about candidates' personal character or conduct.

11.94 The maximum penalty able to be imposed should be increased substantially to a level similar to that recommended by the JSCEM.

11.95 The Commission considers that provisions in regard to misleading advertising should also cover such advertising on electronic media.

RECOMMENDATIONS

11.96 **The Commission recommends that:**

(a) Current provisions regarding misleading advertising should be enhanced by the insertion into the proposed Electoral Act of a section similar to Section 105(4) of the Criminal Code which prohibits the publication of any false statement in respect of the personal character or conduct of a candidate which may affect the return of such candidates at an election.

(b) Penalties should be similar to those recommended by the JSCEM.

11.97 The necessary provisions have been included in the Draft Bill in Part 8 s.163.

Local Government and Aboriginal and Torres Strait Islander Issues

11.98 This chapter has dealt with the various legislative controls to be imposed upon political advertising. In doing so, a number of issues have been identified:

(a) The definitions of political advertising and electoral matter;

(b) authorisation of electoral advertising material;

(c) misleading advertising provisions; and

(d) offence provisions and appropriate penalties.

11.99 All of these issues have an impact on Local Authority elections (including ATSI and Community Council elections) as traditionally the relevant provisions contained in the Elections Act have been adapted for use in these elections.

11.100 As a result of the recommendations by the Commission outlined in this chapter, consideration should be given by the relevant authorities to amending their legislation so as to reflect the provisions in the attached Bill relating to political advertising in Local Authority elections.

RECOMMENDATION

11.101 **The Commission recommends that its proposed legislative controls on political advertising should also apply to Local Government and Community Council elections.**

CHAPTER TWELVE

ADMINISTRATIVE APPEALS

Introduction

12.1 A number of Australian jurisdictions allow appeals against various decisions of an administrative nature made by the Electoral Commission or electoral officials. Appeals are usually heard by administrative bodies such as Electoral Commissions or State Electoral Offices or judicial bodies such as Magistrates Courts or other local courts.

12.2 Although the matter of administrative appeals against decisions made by the QEC was not raised directly in the Issues Papers, the Commission considers the matter important. Therefore in this chapter, the Commission will consider the following issues:

> ***Issue 1 Should there be changes made to the current administrative decisions under the Act from which a person may lodge an appeal?***
>
> ***Issue 2 Should the Magistrates Court be empowered to hear all administrative appeals as at present or should some other body be empowered to hear some or all appeals?***
>
> ***Issue 3 Should there be any change to the current procedural process for the instigation of appeals?***

Current Situation

12.3 Section 43 of the Act makes provision for the Magistrates Court to hear appeals in any of the following events:

> *"43. Appeal to magistrates court. (1) Any person -*
>
> *(a) who has made and sent in a claim to be enrolled on a roll or an application for transfer or change and who has not been enrolled pursuant to the claim or application;*
>
> *(b) whose name has been removed from a roll by the principal electoral officer pursuant to section 31 (5); or*
>
> *(c) whose name has been struck off a roll by the principal electoral officer upon an objection.*
>
> *may in the manner and within the time period prescribed make application to a magistrates court, constituted by a stipendiary magistrate or by two or more justices of the peace who are authorized by the Governor in Council to hear and determine electoral appeals, for an order directing that his name may be enrolled or restored to the roll.*
>
> *(2) Where an objection has been determined by the principal electoral officer adversely to the person objecting, being an elector registered on the same roll, that person may in manner prescribed apply to a magistrates court, constituted as specified in subjection (1), for an order sustaining the objection."*

12.4 The legislation of the Commonwealth and other States allows appeals from various decisions regarding enrolment and objections to names being put on rolls. Table 12.1 shows the types of administrative decisions which can be appealed and the body which hears the appeal.

TABLE 12.1

ADMINISTRATIVE APPEALS IN COMMONWEALTH AND OTHER AUSTRALIAN JURISDICTIONS

Jurisdiction	Section	Subject Matter of Decision	Body Appealed To	Period From Date of Notification in which to lodge an appeal
Commonwealth	s.120 CE Act	. objection to name on the roll . refusal of request to have address not shown on the roll . cancellation of registration as general postal voter . registration of a political party	Australian Electoral Officer Administrative Appeals Tribunal	1 Month
New South Wales	s.48 PEEA	. enrolment . objection to name on the roll	Magistrate (Local Court)	1 month
Victoria	s.129 CAAA	. enrolment objection to name on the roll	Magistrates Court	1 month
Queensland	s.43 EA	. enrolment . objection to name on the roll	Magistrates Court	1 month
South Australia	s.100 EA	. enrolment . objection to name on the roll . registration of a political party . decision of prescribed class in the regulations	Electoral Commission or Local Court	1 month
Western Australia	s.47 EA	. objection to claims for enrolment . objection to name on the roll	Electoral Commissioner	7 days minimum
Tasmania	ss.46 & 47 EA	. enrolment . objection to name on the roll . refusal of request to have address not shown on the roll	Court of Petty Sessions	1 month
	s.64 EA	. objection against granting of application regarding the registration of a political party	Chief Electoral Officer Registration Objection Board	

Matters for Consideration

12.5 Under the Act, the range of administrative decisions from which a person may appeal is somewhat limited. Queensland does not at present have an Administrative Appeals Tribunal or similar body to hear appeals from administrative decisions. This matter was discussed in Issues Paper No. 14 *Appeals from Administrative Decisions* and will be the subject of a Report by EARC in 1992.

12.6 At this stage, the Commission will make recommendations concerning the hearing of administrative appeals relating to decisions of an electoral nature having regard to the bodies presently available to hear electoral appeals. These recommendations may be subject to modification as a consequence of the *Report on Appeals from Administrative Decisions* due in February/March 1992.

Evidence and Arguments

12.7 In addition to administrative decisions regarding claims for enrolment and objections to names on rolls, the South Australian, Tasmanian and Commonwealth legislation provide a right of appeal from decisions regarding the registration of political parties. The South Australian legislation provides that *"a decision by the Electoral Commission as to the registration of a political party"* is reviewable by the Electoral Commissioner or Local Court (ss.100,101 *Electoral Act 1985* (SA)). Similarly, the Commonwealth legislation provides that the Administrative Appeals Tribunal may review a decision *"to register a political party under this part."* (s.141(1)(a) and (5) CE Act).

12.8 The Tasmanian provisions go into more detail as to who may lodge an appeal relating to the registration of a political party and the circumstances under which that person may appeal. Section 64 of the *Electoral Act 1985* (TAS) provides that a person whose name appears in the party register as a member of a registered party may lodge a notice or objection with the Chief Electoral Officer against the granting of an application for registration on the following grounds:

> *"s.64(2)(a) that any of the persons making the application is not eligible, within the terms of section 55(1)(b), to be a registered member of a registered party; or*
>
> *(b) An objection under subsection (1) may be on the ground that the name of the party in respect of which the application is made, or the other or abbreviated name (if any) by which, if the party is registered, it will be designated on ballot-papers as the name of the party for the purposes of this Act, is identical with or so nearly resembles the full, or other or abbreviated name of the registered party on behalf of which the objection is made as to be reasonably likely to be misleading or confusing to persons voting as to the party affiliations (if any) of the candidates for election or any of them,*
>
> *and on no other ground."*

12.9 The Chief Electoral Officer may object to the registration on the grounds listed in s.64(2)(b) or on the ground that the name of the party is indecent, frivolous or obscene (s.64(4)(a)).

12.10 The Commonwealth legislation provides a right of appeal to a person who has applied that their address not be shown on the roll and has had the application refused (s.120 CE Act).

12.11 The South Australian provisions are wider than the provisions of the Commonwealth and other States, providing appeals for the following decisions:

(a) a decision by the Electoral Commission or an officer as to the enrolment of any claimant for enrolment;

(b) a decision by an electoral registrar or an objection to the enrolment of an elector on the roll;

(c) a decision by the Electoral Commissioner as to the registration of a political party; or

(d) a decision of a prescribed class taken under this Act by the Electoral Commission or an officer.

12.12 The Regulations under the *Electoral Act 1985* (SA) set out a number of decisions of a "prescribed class" from which a person may appeal, including:

> *"(a) a decision regarding the order of names of candidates to appear on the ballot-paper;*
>
> *(b) a decision regarding how-to-vote cards;*
>
> *(c) a decision regarding the exhibition of electoral advertisements; and*
>
> *(d) a decision concerning whether an elector has failed to vote without a valid and sufficient reason."*

12.13 In all Australian State jurisdictions with the exception of Tasmania, appeals lie to the Magistrates Court or Local Court. In Tasmania, the Court of Petty Sessions hears appeals regarding claims for enrolment and objections to names on rolls (s.47 *Electoral Act 1985* (Tas)). Appeals against objections to the granting of an application regarding the registration of a political party are heard by the Chief Electoral Officer who, upon being satisfied that the person lodging the notice of objection is a registered member of a registered party on behalf of whom the objection is brought, must immediately transmit the notice to the Registrar of the Supreme Court. The Registrar then must communicate the objection to the Chief Justice who, together with two other Judges of the Supreme Court, shall constitute a Registration Objection Board which hears the objection (s.65(1)).

12.14 All Australian jurisdictions, with the exception of Western Australia, allow a period of one month from the day of notification of the administrative decision in which to lodge an appeal. The Western Australian legislation merely provides that a person may lodge an appeal after a minimum of 7 days from the date of notification of the decision (s.47 *Electoral Act 1907* (WA)).

Analysis of Evidence and Arguments

12.15 As noted above, under the Act appeals may be lodged with the Magistrates Court against decisions concerning claims for enrolment or objections to enrolment. The legislation of other Australian jurisdictions goes much further than the Queensland provisions and provides for appeals from decisions regarding registration, how-to-vote-cards, the exhibition of electoral advertisements, order of names of candidates on ballot-papers, failure to vote without valid and sufficient reason and requests to have addresses not shown on the roll.

12.16 It is arguable that many of the administrative decisions regarding the matters listed above have a significant impact on the rights of individuals and therefore a right of appeal is essential to protect these individual rights. Furthermore, the integrity of the electoral process is enhanced when parties can appeal decisions which affect the conduct of an election directly or indirectly .

12.17 It is important to ensure the impartiality of the body hearing appeals and therefore, an independent body not connected with the original decision-maker is desirable to hear such appeals. Considering that the types of decisions currently subject to appeal under the Acts of various Australian jurisdictions are solely administrative in nature and, although affecting individual rights, do not do so to an extent to warrant review by a higher court such as the Supreme Court, the Magistrates Court, is adequately equipped to hear appeals of this nature. An appeal on a point of law could still lie is a superior court from the Magistrate Court.

12.18 Presently, a person has one month from the time of receipt of notification of the administrative decision (Regulation 14) in which to lodge an appeal and this provision is in accordance with most other Australian jurisdictions. There would seem, therefore, to be no reason to change this provision.

Recommendations

12.19 **The Commission recommends that:**

(a) The current administrative decisions under the Act from which a person may lodge an appeal should be retained and the class of decisions which may be appealed should be expanded to include:

(i) a decision by the Electoral Commission as to the registration of a political party;

(ii) a decision to refuse a request by an elector to have their address not shown on the electoral roll; and

(iii) a decision concerning whether an elector has failed to vote without a valid and sufficient reason.

(b) The Magistrates Court should be empowered to hear administrative appeals under the Act. Appeals in relation to decisions by the Electoral Commission as to the registration of political parties should be heard by a Judge of the Supreme Court.

(c) The current one month period prescribed by the Act in which a person may lodge an appeal should be retained.

12.20 The recommendations are reflected in Part 9 s.180 of the Draft Bill.

CHAPTER THIRTEEN

DISPUTES AND PETITIONS

Introduction

13.1 In Chapter Two a set of principles to underlie the provisions of new Queensland electoral legislation was recommended. These included principles to ensure that Queensland electoral law and its administration would be open, honest and deliver election results corresponding to the intentions of electors expressed through the ballot-box.

13.2 Apart from the prescription of electoral offences and penalties to deter those who might attempt to affect election outcomes illegally, there must be avenues for challenging the results of elections where there are concerns that unlawful practices have been employed or official mistakes have been made.

13.3 Every Australian electoral jurisdiction makes provision for the hearing by a judicial body specifically created for that purpose of disputes about the validity of an election or return of any Member.

13.4 In this chapter the Commission will consider:

(a) the grounds upon which the current Elections Tribunal has power to hear a petition or a matter referred to it by the Legislative Assembly;

(b) the parties to the proceedings;

(c) procedural deadlines relating to the filing of petitions and hearing of cases;

(d) the appeal process; and

(e) other matters related to the hearing of electoral disputes.

Current Situation

13.5 At present in Queensland, disputes and petitions are heard by a single Judge of the Supreme Court sitting as the Elections Tribunal and determining all questions of law and fact arising from the petition (ss.129, 130 and 132). The Judge is appointed at the beginning of each year by the Chief Justice to sit as the Elections Tribunal for that year (s.134).

13.6 Section 131 of the Elections Act gives the Tribunal power to determine all questions relating to the validity of the election or return of a Member whether those questions arise out of:

(a) an error in the return of the RO;

(b) a failure of an RO to make a return;

(c) allegations of bribery or corruption;

(d) other allegations affecting the validity of an election or return; or

(e) any matter or question concerning the qualification or disqualification of any person returned as a Member of the Legislative Assembly

13.7 Where it appears to the Judge that the case raised is a special case, the case shall be stated as such and heard by the Full Court and the decision of the Full Court is final (s.156).

13.8 The Full Court may also be called upon where it appears to the Judge on the trial of a petition or reference that any question of law requires further consideration (s.157). In this event, the Judge may postpone the giving of the certificate containing his or her determination until the Full Court has determined such question (s.157).

13.9 Subject to the provisions of the Act, the Judge appointed has all the powers, jurisdiction and authority of a Judge of the Supreme Court (s.133).

13.10 The Tribunal has power to inquire into and determine election petitions and all questions referred to it by the Legislative Assembly regarding the validity of elections or election of any Member to serve in the Assembly (s.131).

13.11 Complaints are made in the form of a petition filed with the Registry of the Supreme Court which sets out particulars of the complaint. Matters may also be referred to the Tribunal by the Legislative Assembly.

13.12 Electoral disputes and petitions in other State jurisdictions are heard by a single Judge of the Supreme Court sitting as a Court of Disputed Returns. Electoral disputes and petitions under the jurisdiction of the CE Act are heard by the High Court sitting as a Court of Disputed Returns (s.354). The High Court can refer matters to the Supreme Court of the State or Territory in which the election was held or the return made (s.354). The petition is heard by a single Judge (s.354).

13.13 A petition opposing the election or return of a Member to serve in the Legislative Assembly or complaining that no return has been made to a writ issued for the election of a Member may be presented by:

(a) a person who voted or had a right to vote at the election to which the petition relates;

(b) a person who claims to have been elected or returned at the election; or

(c) a person who claims to have been a candidate at the election (s.135).

13.14 The petition must be presented to the Supreme Court at Brisbane within eight weeks after the return of the writ. However, where the petition involves an alleged charge of bribery or corruption, the petitioner has, with leave of the Legislative Assembly, up to 12 months to present the petition (s.136).

13.15 The procedures prescribed under the Act for the lodging and hearing of a petition differ from those contained in the legislation of other Australian jurisdictions. The Commonwealth, New South Wales, Victorian, Western Australian and South Australian legislation allows the petitioner up to 40 days from the date of the return of the writ to file the petition. The Tasmanian legislation, allows up to 90 days to file the petition.

13.16 Upon lodging the petition, the petitioner is required to pay a $400 deposit into court (s.139). This sum may go to the costs of the respondents or may be returned to the petitioner, wholly or in part, as the case requires (s.139).

13.17 The Commonwealth, Victorian and Western Australian legislation requires only a $100 security to be paid. In South Australia, the security required is $200 and in New South Wales $250.

13.18 Within 14 days after the lodging of the petition, the petitioner is required to serve a copy of the petition upon the sitting Member, if any, and the RO of the electoral district (s.136).

13.19 The sitting Member may, within 6 weeks after petition has been served, be joined as a party to the petition by giving notice in writing to the Supreme Court Registrar. Any person who voted or had a right to vote at the election or any person complained against in the petition, may also be joined as a party within the six week period (s.138).

13.20 The Judge has a discretion as to when and where the trial is to be held, although the Act requires the Judge, in exercising this discretion, to have regard to the saving of time and expense to the petitioner, and other parties, if any (s.140).

13.21 Once the Judge has set a date for the trial, the Registrar must give all parties not less than 14 days notice of the day on which the trial is to be held (s.141). The Judge has a general power to adjourn the time and place of the trial (s.142).

13.22 If the Tribunal finds that a candidate either committed, or had knowledge of and consented to, a corrupt practice (other than treating or undue influence), the candidate's election is void (s.161). In the case of a candidate found guilty of actually committing the offences of treating or undue influence, if the candidate was elected, then that candidate's election is void (s.161).

13.23 A candidate's election may also be voided where the candidate's agent has been guilty of a corrupt practice (s.162) or where the candidate has connived in the perpetration of the corrupt practice (s.163).

13.24 Parties to the petition have a right of appeal to the Full Court on any determination of the Judge which involves a question of law (s.154). Notice of appeals to the Full Court must be filed in the Supreme Court at Brisbane within 21 days after the date of the determination by the Judge (s.154).

13.25 All other Australian jurisdictions, with the exception of Tasmania, specify that the decision of the Judge is final and without appeal. The Tasmanian legislation provides that a party may appeal to the Full Court with special leave of the Supreme Court *(Electoral Act 1985* (Tas) s.228).

13.26 Section 174 of the Act prescribes that the total amount of costs that may be ordered to be paid by any one party shall not exceed $1,000 and that all costs, charges and expenses shall be defrayed by the parties to the petition in such manner and in such proportions as the Judge may determine, with regard being had to:

> *"(a) the disallowance of any costs, charges or expenses that may in the opinion of the Judge have been caused by vexatious conduct, unfounded allegations or unfounded objections on the part either of the petitioner or the respondent; and*

(b) the discouragement of any needless expense by throwing the burden of defraying the same on the parties by whom it has been caused, whether such parties are or are not on the whole successful."

13.27 The reasonable expenses of witnesses are deemed part of the expenses of the Tribunal if the witnesses were called and examined by the Judge, and in all other cases are deemed to be costs of the petition or reference (s.148).

13.28 Once a petition has been lodged, the petition cannot be withdrawn without the leave of the Judge upon special application made in the prescribed manner, within the prescribed time and at the prescribed place (s.169).

13.29 Section 169 further provides that:

"(2) No such application shall be made for the withdrawal of a petition until the prescribed notice has been given in the electoral district of the intention of the petitioner to make an application for the withdrawal of his petition.

(3) On the hearing of the application for withdrawal, any person who might have been a petitioner in respect of the election to which the petition relates may apply to the Judge to be substituted as a petitioner for the petitioner so desirious of withdrawing the petition.

(4) (a) The Judge may, if he thinks fit, substitute as a petitioner any such applicant applying to be substituted, and may further, if the proposed withdrawal is, in the opinion of the Judge, induced by any corrupt bargain or consideration, by order direct that the sum paid into court by the original petitioner shall remain as security for any costs that may be incurred by the substituted petitioner, and that the original petitioner shall be liable to pay the costs of the substituted petitioner.

(b) If no such order is made with respect to the sum paid into court by the original petitioner, the same amount shall be paid into court by the substituted petitioner before he proceeds with his petition and within the prescribed time after the order of substitution.

(c) Subject as aforesaid, a substituted petitioner shall stand in the same position as nearly as may be, and be subject to the same liabilities, as the original petitioner.

(5) If a petition is withdrawn, the petitioner shall be liable to pay the costs of the respondent.

(6) Where there are more petitioners than one, no application to withdraw a petition shall be made except with the consent of all the petitioners."

13.30 In every case where the petition is withdrawn, the Judge must report to the Speaker whether, in the Judge's opinion, the withdrawal of the petition was the result of any corrupt arrangement or in consideration of the withdrawal of any other petition, and if so, shall report the circumstances attending the withdrawal (s.170). Tasmania is the only other State which makes specific provision for the withdrawal of the petition in its electoral legislation and the provisions contained in the Tasmanian Act are substantially the same as those for Queensland (*Electoral Act 1985* (Tas), s.221).

13.31 A petition may also abate by the death of a sole petitioner or the survivor of several petitioners (s.171). The abatement does not affect the liability of the petitioner to costs previously incurred. Upon the abatement of the petition, the court must give the public notice of the abatement in the electoral district to which the petition relates and within the prescribed time any person who may have been a petitioner in respect of the election to which the petition relates may apply to the Judge to be substituted as a petitioner (s.171). A similar provision allows a person to be admitted as a respondent if, before the trial of the petition:

(a) the respondent dies;

(b) the Legislative Assembly resolves that the respondent's seat is vacant;

(c) the respondent fails within the prescribed time to give notice to the Registrar that he or she intends to oppose the petition; or

(d) if the respondent gives within the prescribed time notice that he or she does not intend to oppose the petition (s.172).

13.32 Under s.173, a respondent who has given the prescribed notice that they do not intend to oppose a petition is not allowed to appear or act as a party against the petition in any proceedings thereon, and is not allowed to sit or vote in the Legislative Assembly until the Assembly has been informed of the report on the petition.

Matters for Consideration

13.33 Issues Paper No. 13 raised a number of questions about the current legislative regime for dealing with disputes arising from elections. These matters can be broadly summarised as follows:

(a) Is the Elections Tribunal the appropriate body for determining all questions of law and fact arising upon a petition?

(b) Does the Elections Tribunal have sufficiently wide powers for dealing with matters referred to it?

(c) Should the Electoral Commission be made a party to any proceedings before the Tribunal?

(d) Is the current timetable for the hearing of disputes and any subsequent appeals appropriate? Can it be expedited?

13.34 The Issues Paper also called for submissions concerning the procedures relating to electoral disputes and petitions. A number of submissions referred to the Nicklin petition following the 1989 State election where nearly 11 months lapsed between the time of the return of the writ and the swearing in of a different candidate as the elected Member. The delay, in part, was attributed to the time limits outlined in the Act relating to the lodgement and service of petitions and to the lodging of an appeal following the declaration and determination of the case.

13.35 The two considerations which the Commission must weigh in this particular area are the importance of giving parties sufficient time to attend properly to all the procedural requirements, brief counsel and prepare an adequate case on the one hand, and the importance of determining the outcome of an election as soon as is reasonably possible on the other hand.

Who Should Hear Electoral Disputes and Petitions

13.36 The initial question to be settled is the nature of the judicial body to consider election disputes and petitions. Currently this is the Elections Tribunal in Queensland; in other States (except Tasmania) and at the Commonwealth level this body is the Court of Disputed Returns.

13.37 The issue here is whether Queensland should retain a separate Tribunal or whether this function should be transferred to the Supreme Court sitting as a Court of Disputed Returns as elsewhere. No submissions were received by the Commission which addressed this question directly. The Commission therefore relies on its own investigation in this area.

EVIDENCE AND ARGUMENTS

13.38 Section 129 of the current Act states that: *"There shall be an Elections Tribunal and it shall be constituted by a Judge of the Supreme Court."*

13.39 The Act further sets out that the Tribunal shall be constituted by a single Judge of the Supreme Court nominated by the Chief Justice at the commencement of each year to sit as the Elections Tribunal for that year (ss.129, 132, 134).

13.40 Unlike the legislation of other Australian jurisdictions, the Act sets out in great detail matters relating to court proceedings, particularly with regard to the summoning and questioning of witnesses and rules of evidence. (ss.146, 147, 148, 149, 166, 169, 174, 175).

13.41 With the exception of Tasmania, the legislation of the other States provides that electoral petitions shall be heard by the Supreme Court sitting as a Court of Disputed Returns (*Parliamentary Electorates and Elections Act 1912* (NSW), ss. 155, 156; *Constitution Act Amendment Act 1958* (Vic) ss. 279, 280; *Electoral Act 1985* (SA), s.102; *Electoral Act 1907* (WA), s. 157).

13.42 Similarly the Commonwealth legislation provides that the High Court shall be the Court of Disputed Returns and may refer matters to the Supreme Court of the State in which the disputed election or return occurred (*Commonwealth Electoral Act 1918*, s.354).

13.43 The Tasmanian legislation does not specifically state that the Supreme Court shall sit as a Court of Disputed Returns, but nevertheless empowers the Supreme Court to hear all electoral disputes and petitions (*Electoral Act 1985* (Tas), s.214).

13.44 Section 145 of the Elections Act (Qld) states that:

> *"Principles of trial. (1) Upon the trial of an election petition or reference, the Tribunal shall be guided by the real justice and good conscience of the case, without regard to legal forms and solemnities, and shall direct itself by the best evidence it can procure or that is laid before it, whether the same is such evidence as the law would require or admit in other cases or not."*

13.45 The legislation of the Commonwealth and the other States, with the exception of Tasmania, contains a similar provision enabling the court to depart from strict rules of evidence (*Commonwealth Electoral Act 1918*, s.364; *Electoral Act 1970* (WA), s.162(2); *Electoral Act 1985* (SA), s.106; *PE & E Act* 1912 (NSW), s.166; *Constitution Act Amendment Act 1958* (Vic), s.289). The Tasmanian legislation, on the other hand provides that:

> *"219 (1) Subject to this Part, the procedure applicable in an action before the Supreme Court relating to the summoning, swearing, examining, and cross-examining of witnesses shall, as far as is practicable, apply to and in relation to the summoning, swearing, examining, and cross-examining of witnesses in proceedings under this Part."*

13.46 The legislation of the Commonwealth and the States, with the exception of South Australia, confers upon the court power to make rules of court not inconsistent with the provisions as set out in the relevant legislation (*Elections Act 1983-1991* (Qld), s.175; CE Act, s.375; *Electoral Act 1907* (WA), s.173; *Electoral Act 1985* (Tas), s.229; PE & E Act 1912 (NSW), s.175A; *Constitution Act Amendment Act* 1958 (NSW), s.285(2)).

13.47 The South Australian electoral legislation does not contain an express provision empowering the court to make rules of court but, as mentioned above, the South Australian Act enables the court to depart from rules of evidence when it thinks fit.

ANALYSIS OF EVIDENCE AND ARGUMENTS

13.48 The provisions in the Act relating to proceedings before the Elections Tribunal go into more detail than the Acts of other jurisdictions. This may be a consequence of the nature of the Tribunal which is specially created for the purpose and hence rules and procedures under which a separate body such as the Tribunal may operate must be defined in the Act. In other Australian jurisdictions, however, such detail is not necessary because the Supreme Court, as the designated judicial body, operates under the existing rules of the Supreme Court to the extent that they are appropriate.

13.49 The nature of the Tribunal creates another disadvantage which may increase the possibility of delay relating to the hearing of the petition. Section 134 of the present Act states that the Judge constituting the Tribunal shall be a Supreme Court Judge nominated at the beginning of each year to constitute the Elections Tribunal for that year. Because of the workload of the Justices of the Supreme Court, it is possible that the designated Judge may not be immediately available to hear a petition as soon as is reasonably possible due to prior commitments. A provision that the Supreme Court shall be the Court of Disputed Returns which makes no reference to a designated Judge hearing the petition would be less likely to cause delay in commencing a hearing.

13.50 If the Elections Tribunal is abolished and the Supreme Court is given jurisdiction to hear election petitions, the following advantages would result:

(a) the possibility of delays associated with the availability of the Judge to hear the case would be minimised;

(b) the possibility of delays associated with the Judge's decision being subject to judicial review would be greatly reduced;

(c) the provisions relating to the hearing of disputes and petitions will be brought in line with the legislation of the Commonwealth and other States;

(d) fewer details will be required in the new Electoral Act because many of the provisions relating to rules of evidence in the current Elections Act can be omitted from the new Act. In many instances, the rules of the Supreme Court will apply to court proceedings where they are appropriate.

RECOMMENDATIONS

13.51 **The Commission recommends:**

(a) The Elections Tribunal should be abolished and the Supreme Court sitting as the Court of Disputed Returns should be empowered to hear electoral disputes and petitions.

(b) The Court of Disputed Returns should be constituted by a single Judge of the Supreme Court.

(c) The Court should be empowered to make rules of court not inconsistant with the Electoral Act and should be guided by the substantial merits and good conscience of each case without regard to legal forms or solemnities. The Court should not be bound by the rules of evidence.

13.52 Provisions in the accompanying Draft Bill for an Electoral Act which deal with these matters are Part 7 s.127.

The Grounds Upon Which A Petition May Be Heard

EVIDENCE AND ARGUMENTS

Issue 1 Are the grounds upon which the Elections Tribunal has power to hear a petition or matter referred to it by the Legislative Assembly sufficiently wide to cover all areas which should be within its jurisdiction?

13.53 The legislation of the Commonwealth and other States merely provides that the validity of an election or return may be disputed by petition addressed to the Court of Disputed Returns and not otherwise. The Queensland legislation sets out in detail the grounds upon which the Tribunal has power to hear a petition. Section 131 of the Act gives the Tribunal power to inquire into and determine:

> *"(a) election petitions;*
>
> *(b) all questions that may be referred to it by the Legislative Assembly respecting the validity of any election or return of any member to serve in the Legislative Assembly, whether the question relating to such election or return arises out of -*
>
> *(i) an error in the return of the returning officer;*
>
> *(ii) the failure of the returning officer to make a return;*
>
> *(iii) an allegation of bribery or corruption against any person concerned in the election; or*
>
> *(iv) any other allegation calculated to affect the validity of such election or return; and*
>
> *(c) any matter or question concerning the qualification or disqualification of any person who has been returned as a member of the Legislative Assembly."*

13.54 The Commission received only two submissions dealing with this matter:

(a) The National Party (S76) recommended that any determination that there is no winner in the case of a tied election should be open to appeal. This recommendation was made contingent on the Commission accepting the National Party's recommendation that there should be a count-back to a stage where one candidate is ahead of the other in the event of a tied election and if there is still no winner a by-election should result. This question of procedures to be followed in the event of tied elections has already been dealt with in Chapter Ten.

(b) The DJCS (S77) noted that *" ... any close election result is likely to produce enough 'errors' - honest mistakes of one kind or another - to justify an appeal to a Court of Disputed Returns."*

ANALYSIS OF EVIDENCE AND ARGUMENTS

13.55 The Act sets out in detail the grounds upon which the Legislative Assembly may refer a question to the Tribunal. It is arguable that the specific grounds set out in paras (i) to (iv) of s.131(b) are superfluous because they are caught by the opening paragraph of subsection (b) which gives the Tribunal power to determine:

> *"(b) all questions that may be referred to it by the Legislative Assembly respecting the validity of any election or return of any Member ... "*

13.56 The legislation of the Commonwealth and the other States does not reflect any need to express detail in this area (see para.13.53).

13.57 Furthermore all other Australian jurisdictions provide that the validity of any election or return of any Member may be disputed by petition addressed to the Court of Disputed Returns and not otherwise. It is likely that the process of initiating proceedings would be simplified if Queensland were to follow other jurisdictions and have proceedings initiated by petition only.

13.58 On the other hand, however, the Tribunal's power to investigate all questions which may be referred to it under s.131(b) is not subject to the current procedural deadlines for the lodgement of petitions and matters incidental thereto. Therefore, if, for example, allegations of corruption or gross misconduct were to arise at a time much later than that allowed under the Act for the instigation of proceedings, s.131(b) empowers the Tribunal to hear the matter notwithstanding the procedural deadlines which limit only petitions.

13.59 The National Party (S76) and the Department of Justice (S77) recommended that in the event of a declaration that there is no winner because a tied election or where the election is close, an appeal to a Court of Disputed Returns is justified.

13.60 Under the current provisions of the Act, where the election result is close a person may file a petition disputing an election on the ground that certain ballot-papers were wrongfully admitted to the formal vote count. Each candidate is presently allowed scrutineers to watch the counting process and gather evidence as to questionable decisions concerning inclusion in or exclusion of ballot-papers from the count. A party has to submit evidence that specific ballot-papers were wrongly admitted to the formal vote count. A close election, per se, is not generally a sufficient ground upon which to refer a matter to the Tribunal. Chapter Ten deals with these issues in more detail.

RECOMMENDATION

13.61 **The Commission recommends the current grounds upon which a person may lodge a petition are adequate. However, the language of the Act should be simplified in accordance with equivalent provisions of other Australian jurisdictions.**

13.62 Provisions in the Draft Bill for the new Electoral Act dealing with these matters are Part 7 s.128.

Parties to the Proceedings

EVIDENCE AND ARGUMENTS

> ***Issue 2 Should the Queensland electoral legislation enable, or alternatively impose a duty on, the Electoral Commissioner to seek leave of the Court of Disputed Returns to be made a party to any proceedings before that Court? If it does, should it also impose a duty on the Electoral Commissioner to ensure that any such proceedings are brought to trial on the merits or otherwise determined? Should a time limit be prescribed after which this duty operates?***

13.63 As noted earlier, a petition may be presented by a person who voted or who had a right to vote at the election, a candidate in that election or a person elected or returned at that election.

13.64 Under the CE Act a petition may be filed by the AEC (s.357). Victoria and Tasmania have equivalent provisions relating to the filing of the petition by the Chief Electoral Officer and Crown Advocate (or their representative), respectively. (*Constitution Act Amendment Act 1958* (Vic), s.281; *Electoral Act 1985* (Tas), s.214).

13.65 Section 359 of the CE Act provides that the AEC is entitled, by leave of the Court of Disputed Returns, to enter an appearance in any proceedings in which the validity of any election or return is disputed, to be represented and heard in such proceedings, and to be deemed to be a party respondent to the petition.

13.66 Section 105 of the *Electoral Act 1985* (SA) provides that the Electoral Commissioner "shall" be the respondent to any petition in which the validity of an election or return is disputed. There is a comparable section in the Tasmanian Electoral Act which provides that the Chief Electoral Officer or Crown advocate "is entitled" to be a party to the dispute (s.216).

13.67 The Queensland Act makes no provisions regarding the filing of the petition by the current CRO or PEO, neither does the Act provide for either of them to be joined as a party to the dispute.

13.68 The question as to whether the new legislation should enable or impose a duty on the Electoral Commission to seek leave of the court to be made a party to any proceedings before it was addressed in the Issues Paper. The National Party (S76) submitted that the Commission should be entitled, but not obliged, to seek leave to be a party to proceedings before the court. The legislation of the Commonwealth and Tasmania "entitles" the Electoral Commissioner to be a party to proceedings whereas the South Australian legislation provides that the Commissioner "shall" be a party to proceedings before the court.

ANALYSIS OF EVIDENCE AND ARGUMENTS

13.69 The current legislation, although it allows voters, candidates and returned Members to file petitions (s.135), does not make provision for the Electoral Commission to file a petition with the Tribunal nor does it provide that the Electoral Commission may, with leave of the court, enter an appearance in any proceedings in which the validity of any election or return is disputed. As noted earlier (paras. 15.37 to 15.40), other Australian jurisdictions allow the Electoral Commissioner to file petitions and/or be joined in court proceedings.

13.70 Concern has been expressed that petitions may be lodged, making serious allegations of electoral malpractice either in general or by named persons, and then not pursued so that the truth or falsity of such allegations is not properly tested by the court. Such allegations can reduce public confidence in the integrity of the electoral process and damage the reputations of particular individuals without them having redress. A provision allowing the Electoral Commission to file a petition, or be deemed a party to any other dispute, may ensure that this situation does not arise. A provision requiring a petitioner to serve a copy of any petition disputing an election or return of any Member upon the Electoral Commission would be necessary in order to give the Commission due notice of the petition.

RECOMMENDATIONS

13.71 **The Commission recommends the current provisions of the Act should be extended to allow the Electoral Commission to file a petition with the Court of Disputed Returns and be represented and heard in any proceedings before the court, and to be deemed to be a party respondent to any petition filed in the court.**

13.72 Suitable provisions have been included in the Draft Bill in Part 7 ss.129 and 133.

Petitions

EVIDENCE AND ARGUMENTS

Issue 3 Is the current provision which determines the period allowed for a petitioner to lodge a petition appropriate? Should the time period be reduced in line with other jurisdictions?

Issue 4 Should the Electoral Commissioner have the right to apply for dismissal of the petition if it not proceeded with in a reasonable time?

Issue 5 Should the deposit required to be paid into Court by the petitioner when the petition is lodged be indexed and forfeited if the petitioner does not proceed without sufficient reason?

13.73 Section 136 of the Act allows the petitioner eight weeks from the day of the return of the writ in which to file a petition, or in the case of an allegation of bribery or corruption, the petitioner has, with leave of the Legislative Assembly, up to 12 months in which to file the petition. Equivalent legislation in other Australian jurisdictions allows the petitioner up to 40 days in which to file a petition (Commonwealth, New South Wales, Victoria, South Australia and Western Australia); the Tasmanian legislation allows up to 90 days.

13.74 The Commission received only two submissions dealing with the period of time a petitioner should have in which to lodge a petition. The Liberal Party submission (S100) suggested a seven day period from the date of declaration of the poll and the National Party (S76) recommended that the provisions of the CE Act should apply.

13.75 In respect of the other two issues the Act does not make any provision for the dismissal of the petition or forfeiture of the deposit ($400) required to be paid into court. Section 139 of the Act merely provides that:

> *"The petitioner shall pay into court with the petition the sum of $400 to the credit of the matter of the petition, which sum shall be liable to be applied, upon the order of the Judge, towards the costs of the respondents to the petition as hereinafter provided or may be restored to the petitioner, wholly or in part, as the case may require."*

13.76 EARC received only one submission dealing with these matters. The National Party (S76) recommended that the Electoral Commissioner should have the right to apply for dismissal of the petition if it is not proceeded with in a reasonable time.

13.77 The National Party further recommended that the deposit should be indexed and forfeited where the petitioner does not proceed without sufficient reason.

ANALYSIS OF EVIDENCE AND ARGUMENTS

13.78 Under s.136 of the Act, a petitioner is allowed 8 weeks from the day of the return of the writ in which to file a petition. Most other Australian jurisdictions only allow a 40 day period. Submissions were generally in favour of the current period being reduced.

13.79 Usually an intention to pursue an action is formed by the petitioner by the time the writ is returned. Therefore the present eight week period allowed under the Act seems excessive. Given the criticism voiced after the Nicklin dispute, when it took nearly 11 months before the result of the election was finally known, the statutory deadlines for lodging and serving documents should be reduced as much as is reasonably possible. This would ensure that the determination of an electoral dispute was not unduly delayed by timetable provisions in the Act.

13.80 With regard to the issue of whether the Electoral Commission should have the right to apply for dismissal of a petition if it is not proceeded with in a reasonable time, it is arguable that without a provision in the Act to this effect, a petition may sit in the registry indefinitely. In the case of electoral disputes it is highly desirable that the matter be dealt with as quickly as possible to reduce uncertainty in the return of a Member and the composition of the Parliament. However, it is arguable that with the introduction of a strict timetable for the lodging of petitions and commencement of proceedings, a provision which gives the Electoral Commission the right to apply for dismissal of the petition if it is not proceeded with in a reasonable time, would not be necessary.

13.81 Further issues raised in the Issues Paper were whether the security required to be paid into court with the petition should be indexed, and whether it should be forfeited if, without sufficient cause, the petitioner does not proceed.

13.82 As to indexing the security, no other Australian jurisdiction provides for this effect. Such a provision would be an added administrative burden for the court though it is arguable that such a provision is necessary in order to keep all monetary units mentioned in the Act up to date.

13.83 The forfeiture of the security if the petitioner does not proceed with the action without sufficient reason is something of a deterrent against lodging frivolous claims when there is no intention of pursuing them and which may serve to damage the reputation of persons named in the petition.

13.84 The current security required to be paid into court with the petition ($400) is only slightly higher than that required in other Australian jurisdictions. If the security were to be increased, it might deter persons wishing to bring an action, yet conversely its decrease may not serve as a sufficient deterrent to persons bringing frivolous actions.

RECOMMENDATIONS

13.85 **The Commission recommends:**

(a) The security for cost required to be paid into court when the petition is filed, should be forfeited if the petitioner does not proceed without sufficient cause.

(b) The security should be set at the present amount of $400.

13.86 This recommendation is implemented in Part 7 s.130 of the Draft Bill.

Procedural Deadlines

EVIDENCE AND ARGUMENTS

Issue 6 Should the procedural deadlines specified in the Act be changed? Specifically are the time limits too long?

13.87 As outlined in paras 13.14-24 of this chapter, the current Act prescribes certain deadlines relating to procedural matters incidental to the hearing of the dispute before the court.

13.88 As mentioned earlier, a number of submissions made reference to the 11 months required to resolve the Nicklin dispute following the 1989 State election. Part of that delay can be attributed to the time allowed for the presentation of the petition (eight weeks) and the joining of the parties (six weeks).

13.89 The current Act also allows the petitioner two weeks in which to serve a copy of the petition on the Returning Officer and sitting Member, and a party to the petition three weeks to lodge an appeal following the declaration and determination of the case.

13.90 It was argued by the National Party (S76) that the principal problem with the Nicklin petition was delay occasioned by the following three factors:

> *"(1) The time limits for institution of, and response to, proceedings;*
>
> *(2) The making of an application that the appeal was incompetent based upon late service of the election petition on the respondent and the Returning Officer;*

(3) *Numerous interlocutory applications directed to ascertaining how the Returning Officer had dealt with particular ballot papers, which ultimately had to be achieved by way of a recount."*

13.91 The National Party (S76) submitted that:

" ... reduction of the time limits for institution of proceedings to the times prescribed by Commonwealth legislation would be appropriate." and that *" ... once a petition has been filed, it should be treated as being on foot immediately rather than any action be necessary by way of notice of opposition by any other party."*

13.92 The Liberal Party (S100) submitted the following procedural time limits for an action before the court:

"(i) Any candidate has 7 days to object from the date of declaration of the poll.

(ii) There would be compulsory provision of marked rolls etc within 24 hours of the declaration.

(iii) Pleadings to be delivered within 14 days.

(iv) The matter to be heard within 28 days of the application being made, with no adjournment allowed except for good cause.

(v) Decision to be required within 14 days of hearing."

ANALYSIS OF EVIDENCE AND ARGUMENTS

13.93 As mentioned above at para. 13.25, all Australian jurisdictions with the exception of Queensland and Tasmania specify that the decision of the Judge is final and without appeal.

13.94 The abolition of appeals to the Full Court would shorten the time taken to determine a dispute. However, if this option were followed a party to the dispute should still be able to challenge the decision of the Court of Disputed Returns on a matter of law.

13.95 There has been only one case this century, *Webb v Hanlon (The Ithaca Election Petition 1939)* St.R.Qd 91, where a decision of a single Judge constituting the Elections Tribunal was overruled on a matter of law. In *Webb v Hanlon*, the Full Court held that the Elections Tribunal Judge erred in finding on the evidence that two persons distributing unsigned pamphlets in contravention of s.106(2) of the Criminal Code were acting as agents of a candidate. If the express provision in the Act relating to the hearing of appeals by the Full Court of the Supreme Court on all matters relating to a question of law were abolished, it is likely that a higher court could still review the decision of the Court of Disputed Returns notwithstanding the absence of an express provision in an Electoral Act to that effect.

13.96 Apart from the appeal process and the eight week period allowed in which a petitioner may lodge a petition, delay in determining the outcome of a dispute may also be attributed to the length of a number of other procedural periods of time. Sections 136 and 138 of the Act allow the petitioner up to 14 days after the presentation of the petition in which to serve a copy of the petition upon the sitting Member and up to six weeks thereafter in which to be joined as a party to the petition, respectively.

13.97 The above procedural deadlines have remained unchanged since the *Elections Act 1915* (Qld), which was enacted at a time when communications were not as speedy as they are today. Accordingly, many of the procedural periods of time prescribed in the Act are too generous in allowing parties time to attend to procedural matters and should be reduced.

13.98 The timetable for the hearing of the petition should also be reviewed balancing the importance of resolving the dispute quickly against allowing parties to the dispute adequate time in which to gather evidence in support of their case. Section 141 provides that the Judge must give the parties not less than 14 days notice of the day on which the trial is to be held, although the Judge may adjourn the time and place of the trial (s.142). The current Act contains no provision that the trial be held within a specified time nor is there a provision in the Act that adjournment be made only on good cause. Although in most instances the Judge hearing the petition would have had regard to the importance of timeliness the current legislation does not give statutory recognition to this important point.

13.99 The lengthy period required to dispose of the Nicklin petition illustrates the delays that can take place in the absence of strict procedural deadlines.

RECOMMENDATIONS

13.100 **The Commission recommends:**

(a) Any petition must be filed with the Supreme Court within seven days after the day of the return of the writ.

(b) The petitioner be required to serve a copy of the petition upon the Member declared to have been returned, if any, the RO of the electoral district and the Electoral Commission (where the Commission is not the petitioner) within seven days after the petition has been filed in the Supreme Court.

(c) The Member declared to have been returned may, within 7 days after service of the petition on them, be admitted as a party to the petition by giving notice in writing to the Registrar of the Supreme Court.

(d) Once the Judge has set a date for the trial, the Registrar must give all parties at least 10 days notice of the day on which the trial is to be held.

(e) The case is to be heard within 28 days of the application being made with no adjournment except for good cause.

(f) The Judge's determination is to be given within 14 days of the final day of hearing.

(g) The determination of the Judge shall be final and without appeal.

13.101 The Draft Bill contains provisions for these recommendations in Part 7 ss.130 and 134.

Related Matters

THE EFFECT OF THE TRIBUNAL'S DETERMINATION

Evidence and Arguments

13.102 The National Party (S76) raised a number of other issues relating to proceedings before the Elections Tribunal which were not addressed directly in the Issues Paper. With regard to the length of time a person may sit as a Member of the Legislative Assembly following a determination by the Tribunal or an appeal from the Tribunal's determination, the National Party (S76) submitted:

> *"The process should be varied by providing*
>
> *(i) that a person declared elected by the Elections Tribunal take his seat forthwith; and*
>
> *(ii) that a person declared not elected, where the Tribunal declares the election void, may not sit or vote in the Legislative Assembly pending any appeal."*

13.103 The current Act makes no specific provision as to when a Member subject to a petition may sit in the Assembly. The Act provides as follows:

> *"151. Determination by Judge. At the conclusion of the trial, the Judge shall determine and declare, upon the questions of fact and law arising before him -*
>
> *(a) whether the member whose return or election is complained of was duly returned or elected;*
>
> *(b) whether any person not returned as elected was duly elected;*
>
> *(c) whether the election was void; or*
>
> *(d) whether any member whose qualification is in question was qualified or disqualified,*
>
> *as the case may require.*
>
> *152. Judge to certify determination to Speaker. (1) The Judge shall certify in writing his determination to the Speaker.*
>
> *(2) The certificate shall be accompanied by a copy of the transcribed record of the proceedings before the Tribunal.*
>
> *153. Time of certification of determination. (1) Subject to subsection (2), the Judge shall certify in writing pursuant to section 152 forthwith upon the expiry of the time for appeal to the Full Court as hereinafter provided.*
>
> *(2) Where within the prescribed time notice is given by a party of an appeal to the Full Court, the Judge shall postpone the giving of his certificate to the Speaker until the determination of the appeal by the Full Court.*
>
> *160. Legislative Assembly to carry out report. The Legislative Assembly, on being informed by the Speaker of any such certificate and report or reports, if any, shall order the same to be entered in its journals, and shall give the necessary directions for confirming or amending the return or for issuing a writ for a new election or for carrying the determination into execution, as circumstances may require."*

13.104 Therefore, under the current provisions a person declared elected by the Tribunal would have to wait until after an appeal was heard and determination given to the Speaker, before sitting in the Assembly where he or she was disputing the return of the Member. Conversely, a person returned at the election who is a party to proceedings before the court, who is declared not elected by the Tribunal where the election is void, and who subsequently lodges an appeal to the Full Court, continues to sit in the Assembly until the appeal is heard and the determination is given to the Speaker. The Act only disallows a person from sitting in the Assembly where they have given notice that they do not intend to oppose a petition. This disqualification lasts until the Assembly has been informed of the report on the petition (s.173).

Analysis of Evidence and Arguments

13.105 Under the current provisions of the Act, a person returned at an election may continue to sit in the Legislative Assembly until after the hearing of an appeal to the Full Court despite a finding by the single Judge of the Supreme Court that the Member declared to have been returned was not duly elected and the election is void.

13.106 It is arguable that a person who has been declared elected by the Court of Disputed Returns has a better claim to sit in the Assembly than an unsuccessful candidate who lodges an appeal. On the other hand, however, it may be said that the judicial process is incomplete until the appeal has been heard and that it is presumptuous to provide that a person declared elected by the Court shall take their seat forthwith. Moreover, it is desirable that the electoral district be represented in the Legislative Assembly and that its electors be deprived of their representation for as short a period as possible.

13.107 If the Act contained a provision to the effect that the decision of the Court of Disputed Returns shall be final and without appeal, then it would follow that a person declared elected by the Court of Disputed Returns could be sworn in as a Member of the Assembly upon the determination by that Court.

Recommendation

13.108 **The Commission recommends a person declared elected by the Court of Disputed Returns shall take their seat forthwith upon the determination and declaration of the Judge being communicated to the Speaker.**

13.109 A provision to this effect has been included in the Draft Bill in Part 7 s.139.

COSTS

Evidence and Arguments

13.110 The National Party (S76) suggested a further amendment to the current legislation regarding the limitation on costs that may be ordered to be paid by any one party:

> *"The party, having been a respondent to an appeal in 1983 (Maryborough) and an appellant in 1989 (Nicklin), has some familiarity with the appellate process.*
>
> *It was successful in both. In the case of the Maryborough election petition, it was awarded costs but the monetary limit on costs ($1,000.00) made the order for all practical purposes of no value.*

In the case of Nicklin, no order as to costs was made. The Court's reason for making that order was that the result had changed largely due to correction of official error, and that a considerable part of the proceedings resulted from attempts in the course of the proceedings to ascertain precisely what the Returning Officer had done, which was not a matter for which the respondent was responsible.

In such a case, the Court should in the view of the Party, be authorised to award costs against the Commission. These would not, of course, be payable by particular individuals but would recognise that it is not appropriate for a successful party who has had to go to Court to prove its case to have to bear a substantial costs penalty. The State, as employer of the officials concerned, is not unreasonably made vicariously liable for their action."

13.111 The legislation of the other States with the exception of South Australia, provides that the court may award costs against an unsuccessful party to the petition and may, in its discretion, recommend that costs be paid by the Crown. These jurisdictions further recommend that all other costs awarded by the court shall be recoverable as if the order of the court were a judgement of the Supreme Court, and such order may be entered as a judgement of the Supreme Court, and enforced accordingly (*Parliamentary Electorates and Elections Act 1912* (NSW), ss.172,174; *Electoral Act 1985* (Tas), s.226; *Constitution Act Amendment Act 1958* (Vic), ss.295,297; *Electoral Act 1907* (WA), ss.169,171).

13.112 The South Australian legislation provides that the court may award costs against an unsuccessful party to the petition (*Electoral Act 1985* (SA), s.107(2)). The Commonwealth legislation provides that the court may award costs against an unsuccessful party and that all other costs awarded by the court shall be recoverable as if the order of the court were a judgement of the High Court (CE Act, ss.371, 373).

Analysis of Evidence and Arguments

13.113 As noted by the National Party (S76), the $1,000.00 limitation on costs can disadvantage a party which has spent a greater amount on court costs. The current Act does not make provision for costs to be ordered against the SEO. The National Party proposed that costs be awarded against the Electoral Commission where the result of an election has changed "... *largely due to correction of official error.*"

13.114 If the QEC were to be joined as a party to the petition, costs could be awarded against the QEC under a provision similar to the present s.174 at the Judge's discretion and in such amount as the Judge may determine. Whilst the public interest requires that election petitions should not be discouraged by excessive security for costs being required, once the Crown is a party to proceedings there is no such obstacle and ordinary principles for allocation of costs and the amount become applicable.

13.115 The legislation of South Australia provides that the Judge may award costs against an unsuccessful party. It follows as a consequence of s.105 of the *Electoral Act 1985* (SA), which provides that the Electoral Commissioner "shall" be the respondent to the petition, that the Judge may award costs against the Electoral Commissioner. The legislation of the other States specifically states that the Judge may award costs against the Crown.

Recommendations

13.116 **The Commission recommends:**

(a) The limitation on costs should be removed from the Act.

(b) The Act should allow the Court of Disputed Returns to award costs against an unsuccessful party and in its discretion, against the Crown.

13.117 This latter recommendation is given effect by Part 7 s.140 of the Draft Bill.

SPECIAL CASES

13.118 The Full Court's role in the court process is not merely limited to its capacity as an appellate body. Where it appears to the Judge that the case raised is a special case or where any question of law requires further consideration, the Full Court may be called upon to hear the case in the first instance, or consider the matter referred to it, respectively (ss.156, 157).

13.119 These provisions ultimately serve to minimise the possibility of a legal error occurring in the hearing of the case where complex questions of law are involved or at least the single Judge's decision being challenged on that ground. Furthermore, in such a case, a decision by the Full Court carries more weight and it is important to maintain public confidence in the electoral system when there is an electoral dispute.

Recommendation

13.120 **The Commission recommends the Act should retain the provisions allowing the Judge to refer to the Full Court special cases and questions of law.**

13.121 The provisions have been incorporated into Part 7 s.134 of the Draft Bill.

WITHDRAWAL OF THE PETITION

13.122 The current provisions in the Act relating to the withdrawal of the petition without the leave of the Judge upon special application serve two main purposes: firstly, to ensure that due notice is given of the petition's withdrawal so that an interested party may apply to be substituted as petitioner; and secondly, to guard against the likelihood of an action being abandoned as a consequence of any improper arrangement (ss.169-170).

13.123 Tasmania is the only other Australian jurisdiction which contains specific legislation on this matter (*Electoral Act 1985* (Tas), s.221).

Recommendation

13.124 **The Commission recommends that the Court of Disputed Returns should be empowered to make rules regarding the withdrawal of petitions and the substitution of new petitioners and no express provision is necessary in the Act.**

ABATEMENT OF THE PETITION

13.125 The provisions in the Act relating to the abatement of a petition and substitution of new petitioners operate in a similar manner to those relating to the withdrawal of a petition. Again, the purpose of the provisions is to give an interested party due notice of the petition's abatement or lapse so that they may make an application for substitution as petitioner (s.171).

13.126 Again, Tasmania is the only State which sets out similar provisions in its electoral legislation (*Electoral Act 1985* (Tas), s.221).

Recommendation

13.127 **The Commission recommends that the Court of Disputed Returns should be empowered to make rules regarding the deaths of petitioners and the substitution of new petitioners and no express provision is necessary in the Act.**

CHAPTER FOURTEEN

ELECTORAL OFFENCES

Introduction

14.1 At present electoral offences appear in both the Act and the Criminal Code. While electoral offences appearing in the Act are regularly amended, the offences and penalties appearing in the Criminal Code have remained very much in their original form since 1901. Consequently, the current Criminal Code provisions contain in many instances severe jail penalties. The more recent electoral offences appearing in the Act tend to prescribe more severe pecuniary penalties and shorter imprisonment terms. However, the offence provisions of the Act prescribe a wide range of penalties for offences of equivalent severity.

14.2 In this chapter the Commission will consider:

(a) The location of electoral offences throughout the legislation of Queensland and the format of electoral offences within the Act;

(b) Specific electoral offence provisions and whether they provide adequate penalties, with particular reference to the offences of bribery, treating, printing or publishing a misleading political article, multiple voting, personation, cemetery voting and non-voting; and

(c) The current provisions under which persons may be disqualified from voting at an election or sitting as a Member of the Legislative Assembly.

Current Situation

14.3 Electoral offences under the Criminal Code were set out in some detail when the Code was enacted on January 1, 1901 and have remained unchanged since then. When the *Elections Act 1885* (Qld) first came into effect it contained no specific provisions regarding electoral offences, but merely prohibited voting at elections by persons guilty of " ... *corrupt or illegal practices.*"

14.4 The insertion of electoral offences in the Criminal Code rather than the *Elections Act 1885* (Qld) reflected a general trend towards the consolidation and codification of all criminal offences in Queensland in a single piece of legislation. Since that time, however, the Act has been expanded and updated to accommodate various other electoral offences not covered in the Criminal Code.

14.5 Electoral offences under the Criminal Code are allocated to a specific chapter entitled *"Corrupt and Improper Practices at Elections"* (Chapter XIV ss.98-117). Sections 98 - 117 cover electoral offences while ss.586 and 587 deal with summary proceedings for electoral offences.

14.6 Tables 14.1 and 14.2 show the electoral offences appearing in the Act and the Criminal Code, respectively and Table 14.3 compares the penalties for major electoral offences in Queensland with those of other Australian jurisdictions.

TABLE 14.1

ELECTORAL OFFENCES UNDER THE ELECTIONS ACT 1983-1991

Section	Offence	Penalty
32(4)	Regulatory offences re enrolment/transfer	$60
42	Objection to name on roll without reasonable ground or cause	$1,200
68(10)	Fail to comply with s.68 (security, supply, distribution of ballot-papers)	$600
70(5)	Preventing/attempt to prevent scrutineer from entering/leaving the Polling-booth	$1,200
77(2)	Wilful neglect by PO - fail to supply elector with ballot-paper	$120
82(5)	Absent voting - False answers to questions	$120
82A(25)	Unexpectedly incapacitated voting	$240/6 months
84(11)	Failure to post, or deliver outer pre-poll envelope	$240
84(12)	Unlawful possession of ballot-papers/envelopes	$1,200/6 months
85(11,32,33)	Electoral visitor voting offences	$240/6 Months
91(12)	Failure to vote/comply with compulsory voting requirement.	$60
93	Canvassing/soliciting/inducing	$240
94	Wearing party emblems	$60
111(1)	Political articles to be signed	$120
111(2)	Newspaper editors - publishing unsigned articles	$120
112	Printing/publishing misleading article	$120
115	Unauthorised possession of ballot-papers	$1,200/6 months
116(1)	Postal voting and enrolment-general offences	$1,200/6 months
116(2)	Wilfully informing elector they are not enrolled	$1,200/6 months
117	Obstructing/wilful misleading PEO in performance of duties	$240/3 months
118	Person guilty of corrupt or illegal practice prohibited from voting	
119(1)	Neglect by PEO	$120
119(2)	Neglect of Officer on duty	$60
120	Undue influence by officers	$240
121(1)	Neglect by RO	$480
121(2)	Neglect by PO/other officer	$120
125	General penalty	$1,200
127	Offences against the Regulations (maximum penalty)	$120

TABLE 14.2

OFFENCES UNDER THE CRIMINAL CODE

Section	Offence	Penalty
99	Personation	2 years
100	Double voting	2 years
101	Treating	$400/1 year
102	Undue Influence	$400/1 year
103	Bribery	$400/1 year
104	Further penalties (for above 5)	3 years disqualification from enrolment, voting, holding judicial office and election
105	Illegal practices	$400/1 year
	(1) voting where prohibited from voting (2) procuring another to vote where prohibited from voting. (3) false statement re candidate withdrawal (4) false statement re candidate (5) candidate withdrawal in consideration of payment (6) corruptly procures another to withdraw in consideration of payment or promise	2 years disqualification from enrolment and voting
106	(1) knowingly provides money for payment contrary to law. (2) printing, publishing material without name and address of printer/publisher	$200
	(3) hires spirithouse, club etc. for use as a committee room at an election	2 years disqualification from enrolment and voting
108	(1) unlawful intrusion into booth (2) interrupts, obstructs election proceedings	3 years
109	Marks ballot-paper/fails to fold or deposit ballot paper	3 years
110	(1) attempts to take ballot out of booth (2) intrusion into compartment	3 years
111	Stuffing the ballot-box	7 years
112	Offences by presiding officer - (1) fail to assist blind etc (2) allows another in compartment while person is voting.	3 years
113	False answers to declarations	7 years
114	Unfastens ballot or interferes with secrecy, attempts to ascertain voter identity, unlawful marks on ballot-papers	2 years
115	Breaking seals of packages	2 years
116	Postal voting offences	$400/1 year
117	False claims re enrolment	7 years

TABLE 14.3

MAJOR ELECTORAL OFFENCES - AUSTRALIAN STATES & THE COMMONWEALTH

Bribery	**Section**	**Maximum Penalty**
Commonwealth	s.326 CEA	$5,000 or 2 Years or both
New South Wales	s.147 PEEA	$10,000 or 3 Years or both
Victoria	ss.241-243 CAAA	At large *
Queensland	s.103 CC	$480 or 1 Year
Western Australia	ss.181,182,186,188 EA	$400 or 1 Year
South Australia	ss.109,133 EA	2 Years
Tasmania	s.206 EA	$10,000 or 2 Years or both
Canvassing Near Booth		
Commonwealth	s.340 CEA	$500
Victoria	s.193 CAAA	$500
Queensland	s.93 EA	$240
Western Australia	ss.190,192 EA	$100
South Australia	s.125 EA	$500
Tasmania	s.133(2) EA	$200
Double/Multiple Voting		
Commonwealth	s.339 CEA	$1,000 or 6 Months or both
New South Wales	s.112 PEEA	$10,000 or 3 Years or both
Victoria	ss.177,178,252 CAAA	$1,000 or 6 Months
Queensland	s.100 CC	2 Years
Western Australia	s.190 EA	12 Months
South Australia	s.124 EA	$2,000 or 6 Months or both
Tasmania	s.205 EA	$5,000 or 12 Months
False Claims, Declarations, Answers to Questions		
Commonwealth	s.339 CEA	$1,000 or 6 Months or both
New South Wales	ss.106,176D PEEA	$1,000 or 6 Months or both
	s.112	$10,000 or 3 Years or both
Victoria	s.133,189, 252, 310	At large
Queensland	ss.113,117 CC	7 Years
Western Australia	s.190 EA	12 Months
	s.191 EA	$40
South Australia	s.124 EA	$2,000 or 6 Months or both
Tasmania	ss.204,205 EA	$5,000 or 12 months
	s.52 EA	$500
Not Voting		
Commonwealth	s.245 CEA	$50
New South Wales	s.120F PEEA	$50
Victoria	s.274 CAAA	$50
Queensland	s.91 EA	$60
Western Australia	s.156 EA	$50
South Australia	s.85 EA	$50
Tasmania	s.183 EA	$50

Personation		
Commonwealth	s.339 CEA	$1,000 or 6 Months or both
New South Wales	s.112 PEEA	$10,000 or 3 Years or both
Victoria	s.252 CAAA	At large
Queensland	s.99 CC	2 Years
Western Australia	s.190 EA	2 Years
South Australia	s.124	$2,000 or 6 Months or both
Tasmania	s.205	$5,000 or 12 Months
Printing, Publishing Misleading Political Article		
Commonwealth	s.329 CEA	$1,000 or 6 Months or both [natural person] $5,000 [body corporate]
New South Wales	s.151A PEEA	$1,000 or 6 Months or both [natural person] $5,000 [body corporate]
Victoria	s.267B	$1,000 or 6 Months or both
Queensland	s.112 EA	$120
Western Australia	s.191A EA	$1,000 or 6 Months or both [natural person] $5,000 [body corporate]
South Australia	s.113 EA	$1,000 [natural person] $10,000 [body corporate]
Tasmania	s.209 EA	$2,500 or 6 Months or both
Stuffing the Ballot-Box		
Commonwealth	s.339	$1,000 or 6 Months
New South Wales	s.177 PEEA	$1,000 or 6 Months or both
Victoria	s.252 CAAA	At large
Queensland	s.111 CC	7 Years
Western Australia	s.190 EA	$2,000 or 6 Months or both
South Australia	s.124 EA	$2,000 or 6 Months or both
Tasmania	s.205 EA	$5,000 or 12 Months
Treating		
Commonwealth	see bribery	
New South Wales	ss.149,150 PEEA	$10,000 or 3 Years or both
Victoria	ss.244,245 CAAA	At large
Queensland	s.101 CC	1 Year $480
Western Australia	ss.182,186,188 EA	$400 or 1 Year
South Australia	see bribery	
Tasmania	s.207 EA	$2,500 or 6 Months or both
Undue Influence/Intimidation		
Commonwealth	ss.325A,327 CEA	$1,000 or 6 Months or both
New South Wales	s.151 PEEA	$10,000 or 3 Years or both
Victoria	s.246 CAAA	At large
Queensland	s.102 CC	1 Year or $480
Western Australia	ss.183,184,185,186,188 EA	$400 or 1 Year
South Australia	s.110 EA	2 Years
Tasmania	s.208 EA s.389 CC	$10,000 or 5 Years or both

* s.312A CAAA ss.69,70 Magistrate Courts Act 1971 enables summary hearing of charges for indictable offences under ss.241-243 with a limit of $2,000 or 12 Months or both.

CEA	Commonwealth Electoral Act 1918
CC	Criminal Code (Qld)
CAAA	Constitution Act Amendment Act 1958 (Vic)
EA	Qld - Elections Act 1983 -1985 WA - Electoral Act 1907 SA - Electoral Act 1985 TAS - Electoral Act 1985
PEEA	Parliamentary Electorates and Elections Act 1912 (NSW)

Matters for Consideration

14.7 In Issues Paper No. 13 the Commission invited submissions on a number of issues dealing with specific electoral offences and electoral offences in general. Many of the submissions received by the Commission commented that current penalties for offences were not adequate and recommended that particular provisions be brought into line with the Commonwealth legislation. In this chapter the Commission will review current offence provisions with the objective that penalties match the offence and penalties be consistent with those for other electoral offences of equivalent gravity.

Location of Electoral Offences

Issue 1 Should all provisions relating to electoral offences be contained in the Elections Act or should they remain split between the Elections Act and the Criminal Code as at present?

Issue 2 Should electoral offences in Queensland come under a specific part or division of an Elections Act or be dispersed throughout the Act?

EVIDENCE AND ARGUMENTS

14.8 As mentioned above, electoral offences appear in both the Criminal Code and the Act, with major electoral offences such as bribery, multiple voting and personation appearing in the Criminal Code. (see Table 14.2).

14.9 The Criminal Code Review Committee in its *First Interim Report* (1991) recommended that electoral offences of strict liability or involving breaches of duty where there is no intention on the offender's part to corrupt or interfere with the election or its result be removed from the Criminal Code to a *Simple Offences Act*. The Committee recommended that there should be a consequent reduction in penalty for those offences moved to the *Simple Offences Act* and that such offences should be triable summarily and not upon indictment. The Committee further recommended that these offences should be in a statute of general application rather than in the Act which relates to parliamentary elections only.

14.10 The Committee proposed that a general electoral offence containing the element of intending to interfere with the lawful conduct of, or improperly influence the result of, an election be inserted into the Criminal Code. Issues Paper No. 13 raised the question of whether all provisions relating to electoral offences should be contained in the Act or whether they should remain spread between the Act and the Criminal Code.

14.11 Of the several submissions received by the Commission on this point, all but one were in favour of consolidating the legislation into a single Act (Miriam Vale Shire Council (S52), R. Balchin (S63), Queensland Police Service (S98)). The only submission against consolidation was received from M Passmore (S45) who submitted that offences currently under the Criminal Code should stay there as (i) the Code is accessible through libraries, and (ii) gives an option of courts in which to bring an action.

14.12 Offences appearing in the current Act are scattered throughout the legislation with offence provisions sometimes being located amongst non-offence provisions. In contrast, the CE Act allocates Part XXI of that Act to electoral offences. Similarly, the Western Australian and South Australian legislation have specific parts dealing with offences, as does the Tasmanian legislation to a lesser extent; New South Wales and Victoria have offence provisions scattered throughout their electoral legislation.

14.13 Submissions were invited from the public on the issue of whether electoral offences in Queensland should come under a specific part or division of the Act or be dispersed throughout the legislation.

14.14 All submissions dealing with this point were in favour of electoral offences being contained in a specific division of the Act.

ANALYSIS OF EVIDENCE AND ARGUMENTS

14.15 As noted earlier, electoral offences are distributed between the Act and the Criminal Code. A number of consequences arise from this situation. Firstly, offences in the Act and Code do not complement each other well and in many cases there is an overlap of offences. Secondly, there was until recently no regular review of electoral offences in the Criminal Code although offences in the Act have come under review in recent times. If electoral offences continue to remain scattered throughout legislation, it is arguable that anomalies regarding the severity of penalties will continue and further anomalies may arise between offences prescribed under the Criminal Code and the Act.

14.16 The consolidation of electoral offences in the one Act is likely to ensure that:

(a) particular electoral offences are more easily located by electoral officials, candidates and electors alike;

(b) all electoral offences are regularly reviewed;

(c) penalties for electoral offences can be more readily updated; and

(d) the penalty for any electoral offence consistently correlates with the severity of the offence.

RECOMMENDATIONS

14.17 **The Commission recommends:**

(a) All provisions relating to electoral offences should be contained in the Electoral Act. For the purposes of Legislative Assembly elections, the current provisions in the Criminal Code relating to electoral offences should be repealed and equivalent provisions should be inserted in the Electoral Act.

(b) All electoral offences under the Elections Act should come under a specific part of the new Act entitled "Electoral Offences".

Adequacy of Penalties in General

Issue 3 Do current Queensland electoral offence provisions provide for adequate penalties? Should current jail sentences be reduced or eliminated in favour of higher pecuniary penalties?

CURRENT SITUATION

14.18 Issues Paper No. 13 raised the question of whether the current electoral offence provisions in the Act provide adequate penalties and whether imprisonment penalties prescribed for electoral offences should be reduced or eliminated in favour of higher pecuniary penalties.

14.19 Most offence provisions under the Commonwealth legislation and legislation of other Australian States provide for both a pecuniary penalty and/or a jail sentence for major electoral offences. Queensland and Western Australia are exceptions to this general rule, providing only jail sentences for some offences (see Tables 14.2 and 14.3).

14.20 The Criminal Code offences of stuffing the ballot-box, false answers to questions and false claims all carry jail sentences of seven years in Queensland. Equivalent Commonwealth and other State provisions provide for maximum penalties of up to three years only (see Table 17.3). Furthermore, with the exception of Western Australia, the Commonwealth and the other States provide a pecuniary penalty as well as, or as an option to, the jail sentence.

14.21 The current Act contains a number of specific offence provisions for certain forms of voting such as electoral visitor voting offences, absent voting offences, and so on. Presently there are a number of major anomalies between the penalties prescribed for offences relating to these different forms of voting. For example, an elector who gives a false answer to a PO at an election is liable to a maximum penalty of seven years imprisonment under the Criminal Code. On the other hand, false answers given by a person claiming to vote as an absent voter attract a maximum penalty of only $120.00 under the Act. A less substantial variation, misfeasance or neglect by the PEO or Electoral Registrar only attracts a maximum penalty of $120.00 whereas neglect by a RO attracts a penalty of $480.00.

EVIDENCE AND ARGUMENTS

14.22 Submissions received by the Commission dealing with the issue of whether present penalties were adequate generally recommended the reduction or elimination of jail sentences in favour of more severe pecuniary penalties.

14.23 The Miriam Vale Shire Council (S52) put the following view:

> *" ... jailing offences ... under the Electoral Act, unless such offence is really serious, achieves no practical purpose or result at all. Council is strongly of the opinion that for such offences it would be far better to have a lengthy period of community service imposed on the guilty party together with such guilty party being debarred from standing for public office or from voting together with a substantial penalty being imposed."*

ANALYSIS OF EVIDENCE AND ARGUMENTS

14.24 There are a number of problems associated with the current offences and penalties prescribed in the Act and the Criminal Code:

(a) some offences appearing in the Act and the Criminal Code are inappropriate in the context of modern day elections. In many instances the wording of offences is vague and outdated and may classify as offences innocent acts lacking criminal intent;

(b) some penalties prescribed in the legislation are unnecessarily punitive and are inappropriate considering the nature of the offence;

(c) conversely, some penalties are very light considering the severity of the offence; and

(d) in many instances, there is an overlap between offences prescribed in the Criminal Code and the Act with anomalies occurring between the penalties prescribed for similar offences.

14.25 Some offences appearing in the legislation particularly in the Criminal Code, contain vague and outdated language which makes the purpose of the provision unclear. For example, s.108 of the Criminal Code provides that:

> *"Any person who -*
>
> *(1) Intrudes into a polling-booth, not being lawfully entitled to be in it; or*
>
> *(2) Wilfully interrupts, obstructs, or disturbs, any proceedings at an election;*
>
> *is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years."*

14.26 The term "intrude" is vague; the provision is very general and catches a wide range of acts where no wilful or wrongful intent is present. The second part of the section relating to wilful interruption of proceedings would deal adequately with any disruption regarding the conduct of the poll within the polling-booth.

14.27 A similar difficulty arises with the Criminal Code offence of undue influence where s.102 states:

> *"Any person who -*
>
> *(1) Uses or threatens to use any force or restraint, or does or threatens to do any temporal or spiritual injury, or causes or threatens to cause any detriment of any kind, to an elector in order to induce him to vote or refrain from voting at an election, or on account of his having voted or refrained from voting at an election; ... "*

14.28 The term "spiritual injury" might be difficult to apply in current times.

14.29 The offence of hiring or using a committee room where liquor is sold at an election is similarly inappropriate in contemporary conditions. Section 106(3) and (4) of the Criminal Code provides that any person who:

> *"(3) Hires or uses for a committee-room at an election -*
>
> *(a) Any part of a house licensed for the sale of fermented or spirituous liquors; or*

> *(b) Any part of any premises where any intoxicating liquor is sold or supplied to members of a club, society, or association, which is not a permanent political club; unless in either case, it is a part which has a separate entrance, and has no direct communication with any part of the premises in which intoxicating liquor is sold, and is a part ordinarily let for the purpose of chambers or offices or for holding public meetings or arbitrations; or*
>
> *(4) Knowing that the same are intended to be used as a committee-room at an election, lets any part of any such premises, not being such a part as aforesaid, for such use;*
>
> *is guilty of an offence, and is liable on summary conviction to a fine of two hundred dollars.*
>
> *If the offence was committed with respect to a parliamentary election, and the offender was a candidate or the agent of a candidate at the election, he also incurs the same incapacity as a person convicted of any of the offences defined in the last preceding section committed with respect to a parliamentary election."*

14.30 In subsection (a), the Act refers to "fermented or spirituous liquors" while in subsection (b) the reference is to "any intoxicating liquor". It is not apparent whether the two references are intended to have different meanings. The term "committee room at an election" is also inappropriate today.

14.31 The reference in s.106 to "candidates" and "The agent of a candidate" indicates that the section is intended to cover candidates, their representatives, and possibly the political parties to which they belong.

14.32 Furthermore, the period in which it is an offence to commit the acts prescribed in s.106(3) is unclear. Is the section intended to catch those acts committed during the election period? If so, when does this period commence and end?

14.33 The legislation of the Commonwealth and other States, with the exception of Western Australia, contains no equivalent provision to that of s.106.

14.34 The Western Australian legislation contains a similar provision which is somewhat more specific. Section 187(4) and (5) of the *Electoral Act 1907* (WA) provides:

> *"(4) The attendance by a candidate after nomination day at any committee meeting held for the purpose of promoting or procuring his election on premises on which the sale by retail of any intoxicating liquor is authorized by license, except where the meeting is held in or on a part of those premises in or on which part, intoxicating liquor is not ordinarily sold by retail to members of the public and is a part that is ordinarily let for the holding of meetings.*
>
> *(5) The attendance by any member of a committee formed in the interests and with a view to obtain the return of any candidate at an election at a committee meeting held on any premises licensed to sell by retail spirituous liquors, except where the meeting is held in or on a part of those premises in or on which part spirituous liquors are not ordinarily let for the holding of meetings."*

14.35 Nonetheless, the purpose of even that provision is unclear. If the purpose of the Queensland provision is to endeavour to stop candidates from holding a committee meeting on any licensed premises, the provision is archaic, unnecessary and unduly restrictive in modern times. Reference must be made to the mischief for which the section was originally intended to deal with and whether it has any relevance today. It would seem that the original purpose of the provision related to the prohibition of the liquor trade which was an issue in the late 1800s and early 1900s and the move to reform many areas of public life including the conduct of elections.

14.36 As mentioned earlier, some penalties in the Act and Criminal Code are unnecessarily punitive and appear inappropriate considering the nature and seriousness of the offence.

14.37 For example, the Act contains a number of provisions regarding negligence by various electoral officers. The offences and penalties in the Act are as follows:

(a) s.77(2) - Wilful neglect by PO (re failure to supply elector with a ballot-paper where elector has satisfied PO of entitlement to vote) - there is no penalty prescribed in this section; However, it is covered by s.121(2) below - $120

(b) s.119(1) - Neglect by PEO - $120

(c) s.119(2) - Neglect by Officers on duty - $60

(d) s.121(1) - Neglect by RO - $480

(e) s.121(2) - Neglect by PO/Other Officer - $120

14.38 It is arguable that minor breaches of duty by electoral officials should not be classified as offences and subjected to penalty under the Act. The above provisions may be inappropriate and better left to disciplinary proceedings under the *Public Service Management and Employment Act 1988-1990* or under terms and conditions relating to senior electoral officers. In respect of temporary polling-officials, the appropriate sanction would be not to engage their services again and, because the QEC should maintain a detailed database on polling-officials, notation should be kept to ensure that they are not employed by an RO at another time or elsewhere.

14.39 The Criminal Code offences of stuffing the ballot-box (s.111), false answers to declarations (s.113) and false claims regarding enrolment (s.117), all carry penalties of seven years imprisonment. Such penalties are excessively punitive when compared with other offences of equivalent severity such as bribery (s.103) and undue influence which carry penalties of $480 or one year imprisonment.

14.40 Similarly, the offences of intruding into a voting compartment when another person is voting (which is likely to involve several members of the one family pressing their opinions on each other) and attempting to take a ballot-paper out of a polling-booth (which is likely to catch those who protest against compulsory voting), carry a penalty of three years imprisonment (s.110 Criminal Code).

14.41 Conversely, the Criminal Code and the Act in some provisions contain mild penalties for relatively major offences. The offence of undue influence by officers (s.120 Elections Act) only carries a penalty of $240 and the offence of printing or publishing a misleading political article only incurs a penalty of $120 even though each goes to the heart of the integrity of the electoral process. Many Queensland offence provisions prescribe penalties that are:

(a) at variance with penalties prescribed for equivalent offences in other jurisdictions; and

(b) penalties which do not consistently, or at all, correlate to the gravity of the offence.

14.42 It has been noted that the location of electoral offences in the Criminal Code and the Act may lead to an overlap of offences with anomalies occurring between the penalties prescribed for similar offences. For example, there is an overlap between s.112(b) of the Act and s.105(3) and (4) of the Criminal Code. Section 112 relates to the printing or publishing of misleading political material intended or likely to mislead any elector in or in relation to the casting of their vote. Section 105(3) and (4) relate to the publication of false statements regarding the withdrawal of a candidate or in respect of the personal character or conduct of a candidate. Penalties of $240 and $120 are prescribed for the Criminal Code and Act offences, respectively. The wilful publication of false statements regarding candidates could possibly fall within the ambit of printing or publishing a statement which is intended to mislead an elector in the casting of their vote depending on what is said about the candidate. Such overlap in the legislation serves to clutter the Act and cause inconsistencies to arise in penalties for offences of a like nature.

14.43 Generally, the current Queensland offence provisions do not provide for adequate or appropriate penalties. In many cases, jail sentences for electoral offences should be eliminated or reduced in favour of higher pecuniary penalties. This is particularly so in the case of such offences as stuffing the ballot-box, false answers to questions and false claims, which currently carry maximum penalties of seven years imprisonment under the Criminal Code.

RECOMMENDATIONS

14.44 **The Commission recommends that the penalties presently prescribed under the Act and the Code should be amended and brought in line with the penalties currently prescribed under the CE Act.**

Bribery and Treating

Issue 4 Is the current penalty for bribery adequate or appropriate?

Issue 5 Should treating remain as an electoral offence under new electoral legislation?

Issue 6 If so, is the current Criminal Code provision adequate?

CURRENT SITUATION

14.45 Bribery is made an offence under s.103 of the Criminal Code. Under s.103 a person commits bribery where that person:

> *"(1) Gives, confers, or procures, or promises or offers to give or confer, or to procure or attempt to procure, to, upon, or for, any person any property or benefit of any kind on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by an elector at an election in the capacity of an elector, or on account of any person acting or joining in a procession during an election, or in order to induce any person to endeavour to procure the return of any person at an election, or the vote of any elector at an election; or*
>
> *(2) Being an elector, asks, receives, or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him at an election in the capacity of an elector; or*

(3) Asks, receives, or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person, on account of a promise made by him or any other person to endeavour to procure the return of any person at an election, or the vote of any person at an election; or

(4) Advances or pays any money to or to the use of any other person with the intent that such money shall be applied for any purposes hereinbefore in this section mentioned, or in discharge or repayment of money wholly or in part applied for any such purpose; or

(5) Corruptly transfers or pays any property or money to any person for the purpose of enabling that person to be registered as an elector, and thereby influencing the vote of that person at a future election; or

(6) Is privy to any such transfer or payment as last-mentioned which is made for his benefit..."

14.46 Under the CE Act, the offence of bribery carries a penalty of $5,000 or two years imprisonment or both (CE Act s.326). The equivalent Queensland provision only provides for a penalty of $480 or one year imprisonment. With the exception of Western Australia, the other States provide higher penalties for bribery, with Tasmania and New South Wales at the top of the range with penalties of $10,000 or two years imprisonment or both and $10,000 or three years imprisonment or both, respectively (s.206 *Electoral Act 1985* (Tas); s.147 PE & E Act).

14.47 Treating is made an electoral offence under s.101 of the Criminal Code with a penalty of one year imprisonment or $480. Treating occurs where a person:

"(1) Corruptly, before, during, or after, an election, provides, or pays in whole or part the expense of providing, any food, drink, or lodging, to or for any person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by an elector at the election in the capacity of an elector; or

(2) Being an elector, corruptly receives any food, drink, or lodging, on account of any such act or omission..."

14.48 The Queensland legislation compares with the legislation of the Commonwealth and other States as follows:

Commonwealth	$5000 or 2 years or both	falls within bribery
New South Wales	$10 000 or 3 years or both	ss.149,150 PEEA
Victoria	at large	ss.244,245 CAAA
Queensland	**$480 or 12 months**	**s.101 CC**
Western Australia	$400 or 12 months	falls within bribery
South Australia	2 years	falls within bribery
Tasmania	$2500 or 6 months or both	s.207 EA

14.49 The specific offence of treating also falls within the wide definition of bribery in the Criminal Code. The Commonwealth, Western Australian and South Australian legislation only have an offence of bribery which covers treating.

EVIDENCE AND ARGUMENTS

14.50 Issues Paper No. 13 invited submissions on whether the electoral offence of treating should be retained as an electoral offence. A further issue is whether the Act should fix the ambit of the offence so that trivial breaches of the provisions are excluded.

14.51 The Commission only received one submission on this point from the National Party (S76) which submitted that the current Criminal Code provision was adequate and that treating should remain a separate offence.

ANALYSIS OF EVIDENCE AND ARGUMENTS

14.52 As noted above, the pecuniary penalty for bribery is much lower than that for other States. Considering the severity of the offence and the potential benefits to be gained in successfully bribing electoral officials, candidates or electors, the penalty should be increased as a disincentive to potential cases of bribery arising.

14.53 On the other hand, treating has been an offence under the Criminal Code since 1901. At that time, voting was not compulsory, electoral districts contained on average between 3,000 and 4,000 electors and electors had more modest incomes and were correspondingly more vulnerable to inducements. Hence there was a greater benefit to be obtained by candidates offering free food and drink to electors to vote and/or vote in a certain manner. Since voting became compulsory in Queensland in 1915, and most electoral districts now have over 20,000 electors, the original intention is largely irrelevant.

14.54 A problem associated with the present treating provision in the Criminal Code is that there is no minimum amount or action prescribed to constitute an offence. Therefore, such acts as giving electors a free sausage or soft drink at a barbeque, or a cup of tea and a lamington at a "meet-the-candidate" social may fall within the definition of treating. The Code catches trivial acts which do not today constitute an inducement to an elector to vote in a certain manner.

14.55 Paradoxically, "entertainment" which was originally included in the statutory offence when it was introduced in the United Kingdom, is no longer covered, yet the attractions of well-known entertainers might constitute a much more effective inducement to electors than receiving a free snack.

14.56 It has been noted that the offence of treating also falls within the bribery provisions of the Criminal Code. Section 103 of the Code is a wide provision covering amongst other things, all acts of giving or conferring property or benefits *" ... in order to induce any person to endeavour to procure the return of any person at an election, or the vote of any elector at an election."* The Commonwealth, South Australian and Western Australian legislation do not contain separate offences of treating. The *Electoral Act 1907* (WA), however, specifically includes acts of treating within its definition of bribery (s.182).

14.57 Arguments against the legislation retaining a separate treating provision are:

(a) the offence is archaic and not relevant to the current electoral system;

(b) the definition of treating does not prescribe a minimum amount or action which constitutes the offence;

(c) the definition catches trivial and potentially innocent acts which do not, alone, serve as an inducement to an elector to vote in a certain manner; and

(d) the offence can be adequately accommodated within the current Criminal Code definition of bribery.

14.58 An argument for retaining a separate offence of treating is that treating is not as severe an offence as bribery and therefore should be left as a separate offence to be dealt with more lightly.

RECOMMENDATIONS

14.59 **The Commission recommends**:

(a) The penalty for bribery should be increased to 85 penalty units ($5,100) or two years imprisonment or both which brings the provision closer to the Commonwealth legislation.

(b) Treating should not remain as a separate offence under new electoral legislation and for the purpose of Legislative Assembly elections, the current Criminal Code provision should be repealed.

(c) It is unnecessary to further define the ambit of the offence of treating since it is covered under the general definition of bribery and it would be unwise to limit this definition in any way.

Printing or Publishing a Misleading Political Article

Issue 7 Is the current penalty for printing or publishing a misleading political article adequate or appropriate?

CURRENT SITUATION

14.60 The offence of printing or publishing a misleading political article reflects similar disparities. In Queensland, the penalty prescribed is only $120. The Commonwealth and other States provide much more severe penalties ranging up to $1,000 for natural persons and between $1,000 and $10,000 for bodies corporate. The Queensland legislation compares with the legislation of the Commonwealth and other States as follows:

Commonwealth	$1000 or 6 months or both (natural person) $5000 (body corporate)	s.329 CE Act
New South Wales	$1000 or 6 months or both (natural person) $5000 (body corporate)	s.151A PEEA
Victoria	$1000 or 6 months or both	s.267B CAAA
Queensland	**$120**	**s.112 EA**
Western Australia	$1000 or 6 months or both (natural person) $5000 (body corporate)	s.191A EA
South Australia	$1000 (natural person) $10 000 (body corporate)	s.113 EA
Tasmania	$2500 or 6 months or both	s.209 EA

14.61 The offence of printing or publishing a misleading political article is discussed in further detail in Chapter Eleven.

ANALYSIS OF EVIDENCE AND ARGUMENTS

14.62 It was noted earlier that the offence of printing or publishing a misleading political article prescribes a penalty of only $120 which is much less than the penalties prescribed in other Australian jurisdictions.

14.63 Considering the political consequences that can arise from the incidence of this offence, it is arguable that the penalty should be increased to reflect the severity of the offence and to be consistent with penalties provided in other jurisdictions. The offences of publishing false statements regarding the withdrawal of a candidate or in respect of the personal character or conduct of a candidate (s.105) Criminal Code are similar to the offence of printing or publishing a misleading political article and should, therefore, be contained in the same section of the Act.

RECOMMENDATIONS

14.64 **The Commission recommends:**

(a) The penalty for the printing or publishing of a misleading article or false statements regarding candidates should be increased to 40 penalty units ($2,400) where the offence is committed by a natural person and 200 penalty units ($12,000) where the offence is committed by a body corporate.

(b) The offences of publishing false statements regarding the withdrawal of a candidate or regarding the personal character or conduct of a candidate should be associated with the offences of printing or publishing a misleading political article.

Multiple Voting and Locality Voting

Issue 8 Is the current penalty for multiple voting adequate or appropriate?

Issue 9 Is the introduction of "locality voting" an option for Queensland elections as a means of limiting multiple voting?

CURRENT SITUATION

14.65 Multiple voting is made an offence under s.100 of the Criminal Code with a maximum penalty of two years imprisonment. The Queensland legislation compares with the legislation of the Commonwealth and other States as follows:

Commonwealth	$1000 or 6 months or both	s.339 CEA
New South Wales	$10 000 or 3 years or both	s.112 PEEA
Victoria	$1000 or 6 months	ss.177,178,252 CAAA
Queensland	**2 years**	**s.100 CC**
Western Australia	12 months	s.190 EA
South Australia	$2000 or 6 months or both	s.124 EA
Tasmania	$5000 or 12 months	s.205 EA

EVIDENCE AND ARGUMENTS

14.66 Many instances of apparent multiple voting are reported at both State and Commonwealth levels. The incidence of multiple voting in Queensland has gradually increased over the last decade. The AEC identified more than 500 cases of unexplained multiple voting in Queensland following the 1987 Federal election. From these, 37 people admitted to voting twice and 12 were referred to the police (*Courier-Mail*, 20 January 1989, p.10).

14.67 The incidence of apparent multiple voting at Federal Elections in Queensland has steadily increased with 2,148 cases being reported in 1990 compared to 568 in 1980 (JSCEM 1990, p.56).

14.68 The AEC has been unable to determine why this increase has occurred, although the JSCEM noted that the increase reported at the 1987 Federal election coincided with the introduction of the new computer scanning system which may have improved the accuracy of identification.

14.69 Following the 1989 State election, only one person was charged and convicted for multiple voting in Queensland. Although the Criminal Code prescribes a penalty of two years for the offence, the defendant was fined only $300 (information supplied by the PEO). The number of prosecutions in other jurisdictions is comparable.

14.70 Issues Paper No. 13 invited submissions as to whether the current penalty for multiple voting was adequate or appropriate. The Commission only received one submission dealing with this point from the National Party (S76) which submitted that the current provision was adequate.

14.71 One means of limiting the possibility of multiple voting would be to require electors to vote at designated polling-booths. This is sometimes known as "locality voting" or "precinct voting".

14.72 Proponents of locality voting argue that if voters are restricted to voting at a designated polling-booth, the incidence of electoral fraud, particularly multiple voting, will be reduced.

14.73 The Cundy Report recommended a system of one polling-place per sub-division and voters being required to vote within their sub-division. (New South Wales Electoral Inquiry Committee 1989, pp.30-32). A vote cast elsewhere would be registered as an absentee vote. The Committee noted that the majority of New South Wales voters usually voted at the same polling-booth for each election. However, the New South Wales Government has failed to act on the Committee's recommendation.

14.74 A locality voting system currently operates in many countries including Canada and the United States. However, unlike Australia, voting is not compulsory in most of these countries and the range of facilities provided for electors is not as extensive as that provided in Australia.

14.75 The National Party (S76) recommended that the introduction of locality voting was unnecessary at this stage, but that it should be considered if the level of multiple voting were to rise and other enforcement mechanisms proved inadequate.

ANALYSIS OF EVIDENCE AND ARGUMENTS

14.76 It was noted earlier that many instances of apparent multiple voting are reported at State and Commonwealth levels. This might suggest the question of whether more severe penalties should be imposed and whether more rigorous controls on voting procedures are needed to reduce its occurrence.

14.77 A very high proportion of apparent multiple voting cases, however, may be attributed to issuing officers' clerical errors. A wrong name may be marked off when an elector votes. Other explanations have included elderly persons forgetting that they have already voted and persons who obtained postal votes in advance of polling-day subsequently casting an ordinary vote in the mistaken belief that it will supersede the earlier vote.

14.78 Locality voting has been recommended as a means of reducing the incidence of multiple voting. The New South Wales Government, however, has decided not to pursue the implementation of locality voting. Reasons given for this decision included the high cost of writing to all voters to advise them of their assigned polling-place. Other reasons were the likely public reaction against electors being told where they had to register their vote and a possible large increase in the number of absent votes and the subsequent delays and costs in processing them. The New South Wales Government's failure to implement this recommendation is some corroboration of the rarity of genuine cases of malpractice.

14.79 Section 12 of the Act empowers the Governor in Council to divide an electoral district into divisions. If locality voting were introduced in Queensland, such divisions would be necessary. If locality voting is not introduced, s.12 is unnecessary and need not be retained.

14.80 Arguments for the introduction of locality voting are:

(a) The incidence of electoral fraud, particularly multiple voting, may be reduced; and

(b) Electors would be encouraged to vote at the same polling-booth at each election and resources of staff and materials could be allocated more effectively with waste significantly reduced.

14.81 Arguments against the introduction of locality voting are:

(a) A locality voting system would entail higher administration costs due to the desirability of writing to electors before each election advising them of their assigned polling-place. New South Wales decided against locality voting especially on grounds of cost;

(b) There is likely to be an increase in the number of absent votes and subsequent delay and cost in processing them;

(c) Electors may be unhappy about being told where to vote, particularly because voting in Australia is compulsory;

(d) Locality voting is not needed as a means of reducing the incidence of multiple voting, since there is no evidence that this offence is widespread in Queensland at present; and

(e) Locality voting does not occur at parliamentary elections anywhere in Australia.

14.82 Section 103(5) and (6) of the Criminal Code sought to prevent unqualified persons being enrolled in a period when a property franchise still existed:

> *"(5) Corruptly transfers or pays any property or money to any person for the purpose of enabling that person to be registered as an elector, and thereby of influencing the vote of that person at a future election; or*
>
> *(6) Is privy to any such transfer or payment as last-mentioned which is made for his benefit;"*

14.83 The penalty was a years imprisonment or a fine of $400. Under s.104 a person convicted of either offence is to be disqualified as an elector for three years, from the date of conviction, and not capable of being elected or sitting in the Legislative Assembly for the same period.

14.84 The legislation has not been kept up to date in respect of franchise changes. A new offence of doing any act to enable or assist a person who is not entitled to be enrolled should be created to replace s.103(5) and (6). Its definition should cover the forging of signatures (whether it be applicants for enrolment or change of enrolment or witnesses to such applications) and the making of false answers to any questions put by an officer of the QEC in connection with the enrolment, and should extend to inducing another person to commit an offence. The penalty should be as for bribery, 85 penalty units or imprisonment for two years, or both, and disqualification from candidacy and membership of the Legislative Assembly for four years.

14.85 The CE Act, ss.336 and 337, also deals with false signatures and witnesses' signatures on "electoral papers" applications for enrolment and change of enrolment. The penalty in each case is $1,000, though the possibility of a prosecution for forgery is preserved in respect of s.336. As presumably the Commonwealth would prosecute such offences, there appears to be no need to make provision in the Act, and as the offence is less serious than obtaining, or seeking to obtain, the enrolment of an unqualified person, there is no need to provide for disqualification from candidacy or membership of the Legislative Assembly.

14.86 On balance the Commission does not favour the introduction of locality voting at this stage.

RECOMMENDATIONS

14.87 **The Commission recommends:**

(a) The current penalty for multiple voting is not adequate. It is recommended that the penalty be increased to a maximum of 20 penalty units ($1,200) and/or six months imprisonment.

(b) Sections 103(5) and (6) of the Criminal Code should be repealed and replaced by an offence provision in the proposed Electoral Act which would cover the forging of signatures and false answers to questions put by a Queensland Electoral Commission officer.

(c) Locality voting is not required at Queensland elections as a means of reducing multiple voting. Accordingly, s.12 of the current Act, which empowers the Governor in Council to divide an electoral district into divisions, should be removed from the Act.

14.88 These provisions have been incorporated into Part 8 ss.158 and 160 and 170 of the Draft Bill.

Personation and Cemetery Voting

Issue 10 Is the current penalty for voter personation adequate or appropriate?

Issue 11 What measures are required to reduce the opportunities for "cemetery voting"?

CURRENT SITUATION

14.89 Personation (or "impersonation") occurs when a person votes or attempts to vote in the name of another person at an election, whether the name is that of a person living or dead or of a fictitious person.

14.90 Personation is made an offence under s.99 of the Criminal Code with a maximum penalty of two years imprisonment. The Criminal Code provision has not been amended since the Code was enacted in 1901. The Queensland legislation compares with the legislation of the Commonwealth and other States as follows:

Commonwealth	$1000 or 6 months or both	s.339 CEA
New South Wales	$10 000 or 3 years or both	s.112 PEEA
Victoria	at large	s.252 CAAA
Queensland	**2 years**	**s.99 CC**
Western Australia	2 years	s.190 EA
South Australia	$2000 or 6 months or both	s.124 EA
Tasmania	$5000 or 12 months	s.205 EA

14.91 The names of deceased persons are removed from the electoral roll when a notification of death is forwarded from the State Registrar of Births, Deaths and Marriages. However, there have been allegations of persons casting votes in the names of deceased persons before the names can be deleted from the roll. This practice is known as "cemetery voting". This offence is currently covered under the Criminal Code offence of personation.

14.92 Cemetery voting has been raised as an issue by the media and by various electoral inquiries over the past few years. It is alleged that cemetery voting arises because of the time lag of several weeks between the close of the rolls shortly after the announcement of an election and the time of notification of death by the Registrar of Births, Deaths and Marriages.

EVIDENCE AND ARGUMENTS

14.93 The Commission received a number of submissions on the question as to what measures were required to reduce the opportunities for cemetery voting:

(a) The Miriam Vale Shire Council (S52) held the view that the problem of cemetery voting can never be totally eliminated. However, the Council submitted that:

" ... it can be substantially reduced by reducing time delays in notification. As Returning Officer for the recent Council elections, I was never advised of any deceased persons from the State Electoral Office. However, there were names of deceased persons on the roll as at the date of closure when such names should have been removed."

(b) *" ...the matter should be kept under review for re-evaluation once the joint-electoral roll is introduced."* (National Party (S76)).

ANALYSIS OF EVIDENCE AND ARGUMENTS

14.94 Although allegations of personation are raised from time to time, very few cases come to the notice of electoral authorities. Of those which do, many are "innocent", reflecting unfamiliarity with electoral law; for example, a spouse who votes in the name of an absent partner so they will not be prosecuted for non-voting. Lack of prosecutions may be due to the difficulty in detecting cases of personation and also in finding a culprit once the possibility has come to notice.

14.95 Forms of personation which have been raised in allegations concern the use of names and addresses of persons who are known not to have voted. Although various allegations of cemetery voting have been made following recent elections, few have been found to be of any substance. An allegation was made that some 400 votes were cast in names of deceased persons at a by-election in the New South Wales electoral district of Castlereagh in 1980. It was alleged that those involved in the scheme had obtained the names of persons who had died over a 12 month period from lists provided in the local newspaper. The allegations were refuted by the AEC (AEC, 1988).

14.96 The report of the New South Wales Government *Inquiry into the Operations and Processes for the Conduct of State Elections*, found that while it remained possible for cemetery voting to occur, there was no evidence that it occurred on a widespread scale (Cundy et al. 1989, p.38).

14.97 The possibility of cemetery voting is very small. Notifications of deaths are received by the AEC from the Registrars of Births, Deaths and Marriages regularly. Thus whilst it would be possible for persons to attempt to vote in the names of the very recently deceased, most deceased persons' names will be removed from the roll promptly.

14.98 Prior to the introduction of the Joint Roll, another loophole existed in respect of persons who died interstate. With the introduction of a Joint Electoral Roll, the problems surrounding notification of voters who die interstate should be diminished because interstate data is automatically fed through to the AEC's Queensland roll.

14.99 Nevertheless, the current penalty for personation is not comparable with the penalties prescribed in other Australian jurisdictions, with the exception of Western Australia.

14.100 A severe pecuniary penalty coupled with disqualification from election, should be a sufficient deterrent to potential offenders.

14.101 The already minute chance of cemetery voting occurring will be reduced further with the introduction of the Joint Roll Agreement. The administrative problems associated with electors who die interstate should thereafter be reduced. The frequency and effectiveness of habitation reviews is a further check which identifies names that should be removed from the roll, including those of people who have died. The AEC already updates its Queensland roll from notifications of death received from the Registrar of Births, Deaths and Marriages.

14.102 The administrative procedures presently in place to prevent cemetery voting are sufficient.

RECOMMENDATION

14.103 **The Commission recommends the current penalty prescribed under the Act for voter personation is not appropriate. It is recommended that the penalty be changed to 20 penalty units ($1,200) or six months imprisonment or both.**

14.104 This provision has been incorporated in Part 8 s.170 of the Draft Bill.

Non-Voting

Issue 12 Is the current penalty for non-voting adequate and appropriate? Should an automatic penalty for non-voting be introduced which places the onus on the elector to give reasons for failure to vote?

Issue 13 Should the legislation require employers to allow employees leave of absence to vote?

CURRENT SITUATION

14.105 Voting is made compulsory by s.91 of the Act. Section 91(12) makes failure to vote an offence with a penalty of one penalty unit ($60). The Commonwealth and other States prescribe a $50 penalty for non-voting.

14.106 All electors who fail to cast votes are sent notification of their failure to vote requiring them to give reason for such failure within a specified time (not less than 21 days). An elector who fails to vote without a "valid and sufficient" reason or fails to complete and deliver the notice within the specified time, or gives a false reason for not voting, is guilty of an offence.

EVIDENCE AND ARGUMENTS

14.107 The Commission received the following submissions on the question of whether the current penalty for non-voting was appropriate and whether an automatic penalty for non-voting should be introduced which places the onus on the elector to give reason for failure to vote:

(a) The National Party (S76) submitted that the current penalty for non-voting was adequate but that an automatic penalty for non-voting should be introduced which places the onus of proof on the elector.

(b) The Burleigh Heads Group (S56) submitted that non-voting should not be an electoral offence.

(c) *"... the approach to penalising non-voters should be pragmatic, in the sense that the purpose of the legislation is to ensure that the requirement to vote is accepted generally as a continuing obligation."* (ALP (S70)).

14.108 Failure to vote is the most frequent offence under the compulsory voting system in Queensland. At the 1989 State election, nearly 8% of eligible voters apparently did not register a vote.

14.109 Unlike the legislation of the Commonwealth and Western Australia, the present Act does not require employers to allow employees leave of absence to vote. Section 345 of the CE Act provides:

"345. (1) If an employee who is an elector notifies his or her employer before the polling day that the employee desires leave of absence for the purpose of voting at any election, the employer shall, if the absence desired is necessary to enable the employee to vote at the election, allow the employee leave of absence without any penalty or disproportionate deduction of pay for such reasonable period not exceeding 2 hours as is necessary to enable the employee to vote at the election.

(2) No employee shall under pretence that he or she intends to vote at the election, but without the bona fide intention of doing so, obtain leave of absence under this section.

(3) This section shall not apply to any elector whose absence may cause danger or substantial loss in respect of the employment in which he or she is engaged.

Penalty:

(a) if the offender is a natural person - $500; or

(b) if the offender is a body corporate - $2,500."

14.110 The Western Australian legislation contains a similar section although no specific penalty is provided for contravention of the provision (s.196 *Electoral Act 1907* (WA)); the Act, however, contains a general penalty, up to $100, for any contravention of the Act for which no other punishment is provided (s.190).

ANALYSIS OF EVIDENCE AND ARGUMENTS

14.111 An issue of concern under the current compulsory voting provisions is the cost of sending out non-voting and penalty notices to non-voters and the cost of legal proceedings to enforce the fine. At present, the SEO does not have sufficient resources to enforce these provisions adequately. If an elector replies to the initial letter requesting their reasons for non-voting (many electors do not), the SEO must decide whether to pursue the matter.

14.112 It would be unfair to proceed against those who respond to the inquiry and not those who ignore the request. The cost of administration of the system is greater than the revenue generated but that is often the case with law-enforcement activities.

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

14.114 As noted earlier, the Act makes no provision requiring employers to allow employees leave of absence to vote. Such a provision would complement the current compulsory voting requirement and may decrease somewhat the number of eligible persons who did not vote at an election on the ground that they had to work on polling-day.

RECOMMENDATIONS

14.115 **The Commission recommends:**

(a) The current penalty for non-voting is adequate. However it is recommended that there be an evidential burden on the elector to give reasons for failure to vote or otherwise pay the fine.

(b) The Act should contain a provision which places an obligation on employers to allow employees to vote. The provision should be drafted to correspond to s.345 of the CE Act.

14.116 The Draft Bill contains provisions in the recommendations at Part 8 ss.164 and 165.

Disqualification from Voting

Issue 14 Are current provisions under which persons may be disqualified from voting adequate?

CURRENT SITUATION

14.117 In Queensland, a person is disqualified from voting under the following provisions:

(a) Section 21 of the Act as amended by s.5 of the EA Act where a person is convicted of an offence under the law of the Commonwealth or of a State or Territory and is sentenced to imprisonment for 5 years or longer (to be finalised, January 1991);

(b) Section 104 (Criminal Code) (3 Years disqualification) following convictions for:

(i) bribery
(ii) undue influence
(iii) treating
(iv) multiple voting
(v) personation

(c) Section 105 (Criminal Code) (2 Years disqualification) following conviction for:

(i) voting where prohibited from voting
(ii) procuring another to vote where prohibited from voting
(iii) false statement re withdrawal of candidature
(iv) publication of false statement re candidate
(v) candidate withdrawal in consideration of payment or promise thereof
(vi) procures another to withdraw candidature in consideration of payment or promise thereof

(d) Section 118 (Elections Act) (Disqualified for that election) following conviction for:

(i) corrupt or illegal practice, payment or hiring at election

EVIDENCE AND ARGUMENTS

14.118 Prior to April 15, 1991, a person was disqualified from voting where that person, in the State or elsewhere, had been convicted of an offence and sentenced to imprisonment for that offence for six months or longer and was in prison serving that sentence. This section of the Act was repealed by the EA Act. Section 21 of the amended Elections Act entitles a person who is, (under the CE Act) entitled to vote at an election in Queensland for Members of the House of Representatives, to vote at an election for Members of the Legislative Assembly. The CE Act entitles prisoners serving sentences of less than 5 years to vote at an election for Members of the House of Representatives. Therefore, in Queensland, persons serving sentences of less that 5 years are entitled to vote at elections for the Legislative Assembly.

14.119 The South Australian and Western Australian legislation contain no equivalent provisions disqualifying persons from voting upon conviction for electoral offences. The Commonwealth legislation contains a general provision which disqualifies a person who has been convicted and is under sentence for an offence punishable under the law of the Commonwealth or of a State or Territory by imprisonment of 5 years or longer, from voting at any Senate or House of Representatives election (s.93(8) CE Act). Victoria and New South Wales disqualify persons guilty of bribery or treating from voting at the election at which the offence occurred. In the *First Interim Report of the Criminal Code Review Committee to the Attorney-General*, it was recommended that the penalty under s.104 of the Criminal Code should not disfranchise any person (Criminal Code Review Committee, 1991).

ANALYSIS OF EVIDENCE AND ARGUMENTS

14.120 Disqualification from voting, or disfranchisement, for persons found guilty of certain electoral offences does not complement the 1991 amendment to the Act which entitles prisoners serving sentences for offences carrying penalties of less than five years to vote. In some cases the offences detailed in ss.104, 115 and 118 of the Criminal Code carry a nominal fine and may not be so severe as to warrant disfranchisement, particularly when the commission of more severe offences, electoral or otherwise, entitles the offender to vote although the offender has been sentenced to imprisonment for any period less than five years. The repeal of the current provisions disqualifying persons from voting would ensure that no person is disfranchised at a State election upon being found guilty of an electoral offence carrying a penalty of less than five years imprisonment.

RECOMMENDATIONS

14.121 **The Commission recommends that the provisions concerning disqualification be repealed and no other provisions be inserted into the new Act disqualifying persons from voting. However, the amendment inserted in the Elections Act Amendment Act 1991, which disqualifies prisoners serving sentences of five years or more from casting a vote, should be incorporated into the new Act.**

Disqualifications from Sitting as a Member of the Legislative Assembly

Issue 15 Are current provisions relating to offences attracting disqualification from being elected or sitting in Parliament adequate?

CURRENT SITUATION

14.122 Under ss.161, 162 and 163 of the current Act and s.104 of the Criminal Code, persons are disqualified from being elected or sitting as a Member of the Legislative Assembly for the following offences:

(a) personation;

(b) treating;

(c) double voting;

(d) undue influence;

(e) bribery;

(f) corrupt practices by candidate;

(g) candidate guilty by agent of corrupt practices;

(h) connivance of candidate at illegal practice (with the candidate's knowledge and consent)

14.123 The Queensland provisions provide disqualification for most major offences and are wider than the provisions of the Commonwealth and other States in this regard. The three year disqualification period prescribed in Queensland for most of the offences above is more severe than the Commonwealth, South Australian and Western Australian legislation (two years) but less severe than the Tasmanian and Victorian legislation (four and five years, respectively).

EVIDENCE AND ARGUMENTS

14.124 The *First Interim Report of the Criminal Code Review Committee to the Attorney-General* recommended that s.104 of the Criminal Code should be retained to the extent of the capacity to be elected to or sit as a Member of the Legislative Assembly (Criminal Code Review Committee 1991, p.128). Section 104 currently prescribes a three year disqualification period from being elected or sitting as a Member of the Legislative Assembly upon conviction for the offences of personation, double voting, treating, undue influence or bribery.

14.125 The Commission received little public input on the issue as to whether current provisions relating to offences attracting disqualification from being elected or sitting in Parliament were adequate. Of the three submissions dealing with this matter, M Passmore (S45) recommended that the Commonwealth provisions should apply and the National Party (S76) and R McKinnon (S56) submitted that the current provisions were adequate, and not adequate, respectively.

ANALYSIS OF EVIDENCE AND ARGUMENTS

14.126 As noted earlier, the Queensland provisions provide disqualification from sitting as a Member of the Assembly for most major offences and are more extensive than the provisions of other Australian jurisdictions. However, the present provisions do not disqualify persons found guilty of relatively major offences relating to enrolment.

14.127 Unlike disqualification from voting, which serves to take away individual rights by disenfranchising persons from voting at an election, the nature of this penalty goes beyond retribution and serves to protect the integrity of the electoral system. Persons who have tried to gain a seat in the Assembly by unlawful means should not be eligible for candidature until they have atoned for their wrongful acts. To allow the contrary subverts the integrity of the Parliament itself.

RECOMMENDATION

14.128 **The Committee recommends the current provisions relating to offences attracting disqualification from being elected or sitting in Parliament should include the following offences relating to enrolment, namely s.103(5) and (6) of the Criminal Code should be repealed and replaced by an offence provision in the proposed Electoral Act which would cover the forging of signatures and false answers to questions put by a Queensland Electoral Commission officer.**

14.129 The Draft Bill in Appendix H contains provisions for electoral offences and penalties in Part 8 s.158 and 160.

CHAPTER FIFTEEN

MISCELLANEOUS

Union Elections

Issue 1 Should the conduct of industrial elections in Queensland, upon arrangement with the Industrial Registrar, be a function of the Queensland Electoral Commission?

15.1 For many years, State union elections in Queensland have rarely been subject to effective scrutiny or enforcement to ensure that elections complied with union rules. There have been allegations of corruption and ballot-rigging in several Queensland unions.

15.2 The Commission of Inquiry into the Activities of Particular Queensland Unions conducted by N M Cooke QC investigated several Queensland unions suspected of corruption and/or ballot rigging. There included the Federated Engine Drivers and Firemen's Association of Australasia (Queensland Branch); the Federated Liquor and Allied Industries Employees Union of Australia (Queensland Branch); the Federated Clerks' Union (Central and Southern Queensland Branch); the Transport Workers' Union of Australia (Queensland Branch); the United Firefighters' Union of Australia (Queensland); the Queensland Association of Teachers in Independent (Non-Governmental) Schools; the Queensland Professional Officers' Association; and the Australasian Meat Industry Union of Employees (Queensland Branch).

15.3 Their investigations suggested that many of the current methods of conducting union ballots lacked measures to ensure that the ballots were conducted in a proper manner and that the integrity of process was adequately protected.

CURRENT SITUATION

15.4 The Legislative Assembly resolved on 11 April 1991 that the functions of the QEC as outlined in EARC's *Report on Queensland Legislative Assembly Electoral System* be expanded to include:

> *"... as permitted by or under an Act, conducting*
>
> *... (c) union elections."*

(Votes and Proceedings of the Legislative Assembly, 11 April 1991, para 5(7)).

15.5 Currently, an industrial organisation or branch of an industrial organisation may request the Industrial Registrar to conduct an election pursuant to the provisions set out under s.13.41 of the *Industrial Relations Act 1990*. The Industrial Registrar may conduct the election or make arrangements with the PEO for the election to be conducted by the PEO or a RO. Under s.6B of the EA Act, a reference in the Act to the PEO is now taken to be a reference to the Electoral Commissioner.

15.6 These sections of the Act reflect slight changes to the previous provisions in accordance with recommendations of the *Committee of Inquiry into the Industrial Conciliation and Arbitration Act 1961-1987* (the Hanger Inquiry).

15.7 There appear to be at present approximately 27 State registered unions. Each of these unions holds elections every four years. To date, there have been no industrial elections conducted by the PEO or an RO pursuant to the provisions of ss.13.41 or 13.42 of the Queensland Industrial Relations Act 1990.

15.8 In all the other States except Victoria, unions may ask request the relevant Electoral Commission to conduct an election on their behalf. Union elections are conducted regularly by the Electoral Commissions in these jurisdictions. In Victoria, however, an Order-in-Council is needed to approve the conduct of an industrial election by the Electoral Commission of Victoria.

15.9 In the Commonwealth, s.210 of the *Industrial Relations Act 1988* (Cwlth) provides that elections for industrial organisations shall be conducted by the AEC unless an exemption is granted from the Industrial Registrar. In effect, this means that the AEC will conduct virtually all union elections under the Commonwealth legislation. *The Second Report of the Commission of Inquiry into the Activities of Particular Queensland Unions* (the Cooke Inquiry) recommended that this section of the Commonwealth Act be mirrored in State legislation.

EVIDENCE AND ARGUMENTS

15.10 The Commission received a number of submissions dealing with this issue.

15.11 The Department of Employment, Vocational Education, Training and Industrial Relations (DEVETIR) stated:

(a) *"It has been indicated that when all the Cooke Inquiry Reports have been received, the Government will consider the several recommendations in toto. Issues that would need to be assessed at that time would include:-*

the question of cost if all industrial elections were to be conducted by the State, including consideration of a possible 'user pays' system;

the argument that elections for industrial organisations, as for other voluntary bodies, are a matter for the members of those organisations." (S66).

(b) Section 13.41 of the *Industrial Relations Act* states that at least 5% or 250 members of a union are required to request the PEO to conduct a union election. With regard to this provision DEVETIR submitted:

"The Federal Act and industrial legislation in the other States prescribes differing numbers required to support a request by members that the Industrial Registrar conduct an election.

Regulation 139 of the Federal Act requires an application by two hundred and fifty (250) members or 1/20th of the total number of members of the organisation or of the branch as the case may be, whichever is the lesser. New South Wales legislation prescribes a minimum of one thousand (1000) or 10% of the trade union or of the branch whichever is the lesser. Western Australian legislation adopts the figures of 5% or two hundred and fifty (250) whichever is the lesser.

We accept the view expressed by the Queensland Government which is, generally speaking, consistent with the approach taken elsewhere. To require a higher number than two hundred and fifty (250) or 5% makes the concept behind the section practically unworkable ...

It is clearly most unsatisfactory to have a situation where Queenslanders who are members of a branch of a Federal union are afforded greater protection for the exercise of their democratic rights in the election of their union officials than are Queenslanders who are members of a purely State registered union. State registered unions constitute a minority in terms of numbers. There are sixty-six (66) organisations currently registered under the State Act of which only twenty (20) are solely State unions.

It is desirable in the interests of uniformity that s.13.41 of the Industrial Relations Act 1990 (Qld) be amended to mirror the provisions of s.210 of the Industrial Relations Act (Cwth). Further, if elections of State registered organisations are to be conducted by officers from the State Electoral Office, then those officers should have the same powers as a returning officer pursuant to s.215 of the Industrial Relations Act 1988 (Cwth)." (S66).

(c) The Trades and Labour Council of Queensland (S58) supported the idea that the conduct of industrial elections, upon arrangement with the Industrial Registrar, should become a function of the new Electoral Commission:

"The Queensland Electoral Commission will be an impartial body.

Costs of elections conducted by arrangements with the Industrial Registrar will be met by the State.

There is non mandatory power for elections to be conducted by or through the Industrial Registrar."

(d) The Trades and Labour Council added:

" ... the Queensland Electoral Commission should be able to co-ordinate elections for State registered unions with those held by the Australian Electoral Commission for unions registered with the Australian Industrial Relations Commission. There are a considerable number of instances where elections for state branches of Australian unions occur concurrently with those for State registered unions. Where this occurs, it should be possible for the Queensland Electoral Commission (if it has been requested to conduct the election) to either act as an agent for the Australian Electoral Commission or to delegate matters to that Commission."

(e) The National Party (S76), on the other hand, submitted that:

"The Party strongly believes that the Electoral Commission should not become involved in elections for industrial organisations. Such organisations form no part in the Government of the State and the State Electoral Commission should form no part of their process of elections.

The Party readily concedes the need to have such elections conducted with propriety and is well aware of the overwhelming evidence of fraud and misconduct in relation to union elections. However it seems the appropriate response to such matters as being the establishment of proper audit procedures, involving registered company auditors, to be paid for out of union funds as the appropriate means of preventing such misconduct."

ANALYSIS OF EVIDENCE AND ARGUMENTS

15.12 In light of the findings of the Cooke Inquiry, there appears to be an urgent need to strengthen powers in regard to the conduct of union elections. The Sixth and Final *Report of Commission of Inquiry into the Activities of Particular Queensland Unions* argued:

> *"(a) Union ballots of all types (for officials and amalgamation) should be conducted by an independent electoral authority, the most appropriate being the Australian Electoral Commission;*

(b) Security measures to ensure the integrity of the ballot are presently totally inadequate and in the majority of cases completely non-existent;

(c) The legislative machinery providing for an election inquiry to be conducted is ineffective for the investigation of complaints of ballot irregularity; and

(d) Enforcement of the penal provisions of both Commonwealth and Queensland Acts has been very lax and has bordered on administrative indifference."

15.13 The Inquiry also recommended the use of model rules for union elections be utilised in order to standardise such elections. These rules would be based on a "first past the post" voting system rather than a one-tier collegiate system.

15.14 The collegiate system was seen as being unacceptable in that *" ... the inter position of an electoral college between the full-time official and the rank and file dilutes the democratic ideal."* (11.4.6 of the Third *Report of the Commission of Inquiry into the Activities of Particular Queensland Unions).* The use of a direct voting system would be more likely to fulfil the objective of s1.3(e) of the *Industrial Relations Act 1990*:

> *"(e) to encourage the democratic control of industrial organisations and the participation by their members in the affairs of industrial organisations."*

15.15 Submissions received by the Commission tended to support the view that union elections be held by an independent body, namely the QEC. DEVETIR (S66) also raised issues concerning the costs of union elections run by the State and whether a user-pays system would be appropriate. They also queried whether elections for unions, as voluntary bodies, should be a matter for the members of such organisations only.

15.16 The National Party (S76) was opposed to the QEC running union elections and considered that proper audit practices would prevent improper practices.

15.17 These arguments are not accepted by the Commission. The Cooke Inquiry found that there is a need for stronger controls over union elections by an independent body; audits have not proved an efficient means of scrutinising such elections.

15.18 Evidence revealed by the Cooke Inquiry and this Commission's own inquiries indicate there are a number of issues concerning the QEC's involvement in the conduct of union elections and could form the basis of any negotiations:

(a) Whether the QEC can be given the power to scrutinise lists of members submitted by unions to ensure their validity.

(b) As indicated by the Cooke Inquiry's, evidence inadequate security measures taken with postal ballots led to allegations of forgery of ballot-papers. Alternative measures to ensure the majority of union members receive ballot-papers need to be considered.

(c) Standardisation of union rules in regard to elections, as recommended by the Cooke Inquiry.

(d) Costs of running such elections.

RECOMMENDATION

15.19 **The Commission recommends that the Queensland Electoral Commission should have the legislative authority to conduct union elections. However the means of conducting these elections should be negotiated between the QEC and other relevant bodies.**

15.20 These recommendations have been taken into account in the Draft Bill, Part 1 s.8(1)(h).

Electronic Voting

Issue 2 Should electronic voting or electronic vote counting be introduced in Queensland?

15.21 Electronic voting or "automation" voting has been in use for several years in the United States, although it is a relatively new concept in Australia which uses the traditional manual system of recording votes. The term covers a wide scope of electronic facilities that may be potentially used for recording votes at elections.

15.22 Facilities which have been suggested for use in Australia include computer terminals, lever voting machines, TAB networks and Automatic Teller Machines.

15.23 In this section the Commission will consider the advantages and disadvantages of electronic voting with reference to its existing use and its suitability to the Queensland electoral system.

CURRENT SITUATION

15.24 At present, Queensland and other Australian jurisdictions have manual voting and manual counting of ballot-papers. Advocates of electronic voting claim that automation will result in a more efficient and reliable electoral process.

15.25 Electronic voting is currently in use in the United States. Of the 3,126 US local authorities conducting elections, 32.6% still use ballot-papers, 22.3% require voters to punch a card and 29.2% use lever machines which were the original "voting machines" (AEC 1989, p.43). Some jurisdictions now use optical and electronic scanning methods. The New South Wales *Inquiry into the Operations and Processes for the Conduct of State Elections* noted that while there had been an increase in the use of electronic and optical scanning methods since 1986, the Committee was given the impression that a number of U.S. counties were adopting a "wait and see" attitude before introducing the use of electronic voting. (Cundy Report, 1989 p.61).

15.26 During the course of its enquiries in the United States, the New South Wales Committee saw demonstrations of two types of electronic voting machines currently in use:

"The first one demonstrated was a 'Shouptronic' manufactured by the Shoup Corporation and is in use in Fairfax County in the State of Virginia. It is a compact mobile voting compartment with a screen on which there can be up to 504 buttons set out in rows in two possible configurations of 12 across and 42 down or 42 across and 12 down. The screen is approximately 68 cm square so that in a configuration where there were 42 buttons across there would be slightly less than 2 cm spacing between them. Names of candidates are printed under computerised control, on a sheet of paper which is then clamped into position over the screen. Obviously a candidate's name which is printed in letters large enough to be easily read would spread across several rows of buttons. For the purpose of voting, only those buttons coinciding with a square opposite each candidate's name are active. As a button is pressed it lights up so that electors are able to be assured that their votes will be registered for the candidate of their choice. If an elector makes a mistake the entry can be cancelled. When the elector is satisfied that all choices have been made correctly an 'enter' button is pressed to register the vote or votes. This causes the machine to be automatically switched off until reactivated by a polling-official.

The machine incorporates a message display panel which informs the voter and verifies every action taken in the voting booth. All votes are recorded on magnetic tape contained within a cassette locked inside the machine. At the end of voting the polling-official in charge (they are called election judges) activates the machine so that votes for each candidate are counted and printed on paper tape also contained within the machine.

Business Records Corporation of America has produced a machine called the V-2000 which is similar in most respects to the Shouptronic. In lieu of buttons it has touch sensitive spots on the screen which are available in two configurations - 12 positions across and 42 down or 32 positions across and 16 down." (Cundy Report 1989, p.63).

15.27 The Committee stated that it was unable to recommend the introduction of electronic voting in New South Wales for the following reasons:

(a) Each of the machines described above would cost approximately A$6000 and to equip the 2,800 polling-places in New South Wales with such machines would cost A$63,600,000 plus A$10,000,000 for ancillary equipment; and

(b) The Committee noted that a computer system in the form of the Shouptronic with its configuration of buttons would not, even with modifications, permit preferential voting, and therefore would not be suitable for elections in New South Wales (Cundy Report 1989, p.63).

15.28 There are two main factors which the Commission must weigh in considering this issue: firstly, the need for an efficient, reliable method of recording votes; and secondly, whether electronic voting is a practical alternative with regard to such matters as costs and storage problems.

EVIDENCE AND ARGUMENTS

15.29 A number of submissions suggested that electronic voting should be introduced, or at least thoroughly investigated, by either EARC or the incoming Electoral Commissioner. The major benefit expected from electronic voting was that results would be known sooner, as a program could be run immediately after the close of poll to establish the result.

15.30 Several submissions suggested the use of existing computer networks, such as those belonging to either the Totalisator Administration Board (TAB) or the banks.

(a) B McCoy (S21) suggested that the TAB could be used at elections and listed reasons for its use including the fact that the TAB is located in *"every suburb and tin-pot town in Australia"* and invalid votes would be instantly rejected and the voter given another chance to vote.

(b) V Bowles (S28) similarly proposed the use of a TAB network and further suggested that the system would be further enhanced if there was a TAB terminal at each polling-booth.

(c) The National Party (S76) had that no objection in principle to electronic voting but believed that, at this stage, the proposal seemed unlikely to be cost-effective.

(d) P Soper (S78) also recommended against the introduction of electronic voting on the ground that:

"Manual counting in the presence of scrutineers may provide far less chance of electoral fraud thus outweighing any perceived advantage of a slower count."

(e) Another option detailed by the Toowoomba City Council (S53) and other submissions, was to maintain a system of ballot-papers, but redesign them to enable electronic scanning, and therefore counting, of the ballot-papers.

ANALYSIS OF EVIDENCE AND ARGUMENTS

15.31 Generally, those in favour of electronic voting argue that it will:

(a) reduce or eliminate electoral fraud;

(b) enhance electoral security;

(c) eliminate the need for recounts;

(d) make inadvertently informal votes impossible;

(e) finalize results within minutes;

(f) make the primary count for each polling-place available instantaneously;

(g) allow preferences to be allocated within minutes rather than weeks;

(h) eliminate manual counting;

(i) simplify the electoral administration process;

(j) enhance voter opinion of the electoral process;

(k) enable absentee votes to be recorded in any polling-booth in Queensland; and

(l) allow non-voters to be automatically identified.

15.32 On the other hand, those opposed to electronic voting claim:

(a) The initial costs of installing an electronic voting system which is used only on one day every two or three years is not justified.

(b) There were 1,686 polling-booths set up in Queensland for the 1989 election; many polling-booths would need a number of terminals, each costing at least $6,000 (as assessed by the NSW Committee) to operate effectively because large polling-booths may have several dozen voting compartments.

(c) Electoral fraud may still occur. Interference with computer programs and the insertion of computer "viruses" into programs may actually lead to more sophisticated and efficient methods of fraud.

(d) The use of electronic voting may dissuade some voters who are unaccustomed to polling machines or computers from voting, or cause them to vote informally.

(e) Electronic voting will not necessarily speed up the electoral process. In the United States for example, voters are allowed up to seven minutes to register their vote on the lever voting machines. Queuing to vote, therefore, may still be a problem.

(f) Postal votes may still delay the result of an election. Even if they are not counted manually, but punched into counting machines, s.87(18)(c) of the current Act allows ten days after the close of the poll for receipt of postal votes by the RO, and the Commission has recommended the retention of this period in Chapter Ten, Scrutiny and Determination of Results.

(g) Computers are not infallible. Systems may go "down" and have been known to lose the information stored. There is also the possibility of power failures and electrical storms which could affect their operation. Manual back-up systems would still be required and recounts might still be required.

15.33 A number of submissions suggested the use of TAB or bank networks for recording votes. This idea although initially appealing, has a number of drawbacks:

(a) It would be highly unlikely that a commercial organisation, whether it be privately owned like the banks or publicly owned as with the TAB, would hand over their computer network to the Electoral Commission. The network would be required for more time than just polling-day. Programs would need to be tested regularly between elections under simulated election conditions for periods similar to the period of polling on polling-day.

(b) The difficulty associated with establishing a vast computer network to operate on one day every three years should not be underestimated.

(c) The size of the network that would be required to service the whole State, or even a portion of it, does not appear to be appreciated in some submissions. For example, at the last State election, there were 1686 polling-booths across the State, and approximately 4,500 POs.

(d) The sheer number of transactions required to be processed in a day would exceed what has been required of the existing commercial networks. A recent article in the Melbourne *Age* stated that Westpac typically conducted 172,000 ATM transactions daily on a national basis. This is approximately one tenth of the 1.62 million votes that were cast at the last State election.

15.34 As for the TAB, elections are held on a Saturday which is the heaviest betting day of the week. The TAB would not be able to cope with both activities on the one day.

15.35 The alternative investigated in New South Wales was the adoption of modified stand alone electronic voting machines used in some jurisdictions of the USA. In the light of the findings of the New South Wales investigation that it would cost approximately $73m to fully operationalise electronic voting in that State using such technology, such a system would similarly not be cost-effective in Queensland.

15.36 A number of submissions proposed that a system of ballot-papers be retained but that they should be redesigned to allow for electronic scanning. This option offers several advantages over other systems of electronic voting: its lower cost; it is technically more feasible; voters would not be faced with a system radically different to their electoral experience; and the system could not "crash" on polling-day.

Recommendations

15.37 **The Commission recommends:**

(a) For the purposes of the new Act, there be no provision for electronic voting.

(b) Many forms of electronic voting would be inappropriate for recording votes in Queensland elections, as well as lacking cost-effectiveness. However, the Queensland Electoral Commission should further investigate the possibility of electronic scanning of ballot-papers as a means of counting votes.

Referendums

Issue 3 Should the Elections Act and the Referendums Act 1989-1990 be consolidated to form a single Act? or

Issue 4 Should the Elections Act make reference to the Referendums Act regarding the conduct of referendums?

Issue 5 Should referendums be held on the same day as State or LA elections?

Issue 6 Should there be any changes to the manner of voting at referendums in order to obtain consistency with the method of voting at Legislative Assembly elections?

Issue 7 Should there be any other changes to the current method of voting at referendums?

15.38 State referendums have not, until recently, been a common occurrence in Queensland. Prior to the referendum held co-jointly with the Local Authority Triennial elections in March 1991, the last referendum had been conducted in 1923.

15.39 To date, Queensland has only held four State referendums. These were: the issue of religious education in State schools in 1910; the abolition of the Legislative Council in May 1917; the Brewing Manufacture (prohibition) referendums 1920-1923; and the four-year parliamentary terms referendum 1991. Only the 1910 referendum was passed by the people.

15.40 The referendum of 1910 was held under the provisions of the *Religious Instruction in State Schools Referendum Act 1908* which set out various appointments and procedures regarding the conduct of the referendum.

15.41 In 1917, the then Labor government of Queensland resolved, pursuant to the provisions of the *Parliamentary Bills Referendum Act 1908*, to hold a referendum on the question of abolishing the Legislative Council. 77.74% of Queensland electors went to the poll and of these 39% voted in favour of abolition and 61% voted against. In June 1919, the Labor government launched another campaign for abolition but failed to receive any further public support. In 1921, the government nevertheless abolished the Legislative Council (Parliamentary Papers 1922 (Qld), 3rd session of 22nd Parl. Vol I, pp.2-3).

15.42 A further State referendum is proposed for early 1992 to seek the views of electors on whether daylight saving should be introduced permanently.

CURRENT SITUATION

15.43 State referendums are held in Queensland pursuant to the *Referendums Act 1989*. The *Referendums Act* is designed to be read in conjunction with the current *Elections Act* and all relevant provisions relating to both elections and referendums are reiterated in the *Referendums Act* with minor modifications.

15.44 Referendums under the *Local Government Act 1936* are called polls, and are regulated by s.53 of that Act.

EVIDENCE AND ARGUMENTS

15.45 The Commission only received a few submissions on this issue.

(a) The National Party (S76) recommended that the Acts be kept separate. It was not necessary for the *Elections Act* to make reference to the *Referendums Act* regarding the conduct of referendums.

(b) Mount Isa City Council (S69) held that the *Elections Act* should make reference to the referendum legislation.

(c) *"On the information supplied that the Referendum Act 1989 mirrors the Act in nearly all provisions relating to definitions, conduct and procedure, it appears logical that it be consolidated with the Act to form a single Act."* (Boonah Shire Council (S68)).

15.46 The recent State referendum (March 23, 1991) on four year Parliamentary terms was held on the same day as the Queensland Local Authority elections. The referendum was defeated with 50.58% of electors voting against four year terms.

15.47 Concern was raised regarding the large number of informal votes in Local Authority elections conducted simultaneously on the day. The statewide average of informal votes was estimated to be double that of the 1988 Local Authority election, an increase from 4% to 8%, with some polls recording as many as 20% informal votes *(Courier-Mail,* 30 March 1991).

15.48 The difference in the voting systems operating for the Local Authority elections and the State referendum was thought to be a major factor contributing to the high number of informal votes. Voting in the referendum required electors to place a single tick within the "yes" or "no" box on the referendum voting slip. The Local Government election, on the other hand, required electors to place numbers within the boxes beside each candidate's name. Many votes were declared invalid because some electors placed a tick instead of a number in the box beside the candidate's name.

15.49 Under s.24 of the *Referendums (Machinery Provisions) Act 1984* (Cwlth), unlike the Queensland procedure, the voter is required to write "yes" or "no" in the space provided when voting in Commonwealth referendums. Section 93(8) of the same Act, however, provides that effect is to be given to the ballot-paper of a voter according to the voter's intention where the voter's intention is clear. Other Australian jurisdictions usually require the voter to write "yes" or "no" in the space provided.

15.50 The Commission received a number of submissions from Local Authorities on these issues.

15.51 With regard to the question of whether referendums should be held on the same day as State or Local Authority elections, many Councils submitted that State referendums related to State issues and should not be held in conjunction with Local Authority elections.

(a) *"Referendums should only be held on the same days as other elections, if the method of voting is the same."* (Kingaroy Shire Council (S91)).

(b) The Brisbane City Council (S88) suggested that State referendums could be held independently of elections or the Electoral Commission could *" ... implement better electoral education programs or uniform voting systems."*

(c) *" ... holding a Referendum in conjunction with the Local Authority election was a cost saving, however it was felt that being held in conjunction (with a State referendum) detracted from the main purpose of the elections, that is, the casting of votes for Councillors."* (Esk Shire Council (S87)).

(d) *" ... the encouragement through the Referendum voting procedures for voters to use ticks and crosses when indicating their choice for the position of Shire Chairman resulted in 9,793 informal votes being cast out of a total of 47,653 votes. This represented 20.55% of votes counted and it is estimated that approximately 70% of these informal votes were cast by voters using a tick in lieu of the figure 1."* (Pine Rivers Shire Council (S102)).

15.52 In summary, most of the Local Authority submissions recommended:

(a) Local and State issues should be kept separate and consequently State referendums should not be held in conjunction with Local Authority elections.

(b) If a State referendum is held on the same day as a Local Authority election, the SEO should provide better electoral education programs instructing electors as to the correct method of voting on the day, and there should be uniform voting procedures in operation for both the election and referendum.

(c) The method of voting for the referendum should not in any way serve to increase the informal vote for the Council election by virtue of requiring different marks to validate votes cast in the two types of election.

ANALYSIS OF EVIDENCE AND ARGUMENTS

15.53 As stated above, the *Referendums Act* follows closely the machinery provisions of the *Elections Act*. However, it also contains "stand alone" provisions relating to voting procedures. It should be noted that the Draft Bill appended to this Report alters the voting procedures to be following in State Legislative Assembly elections.

15.54 The Commission considers that, at the present time, the *Referendums Act* should remain a separate Act. This, however, should be reviewed by the Electoral Commission following the forthcoming referendum on daylight saving.

15.55 The concerns raised by the various Local Authorities in relation to the conduct of the referendum in March of this year highlighted the difficulties that occur when referendums are conducted simultaneously with elections.

15.56 The problems are magnified when the concurrent election and referendum use differing voting systems as was the case in Queensland this year.

15.57 However, whilst mindful of these concerns, the Commission is also aware that elections, be they State or Local Authority, can present an ideal opportunity to obtain at the same time and little additional cost, public opinion by way of a referendum.

15.58 Cost savings and elector convenience are major benefits from conducting joint elections/referendums.

RECOMMENDATION

15.59 **The Commission recommends that, whilst the holding of referendums simultaneously with elections should not be precluded in the future, the problems that occurred in the Local Authority Elections in Queensland and the New South Wales State elections this year should be borne in mind.**

Production of Election Material on Recycled Paper

Issue 8 Should the Electoral Commission use recycled paper for the production of its electoral material?

CURRENT SITUATION

15.60 Over recent years there has been a growing public concern over the amount of paper used to produce electoral material such as ballot-papers and how-to-vote cards and an increasing public interest in environmental issues such as recycling and waste management.

15.61 Approximately one-third of the 2.8 million tonnes of paper products consumed annually in Australia are recovered and recycled. The vast majority of this (750,000 tonnes) is used for packaging and industrial paper with a utilisation rate of about 68% (*Industry Commission 1990*, p.9).

15.62 About 35,000 tonnes of recycled waste paper a year are used in the production of printing and writing papers with a utilisation rate of about 6%. The low utilisation rate can be attributed to the degradation of fibres during reprocessing which limits the use of waste paper in this area, although printing and writing papers are in demand for recycling into other paper products (*Industry Commission 1990*, p.9).

15.63 In Chapter Seven of this Report, the Commission recommended that disposable ballot-boxes and voting compartments be introduced for Queensland elections (para. 7.199). This will result in an increase in the amount of paper and cardboard used for electoral purposes. Waste paper can effectively be reprocessed into cardboard of a quality suitable for use in the construction of voting compartments and ballot-boxes.

EVIDENCE AND ARGUMENTS

15.64 Most submissions dealing with this issue were in favour of the QEC producing electoral material on recycled paper; in one of these submissions however, it was noted that regardless of the merits of producing electoral material on recycled paper, the issue was not relevant to a review of the *Elections Act*. Nonetheless, the issue is an administrative matter relating to the operations of the Electoral Commission and hence falls within the ambit of this review.

15.65 The Commission also received a number of submissions which expressed concern about the amount of paper used in the production of how-to-vote cards which are thrown away after voting. It was suggested in Chapter Eight that how-to-vote cards could be placed in bins situated at polling-booths which could then be collected for recycling. This would also reduce the incidence of littering around the booth.

RECOMMENDATION

15.66 **The Queensland Electoral Commission should use recycled paper wherever possible for the production of electoral material. This is an administrative matter which need not be included in the Draft Bill.**

Local Authorities and Community Councils

Issue 8 What responsibilities should the Electoral Commissioner have in respect of the conduct of LA elections and other electoral matters?

Issue 9 What responsibility should the Queensland Electoral Commission have in respect of LA boundaries?

Issue 10 How can voting and scrutiny procedures for LA elections be improved?

CURRENT SITUATION

15.67 On 11 April 1991 Parliament resolved that the functions of the QEC were to include:

> *"(i) as permitted by or under an act, conducting:*
>
> . *local government elections; and*
>
> . *the redistribution of ward and division boundaries ... "*

15.68 Currently the conduct of Local Authority elections is regulated by the *Local Government Act 1936-1990* and the *City of Brisbane Act 1924-1990.* The Third Schedule of the *Local Government Act* sets out the rules for all Local Authority elections other than for the City of Brisbane. The rules set out in the schedule are based largely on the Elections Act. The *Community Services (Torres Strait) Act 1984 - 1986* and the *Community Services (Aborigines) Act 1984-1986* refer to the conduct of community elections. Regulations to each of these Acts stipulate that the procedures outlined in the *Local Government Act 1936-1991* are to be utilised for Community Council elections. Section 17(6) of the *City of Brisbane Act* specifies that the provisions of the *Elections Act* will apply to Brisbane City Council elections. Also s.16(3) appoints the Town Clerk as CRO for Brisbane City Council elections, and s.16(4) requires the Town Clerk to appoint ROs for each Brisbane City Council ward with the proviso that an RO for a council ward must also be an RO for a State electoral district.

15.69 Differing legislative provisions result in differences in the conduct of Brisbane City Council elections and elections for other Local Authorities in Queensland. For example, on polling-day Brisbane City electors can obtain an absent vote for any Brisbane City Council ward whereas there is no such provision for absent votes on polling-day inside or between other Local Authorities. Another difference is that 10 days are allowed for the receipt of postal votes in Brisbane City and only seven days in other Local Authorities.

15.70 The question of ROs and the need for external review of local government electoral standards has already been dealt with in EARC's Report on the *Local Authority Electoral System of Queensland* (September 1990). The relevant recommendation was:

> *"The Commission recommends that the present practice of town/shire clerks conducting elections continue. The Commission further recommends that there should be provision for an officer supplied by the State Electoral Office to act as a returning officer where -*
>
> *(a) the clerk is unable to perform the relevant duties for workload reasons; or*
>
> *(b) the clerk is in a conflict of interest situation.*
>
> *The current arrangements for Brisbane should continue."* (pp. 97-98).

15.71 Also in its Report on the *Local Authority Electoral System of Queensland* (September 1990), EARC recommended that Local Authorities should adopt one of the following three voting systems to return individual councillors:

(a) Optional preferential voting (OPV) for members in Local Authorities which are divided into single-member divisions.

(b) First-past-the-post voting for members in Local Authorities with multiple member or mixed (ie. both single and multi-member) divisions.

(c) Proportional representation using the Hare-Clark system for members in undivided Local Authorities with electors being required to indicate at least as many preferences as there are vacancies to be filled.

(d) In the case of mayors or chairman, the system recommended was either first past the post, where used for election of members, or optional preferential in all other cases.

15.72 The Parliamentary Committee has accepted these recommendations on Local Authority voting systems. If the Parliamentary Committee's report is accepted by the Parliament, then Local Authorities will be able to either maintain their existing voting system or adopt one of the three models above.

15.73 Currently there are three voting systems in operation in Local Authorities:

(a) compulsory preferential,

(b) single member - first past the post,

(c) multi-member - first past the post.

15.74 In addition, some councils conduct the poll for one or more of their divisions by postal voting. The existing and proposed provisions are summarised in Table 15.1.

TABLE 15.1

LOCAL AUTHORITY VOTING SYSTEMS

EXISTING PROVISIONS

Local Authority	**Divisional System**	**Voting System**	**Number of Councils**
Brisbane	Single Member	Preferential	1
Others	Multi-member or Undivided	First -Past-Post	123
	Single Member	Preferential	10

PROPOSED PROVISIONS

Local Authority	**Divisional System**	**Voting System**	**Number of Councils**
Brisbane	Single Member	Optional Preferential	1
Others:	Choose to maintain existing divisional and voting systems or adopt one of:		Unknown
	Single Member	Optional Preferential	Unknown
	Multiple or Mixed	First -Past-Post	Unknown
	Undivided	Hare-Clark	Unknown

Additionally, Governor in Council may direct Councils to conduct elections completely by postal voting.

15.75 The resolution of the Parliament of 11 April 1991 is in keeping with the recommendation of EARC in its *Report on the Local Authority Electoral System of Queensland* where it stated:

> *The Commission recommends that there be an independent body to review and monitor Local Government electoral and boundary (both internal and external) matters. The precise composition of this body will be developed, after appropriate public comment, in the course of the Commission's external boundaries review."* (p.104).

15.76 The current provisions for determining internal LA boundaries were described in detail in the Commission's *Report on the Local Authority Electoral System of Queensland* (Chapter Eight, pp.54-9). At present separate procedures apply for altering Brisbane City Council ward boundaries and divisional boundaries in other LAs. Brisbane boundaries are determined by Commissioners appointed by the Governor in Council. In other LAs the Governor in Council has the authority to determine divisional boundaries.

EVIDENCE AND ARGUMENTS

15.77 Public submissions from local authorities were mixed on the issue of QEC involvement in Local Authority elections.

(a) Councils supporting arguments in support of a role for the QEC in Local Authority elections included: Boonah Shire (S68), Ipswich City (S72), Miriam Vale Shire (S52) and Mount Isa City (S69).

(b) Councils arguing against a role for the QEC in the Local Authority elections included: Bundaberg City (S41), Crows Nest Shire (S38), Eidsvold Shire (S39) and Gympie City Council (S57).

(c) The Local Government Association (S96) stated:

> *"The Association does not believe the Electoral Commission should have any increased responsibility for Local Government Elections above that currently held by the State Electoral Office.*
>
> *The State Electoral Office is responsible for the preparation of voters rolls and this will need to continue given the enrolment procedures.*
>
> *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.*
>
> *The Issues Paper acknowledges the logistical nightmare involved if the Electoral Commission were to be involved in managing the elections of all local government councils.*
>
> *Common legislative requirements within the Elections Act and the Local Government Act will significantly reduce inconsistencies."*

(d) The Institute of Municipal Management (S86) argued that:

> *"It is the Institute's view that the Electoral Commission should act only as a co-ordinating body and adviser in the conduct of local government elections. The Institute wholeheartedly supports the recommendations of the Electoral and Administrative Review Commission in its report of September 1990 where it recommended that the present practice of town and shire clerks conducting elections continue subject to the proviso that the State Electoral Office could act as returning officer where:*
>
> *(a) the clerk is unable to perform the relevant duties for workload reasons, or*
>
> *(b) the clerk is in a conflict of interest situation.*

The Institute feels strongly that these arrangements are the most effective and that 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. In particular, the role of the Electoral Commission should encompass the following:

(a) Promulgation and maintenance of uniform electoral provisions for both State and local government elections.

(b) Maintaining communication with Returning Officers concerning developments in legislation and administrative practice in elections.

(c) Development and conduct of training courses on electoral procedures.

(d) Provision of resources for advice and assistance to returning officers in the conduct of the elections.

The Electoral Commission's role should not be extended to overall management of local government elections as there would be a propensity to increase the complexity of the administrative arrangements and increase bureaucratic requirements. As mentioned previously in the submission, the creation of additional levels of authority only increases both the cost and bureaucratisation of the process. It should be the Electoral Commission's task to see that confusion which currently exists amongst electors caused by different procedures is eliminated and that the voting system is made as simple and effective as possible."

15.78 The Parliamentary resolution was unclear on the nature and extent of the QEC's role in respect of determining LA internal boundaries. Submissions from LAs were mixed on the question:

(a) Submissions in favour of the QEC having responsibility for LA internal boundaries were from the Bundaberg City Council (S41), Ipswich City Council (S72) and the Mackay City Council (S73).

(b) Submissions which advocated that the QEC should have no responsibility for LA internal boundaries were: Eidsvold Shire Council (S39), Woongarra Shire Council (S46), Miriam Vale Shire Council (S52), Gympie City Council (S57) and Mt Isa City Council (S69).

(c) The Local Government Association (S96) stated that:

"The Association believes the QEC should have no responsibility for Local Government boundaries. The Association is strongly of the view that a separate body is necessary for Local Government boundary investigations and change.

The following extracts from previous submissions to EARC expand on this point:

"(1) Initial Submission - EARC Issues Paper No 2

Question 5: Should the current system of changing divisional boundaries be altered?

If so, in what respects?

COMMENT:

5.1 The Association believes the process of ongoing review and change of the local government electoral system should, as far as possible, be removed from direct political control.

5.2 The establishment of an independent specific purpose body to publicly investigate and determine boundary changes and related electoral issues is supported. The processes of this body must be open to the public. It is considered desirable that, as far as possible, this body also be given responsibility for final decisions within guidelines established by Parliament.

5.3 Such a body would, over time, develop a wide knowledge and understanding of local government electoral and boundaries issues thereby establishing a credibility and respect for its activities. Such a situation now exists in relation to the Local Government Grants Commission. Electoral matters are of such fundamental importance they should not be left to ad hoc bodies formed in response to a particular need.

5.4 The process of boundary review should be undertaken at the completion of every third term or sooner should the established criteria/tolerance levels be exceeded."

15.79 As to the massive workload involved, the Commission said in its *Report on Local Authority Electoral System of Queensland* (Report 90/R2):

> *"It needs to be borne in mind that Local Government elections in Queensland can involve up to 685 contests for up to 1,329 positions on one day. To pass the responsibility for the conduct of these elections to the State Electoral Office or an independent electoral commission may not be justified on the grounds of practicality, cost or efficiency."*

15.80 These figures do not include the 14 Aboriginal and 17 Torres Strait Community Councils, ie. the ultimate number of possible contests on the same day is 716 (ATSI chairmen are selected by the members of their councils). Even if the QEC could assemble the resources to perform this task (which is doubtful) the logistical problems would be horrendous.

ANALYSIS OF EVIDENCE AND ARGUMENTS

15.81 Whilst the Parliament has resolved that the QEC should conduct Local Authority elections, the Commission is uncertain as to the extent to which the QEC should be involved. Options available range from the QEC having total conduct of the elections to its having a supervisory role only.

15.82 The Commission considers that it would be impractical for the QEC to conduct Local Authority elections for a number of reasons including:

(a) The need to organise 134 Local Authority as well as 31 Community Council elections on one day.

(b) Although all the elections are held on one day, each election is a unique event. Therefore there is little that can be done to co-ordinate the elections across Local Authority and Community Council boundaries.

15.83 The drafting of new electoral legislation for the conduct of State elections will have a marked impact on legislation providing for Local Authority and Community Council elections. The attached Draft Bill for an *Electoral Act* contains significantly altered procedures for State elections.

15.84 As Local Authorities rely in various ways on the content of the Elections Act for the conduct of their elections, the Commission considers that the Local Authority legislation should be reviewed following promulgation of the new electoral legislation. It is impractical for it to devise detailed draft legislation at this point because the *Local Government Act* is currently under review by the Department of Housing and Local Government.

15.85 The Legislation Review Committee has recently furnished its Report into the management of Aboriginal and Islander Communities in Queensland (LRC, 1991). The recommendations in that Report will need to be considered in developing appropriate electoral systems for ATSI communities.

15.86 As to divisional boundaries for Local Authority elections the Commission does not consider it feasible or appropriate for the QEC to be involved. The principle of equal suffrage is now well established at Local Government level. Continuation of the existing mechanism of approval of divisional boundaries is appropriate.

RECOMMENDATION

15.87 **The Commission recommends that discussions be held between the Queensland Electoral Commission and the Ministers responsible for Local Government and for Aboriginal and Islander Affairs to determine the role of the Queensland Electoral Commission in relation to Local Authority and Community Council elections.**

15.88 **The Commission further recommends that those Ministers take action to amend the legislation administered by them to incorporate any provisions contained in the Draft Bill for an Electoral Act which would ensure consistency, as far as practicable, between State and Local Authority elections.**

Signatures on Claims and Forms

Issue 11 Should claimants/applicants be able to sign their name, or should a mark, duly witnessed, be accepted?

15.89 There are some inconsistencies in the Act in relation to signatures on various forms and applications. In s.26, any person meeting the enrolment qualification criteria is entitled to lodge a claim for enrolment. Any claim for enrolment (or transfer) must be on the prescribed form and be signed by the claimant and appropriately witnessed.

15.90 Under s.27 the PEO must enrol a claimant if the PEO is satisfied that the claimant is entitled to enrol. For the purposes of this section, if a claimant is unable to sign their name, the mark of the claimant is accepted if the claim has been properly witnessed.

CURRENT SITUATION

15.91 In relation to s.86, an application by an incapacitated voter for an Electoral Visitor vote is accepted if that voter is unable to sign the application, but is able to place their mark on the application. Also it is current practice that marks are accepted for absent voters, s.82, although there is no specific authorisation in the Act for this.

15.92 However, applicants for a postal vote under s.87 or a general postal vote under s.88 must be able to sign their names. (s.87(2), and s.88(11)(a)).

15.93 The reason why applicants for postal votes have to sign their name is that this signature is used as a check against fraud. The signature on the application is compared to the signature on the envelope forwarding the ballot-paper to the RO. The ballot-paper is accepted for scrutiny only if the RO is satisfied that the signatures are the same.

15.94 The situation in the CE Act is quite different. Section 336 of that Act provides that when an elector is unable to sign his/her name, a witnessed mark is acceptable:

> *"336. (1) Every electoral paper which by this Act or the regulations has to be signed by any person shall be signed by that person in his or her own handwriting.*

(2) Where a person who is unable to sign his or her name in writing makes a mark as his or her signature to an electoral paper, the mark shall be deemed to be that signature, if it is identifiable as such, and is made in the presence of a witness who signs the electoral paper as such witness:

Provided that nothing in this section shall authorize any person to sign any electoral paper by a mark or otherwise than in his or her own handwriting in cases where the Act or the regulations require that the electoral paper be signed in the persons' own handwriting.

(3) A person shall not make the signature of any other person on an electoral paper.

Penalty: $1,000.

(4) Sub-section (3) shall not affect the liability of any person to be proceeded against for forgery, but so that a person shall not be liable to be punished twice in respect of the same offence.

(5) In this section, "electoral paper" includes a prescribed form and an approved form.

EVIDENCE AND ARGUMENTS

15.95 The Commission received a wide range of views in public submissions.

15.96 A number of submissions argued in favour of accepting an elector's mark, duly witnessed:

(a) *"A major issue for some people with disability is the inconsistency within the Act and between Commonwealth and State procedures relating to signature.*

Where an applicant for enrolment is unable to sign their name but can make their mark, QAI believes that provisions in the Act should make it clear that a properly witnessed mark is acceptable. At common law such a form of signature is acceptable.

If the postal voting requirements are to be extended to cover some people with disability, then applicants for postal votes should also be able to sign by making a mark which is then appropriately witnessed. We strongly favour consistency within these provisions so that people who have sufficient understanding to exercise a vote should not be precluded from doing so by limitations in enrolment, and indeed in voting procedures." (Queensland Advocacy Inc. S84).

(b) *"A witnessed mark should be acceptable. A person can do anything else in life on the basis of a witnessed mark, except vote. Surely that is not acceptable in this day and age."* (Kingaroy Shire Council, S91).

15.97 The National Party (S76) advocated that a mark only be accepted if supported by identification:

"A mark, duly witnessed, should be accepted provided some means of identification is provided."

15.98 On the other hand, the Rockhampton City Council (S103) suggested that the current requirements be retained:

"The requirement for claimants/applicants to sign their name should be retained and there should be no change to the existing system."

ANALYSIS OF EVIDENCE AND ARGUMENTS

15.99 As outlined above, the only time that the current Act insists on a signature rather than a mark is for applications for postal and general postal votes. The signatures on the application and the postal vote certificate are then compared during the scrutiny to determine whether the vote should be admitted.

15.100 The Commission does not accept the argument that the signature of an elector voting by post is necessary as a protection against fraud. Ordinary voters do not need to provide any form of identification in order to obtain a vote and have that vote admitted. It is an imposition to require a very small proportion of declaration voters to meet an extra qualification in order to have their votes admitted. Moreover, it would be much easier for a person intent on electoral fraud to simply impersonate one or more electors on the roll or vote several times in his/her own name.

15.101 Also, as shown in Table 9.2 only 17,819 or 1.09% of all votes were cast at the 1989 State election under postal or general postal voting provisions. This compares with 131,654 absent votes and 24,787 Electoral Visitor votes at the same election where a mark witnessed by an electoral official would have been acceptable. This is an unjustifiable discrimination.

RECOMMENDATION

15.102 **The Commission recommends that if an elector is unable to sign his/her name, the mark of the elector, duly witnessed, should be acceptable for all claims and forms lodged with the Queensland Electoral Commission.**

15.103 These recommendations have been included in the Draft Bill, Part 9 s.179.

Disrupted Polling

Issue 12 Are the circumstances in which polling may be adjourned adequate?

Issue 13 Is the 36 day period allowed under s.66 of the Act (from the date named in the writ) for the holding of an election too long? Should a shorter adjournment period be prescribed?

CURRENT SITUATION

15.104 The Act makes provision for the adjournment of the poll by the presiding officer in the event of storm, tempest, flood, fire or like occurrence or where the poll is interrupted or obstructed by riot or open violence.

15.105 Section 65 of the Act sets out the procedures to be followed where the poll is disrupted or likely to be disrupted by storm, tempest, flood, fire and like occurrences. The language of s.65 is sufficiently wide to cover all natural disturbances or disasters.

15.106 Section 65 provides that:

> *"65. Adjournment of poll by presiding officer. (1) The presiding officer at any polling booth may adjourn the poll at that polling booth in any case where the taking of the poll is or is likely to be interrupted or obstructed by storm, tempest, flood, fire or other occurrence of a like nature.*

(2) Where a poll has been adjourned by a presiding officer other than a returning officer, the presiding officer shall forthwith give notice of the adjournment to the returning officer, and in any case the returning officer shall give notice of the adjournment to the chief returning officer.

(3) The returning officer shall not finally declare the state of the poll or the name of the member elected until the poll has been finally closed and the ballot-papers have been examined and counted by him as hereafter in this Act provided."

15.107 Section 92 of the Act provides for an adjournment of the poll by the presiding officer where the poll is interrupted or obstructed by any riot or open violence.

15.108 Provisions under the CE Act and legislation of other States are equivalent to the Queensland provisions regarding the circumstances in which polling may be adjourned. However, the legislative provisions of these jurisdictions tend to have a slightly wider application which allows an adjournment *"if for any cause or any other reason"* polling cannot take place on the day fixed for polling.

15.109 The Act provides for the adjournment until the following day and if necessary, further adjournment is allowed until the interruption or obstruction has ceased (s.92(b)).

15.110 The adjournment shall not be made to any day beyond the day named for the return of the writ and if the election has not been completed by that day, the RO is to return that fact (s.92(3)).

15.111 Where the poll is adjourned by the Presiding Officer who is not the RO, the Presiding Officer shall give notice of the adjournment to the RO who shall not declare the poll or the Member elected until the poll has been finally closed and the ballot-papers counted (s.92(4)).

15.112 Section 66 of the Act saves the election from being void where the poll is not taken on polling-day and empowers the CRO to appoint another day for polling not later than 36 days from the date named in the writ for the election. Public notice must be given of the new date for polling at that polling-booth and the poll on that date shall be deemed to have been taken on the first day appointed.

15.113 The CE Act makes similar provision for the adjournment of polling. However, the CE Act provides that the Presiding Officer may adjourn the polling for a period not exceeding 21 days (s.242).

15.114 Western Australia, Tasmania, New South Wales and South Australia, like the Commonwealth, provide that the period of adjournment shall not run for more than 21 days after the day appointed for the polling to take place.

EVIDENCE AND ARGUMENTS

15.115 This is a non-contentious issue, and is primarily a back-up provision to protect electors' right to vote in emergency situations. The most recent example of the use of these provisions was in the 1990 Federal election. In the Division of Kennedy and Herbert, polling was delayed for some days at several booths because local floods prevented voting on polling day.

15.116 Of the two submissions received on this issue (Mount Isa City Council (S69), and the National Party (S76)), both were of the opinion that the current provisions were adequate as to the circumstances in which polling may be adjourned. Both submissions further said that the 36 day adjournment period should be reduced to 21 days as specified under the CE Act.

ANALYSIS OF EVIDENCE AND ARGUMENTS

15.117 The Commission considers this an important provision, although it is rarely used. Although the only submissions received on the matter suggested the circumstances for delaying polling were adequate, widening the provision to include the phrase *"if for any reasonable cause"*, would confer a clear general authority to electoral officials, and should be included in the new Act.

15.118 The major principles here are the maintenance of electors' right to vote, and the need to finalise elections as quickly as possible. Twenty-one days is ample time for an emergency to pass and conditions to return to a situation when polling can resume. The period allowed in the legislation to finalise disputed polling should therefore be reduced to 21 days.

RECOMMENDATIONS

15.119 **The Commission recommends that the circumstances in which polling may be deferred be widened to include "if for any reasonable cause", and that the maximum period of deferral be reduced to 21 days.**

15.120 These recommendations have been included in the Draft Bill, Part 6 s.82.

Security

Issue 14 Should the Act contain specific provisions regarding the security of ballot-papers? If so, what parts of the electoral process should be addressed?

Issue 15 Should the Act make provision for dealing with or disposing of ballot-papers which have not been filled out or dealt with in the manner prescribed under the Act and which have been left in the polling-booth?

Issue 16 Should election returns show the number of ballot-papers issued at each polling-booth and the numbers accounted for as cast, spoilt and missing?

CURRENT SITUATION

15.121 The security of ballot-papers needs to be considered from the time the ballot-papers are manufactured until they are placed in storage following the declaration of the results of an election. Ballot-paper security must be maintained to ensure that a valid and accountable election is conducted.

15.122 The present Act contains no provisions explicitly regarding the security of ballot-papers. However, the Act sets out various procedures which operate to reduce the likelihood of interference with ballot-papers.

15.123 On the actual day of polling, scrutineers have the right to be present in the polling-booth at any time during the hours of polling and inspect the ballot-box before it is locked and sealed to receive ballot-papers (ss.70(5), 71, 85). Similar scrutiny provisions apply with regard to declarations made under ss.45, 74, 81, 82 and 82A (see Chapter Eight).

15.124 On the polling-night scrutineers may be present at, and observe, the counting of ballot-papers and may countersign the returns. Furthermore, scrutineers may be present after polling-day at the RO's counting centre to observe the checking and counting of ballot-papers (see Chapter Ten).

15.125 Section 107 of the Act makes provision for the sealing, storage and disposal of ballot-papers. Within 30 days after the day nominated for the return of the writ, the ballot-papers and declarations should be sealed, labelled and stored at Parliament House by the Clerk of Parliament for a two year period. The ballot-papers can be released from storage during this period pursuant to a Court order, or if requested to do so by the police or the Elections Tribunal (see Chapter Ten).

15.126 Section 96 deals with polling in remote areas where an Assistant Returning Officer has been allocated more than one polling-booth. Upon completion of polling, the Presiding Officers parcel up the unopened ballot-box, the roll and the votes set aside for separate custody (spoilt ballot-papers) and deliver same to the Assistant Returning Officer who counts the votes for each booth, puts them together and forwards them to the RO conducting the count for that district (see para. 10.6).

EVIDENCE AND ARGUMENTS

15.127 Concern regarding the security of ballot-papers in polling-booths has been raised in recent years. Allegations have been made that ballot-papers left lying in voting compartments, on floors and in bins located at polling-booths have been filled out by persons other than the person to whom the ballot-paper was originally issued. The Act does not address the procedures to be followed to avoid this happening. Specifically, should polling officials check the floors and bins for unused ballot-papers and deal with them in a prescribed manner, or alternatively only concern themselves with the ballot-papers actually deposited in the ballot-box.

15.128 Although it is presumably the practice of ROs to securely store ballot-papers during the ROs' scrutiny, the standard of security is not stipulated in the Act. A recent case in Queensland (the Nicklin Petition) revealed that ballot-papers were left unguarded overnight in a room at a Court House.

15.129 Only a small number of submissions received addressed the issue of security. The National Party (S76) suggested that: the security of premises where ballot papers were not sealed in envelopes was a concern; that provision should be made in the Act for dealing with ballot papers left in the booth; and that election returns should account for ballot papers cast, spoilt and missing.

15.130 P Soper (S78) also stated that security was a particular concern:

> *"Overnight sealing and security of ballot papers should be a top priority. We have been disturbed by reports of scrutineers apparently being told they would not be required the next day (Sunday) only to find out later that counting had continued on that day."*

15.131 The Kingaroy Shire Council (S91), although primarily concerned with Local Authority elections, argued that security was best left to be arranged at the local level.

> *"This matter is referred to, as any provisions in the State Elections act are likely to flow over into Local Government. In this regard it is believed that all security matters should be left to be dealt with locally. If they are dealt with in the Act, then measures which are adopted for Brisbane will apply to Bourke and will impose unwarranted requirements and cost on such areas. Only one case of a security problem has received any publicity for many years. Thus there would hardly seem to be a problem requiring legislation relating to the whole of Queensland."*

15.132 At the meeting of ROs convened by the Commission on 28 November 1990, all ROs reported that in their experience there had been no known breaches of security.

ANALYSIS OF EVIDENCE AND ARGUMENTS

15.133 Apart from the information which became available during the hearing of the petition in relation to Nicklin following the last general election, the Commission is not aware of any breaches of the security of ballot papers in recent times. In the Nicklin case, the only evidence available is that the ballot papers were left unattended on two occasions; once at the ROs counting centre overnight; and once during the hearing of the petition in a room that was either unlocked, or unlocked by cleaners during the night, at the Supreme Court. Even in this case there was no evidence whatsoever that the papers were interfered with.

15.134 The best way to ensure that the integrity of the system is maintained is to provide that candidates or the scrutineers they appoint are entitled to be present during all stages of polling and the scrutiny. Any interference with ballot papers would therefore come to notice quite quickly. In these circumstances, it is best to leave security arrangements for ballot-papers to the QEC, rather than specifying them in the Act.

RECOMMENDATION

15.135 **The Commission recommends that the Queensland Electoral Commission should have discretion to make security arrangements for ballot-papers that it considers appropriate. There is no need to incorporate such a duty in the proposed Bill.**

Casual Vacancies/By-Elections

Issue 17 Should the Act contain or make reference to the provisions currently under the Legislative Assembly Act relating to the filling of casual vacancies and the holding of by-elections?

Issue 18 Should by-elections be held to fill casual vacancies arising in the Legislative Assembly? If so, should there be a specified period after the vacancy arises, in which the by-election must be held?

Issue 19 Would a system of filling vacancies with persons nominated by the party to which the vacating member belonged, be a more appropriate method of filling vacancies?

INTRODUCTION

15.136 From time to time, by-elections are held to fill vacancies arising in the Legislative Assembly in Queensland. Some Australian jurisdictions do not require a by-election to be held every time there is a vacancy. Alternative means of filling the vacancy, especially for multiple-member electoral districts, include recounting the votes from the last election in that district, or nomination of a person by the party to which the vacating member belonged.

CURRENT SITUATION

15.137 Provisions relating to casual vacancies in the Legislative Assembly and the holding of by-elections are to be found in the Act and the *Legislative Assembly Act*.

15.138 The *Legislative Assembly Act* provides that the Governor is to issue writs:

> *" ... for the purpose of every general election of members to serve in the Assembly and also in the case of any vacancy of a seat by death, written resignation to the Governor or otherwise after such general election and before the meeting of Parliament the writs for the several electoral districts shall be issued by the Governor."* (s.9).

15.139 The *Legislative Assembly Act* empowers the Speaker to issue the writ for the election when the Assembly is not in session or when such vacancy occurs during any adjournment for a longer period than 7 days (s.10). In the event of there being no Speaker or if the Speaker is absent, the Governor, if satisfied of such vacancy, may issue the writ (s.11).

15.140 The issue of the writ may be deferred where a vacancy occurs by reason of the resignation of a member to contest a Commonwealth election. In this instance, Members are required to resign their seat not later than 21 days before the issue of the writ for the Commonwealth election and notify the Speaker at the time of tendering the resignation, their intention to seek such election.

15.141 Furthermore, Members must notify the Speaker of their intention, in the event of failing to secure such election, to become a candidate for the vacancy occurring pursuant to their resignation (s.8A). If the above requirements are satisfied, the issue of the writ shall be deferred until the Member is either elected to either House of the Parliament of the Commonwealth or is not elected or does not consent to nomination within the time specified (s.8A).

15.142 The Act makes no provision as to when by-elections should be held. Section 46 of the Act provides that in the case of a by-election, upon the issue of the writ by the Speaker, the writ shall be sent by the Speaker direct to the appropriate RO.

15.143 Without provision of a time period in which a by-election can be delayed until a time that is politically advantageous and the electors in the interim are deprived of representation.

EVIDENCE AND ARGUMENTS

15.144 A number of submissions argued strongly for a system where casual vacancies in the Assembly were filled by re-examining the votes cast in the district concerned at the previous general election:

(a) *I SUPPORT THE SITUATION OF A "NO" BY-ELECTION SYSTEM. Reasons are as follows: At State election time the candidates and electors know that the result will stand for the FULL TERM of parliament. At present elected members are able to quit without fulfilling their responsibilities to the electors. Also electors vote at a State election for a particular party and then at a by-election some voters change their support. This causes very unstable Government. The cost of holding by-elections is also causing great public concern. State elections are expensive let alone the added burden of by-elections. To support this argument please check the number of By-elections during the last 3 complete terms.*

Where death, physical or mental disability occurs, then the member is replaced by a nominated party member. If an independant member needs replacing then the result from the previous State Election should be found and the position given to the candidate coming second at that time ." (O Yates S48).

(b) *Casual Vacancies should be filled by re-examining the votes, retained from the previous general election, that elected the vacating candidate and declaring elected the candidate that receives an absolute majority of the next available preference votes. Such a method is used in Tasmania with multi-member electorates.*

This method should be extended to single-member electorates as it is important to preserve the opinions of the electors as expressed at a general election until the next general election. To hold a by-election allows only a small proportion of the voters in the State to express an opinion later and separate to the rest of the State which can unduly influence future political outcomes (such an influence is doubly bad if the casual vacancy has been politically manipulated). The alternative of allowing political parties to nominate replacements is undemocratic as it means the replacements are not directly elected by the people." (Electoral Reform Society of South Australia (S65)).

15.145 On the other hand a number of submissions argued that by-elections for vacancies should be retained.

(a) *As Queensland is retaining single member electorates, we would strongly oppose any suggestion that mid-term vacancies should be filled by a method other than by-elections. Methods such as appointing a member of the same party to fill a vacancy could be readily abused by political parties and should not be considered."* (Australian Democrats (S62)).

(b) *Should by-elections be held to fill casual vacancies arising in the Legislative Assembly? If so, should there be a specified period after the vacancy arises, in which the by-election must be held?*

(a) Yes

(b) Yes

Would a system of filling vacancies with persons nominated by the party to which the vacating member belonged, be a more appropriate method of filling vacancies?

No." (National Party (S76)).

ANALYSIS OF EVIDENCE AND ARGUMENTS

15.146 In relation to whether provisions for by-elections should be contained in the Legislative Assembly Act or the Electoral Act, two things need to be considered. Firstly, there are the circumstances through which the vacancy arises, and secondly the arrangements for the by-elections. The Commission considers that it is most appropriate for the Legislative Assembly Act to specify circumstances through which a vacancy arises, eg. death or resignation of a member, disqualification, etc. The arrangements for the by-election, including the issue of the writ properly belong in the Electoral Act however.

15.147 The Commission considers that casual vacancies should continue to be filled by by-elections. This is the accepted method in all single member district systems in Australia. The Commission is aware that by-elections impose significant costs on both the public purse and political parties. However in a democratic system the electors should decide directly who is to represent them wherever possible.

15.148 The question of the issue of writs for by-elections was previously addressed in Chapter Seven, Preparations for Elections. In that chapter it was recommended that the Speaker issue writs for by-elections, and in the absence of a Speaker, the Governor should issue the writ. In relation to the timing of by-elections after a vacancy occurs, it has been traditional practice in Westminster systems that the Government of the day determines when by-elections, are to be held. This practice should continue.

RECOMMENDATION

15.149 **The Commission therefore recommends that:**

(a) Provisions for by-elections, (including the issue of the writ), should be contained in the Electoral Act, while the circumstances which determine when a vacancy arises should continue to be in the Legislative Assembly Act.

(b) Casual vacancies should continue to be filled through by-elections.

(c) The timing of by-elections should continue to be determined by the Government of the day.

15.150 These provisions have been included in Part 6 ss.78 and 79 of the Draft Bill.

OTHER ACTS AFFECTED

15.151 The proclamation of the new Electoral Act will have an effect on a number of existing Acts namely -

(a) Elections Act 1983-1991 (Qld)

(b) Referendums Act 1989

(c) Local Government Act 1936-1990

(d) Community Services (Aborigines) Act 1984-1986

(e) Community Services (Torres Strait) Act 1984-1986

(f) Industrial Relations Act 1990

(g) Legislative Assembly Act 1867-1978

(h) City of Brisbane Act 1924-1990

(i) Justices of the Peace Act 1975

(j) Jury Act 1929-1990

(k) Criminal Code

(l) Traffic Act 1949-1990

(m) Police Service Administration Act 1990

(n) Criminal Justice Act 1989-1990

15.152 The new electoral legislation needs to make provision for persons appointed as electoral officials under the present Act to be taken, for the purposes of the new Act, to have been appointed under the new Act. Electoral officials in respect of whom the new Act will have to contain provisions to include the Electoral Commissioner, Electoral Registrars and Returning Officers. Provision also has to be made for the continuance of the Joint Roll Arrangement with the Commonwealth established under s.29A of the present Act.

15.153 The *Referendums Act 1989* (Qld) is closely linked to the present Act. Most of the provisions in the *Referendums Act* are substantially the same as those in the Act and the electoral officials administering referendums are the same as those appointed under the Act. Disputes concerning referendums are presently heard by the Elections Tribunal established under the *Elections Act*. With the establishment of the Court of Disputed Returns and abolition of the Elections Tribunal, provisions will need to be made for the Court of Disputed Returns to hear referendum disputes. The substantial changes to many of the provisions in the current Act will make it necessary to overhaul the Referendums Act if it is intended that its provisions should mirror current electoral legislation.

15.154 Minor changes are needed to the *Local Government Act 1936-1990* (Qld). The majority of these changes appear in the definition section of the Act where references are made to the *Elections Act 1983*, certain electoral officials and electors. The Third Schedule of the Local Government Act which contains rules for the conduct of elections is fairly self-contained and would not appear to need many amendments as a result of the new Act.

15.155 However if it is decided that the provisions concerning the conduct of elections in the Third Schedule should reflect the new provisions of the *Electoral Act* much more extensive changes will be required. The extent to which changes to the *Local Government Act* should be made should be the subject of a further investigation by the Department of Housing and Local Government.

15.156 The *Community Services (Aborigines) Act 1984-1986* (Qld) and the *Community Services (Torres Strait) Act 1984-1986* (Qld) will not be directly affected by the new legislation since Community Council elections follow Local Authority election procedures as outlined in the *Local Government Act 1936-1990* (Qld). As noted above, the recommendations of the Legislation Review Committee will need to be considered in this context.

15.157 Minor changes need to be made to the *Industrial Relations Act 1990* (Qld). Section 13.41 provides that an industrial organisation or branch thereof may request the Industrial Registrar to hold an election pursuant to the provisions set out under s.13.41 which state that the Registrar may:

> *"(ii) make arrangements with the Principal Electoral Officer within the meaning of the Elections Act 1983-1989 for the conduct of the election by the Principal Electoral Officer or by a Returning Officer within the meaning of that Act."*

15.158 The reference to the "Principal Electoral Officer" will have to be changed to "Electoral Commission" under the new *Electoral Act.*

15.159 The *Legislative Assembly Act 1867-1978* (Qld) will have to be amended to reflect the recommendations made in Chapter Fourteen of this Report in relation to the vacating of seats of Members of the Legislative Assembly. In Chapter Fourteen the Commission recommended that persons be disqualified from being elected or sitting as a Member of the Legislative Assembly upon being found guilty of committing an electoral offence.

15.160 It is appropriate that the *Legislative Assembly Act* continue to make reference to the number of Members constituting the Assembly and that each Member is to represent one of the 89 electoral districts.

15.161 Sections 9, 10 and 11 of the *Legislative Assembly Act* make provisions regarding the issue of writs for elections. These matters should be removed from the *Legislative Assembly Act* and equivalent provisions inserted in the new *Electoral Act* in the Part dealing with writs for elections.

15.162 Minor changes are needed to the *City of Brisbane Act 1924-1990* (Qld) which states that Brisbane City Council elections shall be conducted in accordance with the *Elections Act 1983-1991* and that the SEO/PEO are required to provide and maintain rolls for its elections. The reference section would need to be changed to refer to the *Electoral Act 1992*, the Electoral Commission. The SEO/PEO currently assist other Local Authorities and Community Councils with the preparation of rolls for elections, as required by s.7(7)(iii) of the Local Government Act.

15.163 Section 21 of the *Justices of the Peace Act 1975* (Qld) requires the PEO to note on the electoral roll the initials JP after the name of the approved Justices of the Peace. This allows the electoral district roll to be used to find a local Justice of the Peace. This section would only need substitution of the words "Electoral Commission" for PEO.

15.164 Section 12 of the *Jury Act 1921-1990* (Qld) requires the PEO to make available to the Sheriff electoral information obtained in the course of administration of the *Elections Act 1983-1991*. Under s.14A the Sheriff must advise the PEO of any names to be struck out of the list of potential jurors because of information obtained by the Sheriff. The PEO is also required to note on the roll all potential jurors who are excused from service for a given period. Again, references to the existing Act and the PEO will have to be changed to the *Electoral Act 1992* and the Queensland Electoral Commission, respectively.

15.165 Sections 98-117 of the Criminal Code deal with electoral offences and ss.586 and 587 deal with summary proceedings for electoral offences. In Chapter Fourteen, the Commission has recommended that the Criminal Code provisions relating to electoral offences be repealed for the purposes of Legislative Assembly elections. The offence provisions in the Code, however, apply to "any election held under the authority of any Statute providing for the choice of persons to fill any office or place of a public character" (s.98 Criminal Code). This definition will need to be modified to exclude Legislative Assembly elections.

15.166 The *Traffic Act 1949-1991* (Qld) and Regulations contain general provisions relating to advertisements and handbills. Clauses 8(e) and 8A of the Schedule empower the Governor in Council to make regulations regarding:

> *"The passage on roads of persons, vehicles, or animals carrying any advertisements, placard, board, notice, or sign, and the throwing or distributing of handbills or other printed or written matter in or on roads or from any place where such handbills or other printed or written matter may fall in or on a road;" and*
>
> *"Prohibiting or regulating and controlling the constructing, making, marking, placing, erecting, or painting, as the case may be, of advertisements, placards, boards, notices, lights, and signs on the surfaces of roads or, when danger to traffic may result therefrom, in, on, or near roads."*

15.167 The Regulations under this power are general and do not pertain specifically to electoral advertisements or handbills; therefore they need not be amended as a consequence of the recommendations in this Report.

15.168 Section 120 of the Act provides that:

> *"Any stipendiary magistrate, clerk of the court or member of the police force who, during the time he continues in such office and as a consequence of being in such office, by word, message, writing or in any other manner endeavours to persuade any elector to give, or dissuade any elector from giving, his vote for any candidate or endeavours to persuade or induce any elector to refrain from voting at any election is guilty of an offence."*

15.169 The Queensland Police Service (S98) submitted:

> *"Section 120 of the Act is now clearly inappropriate as it refers to matters which are now the subject of Official Misconduct under s.2.23 of the Criminal Justice Act 1989 and the Queensland Police Service Code of Conduct pursuant to s.4.9 of the Police Service Administration Act 1990. Given this situation, the Queensland Police Service is of the view that the provisions of s.120 should be removed from any 'new' Elections Act."*

15.170 It is appropriate that s.120 be omitted from the new Act and that actions by police officers in relation to elections be left to the disciplinary measures contained in the *Criminal Justice Act 1989* (Qld) and *Police Service Administration Act 1990* (Qld).

15.171 So far as practicable at this stage, the above consequential repeals and amendments are contained in Part 10 of the Draft Bill.

CHAPTER SIXTEEN

SUMMARY OF RECOMMENDATIONS

Introduction

16.1 In the course of the Report, the Commission has made a number of recommendations relating to its Review of the Elections Act 1983-1991 and Related Matters. These recommendations have been drawn together below to provide a summary list.

CHAPTER THREE: ELECTORAL ADMINISTRATION

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. (para.3.31).

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. (para.3.34).

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*. (para.3.35).

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.** (para.3.41).

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. (para.3.51).

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.** (para.3.60).

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.** (para.3.70).

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. (para.3.71).

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.** (para.3.79).

CHAPTER FOUR: REGISTRATION OF POLITICAL PARTIES, AND INDIVIDUAL CANDIDATES

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. (para.4.21).

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. (para.4.40).

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

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

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.

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. (para.4.65).

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. (para.4.75).

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.** (para.4.83).

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

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.** (para.4.100).

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.** (para.4.107).

CHAPTER FIVE: ELECTORAL ROLLS AND ENROLMENT

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.** (para.5.19).

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". (para.5.25).

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

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. (para.5.31).

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.** (para.5.62).

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.** (para.5.68).

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.** (para.5.81).

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. (para.5.88).

CHAPTER SIX: DETERMINATION OF ELECTORAL DISTRICT BOUNDARIES

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. (para.6.25).

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. (para.6.35).

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. (para.6.43).

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. (para.6.51).

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. (para.6.67).

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. (para.6.77).

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. (para.6.87).

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. (para.6.94).

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. (para.6.97).

CHAPTER SEVEN: PREPARATIONS FOR ELECTIONS

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. (para.7.16).

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. (para.7.38).

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.** (para.7.60).

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.** (para.7.94).

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.** (para.7.144).

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.** (para.7.153).

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.** (para.7.160).

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. (para.7.166).

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.** (para.7.176).

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. (para.7.203).

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.** (para.7.255).

CHAPTER EIGHT: ORDINARY VOTING

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. (para.8.10).

The Commission recommends that there should be no requirement for electors to produce personal identification at the time of voting. (para.8.22).

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. (para.8.31).

The Commission recommends that there should not be a requirement for officials to initial or sign ballot-papers when they are issued. (para.8.39).

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. (para.8.51).

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. (para.8.86).

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. (para.8.100).

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. (para.8.114).

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. (para.8.130).

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. (para.8.147).

CHAPTER NINE: EXTRA-ORDINARY VOTING

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. (para.9.19).

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. (para.9.38).

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. (para.9.54).

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. (para.9.64).

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. (para.9.85).

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. (para.9.106).

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. (para.9.122).

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. (para.9.138).

The Commission recommends that provision should be made for electors who have apparently already voted to be included in declaration voting procedures. (para.9.147).

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. (para.9.165).

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.** (para.9.181).

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. (para.9.191).

CHAPTER TEN: SCRUTINY AND DETERMINATION OF RESULTS

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.** (para.10.25).

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.** (para.10.42).

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.** (para.10.53).

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.** (para.10.64).

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.** (para.10.77).

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. (para.10.91).

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. (para.10.115).

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. (para.10.127).

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.** (para.10.138).

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. (para.10.152).

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. (para.10.168).

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. (para.10.176).

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. (para.10.187).

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. (para.10.203).

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. (para.10.218).

The Commission therefore recommends that:

(a) **Controls over political advertising be established to prevent misleading or false advertising which may adversely affect political parties and individual candidates. These controls should apply to both electronic and printed advertisements.**

(b) **A ban should be placed on advertising of a political nature by government agencies during the State election period unless such advertising falls within the Commonwealth's exemption categories and was agreed to by the leaders of the Parliamentary parties.** (para.11.33).

The Commission recommends that:

(a) **The definition of "electoral matter" should include anything able to, or intended to -**

(i) **influence an elector in relation to voting at an election; or**

(ii) **affect the result of an election.**

(b) **The definition should include a further definition which relates to "political advertisements."** (para.11.47).

The Commission recommends that:

(a) **Electoral commentary in newspaper editorials, similar publications or otherwise should not be regarded as political advertising and should not be subject to legislative control.**

(b) **The definition of political advertising adopted for Queensland legislation should expressly exclude editorials and political commentary articles published in newspapers and journals or otherwise.** (para.11.57).

The Commission recommends that while current legislation is generally regarded as adequate, provision should be made to deal with advertising that may be false or misleading and including a remedy for threatened breaches of the legislation. (para.11.65).

The Commission recommends that:

(a) **Section 106 of the Criminal Code which requires the printer's name and place of business to appear on electoral matter should be repealed for Legislative Assembly elections and a similar section inserted into the new Electoral Act.**

(b) **Provision should also be made to exempt certain articles such as car stickers, T-shirts, lapel buttons and badges, pens, pencils, balloons, etc. from the authorisation requirements of the Act.**

(c) **Penalties for misleading advertising should be increased to that equivalent to 20 penalty units for an individual and 100 penalty units for a body corporate.** (para.11.79).

The Commission recommends that advertising by third party organisations should be subject to the same controls as apply to political parties and candidates. (para.11.84).

The Commission recommends that:

(a) **Current provisions regarding misleading advertising should be enhanced by the insertion into the proposed Electoral Act of a section similar to Section 105(4) of the Criminal Code which prohibits the publication of any false statement in respect of the personal character or conduct of a candidate which may affect the return of such candidates at an election.**

(b) **Penalties should be similar to those recommended by the JSCEM.** (para.11.96).

The Commission recommends that its proposed legislative controls on political advertising should also apply to Local Government and Community Council elections. (para.11.101).

CHAPTER TWELVE: ADMINISTRATIVE APPEALS

The Commission recommends that:

(a) **The current administrative decisions under the Act from which a person may lodge an appeal should be retained and the class of decisions which may be appealed should be expanded to include:**

  (i) **a decision by the Electoral Commission as to the registration of a political party;**

  (ii) **a decision to refuse a request by an elector to have their address not shown on the electoral roll; and**

  (iii) **a decision concerning whether an elector has failed to vote without a valid and sufficient reason.**

(b) **The Magistrates Court should be empowered to hear administrative appeals under the Act. Appeals in relation to decisions by the Electoral Commission as to the registration of political parties should be heard by a Judge of the Supreme Court.**

(c) **The current one month period prescribed by the Act in which a person may lodge an appeal should be retained.** (para.12.19).

CHAPTER THIRTEEN: DISPUTES AND PETITIONS

The Commission recommends:

(a) **The Elections Tribunal should be abolished and the Supreme Court sitting as the Court of Disputed Returns should be empowered to hear electoral disputes and petitions.**

(b) **The Court of Disputed Returns should be constituted by a single Judge of the Supreme Court.**

(c) **The Court should be empowered to make rules of court not inconsistant with the Electoral Act and should be guided by the substantial merits and good conscience of each case without regard to legal forms or solemnities. The Court should not be bound by the rules of evidence.** (para.13.51).

The Commission recommends the current grounds upon which a person may lodge a petition are adequate. However, the language of the Act should be simplified in accordance with equivalent provisions of other Australian jurisdictions. (para.13.61).

The Commission recommends the current provisions of the Act should be extended to allow the Electoral Commission to file a petition with the Court of Disputed Returns and be represented and heard in any proceedings before the court, and to be deemed to be a party respondent to any petition filed in the court. (para.13.71)

The Commission recommends:

(a) **The security for cost required to be paid into court when the petition is filed, should be forfeited if the petitioner does not proceed without sufficient cause.**

(b) **The security should be set at the present amount of $400.** (para.13.85).

The Commission recommends:

(a) **Any petition must be filed with the Supreme Court within seven days after the day of the return of the writ.**

(b) **The petitioner be required to serve a copy of the petition upon the Member declared to have been returned, if any, the RO of the electoral district and the Electoral Commission (where the Commission is not the petitioner) within seven days after the petition has been filed in the Supreme Court.**

(c) **The Member declared to have been returned may, within 7 days after service of the petition on them, be admitted as a party to the petition by giving notice in writing to the Registrar of the Supreme Court.**

(d) **Once the Judge has set a date for the trial, the Registrar must give all parties at least 10 days notice of the day on which the trial is to be held.**

(e) **The case is to be heard within 28 days of the application being made with no adjournment except for good cause.**

(f) **The Judge's determination is to be given within 14 days of the final day of hearing.**

(g) **The determination of the Judge shall be final and without appeal.** (para.13.100).

The Commission recommends a person declared elected by the Court of Disputed Returns shall take their seat forthwith upon the determination and declaration of the Judge being communicated to the Speaker. (para.13.108).

The Commission recommends:

(a) **The limitation on costs should be removed from the Act.**

(b) **The Act should allow the Court of Disputed Returns to award costs against an unsuccessful party and in its discretion, against the Crown.** (para.13.116).

The Commission recommends the Act should retain the provisions allowing the Judge to refer to the Full Court special cases and questions of law. (para.13.120).

The Commission recommends that the Court of Disputed Returns should be empowered to make rules regarding the withdrawal of petitions and the substitution of new petitioners and no express provision is necessary in the Act. (para.13.124).

The Commission recommends that the Court of Disputed Returns should be empowered to make rules regarding the deaths of petitioners and the substitution of new petitioners and no express provision is necessary in the Act. (para.13.127).

CHAPTER FOURTEEN: ELECTORAL OFFENCES

The Commission recommends:

(a) **All provisions relating to electoral offences should be contained in the Electoral Act. For the purposes of Legislative Assembly elections, the current provisions in the Criminal Code relating to electoral offences should be repealed and equivalent provisions should be inserted in the Electoral Act.**

(b) **All electoral offences under the Elections Act should come under a specific part of the new Act entitled "Electoral Offences".** (para.14.17).

The Commission recommends that the penalties presently prescribed under the Act and the Code should be amended and brought in line with the penalties currently prescribed under the CE Act. (para.14.44).

The Commission recommends:

(a) **The penalty for bribery should be increased to 85 penalty units ($5,100) or two years imprisonment or both which brings the provision closer to the Commonwealth legislation.**

(b) **Treating should not remain as a separate offence under new electoral legislation and for the purpose of Legislative Assembly elections, the current Criminal Code provision should be repealed.**

(c) **It is unnecessary to further define the ambit of the offence of treating since it is covered under the general definition of bribery and it would be unwise to limit this definition in any way.** (para.14.59).

The Commission recommends:

(a) **The penalty for the printing or publishing of a misleading article or false statements regarding candidates should be increased to 40 penalty units ($2,400) where the offence is committed by a natural person and 200 penalty units ($12,000) where the offence is committed by a body corporate.**

(b) **The offences of publishing false statements regarding the withdrawal of a candidate or regarding the personal character or conduct of a candidate should be associated with the offences of printing or publishing a misleading political article.** (para.14.64).

The Commission recommends:

(a) **The current penalty for multiple voting is not adequate. It is recommended that the penalty be increased to a maximum of 20 penalty units ($1,200) and/or six months imprisonment.**

(b) **Sections 103(5) and (6) of the Criminal Code should be repealed and replaced by an offence provision in the proposed Electoral Act which would cover the forging of signatures and false answers to questions put by a Queensland Electoral Commission officer.**

(c) **Locality voting is not required at Queensland elections as a means of reducing multiple voting. Accordingly, s.12 of the current Act, which empowers the Governor in Council to divide an electoral district into divisions, should be removed from the Act.** (para.14.87).

The Commission recommends:

(a) **The current penalty for non-voting is adequate. However it is recommended that there be an evidential burden on the elector to give reasons for failure to vote or otherwise pay the fine.**

(b) **The Act should contain a provision which places an obligation on employers to allow employees to vote. The provision should be drafted to correspond to s.345 of the CE Act.** (para.14.115).

The Commission recommends that the provisions concerning disqualification be repealed and no other provisions be inserted into the new Act disqualifying persons from voting. However, the amendment inserted in the Elections Act Amendment Act 1991, which disqualifies prisoners serving sentences of five years or more from casting a vote, should be incorporated into the new Act. (para.14.121).

The Committee recommends the current provisions relating to offences attracting disqualification from being elected or sitting in Parliament should include the following offences relating to enrolment, namely s.103(5) and (6) of the Criminal Code should be repealed and replaced by an offence provision in the proposed Electoral Act which would cover the forging of signatures and false answers to questions put by a Queensland Electoral Commission officer. (para.14.128).

CHAPTER FIFTEEN: MISCELLANEOUS

The Commission recommends that the Queensland Electoral Commission should have the legislative authority to conduct union elections. However the means of conducting these elections should be negotiated between the QEC and other relevant bodies. (para.15.19).

The Commission recommends:

(a) **For the purposes of the new Act, there be no provision for electronic voting.**

(b) **Many forms of electronic voting would be inappropriate for recording votes in Queensland elections, as well as lacking cost-effectiveness. However, the Queensland Electoral Commission should further investigate the possibility of electronic scanning of ballot-papers as a means of counting votes.** (para.15.37).

The Commission recommends that, whilst the holding of referendums simultaneously with elections should not be precluded in the future, the problems that occurred in the Local Authority Elections in Queensland and the New South Wales State elections this year should be borne in mind. (para.15.59).

The Queensland Electoral Commission should use recycled paper wherever possible for the production of electoral material. This is an administrative matter which need not be included in the Draft Bill. (para.15.66).

The Commission recommends that discussions be held between the Queensland Electoral Commission and the Ministers responsible for Local Government and for Aboriginal and Islander Affairs to determine the role of the Queensland Electoral Commission in relation to Local Authority and Community Council elections. (para.15.87).

The Commission further recommends that those Ministers take action to amend the legislation administered by them to incorporate any provisions contained in the Draft Bill for an Electoral Act which would ensure consistency, as far as practicable, between State and Local Authority elections. (para.15.88).

The Commission recommends that if an elector is unable to sign his/her name, the mark of the elector, duly witnessed, should be acceptable for all claims and forms lodged with the Queensland Electoral Commission. (para.15.102).

The Commission recommends that the circumstances in which polling may be deferred be widened to include "if for any reasonable cause", and that the maximum period of deferral be reduced to 21 days. (para.15.119).

The Commission recommends that the Queensland Electoral Commission should have discretion to make security arrangements for ballot-papers that it considers appropriate. There is no need to incorporate such a duty in the proposed Bill. (para.15.135).

The Commission therefore recommends that:

(a) **Provisions for by-elections, (including the issue of the writ), should be contained in the Electoral Act, while the circumstances which determine when a vacancy arises should continue to be in the Legislative Assembly Act.**

(b) **Casual vacancies should continue to be filled through by-elections.**

(c) **The timing of by-elections should continue to be determined by the Government of the day.** (para.15.149).

CHAPTER SEVENTEEN

ACKNOWLEDGEMENTS AND CONCLUDING REMARKS

17.1 The Commission wishes to express its appreciation to all persons and organisations who made submissions and comments in response to the Commission, or otherwise provided views, on the Review of the Elections Act 1983-1991 and Related Matters. All submissions, comments and opinions expressed have been taken into account. Public input is essential to the Commission's review process and the Commission benefited greatly from the public response to its review.

17.2 The Commission also wishes to express its appreciation to the following members of staff who assisted the Commission in the conduct of the Review, namely: John Greenaway (Senior Project Officer); Alex Bogicevic and Garry Wiltshire (Project Officers); Debra Carter, Kathryn Mandla and Lyn Doblo (Research Officers); and Donna Cook, Colleen Coombe and Wendy Rikihana (Administrative Assistants). The Commission also wishes to express its appreciation to its consultant, Stan Pothecary, and to Kerry Jones, First Assistant Parliamentary Counsel, for his assistance in preparing the Draft Bill for the Electoral Act.

17.3 The Commission acknowledges the assistance of the Australian Electoral Commission, electoral agencies in other States and Queensland, as well as those Returning Officers with whom the Commission consulted.

17.4 The Commission is satisfied that the Draft Bill gives effect to its recommendations. However it will require some further development particularly in the area of restrictions on advertising by government agencies (see para.11.33).

17.5 This Report was adopted unanimously at a meeting of the Commission held on 13 December 1991. Commissioners Hall, Hunter, Hughes, Watson Blake and the Chairman were present at the meeting.

TOM SHERMAN
Chairman

17 December 1991

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APPENDIX A

ADVERTISEMENTS CALLING FOR PUBLIC SUBMISSIONS

QUEENSLAND

ELECTORAL AND ADMINISTRATIVE REVIEW COMMISSION

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

The Commission seeks written public submissions for its review of the Queensland Elections Act 1983-1991. This investigation forms part of stage four of the review of the Legislative Assembly electoral system and will culminate in a report to the Chairman of the Parliamentary Committee, the Speaker of the Legislative Assembly and the Premier later this year. The report will have attached to it draft legislation based on the principles and issues analysed in the report.

Issues Paper No. 13, *Review of the Elections Act 1983-1991 and Related Matters*, is now available. Copies of the Issues Paper can be inspected at major Public Libraries and selected Magistrate's Courts throughout the State. Persons or organisations wanting a copy of the Issues Paper should contact the Commission on Ph. 237 1998 (Brisbane callers) or 008 177 172 (Country callers).

The major issues include:

- the functions and structure of the Queensland Electoral Commission, including the appropriate role of the Commission in relation to Local Authority elections;
- the future electoral review process in Queensland;
- the order of candidates' names on ballot-papers, printing political affiliation on ballot-papers, and the location of polling-booths;
- the issue of writs for elections, election timetables, candidate eligibility and nomination;
- the day and hours of voting, issuing ballot-papers to electors, how-to-vote cards and canvassing at polling-booths;
- postal, electoral visitor, pre-poll, and absent voting, and voting by a person not named as an elector on the roll;
- scrutineers, determining formality, scrutiny (counting) of the vote, determination of the result and continuing the count to a two-party preferred;
- the elections tribunal and the process of determining disputes and petitions;
- electoral offences and penalties; and,
- the appropriate level of uniformity between voting procedures at Federal, State and Local Authority elections.

Initial written submissions should be marked Reference 438 and received at the Commission by 5.00 pm on Friday, 7 June 1991. The postal address for lodgement of submissions is:

ELECTORAL AND ADMINISTRATIVE REVIEW COMMISSION
PO BOX 349
NORTH QUAY QLD 4002 (REFERENCE 438)

All initial submissions received will be available for public inspection at the Commission's Public Reading Room from Tuesday 11 June 1991. Copies of these submissions will also be available for perusal and inspection at major Public Libraries and selected Magistrate's Courts from Wednesday 19 June 1991.

Comments in response to initial submissions (ie. submissions in reply) should be received at the Commission by 5.00 pm on Friday 5 July 1991. Comments on initial submissions will be available for inspection at the Commission's Public Reading Room from Monday 8 July 1991.

Commission's Public Reading Room: Level 8, Capital Hill
85 George Street, Brisbane.

Telephone: 237 1998 (Brisbane) **008 177 172 (Country)**
Facsimile: (07) 237 1990

TOM SHERMAN
Chairman
27 April, 1991.

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QUEENSLAND

ELECTORAL AND ADMINISTRATIVE REVIEW COMMISSION

INVESTIGATION OF PUBLIC REGISTRATION OF POLITICAL DONATIONS, DISCLOSURE OF ELECTORAL EXPENDITURE, PUBLIC FUNDING OF ELECTION CAMPAIGNS, REGISTRATION OF POLITICAL PARTIES AND POLITICAL ADVERTISING.

The Commission seeks written public submissions to assist with its consideration of these issues. This investigation forms part of the fourth stage of the review of the Legislative Assembly electoral system and will culminate in a report to the Chairman of the Parliamentary Committee, the Speaker of the Legislative Assembly and the Premier later this year. The report may have attached to it draft legislation covering the principles and issues analysed in the report.

Issues Paper No. 12, *Public Registration of Political Donations, Public Funding of Election Campaigns and Related Issues*, is now available. Copies of the Issues Paper can be inspected at major Public Libraries and selected Magistrate's Courts throughout the State. Persons or organisations wanting a copy of the Issues Paper should contact the Commission on Ph. 237 1998 (Brisbane callers) or 008 177 172 (Country callers).

The major issues include:

- whether a system of public registration of political donations should be established in Queensland;
- whether political parties and candidates should be required to disclose their electoral expenditure;
- whether Queensland should introduce public funding of election campaigns;
- whether the registration of political parties and individual candidates should be introduced;
- whether legislative controls should be imposed on political advertising.

Initial written submissions should be marked Reference 44S and received at the Commission by 5.00 pm on Friday, 7 June 1991. The postal address for submissions is:

ELECTORAL AND ADMINISTRATIVE REVIEW COMMISSION
PO BOX 349
NORTH QUAY QLD 4002 (REFERENCE 44S)

All initial submissions received will be available for public inspection at the Commission's Public Reading Room from Tuesday, 11 June 1991. Copies of these submissions will also be available for perusal and inspection at major Public Libraries and selected Magistrate's Courts from Wednesday, 19 June 1991.

Comments in response to initial submissions (ie. submissions in reply) should be received at the Commission by 5.00 pm on Friday, 5 July 1991. Such comments on initial submissions will be available for inspection at the Commission's Public Reading Room from Monday, 8 July 1991.

Commission's Public Reading Room: Level 8, Capital Hill
85 George Street, Brisbane

Telephone: 237 1998 (Brisbane) **008 177 172 (Country)**
Facsimile: (07) 237 1990.

TOM SHERMAN
Chairman
27 April, 1991.

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APPENDIX B

PUBLIC REGISTRATION OF POLITICAL DONATIONS, PUBLIC FUNDING OF ELECTION CAMPAIGNS AND RELATED ISSUES - PUBLIC SUBMISSIONS

Submission No	Name/Organisation	Address	Date Received
1	Various Authors	Copies of submissions received during stage 1 of the Legislative Assembly Electoral Review	1990
2	H H Duncan	PO Box 735 CHARTERS TOWERS QLD 4820	1/5/91
3	P Beattie, MLA Member for Brisbane Central	21 Enoggera Terrace RED HILL QLD 4059	1/5/91
4	R E Ward	18 Davidson Street NEWMARKET QLD 4051	1/5/91
5	J Hobbs Hon Secretary	Bribie Island Chamber of PO Box 223 BRIBIE ISLAND QLD 4507	2/5/91
6	B Draper	PO Box 1275 MAREEBA QLD 4880	26/3/91
7	F McLennan	34 Munro Street AUCHENFLOWER QLD 4066	14/5/91
8	Prof K Wiltshire	Dept of Government University of Queensland ST LUCIA QLD 4067	15/5/91
9	M Passmore	PO Box 162 STANTHORPE QLD 4380	17/5/91
10	J Russell	16 Orchis Drive EAGLE HEIGHTS QLD 4271	24/5/91

Submission No	Name/Organisation	Address	Date Received
11	A Sandell	Lot 85 Greensward Road TAMBORINE QLD 4270	30/5/91
12	O Yates	113 Spencer Street GATTON QLD 4343	31/5/91
13	A Conway-Jones	12 Willow Street BIGGERA WATERS QLD 4216	5/6/91
14	F G Short	9/12-14 Mountain View Road MIAMI QLD 4220	5/6/91
15	D Hinchliffe Alderman	Brisbane City Council (Spring Hill Ward Office) 80 Days Road GRANGE QLD 4051	28/3/91
16	R MacKinnon	38 Burleigh Street BURLEIGH HEADS QLD 4220	6/6/91
17	A Mijo	PO Box 123 MOSSMAN QLD 4873	6/6/91
18	Andrew Bartlett (Secretary)	Australian Democrats (Queensland Division) PO Box 715 SOUTH BRISBANE QLD 4101	7/6/91
19	R McKinnon	Lot 1 New England Hwy EAST GREENMOUNT QLD 4359	7/6/91
20	Ray Sargent	Australian Republican Party PO Box 670 ASHGROVE QLD 4060	7/6/91
21	Australian Labor Party	PO Box 32 WEST END QLD 4101	7/6/91

Submission No	Name/Organisation	Address Received	Date
22	G Richardson	Aboriginal & Torres Strait Islander Commission PO Box 1599 CAIRNS QLD 4870	7/6/91
23	National Party of Australia	PO Box 403 SPRING HILL QLD 4004	7/6/91
24	Chris Griffith (Secretary)	Queensland Watchdog Committee PO Box 998 TOOWONG QLD 4066	11/6/91
25	Liberal Party	(Queensland Division) PO Box 188 SPRING HILL QLD 4004	11/6/91
26	P J Jardine	PO Box 5120 MACKAY MC 4740	11/6/91
27	Queensland Watchdog Committee	C Griffith Secretary PO Box 998 TOOWONG QLD 4066	17/6/91
28	National Party of Australia Queensland Division	K Crooke State Director PO Box 403 SPRING HILL QLD 4004	28/6/91
29	Australian Democrats Queensland Division	A Bartlett Secretary PO Box 715 SOUTH BRISBANE QLD 4101	5/7/91
30	Local Government Assoc. of Queensland Inc.	G Hoffman Executive director PO Box 130 NEWSTEAD QLD 4006	5/7/91
31	P J Keogh	8 Thunderbird Drive BOKARINA QLD 4575	4/7/91

Submission No	Name/Organisation	Address	Date Received
32	Dept of the Auditor-General Queensland	P B Nolan Auditor-General GPO Box 1139 BRISBANE QLD 4001	5/7/91
33	Dept of the Auditor-General Queensland	P B Nolan Auditor-General GPO Box 1139 BRISBANE QLD 4001	8/7/91
34	Dr Ian Ward	Department of Government University of Queensland ST LUCIA Qld 4072	12/6/91

APPENDIX C

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

Submission No	Name/Organisation	Address	Date Received
1	Various Authors received during stage 1 of the Legislative Assembly Electoral Review	Copies of submissions	1990
2	Australian Labor Party (Mount Isa Branch)	PO Box 210 MOUNT ISA QLD 4825	9/11/90
3	D J Currier	PO Box 210 MONTO QLD 4630	20/12/90
4	J C Dettori	PO Box 135 HOLLAND PARK QLD 4121	21/12/90
5	P Dwyer	8 Underhill Avenue INDOOROOPILLY QLD 4068	8/1/91
6	C Williamson	PO Box 283 CLERMONT QLD 4721	14/1/91
7	A W B Armitage	14 Tennyson Street BULIMBA QLD 4171	24/1/91
8	P P Conor	PO Box 462 SARINA QLD 4737	25/1/91
9	J Hall	23 Rouen Road BARDON QLD 4065	30/1/91
10	R T Hall	23 Tabulam Drive FERNY HILLS QLD 4055	31/1/91
11	R L Wood	343 Old Cleveland Road BIRKDALE QLD 4159	1/2/91
12	J Williams	"Essen" George Street KALBAR QLD 4309	26/3/91

Submission No.	Name/Organisation	Address	Date Received
13	R E Balchin	5 Brampton Court ROBINA QLD 4226	27/3/91
14	Institute of Municpal Management Qld Inc.	R W Edwards President PO Box STANTHORPE QLD 4380	3/4/91
15	C Heberlein	21 Crown Street MOUNT MORGAN QLD 4714	5/4/91
16	N Bird	17 Torbruk Street LUTWYCHE QLD 4030	11/4/91
17	F N Albietz	34 Derwent Street UPPER MT GRAVATT QLD 4122	29/11/90
18	P J Hardcastle	Court House GYMPIE QLD 4570	17/4/91
19	F J & L J Keenan	C/- Longreach Pastoral College PO Box 470 LONGREACH QLD 4730	28/3/91
20	Fitzroy Shire Council	V N Donovan Shire Clerk PO Box 396 ROCKHAMPTON QLD 4700	18/4/91
21	B M McCoy	33 Walker Street COORPAROO QLD 4151	26/4/91
22	B Draper	PO Box 1275 MAREEBA QLD 4880	26/3/91
23	Australian Labor Party Toowoomba North Branch	Hugh Wilson Secretary PO Box 1397 TOOWOOMBA QLD 4350	30/4/91
24	H Duncan	PO Box 735 CHARTERS TOWERS QLD 4820	1/5/91

Submission No.	Name/Organisation	Address	Date Received
25	J Williams	"Essen" George Street KALBAR QLD 4309	1/5/91
26	A M Harrison	141 Truro Street TORQUAY QLD 4655	29/4/91
27	R E Ward	18 Davidson Street NEWMARKET QLD 4051	1/5/91
28	V Bowles	136 Worthing Street WYNNUM QLD 4178	29/4/91
29	Bribie Island Chamber of Commerce	J Hobbs Secretary PO Box 223 BRIBIE ISLAND QLD 4507	2/5/91
30	B Shaw	18 Michelle Street CABOOLTURE QLD 4510	2/5/91
31	T C Cheung	22/12 Harcourt Street NEW FARM QLD 4005	30/4/91
32	P F Vale	PO Box 300 GLADSTONE QLD 4680	7/5/91
33	Women's Policy Branch C Mason Director	Department of the Premier Economic & Trade Development PO Box 185 NORTH QUAY QLD 4002	3/5/91
34	M Bryan	70 McManus Street WHITFIELD QLD 4870	13/5/91
35	Cairns Chamber of Commerce	W S Cummings Secretary PO Box 2336 CAIRNS QLD 4870	20/5/91

Submission No.	Name/Organisation	Address Received	Date
36	K R Partlett	126 Ross River Road MUNDINGBURRA QLD 4812	21/5/91
37	E Berry	29 Turner Street MAROOCHYDORE QLD 4558	23/5/91
38	Crow's Nest Shire Council	I A O'Donnell Shire Clerk PO Box 35 CROW'S NEST QLD 4355	23/5/91
39	Eidsvold Shire Council	C W R Kirby Shire Clerk PO Box 51 EIDSVOLD QLD 4627	24/5/91
40	Australian Labor Party	L D'Arcy Branch Secretary (Logan Branch) PO Box 1486 SPRINGWOOD QLD 4127	24/5/91
41	Bundaberg City Council	D A Byrnes Town Clerk PO Box 538 BUNDABERG QLD 4670	27/5/91
42	Australian Labor party	G Duncan Secretary (Logan MEC) 21 Claudia Street KINGSTON QLD 4114	27/5/91
43	H A & H Marsden	7 Caister Court CARINDALE QLD 4152	27/5/91
44	National Party of Australia	C Butler Hon. Secretary (Dalveen Branch) PO Box 16 DALVEEN QLD 4374	29/5/91

Submission No.	Name/Organisation	Address	Date Received
45	M D Passmore	PO Box 162 STANTHORPE QLD 4380	30/5/91
46	Woongarra Shire Council	R B Kernke Shire Clerk PO Box 540 BUNDABERG QLD 4670	29/5/91
47	J Williams	"Essen" George Street KALBAR QLD 4309	17/5/91
48	O Yates	113 Spencer street GATTON QLD 4343	31/5/91
49	Broadsound Shire Council	N R Mapes PO Box 1 ST LAWRENCE QLD 4707	3/6/91
50	B Treton	C/-PO Box 586 SMITHFIELD QLD 4878	3/6/91
51	H Ball	4 Appaloosa Court MUDGEERABA QLD 4213	3/6/91
52	Miriam Vale Shire Council	E J Thorne (Shire Clerk) 36 Roe Street MIRIAM VALE QLD 4677	5/6/91
53	Toowoomba City Council 153 Herries Street	I R Farr Town Clerk TOOWOOMBA QLD 4350	5/6/91
54	Mirani Shire Council	B J Evans (Shire Clerk) PO Box 1 MIRANI QLD 4754	5/6/91

Submission No.	Name/Organisation	Address Received	Date
55	C J Parker	68 Kokoda Street IDALLA ESTATE QLD 4811	8/11/90
56	R McKinnon	38 Burleigh Street BURLEIGH HEADS QLD 4220	6/6/91
57	Gympie City Council	R W Irvine (Town Clerk) PO Box 195 GYMPIE QLD 4570	7/6/91
58	Trades & Labor Council of QLD	16 Peel Street SOUTH BRISBANE QLD 4101	6/6/91
59	V Bowles	136 Worthing Street WYNNUM QLD 4178	6/6/91
60	M Lamerton	PO Box 3080 SOUTHPORT QLD 4215	6/6/91
61	A Sandell	Lot 85 Greenward Rd TAMBORINE QLD 4270	7/6/91
62	Australian Democrats	A Bartlett (Secretary) PO Box 715 SOUTH BRISBANE QLD 4101	7/6/91
63	R E Balchin	5 Brampton Court ROBINA QLD 4226	7/6/91
64	R McKinnon	Lot 1 New England Hwy EAST GREENMOUNT QLD 4359	7/6/91
65	D Crabb	11 Yapinga Street SOUTH PLYMPTON SA 5038	7/6/91
66	Dept of Employment, Vocational Education Training & Industrial Relations	B J Nutter GPO Box 69 BRISBANE QLD 4001	7/6/91

Submission No.	Name/Organisation	Address Received	Date
67	Gladstone City Council	G P Winter 101 Goondoon Street GLADSTONE QLD 4680	7/6/91
68	Boonah Shire Council	C H Grant PO Box 97 BOONAH QLD 4310	7/6/91
69	Mount Isa City Council	A O'Brien West Street MOUNT ISA QLD 4825	7/6/91
70	Australian Labor Party	PO Box 32 WEST END QLD 4101	7/6/91
71	L Madden	21 Kilmorey Street CARINDALE QLD 4152	7/6/91
72	Ipswich City Council	J T Quinn 50 South Street IPSWICH QLD 4305	7/6/91
73	Mackay City Council	S B Fursman Gordon Street MACKAY QLD 4740	7/6/91
74	R L Wood	343 Old Cleveland Road BIRKDALE QLD 4159	7/6/91
75	I Rowland	PO Box 190 KEDRON QLD 4031	7/6/91
76	National Party of Australia	PO Box 4004 SPRING HILL QLD 4004	7/6/91
77	Dept of Justice & Corrective Services	50 Ann Street BRISBANE QLD 4000	7/6/91
78	P Soper	29 Watson's Road Kelly's Creek BARGARA QLD 4670	11/6/91

Submission No.	Name/Organisation	Address	Date Received
79	Dept of Premier, Economic & Trade Development	PO Box 185 NORTH QUAY QLD 4002	11/6/91
80	A F T Bambrick	253 Elphinestone Street NTH ROCKHAMPTON QLD 4701	11/6/91
81	R M Collins	10 Garra Street EIGHT MILE PLAINS QLD 4113	11/6/91
82	R Williams	PO Box 52 ALDERLEY QLD 4051	11/6/91
83	Prisoners Legal Service	PO Box 162 WEST END QLD 4101	11/6/91
84	Queensland Advocacy Inc	Ms M Schroder President Suite 5 Ground Floor 40 Tank Street BRISBANE QLD 4000	12/6/91
85	Women's Policy Branch C Mason	Department of the Premier Economic & Trade Development PO Box 185 NORTH QUAY QLD 4002	12/6/91
86	Institute of Municpal Management	PO Box 335 NORTH QUAY QLD 4002	14/6/91
87	Esk Shire Council	G P Sorensen Shire Clerk PO Box 117 ESK QLD 4312	19/6/91
88	Brisbane City Council	P W Berthold Town Clerk GPO Box 1434 BRISBANE QLD 4001	21/6/91
89	Dauringa Shire Council	D L Stower Shire Clerk PO Box 2 DAURINGA QLD 4702	24/6/91

Submission No.	Name/Organisation	Address	Date Received
90	R Williams	PO Box 52 ALDERLEY QLD 4051	11/6/91
91	Kingaroy Shire Council	R Knopke Shire Clerk PO Box 336 KINGAROY QLD 4610	28/5/91
92	Aboriginal and Torres Strait Islander Commission	G Richardson Cairns Regional Manager PO Box 1599 CAIRNS QLD 4870	27/6/91
93	Dept of Housing and Local Government	M Tucker Director Local Government PO Box 31 NORTH QUAY QLD 4002	26/6/91
94	C Broughton	48 Gillender Street ROCKHAMPTON ALD 4700	1/7/91
95	Moreton Shire Council	N Craswell Shire Clerk PO Box 192 IPSWICH QLD 4305	2/7/91
96	Local Government Assoc.	G T Hoffman Executive Director PO Box 130 NEWSTEAD QLD 4006	2/7/91
97	Broadsound Shire Council	N R Mapes Shire Clerk PO Box 1 ST LAWRENCE QLD 4707	2/7/91

Submission No.	Name/Organisation	Address Received	Date
98	Queensland Police Service	Dr M Henderson Director Policy, Research and Evaluation GPO Box 1440 BRISBANE QLD 4001	5/7/91
99	Australian Democrats	Andrew Bartlett Qld Secretary PO Box 715 SOUTH BRISBANE QLD 4101	5/7/91
100	Liberal Party of Australia Queensland Division	Paul Everingham President PO Box 188 SPRING HILL QLD 4004	5/7/91
101	Blackall Shire Council	P O Box 21 BLACKALL QLD 4472	8/7/91
102	Pine Rivers Shire Council	P O Box 70 STRATHPINE QLD 4500	8/7/91
103	Rockhampton City Council	P O Box 243 ROCKHAMPTON QLD 4700	12/7/91
104	Criminal Justice Commission	P O Box 157 NORTH QUAY QLD 4002	11/7/91
105	Hon. Glen R Milliner, MLA	P O Box 195 NORTH QUAY QLD 4002	31/7/91
106	National Party of Australia	6 St Pauls Terrace SPRING HILL QLD 4004	8/8/91
107	Gary Porter Medical Pty Ltd	Pittsworth Medical Centre 36 Yandilla St PITTSWORTH QLD 4356	19/8/91
108	R F Diamond	Cherryfield Road GRACEMERE QLD 4702	28/8/91
109	Hervey Bay City Council	P O Box 45 TORQUAY QLD 4655	30/8/91
110	Colin Heberlein	21 Crown Street MOUNT MORGAN QLD 4714	4/9/91

ADVICE ON APPOINTMENT OF ELECTORAL OFFICIALS FROM CROWN SOLICITOR

Crown Solicitor,
State Law Building,
50 Ann Street,
Brisbane, Queensland. 4000.

20 September 1991

Mr Tom Sherman
Chairman
Electoral and Administrative
Review Commission
Capital Hill Building
85 George Street
BRISBANE Q 4000

Dear Mr. Sherman,

I refer to your letter of 10 September 1991 (your reference: 043/SELEACT/208) seeking my advice concerning the effect of Section 14 of the Constitution Act 1867-1988 on the appointment of Commissioners and other officers of the new Queensland Electoral Commission.

As you say in your letter, we have previously discussed the Section briefly in relation to this present problem, and I have given formal written advice on it, in another context.

The Section reads as follows:-

> ***"14. Appointment to offices under the Government of the colony to be vested in the Governor in Council or alone. Schedule to 18 and 19 Vic. c. 54. Exceptions.*** *(1) The appointment of all public offices under the Government of the Colony hereafter to become vacant or to be created whether such offices be salaried or not shall be vested in the Governor in Council with the exception of the appointments of the officers liable to retire from office on political grounds which appointments shall be vested in the Governor alone.*

:5528

Provided always that this enactment shall not extend to minor appointments which by Act of the Legislature or by order of the Governor in Council may be vested in heads of departments or other officers or persons within the colony.

(2) Officers liable to retire from office on political grounds shall hold office at the pleasure of the Governor who in the exercise of his power to appoint and dismiss such officers shall not be subject to direction by any person whatsoever nor be limited as to his sources of advice."

Section 53 of the same Act purports to entrench the Section so that it cannot be amended without a referendum.

For a history of the entrenchment of Section 14, I would refer you to Hansard of 30 November 1976 at p. 1943 et. seq. and 7 December 1976 at p. 2169 et. seq.

Leaving aside for the moment the question whether the purported entrenchment is effective, it is useful to first consider just what would be a "public office" and what would be a "minor appointment" within the meaning of the Section.

My researches have been extensive, but have not turned up much helpful authority on the point, probably because so far as I am aware, no other Australian jurisdiction has attempted to entrench such a provision.

There is however some authority:-

In Krefft v. Hill (1875) S.C.R. 280, the equivalent Section in the New South Wales Constitution Act was considered by a Full Court of the Supreme Court of New South Wales.

The question there was whether the Curator of the Sydney Museum was the holder of a public office within the meaning of the Section.

The Curator was appointed by a resolution of the trustees of the Museum and was paid out of money voted for the purpose by Parliament.

The Judge at first instance, Cheeke J., held that the Constitution Act provision controlled the earlier Section of the Museum Act, that the trustees had no power to appoint him and that he was an officer receiving his salary from the Government and could not be removed without the sanction of the Government.

In the Full Court, one of the Judges, Hargrave J., held that the Curator had been clearly appointed to an "office" created and paid by the legislature and he held that in all the circumstances it was clear to him that the Curator was a "public officer under the Government of the Colony within the meaning of the 37th section of the

Constitution Act".

He went on to say: "The trustees seem to have forgotten for the moment that Mr. Krefft occupied a position of a strictly professional character, as a gentleman appointed by themselves and the Government of the colony, and ought to have been treated as a gentleman, and not as a 'recalcitrant' and obnoxious menial".

It seems to me to be implied that he did not regard the Curator as holding a minor appointment.

The other Judge, Faucett J., held that the earlier Museum Act was not repealed by Section 37 of the Constitution Act. However, he said:-

> *"The Constitution Act refers to such officers as are, or may be, under what is commonly and popularly known as the Government, and not to officers under the management and control of a corporation appointed by a statute for special purposes. A statute is not repealed by implication by a subsequent statute, unless it clearly appears, from a comparison of both, that the one is inconsistent with the other. Such inconsistency, I think, does not appear in this case; and I am therefore of opinion, as I have said, that section 7 of the Museum Act is not repealed, and that under it the trustees have full power to appoint all officers and servants of the institution.*
>
> *..... I agree with his Honour - that the trustees might, if they chose, travel outside of their Act, and might accept an officer appointed by the Government, or agree merely to recommend an officer to be approved of, and appointed by the Government; and in such case the officer so appointed would be a public officer, more especially if he were paid by a salary voted annually by Parliament."*

It seems from the judgment of Faucett J. that the Curator had at one time endeavoured to show that he held office under the trustees and then when it suited him claimed he was an officer of the Government.

The judgments are not entirely clear but it does seem that Faucett J., holding as he did that the trustees could dismiss him, did not consider that he was an officer appointed under the Government within the meaning of the first part of the New South Wales equivalent of Section 14.

In an earlier case, Ex parte Everingham (1870) N.S.W.S.C.R. 250, a Full Court (Stephen C.J., Cheeke J. and Faucett J.) considered the case of a Poundkeeper who was dismissed by the Magistrates who apparently had power to appoint him and to dismiss him.

Stephen C.J. held that quo warranto would apply in respect of a wrongful

dismissal from this office and Cheeke J. agreed with him.

Quo warranto will only lie where there is a public office of some substance and Cheeke J. said at p. 258:-

> *"However, there can be no doubt that the duties of a poundkeeper are public duties, and, therefore, that his office is a public office."*

The other Judge, Hargrave J., disagreed and said:-

> *"In my opinion the office of a poundkeeper is of too subordinate a character for the application of this proceeding, which has hitherto been confined to offices of importance under the Crown, or which are connected with the administration of justice, and are not held at the will and pleasure of others. I think, therefore, that the rule should be discharged."*

In Ex parte Duggan (1883) N.S.W.R. 332, a Full Bench (Martin C.J. and Innes J.) considered the meaning of the words as they affected the appointment of an Inspector under the Weights and Measures Act.

This Inspector, like Poundkeepers under their legislation, was appointed on the basis that he would receive and would be entitled to keep fees for his work.

Martin C.J. sets out the history of the Constitution Act Section at p. 334 as follows:-

> *"There can be no doubt that what the Legislature of this colony had in view in framing this schedule (which was not an Act when it passed the colonial Legislature, but derived its force from the subsequent Act of the Imperial Parliament) was only the necessity of preventing the appointment of public officers in this colony being made by persons outside the colony. It is a matter of historical knowledge that the appointment of officers in the public service of this colony used to be made by a Secretary of State in England; and the object of the statute was to confer on the Government of this colony the power to make such appointments in exactly the same way as similar powers are exercised in England by the Imperial Government, and so prevent persons unknown to us being appointed to these offices. It is also evident from the proviso that it was not intended to confer the power of making all appointments on the Governor-in-Council exclusively; but where before the Act some officers were appointed in the colonies by local jurisdictions, it was thought proper to leave these appointments as they were; that is why this proviso was inserted. The Legislature must be taken to have known that there were at the time of the passing of this statute a*

number of persons appointed in this colony to certain offices whose appointments did not proceed from the Imperial Government, but from some local official. There was no cause why the power to make appointments conferred by an earlier statute - the Weights and Measures Act, should have been interfered with; and it cannot be said that this appointment is a superior one and not within the terms of the proviso. This appointment is a minor one within the meaning of the proviso, and being vested by the Legislature in the Court of Petty Sessions for Sydney, the power to make it was not transferred and vested in the Governor and Executive Council by the Constitution Act."

The other Judge, Innes J., agreed with him but as it had been argued that the proviso to the Section was only prospective, he held:-

"I am of opinion that this proviso is to apply to any appointments which 'now or hereafter' may be vested in persons within the colony ....."

In Hodel v. Cruckshank (1889) Q.L.J. 141, Lilley C.J. was called upon to decide whether a Poundkeeper employed on the same basis as his New South Wales counterparts was the holder of an office of profit under the Crown.

He considered Section 14 of the Constitution Act and said:-

"Now, a pound is a public pound; it is established, and may be abolished by the act of the Executive Council. The poundkeeper is accountable to the Crown for fees received; he must give a bond to the Crown for the proper discharge of the duties of his office. He is placed under the inspection of an officer of the Crown, called the Inspector of Brands, and his appointment and removal depend on the judgment of other officers of the Crown, who are the Justices of the Peace. It seems to us, that, looking at all these circumstances, and at the Act, that he must be a minor officer of the Crown ..... he is holding an office of profit, and secondly, he is holding that office of profit under the Crown."

In Evans v. Donaldson and Ors. (1909) 9 C.L.R. 140, the High Court (Griffith C.J., Barton and O'Connor JJ.) considered the question in relation to the appointment of an Inspector of Weights and Measures under the New South Wales legislation. Griffith C.J. said (at p. 148):-

"I am of opinion that the case of Ex parte Duggan 4 N.S.W.L.R. 323 was rightly decided ....."

At p. 149 he said:-

"I am of opinion that the appellant in this case was not an officer in the Public Service within the meaning of the Constitution Act, and that on that ground he was not liable to be dismissed by the Governor in Council, and that the arrangement, for such it was, for commutation of his fees into an annual salary made no difference in this respect."

Barton J. agreed with the Chief Justice but O'Connor J. said (at p. 157):-

"Another objection relied on was that the office was not a public office. It was contended that the justices in making the appointment acted merely on behalf of the Government in pursuance of the Constitution Act of New South Wales, and that acting similarly on the Government's behalf they were entitled to remove the appellant at the pleasure of the Government. I dissent entirely from that view of the duty which the Weights and Measures Act imposes on the justices. In Ex parte Duggan 4 N.S.W.L.R. 332 which related to an appointment by justices to an office under the Weights and Measures Act, Sir James Martin C.J. held that the section of the Constitution Act in that case mentioned, which is identical with the corresponding provision of the Act of 1902, cannot be taken to refer to such appointments. The observations of Mr. Justice Faucett in Krefft v. Hill 13 S.C.R.(N.S.W.) 280 at p. 298 bear in the same direction. The appointment under consideration in the latter case was under the Museum Act, which gave the trustees of the museum power to appoint all officers and servants of the institution. The learned Judge pointed out the importance of giving full meaning to the words 'public office under the Government' contained in the section of the Constitution relied on. It is, to my mind, impossible by any reasonable construction of these words to interpret them as including offices created by Statute in such terms as the Weights and Measures Act has used."

It seems then that whilst there would be many offices which would clearly come within the first part of Section 14 and appointments to them could only be made by the Executive Council, and conversely many others which clearly would come within the minor office class, there would also be a rather large grey area in between the two categories.

For example, Chief Executives of Government Departments would come within the former category and Unclassified Clerks and Administrative Assistants in the latter.

In my opinion, the members of the Electoral Commission would clearly be the holders of a "public office" within the meaning of Section 14 and their appointments would not be "minor appointments" within the meaning of the

Section.

I am inclined to the view that Returning Officers and Electoral Registrars, especially given the important functions cast upon them by the Act, would be in the same category.

On the other hand, Presiding Officers and Poll Clerks would I think fall into the category of "minor appointments" within the meaning of the Section.

Turning now to the question whether Section 14 is effectively entrenched by Section 53, I have, as you know, previously expressed the opinion that the purported entrenchment of Section 14 of the Constitution Act 1867-1988, insofar as it attempts to entrench the sole power of the Governor in Council to appoint officers of the public service, (I would include all persons whose positions are under consideration in that category), fails to achieve its object for two reasons:-

1. It is not a law "respecting the Constitution powers and procedure of the legislature" within the meaning of Section 5 of the Colonial Laws Validity Act 1865 or a law "respecting the Constitution powers or procedure of the Parliament of the State" within the meaning of Section 6 of the Australia Act 1986.

2. For an Act to provide that an Act can only be amended if the people approve of the amendment at a referendum, amounts to the "establishment of another legislative body" (the people) within the meaning of Section 3 of the Constitution Act Amendment Act of 1934 so that Section 3 would first have to be amended (for which a referendum would be necessary) before the entrenchment would be effective.

In other words, my second argument was that although Section 3 prescribes a referendum before it itself can be amended, it has had since it was enacted in 1934 the side effect of preventing future entrenchments without a prior referendum.

My authority for this proposition is West Lakes Limited v. The State of South Australia (1980) S.A.S.R. 389 (see King C.J. at p. 396) and see also the dicta of Wanstall S.P.J. (as he then was) in Commonwealth Aluminium Corporation Ltd. v. Attorney-General (1976) Qd.R. 231 (at p. 239).

Since I expressed that opinion, we have had advice from Dr. John Finnis of Oxford in another matter, that whilst he does not agree with my second argument, he does agree that Section 14 of the Constitution Act 1867-1988 insofar as it purports to entrench the power of appointment of Public Servants in the Executive Council, is ineffective to achieve its object, the reason being that it is not a law "respecting the Constitution powers and procedure of the legislature" within the

meaning of Section 5 of the Colonial Laws Validity Act 1865 or a law "respecting the Constitution powers or procedure of the Parliament of the State" within the meaning of Section 6 of the Australia Act 1986.

Nevertheless, the Section does purport to be fully entrenched and notwithstanding Dr. Finnis' opinion and my own that in this respect, inconsistent legislation passed in the ordinary way would not be struck down, the proper and safe course is to treat the Section as fully entrenched, unless the Government proposes to immediately test the effectiveness of the entrenchment in the Courts.

In fact, I think that the Constitutional problems which would be involved should someone successfully challenge the validity of an election because the persons conducting it were not validly appointed, make any other course unthinkable.

To sum up then, I consider Commissioners, Deputy Commissioners, Returning Officers and Electoral Registrars should all be appointed by the Governor in Council.

Presiding Officers and Poll Clerks may safely be appointed by the new Commission or by Returning Officers.

As to other members of the staff of the Commission, many of them would doubtless fall into the "minor appointments" category and need not be appointed by the Governor in Council. There may however be more senior and onerous positions involved which may not fall into this category of exception and where consequently, the safe thing to do would be to have the Executive Council make those appointments as well.

If I can be of any further assistance, please get in touch with me.

Yours faithfully,

(K. M. O'Shea)
Crown Solicitor.

:5528

APPENDIX E

EARC JOINT ROLL RECOMMENDATIONS

ESTABLISHMENT OF A JOINT ELECTORAL ROLL (para. 7.11)

(a) A Joint Electoral Roll Arrangement should be negotiated by the Queensland Government with the Commonwealth Government, to be effected as soon as practicable. The Commission further recommends that the existing Commonwealth Roll should form the basis of the Joint Electoral Roll.

(b) A Joint Electoral Roll Management Committee should be established to assist with the negotiation of the Arrangement and implement the Joint Electoral Roll Arrangement subsequently. The Joint Electoral Roll Management Committee should consist of senior officers of the Australian Electoral Commission (AEC) and senior officers of the Department of Justice and Corrective Services.

(c) The form of the Joint Electoral Roll to be adopted by Queensland should incorporate:

(i) A single database which is compatible with the National standard.
(ii) Management of additions to and deletions from the database should be undertaken by the AEC.
(iii) On-line access to the database should be provided to the State Electoral Office (SEO) and other authorities approved by the Queensland Government so that maintenance of State data fields can be performed.
(iv) Production of electoral rolls for Legislative Assembly and Local Government elections should be the responsibility of the AEC.

ENROLMENT QUALIFICATIONS AND DISQUALIFICATIONS (para. 3.80)

(a) State enrolment qualifications should be the same as the current Commonwealth qualifications, namely:

(i) A period of one month should be adopted as the residential qualification for enrolment in an electoral district.

(ii) The Commonwealth criteria for eligibility of non-Australian British subjects should be adopted, with the proviso that any non-Australian British subjects currently on the State roll be retained on the roll for State elections.
(iii) The Commonwealth provisions should be adopted for the enrolment of itinerant electors, electors travelling overseas and Antarctic workers.
(iv) The Commonwealth provisions for provisional enrolment for 17 year olds should be adopted.

(b) The State should adopt the disqualification criteria for prisoners and persons of unsound mind specified in the Commonwealth Electoral Act.

(c) Legislation to effect these changes should be drafted as a matter of priority.

ACCESS TO ROLL INFORMATION (para. 3.80)

(a) The published State and Local Government rolls should contain only the elector's surname, given names, address and the notation JP if applicable, and the fields on the current published roll showing occupation, gender and date of claim should be deleted.

(b) The State agency responsible for roll maintenance should also be responsible for determining right of access to non-published roll data in accordance with any State privacy legislation that may be promulgated.

(c) Current provisions for access to roll information in electronic form by MLAs, duly nominated candidates, local authorities and community councils, should be maintained, including information on elector's occupation, gender and date of claim.

(d) Electronic access should be only for the use prescribed as discussed in para. 3.56.

USE OF ROLL INFORMATION BY STATE AUTHORITIES (para. 3.80)

(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) Provision 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.

NECESSARY CONDITIONS (para. 5.9)

The Commission recommends that any Joint Electoral Roll Arrangement should be negotiated only after the Commonwealth has agreed to the Queensland Government's satisfaction that:

(a) It can provide electoral rolls to support both Legislative Assembly and Local Government elections according to a timetable acceptable to Queensland.

(b) All regional offices of the AEC will have on-line computer facilities within an acceptable time-frame.

(c) That any conflict arising from simultaneous competing needs for roll information from the Commonwealth and Queensland will be resolved promptly and acceptably to both parties.

The Commission further recommends that performance criteria, and to the extent possible performance indicators, should be negotiated and form part of the Arrangement to allow proper monitoring of the implementation of any Joint Electoral Roll.

IMPLEMENTATION TIMETABLE (para. 6.9)

The introduction of any Joint Electoral Roll should proceed according to the following timetable as far as practicable:

(a) negotiation of a Joint Electoral Roll Arrangement by the State with the Commonwealth by 31 December 1990;

(b) implementation of the Joint Electoral Roll during 1991, and to be fully operational no later than 31 December 1991.

APPENDIX F

ELECTION WRITS

Commonwealth Electoral Act 1918

SCHEDULE I - continued

FORM B Section 152

Writ for the Election of [here insert members or a member, as the case requires,] of the House of Representatives.

COMMONWEALTH OF AUSTRALIA

To , Electoral Commissioner

GREETING.

We command you that you cause *[here insert elections or election, as the case requires]*, to be made according to law of *[here insert Members of the House of Representatives or one Member of the House of Representatives for the Electoral Division of [here inset name of Division], as the case requires]*, to serve in the Parliament of our Commonwealth of Australia and we appoint the following dates for the purposes of the said, *[elections or election as the case requires]*

1. For the close of the Rolls the day of 19 .
2. For nomination the day of 19 .
3. For taking the poll at the different polling-places in the event of the election being contested the day of 19 .
4. For the return of the writ on or before the day of 19 .

Witness *[here insert the Governor-General's title or Speaker's title, as the case requires]* at *[here insert place]* the day of in the year of our Lord One thousand nine hundred and

[FORM 6] s. 46

STATE OF QUEENSLAND

Elections Act 1983

WRIT FOR ELECTION

Elizabeth the Second, by the Grace of God, Queen of Australia and Her other Realms and Territories, Head of the Commonwealth

To the Returning Officer for the Electoral District of

GREETING:

We command you that you proceed according to the law to election of a member to serve in the Legislative Assembly of Queensland for the said District. And we do hereby appoint the day of , in the year of our Lord , to be the day and to be the place of nomination of candidates at the said election being contested the poll shall be taken on the day of , at the several polling-booths duly appointed for the said District. And that you do endorse hereon the name of the person elected and the date of election, and do return this our writ so endorsed to the Governor of our State of Queensland [or the Speaker of the said Legislative Assembly] at Brisbane, not later than the day of

Witness our Trusty and Well-beloved , said State [or the Honourable , Speaker of the Legislative Assembly of our said State, as the case may be], at , the day of , 19 , in the year of our reign.

Governor [or Speaker].

ADVICE ON MISLEADING ADVERTISING FROM CROWN SOLICITOR

Folio No: 93
File No: 044
Officer:

Crown Solicitor,
State Law Building,
50 Ann Street,
Brisbane, Queensland. 4000.

"A COPY OF THIS DOCUMENT HAS PREVIOUSLY BEEN FORWARDED BY FACSIMILE"

10 October 1991

Mr Tom Sherman
Chairman
Electoral and Administrative
Review Commission
Level 9
Capital Hill
85 George Street
BRISBANE Q 4000
FAX NO: 237 1991

Dear Mr Sherman,

I refer to your letter of 19 September 1991 (Your Ref: 044/SPOLDON/65) seeking my advice whether the Queensland Parliament may validly enact legislation which extends s.112 of the *Elections Act 1983-1991 (Qld)* to include a prohibition on misleading advertisements appearing in the electronic media.

It would appear that, subject to certain qualifications, such an amendment could be validly made.

The Queensland Legislative Assembly has power to make laws for the peace, welfare and good government of the State of Queensland (s.2 *Constitution Act 1867*) and a law relating to matters reasonably incidental to the election of members to the Legislative Assembly will clearly fall within such powers. The only limitation upon that power relevant in this case may be certain Commonwealth Acts namely the *Electoral Act 1918* ("the Electoral Act") and the *Broadcasting Act 1942* ("the Broadcasting Act").

The Electoral Act

The Electoral Act contains, in s.329(1), a prohibition upon, inter alia, the publishing of any matter or thing that is likely to mislead or deceive an elector in relation to the casting of a vote in relation to an election under that Act.

:8204

"Publish" is defined to include publication by radio or television (s.329(6)). A breach of s.329 is an offence, and the conduct constituting that offence may be restrained by injunction (s.383).

However, s.329(1) is limited to an "election under this Act"; that phrase is not defined, but is clearly limited to the election of members to the Parliaments of the Commonwealth or of the Territories. Although the power of the Commonwealth Parliament to enact s.329 is not an exclusive power (see s.31 and s.51(xxxvi) of the Constitution) so that a State could legislate with respect to electronic media advertisements for federal elections, any provision of a State enactment which was inconsistent with s.329 would, of course, be invalid to the extent of that inconsistency (s.109 Constitution). Accordingly, any prohibiting of the publishing on radio or television of any matter or thing that is likely to mislead or deceive an elector in relation to the casting of a vote would, to the extent that it relates to an election to which s.329(1) Electoral Act applies, be invalid.

The Broadcasting Act

As you have noted in your letter the Broadcasting Act does not provide any head of power for controlling misleading electronic advertising.

However the conditions of a license granted under the Act may include such conditions are as imposed by the Australian Broadcasting Tribunal (s.84(1)(b) Broadcasting Act). It would seem that under s.84(1)(b), the Tribunal could validly impose upon a broadcast license a condition that the licence holder not authorise, cause or permit the publication of a advertisement which is likely to mislead or deceive; any provision of a State enactment which purported to limit the power of the tribunal to impose such conditions, or to override such conditions, would of course be invalid to that extent (s.109 of the Constitution).

Further s.116 of the Broadcasting Act places certain restrictions on the broadcasting of political matter. By s.116(1), the Australian Broadcasting Corporation Board is empowered with a discretion to determine to what extent and in what manner political matter or controversial matter may be broadcast by the corporation. Although "political matter" is not defined for the purposes of s.116, nor for the purposes of the Broadcasting Act generally, it is defined in s.117 to include matters intended or calculated or likely in the circumstances to influence the voting intentions of reasonable electors in respect of an election or referendum. "Election" in s.116 includes an election for the Parliament of a State (s.116(6); s.4). Accordingly any Act of a State which purported to limit the power of the ABC Board to determine what matters would be broadcast by the ABC would be invalid under s.109 of the Constitution to the extent that it purported to impose such limitation.

Section 116 also places certain limitations upon licensees with respect to the broadcast of election matter. For example, licensees are required to refrain from broadcasting election advertisements in relation to an election during the period

commencing on the expiration of the Wednesday preceding the polling date for the election (s.116(4)). However, there is nothing in these sections which would be inconsistent with State legislation prohibiting the broadcast of misleading or deceptive election material.

Summary

The Queensland Parliament may validly enact legislation in terms similar to s.113 of the *Electoral Act 1985 (SA)* prohibiting the publication in electronic media of election advertisements which are, or are likely to be, misleading or deceptive. However, any legislation enacted would be subject to:

1. The power of the Australian Broadcasting Tribunal to impose inconsistent conditions with respect to a broadcasting license (s.84(1)(b) Broadcasting Act);

2. The power of the ABC Board to make an inconsistent determination with respect to the ABC pursuant to s.116(1) Broadcasting Act; and

3. Any future inconsistent Commonwealth legislation. Although there is no express provision in the Broadcasting Act at this stage, the Commonwealth Parliament clearly has power to legislate to prohibit misleading election advertising with respect to Parliamentary elections, given the wide nature of the power vested in it pursuant to s.51(v) of the Constitution (see Jones v. Commonwealth (No. 2) (1965) 112 CLR 207 particular per Kitto J. at 226-227).

Yours sincerely,

(K.M. O'Shea)
Crown Solicitor.

:8204

APPENDIX H

A DRAFT BILL FOR AN ELECTORAL ACT

ELECTORAL BILL 1992

TABLE OF PROVISIONS

Section

Division 2—Disputing elections

Division 3—Disputing qualifications and vacancies of members

PART 8—ENFORCEMENT

Division 1—Offence in general

1992

A BILL
FOR

An Act relating to Legislative Assembly elections and other electoral matters

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows.

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Electoral Act 1992*.

Commencement

2.(1) Section 1 and this section commence on the day this Act receives the Royal Assent.

(2) The remaining provisions of this Act commence on a day or days to be fixed by proclamation.

Interpretation

3. In this Act —

"Aboriginal Council" has the same meaning as in the *Community Services (Aborigines) Act 1984*;

"Antarctic elector" has the same meaning as in section 246(1) of the Commonwealth Electoral Act;

"appointed commissioner" means the Chairperson or the non-judicial appointee;

"assistant returning officer" has the meaning given by section 33;

"average number of enrolled electors for electoral districts" has the meaning given by section 4;

"candidate", in relation to an election, means a person who has become a candidate in accordance with section 88(4);

"Chairperson" means the Chairperson of the Commission;

"Commission" means the Queensland Electoral Commission established by section 7;

"commissioner" means a commissioner of the Commission;

"Commonwealth Electoral Act" means the *Commonwealth Electoral Act 1918* of the Commonwealth;

"Commonwealth electoral roll" means an electoral roll under the *Commonwealth Electoral Act 1918* of the Commonwealth;

"continuing candidate", in relation to a counting of votes, means a candidate who has not been excluded at a previous count of votes;

"Court of Disputed Returns" means the court of that name referred to in section 127;

"cut-off day for electoral rolls", in relation to an election, means the day so described in the writ for the election;

"cut-off day for the nomination of candidates", in relation to an election, means the day so described in the writ for the election;

"day for the return of a writ" means the day so described in the writ;

"declaration envelope" means an envelope included in declaration voting papers;

"declaration voting papers", in relation to an election, means—

(a) the ballot paper for the election; and

(b) an envelope on which there is or are—

(i) where the declaration voting papers are given to a person under section 111—questions as required by that section; or

(ii) in any other case—a declaration to be made by an elector;

"Deputy Electoral Commissioner" means the Deputy Electoral Commissioner referred to in section 22;

"election" means an election of a member or members of the Legislative Assembly;

"election matter" means anything able to, or intended to—

(a) influence an elector in relation to voting at an election; or

(b) affect the result of an election;

"election period", in relation to an election, means the period beginning at the end of the day on which the writ for the election is issued and ending at 6 p.m. on the polling day for the election;

"elector" means a person entitled to vote under section 101;

"Electoral Commissioner" means the Electoral Commissioner referred to in section 21;

"electoral matters" means matters relating to elections;

"electoral registrar" has the meaning given by section 31;

"electoral paper" means ballot paper, declaration voting paper or any other

document issued by the Commission for the purposes of this Act;

"electoral redistribution" means a redistribution of the State into electoral districts in accordance with Part 3;

"electoral roll" means the roll referred to in section 58;

"eligible Judge" means a person who is a Judge of a District Court or District Courts and has been such a Judge for 3 years or longer;

"exhausted ballot paper", in relation to a count of votes, means a ballot paper on which there is not recorded a vote for a continuing candidate;

"first preference vote" means the number 1 or a tick or cross made in a square opposite the name of a candidate on a ballot paper;

"formal ballot paper"has the meaning given by section 113(4);

"illegal election practice" means any contravention of this Act or the regulations;

"informal ballot paper" has the meaning given by section 113(4);

"institution" means —

(a) a hospital; or

(b) a convalescent home; or

(c) a nursing home; or

(d) a home for the aged; or

(e) a hostel for the aged or infirm; or

(f) a prison or other place of confinement; or

(g) any other place that is declared by regulation for the purposes of this definition to be an institution;

or any part of a place to which any of the paragraphs of this definition applies;

"Island Council" has the same meaning as in the *Community Services (Torres Strait) Act 1984*;

"issuing officer" means a member of the staff of the Commission who is responsible for issuing ballot papers or declaration voting papers to electors;

"Local Authority" has the same meaning as in the *Local Government Act 1936*;

"member", in relation to a political party, means a person who is a member of the political party or of a related political party;

"mobile polling booth" has the meaning given by section 95;

"non-judicial appointee" means the commissioner referred to in section 7(2)(c);

"ordinary polling booth" has the meaning given by section 95;

"ordinary voting hours" means voting hours in relation to ordinary polling booths;

"Parliamentary party" means a political party of which at least one member is a member of—

(a) the Parliament of the Commonwealth; or

(b) the Parliament of a State; or

(c) the Legislative Assembly of the Northern Territory; or

(d) the Legislative Assembly of the Australian Capital Territory;

"political party" means an organisation whose object or activity, or one of whose objects or activities, is the promotion of the election to the Legislative Assembly of a candidate or candidates endorsed by it or by a body or organisation of which it forms a part;

"polling booth" means an ordinary polling booth or a mobile polling booth;

"polling day", in relation to an election, means the day so described in the writ for the election;

"publicly available part of an electoral roll" means that part of an electoral roll that does not contain—

(a) if section 58(4) applies in relation to a person whose name is on the roll—the address of the person; and

(b) in any case—information of a kind declared by regulation for the purposes of this definition to be restricted information;

"Register of Candidates" means the register kept in accordance with section 96;

"Register of Political Parties" means the register kept in accordance with Part 5;

"registered officer", in relation to a registered political party, means the person who became the registered officer of the party in accordance with section 72(4) or any person replacing that person as a result of an amendment of the Register of Political Parties under section 74, as the case requires;

"registered political party" means a political party that is registered in the Register of Political Parties in accordance with Part 5;

"registrable political party" means a political party that—

(a) either—

(i) is a Parliamentary party; or

(ii) has at least 150 members who are electors; and

(b) is established on the basis of a written constitution (however described) that sets out the aims of the party;

"related political party" has the meaning given by section 6;

"returning officer" has the meaning given by section 32;

"scrutineer" means a person appointed under section 99;

"secretary", in relation to a political party, means the person who holds the office (however described) whose duties involve responsibility for carrying out the administration and dealing with the external correspondence of the party;

"senior electoral officer" means the Electoral Commissioner or the Deputy Electoral Commissioner;

"voting compartment" means a compartment in a polling booth where electors may vote in private;

"voting hours", in relation to a polling booth, means the hours during which electors may, in accordance with section 94(8), enter the polling booth.

Average number of enrolled electors for electoral districts

4.(1) For the purposes of this Act, but subject to subsection (2), **"average number of enrolled electors for electoral districts"** means the number worked out by dividing the total number of enrolled electors for all electoral districts by 89.

(2) If the number includes a fraction —

(a) if the fraction is less than one-half—the number is to be reduced to the nearest whole number; and

(b) in any other case—the number is to be increased to the nearest whole number.

When electoral redistribution etc. becomes final

5. For the purpose of this Act, the electoral distribution undertaken under the *Electoral Districts Act 1991* or any electoral redistribution undertaken under this Act became or becomes final when all appeals, and proceedings in relation to appeals, that have been instituted under section 4.5 of the *Electoral Districts Act 1991* or under section 57 of this Act have been determined and the time for all such appeals and proceedings to be instituted has passed.

Related political parties

6. For the purposes of this Act, 2 political parties are related political parties if—

(a) one is a part of the other; or

(b) both are parts of the same political party.

PART 2—ADMINISTRATION

Division 1—The Queensland Electoral Commission

Establishment of Queensland Electoral Commission

7.(1) A commission called the Queensland Electoral Commission is established.

(2) The commission consists of the following commissioners —

(a) the Chairperson; and

(b) the Electoral Commissioner; and

(c) one other commissioner.

(3) The Chairperson and the non-judicial appointee are to be appointed by the Governor in Council and hold office on a part-time basis.

(4) The person appointed as Chairperson must be a person whose name is included in a list of the names of 3 eligible Judges (which may include the Chairperson of District Courts) submitted to the Governor for the purposes of this section by the Chairperson of District Courts.

(5) A person is not to be appointed as the non-judicial appointee unless the person is the holder of —

(a) the office of chief executive of a department within the meaning of the *Public Service Management and Employment Act 1988;* or

(b) an office established by or under an Act, that the Governor in Council considers to be equivalent to the office mentioned in paragraph (a).

(6) Before a person is appointed as a commissioner, the Minister must consult the leader of each political party in the Legislative Assembly regarding the proposed appointment.

(7) The appointment of the Chairperson or non-judicial appointee is not invalid merely because of a defect or irregularity in relation to the appointment.

(8) The performance of the functions or the exercise of the powers of the Commission is not affected merely because of one vacancy in the membership of the Commission.

Functions and powers of Commission

8.(1) The functions of the Commission are —

(a) to perform functions that are permitted or required to be performed by or under this Act, other than functions that a specified person or body, or the holder of a specified office, is expressly permitted or required to perform; and

(b) whenever it considers that a review of the appropriateness of the number of electoral districts should be conducted, to request the Parliamentary Committee for Electoral and Administrative Review to conduct the review; and

(c) to consider, and report to the Minister on, electoral matters referred to it by the Minister and such other electoral matters as it thinks fit; and

(d) to promote public awareness of electoral matters by means of the conduct of education and information programs and by other means; and

(e) to provide information and advice on electoral matters to the Legislative Assembly, the Government, Departments and Government authorities; and

(f) to conduct and promote research into electoral matters and other matters that relate to its functions; and

(g) to publish material on matters that relate to its functions; and

(h) to perform any other functions that are conferred on it by or under any other Act.

(2) The Commission may perform any of its functions under subsection (1)(c) to (g) in conjunction with the electoral authorities of the Commonwealth.

(3) The Governor may arrange with the Governor-General of the Commonwealth for the performance by the electoral authorities of the Commonwealth of any functions on behalf of the Commission.

(4) The Commission may do all things necessary or convenient to be done for or in connection with the performance of its functions.

Queensland Redistribution Commission

9. When performing its functions under Part 3, the Commission is to be known as the Queensland Redistribution Commission.

Tenure and terms of office

10.(1) Subject to this Division, an appointed commissioner holds office for the period specified in the instrument of the commissioner's appointment, which is not to be more than 7 years.

(2) The Chairperson ceases to hold office if the Chairperson ceases to be a Judge of a District Court or District Courts.

(3) Where—

(a) at any time, a person who is the non-judicial appointee holds an office of a kind referred to in section 7(5)(a); and

(b) the person ceases to be the holder of that position; and

(c) the person does not, immediately upon ceasing to hold that position, commence to hold another such position;

the person ceases to be a commissioner.

(4) Where—

(a) a person who was appointed as the non-judicial appointee because of holding an office referred to in section 7(5)(b) ceases to hold that office; and

(b) the person does not, immediately upon ceasing to hold that office, commence to hold a position of a kind referred to in section 7(5)(a);

the person ceases to be a commissioner.

(5) An appointed commissioner holds office on such terms and conditions not provided for by this Act as are determined by the Governor in Council.

(6) In the case only of the non-judicial appointee, remuneration may be such a term or condition.

(7) The *Public Service Management and Employment Act 1988* does not apply to an appointed commissioner.

Leave of absence

11. The Commission may grant the non-judicial appointee leave of absence from a meeting of the Commission.

Resignation

12. An appointed commissioner may resign his or her office by writing given to the Governor.

Disclosure of interests

13.(1) A commissioner who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Commission must, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of his or her interest at a meeting of the Commission.

(2) The disclosure must be recorded in the minutes of the meeting of the Commission and the commissioner must not, unless the Minister otherwise determines —

(a) be present during any deliberation of the Commission with respect to the matter; or

(b) take part in any decision of the Commission with respect to the matter.

Termination of appointment

14. If the non-judicial appointee—

(a) is absent, except on leave granted by the Commission in accordance with section 11, from 3 consecutive meetings of the Commission; or

(b) fails, without reasonable excuse, to comply with his or her obligations under section 13;

the Governor in Council is to terminate the appointment of the non-judicial appointee.

Acting appointments

15. The Governor in Council may appoint a person to act as an appointed commissioner.

Meetings of Commission

16.(1) The Chairperson may, at any time, convene a meeting of the Commission.

(2) If the Chairperson is absent or otherwise unavailable to perform his or her duties and no-one is acting as Chairperson under section 15, the Electoral Commissioner may convene a meeting of the Commission.

(3) The Chairperson must convene such meetings of the Commission as, in his or her opinion, are necessary for the efficient performance of its functions.

(4) At a meeting of the Commission, 2 Commissioners constitute a quorum.

(5) The Chairperson must preside at all meetings of the Commission at which he or she is present.

(6) If the Chairperson is not present at a meeting of the Commission, the commissioners present must elect one of their number to preside at that meeting.

(7) Questions arising at a meeting of the Commission are to be determined by a majority of the votes of the commissioners present and voting.

(8) The person presiding at a meeting of the Commission has a deliberative vote

and, in the event of an equality of votes, also has a casting vote.

(9) If, at any meeting of the Commission at which only 2 commissioners are present (other than a meeting from which a commissioner is absent because of section 13), the commissioners differ in opinion on any matter, the determination of that matter must be postponed to a full meeting of the Commission.

(10) The Commission may regulate the conduct of proceedings at its meetings as it thinks fit.

Estimates

17.(1) The Commission must give the Minister a statement in relation to each financial year setting out —

(a) estimates of the receipts and expenditure of the Commission for the financial year; and

(b) the purpose of the expenditure; and

(c) the receipts and expenditure of the Commission for the preceding financial year; and

(d) where the Commission has previously given the Minister a statement under this section in relation to the preceding financial year—the estimates of receipts and expenditure set out in the statement for that preceding financial year.

(2) The Commission must comply with any request by the Minister relating to the time when the statement is to be given to the Minister.

Delegation by Commission

18.(1) The Commission may by resolution delegate to a commissioner, a senior electoral officer or a member of the staff of the Commission all or any of its powers under this Act (other than under sections 44 to 46 or section 50 or 51).

(2) A certificate signed by the Chairperson stating any matter with respect to a delegation of a power under this section is *prima facie* evidence of that matter.

(3) A document purporting to be a certificate under subsection (2) is, unless the contrary is established, taken to be such a certificate.

Reports by Commission

19.(1) The Commission must, as soon as practicable after 30 June in each year, give to the Minister a report of the operations of the Commission during the year that ended on that 30 June.

(2) The Commission must, as soon as practicable after the return of the writ for any

election, give to the Minister a report on the operation of Part 6 in relation to the election.

(3) The Minister must cause a copy of any report under this section to be laid before the Legislative Assembly within 3 sitting days of the Assembly after the day on which the Minister receives the report.

Application of *Financial Administration and Audit Act 1977*

20. For the purposes of the *Financial Administration and Audit Act 1977* the Commission is taken to be a department.

Division 2—Electoral Commissioner and Deputy Electoral Commissioner

Electoral Commissioner

21.(1) There is to be an Electoral Commissioner.

(2) The Electoral Commissioner is the chief executive officer of the Commission.

Deputy Electoral Commissioner

22.(1) There is to be a Deputy Electoral Commissioner.

(2) Subject to any directions by the Commission, the Deputy Electoral Commissioner is to perform such duties as the Electoral Commissioner directs.

(3) Subject to subsection (4), the Deputy Electoral Commissioner is to act as the Electoral Commissioner —

(a) during a vacancy in the office of the Electoral Commissioner, whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when the Electoral Commissioner is absent from duty or from Australia or is, for any other reason, unable to perform the functions of the office.

(4) The Deputy Electoral Commissioner is not to act as the Electoral Commissioner during a vacancy in the office of Electoral Commissioner while a person appointed under section 27 is acting in that office.

(5) A person acting as the Electoral Commissioner is chief executive officer of the Commission.

Terms and conditions of appointment etc.

23.(1) A senior electoral officer is to be appointed by the Governor in Council.

(2) Before a person is appointed as a senior electoral officer, the Minister must consult the leader of each political party in the Legislative Assembly regarding the proposed appointment.

(3) A person who is a member of a political party is not to be appointed as a senior electoral officer.

(4) Subject to this Act, a senior electoral officer holds office for the period specified in the senior electoral officer's instrument of appointment, which is not to be longer than 7 years.

(5) A person who has turned 65 is not to be appointed as a senior electoral officer and a person is not to be appointed as a senior electoral officer for a period extending beyond the day on which the person turns 65.

(6) The *Public Service Management and Employment Act 1988* does not apply to a senior electoral officer.

(7) If an officer of the public service (within the meaning of the *Public Service Management and Employment Act 1988*) is appointed as a senior electoral officer, the person retains —

(a) any long service leave and other leave entitlements accrued or accruing; and

(b) any other rights and entitlements accrued or accruing under that Act and any other Act prescribed for the purposes of this paragraph;

as if the person's service as a senior electoral officer were a continuation of the person's service as an officer of the public service.

(8) A senior electoral officer holds office on such terms and conditions, relating to remuneration and other matters not provided for by this Act, as are determined by the Governor in Council.

(9) The appointment of a person as a senior electoral officer is not invalid merely because of a defect or irregularity in relation to the appointment.

Leave of absence

24. The Commission may grant leave of absence to a senior electoral officer on such terms and conditions as the Commission determines.

Resignation

25. A senior electoral officer may resign his or her office by writing given to the Governor.

Termination of appointment

26.(1) The Governor in Council may terminate the appointment of a senior electoral officer for misbehaviour or physical or mental incapacity.

(2) If a senior electoral officer —

(a) accepts nomination for election to the Parliament of the Commonwealth or of any State or Territory; or

(b) becomes a member of a registered political party; or

(c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or

(d) is absent, except on leave granted by the Commission, for 14 consecutive days, or for 28 days, in any 12 months; or

(e) engages in paid employment outside the duties of his or her office without the approval of the Commission;

the Governor in Council must terminate the appointment of the senior electoral officer.

(3) If the Electoral Commissioner, or the Deputy Electoral Commissioner while acting as the Electoral Commissioner, fails, without reasonable excuse, to comply with his or her obligations under section 13, the Governor in Council must terminate his or her appointment as a senior electoral officer.

Acting Electoral Commissioner

27.(1) The Governor in Council may appoint a person to act as the Electoral Commissioner —

(a) during a vacancy in the office of the Electoral Commissioner; or

(b) during any period, or during all periods, when —

(i) the Electoral Commissioner is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office; and

(ii) no person is acting as the Electoral Commissioner by virtue of holding the office of, or acting as, the Deputy Electoral Commissioner.

(2) Section 24B (other than subsection (2)) of the *Acts Interpretation Act 1954* applies to the appointment.

Acting Deputy Electoral Commissioner

28.(1) The Governor in Council may appoint a person to act as the Deputy

Electoral Commissioner —

(a) during a vacancy in the office of the Deputy Electoral Commissioner;

(b) during any period, or during all periods, when the Deputy Electoral Commissioner is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office.

(2) Section 24B (other than subsection (2)) of the *Acts Interpretation Act 1954* applies to the appointment.

Notice of appointments

29. Notice of the appointment of persons as, or to act as, senior electoral officers must be published in the Gazette.

Division 3—Staff of the Commission

Staff

30.(1) The staff of the Commission consist of—

(a) electoral registrars, returning officers and assistant returning officers appointed in accordance with this Division; and

(b) other staff necessary for the performance of the functions of the Commission.

(2) Except where section 31(4) applies, staff of the Commission are to be appointed under the *Public Service Management and Employment Act 1988.*

(3) The Electoral Commissioner has all the powers and responsibilities of the chief executive of a department, so far as they relate to the organisational unit comprising the Commission's staff, as if —

(a) that unit were a department within the meaning of the *Public Service Management and Employment Act 1988;* and

(b) the Commissioner were the chief executive of that department.

Electoral registrars

31.(1) The Governor in Council may appoint one or more electoral registrars for any electoral district.

(2) Advice to the Governor in Council regarding the appointment must only be given after consultation with the Commission.

(3) The Governor in Council may appoint the same person as an electoral registrar for 2 or more electoral districts.

(4) Subject to subsection (5), the Governor in Council may appoint as an electoral registrar —

(a) the holder of a specified office under the Crown in the right of the State; or

(b) a returning officer within the meaning of the *City of Brisbane Act 1924* or the *Local Government Act 1936*; or

(c) in accordance with an arrangement between the Governor-General and the Governor—the holder of a specified office of Divisional Returning Officer, within the meaning of the *Commonwealth Electoral Act 1918.*

(5) The Governor in Council must not appoint a member of a registered political party as an electoral registrar.

(6) Without limiting the powers of the Governor in Council to terminate the appointment of electoral registrars, the Governor in Council must terminate the appointment of an electoral registrar if the electoral registrar becomes a member of a registered political party.

(7) Where the Governor in Council does so, the holder from time to time of the office, and a person from time to time performing the duties of the office, is the electoral registrar.

(8) An electoral registrar has, subject to the directions of the Commission, the functions and powers conferred under this Act.

Returning officers

32.(1) The Governor in Council may appoint a person who is an elector as a returning officer for any electoral district.

(2) Advice to the Governor in Council regarding the appointment must only be given after consultation with the Commission.

(3) A person must not be appointed as a returning officer if the person is aged less than 18 years or is a member of a registered political party.

(4) Without limiting the powers of the Governor in Council to terminate the appointment of returning officers, the Governor in Council must terminate the appointment of a returning officer if the returning officer becomes a member of a registered political party or ceases to be an elector.

(5) A returning officer has, subject to the directions of the Commission, the functions and powers conferred under this Act.

Assistant returning officers

33.(1) The Governor in Council may appoint an elector as assistant returning officer, or electors as assistant returning officers, for an electoral district.

(2) Advice to the Governor in Council regarding the appointment must only be given after consultation with the Commission.

(3) A person must not be appointed as an assistant returning officer if the person is aged less than 18 years or is a member of a registered political party.

(4) Without limiting the power of the Governor in Council to terminate the appointment of assistant returning officers, the Governor in Council must terminate the appointment of an assistant returning officer if the assistant returning officer becomes a member of a registered political party.

(5) An assistant returning officer must, subject to the directions of the Commission—

(a) assist the returning officer for the electoral district in performing his or her functions and exercising his or her powers under this Act; and

(b) act as returning officer during any period when there is a vacancy in the office of returning officer or when the returning officer is absent for duty.

(7) When acting as the returning officer, an assistant returning officer has all the powers, and must perform all the functions, of the returning officer.

PART 3—ELECTORAL DISTRICTS AND ELECTORAL REDISTRIBUTIONS

Division 1—Distribution etc of State into electoral districts

Number of electoral districts for the State

34. There are 89 electoral districts for the State.

Distribution, and redistribution, of State into electoral districts

35.(1) Until the first electoral redistribution under this Act has become final, the State is distributed into the 89 electoral districts in accordance with the *Electoral Districts Act 1991*.

(2) Division 2 describes when the need for electoral redistributions arises.

(3) Subject to subsections (4) and (5), when the need for an electoral redistribution arises, the Commission must, as soon as practicable, redistribute the State into the 89 electoral districts in the manner set out in Division 3.

(4) If—

(a) the need for an electoral redistribution arises in the period between the issue and return of a writ for a general election; or

(b) a writ for a general election is issued while the Commission is undertaking an electoral redistribution;

the Commission must defer undertaking, or any further action in undertaking, the electoral redistribution until after the return of the writ.

(5) If—

(a) the writ for a general election (in this subsection called the **"later election"**) is issued more than 2 years after the day on which the writ for the preceding general election was returned; and

(b) the need for an electoral redistribution arises after the 2 years and before the issue of the writ for the later election;

the Commission must defer undertaking the electoral redistribution until after the return of the writ for the later election.

(6) Whenever the Commission is required by subsection (3) to undertake a redistribution, the Commission must, as soon as practicable after the requirement arises, publish in the Gazette a notice—

(a) stating that the requirement has arisen; and

(b) setting out the membership of the Commission at the time.

Division 2—When need for an electoral redistribution arises

Need for electoral redistribution arises in 3 circumstances

36. For the purposes of this Act, the need for an electoral redistribution arises whenever section 37, 38 or 39 applies.

Electoral redistribution because of changed number of electoral districts

37. The need for an electoral redistribution arises if this Act is amended to make a change in the number of electoral districts for the State.

Electoral redistribution after a certain number of elections

38. The need for an electoral redistribution arises one year after the day appointed for the return of writs for the 3rd general election of the Legislative Assembly held after —

(a) the electoral distribution under the *Electoral Districts Act 1991* became final; or

(b) any electoral redistribution under this Act becomes final.

Electoral redistribution because of enrolment changes

39.(1) Subject to this section, the need for an electoral redistribution arises whenever the requirement set out in section 45 would not be satisfied in respect of one-third or more of electoral districts for 2 months in a row, assuming that it were applied by reference to the number of enrolled electors and the average number of enrolled electors for electoral districts as gazetted under section 63 for each of the months.

(2) For the purposes of subsection (1), it is not necessary that the requirement would not be satisfied in respect of the same one-third or more of electoral districts for the 2 months in a row.

Situation where need for more than one electoral redistribution arises

40. If during the period beginning when the need for an electoral redistribution arises under section 37, 38 or 39 and ending when the electoral redistribution becomes final, the need for another or other electoral redistributions would, apart from this section, arise during that period under any of those sections (including the same section) then:

(a) the need for that other or those other electoral redistributions does not arise; and

(b) for the purposes of any later application of section 39, any month occurring wholly or partly during the period is to be disregarded.

Division 3—How electoral redistributions are to be undertaken

Scope of Division

41.(1) This Division sets out the way in which the Commission is to undertake an electoral redistribution.

(2) The steps involved are —

(a) inviting suggestions (section 42); and

(b) inviting comments on the suggestions (section 43); and

(c) preparing a proposed electoral redistribution (sections 44 to 46); and

(d) publishing the proposed electoral redistribution (section 47); and

(e) inviting objections against the proposed electoral redistribution (section 48); and

(f) inviting comments on the objections (section 49); and

(g) considering the objections etc. and inviting further objections (section 50); and

(h) considering the further objections and making any changes required to the proposed electoral redistribution (section 51); and

(i) making the electoral redistribution (section 52); and

(j) advertising the electoral redistribution (section 53); and

(k) tabling all relevant documents (section 54).

(3) The Division also contains provisions (section 57) relating to appeals against electoral redistributions.

Inviting suggestions

42.(1) As soon as practicable after the need for the electoral redistribution to be undertaken has risen, the Commission must, in accordance with this section, invite suggestions from persons relating to the redistribution.

(2) The Commission must invite the suggestions by notice published in accordance with section 56.

(3) The notice must state that suggestions are to be given to the Commission in writing within 30 days after the notice is published in the Gazette in accordance with section 56.

Inviting comments on the suggestions

43.(1) As soon as practicable after the 30 days mentioned in section 42(3), the Commission must make available copies of all suggestions given to it within the 30 days for public inspection, without fee, at the Commission's office and at any other places in the State that the Commission considers appropriate.

(2) The Commission must, as soon as practicable after the 30 days, also publish a notice in accordance with section 56 that—

(a) advises of the availability for inspection of the copies of the suggestions; and

(b) states that any person or association may comment in writing to the Commission on the suggestions within 21 days after the notice is published in the Gazette in accordance with section 56.

(3) After the 21 days, the Commission must make available, for public inspection, without fee, at the Commission's office, copies of any comments given to it within the 21

days.

Preparing a proposed electoral redistribution

44.(1) The Commission must, as soon as practicable after the end of the period of 21 days referred to in section 43(2)(b), prepare a proposed redistribution of the State into areas that it considers appropriate as the 89 electoral districts and prepare proposed names for the electoral districts.

(2) In preparing the proposed electoral redistribution, the Commission must take into account all suggestions and comments under sections 42 and 43, and must comply with the requirements of sections 45 and 46.

Proposed electoral redistribution must be within numerical limits

45.(1) The Commission must, in undertaking the proposed electoral redistribution, ensure that the following requirement is satisfied, as at the end of the 21 days mentioned in section 43(2)(b), for each proposed electoral district —

(a) if paragraph (b) does not apply to the electoral district—that the number of enrolled electors does not differ from the average number of enrolled electors for electoral districts by more than 10%; or

(b) if the electoral district has an area of 100,000 square kilometres or more—the sum of the number of enrolled electors and the additional large district number does not differ from the average number of enrolled voters for electoral districts by more than 10%.

(2) In subsection (1)(b)—

"additional large district number" means 2% of the number of square kilometres in the area of the electoral district.

Matters to be considered in preparing proposed electoral redistribution

46.(1) In redistributing the State into proposed electoral districts, the Commission must also consider the following matters —

(a) the extent to which there is a community of economic, social, regional or other interests within each proposed electoral district; and

(b) the means of communication and travel within each proposed electoral district; and

(c) the physical features of each proposed electoral district; and

(d) the boundaries of existing electoral districts and areas of Local Authorities; and

(e) demographic trends in the State, with a view to ensuring as far as practicable

that, on the basis of the trends, the need for another electoral redistribution will not arise under section 39 before it does under section 38.

(2) The Commission may give such weight to each of the matters set out in subsection (1) as it considers appropriate.

Publishing the proposed electoral redistribution

47.(1) As soon as practicable after the Commission has prepared the proposed electoral redistribution, it must comply with this section and section 48.

(2) The Commission must —

(a) make available for public inspection, without fee, at its office a single map, or a number of maps, such that the names and boundaries of all the proposed electoral districts in the State are shown; and

(b) make available, for public inspection, without fee, at its office and at any other places in the State that the Commission considers appropriate, a description of the boundaries of all proposed electoral districts and of its reasons for redistributing the State in the manner proposed (including the reasons of any commissioner who disagrees with the redistribution in that manner).

(3) The Commission must display, in a conspicuous place to which the public has access and at any other place that the Commission considers appropriate, in each proposed electoral district, a map showing the boundaries of that proposed electoral district.

Inviting objections against the proposed electoral redistribution

48.(1) The Commission must publish a notice in accordance with section 56 that —

(a) advises of the availability for inspection, and the display, of the things mentioned in section 47 (2) and (3); and

(b) states that any person or association may object in writing to the Commission against the proposed electoral redistribution within 30 days after publication of the notice in the Gazette in accordance with section 56; and

(c) is accompanied by a map showing, or any number of maps together showing, the names and boundaries of all proposed electoral districts in the State.

(2) The Commission may, at any time before publishing a notice under subsection (1), make public its proposed electoral redistribution.

Inviting comments on the objections

49.(1) As soon as practicable after the 30 days mentioned in section 48(1)(b), the Commission must make available copies of all objections given to it within the 30 days for

public inspection, without fee, at the Commission's office and at any other place in the State that the Commission considers appropriate.

(2) The Commission must, as soon as practicable after the 30 days, also publish a notice in accordance with section 56 that—

(a) advises of the availability for inspection of the copies of the objections; and

(b) states that any person or association may comment in writing to the Commission on the objections within 10 days after the notice is published in the Gazette in accordance with section 56.

(3) After the 10 days, the Commission must make available for public inspection, without fee, at the Commission's office copies of any comments given to it within the 10 days.

Commission to consider objections etc. and invite further objections

50.(1) Where an objection or comment given to the Commission within the period allowed under section 48 or 49 raises a matter that has not already been raised, or substantially raised, in a suggestion or comment under section 42 or 43, the Commission must —

(a) consider the objection or comment; and

(b) make any changes to the proposed electoral redistribution that it considers would be necessary if sections 45 and 46 were being applied.

(2) As soon as practicable afterwards, the Commission must publish a notice in accordance with section 56—

(a) setting out its conclusions in relation to all objections to which subsection (1)(a) applies; and

(b) describing any changes that it has made under subsection (1)(b) to the proposed electoral redistribution; and

(c) if the Commission considers that any such changes involve a significant difference in the proposed electoral redistribution—stating that any person or association that made an objection or comment within the period allowed under section 48 or 49 may object to the Commission against the changed proposed electoral redistribution within 10 days after the notice is published in the Gazette in accordance with section 56.

Commission to consider further objections and make changes

51. Where an objection given to the Commission within the 10 days referred to in section 50(2)(c) raises a matter that has not already been raised in an objection, comment or suggestion under section 42, 43, 48 or 49, the Commission must—

(a) consider the objection; and

(b) make any changes to the proposed electoral redistribution that it considers would be necessary if sections 45 and 46 were being applied.

Making the electoral redistribution

52.(1) The Commission must, within 90 days after the end of the 30 days referred to in section 48(1)(b), publish in the Gazette a notice stating that the State is redistributed into the electoral districts whose names and boundaries are set out in the notice.

(2) The names and boundaries set out in the notice are to be the same as those for the proposed electoral redistribution, incorporating any changes made under section 50 or 51.

(3) The Commission may, at any time before publishing the notice, make public anything that it intends to publish in the notice.

(4) On the publication of the notice, the State is redistributed into the electoral districts, and those districts have the names, set out in the notice.

(5) The State remains so redistributed until the next electoral redistribution becomes final.

Advertising the electoral redistribution

53.(1) As soon as practicable after publishing the notice under section 52(1), the Commission must comply with this section.

(2) The Commission must—

(a) make available for public inspection, without fee, at its office a single map, or a number of maps, such that the names and boundaries of all the electoral districts in the State are shown; and

(b) make available, without fee, for public inspection, at its office and at any other places in the State that the Commission considers appropriate, a description of the boundaries of all electoral districts in the State and of its reasons for redistributing the State in that manner (including the reasons of any Commissioner who disagrees with the redistribution).

(3) The Commission must display, in a conspicuous place to which the public has access and at any other place that the Commission considers appropriate, in each electoral district, a map showing the boundaries of that district.

(4) The Commission must publish a notice in—

(a) 2 newspapers circulating generally in the State; and

(b) any regional newspapers, circulating in any parts of the State, that the Commission considers appropriate;

advising of the availability for inspection, and the display, of the things mentioned in subsections (2) and (3).

Tabling of all relevant documents

54.(1) The Commission must, as soon as practicable after publishing the notice under section 52(1), give the Minister a copy of —

(a) all suggestions made to it under section 42; and

(b) all comments made to it under section 43; and

(c) the things made available for public inspection under section 47(2); and

(d) all objections made to it under section 48; and

(e) all comments made to it under section 49; and

(f) the notice published under section 52(1); and

(g) the Commission's reasons for the names and boundaries set out in the notice, together with the reasons of any commissioner who disagrees with them.

(2) The Minister must cause a copy of the things given to the Minister under subsection (1) to be laid before the Legislative Assembly within 5 sitting days after they are given.

Powers of Commission

55. Without limiting its power under section 8(4), the Commission may conduct such public hearings as it considers appropriate for the purposes of this Division.

How notices are to be published

56. Where, under this Division, the Commission is required to publish a notice in accordance with this section, the Commission must publish the notice in—

(a) the Gazette; and

(b) 2 newspapers circulating generally in the State; and

(c) any regional newspapers, circulating in any parts of the State, that the Commission considers appropriate.

Appeals against boundaries of electoral districts

57.(1) A person who is entitled to vote at an election of members of the Legislative Assembly may appeal to the Court of Appeal against the boundaries set out in the notice under section 52(1) on the ground that the Commission has not complied with this Part

in making the electoral redistribution concerned.

(2) The appeal must be made—

(a) within 21 days after the publication of the notice; and

(b) in the manner set out in the rules of court of the Court of Appeal.

(3) The Commission is the respondent to the appeal.

(4) If more than one appeal is instituted against the boundaries, every appeal must be dealt with in the same proceedings.

(5) Any person having an interest in the appeal may apply to the Court of Appeal to be joined as a party to the appeal.

(6) If an appeal is instituted under this section, the notice under section 52(1) does not take effect until the appeal has been disposed of by the Court of Appeal.

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

(a) quash the notice and, subject to such directions as it thinks fit, order the Commission to make a fresh notice under section 52(1); or

(b) dismiss the appeal;

and may make any ancillary order as to costs or any other matter that it thinks appropriate.

(8) The Court of Appeal may make rules of court, not inconsistent with this section, with respect to its practices and procedures in relation to appeals under this section.

(9) The validity of the electoral redistribution may only be called in question in an appeal under this section.

(10) An appeal against the boundaries is to be set down for hearing by the Court as soon as practicable after the end of 21 days from the publication of the notice under section 52(1), and is to be heard and determined by the Court as a matter of urgency.

(11) 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 Part—

(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.

(12) A reference in subsection (11) to a decision includes reference to a refusal or failure to make a decision.

PART 4—ELECTORAL ROLLS

Division 1—Commission to keep electoral rolls

Commission to keep electoral rolls

58.(1) The Commission must keep an electoral roll for each electoral district.

(2) Each electoral roll must, in accordance with this Part, contain information in respect of persons entitled to be enrolled for the electoral district.

(3) Each electoral roll must also set out, in relation to each person —

(a) his or her surname and Christian or given names; and

(b) his or her address; and

(c) his or her sex, occupation, and date of birth; and

(d) an identifying number; and

(e) any other information that may be required by regulations for the purposes of this paragraph.

(4) If the Commission is satisfied that the inclusion on a roll of a person's address would place at risk the personal safety of the person or some other person, the person's address must not be set out in the publicly available part of the roll.

Printing etc. of electoral rolls

59.(1) The Commission must prepare all electoral rolls as soon as practicable after—

(a) an electoral redistribution becomes final; or

(b) the cut-off day for electoral rolls in respect of an election; or

(c) 2 years pass after the day appointed for the return of writs for an election of all members of the Legislative Assembly.

(2) The Commission may also prepare all or any of the electoral rolls at any time that it considers appropriate.

(3) Subject to subsection (4), the electoral rolls must be prepared in a printed, microfiche, computer disk, computer tape or other form approved by the Commission.

(4) The rolls prepared when subsection (1)(c) applies must be in a printed form.

Inspection and purchase of publicly available parts of electoral rolls

60.(1) The Commission must make available for inspection by any person, without fee, a copy of the most recent printed version of the publicly available part of all electoral rolls —

(a) at the office of the Commission; and

(b) at the office of each returning officer.

(2) The Commission may also make available for inspection, without fee, by any person, at any other place that the Commission considers appropriate, a copy of the most recent version, in any form, of the publicly available part of any electoral roll.

(3) The Commission must make available copies of the most recent printed version of the publicly available part of each electoral roll for purchase by any person at a price that reasonably reflects the cost of producing each copy.

(4) The Commission may also make available copies of the most recent version, in a non-printed form, of the publicly available part of each electoral roll for purchase by any person at a price that reasonably reflects the cost of producing each copy.

Availability of entire electoral rolls

61.(1) The Commission must, once during each Legislative Assembly, give each member of the Legislative Assembly 3 free copies of the most recent printed version of the entire electoral roll for the electoral district that the member represents.

(2) The Commission must, as soon as practicable after the cut-off day for the nomination of candidates for an election, give a certified copy, without fee, of the entire electoral roll for an electoral district, as at the cut-off day, to each person who is a candidate for election for that district and who requests such a copy.

(3) The Commission may allow any Government department or authority (other than one referred to in subsection (5)) to have access, without fee, to a copy of the most recent computer disk or computer tape version of the entire electoral roll for any electoral district.

(4) The Commission must make available a copy of the most recent computer disk or computer tape version of the entire electoral roll for an electoral district for purchase, at a price that reasonably represents the cost of producing it, by the member who represents the district.

(5) The Commission must make available a copy of the most recent version of the entire electoral roll for any electoral district within—

(a) the area of a Local Authority under the *Local Government Act 1936*; or

(b) the area for which an Aboriginal Council is established under the *Community Services (Aborigines) Act 1984*; or

(c) the area for which an Island Council is established under the *Community*

Services (Torres Strait) Act 1984;

for purchase, at a price that reasonably represents the cost of producing it, by the Local Authority, Aboriginal Council or Island Council.

(6) The Commission must make available a copy of the most recent computer disk or computer tape version of the entire electoral roll for any electoral district for purchase, at a price that reasonably reflects the cost of producing it, by any registered political party.

(7) Except in accordance with this section, the Commission must not provide a copy of any part of any electoral roll, other than the publicly available part, to any person other than a senior electoral officer, a member of the staff of the Commission or a person performing functions under an arrangement referred to in section 62 or 185.

Joint roll arrangement with Commonwealth

62.(1) The Governor may arrange with the Governor-General of the Commonwealth for—

(a) the preparation, alteration or revision of the electoral rolls; or

(b) the carrying out of any procedure relating to the preparation, alteration or revision of the electoral rolls;

in any manner consistent with this Act, jointly by the State and the Commonwealth, whether for the purpose of the rolls being used as electoral rolls for Legislative Asembly as well as for Commonwealth elections, or for any other purpose.

(2) Where such an arrangement is made, the electoral rolls may contain—

(a) names and other information in respect of persons who are not entitled to be enrolled as electors for Legislative Assembly elections, provided that it is clearly indicated in accordance with regulations for the purposes of this paragraph that those persons are not enrolled as electors for the Legislative Assembly; and

(b) distinguishing marks against the names of persons enrolled to show that they are not also enrolled as electors for Commonwealth elections; and

(c) other information in addition to that required under this Division.

(3) For the purposes of this Act, the marks and other information do not form part of the electoral rolls.

Gazettal of enrolment figures

63. The Commission must arrange for the gazettal each month of—

(a) the number of enrolled electors for each electoral district; and

(b) the average number of enrolled electors for electoral districts; and

(c) the extent to which the number of enrolled electors for each electoral district differs from the average number of enrolled electors for electoral districts.

Division 2—Enrolment

Entitlement to enrolment

64.(1) Subject to subsection (2), a person who—

(a) either—

(i) is entitled to be enrolled under the Commonwealth Electoral Act for the purposes of that Act in its application in relation to an election within the meaning of that Act; or

(ii) is not so entitled, but was entitled to be enrolled under the *Elections Act 1983* immediately before the commencement of this section; and

(b) lives in an electoral district and has lived in it for the last month;

is entitled to be enrolled for the electoral district.

(2) If a member of the Legislative Assembly gives notice to the Commission, in the form and manner approved by the Commission, that the member wishes to be enrolled for the electoral district that the member represents, the member is entitled to be enrolled for that electoral district instead of the one applicable under subsection (1).

Enrolment and transfer of enrolment

65.(1) Subject to any arrangement under section 62, the Commission must maintain each electoral roll in accordance with this section.

(2) A person who is entitled to be enrolled for an electoral district and who is not enrolled on the electoral roll for the district must give notice to the an electoral registrar for the district in the form and manner approved by the Commission.

(3) If a person who is enrolled on an electoral roll for an electoral district changes address within the electoral district, the person must, within 21 days, give notice to an electoral registrar for the district in the form and manner approved by the Commission.

(4) Subject to subsection (5), where a notice under this section is received by an electoral registrar, the Commission must, if satisfied that the person concerned is entitled to be enrolled for an electoral district, make appropriate amendments of the electoral rolls.

(5) The Commission must not, except to correct a mistake, amend the electoral rolls during the period from the end of the cut-off day for electoral rolls until the end of polling day for an election.

(6) If the Commission does not (except because of subsection (5)) amend an

electoral roll to give effect to a notice by a person under subsection (2), the Commission must notify the person in writing of—

(a) its decision not to amend the roll; and

(b) the reasons for its decision; and

(c) the person's rights under this Act to have the decision reviewed.

Provisional enrolment

66. Where—

(a) a person is 17 years of age; and

(b) if the person were 18 years of age, the person would be entitled to be enrolled for an electoral district; and

(c) the person makes a request, in the form and manner approved by the Commission, to be enrolled;

then the Commission must enrol the person, but the enrolment is of no effect for the purposes of this Act until the person reaches the age of 18 years.

Objections

67.(1) A person entitled to be enrolled on an electoral roll for an electoral district may object against the enrolment of any person who is enrolled on that roll or any other electoral roll.

(2) The objection must—

(a) set out the grounds on which it is made; and

(b) be made in a form and manner approved by the Commission; and

(c) be accompanied by a deposit of $2.

(3) If—

(a) an objection is made under subsection (2) in relation to the enrolment of any person; or

(b) the Commission decides that any person enrolled on an electoral roll should not have been enrolled;

the Commission must, subject to subsection (4), give the person concerned a reasonable opportunity to answer the objection or respond to the decision.

(4) If the Commission considers that an objection under subsection (2) is frivolous

or vexatious, it must take no further action in relation to the objection.

(5) After considering any answer to the objection or response to the decision, the Commission must take such action (if any) as it considers necessary to amend the electoral rolls.

(6) The Commission must—

(a) give to—

(i) the person objected against or to whom the decision relates; and

(ii) in the case of an objection, the objector;

written notice of the action taken by it and of its reasons for taking that action; and

(b) if the name of the person objected against or to whom the decision relates was removed from an electoral roll—include in the notice advice of the person's right to have the decision to take that action reviewed.

(7) If, as a result of an objection, the name of the person objected against is removed from an electoral roll, the Commission must repay the deposit of $2 that accompanied the objection.

PART 5—REGISTRATION OF POLITICAL PARTIES

Scope of Part

68. This Part sets out the way in which certain political parties may become registered for various purposes under this Act.

Register of Political Parties

69.(1) The Commission must, in accordance with this Part, keep a register containing the names of, and other information and documents related to, political parties registered under this Part.

(2) The Commission must keep the register in the form and way that the Commission considers appropriate.

(3) The register is called the Register of Political Parties.

Applications for registration

70.(1) An application for registration of a political party is to be made in accordance with this section.

(2) The application must only be made for the registration of a registrable political party.

(3) The application must be made by the secretary of the party.

(4) The application must be made to the Commission in a form approved by the Commission for the purposes of this section, and must—

(a) set out the name of the political party; and

(b) if the political party wishes to use an abbreviation of its name on ballot papers for elections—set out the abbreviation; and

(c) set out the name and address of the person who is to be the registered officer of the political party for the purposes of this Act; and

(d) in the case of an application in respect of a Parliamentary party—set out the name of one member of the party who is a member of one of the bodies referred to in any of paragraphs (a) to (d) of the definition of "Parliamentary party" in section 3;

(e) in the case of an application in respect of a party other than a Parliamentary party—set out the names and addresses of 150 members of the party; and

(f) be accompanied by a copy of the constitution of the party; and

(g) set out any other information, and be accompanied by a copy of any other document, required by regulations for the purposes of this paragraph.

Publication of notice of application

71.(1) As soon as practicable after an application is made to the Commission, the Commission must publish a notice in relation to the application in the Gazette and in 2 newspapers circulating generally in Queensland.

(2) The notice must—

(a) set out the information included in the application under section 70(4)(a), (b) and (c); and

(b) invite any persons who believe that the application—

(i) is not in accordance with section 70; or

(ii) should be refused under section 73;

to submit to the Commission, within one month after the day of publication of the notice in the Gazette, a statement in accordance with subsection (3).

(3) The statement must set out in detail the grounds for the belief, set out the

address of the person and be signed by the person.

(4) The Commission must make the statement available at its office for public inspection, without fee.

(5) The Commission must give the person who is to be the registered officer of the party—

(a) a copy of the statement; and

(b) a notice inviting the person to give the Commission a reply to the statement within such reasonable period as is specified in the notice.

(6) If the person gives the Commission a reply within the period, the Commission must, as soon as practicable, make the reply available at its office for public inspection, without fee.

Registration

72.(1) If the Commission—

(a) has considered all statements and replies to those statements under section 71; and

(b) considers that the application complies with the requirements of section 70;

then, subject to subsection (2) and to section 73, the Commission must register the political party, by entering or otherwise including in the Register of Political Parties—

(c) the information set out in the application (other than under section 70(4)(e)); and

(d) any document accompanying the application as required by that section.

(2) The Commission must not take any action in relation to the application during the election period in relation to any election.

(3) The Commission must not, except in accordance with this section, register a political party.

(4) On registration of the political party, the person whose name was set out in the application under section 70(4)(c) becomes the registered officer of the party for the purposes of this Act.

(5) After the Commission registers the political party, it must—

(a) give written notice to the registered officer that it has done so; and

(b) if any person made a statement to the Commission under section 71 in relation to the application—give written notice to that person stating that it has registered the party and setting out why the reasons in the person's statement were rejected; and

(c) give notice in the Gazette of the registration of the party.

Refusal of registration

73.(1) The Commission may refuse to register a political party if the Commission believes on reasonable grounds that information set out in, or documents required to accompany, the application are incorrect.

(2) The Commission must refuse to register a political party if, in the opinion of the Commission, the name of the party or the abbreviation of the name (if any) as set out in the application for registration—

(a) has more than 6 words; or

(b) is obscene or offensive; or

(c) is such that, if the party were registered in that name, the electoral system would be likely to be brought into disrepute; or

(d) is the name, or abbreviation or acronym of the name, of another political party (not being one that is related) that is a Parliamentary party or a registered political party; or

(e) so nearly resembles the name, or abbreviation or acronym of the name, of another political party (not being one that is related) that is a Parliamenttary party or a registered political party that it is likely to be confused with or mistaken for that name, abbreviation or acronym; or

(f) comprises the words "Independent Party"; or

(g) comprises or contains the word "Independent" and—

(i) the name, or an abbreviation or acronym of the name, of a Parliamentary party or a registered political party; or

(ii) matter that so nearly resembles the name, or an abbreviation or acronym of the name, of a Parliamentary party or a registered political party that the matter is likely to be confused with or mistaken for that name, abbreviation or acronym.

(3) The Commission may refuse to register a party if, in the opinion of the Commission, the name of the party or the abbreviation of the name (if any) set out in the application—

(a) is the name, or an abbreviation or acronym of the name, of a prominent public body; or

(b) so nearly resembles the name, or an abbreviation or acronym of the name, of a prominent public body that it is likely to be confused with that name, abbreviation or acronym.

(4) If the Commission decides to refuse an application, it must give the person who was to be the registered officer the political party written notice of—

(a) the refusal; and

(b) the reasons for the refusal; and

(c) the rights of the person to have the refusal decision reviewed.

Amendment of Register

74.(1) An application may be made in accordance with this section to the Commission for the amendment of the information, or the replacement of documents, in the Register of Political Parties with respect to a registered political party.

(2) The application must be made in the form and manner approved by the Commission.

(3) The application must only be made—

(a) except where paragraph (b) applies—by the registered officer of the party; or

(b) if the application is to change the registered officer of the party—by the secretary of the party.

(4) This Part applies to an application under this section, subject to any necessary changes, as if it were an application for registration of a political party.

Cancellation of registration

75.(1) The Commission may cancel the registration of a party at the written request of the registered officer of the party.

(2) If the Commission is satisfied on reasonable grounds that—

(a) a registered political party has ceased to exist; or

(b) a registered political party is not a Parliamentary party and does not have at least 150 members; or

(c) the candidates at the next 2 general elections held after the registration of a political party did not include at least one candidate endorsed by the party; or

(d) the registration of a political party was obtained by fraud or misrepresentation;

the Commission may cancel the registration of the party.

(3) If the Commission proposes to cancel the registration of a party, other than for grounds set out in subsection (2)(d), the Commission must—

(a) give written notice of its proposed action to the registered officer of the party; and

(b) give notice of its proposed action in the Gazette and in 2 newspapers circulating generally in Queensland; and

(c) include in the notice under paragraph (b) a statement that persons may, within 14 days after the notice is given, object to the Commission in writing against the proposed cancellation.

(4) The Commission must consider any objection lodged under subsection (3) before taking any further action in respect of the cancellation.

(5) If the Commission decides to cancel the registration of a party, the Commission must—

(a) give notice of the cancellation and the reasons for it to the person who was the registered officer of the party immediately before the cancellation; and

(b) give notice of the cancellation in the Gazette; and

(c) cancel the information in the Register of Political Parties, and remove the documents, relating to the political party; and

(d) retain the documents in the Commission's records.

Public access to Register

76. (1) The Commission must ensure that the Register of Political Parties is made available for public inspection, without fee, at its office.

(2) The Commission must, as soon as practicable after the issue of a writ for any election, publish in the Gazette a list of the names and registered officers of all political parties entered in the Register of Political Parties.

PART 6—ELECTIONS

Division 1—Calling of Elections

Writs for elections

77. (1) The Commission must conduct an election of a member or members of the Legislative Assembly if , and only if, the Governor or the Speaker of the Legislative Assembly issues a writ to the Commission in accordance with this Division.

(2) The Commission must conduct the election in accordance with the writ and the provisions of this Part.

Writs by Governor

78.(1) The Governor is to issue writs of the follow kinds—

(a) a writ for an election of all members of the Legislative Assembly;

(b) a writ for an election to fill a vacancy arising after an election of all members of the Legislative Assembly and before the first meeting of the Legislative Assembly after that election;

(c) a writ for an election to which section 79(3) or 90(d) applies;

(d) a writ for an election ordered by a Court of Disputed Returns under section 119(13) or 136.

(2) The Governor must issue a writ under subsection (1)(a) not later than 4 days after the day on which the Legislative Assembly is dissolved or expires by the passage of time.

Writs by Speaker

79.(1) Subject to this section, the Speaker of the Legislative Assembly must issue a writ for an election to fill a vacancy in the membership of the Legislative Assembly where —

(a) the vacancy is not one referred to in section 78(b); and

(b) the Legislative Assembly passes a resolution declaring that the vacancy exists and stating its cause.

(2) Subsection (1) does not apply where —

(a) the vacancy is caused by death or resignation; and

(b) when the vacancy arises, the Legislative Assembly is either not sitting or is adjourned for more than 7 days.

(3) Where —

(a) the vacancy is caused by death or resignation and the Governor is satisfied that there is such a vacancy;

(b) either —

(i) there is no Speaker and the Legislative Assembly is not in session; or

(ii) the Speaker is absent from Queensland;

the Governor is to issue the writ.

Form and content of writs

80. A writ must be in the form set out in Schedule 1 and must set out the following—

(a) the day of issue of the writ; and

(b) the cut-off day for electoral rolls in respect of the election, which must be seven days after the day of issue of the writ;

(c) the cut-off day for the nomination of candidates for the election, which must be no fewer then 14 days, and no more than 21 days, after the day of issue of the writ;

(d) the polling day, which must be a Saturday no fewer than 35 days and no more than 56 days, after the day of issue of the writ;

(e) the day for the return of the writ, which must be no more than 84 days after the day of issue of the writ.

Commission to publish writ and prepare for election

81. On receiving a writ, the Commission must—

(a) arrange for a copy of the writ to be published in the Gazette; and

(b) advertise, in such other manner as the Commission considers appropriate, the days for things to be done as set out in the writ; and

(c) make appropriate arrangements, in accordance with this Part, for the conduct of the election or elections concerned.

Extension of time limits in writ

82.(1) In spite of anything in this Act, the Governor or Speaker, as the case requires, may by notice in the Gazette either before, on or after any day specified in the writ as required by section 80(a) to (e)—

(a) subject to subsection (2), specify that a later day is to be substituted for any such day either generally or in respect of a specified electoral district or electoral districts; or

(b) provide for any thing to be done to overcome any difficulty that might otherwise affect the election concerned.

(2) The Governor or Speaker must not substitute a day for polling day that is more than 21 days after that specified in the writ.

(3) When the notice is gazetted, it has effect accordingly.

Division 2—Nomination of candidates for election

Who may be nominated

83.(1) A person may be nominated as a candidate for election, and may be elected, as a member of the Legislative Assembly for an electoral district if, and only if—

(a) the person is enrolled on an electoral roll for the electoral district or for any other electoral district; and

(b) the person is an Australian citizen; and

(c) the person is at least 18 years old; and

(d) the person is not a disqualified person under this section.

(2) A person is a disqualified person for the purposes of subsection (1)(d) if —

(a) the person is, under the *Bankruptcy Act 1966* of the Commonwealth , a bankrupt in respect of a bankruptcy from which the person has not been discharged; or

(b) the person has executed a deed of arrangement under Part X of the *Bankruptcy Act 1966* of the Commonwealth and the terms of the deed have not been fully complied with; or

(c) the person's creditors have accepted a composition under Part X of the *Bankruptcy Act 1966* of the Commonwealth and a final payment has not been made under that composition; or

(d) the person is in prison or subject to a periodic detention order; or

(e) the person is not entitled to be elected as a member of the Legislative Assembly under section 176 or under any other law; or

(f) the person is a member of the Parliament of the Commonwealth, a Local Authority, an Aboriginal Council or an Island Council.

How and when nomination takes place

84.(1) Only the following persons may nominate a candidate —

(a) a registered officer of a registered political party that has endorsed the candidate for the election; or

(b) 6 or more persons who are enrolled on the electoral roll for the electoral district concerned and none of whom has previously nominated a candidate for the election.

(2) To have effect for the purposes of this Act, the nomination must comply with the requirements set out in this section and in section 85.

(3) The nomination—

(a) must be in a form approved by the Commission for the purposes of this section; and

(b) must contain the following—

(i) the candidate's name, address and occupation;

(ii) a signed statement by the candidate consenting to the nomination;

(iii) if subsection (1)(a) applies—a signed statement by the registered officer of the party that the registered political party has endorsed the candidate; and

(c) may, if subsection (1)(b) applies, contain a signed statement by the candidate that the candidate does not wish the word "Independent" to be printed on the ballot paper in relation to the election adjacent to the candidate's name.

(4) The nomination must be given to—

(a) if subsection (1)(a) applies—the Commission; or

(b) in any other case—the Commission or the returning officer for the electoral district concerned.

(5) The nomination must be given after the day of issue of the writ for the election and before noon on the cut-off day for nomination of candidates for the election.

Deposit to accompany nomination

85. (1) At the same time as a nomination is given to the Commission or the returning officer, as the case may be, the candidate (or another person on the candidate's behalf) must deposit with the Commission or the returning officer, as the case may be, $250 in cash or in a banker's cheque.

(2) Subject to subsection (3), the Commission or returning officer, as the case may be, must hold the deposit until the writ for the election concerned has been returned (see section 123).

(3) If the candidate dies before the writ is returned, the Commission or returning officer, as the case may be, must return the deposit to the personal representatives of the candidate.

(4) If—

(a) the candidate withdraws his or her consent to the nomination in accordance with section 87; or

(b) the candidate is elected; or

(c) more than 4% of the total number of formal first preference votes polled in the election for the electoral district are in favour of the candidate;

the Commission or returning officer, as the case may be, must return the deposit to the candidate.

(5) Except where subsection (3) or (4) applies, the deposit becomes the property of the Crown when the outcome of the election is determined.

Effect of multiple nominations

86. If, at noon on the cut-off day for the nomination of candidates, a person nominated as a candidate for election for the electoral district is also nominated for election for any other electoral district, each of the nominations is of no effect.

Withdrawal of consent to nomination

87.(1) A person nominated as a candidate for election may withdraw his or her consent to the nomination by writing signed by the person and given to the Commission or the returning officer, as the case requires, before noon on the cut-off day for nomination.

(2) Where this happens, the nomination is of no effect.

Announcement of nominations

88.(1) As soon as practicable after noon on the cut-off day for nominations, the Commission must advise the returning officers for electoral districts of the names of all persons duly nominated for election for each district.

(2) A person is duly nominated for election for the purposes of subsection (1) if—

(a) the provisions of this Division relating to nomination have been complied with or, where there is a formal defect or error in the nomination, have been substantially complied with; and

(b) neither section 86 nor 87 applies to the person's nomination.

(3) As soon as practicable afterwards, each returning officer must arrange for a notice stating the names of the persons nominated in respect of the electoral district concerned—

(a) to be displayed in a conspicuous place at the returning officer's office; and

(b) to be published in a newspaper circulating in the electoral district.

(4) On publication of the notice in the newspaper, the persons become candidates for the election for the electoral districts.

Election of sole candidate

89. If there is only one candidate for the election, the candidate is elected.

Failure of election

90. If —

(a) a candidate dies before the polling day for the election set out in the writ; or

(b) there are no candidates for the election;

the following provisions apply —

(c) the writ and, subject to paragraph (f), everything done in connection with the election for the electoral district as a result of the writ, are of no effect; and

(d) the Governor must issue a writ for a fresh election for the electoral district; and

(e) the deposits of any other candidates for the election for the electoral district are to be returned; and

(f) the electoral roll that was prepared for the election must be used for the fresh election.

Election to be held

91. Except where section 89 or 90 applies, an election must be held in accordance with the writ and the requirements of this Part.

Division 3—Arrangements for elections

Commission to make arrangements for elections

92. (1) The Commission has the continuing function of making appropriate administrative arrangements for the conduct of elections.

(2) That function includes, but is not limited to, doing the things required in the remainder of this Division.

Staffing for elections

93. The Commission must arrange for the appointment of appropriate members of staff under Division 3 of Part 2, whether on a continuing basis or in connection with a particular election.

Setting up and operating polling booths

94.(1) The Commission must ensure that appropriate polling booths are established for elections.

(2) In deciding the number, kind and location of polling booths, the Commission must take into account, in addition to any other matters that it considers relevant, the desirability of the booths being the same as polling booths for the purposes of the Commonwealth Electoral Act and of their being accessible to disabled voters.

(3) The Commission must ensure that each polling booth is provided with an adequate number of voting compartments and ballot papers.

(4) In the case only of a mobile polling booth referred to in section 95(7), the Commission must, if requested by a candidate, ensure that "how to vote" matter supplied by the candidate is distributed at the polling booth.

(5) The Commission must, in relation to each election, advertise the location and hours of opening of all polling booths in a newspaper circulating in the electoral district concerned.

(6) The Commission must not—

(a) establish a polling booth after the end of the day before polling day; or

(b) abolish a previously established ordinary polling booth during the period beginning when the writ for an election is issued and ending at the end of polling day for the election.

(7) The Commission must advertise—

(a) the requirements of subsection (6); and

(b) the abolition at any time of any previously established ordinary polling booth in the Gazette and in a newspaper circulating in the electoral district concerned.

(8) The Commission must ensure that—

(a) electors in general are allowed to enter ordinary polling booths between 8 a.m. and 6 p.m. on polling day and to stay until they have voted; and

(b) appropriate electors are allowed to enter mobile polling booths, at times determined in writing by the Commission, during the period referred to in sections 95(5) and (7) and to stay until they have voted.

Kinds of polling booths

95.(1) There are 2 kinds of polling booths—

(a) ordinary polling booths; and

(b) mobile polling booths.

(2) An ordinary polling booth is a building or other structure, or a part of a building or other structure, that the Commission arranges to be available on polling day in relation to an election for the purpose of enabling electors in general to vote.

(3) A mobile polling booth is either an institution declared under subsection (5) to be a mobile polling booth or the whole or or part of a building, structure, vehicle or place made available under subsection (7).

(4) The grounds within the perimeter of which is located an institution, building or structure, or part of a building or structure, that is an ordinary polling booth under subsection (2) or a mobile polling booth under subsection (3) also form part of the polling booth.

(5) Where the Commission considers that patients or inmates of an institution should be able to vote at the institution at times (determined by the Commission) during the period beginning 11 days before polling day and ending at 6 p.m. on polling day, the Commission may, by notice in the Gazette, declare the institution to be a mobile polling booth for the purposes of the election.

(6) Where the Commission does so, the person in charge of the institution must allow access by members of staff of the Commission, and by patients or inmates of the institution, for the purpose of enabling voting to take place at the election concerned.

(7) Where the Commission considers that an area is too remote to have enough electors to warrant an ordinary polling booth, the Commission must arrange for the whole or part of a building, structure, vehicle or place to be available, at times (determined by the Commission) during the period of 11 days ending at 6 p.m. on polling day, for electors in the area to vote at the election concerned.

Register of Candidates

96. (1) As soon as practicable after publication of a notice under section 88(3) stating the names of the candidates for an election for an electoral district, the Commission must enter, in a register called the Register of Candidates, the information, and a summary of the content of any statement, set out in the nomination in respect of each of the candidates in accordance with section 84(3)(b) and (c).

(2) The Register of Candidates is to be kept in such form and manner as the Commission thinks fit.

(3) If elections for other electoral districts have the same polling day, a single register must be used for all of the elections.

(4) The Register of Candidates must be open for public inspection, without fee, at the Commission's office.

(5) If any name or address entered in the Register of Candidates in relation to a candidate ceases to be correct, the candidate may apply to the Commission to have the entry corrected.

(6) The Commission must correct the entry.

Supply of ballot papers and electoral rolls

97.(1) The Commission must ensure that sufficient ballot papers and certified copies of the electoral rolls for each electoral district, as at the cut-off day for electoral rolls, are made available at polling places.

(2) Ballot papers for an election for an electoral district must —

(a) be of such material and opacity that, when folded, the way the user votes is effectively concealed; and

(b) be attached to a butt that—

(i) is not part of the ballot paper; and

(ii) is perforated in such a way that the ballot paper may be easily detached from it; and

(iii) taking into account separately the total number of ballot papers for each electoral district respectively, is numbered in regular arithmetical sequence beginning with the number "1" so that no 2 or more butts in relation to one electoral district bear the same number; and

(c) show the name of the electoral district and the date of the election; and

(d) contain the names of all candidates for election, set out in the order determined under section 98; and

(e) if the Commission considers that a similarity in the names of 2 or more candidates is likely to cause confusion—contain a description or addition that the Commission considers will sufficiently distinguish the names; and

(f) contain a square opposite the name of each candidate; and

(g) if a candidate endorsed by a registered political party was nominated in accordance with section 84(1)(a)—contain, printed adjacent to the candidate's name—

(i) if subparagraph (ii) does not apply—the name of the political party as set out in its application for registration under section 70; or

(ii) if that application contained an abbreviation under section 70(4)(b)—the abbreviation; and

(h) if a candidate was nominated in accordance with section 84(1)(b) and the nomination did not contain a statement under section 84(3)(c)—contain the word "Independent" printed adjacent to the candidate's name; and

(i) be in the form set out in Schedule 2.

Order of candidates' names on ballot papers

98.(1) The order of the names of candidates on ballot papers for an electoral district is to be determined in accordance with this section.

(2) To determine the order, a member of staff of the Commission must—

(a) write the name of each candidate on a separate piece of paper; and

(b) ensure that each piece of paper is the same kind, shape, size and colour; and

(c) place each separate piece of paper in a separate envelope and, if it is necessary to fold the piece of paper to make it fit in the envelope, fold each piece of paper in the same manner in order to make each the same size and thickness; and

(d) ensure that each envelope is opaque and of the same kind, shape, size and colour; and

(e) after each piece of paper has been placed in an envelope, seal the envelope; and

(f) place all the envelopes in a container and shuffle them; and

(g) draw the envelopes out, one at a time; and

(h) as each envelope is drawn out, open it and note the name of the candidate on the piece of paper in the envelope.

(2) The order in which the names are noted is the order in which the names are to appear on the ballot paper.

(3) The member of staff of the Commission must allow to be present any candidate, or representative of a candidate, who wishes to do so.

Scrutineers

99.(1) Each candidate may, by writing sent to a returning officer for an electoral district, appoint a person or persons aged at least 18 years as scrutineers for that electoral district at an election.

(2) One scrutineer for each candidate in respect of each issuing officer may be present in each ordinary polling booth for the purposes of subsection (3) at times when electors are allowed to vote, and beforehand for the purposes of subsection (4).

(3) The scrutineer may—

(a) object to the entitlement of any person to vote at the election concerned; or

(b) record details of electors who vote at the election, and take the record out of the polling booth; or

(c) do any other thing permitted by this Act.

(4) Issuing officers at each polling booth must, before ordinary voting hours, allow

scrutineers for candidates to inspect the ballot boxes that are to be used for voting at the booth.

(5) One scrutineer appointed by each candidate may be present to observe the counting of votes by each member of the staff of the Commission.

(6) Each scrutineer must carry adequate identification to show that he or she is a scrutineer.

Correction of errors

100. If there is a delay, error or omission in the preparation, issue, sending or return of any electoral roll, writ or ballot paper then it may be corrected by proclamation setting out what is to be done.

Division 4—Who may vote

Who may vote

101.(1) Only the following persons are entitled to vote at an election for an electoral district—

(a) a person enrolled on the electoral roll for the district; or

(b) a person who is not so enrolled but is entitled to be enrolled on the electoral roll for the district because of section 64(1)(a)(ii).

(2) A person is not entitled to vote more than once at the same election for an electoral district, or to vote at 2 or more elections for electoral districts held on the same day.

Division 5—How voting takes place

Subdivision A—Ordinary voting

Procedure for voting

102.(1) An elector (other than one who makes or must make a declaration vote in accordance with Subdivision B) is to vote by following the procedures set out in this section.

(2) The elector is, during voting hours, to enter a polling booth in the electoral district for which the elector is enrolled.

(3) In the polling booth, the elector is to request a ballot paper from an issuing officer.

(4) If the elector has declaration voting papers and does not intend to make a declaration vote in accordance with Subdivision B, the elector must give the papers to the

issuing officer.

(5) The issuing officer must only issue a ballot paper to a person requesting one if satisfied that the person is entitled to vote at the election for the electoral district.

(6) The issuing officer may ask any questions of a person requesting a ballot paper for the purposes of deciding whether the person is entitled to vote at the election for the electoral district.

(7) If, after any such questioning, the issuing officer suspects that a person claiming to be a particular elector is not that elector, the issuing officer must comply with section 111.

(8) The issuing officer must keep a record of all persons to whom the officer issues ballot papers under this section.

(9) The issuing officer must, if a scrutineer requests it, keep a record of any objection by the scrutineer to the entitlement of a person to vote.

(10) Subject to sections 103 and 104, on being given the ballot paper, the elector must, without delay —

(a) go alone to an unoccupied voting compartment in the polling booth; and

(b) there, in private, mark his or her vote on the ballot paper in accordance with section 112; and

(c) fold the ballot paper to conceal his or her vote and put it in a ballot box in the polling booth; and

(d) leave the polling booth.

Help to enable electors to vote at polling booths generally

103.(1) Subject to subsection (2), if an elector satisfies an issuing officer that the elector is unable to vote without assistance, the elector may be accompanied in the polling booth by another person chosen by the elector to help the elector vote.

(2) The other person may help the elector in all or any of the following ways —

(a) by acting as an interpreter; or

(b) by explaining the ballot paper and the requirements of section 112 relating to its marking; or

(c) by marking the ballot paper in the way the elector wishes, or helping the elector to mark the ballot paper; or

(d) by folding the ballot paper and putting it in the ballot box.

(3) If an elector is incapacitated to the extent that the elector is unable to enter a polling booth, but is able to bring himself or herself to a place (in the remainder of this section called the **"voting place"**) close to the polling booth, then, subject to subsection (4) —

(a) the issuing officer may perform his or her functions; and

(b) the voter may vote;

at the voting place as if it were the polling booth.

(4) The issuing officer must —

(a) before taking any action under subsection (3), inform any scrutineers present of the proposed action; and

(b) allow only 1 scrutineer for each candidate to be present at the voting place; and

(c) ensure that, after the ballot paper is marked, it is folded so as to conceal the way it was marked and is put into an envelope and sealed; and

(d) open the envelope inside the polling booth in the presence of scrutineers and place the folded ballot paper in a ballot box.

Help to enable electors to vote at hospitals

104.(1) If a polling booth is a hospital or part of a hospital, an issuing officer may visit patients in the hospital or the part of the hospital for the purpose of enabling them to vote.

(2) When so visiting a patient, the issuing officer must—

(a) take to the patient a ballot paper or declaration voting papers, ballot box and anything else necessary to enable the patient to vote; and

(b) if a scrutineer wishes, be accompanied by the scrutineer.

(3) The issuing officer must ensure that, as far is is reasonably practicable, the provisions of section 102 are complied with when the patient votes.

Subdivision B—Declaration voting

Who may make a declaration vote

105.(1) The following electors may make a declaration vote —

(a) any elector who is a general postal voter under the Commonwealth Electoral Act;

(b) any elector who is, under section 94 of that Act, entitled to be treated for the purposes of that Act as an eligible overseas voter;

(c) any elector to whom subsection (2) applies.

(2) This subsection applies to an elector —

(a) who will not, throughout ordinary voting hours on polling day, be within 8 kilometres, by the nearest practicable route, from any polling booth; or

(b) who will, throughout ordinary voting hours on polling day, be working, or travelling, under conditions that prevent voting at a polling booth; or

(c) who will, because of illness, disability or advanced pregnancy, be prevented from voting at a polling booth; or

(d) who will, because of caring for a person who is ill, disabled or pregnant, be prevented from voting at a polling booth; or

(e) who will, because of membership of a religious order or because of religious beliefs, be prevented from voting at a polling booth for all, or the majority, of ordinary voting hours on polling day; or

(f) who will be serving a sentence of imprisonment, or otherwise under detention, on polling day.

Who must make a declaration vote

106. The following electors must make a declaration vote —

(a) an elector who wishes to vote by going to a polling booth on polling day outside the electoral district for which the elector is enrolled;

(b) an elector whose name is not on the electoral roll for an electoral district because of an official error;

(c) an elector to whom section 101(1)(b) applies;

(d) an elector who appears from a record made in error under the Act to have already voted in the election for any electoral district;

(e) an elector who is given declaration voting papers under section 111.

Ways in which an elector may make a declaration vote

107. Except where section 111 applies, an elector who may, or must, make a declaration vote is to do so by —

(a) going during voting hours to a polling booth in an electoral district and following the procedures set out in section 108; or

(b) going to an office staffed by the Commission at a time before polling day for the election and following the procedures set out in section 109; or

(c) using declaration voting papers that have been posted to the elector under section 110 and following the procedures set out in that section.

Making a declaration vote at a polling booth

108. (1) An elector who may or must make a declaration vote may enter a polling booth during voting hours in an electoral district and request a declaration voting paper from an issuing officer.

(2) The issuing officer must comply with the request, except where the issuing officer is satisfied that the elector is enrolled for the electoral district in which the polling booth is located.

(3) The issuing officer must keep a record of all persons to whom the officer gives declaration voting papers under this section.

(4) The issuing officer must, if a scrutineer requests it, record on the declaration envelope any objection by the scrutineer to the right of a person to vote.

(5) On being given the declaration voting papers, the elector must, without delay —

(a) sign the appropriate declaration on the declaration envelope in the presence of an issuing officer and have the officer sign the envelope as witness; and

(b) go alone to an unoccupied voting compartment in the polling booth; and

(c) there, in private, mark his or her ballot paper in accordance with section 112; and

(d) put the ballot paper in the envelope, seal the envelope and put it in a ballot box; and

(e) leave the polling booth.

(6) Sections 103 and 104 apply to the making of a vote under this section in the same way, subject to any necessary changes, as they apply to the making of a vote under section 102.

Making a declaration vote at a Commission office

109.(1) An elector who wishes to make a declaration vote during the period beginning 3 days after the cut-off day for nominations and ending at 6 p.m. on the day before polling day may go to an office staffed by an issuing officer and request a declaration voting paper from the officer.

(2) The officer must comply with the request.

(3) Subject to subsection (5), on being given the declaration voting papers, the elector must without delay—

(a) sign the appropriate declaration on the delcaration envelope in the presence of the officer and have the officer sign the envelope as witness; and

(b) mark the ballot paper in accordance with section 112; and

(c) place the ballot paper in the envelope and seal the envelope; and

(d) give the envelope to the officer; and

(e) leave the office.

(4) The issuing officer must send the envelope to the appropriate returning officer.

(5) If the elector satisfies the issuing officer that the elector is unable to vote without help, the officer, or a person acceptable to the officer, may help by —

(a) acting as an interpreter; or

(b) explaining the ballot paper and the requirements of section 112 relating to its marking; or

(c) marking the ballot paper in the way the elector wishes, or helping the elector to mark the ballot paper.

Making a declaration vote using posted declaration voting papers

110.(1) An elector may, by writing signed by the elector and posted or sent by facsimile to the returning officer for the electoral district in respect of which the elector is enrolled, request declaration voting papers.

(2) The returning officer must post the papers to the elector unless the request is received after 6 p.m. on the Thursday before polling day.

(3) The Commission must, as soon as practicable after the issue of the writ for an election, post declaration voting papers to all electors referred to in section 105(1)(a) and (b).

(4) Returning officers and the Commission must keep a record of all declaration voting papers posted under this section.

(5) Subject to subsection (7), on receiving the declaration voting papers, the elector must —

(a) sign the appropriate declaration on the declaration envelope before another elector or a person approved by the Commission for the purposes of this paragraph and have the other elector or person sign the envelope as witness; and

(b) mark the ballot paper in accordance with section 112; and

(c) place the ballot paper in the envelope and seal the envelope; and

(d) either —

(i) give the envelope to a member of staff of the Commission at an office of the Commission before polling day or at a polling booth on polling day; or

(ii) before the end of voting hours on polling day, post the envelope, or

give it to another person to post, to the returning officer of the electoral district for which the elector is enrolled.

(6) If the elector is unable to vote without help, another person may help by doing the things in subsection (5)(b) to (d) on behalf of the elector.

(7) A member of staff of the Commission who is given an envelope under subsection (5)(d)(i) must —

(a) if it is given before polling day—send the envelope to the appropriate returning officer; or

(b) if it is given on polling day—put the envelope in a ballot box.

Making a declaration vote in cases of uncertain identity

111.(1) Where an issuing officer suspects, as mentioned in section 102(7), that a person claiming to be a particular elector is not that elector, this section applies.

(2) The issuing officer must give the person a declaration envelope.

(3) The declaration envelope must have on it the following questions—

(a) "Are you the same person whose name appears as [*here the issuing officer must write the name of the particular elector and the number appearing on the electoral roll in relation to the name*]?"; and

(b) "Have you already voted, either here or elsewhere, at the present election for this electoral district or any other electoral district?".

(4) The person must write on the envelope his or her answers to the questions, sign the envelope and have the signature witnessed by the issuing officer.

(5) If the person does not answer the questions or answers in either or both of the following ways—

(a) in the negative to the question in subsection (3)(a); or

(b) in the affirmative to the question in subsection (3)(b);

the issuing officer must retain the envelope and tell the person that he or she is not entitled to vote.

(6) The person must then leave the polling booth.

(7) If subsection (5) does not apply, the issuing officer must give the person a ballot paper.

(8) The person must, without delay—

(a) go alone to an unoccupied voting compartment in the polling booth; and

(b) there, in private, mark the ballot paper in accordance with section 112; and

(c) put the ballot paper in the envelope, seal the envelope and put it in a ballot box; and

(d) leave the polling booth.

(9) Sections 103 and 104 apply to the making of a vote under this section in the same way, subject to any necessary changes, as they apply to the making of a vote under section 102.

Subdivision C—Marking of ballot papers

How electors must vote

112.(1) An elector must vote—

(a) by writing the number 1, a tick or a cross in the square opposite the name of only one candidate to indicate the elector's preference for that candidate; or

(b) by writing the number 1, a tick or a cross in the square opposite the name of a candidate to indicate the elector's first preference for that candidate, and by writing the number 2 in another square, or the numbers 2, 3 and so on in other squares, to indicate the order of the elector's preferences for one or more (but not necessarily all) of the other candidates.

(2) The elector must not write or mark anything else on the ballot paper.

Formal and informal ballot papers

113.(1) Subject to this section, for a ballot paper to have effect to indicate a vote for the purposes of this Act—

(a) the ballot paper must contain writing that is in accordance with section 112(1) or other writing or marks that clearly indicate the voter's intended preference or intended order of preferences; and

(b) the ballot paper must not contain any writing or mark (except in accordance with section 112(1) or as authorised by this Act) by which the elector can be identified; and

(c) the ballot paper must have been put into a ballot box as required by this Act; and

(d) if the ballot paper was put into a declaration envelope as required by this Act—the envelope must have been signed and, subject to subsection (3), the signature must have been witnessed as required by this Act.

(2) For the purposes of subsection (1)(a) and the other provisions of this Act—

(a) if a ballot paper contains 2 or more squares in which the same number is

written, those numbers and any higher numbers written in other squares are to be disregarded; and

(b) if there is a break in the order of the preferences indicated in writing in the squares on a ballot paper, any preference after the break is to be disregarded.

(3) Subsection (1)(d) does not apply to the witnessing of a signature if the person required to witness the signature was a member of the staff of the Commission and that member certifies in writing to the returning officer that the envelope was signed by the elector concerned.

(4) If a ballot paper has effect to indicate a vote for the purposes of this Act it is referred to in this Act as a formal ballot paper and if it does not have that effect it is referred to in this Act as an informal ballot paper.

Division 6—Counting of votes

Votes to be counted in accordance with Division

114. Votes at an election are to be counted in accordance with this Division.

Preliminary processing of declaration voting papers

115.(1) The returning officer for each electoral district must ensure that members of the staff of the Commission examine all declaration envelopes received by the returning officer, or identified in respect of the district under section 119(2)(b), to determine, in accordance with this section, whether the ballot papers in them are to be accepted for counting.

(2) A member of staff must only accept a ballot paper for counting if —

(a) he or she is satisfied that the elector concerned was entitled to vote at the election for the electoral district; and

(b) where the declaration on the envelope concerned was witnessed by a person other than a member of the staff of the Commission—the member of staff is satisfied that —

(i) the signature on the envelope corresponds with that in the request; and

(ii) the requirements of section 110(5)(d) were complied with; and

(c) in the case of a ballot paper in a declaration envelope received by post—the envelope was received before the end of 10 days after polling day for the election concerned.

(3) If a member of staff accepts the ballot paper, he or she must take it out of the envelope and, without unfolding it or allowing any other person to do so, put it in a sealed ballot box.

(4) If a declaration envelope is for a different electoral district, it must be sent to the appropriate returning officer.

(5) Members of staff must also seal up in separate parcels, and keep, all remaining unopened envelopes and all opened envelopes.

(6) The returning officer must advise all candidates at the election of the times when, and places where, ballot papers will be examined under this section.

Preliminary and official counting of votes

116. The Commission must arrange for votes to be counted —

(a) on polling day—in accordance with section 118; and

(b) after polling day—in accordance with section 119.

Counting to be observed by scrutineers

117. Scrutineers are allowed to be present to observe the counting, in accordance with section 99(5).

Preliminary counting of ordinary votes

118.(1) As soon as practicable after the end of ordinary voting hours on polling day, the member of staff of the Commission in charge of a polling booth is to ensure that staff of the Commission at the polling booth follow the procedures set out in subsection (2).

(2) The staff must —

(a) open all ballot boxes from the polling booth; and

(b) identify and keep in a separate parcel all declaration envelopes; and

(c) identify and keep in a separate parcel all informal ballot papers (not in declaration envelopes); and

(d) arrange all formal ballot papers (not in declaration envelopes) under the names of the candidates for the election by placing in a separate parcel all those on which a first preference vote is indicated for the same candidate; and

(e) count the first preference votes for each candidate on all of the formal ballot papers; and

(f) prepare and sign a statement, in the form approved by the Commission for the purposes of this paragraph, setting out the number of first preference votes for each candidate and the number of informal ballot papers; and

(g) advise the returning officer for the electoral district of the contents of the statements; and

(h) seal up each parcel of ballot papers or declaration envelopes separately, write on each a description of its contents, sign the description and permit any scrutineers who wish to do so to countersign the description; and

(i) send the parcels and the statements referred to in paragraph (f) to the returning officer for the electoral district concerned.

Official counting of votes

119.(1) As soon as practicable after polling day, the returning officer for each electoral district must ensure that staff of the Commission follow the procedures set out in this section.

(2) First, the staff must—

(a) open all ballot boxes in respect of the electoral district that have not previously been opened; and

(b) identify all declaration envelopes and keep those in respect of different electoral districts in separate parcels; and

(c) seal up each parcel of envelopes for an electoral district other than the returning officer's electoral district, write on each a description of its contents, sign the description and permit any scrutineers who wish to do so to countersign the description; and

(d) send each sealed parcel to the returning officer for the electoral district concerned.

(3) Secondly, the staff must—

(a) open all sealed parcels of ballot papers sent to the returning officer under section 118; and

(b) arrange all formal ballot papers under the names of the candidates for the election by placing in a separate parcel all those in which a first preference vote is indicated for the same candidate; and

(c) count the first preference votes for each candidate on all of the formal ballot papers; and

(d) open all ballot boxes on hand in which ballot papers from declaration envelopes have been placed in accordance with section 115(3); and

(e) arrange all formal ballot papers under the names of the candidates for the election by placing in a separate parcel all those on which a first preference vote is indicated for the same candidate; and

(f) count the first preference votes for each candidate on all of the formal ballot papers and add the number to that obtained under paragraph (c); and

(g) reapply paragraphs (d) to (f) as more envelopes are placed in ballot boxes under 115(3), until there are no more envelopes required to be placed in ballot boxes under that section.

(4) If, as a result of final counting under subsection (3), a majority of the first preference votes is for 1 candidate, that candidate is elected.

(5) If not, then a second count must take place.

(6) On the second count—

(a) the candidate who has the fewest first preference votes must be excluded; and

(b) each ballot paper recording a first preference vote for that candidate that is not exhausted must be transferred to the candidate next in the order of the voter's preference; and

(c) that ballot paper must be counted as a vote for that candidate.

(7) If, on the second count, a candidate has a majority of the votes remaining in the count, the candidate is elected.

(8) If not, the process of —

(a) excluding the candidate who has the fewest votes; and

(b) transferring each ballot paper of that candidate that is not exhausted to the continuing candidate next in the order of the voter's preference; and

(c) counting it to that candidate as a vote;

must be repeated until one candidate has a majority of the votes remaining in the count.

(9) The candidate who, in accordance with subsection (7), has a majority of the votes remaining in the count is elected.

(10) In spite of subsections (6) and (8), the process of transferring to a continuing candidate each of the ballot papers that is not exhausted and counting it to that candidate as a vote must not be repeated where there is only one continuing candidate, but that candidate is elected.

(11) Where, on any count at which the candidate with the fewest number of votes must be excluded, 2 or more candidates have an equal number of votes and that number is fewer than the number of votes that any other candidate has, then—

(a) the candidate who had the fewest number of votes at the last count at which the candidates did not have an equal number of votes must be excluded; or

(b) if the candidates had an equal number of votes at all preceding counts, the candidate whose name is on a slip chosen in accordance with subsection (12) must be excluded.

(12) For the purposes of subsection (11)(b), the returning officer must —

(a) write the names of the candidates who have an equal number of votes on similar slips of paper; and

(b) fold the slips to prevent the names being seen; and

(c) place the slips in an opaque container; and

(d) mix the slips; and

(e) raise the container so that its contents are not visible and choose a slip at random.

(13) Where, on any count at which the candidate with the fewest number of votes must be excluded, 2 or more candidates have an equal number of votes and those candidates are the only continuing candidates—

(a) the returning officer must refer the matter to the Commission, which must refer it to the Court of Disputed Returns; and

(b) the Court must determine the validity of any disputed ballot papers and re-count all of the ballot papers by applying subsection (3)(b) and (c) and subsections (4) to (11); and

(c) if the determination and re-count results in a candidate being elected, the Court must declare that candidate elected; and

(d) if not, the Court must order that a fresh election be held.

(14) Subsection (13) does not affect the jurisdiction of the Court under Part 7 in relation to the disputing of an election.

Objections by scrutineers

120. If, while a member of the staff of the Commission is complying with the requirements of section 118 or 119, a scrutineer objects to the member's treatment of a ballot paper as informal or to the counting of a vote for a particular candidate, the member must mark on the back of it "formal" or "informal" according to the member's decision to treat it, respectively, as formal or informal or mark the name of the candidate for whom it is counted, as the case requires.

Re-counting of votes

121.(1) At any time before a returning officer notifies the election of a candidate under section 122 or the Commission refers a matter to the Court of Disputed Returns under 119(13), the Commission may direct the returning officer to re-count some or all of the ballot papers for the election.

(2) A returning officer may also, if he or she considers it appropriate, and whether on a request by a candidate or otherwise, re-count some or all of the ballot papers for an election at any time before he or she notifies the election of a candidate.

(3) In re-counting the ballot papers, the returning officer is, as far as practicable, to ensure that the requirements of section 119 are complied with.

Division 7—Notifying the results of elections etc.

Notifying the results of an election

122.(1) The returning officer for each electoral district must, as soon as practicable after a candidate is elected in accordance with section 89 or 119 (including that section in its application in accordance with section 121) notify the Commission of the name of the candidate elected for the electoral district.

(2) A returning officer need not delay complying with subsection (1) because ballot papers have not been received if it is clear that those ballot papers cannot possibly affect the election of a candidate.

Return of writ for election

123. As soon as practicable after the Commission has received —

(a) in the case of an election of all members of the Legislative Assembly—the copies of the notifications under section 122(1) from returning officers for all electoral districts; and

(b) in any other case—the copy of the notifiction under section 122(1) from the returning officer for the electoral district in relation to which the election was held;

and before the day for the return of the writ, the Commission must —

(c) write on the writ the names of the candidates, or the name of the candidate, as the case may be, elected; and

(d) return the writ to whichever of the Governor or the Speaker of the Legislative Assembly issued the writ; and

(e) publish in the Gazette the names of the candidates, or the name of the candidate, as the case may be, elected for the electoral districts or district concerned.

Counting for information purposes

124. After a candidate is elected for an electoral district in accordance with section 119 or, as the case requires, that section in its application in accordance with section 121, the Commission may direct the returning officer for the electoral district to examine ballot papers for the purpose of obtaining further information about the preferences of voters.

Notice of failure to vote etc.

125.(1) Subject to subsection (2), the Commission must, as soon as practicable after an election, send a notice to each elector who appears to have failed to vote at the election—

(a) stating that the elector appears to have failed to vote at the election and that it is an offence to fail, without a valid and sufficient reason, to vote at an election; and

(b) requiring the elector—

(i) to state, in a form included in or with the notice, whether the elector voted and, if not, the reason for failing to vote; and

(ii) to sign the form and post or give it to the Commission so that it is received by a specified day, not being fewer than 21 days after the day of posting of the notice.

(2) Subsection (1) does not apply if the Commission is satisfied that the elector is dead or had a valid and sufficient reason for failing to vote.

(3) An elector must comply with the requirements of a notice under subsection (1).

(4) If—

(a) the elector is absent or unable, because of physical incapacity, to comply with the requirements; and

(b) another elector who has personal knowledge of the facts complies with the requirements and in doing so also has his or her signature on the form concerned witnessed;

then the first-mentioned elector is taken for the purpose of subsection (3) to have complied with the requirements.

(5) As soon as practicable after an election, the Commission must send a notice to each person who made a declaration vote in reliance on section 106(b), but whose ballot paper was not accepted for counting under section 115(1), advising the person of the reason why the ballot paper was not accepted for counting.

Storage of ballot papers and declaration envelopes

126.(1) Subject to subsection (3), the Commission must keep all ballot papers, certified copies of electoral rolls and declaration envelopes relating to an election until the day of issue of the writ for the next election of all members of the Legislative Assembly.

(2) The Commission must comply with any order by a court, or any request by the Commissioner of the Queensland Police Service, to hand over, allow access to or provide copies of any ballot papers or declaration voting papers.

PART 7—COURT OF DISPUTED RETURNS

Division 1—Court of Disputed Returns

Supreme Court to be Court of Disputed Returns

127.(1) The Supreme Court is the Court of Disputed Returns for the purposes of this Act.

(2) A single Judge may constitute, and exercise all the jurisdiction and powers of, the Court of Disputed Returns for the purposes of this Act.

Division 2—Disputing elections

Election may be disputed under this Division

128.(1) The election of a person under this Part may be disputed by a petition to the Court of Disputed Returns in accordance with this Division.

(2) The election may not be disputed in any other way.

Who may dispute the election

129. Only the following persons may dispute the election—

(a) a candidate at the election for the electoral district concerned; or

(b) an elector in relation to the election for the electoral district concerned; or

(c) the Commission.

Requirements for a petition to be effective

130.(1) For a petition to have effect for the purposes of this Division, the requirements of this section must be complied with.

(2) The petition must—

(a) set out the facts relied on to dispute the election; and

(b) set out the order sought from the Court of Disputed Returns; and

(c) be signed by—

(i) in the case of a petition by the Commission—the Electoral Commissioner; and

(ii) in any other case—the petitioner, before a witness; and

(d) where paragraph (c)(ii) applies—contain the signature, occupation and address of the witness.

(3) The person disputing the election must—

(a) lodge the petition with the Court within 7 days after the day on which the writ for the election is returned as mentioned in section 123(d); and

(b) when lodging the petition, deposit with the Court $400, or such higher amount as is prescribed by the regulations for the purposes of this paragraph.

Copies of petition to be given to elected candidate and Commission

131. The staff of the Supreme Court must give a copy of the petition to—

(a) the candidate who was elected; and

(b) except where the Commission lodged the petition—the Commission.

Application to Court for order relating to documents etc.

132.(1) The petitioner may apply to the Court of Disputed Returns for an order requiring the Commission to give the Court specified documents and other things held by the Commission in relation to the election.

(2) The Court is to make such order in relation to the application as it considers appropriate.

Parties to petition

133.(1) The parties to a petition are the person who lodged it and any respondent under this section.

(2) The Commission is a respondent to any petition by any other person under this Division.

(3) If the person who was elected gives notice in writing of his or her wish to do so, within 7 days after receiving the copy of the petition under section 131, that person becomes a respondent to the petition as well.

How petition is to be dealt with by Court

134.(1) The Court of Disputed Returns must conduct any hearings and other proceedings that it considers appropriate in relation to the petition.

(2) The Court must not have regard to legal forms and technicalities, and is not required to apply the rules of evidence.

(3) The Court must deal with the petition as quickly as is reasonable in the circumstances.

(4) In giving effect to subsection (3), the Court must use its best efforts to ensure that—

(a) proceedings in relation to the petition begin within 28 days after the petition is lodged; and

(b) the Court's final orders in relation to the petition are given within 14 days after the end of the proceedings.

(5) In spite of subsections (3) and (4), the Court must give all parties to the proceedings in relation to the petition at least 10 days notice before it begins the proceedings.

(6) The rules of court of the Supreme Court may include provision, not inconsistent with this Division, with respect to the practices and procedures of the Court of Disputed Returns.

(7) Without limiting subsection (6), the rules of court may make provision regarding the withdrawal of petitions, the consequences of the death of petitioners and the substitution of petitioners in such circumstances.

Application for dismissal of petition

135. (1) The Commission may apply to the Court of Disputed Returns for an order dismissing the petition on the ground that there has been excessive delay by the petitioner in relation to the proceedings in respect of the petition.

(2) The Court may make such order in relation to the application as it considers appropriate.

Powers of the Court

136.(1) Subject to sections 137 and 138, the Court of Disputed Returns may make any order or exercise any power in relation to the petition that the Court considers just and equitable.

(2) Such orders may include any of the following—

(a) an order to the effect that the person elected is taken not to have been elected;

(b) an order to the effect that a new election must be held;

(c) an order to the effect that a candidate other than the one elected is taken instead to have been elected;

(d) an order to dismiss or uphold the petition in whole or in part.

Restrictions on certain orders

137.(1) The Court must not make an order referred to in section 136(2) on the ground of—

(a) a delay in the announcement of nominations under section 88 or in complying with the requirements of Divisions 5, 6 or 7 of Part 6; or

(b) an absence or error of, or omission by, any member of the staff of the Commission that did not have the effect that the person elected would not have been elected.

(2) In determining whether the requirements of subsection (1)(b) are met, the Court must not, if it finds that an elector was prevented from voting at the election by absence, error or omission, take into account any evidence of the way in which the elector had intended to vote.

(3) The Court must not make an order referred to in section 136(2) on the ground that—

(a) a name or other word, of a kind referred to in section 97(2)(g) or (h), that was required by that section to be printed on a ballot paper adjacent to a candidate's name was not so printed or was misspelt, inaccurate or incorrect; or

(b) a name or other word of a kind referred to in section 97(2)(g) or (h) was, contrary to that section, printed adjacent to a candidate's name; or

(c) the names of the candidates on a ballot paper were not set out in the order required by section 97(2)(d).

Restriction on certain evidence and enquiries

138.(1) In proceedings in relation to the petition, the Court of Disputed Returns must not take into account evidence by any person that the person was not permitted to vote during voting hours in relation to a polling place, unless the person satisfies the Court that, so far as the person was permitted to do so, the person did everything required by this Act to enable the person to vote.

(2) In proceedings in relation to the petition, the Court—

(a) may enquire whether persons voting were enrolled on the electoral roll for the electoral district concerned and whether votes were correctly treated as formal or

informal during the counting of votes; and

(b) must not enquire whether the electoral roll, or any copy used at the election, was in accordance with this Act.

Copies of order of Court to be sent to Assembly

139. The Court of Disputed Returns must arrange for a copy of the Court's order to be sent to the Clerk of the Legislative Assembly as soon as possible after it is made.

Costs

140.(1) The Court of Disputed Returns may order that an unsuccessful party to the petition is to pay the reasonable costs of the other parties to the petition.

(2) If costs are awarded against the person lodging the petition, the deposit lodged with the petition must be applied towards payment of the costs.

(3) If not, the deposit must be returned to the person.

Orders to be final

141. An order or other action of the Court of Disputed Returns in relation to the petition is final and conclusive and cannot be appealed against or questioned in any way.

Right of Commission to have access to documents

142. Unless the Court of Disputed Returns orders otherwise, the lodging of a petition does not deprive the Commission of any right to have access to a document for the purpose of performing its functions.

Division 3—Disputing qualifications and vacancies of members

Reference of question as to qualification or vacancy

143.(1) The Legislative Assembly may, by resolution, refer any question regarding the qualification of a member of the Legislative Assembly or regarding a vacancy in the Legislative Assembly to the Court of Disputed Returns.

(2) The Court of Disputed Returns has jurisdiction to hear and determine the question.

Speaker to state case

144. When the Legislative Assembly refers a question to the Court of Disputed Returns, the Speaker must give the Court—

(a) a statement of the question that the Court is to hear and determine; and

(b) any proceedings, papers, reports or documents relating to the question in the possession of the Legislative Assembly.

Parties to the reference

145.(1) The Court of Disputed Returns may—

(a) allow any person whom the Court considers is interested in the determination of the question to be heard when the reference is heard; or

(b) direct that notice of its hearing of the reference must be served on a specified person.

(2) Any person so allowed to be heard or on whom the notice is served becomes a party to the reference.

Powers of Court

146. In hearing the reference, the Court of Disputed returns—

(a) must sit as an open court; and

(b) has power to make such orders as it considers just and equitable, including the power—

(i) to declare that any person was not qualified to be a member of the Legislative Assembly; and

(ii) to declare that any person was not capable of sitting as a member of the Legislative Assembly; and

(iii) to declare that there is a vacancy in the Legislative Assembly.

Order to be sent to Assembly

147. After the hearing and determination of the reference, the Court must arrange for a copy of its order to be given to the Clerk of the Legislative Assembly.

Application of provisions

148. Sections 134(6), 140 and 141 apply, subject to any necessary changes, to proceedings on a reference under this Division.

PART 8—ENFORCEMENT

Division 1—Offences in general

Attempts to be part of offences

149. A person who attempts to commit an offence under this Part is taken to have committed the offence.

Failure to enrol etc.

150.(1) Subject to this section, a person who contravenes section 65(2) or (3) commits an offence punishable on conviction by a penalty not exceeding 1 penalty unit.

(2) Subject to this section, if a person who is entitled to be enrolled for an electoral district is not enrolled for the electoral district—

(a) at the end of 21 days after becoming entitled; or

(b) at any later time while the person continues to be entitled to be enrolled for the district;

the person is guilty of an offence punishable on conviction by a penalty not exceeding1 penalty unit.

(3) If the person admits evidence that the non-enrolment was not because of the person's failure to give notice as required by section 65(2), the person is not guilty of an offence under subsection (2) unless the prosecution proves the contrary.

(4) Where a person gives notice as required by section 65(2), proceedings must not be instituted against the person for any offence under subsection (1) for a contravention of section 65(2), or for any offence under subsection (2), committed before the notice was given.

False names etc. on electoral rolls

151. A person must not wilfully insert, or cause to be inserted, on any electoral roll a false or fictitious name or address.

Maximum penalty—20 penalty units or imprisonment for 6 months, or both.

Misuse of restricted information

152.(1) Where a copy of an electoral roll is made available to a registered political party under section 61(6), a person must not use any information obtained from any part of that copy that is not a publicly available part for a purpose other than one set out in subsection (2) of this section.

Maximum penalty—20 penalty units or imprisonment for 6 months, or both.

(2) The purposes are—

(a) any purpose related to an election under this Act, the *Local Government Act 1936*, the *Community Services (Aborigines) Act 1984* or the *Community Services (Torres Strait) Act 1984*; or

(b) checking the accuracy of information on the electoral roll; or

(c) the performance by a member of—

(i) the Legislative Assembly; or

(ii) a Local Authority; or

(iii) an Aboriginal Council; or

(iv) an Island Council;

of the member's functions in relation to electors enrolled on the electoral roll, where the member is also a member of the registered political party.

False or misleading statements

153. A person must not, in any claim, application, return or declaration, or in answer to any question, under this Act, make a statement that the person knows is false or misleading in a material particular.

Maximum penalty—20 penalty units or imprisonment for 6 months, or both.

Bribery

154. (1) A person must not—

(a) ask for or receive; or

(b) offer, or agree, to ask for or receive;

any property or benefit of any kind (whether for the person or someone else) on the

understanding that the person's election conduct (as defined in subsection (3)) will be influenced or affected.

Maximum penalty—85 penalty units or imprisonment for 2 years, or both.

(2) A person must not, in order to influence or affect another person's election conduct (as defined in subsection (3)), give, or promise or offer to give, any property or benefit of any kind to that other person or to a third person.

Maximum penalty—85 penalty units or imprisonment for 2 years, or both.

(3) In this section—

"election conduct", in relation to a person, means—

(a) the way in which the person votes at an election; or

(b) the person's nominating as a candidate for an election; or

(c) the person's support of, or opposition to, a candidate or a political party at an election.

Providing money for illegal payments

155. A person must not knowingly provide money for any payment that is contrary to law relating to elections, or for replacing any money that has been spent in any such payment.

Maximum penalty—85 penalty units or imprisonment for 2 years, or both.

Improperly influencing Commission

156. Except as permitted by this Act, a person must not influence a commissioner in the performance of the commissioner's duties under Part 3 of this Act.

Penalty—35 penalty units, or imprisonment for 12 months, or both.

Interfering with election right or duty

157. A person must not hinder or interfere with the free exercise or performance, by any other person, of any right or duty under this Act that relates to an election.

Maximum penalty—20 penalty units or imprisonment for 6 months, or both.

Forging or uttering electoral papers etc.

158. (1) A person must not—

(a) forge any electoral papers; or

(b) utter any forged electoral paper, knowing it to be forged.

Maximum penalty—20 penalty units or imprisonment for 6 months, or both.

(2) A person must not make the signature of any other person on an electoral paper.

Maximum penalty—20 penalty units.

Wilful neglect etc. by Commission staff

159. A senior electoral officer or member of the staff of the Commission must not wilfully neglect or wilfully fail to perform any of his or her duties under this Act.

Maximum penalty—20 penalty units.

False statements in relation to enrolment

160. A person must not, after the cut-off day for electoral rolls in relation to an election, make an oral or written statement to a person in relation to the enrolment of the person, where the statement is, to the knowledge of the person making the statement, false or misleading in a material respect.

Maximum penalty—20 penalty units or imprisonment for 6 months, or both.

Division 2—Offences relating to electoral advertising etc.

Author of election matter must be named

161.(1) Subject to subsection (2), a person must not, during the election period in relation to an election—

(a) print, publish, distribute or broadcast; or

(b) cause, permit or authorise another person to print, publish, distribute or broadcast;

any advertisement, handbill, pamphlet or notice containing election matter unless there appears, or is stated, at its end—

(c) in any case—the name and address (not being a post office box) of the person who authorised the advertisement, handbill, pamphlet or notice; and

(d) in the case of an advertisement or notice that is printed otherwise than in a

newspaper—the name and place of business of the printer.

Maximum penalty—

(a) in the case of an individual—20 penalty units; or

(b) in the case of a body corporate—85 penalty units.

(2) Subsection (1) does not apply to an advertisement—

(a) that is printed, published or distributed on a car sticker, T-shirt, lapel button, lapel badge, pen, pencil or balloon; or

(b) that is of a kind prescribed by regulations for the purposes of this subsection.

Heading to electoral advertisements

162.(1) If—

(a) an article, or a paragraph, containing electoral matter is printed in a newspaper; and

(b) either—

(i) the insertion of the article or paragraph is or is to be paid for; or

(ii) any reward or compensation, or promise of reward or compensation, is or is to be made for the insertion of the article or paragraph; and

(c) the proprietor of the newspaper does not cause the word "advertisement" to be printed as a headline to the article or paragraph in letters not smaller than 10 point or long primer;

the proprietor is guilty of an offence.

(2) The maximum penalty for the offence is—

(a) if the proprietor is a natural person—9 penalty units; or

(b) if the proprietor is a body corporate—40 penalty units.

Misleading voters

163. (1) A person must not, during the election period in relation to an election, print, publish, distribute or broadcast any matter or thing that is intended or likely to mislead an elector in relation to the manner of voting at an election.

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

(3) A person must not, during the election period in relation to an election, print, publish, distribute or broadcast by television any representation or purported representation of a ballot paper for use in the election if it is likely to induce an elector to vote other than in accordance with this Act.

Maximum penalty for an offence against this section—

(a) in the case of an individual—40 penalty units; or

(b) in the case of a body corporate—200 penalty units.

Division 3—Offences relating to voting etc.

Failure to vote etc.

164.(1) An elector who—

(a) not being an Antarctic elector, fails, without a valid and sufficient excuse, to vote at an election; or

(b) contravenes section 125(3); or

(c) in purported compliance with section 125(3), makes a statement, in a form, that is to the elector's knowledge false or misleading in a material particular;

is guilty of an offence punishable on conviction by a penalty not exceeding one penalty unit.

(2) Without limiting subsection (1)(a), if an elector believes it to be part of his or her religious duty not to vote at an election, that is a valid and sufficient excuse for failing to vote at the election.

(3) In proceedings for an offence against subsection (1)(a), a certificate, signed by a member of the staff of the Commission, stating that an elector failed to vote an an election is *prima facie* evidence that the elector failed to vote at the election.

Leave to vote

165.(1) If—

(a) an employee who is an elector asks his or her employer, before polling day in relation to an election, for leave of absence to vote at the election; and

(b) the absence is necessary to enable the employee to vote at the election;

then, unless the absence is reasonably likely to cause danger or substantial loss to the employer in respect of the employment concerned, the employer—

(c) must allow the employee leave of absence for a reasonable period of not more than 2 hours to enable the employee to vote at the election; and

(d) must not impose any penalty or disproportionate deduction of pay in respect of the leave of absence.

(2) An employee must not ask for leave of absence under subsection (1) to vote at an election unless the employee genuinely intends to vote at the election.

Maximum penalty—(a) in the case of an individual—9 penalty units; or

(b) in the case of a body corporate—42 penalty units.

Canvassing etc. in or near polling places

166.(1) A person must not, at any time during the election period in relation to an election, do any of the things set out in subsection (2)—

(a) inside any polling booth; or

(b) within 6 metres of any entrance to a building, where—

(i) the building is, or is part of, a polling booth; and

(ii) either a ballot box is in the building for use in voting at the election or a person is voting at the election in the building; and

(iii) the entrance is on, or within 6 metres from, the perimeter of the polling booth.

Maximum penalty—9 penalty units.

(2) For the purposes of subsection (1), the things are—

(a) canvassing for votes; or

(b) inducing any elector not to vote in a particular manner or not to vote at all at the election; or

(c) loitering, or obstructing the free passage of voters.

Interrupting voting etc.

167. A person must not—

(a) except as authorised under this Act, enter or remain in a polling booth; or

(b) wilfully interrupt, obstruct or disturb any proceedings at an election; or

(c) except as authorised under this Act, enter a voting compartment; or

(d) except as authorised under this Act, prevent a scrutineer from entering or leaving a polling booth during voting hours in relation to the polling booth or

while votes are being counted at a polling booth; or

(e) obstruct or wilfully mislead any senior electoral officer or member of the staff of the Commission in the performance of his or her duties.

Maximum penalty—9 penalty units.

Influencing voting

168. A person must not, by violence or intimidation, influence the vote of any person at an election.

Maximum penalty—20 penalty units or imprisonment for 2 years, or both.

Wearing party badges etc.

169. A person must not wear or display any emblem or badge of a political party in a polling booth.

Maximum penalty—1 penalty unit.

Voting when not entitled etc.

170. A person must not, at an election—

(a) vote in the name of another person (including a dead or fictitious person); or

(b) vote more than once; or

(c) cast a vote that the person knows he or she is not entitled to cast; or

(d) where the person knows another person is not entitled to vote at the election, procure that other person to vote.

Maximum penalty—20 penalty units or imprisonment for 6 months, or both.

Offences relating to ballot papers

171. A person must not—

(a) wilfully fail to comply with section 102(10)(c), 108(5)(d), 109(3)(c) or (d) or 110(5)(c) or (d); or

(b) except as authorised under this Act, take a ballot paper out of a polling place; or

(c) place in a ballot box a ballot paper that has not been given to an elector in

accordance with this Act and has not been marked by the elector.

(2) A person who is not an elector must not, without lawful excuse, obtain possession of, or have in his or her possession—

(a) a ballot paper that has been marked by an elector; or

(b) a declaration envelope that has been signed by an elector.

Maximum penalty—20 penalty units or imprisonment for 6 months, or both.

Failure to post etc. documents on behalf of another person

172.(1) If an elector—

(a) gives a written request under section 110 for declaration voting papers to another person to post or send by facsimile to a returning officer; or

(b) in accordance with section 110(5)(d)(ii), gives a declaration envelope to another person to post to a returning officer;

then the other person is guilty of an offence if the other person fails—

(c) in the case of the written request—to post, or send it by facsimile, to the returning officer; or

(d) in the case of the envelope—to post it to the returning officer before the time set out in section 110(5)(d)(ii).

(2) The maximum penalty on conviction for the offence is 20 penalty units or imprisonment for 6 months, or both.

Secrecy of voting

173. A person must not—

(a) during or after an election, knowingly and wilfully, unless ordered by a court or authorised under this Act to do so, unfold a ballot paper that has been marked and folded by an elector in accordance with this Act; or

(b) if the person is a member of the staff of the Commission performing duties at a polling place in relation to an election—

(i) except as authorised under this Act, ascertain or discover how an elector has voted at the election; or

(ii) except as authorised under this Act or as ordered by a court, disclose any information as to how an elector has voted at the election.

Maximum penalty—20 penalty units or imprisonment for 6 months, or both.

Breaking seals on parcels

174. A person must not knowingly and wilfully, unless ordered by a court or authorised under this Act to do so, open or break the seal of a parcel sealed under section 118(2)(h).

Maximum penalty—20 penalty units or imprisonment for 6 months, or both.

Duty of witness to signing of declaration voting papers

175. An elector or other person (in this section called the **"witness"**) must not sign a declaration envelope as witness under section 110(5)(a) unless—

(a) the witness is satisfied of the identity of the elector referred to in that section; and

(b) the witness has seen the elector sign the envelope; and

(c) either—

(i) the witness knows that the declaration made by the elector on the envelope is true; or

(ii) the witness is satisfied, on the basis of inquiries of the elector or otherwise, that the declaration is true.

Maximum penalty—20 penalty units or imprisonment for 6 months, or both.

Division 4—Further penalty of Parliamentary disqualification for certain offences

Further penalty of disqualification for certain offences

176. Where a person is convicted of an offence against section 154, 168 or 170(a) or (b)—

(a) if the person is a member of the Legislative Assembly—in accordance with section 7(2) of the *Legislative Assembly Act 1867*, the person's seat is vacated; and

(b) in any case—the person is not entitled to be elected, or to sit, as a member of the Legislative Assembly for 3 years after the day of the conviction.

Division 5—Injunctions

Injunctions

177. (1) Where-

(a) either—

(i) a person (in this section called the **"offending party"**) has engaged, is engaging or is proposing to engage in conduct; or

(ii) a person (in this section also called the **"offending party'**) has failed, is failing or is proposing to fail to do an act or thing; and

(b) the conduct or failure constituted, consititutes or would constitute a contravention of, or an offence against, this Act;

an application for an injunction may be made to the Supreme Court in accordance with this section.

(2) The application may be made by—

(a) if the conduct or failure relates to an election—a candidate in the election; or

(b) in any case—the Commission.

(3) Before considering the application for an injunction in a subsection (1)(a) case, the Court may, if it considers it desirable to do so, grant an interim injunction restraining the offending party from engaging in the conduct concerned pending the determination of the application.

(4) Where the Commission makes the application for the injunction, the Court must not require it or any other person, as a condition of granting an interim injunction under subsection (3), to give any undertakings as to damages.

(5) On considering the application for the injunction, the Supreme Court may—

(a) in a subsection (1)(a) case—grant an injunction restraining the offending party from engaging in the conduct concerned or, if the Court considers it desirable to do so, requiring the offending party to do any act or thing; or

(b) in a subsection (1)(a)(ii) case—grant an injunction requiring the offending party to do the act or thing concerned.

(6) The Supreme Court may grant the injunction—

(a) if the Court is satisfied that the offending party has engaged in the conduct, or failed to do the act or thing referred to in subsection (1)—whether or not it appears to the Court that the offending party intends to engage again or continue to engage in the conduct, or to fail or continue to fail or do the act or thing; or

(b) if it appears to the Court that, in the event that the injunction is not granted, it is likely that the offending party will engage in the conduct or do the act or thing

referred to in subsection (1)—whether or not the offending party has previously engaged in the conduct or failed to do the act or thing and whether or not there is an imminent danger of substantial damage to any person if the offending party engages in the conduct or fails to do the act or thing.

(7) The Court may discharge or vary the injunction or any interim injunction granted under subsection (3).

(8) The powers conferred on the Supreme Court under this section are in addition to, and do not limit, any other powers of the Court.

PART 9—MISCELLANEOUS

How things are to be given to Commission

178. For the purpose of this Act, any claim, return, form, notice, application, nomination or other document or thing that is required or permitted by this Act to be given to the Commission is to be given to the Commission by leaving it at, or sending it by post, facsimile, or similar means, to the office of the Commission.

How things are to be signed

179. For the purposes of this Act, a person signs a thing—

(a) by signing his or her name in writing on the thing; or

(b) if the person is unable to sign as mentioned in paragraph (a)—by making his or her mark on the thing as a signature, provided that, where the Act does not already require it, this is done in the presence of another person who signs the thing (in accordance with this section) as witness.

Review of certain decisions

180.(1) The decisions set out in the following table are reviewable in accordance with this section if an application for review is made in accordance with this section by the person set out in the table.

Reviewable decision	Person who may apply for review
1. A decision under section 58(4) regarding the inclusion of a person's address in the publicly available part of an electoral roll	The person
2. A decision under section 65 not to amend an electoral roll to give effect to a notice by a person	The person who gave the notice
3. A decision to take action, or not to take action, under section 67(5) to amend the electoral rolls	The person who objected under section 67 to the enrolment of another person, or that other person
4. A decision under section 72 to register, or under section 73 to refuse to register, a political party	Any person affected by the decision

(2) An application for review of a reviewable decision must—

(a) be in writing; and

(b) be made to—

(i) in the case of a reviewable decision at item 4 in the table—the Supreme Court; and

(ii) in any other case—a magistrates court; and

(c) be made within one month after the decision comes to the notice of the applicant or within such further period as the court allows; and

(d) set out the grounds on which review is sought.

(3) On receiving an application, the court concerned must review the decision and make an order—

(a) confirming the decision; or

(b) varying the decision; or

(c) setting aside the decision and making a decision in substitution.

(4) The Supreme Court is to be constituted by a single Judge for the purposes of this section.

(5) The magistrates court is to be constituted by a stipendiary magistrate for the purposes of this section.

Advertising of office addresses etc.

181. The Commission must advertise the locations and opening hours of its office and offices of returning officers and other members of staff where relevant for the purposes of this Act.

Regulations

182.(1) The Governor in Council may make regulations, not inconsistent with this Act, prescribing matters —

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out orgiving effect to this Act.

(2) Without limiting subsection (1), the regulations may provide for offences against the regulations, provided that the penalties for the offences do not exceed 20 penalty units.

PART 10—CONSEQUENTIAL REPEALS AND AMENDMENTS OF OTHER ACTS

Division 1—Repeal of Acts

Repeal of Acts

183. The following Acts are repealed —

(a) the *Elections Act 1983*;

(b) the *Electoral Districts Act 1991*.

Continuation of appointment of certain officials appointed under *Elections Act 1983*

184. (1) A person who, immediately before the commencement of Division 2 of Part 2, was the Electoral Commissioner under the *Elections Act 1983* is taken for the purposes of this Act to have been appointed under this Act as the Electoral Commissioner referred to in this Act.

(2) The appointment is taken to have occurred at the commencement of Division 2 of Part 2 of this Act, and to have been for the remainder of the term specified in the person's

instrument of appointment under the *Elections Act 1983*.

(3) A person who, immediately before the commencement of Division 3 of Part 2, was an electoral registrar, or a returning officer for an electoral district, under the *Elections Act 1983*, is taken for the purposes of this Act to have been appointed under this Act as an electoral registrar, or a returning officer for the electoral district, referred to in this Act.

Continuation of joint roll arrangement with Commonwealth

185. In spite of the repeal of the *Elections Act 1983* by this Act, where an arrangement made in accordance with section 29A of that Act was in force immediately before the repeal—

(a) the arrangement continues to have effect for the purpose of this Act until a new arrangement is made under section 62 of this Act; and

(b) section 29A of that Act also continues to have effect in relation to the arrangement as if references in that section that relate to that Act were instead references that relate to this Act.

Division 2—Amendment of *City of Brisbane Act 1924*

Amended Act

186. The *City of Brisbane Act 1924* is amended as set out in this Division.

Amendment of s. 14L (Names of electoral wards)

187. Subsection 14L(1)—

omit '*Electoral Districts Act 1971*', *insert* '*Electoral Act 1992*'.

Amendment of s. 14Q (Electoral rolls)

188.(1) Subsections 14Q(1), (4) and (5)—

omit 'Principal Electoral Officer', *insert* 'Queensland Electoral Commission'.

(2) Subsections 14Q(2) and (3)—

omit.

(3) For the purposes of section 14Q of the *City of Brisbane Act 1924*, as amended by this section, any electoral roll prepared by the Principal Electoral Officer is taken to have been prepared by the Queensland Electoral Commission.

Amendment of s.17 (Provisions concerning elections)

189. Section 17(3)(b)(ii)—

omit 'Principal Electoral Officer' (wherever occurring), *insert* 'Queensland Electoral Commission'.

Division 3—Amendment of *Criminal Code*

Amended Act

190. The *Criminal Code* is amended as set out in this Division.

Insertion of new s.98A

191. After section 98—

insert—

'Chapter does not apply to Legislative Assembly elections

'98A. This Chapter does not apply to any act or omission of a person, after the commencement of this section, in relation to an election of a member or members of the Legislative Assembly.'.

Division 4—Admendment of *Electoral and Administrative Review Act 1989*

Amended Act

192. The *Electoral and Administrative Review Act 1989* is amended as set out in this Division.

Amendment of s.5.8 (Functions and powers)

193.(1) After section 5.8(1)(f)—

insert—

';(g) to review and report on the number of electoral districts for the State in accordance with subsections (1A) to (1C).'.

(2) After section 5.8(1)—

insert—

'(1A) The Parliamentary Committee must review the appropriateness of the number of electoral districts for the State set out in section 34 of the *Electoral Act 1992*—

(a) whenever requested in writing by the Queensland Electoral Commission to do so; and

(b) unless a review is required beforehand under paragraph (a)—7 years after the day for the return of writs for the first general election held after the electoral distribution under the *Electoral Districts Act 1991*; and

(c) unless a review is required beforehand under paragraph (a)—7 years after any review is conducted under paragraph (a) or (b) or this paragraph.

'(1B) In conducting the review, the Parliamentary Committee must—

(a) give notice of the review, and ask for submissions, in 2 newspapers circulating generally in the State; and

(b) conduct public hearings; and

(c) take into account all submissions and matters raised at the public hearings.

'(1C) The Parliamentary Committee must, within 90 days after giving notice of the review, complete the review and give a report to the Legislative Assembly on its results, together with a copy of all submissions and other documents connected with the review.'.

Division 5—Amendment of *Legislative Assembly Act 1867*

Amended Act

194. The *Legislative Assembly Act 1867* is amended as set out in this Division.

Insertion of new heading and ss.1A and 1B

195. After section 1–

insert —

'COMPOSITION OF THE ASSEMBLY'.

Number of members of Assembly

'1A. The Assembly is to consist of 89 members'.

One member for each electoral district

'1B. Each member is to represent one of the 89 electoral districts provided for in section #300 of the *Electoral Act 1992.'*.

Amendment of s.7 (Vacating seats of members of Assembly in certain cases)

196. At then end of section 7—

add—

'(2) If a member of the Assembly is convicted of an offence against section 154, 168 or 172(b) of the *Electoral Act 1992*, the member's seat becomes vacant.

'(3) In spite of subsection (1), a member's seat does not become vacant under that subsection if the member is convicted of any other offence against the *Electoral Act 1992* or regulations under that Act.'.

Omission of heading and ss.9, 10 and 11

197. Heading 'WRITS OF ELECTION' and sections 9, 10 and 11.

omit.

SCHEDULE 1

Section 80

QUEENSLAND

Electoral Act 1992

WRIT FOR LEGISLATIVE ASSEMBLY ELECTION

To the commissioners of the Queensland Electoral Commission:

GREETING.

We command that you cause an election to be made according to law of [*here insert "all members of the Legislative Assembly" or "a member of Legislative Assembly for the electoral district of [here insert name of electoral district]", as the case requires*], to serve in the Parliament of our State of Queensland and we appoint the following days for the purposes of the election:

1. Cut-off day for electoral rolls in respect of the election: [*here insert day*]

2. Cut-off day for nomination of candidates for the election: [*here insert day*]

3. Polling day: [*here insert day*]

4. Day for return of writ: [*here insert day*]

Witness [*here insert the Governor's title or Speaker's title, as the case requires*] at [*here insert place of issue of writ*] on [*here insert day of issue of writ*].

SCHEDULE 2

Section 97

BALLOT PAPER

Instructions

Place the number "1" in the square opposite the name of the candidate for whom you wish to give your first preference vote.

*** You may, if you wish, vote for one or more additional candidates by placing consecutive numbers beginning with the number "2" in the squares opposite the names of those additional candidates in the order of your preferences for them.**

QUEENSLAND

Electoral District of [*Here insert name of electoral district*]

Election of Member of the Legislative Assembly

[*Here insert polling day*]

CANDIDATES

☐	FLOYD, Monica	**
☐	MAGEE, Michael	**
☐	KAZZI, Maha	**
☐	HALL, Lara	**
☐	PRELL, James	**
☐	NGUYEN, Thang	**

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* *These words may be excluded by the Commission where there are only 2 candidates.*

** *Here the Commission is to insert, if appropriate, the name of a registered party or the word "Independent".*

APPENDIX I

INDEX TO REFERENCES TO PARTICULAR SECTIONS OF DRAFT BILL FOR AN ELECTORAL ACT IN THE TEXT OF THE REPORT

Section	Paragraph/s of the Report in which Reference is made to the Section
1	3.70
3	11.47
7	3.31
8	3.31, 3.70, 6.94, 16.19
9	6.51
18	3.50
20	3.60
22	3.42
31	3.48, 3.51
32	3.48, 3.51, 7.94
33	5.81, 7.94
36	6.64
37	6.64
38	6.64
39	6.64
40	6.64
45	6.59
46	6.60
52	6.77
53	6.77
57	6.25
59	5.62
60	5.62
61	5.31, 5.62, 5.68
62	5.31

Section	Paragraph/s of the Report in which Reference is made to the Section
63	6.64
64	5.19
67	5.88
69	4.21
70	4.40, 4.41, 4.55
71	4.75
72	4.90
73	4.65
74	4.100
75	4.75, 4.83
77	7.38
78	7.16, 7.38, 15.149
79	7.38, 15.149
80	7.38, 7.60
81	7.38
82	7.38, 15.119
83	7.203
84	4.55, 7.255
85	7.255
87	7.255
88	7.255
89	7.255
90	7.255
94	7.160, 8.10, 9.181
95	4.40, 4.41, 9.165
96	4.21, 4.100
97	7.144
98	7.144

Section	Paragraph/s of the Report in which Reference is made to the Section
99	8.147, 10.25
103	8.100, 9.85
104	9.165
105	9.19, 9.38, 9.54, 9.64, 9.106
106	9.19, 9.147
108	9.122
109	9.64, 9.106
110	9.38
111	8.31
112	8.86
113	10.42
115	10.77, 10.115
117	10.25
118	10.64
119	10.127, 10.168
120	10.25
121	10.152
122	10.176
123	10.176
124	10.138
125	10.91
126	10.187
127	13.51
128	13.61
129	13.61, 13.71
130	13.85, 13.100
133	13.71
134	13.100, 13.120

Section	Paragraph/s of the Report in which Reference is made to the Section
139	13.108
140	13.116
142	10.138
152	5.168, 14.103
153	4.75
154	14.59
156	6.35
158	14.87, 14.128
160	14.87, 14.128
161	11.79
163	11.33, 11.65, 11.96
164	5.25, 5.81, 14.115
165	14.115
166	8.130
170	14.103
178	7.176
179	15.102
180	4.75, 12.19
193	6.87, 6.94
194	6.97
Schedule 1	7.176
Schedule 2	7.176

V. R. Ward, Government Printer, Queensland—1991