ATTACHMENTS

Attachment 1

Extract from "ALP conquistadors burn Beazley's boats", Alan Ramsay, Sydney Morning Herald, 7 October 2000, p 42

In Canberra, John Howard's Government has seized on the political opportunity of what is happening in Queensland. The Federal Parliament's joint committee on electoral matters will conduct its own inquiry into what it loftily calls "the integrity of the electoral roll". What it really intends doing, of course, is exploiting the CJC hearing in Queensland to kick the daylights out of Labor. This is already going on, now Parliament is sitting again after the Olympics, and the pace will escalate when the committee meets on Tuesday to set its inquiry timetable.

The committee called for submissions a few weeks ago. They close next Friday. One submission already circulated in the Labor Party ensures the heat on Labor will not only come from Queensland. Ralph Clarke, the South Australian State Labor MP who took his party to the Supreme Court last year to try to save his own career from a factional branchstack to depose him, tells how he won the court case and cost the Labor Party $250,000 in legal costs.

His submission recounts a massive attempted rort in which, on a single day, January 26 1999, the Labor Party membership in South Australia leapt by 2,103 from approximately 3,500 to 5,600, an increase of 60 per cent. In a single day! Subscriptions for the 2,103 new members totalled $41,937, all of them paid by just 11 people. What was happening was the factions were stacking the membership to influence parliamentary preselections and internal balloting for party positions and conference delegates.

It was a massive breach of the SA branch rules. A Supreme Court judge found these rules enforceable by law and declared the 2,103 "new" members invalid. It didn't save Ralph Clark, though. He polled 84 per cent in his local preselection ballot, but this local ballot, under State ALP rules, elected only a quarter of the delegates who would make the final decision. A full 50 per cent were controlled by the unions, through head office, and this bloc union vote, in a factional deal, stripped Clark of his party endorsement.

Now, the case fought through the courts in Adelaide last year is to be regurgitated before a Canberra parliamentary inquiry controlled by Labor's opponents. The odds are of the kind that favoured Cortes before he fell on the Aztecs.

Attachment 2

Extract from "Matters of Public Interest - Branch Stacking; Senator George Brandis", Queensland Legislative Assembly Hansard, 22 August 2000, pp 2527-2529

Mr MUSGROVE (Springwood - ALP) (12 p.m.): One reason the standing of politicians and the political process is so low in the Australian community is the public perception that politics is dominated by hypocrisy and double standards, as we have just seen from the Leader of the Opposition. All of us, no matter what party we belong to or what side we are on, have a duty to try to restore public trust and confidence in our parliamentary system and our political process. I believe that that is a duty which most honourable members in this place accept. The events in the Labor Party in Townsville some years ago which resulted in the imprisonment of a former Labor Party candidate for electoral fraud are absolutely indefensible. The discovery of these events made the Labor Party put in place the toughest possible rules to stop branch stacking, voting manipulation and all the unsavoury and undesirable behaviour which accompanies these so-called tactics.

I am proud of the indisputable fact that the Queensland branch of the Australian Labor Party under the leadership of the then State secretary and now member for Woodridge, Mike Kaiser, put in place party rules and procedures which are the toughest in any branch of any party in Australia. He cleansed the Townsville rolls. He put in place the rule that no more than five members could attend a branch meeting and join that branch at any one time. He introduced the rule that members had to be a member of the Australian Labor Party for 12 months in order to obtain a vote in preselections. Most importantly, and this is something that the Liberal Party would do well to learn from, he made it a rule that members must live in the Federal electorate in which they vote. At the recent ALP National Conference, the principles we have adopted in Queensland were adopted by the national organisation and must be in place in every State by 30 June 2001.

It is hardly surprising that the Liberal and National Parties here and in Canberra have sought to make political capital of the events which culminated in a former candidate going to prison. If the roles were reversed, we would do the same. However, when a politician or political party attack their opponents for branch stacking, rorting or electoral and organisational malpractice, they ought to look in their own backyards before doing so. They also ought to ensure that the attacks are made by someone with a semblance of credibility on political and party matters. That is why I was truly amazed when the attack in Canberra was made in the Senate by the Howard Government's newest senator, Senator George Brandis, elected to the Senate by this Parliament only a few short months ago. Of all the politicians in Australia today - Labor, Liberal, National or whatever - there is no-one with less credibility on this issue than Senator George Brandis. Indeed, the speech by Senator Brandis will go down in the annals of Australian politics as one of the most hypocritical and shameless speeches ever made by a serving politician.

Senator Brandis is the godfather of branch stacking in the Queensland Liberal Party, branch stacking which is without precedent in this State for both its magnitude and the blatant way it was done. Senator Brandis ought to be the last person in any Parliament to complain about branch stacking, political fraud and malpractice. His record as a senior official in the Queensland Liberal Party is one he ought to be thoroughly ashamed of and one which ought to buy his silence forever on these issues. In view of his cowardly attack on the Federal Labor candidate for Herbert in which he repeated allegations which have already been examined and rejected as false, this Parliament

and the people of Queensland ought to know something about Senator Brandis' own record with regard to branch stacking and political fraud. When his record is examined, his speech in Canberra will be seen as one of the worst examples of hypocrisy and double standards seen in any Parliament in recent years.

About five years ago, the Queensland branch of the Liberal Party had an investigation into branch stacking, voting irregularities and membership fraud in the Queensland Young Liberals. The report uncovered massive fraud, branch stacking and rorting - false names, false addresses, phoney memberships and more. Who was the person who did everything possible to discredit this report and protect the rorters? Yes, it was George Brandis! That is hardly surprising, as Mr Brandis used the Young Liberal rorters to stack the annual general meeting of the Liberal Party in Ryan to get himself elected as the Ryan area chairman. One of Mr Brandis' proteges, now the Young Liberals State President, actually swallowed a membership receipt when challenged by party members to show it to them. We have heard about burning evidence. We have heard about shredding evidence and we have heard about tampering with evidence. The Young Liberals even swallow the evidence!

It was during Mr Brandis' term as the Ryan area chairman that Mr Michael Johnson, perhaps the most notorious ethnic branch stacker in contemporary Australian politics, began stacking the branches in Ryan so he could knock over the sitting member and Australia's Defence Minister, John Moore. Not only did Mr Brandis fail to try to stop the ethnic branch stacking Mr Johnson was engaging in, he actually encouraged it and defended it, even after he was made the chairman of the Liberal Party's Constitution and Rules Committee last year. In fact, he blatantly used that position to protect Mr Johnson and the ethnic branch stackers in the seat of Moreton so they could continue to stack branches.

When this branch stacking was attacked by John Moore and by other potential victims such as Kathy Sullivan, the Federal member for Moncrieff, the Liberal Party set up a committee to review its constitution. Who was appointed by the ruling Santoro/Carroll faction? Yes, George Brandis! The review was set up last year. And guess what? It will not report before April 2001, conveniently after all the Federal preselections have been completed. Putting George Brandis in charge of a review of branch stacking and rorting would be about as credible as making Christopher Skase chairman of the Australian Securities Commission!

Earlier this year we all discovered just why Senator Brandis was so enthusiastic about protecting the ethnic branch stacking in Ryan and Moreton. When the discredited Senator Warwick Parer resigned from the Senate, Mr Brandis was anointed as the Santoro/Carroll candidate to replace him, undoubtedly as a reward for so diligently defending and encouraging the ethnic branch stacking the member for Clayfield is so proud of. When it came to elect the 10 Ryan delegates to the Senate preselection, Mr Johnson turned up with more than 100 Taiwanese and delivered –

Mr Mickel: They've got an office right here in Hong Kong.

Mr MUSGROVE: That is right; they have an office right here in Hong Kong. Mr Johnson turned up with 100 Taiwanese and delivered 10 votes for Mr Brandis. When it seemed Mr Brandis might still be short, one of the Taiwanese branches in Moreton was moved overnight into Rankin, where the Liberal Party had almost no members, to form a Rankin FEC and give Mr Brandis 10 votes.

Mr Mickel: They had no members.

Mr MUSGROVE: To be accurate, they indeed had no members, but they got some overnight. This scandalous abuse was sanctioned by the Constitution and Rules Committee, which Senator Brandis still had effective control over. Senator Brandis won the party preselection thanks to ethnic branch stacking, rorting and manipulation. The same Senator Brandis is also an ardent defender of the Young Liberal branch stacking which is now rife in Moncrieff, where it is so bad that the Prime Minister of Australia has had to intervene to have the preselection deferred indefinitely. With a record like that - and it is only a part of the story - Senator George Brandis ought to be the last person to complain about branch stacking and malpractice in any other party. Yet with the pomposity for which he was known in the legal profession, Senator Brandis got up in the Senate last week and feigned indignation about events in the Labor Party in Townsville. With such shameless hypocrisy, it is little wonder that the public standing of politics and politicians is at rock bottom.

There is one other point I must make about Senator Brandis. When he was lecturing the Senate about the law, the Acting President pointed out that “Senator Brandis is a senior barrister”. That is a statement which does not sit easily with Senator Brandis' record. Indeed, Senator Brandis has a unique place in the history of the Queensland legal profession, and the House will be interested to know what that is. When at the bar, Senator Brandis applied to be a Queen’s Counsel when that position was still available. He was rejected by the Chief Justice of the day. When the Goss Government changed the position to Senior Counsel, he applied again, this time under a different Chief Justice. He was rejected once again. The record of Senator Brandis is one that will not be equalled - rejected for Queen's Counsel and rejected for Senior Counsel under different Chief Justices under both Labor and coalition Governments! Recent events have shown just how wise the decisions of both the current and former Chief Justices were. To top it off, I am told that Senator Brandis has even been rejected for membership of the Queensland Club across the road! When it comes to the integrity of the electoral and political process, Senator Brandis ought forever remain silent.

Of course, the stacking of hundreds of members at a time costs lots of money. It is no secret that the Liberal Party is absolutely terrified about the serial fundraising efforts of the member for Clayfield. I have here in my hands a memorandum to all Liberal Party branch secretaries and treasurers from Graham Jaeschke. This internal Liberal Party memorandum dated 14 June 2000 begs any branch or FEC which believes it might have a turnover in excess of $100,000 per annum to contact the Liberal Party at the earliest opportunity. This is quite squarely aimed at the member for Clayfield, because nobody else raises that sort of money, and this is only the tip of the iceberg. The Liberal Party has written to the member for Clayfield begging him to disclose the details of his own fundraising efforts, in particular the details of the slush fund known as the Clayfield Electorate Staff Fund.

Questions need to be asked about this fund. Is it true that cheques made out by donors at these fundraisers have been made out to “S. Santoro”? Questions need to be asked about the purpose of this fund and why it is not declared in the Register of Members’ Interests. Is it true that the member for Clayfield is a signatory on this account? Has the member for Clayfield lodged a political disclosure return with the Electoral Commission for the slush fund? Alternatively, does the member for Clayfield pay income tax on the moneys channelled into this fund? The member for Clayfield and Senator Brandis are an absolute disgrace and reflect badly on all of us. It is time they were held to account, just as the Labor Party has held its own to account.

Attachment 3

Map of Queensland State electoral districts

Attachment 4

Outcomes of fraudulent enrolments by Mr Andy Kehoe

On 15 October 1996 Mr Kehoe committed enrolment fraud by changing the enrolments of eight enrolled electors and adding one new enrolment to the Commonwealth electoral roll. On 6 December 1996 he added another new elector to the roll. All these instances of enrolment fraud involved Mr Kehoe changing details of real living people, and both the persons he added to the roll were eligible electors not previously enrolled.

Queensland State elections were held on 15 July 1995 and on 13 June 1998. The Mundingburra by-election was held on 3 February 1996. Federal elections were held on 2 March 1996 and on 3 October 1998. The Kehoe fraudulent enrolments were effected between 15 October 1996 and 6 December 1996 which was in the period between the 1996 and the 1998 federal elections.

Of the ten electors affected, there was only one elector, K1, whose federal enrolment was changed by Mr Kehoe. K1 was originally enrolled in the federal Division of Leichhardt. K1 was fraudulently moved from the Division of Leichhardt into the Division of Herbert on 15 October 1996, after the 15 July 1995 State election and the 3 February 1996 Mundingburra by-election. K1 was removed by AEC objection from the fraudulent address in Herbert on 20 January 1998, and was re-enrolled in NSW on 6 March 1998. K1 was therefore correctly enrolled in NSW before the next federal election on 3 October 1998.

Of the remaining nine electors, the enrolments of six electors, K2 to K7, were changed on 15 October 1996, and corrected, at the latest, by 6 October 1997. Four of these electors, K2, K3, K4 and K6, were moved from Mundingburra to Townsville, within the federal Division of Herbert, after the 3 February 1996 Mundingburra by-election and the 2 March 1996 federal election. The enrolments of all six electors were corrected well before the 13 June 1998 State election, and the 3 October 1998 federal election.

Of the remaining three electors, K8 was moved from Mundingburra to Townsville, within the federal Division of Herbert, on 15 October 1996, after the 3 February 1996 Mundingburra by-election and the 2 March 1996 federal election. K8 was removed by AEC objection from the fraudulent address in Townsville on 20 January 1998, and was not re-instated to the Herbert roll until after the 3 October 1998 federal election, on 23 November 1998, as the result of casting an absent vote for Herbert in the Division of Maranoa.

The last two electors, K9 and K10 were both new enrolments. K9 was enrolled on 15 October 1996, at the same time as the other fraudulent enrolments, and K10 was enrolled on 6 December 1996. Both enrolments were placed on the electoral roll after the 2 March 1996 federal election. They were both enrolled for Townsville, within the federal Division of Herbert, and their enrolments were removed by AEC objection on 20 January 1998, prior to the 1998 federal election.

Kehoe Case No	Type of fraud	New enrolment or change of address	Date	Original State enrolment	State enrolment after fraud	Original federal enrolment	Federal enrolment after fraud	Date that fraudulent enrolment deleted by objection	Date that correct enrolment recorded
K1	real person	change of address	15/10/96	Cairns	Townsville	Leichhardt	Herbert	20/1/98 - AEC review	6/3/98
K2	real person	change of address	15/10/96	Mundingburra	Townsville	Herbert	Herbert		6/10/97
K3	real person	change of address	15/10/96	Mundingburra	Townsville	Herbert	Herbert		2/5/97
K4	real person	change of address	15/10/96	Mundingburra	Townsville	Herbert	Herbert		2/5/97
K5	real person	change of address	15/10/96	Townsville	Townsville	Herbert	Herbert		12/5/97
K6	real person	change of address	15/10/96	Mundingburra	Townsville	Herbert	Herbert		15/9/97
K7	real person	change of address	15/10/96	Thuringowa	Townsville	Herbert	Herbert	28/07/97 mail returned	6/10/97
K8	real person	change of address	15/10/96	Mundingburra	Townsville	Herbert	Herbert	20/1/98 AEC review	23/11/98
K9	real person	new enrolment	15/10/96	not on roll at this time	Townsville	not on roll at this time	Herbert	20/1/98 - AEC review	
K10	real person	new enrolment	6/12/96	not on roll at this time	Townsville	not on roll at this time	Herbert	20/1/98 - AEC review	not enrolled

Attachment 5

Outcomes of fraudulent enrolments by Mr Shane Foster

Mr Foster fraudulently changed the enrolments of eight electors, with 11 enrolment changes in all, between 6 October 1993 and 25 July 1996. Queensland State elections were held on 15 July 1995 and on 13 June 1998. The Mundingburra by-election was held on 3 February 1996. Federal elections were held on 2 March 1996 and on 3 October 1998.

Six of the electors, F1, F2, F3, F4, F5 and F6 were originally enrolled in the federal Division of Herbert, and they were not moved from this Division, or removed from the roll. Two of the electors, F7 and F8 were fraudulent new enrolments for the Division of Herbert.

F2 was fraudulently moved twice within the Division of Herbert. It appears that F2 lodged a change of address notification with the AEC on 5 February 1996, for the close of rolls for the 1996 federal election.

F5 was fraudulently moved three times within the Division of Herbert between the 1993 and the 1996 federal elections. On 6 April 1995, prior to both the 1995 State Election and the 1996 federal election, F5 notified the AEC of a change of address.

F7 and F8 were both fraudulently re-enrolled in the Division of Herbert after the 1995 State election and the 1996 federal election, and both their enrolments were corrected prior to the 1998 State and federal elections.

Foster Case No	Type of fraud	New enrolment or change of address	Date	Original State enrolment	State enrolment after fraud	Original federal enrolment	Federal enrolment after fraud	Date that fraudulent enrolment deleted by objection	Date that correct enrolment recorded
F1	real person	change of address	15/7/94	Mundingburra	Thuringowa	Herbert	Herbert		15/8/94
F2	real person	change of address	7/10/93	Mundingburra	Mundingburra	Herbert	Herbert		
		change of address	19/4/95	Mundingburra	Mundingburra	Herbert	Herbert		5/2/96
F3	real person	change of address	28/7/94	Mundingburra	Thuringowa	Herbert	Herbert	13/1/95 - AEC review	
F4	real person	change of address	16/11/93	Mundingburra	Mundingburra	Herbert	Herbert		30/9/94
F5	real person	change of address	6/10/93	Mundingburra	Mundingburra	Herbert	Herbert		
		change of address	16/11/93	Mundingburra	Mundingburra	Herbert	Herbert		
		change of address	31/5/94	Mundingburra	Mundingburra	Herbert	Herbert		6/4/95
F6	real person	change of address	25/7/96	Mundingburra	Townsville	Herbert	Herbert		12/11/97

Foster Case No	Type of fraud	New enrolment or change of address	Date	Original State enrolment	State enrolment after fraud	Original Federal enrolment	Federal enrolment after fraud	Date that fraudulent enrolment deleted by objection	Date that correct enrolment recorded
F7	real person	re-enrolment	27/7/96	Not on roll at this time	Thuringowa	Not on roll at this time	Herbert		16/1/98
F8	real person	re-enrolment	27/7/96	Not on roll at this time	Thuringowa	Not on roll at this time	Herbert		28/8/97

Attachment 6

Outcomes of fraudulent enrolments by Ms Karen Ehrmann

Between 22 January 1993 and 27 July 1996 Ms Ehrmann changed the enrolment details of 18 electors. In all cases, these electors were real people. In no cases did Ms Ehrmann create false identities or use the identities of deceased people.

Queensland State elections were held on 15 July 1995 and on 13 June 1998. The Mundingburra by-election was held on 3 February 1996. Federal elections were held on 2 March 1996 and on 3 October 1998.

Six of the cases, E6, E7, E11, E12, E13 and E16, each involved only one fraudulent change of address within the Division of Herbert. In all cases the enrolments were changed after the 1996 federal election, and corrected prior to the 1998 federal election.

Three of the cases, E5, E9 and E10 involved fraudulent new enrolments, in July 1994, in the Division of Herbert. E5 and E9 were both removed from the roll by AEC objection on 21 January 1998, and neither has re-enrolled. The enrolment of E10 was corrected on 25 August 1997 and remains in the Division of Herbert.

Two cases, E8 and E14 involved two fraudulent changes of address within the Division of Herbert. In the case of E8, the enrolled address was changed on 28 July 1994, and again on 5 August 1994. The enrolment was corrected on 21 October 1994. There were no State or federal elections during this period. In the case of E14, the address was changed on 10 July 1994, and again on 8 October 1996. In April 1998 the incorrect enrolment was removed by AEC objection, and on 21 May 1998 the correct enrolment address was recorded in the federal Division of Charlton, prior to the 1998 State and federal elections.

Two cases, E2 and E3 involved three fraudulent changes of address in each case, within the Division of Herbert. The enrolment of E2 was originally moved from the Division of Perth to the Division of Herbert on 15 February 1993 and E2 remained enrolled for Herbert after the enrolment was corrected on 24 June 1995. In the case of E3, the address was changed on 30 September 1993, 4 May 1994 and 24 June 1995, and corrected on 19 January 1998.

Two cases, E17 and E18 were re-enrolments of previously enrolled electors. They were both enrolled in Herbert on 27 July 1996, after the 1996 federal election and the 1995 State election. Their enrolments were corrected prior to the 1998 State and federal elections.

One case, E4, was enrolled as a new enrolment on 12 October 1993 and was moved on 13 July 1994 to another address, within the Division of Herbert. The enrolment was removed by AEC objection on 13 January 1995, and the correct enrolment recorded on 21 March 1996, prior to the 1995 State and the 1996 federal elections.

One case, E15, was re-enrolled in the Division of Herbert on 10 July 1996, after the 1995 State election, and the enrolled address was changed on 8 October 1996, after the 1996 federal election. The enrolment of E15 was corrected on 16 March 1998, prior to the 1998 State and federal elections.

The final case, E1, was subject to a change of address on 22 January 1993, and then fraudulently re-enrolled on 11 July 1996, within the Division of Herbert. The enrolment was deleted by AEC objection on 13 January 1995. The elector was not on the roll for the 1995 State election, the Mundingburra by-election or the 1996 federal election. The enrolment of E1 was deleted on 21 January 1998 and the correct enrolment re-instated in the Division of Herbert on 15 April 1998, prior to the 1998 federal election.

In summary, the activities of Ms Ehrmann might have resulted in one elector, E2, being fraudulently moved out of the original enrolled Division of Herbert. However, this occurred after the 1993 federal election and was corrected prior to the 1996 federal election.

Ehrmann Case No	Type of fraud	New enrolment or change of address	Date	Original State enrolment	State enrolment after fraud	Original Federal enrolment	Federal enrolment after fraud	Date that fraudulent enrolment deleted by objection	Date that correct enrolment recorded
E1	real person	change of address	22/1/93	Thuringowa	Townsville	Herbert	Herbert	13/01/95- AEC review	15/4/98
		re-enrolment	11/07/96	not on roll at this time	Townsville	not on roll at this time	Herbert	21/1/98 - AEC review	
E2	real person	change of address	15/2/93	Western Australia	Townsville	Perth	Herbert		24/6/95
		change of address	30/9/93	Townsville	Townsville	Herbert	Herbert		
		change of address	4/5/94	Townsville	Thuringowa	Herbert	Herbert		
E3	real person	change of address	30/9/93	Townsville	Townsville	Herbert	Herbert		19/1/98
		change of address	4/5/94	Townsville	Thuringowa	Herbert	Herbert		
		change of address	24/6/95	Thuringowa	Townsville	Herbert	Herbert		
E4	real person	new enrolment	12/10/93	not on roll at this time	Burdekin	not on roll at this time	Herbert		21/3/96
	real person	change of address	13/7/94	Burdekin	Thuringowa	Herbert	Herbert	13/1/95 - AEC review	

Ehrmann Case No	Type of fraud	New enrolment or change of address	Date	Original State enrolment	State enrolment after fraud	Original Federal enrolment	Federal enrolment after fraud	Date that fraudulent enrolment deleted by objection	Date that correct enrolment recorded
E5	real person	new enrolment	4/10/93	not on roll at this time	Townsville	not on roll at this time	Herbert	21/1/98 - AEC review	not done
E6	real person	change of address	15/7/94	Mundingburra	Thuringowa	Herbert	Herbert		14/8/95
E7	real person	change of address	5/4/93	Mundingburra	Thuringowa	Herbert	Herbert	13/1/95 - AEC review	18/6/98
E8	real person	change of address change of address	28/7/94 5/8/94	Townsville Thuringowa	Thuringowa Thuringowa	Herbert Herbert	Herbert Herbert		21/10/94
E9	real person	new enrolment	19/7/94	not on roll at this time	Thuringowa	not on roll at this time	Herbert	21/1/98 - AEC review	
E10	real person	new enrolment	13/7/94	not on roll at this time	Thuringowa	not on roll at this time	Herbert	16/8/96 - information from State election	25/8/97
E11	real person	change of address	13/7/94	Mundingburra	Thuringowa	Herbert	Herbert		13/10/94
E12	real person	change of address	13/7/94	Mundingburra	Thuringowa	Herbert	Herbert		13/10/94

Ehrmann Case No	Type of fraud	New enrolment or change of address	Date	Original State enrolment	State enrolment after fraud	Original Federal enrolment	Federal enrolment after fraud	Date that fraudulent enrolment deleted by objection	Date that correct enrolment recorded
E13	real person	change of address	13/7/94	Townsville	Thuringowa	Herbert	Herbert		15/7/96
E14	real person	change of address change of address	10/7/94 8/10/96	Townsville Thuringowa	Thuringowa Townsville	Herbert Herbert	Herbert Herbert	 7/4/98 - non-resident - federal election	21/5/98
E15	real person	re-enrolment change of address	10/7/96 8/10/96	Not on roll Thuringowa	Thuringowa Townsville	not on roll Herbert	Herbert Herbert		16/3/98
E16	real person	change of address	25/7/96	Mundingburra	Thuringowa	Herbert	Herbert		12/11/97
E17	real person	re-enrolment	27/7/96	Not on roll at this time	Thuringowa	Not on roll at this time	Herbert		16/1/98
E18	real person	re-enrolment	27/7/96	Not on roll at this time	Thuringowa	Not on roll at this time	Herbert		28/8/97

Attachment 7

"Party Politics – Australia Style", Geoff Pryor, Canberra Times, 9 September 2000, p 5

(see attached)

Attachment 8

McMurdo QC legal advice to CJC, "Allegations of Electoral Fraud", 5 September 2000

The Commission's Instructions

1. On 22 August 2000, the commission resolved to engage the services of an independent qualified person pursuant to s.66 of the *Criminal Justice* Act *1989* ("the Act") to direct and supervise preliminary inquiries and to advise in relation to allegations of electoral fraud. On the same date, I was engaged by the commission to provide those services.

Background to the Commission's Instructions

2. The circumstances giving rise to the commission's instructions to me, which are set out in its resolution, are as follows:

> 1. On 11 August 2000, Karen Lynn Erhmann pleaded guilty in proceedings in the District Court of Townsville to 24 counts of forging and 23 counts of uttering Commonwealth Electoral Enrolment forms and was sentenced to three years imprisonment;
>
> 2. During the course of the said proceedings documents were filed on behalf of Karen Lynn Ehrmann alleging the involvement or possible involvement of Australian Labor Party (ALP) members, including elected representatives, in electoral fraud;
>
> 3. On 15 August 2000, allegations were made in the Senate by Senator Brandis that in 1998 Jennifer Hill, an ALP Councillor in the Townsville City Council, fraudulently caused a person to be recorded as a member of the ALP;
>
> 4. On and from 15 August 2000, the Criminal Justice Commission (the Commission) has operated of its own initiative, in conducting preliminary investigations of the allegations referred to in paragraphs (2) and (3);
>
> 5. By letters to the Commission dated 17 August 2000 and 21 August 2000, the Leader of the Opposition, the Honourable R J Borbidge MLA, called for a full and independent inquiry into the allegations made by Ms Ehrmann and the issues relevant to them;
>
> 6. By letter to the Commission dated 18 August 2000 and 21 August 2000, the Electoral Commissioner, Mr D J O'Shea, referred to the Commission documents relating to the said proceedings against Ms Ehrmann and requested the Commission to conduct an investigation into allegations of electoral fraud raised by Ms Ehrmann or to refer those allegations to the Queensland Police Service where the Commission does not have the power to do so.

Scope of Brief

3. I am briefed to:

(a) examine the information gathered during the commission's preliminary investigation relating to the allegations referred to in paragraphs (2) and (3);

(b) direct and supervise such further investigations as I consider appropriate in order to assess whether a reasonable suspicion of official misconduct exists in respect of the allegations referred to in paragraphs (2) and (3);

(c) advise if a reasonable suspicions of official misconduct exists in respect of the allegations referred to in paragaphs (2) and (3) and, if it does, to advise on;

> (i) the nature of the investigation of the suspected official misconduct that the commission should conduct;
> (ii) whether, having regard to section 90 of the Act, an open hearing should be held for the purpose of such investigation;
> (iii) the terms of reference of any such open hearing;

(d) advise, in respect of any allegations referred to in paragraphs (2) and (3) not giving rise to a reasonable suspicion of official misconduct, whether such allegations should be referred to the Queensland Police Service or any other agency for investigation of possible criminal offences.

***Criminal Justice Act* – the investigative responsibilities and powers**

4. The commission has responsibilities and powers to investigate "official misconduct", as to both its incidence generally in the State, and in particular cases of alleged or suspected official misconduct (ss.2(3)(v), 23(f)(iii), 29(3)(a),(d)).

5. In Queensland, there is no criminal offence of official misconduct, so called. In some cases, the outcome of the commission's investigation is a disciplinary charge of official misconduct, which is dealt with under *the Misconduct Tribunals Act* 1997 (*Criminal Justice Act s.39*). The evident intent of the Act, so far as the commission's investigative responsibilities and powers are concerned, is to provide a regime whereby matters of public concern, potentially involving the neglect of, or abuse of the powers or the authority of public officials, can be investigated in a way which is not facilitated by other processes and institutions.

6. Official misconduct for the purposes of the Act is defined by ss.31 and 32. By s.31(1), official misconduct is conduct of the general nature prescribed by s.32, or a conspiracy or attempt to engage in such conduct.

7. Section 32(1) provides that official misconduct is conduct of a kind described in paragraphs (a), (b) or (c) of that sub-section, if that conduct also "... constitutes or could constitute –

> (d) in the case of conduct of a person who is the holder of an appointment in the unit of public administration - a criminal offence, or a disciplinary breach that provides reasonable grounds for termination of the person's services in the unit of public administration; or
> (e) in the case of any other person - a criminal offence."

8. It is convenient to discuss first the terms of paragraph (d). In the present cases, the potentially relevant units of public administration are the Legislative Assembly and one or more local governments within Queensland. Section 7 of the *Legislative Assembly Acts* 1867-1978 provides that the seat of a member of the Legislative Assembly becomes vacant in certain circumstances but does not provide for any disciplinary regime for the "termination of the person's services". Section 7B provides that in the circumstances there set out (Where a member transacts any business or performs any duty or service for the Crown or a Crown instrumentality or

a body representing the Crown), the Assembly may resolve that the person should not continue as a member of the Assembly and that the seat of that person shall become vacant. But circumstances which might engage s.7B do not arise here. There is no relevant disciplinary standard or norm of conduce, nor is there any provision for the disciplining of a member under some regime which might terminate the member's services.

9. *The Local Government Act* 1993 provides for the disqualification and vacation of office of a councillor in certain circumstances as set out in s.221, or(by s.222) if a person is found guilty of certain offences against that Act. Again, there is no prescribed disciplinary standard or disciplinary regime.

10. Accordingly, in the case of conduct of either a member of the Legislative Assembly or a councillor, there must be conduct which constitutes or could constitute a criminal offence, for paragraph (d) to be satisfied, as there must be for paragraph (e) cases.

11. In *Greiner v. ICAC* (1992) 28 NSWLR 125, consideration was given to what was meant by "could" in the context of the analogous provisions of the *Independent Commission Against Corruption Act* 1988 (NSW), ss.8,9. At page 187, Priestley JA held that "could" in that provision means "would, if proved". At page 136, Gleeson CJ noted that it was common ground that, in determining whether conduct could constitute a criminal offence in this context, consideration would have to be given to whether, if there were evidence of certain facts before a properly constituted jury, such a jury could reasonably conclude that a criminal offence had been committed.

12. Most of the allegations by Ehrmann are imprecise and unparticularised. But they do include an assertion thee others engaged in conduct substantially similar to that which constituted the offences committed by her; ie. the forging and uttering of documents to the end of affecting the content of the electoral roll (A criminal offence at least by reason of *Crimes* Act 1914 (Cth) s.67. Even if no criminal offence against the law of Queensland is involved, s.31(4) provides that conduct may be official misconduct for the purposes of this Act "whether the law relevant to the conduct is a law of Queensland or of another jurisdiction", so that a criminal offence against the laws of the Commonwealth would be a criminal offence for the purposes of s.32). Other conduct which is suggested by her affidavit is not conduct which, if proved, would constitute a criminal offence. Only suggestions of criminal conduct are potentially relevant.

13. The allegations relating to Ms Hill would appear to involve allegations of the commission of a criminal offence or offences. Again, care must be taken to distinguish between alleged criminal conduct, as possibly involving official misconduct, and other conduct.

14. If the conduct complained of would constitute a criminal offence, then it is official misconduct if it is of the types described in paragraphs (a), (b) or (c) of s.32(1). They are as follows:

32 (1) Official misconduct is –

(a) conduct of a person, whether or not the person holds an appointment in a unit of public administration, that adversely affects, or could adversely affect, directly or indirectly, the honest and impartial discharge of functions or exercise of powers or authority of a unit of public administration or of any person holding an appointment in a unit of public administration; or

(b) conduct of a person while the person holds or held an appointment in a unit of public administration –

(i) that constitutes or involves the discharge of the person's functions or exercise of his or her powers or authority, as the holder of the appointment, in a manner that is not honest or is not impartial, or
(ii) that constitutes or involves a breach of the trust placed in the person by reason of his or her holding the appointment in a unit of public administration, or

(c) conduct that involves the misuse by any person of information or material that the person has acquired in or in connection with the discharge of his or her functions or exercise of his or her powers or authority as the holder of an appointment in a unit of public administration, whether the misuse is for the benefit of the person or another person;"

15. I shall return to the type of conduct within paragraph (a) but it is convenient to go first to paragraph (b). Read alone, it refers to conduct "of a person while the person holds or held an appointment in a unit of public administration". In turn, the conduct referred to in sub-paragraphs (i) or (ii) seems to be referable only to conduct of a person who, at the rime of the alleged misconduct, held a relevant appointment.

16. Section 31(3) provides that:

"(3) Conduct engaged in by, or in relation to, a person at a time when the person is not the holder of an appointment in a unit of public administration may be official misconduct, if the person becomes the holder of such an appointment."

It could be suggested that this might enlarge the scope of s.32(1)(b). It is only by reference to the holding of an appointment, at the relevant time, that an assessment could be made as *to* whether the conduct described in paragraph (b) was conduct which fell short of what was required. To be official misconduct within s 32(1)(b), the conduct must be that of a person then holding an appointment in a unit of public administration.

17. That is not to say that any criminal conduct of a person who, coincidentally, holds such an appointment, is official misconduct. There must be a relevant and sufficient connection between the conduct concerned and the appointment held. In particular, not all misconduct by a person who also holds an appointment in a unit of public administration will necessarily constitute or involve "a breach of the trust placed in the person by reason of his or her holding the appointment" (See eg. *Re Mullen* [1995] 2 QdR 608: cf. *Re Watson [1997] 1* QdR 340).

18. Paragraph (c) is concerned with misconduct by the misuse of information or material but it must be information or material which the person has acquired in or in connection with the discharge of his or her functions or the exercise of his or her powers or authority as the holder of an appointment.

19. Accordingly, paragraphs (b) and (c) are concerned with the conduct of a person then holding an appointment in a unit of public administration.

20. However paragraph (a) is expressed to refer to the conduct of a person "whether or not the person holds an appointment in a unit of public administration". A

comparison of paragraphs (d) and (e) again reveals that, in certain circumstances, the conduct of a person who is not the present or former holder of an appointment might nevertheless be official misconduct.

21. Consequently, the conduct of a person who is not the prospective, present or former holder of an appointment might be official misconduct if it is of the kind referred to in s 32(1)(a) and constitutes or could constitute a criminal offence. The result is that official misconduct is given a broader meaning than what might be considered its ordinary meaning (Under the common law, it was a term used as a descriptive formula for a series of offences which involved the misuse of the powers of public office. See eg. Question of Law Reserved (No. 2 of 1996) (1996) 67 SASR 63; Finn, Official Misconduct (1978) 2 Crim LJ 307_.

22. Within s.32(1)(a), there is a requirement for a relevant and sufficient nexus between the misconduct and the discharge of functions or exercise of powers or authority of a unit of public administration or of a person holding an appointment in such a unit. The relevant conduct must adversely affect, or be such that it could adversely affect, directly or indirectly, the honest and impartial discharge of such functions or the exercise of such powers or authority. The effect need only be a potential adverse effect directly or indirectly.

23. Although s.31(3) (see paragraph 16 above) does not affect s.32(1)(b), it is relevant to s.32(1)(a). Especially when regard is had to this provision, it appears that conduct engaged in before a person becomes the holder of an appointment, might be within s.32(1)(a) if it has a sufficient potential to adversely affect the honest and impartial performance of a person once that person becomes the holder of an appointment.

24. It is not the responsibility of the commission to investigate all misconduct even criminal conduct, within a political party or any other organisation which is not a unit of public administration. The commission's role exists where that conduct has at least the potential to affect units of public administration or the performance of the functions of those who hold office in them.

25. The ALP has received advice, which it has forwarded to the commission, to the effect that a "fraudulent voting scheme" within a political party could never come within the definition of official misconduct "because it simply does not involve the discharge of the member's ("Member" being a member of the Legislative Assembly) or councillor's functions as such or the exercise of his powers or authority in that office". I disagree. Having regard to s.32(1)(a), (d) and (e), conduct outside the purported discharge of the member's or councillor's functions can be official misconduct, and, by definition, it is when it is the conduct of someone other than the member or councillor. In such cases, consideration of whether that person's criminal conduct might affect, or have affected, the member's honesty or impartiality will usually require an examination of the particular facts and circumstances.

Investigation of Official Misconduct

26. The commission is established as a body to, amongst other things, investigate complaints of official misconduct referred to it and to secure to taking of appropriate action in respect of official misconduct (s.2(a)(v)). Section 23 provides that the responsibilities of the commission include:

> (f) in discharge of such functions in the administration of criminal justice as, in the commission's opinion, are not appropriate to be discharged, or can

not be effectively discharged, by the police service or other agencies of the State, undertaking-

(i) ...
(ii) ...
(iii) investigation of official misconduct in units of public administration

Then follows s.25 which authorises the commission to conduct a hearing in relation to any matter relevant to the discharge of its functions or responsibilities.

27. Within the commission, there is established the official misconduct division (s.19), which "is the investigative unit within the commission" (s.29(1)), and it is the function of this division, subject to directions or orders of the commission:

"(a) to investigate the incidence of official misconduct generally in the State; and
(b)…
(c)…
(d) to investigate cases of-

(i) alleged or suspected misconduct by members of the police service; or
(ii) alleged or suspected official misconduct by persons holding appointments in other units of public administration;

that come to its notice from any source, including by complaint or information from an anonymous source; …"

28. So the commission has a responsibility to investigate official misconduct "in" units of public administration, and a power to conduct a hearing in relation to such an investigation. The official misconduct division is empowered to investigate the incidence of official misconduct generally in the State, but in relation to specific cases of suggested misconduct, it is given the function of the investigation of "alleged or suspected official misconduct by persons holding appointments in ... units of public administration" (s.29(3)(d)(ii)). As discussed earlier, the terms of s.32 could result in conduct engaged in by a person who is not a prospective, present or former holder of an appointment being nevertheless official misconduct, if it has the necessary connection with the performance of another person who is or becomes a holder of an appointment. It seems unlikely that the investigative function of the official misconduct division was not intended to extend to such cases. Again, it would be remarkable if such conduct was not within the commission's investigative responsibility expressed within s.23(f)(iii), or that s.29 was intended to affect the achievement of an expressed object of the Act, being that the commission investigate complaints of official misconduct referred to it and take appropriate action in respect of official misconduct. There is no apparent reason why the Act would permit the investigation of some but not all official misconduct as defined.

Reasonable Suspicion of Misconduct

29. Whether there is a sufficient connection, between the misconduct and the performance or likely performance of the holder of the appointment, requires an assessment of the facts of the particular case. It is necessary to identify a relevant appointment, if not also in every case the identity of the holder of that appointment, as well as the functions and powers of such a person, to assess the actual or potential effect of the conduct concerned. The issues of fact involved might be able to

be resolved only upon the completion of a full investigation, involving a hearing. Ultimately, the revealed facts might show that there is not the requisite connection between the conduct and the performance of an office holder. A lawful investigation might discover no official misconduct. But the commission's role is to investigate where official misconduct is alleged or suspected: s.29(3)(d). On what seems to me to be a correct approach, the commission investigates suspected official misconduct where there could be a reasonable suspicion. Your instructions ask me to consider whether there is, at present, a reasonable basis for suspecting official misconduct. One question which this involves, having regard to s.32(1)(a), is whether there is reasonable basis for suspecting that the conduce has had or will have the required impact upon the performance of the holder of an appointment.

30. Some guidance as to what is involved in a reasonable suspicion is provided by cases decided in relation to search warrants and in other contexts. In *George v, Rockett* (1990) 170 CLR 104 the High Court was concerned with what constituted reasonable grounds for suspicion for the purposes of the issue of a search warrant (Pursuant to the then s.679 of the *Criminal Code*). The Court observed (At 115) that suspicion and belief are different states of mind and that suspicion "in its ordinary meaning is a state of conjecture or surmise where proof is lacking: 'I suspect but cannot prove'" (Citing with approval these words from the speech of Lord Devlin in Jussein v Chong Fook Kam [1970] AC 942 at p 948) and that "the facts which can reasonably ground a suspicion may be quite insufficient reasonably to ground a belief, yet some factual basis for the suspicion must be shown". The Court cited with approval the following passage from the passage of Kitto J in *Queensland Bacon Pty v Rees* ((1996) 115 CLR 266 at 303):

> "A suspicion that something exists is more than a mere idle wondering whether it exists or not; it is a positive feeling of actual apprehension or mistrust, amounting to 'a slight opinion, but without sufficient evidence', as Chambers's Dictionary expresses it. Consequently, a reason to suspect that a fact exists is more than a reason to consider or look into the possibility of its existence. The notion which 'reason to suspect' expresses in sub.s.(4) is, I think, of something which in all the circumstances would create in the mind of a reasonable person in the position of the payee an actual apprehension or fear that the situation of the payer is in actual fact that which the sub-section describes - a mistrust of the payer's ability to pay his debts as they become due and of the effect which acceptance of the payment would have as between the payee and the other creditors."

This passage was applied by Ormiston J in *Commissioner of Corporate Affairs v. Guardian Investments Pty Ltd* ([1984] VR 1019), where his Honour said, in relation to the expression *has reason to suspect that a person has committed an offence in s.16A of the Companies (Vic) Code* (At 1025*):*

> "….the word 'suspect' requires a degree of satisfaction, not necessarily amounting to belief, but at least extending beyond mere speculation as to whether an event has occurred or not."

31. A reasonable suspicion could exist although not every reasonable person would hold it (See *George v Rockett* at 112).

32. In cases such as those raised by the present allegations, a reasonable suspicion of official misconduct, by reason of s.32(1)(a), involves a suspicion both as to the occurrence of criminal conduct and the existence of facts and circumstances by which that conduct might affect the holder of the relevant appointment in the

discharge of his or her functions, This requires some consideration of the functions of a member of the Legislative Assembly or a councillor in a local government.

33. What then are the functions of a member of the Legislative Assembly? A comprehensive examination of those functions is nor required here. Undoubtedly those functions include the participation in parliamentary debate and the advancement of the interests of the member's constituents, as well as the State generally (See report on Review of Parliamentary Committees by the Electoral and Administrative Review Commission (October 1992) para 2.106). Parliament has a critical role as a debating forum, involving the various procedures of general debate, motions of censure, discussions of matters of public importance and the asking of questions. Members are expected to raise matters of public interest both in and out of parliament, as well as to address such issues in the formulation of policy. The fundamental importance of the effectiveness of our electoral laws, including their potential for abuse by conduct such as this conduct, is clearly a matter of proper concern for any member. Suppose a member had progressed to that appointment with the known benefit of conduct such as this: could he or she be adversely affected, at least indirectly, in the honest and impartial discharge of his or her functions in respect of such an issue? Indeed the matters raised by constituents for the member's attention might be the very misconduct of which the member is aware, or at least like conduct. At the same time, the member would know that there is likely to be a continuing problem from the false content of the electoral roll. It seems difficult to see that these would be matters outside the functions of a member of the Legislative Assembly, ie, that the member could ignore them as inevitably quite irrelevant to his or her work. There is a close and real connection between misconduct involving the electoral roll and the functions of an elected member.

34. The role of a councillor is expansive: see *Local Government Acts*.229. It involves a representation of the public interest in matters that relate to local government. The conduct alleged by Ehrmann includes the forging of documents to change the content of the electoral roll. This roll determines the eligibility of voters for local government elections. A councillor who knows that the electoral roll relevant to that local government is false in consequence of this type of conduct, could hardly answer his or her constituents by saying that it was none of the councillor's business. On the contrary, it would be fairly within the functions of the councillor to alert the relevant authorities to the falsity of the electoral roll, for otherwise it could affect the fair and lawful election of councillors.

The Ehrmann Allegations

35. Ehrmann pleaded guilty to 24 counts of forging and 23 counts of uttering Commonwealth electoral enrolment forms. Her purpose in each case was to advance the prospects of herself or others in pre-selection contests within the ALP. At all material times, a party member's entitlement to vote in the selection of candidates for the House of Representatives, the Legislative Assembly and local government, was effectively dependent upon that person being entered on the Commonwealth electoral roll at an address which corresponded with a branch within the relevant electorate or local government area. Ehrmann's conduct followed a pattern, described by Mr Hanson QC for the Crown, and not disputed by Ehrmann, as follows: -

> "In 1993 Mrs Ehrmann and a Shane Foster, also a city council alderman and ALP member adopted a plan to stack an electoral division with voters who did not live there so that those names could be used in a preselection ballot in an attempt to secure the endorsement on a particular candidate for the city council election favoured by both of them. Known persons were enrolled

without their knowledge and consent at addresses within the electorate, whereas, they, in fact, lived elsewhere. Residential addressed were chosen - residential addresses were chosen which were occupied by people she knew, such as her parents, her children and one particular accommodating party member.

Post office boxes, which she and Foster either already had or took out for the purpose, were utilised in the scheme, as I'll explain in a moment. There were three post office boxes in her name, one in her mother's name, three in the name of Shane Foster and one in the name of Foster's wife. You'll see these forms in a moment and you'll see that there's provision for a residential address and a postal address, and where a postal address is shown on the electoral enrolment form which is different from the residential address, the practice of the electoral office is to send mail for that voter to the postal address, for example, to a post office box rather than to the residential address.

The same practice is followed by the ALP returning officer. The practice was to - in a plebiscite - to utilise the postal address shown on the electoral roll. So that plebiscite ballot papers therefore went to the post office boxes controlled by Ehrmann and Foster. In some cases where ballot papers did go to the residential address on the roll she was, of course, also able to collect them." (Transcript of hearing before Chief Judge Wolfe, 11 August 2000 pages 6 and 7)

36. At least according to the Crown submissions, there were three distinct periods in which this activity was undertaken. The first was in 1993, when the applications for enrolment were "designed to support the pre-selection of a candidate in the local council elections" (Transcript page 10). Secondly there were offences in 1994 in anticipation of a pre-selection ballot to follow from what was then an anticipated retirement of a member of the Legislative Assembly. Thirdly, there were offences committed in 1996, which were said to be for the purpose of securing Ehrmann's pre-selection for a State seat. In late 1996, Ehrmann was selected as the party's candidate to contest Thuringowa.

37. Ehrmann swore an affidavit which was tendered at her sentence hearing, where she swore to the contents of a document written by her which was annexed to that affidavit. As I have mentioned, the relevant allegations are those of conduct which constitutes or could constitute a criminal offence. As best I can distil the allegations of cominal misconduct which are there asserted they are as follows:

(1) Ehrmann was asked to "take part in a situation, in the Mundingburra Bi-Election (sic) where people voted, using forged enrolments", whereupon she "refused".

(2) The forged enrolments "did not give me any real advantage in any plebiscite. I won outright without them…The only advantage was to the A.W.U. The extra votes were used to elect their other candidates".

(3) Particular individuals who were not named but were referred to as "a prominent local State politician", "another prominent State Member" and "another Party Member" are said to have forged enrolments at various times.

38. Ehrmann's references to "branch stacking" do not necessarily suggest criminal conduct and thereby even the potential for official misconduct.

39. Ehrmann’s solicitor, Mr Mark Dyer, also swore an affidavit. He deposed to discussions in a meeting he and Ehrmann had with officers of the Australian Federal Police in April this year. A transcript of that meeting was made by the AFP and has been provided to the commission and briefed to me. Care must be taken in the reading of Mr Dyer's affidavit where he refers to a “general scheme that was followed within the Australia Labor Party in Queensland ... which ... was practiced across the State in a widespread manner”, as some of the conduct referred to (at least when egard is had to the transcript of that meeting) could not constitute a criminal offence or amount to official misconduct.

40. As I mentioned, in 1996 Ehrmann was seeking pre-selection for the seat of Thuringowa but, through her counsel, she said that she forged some enrolments so as to place some voters within the electorate of Townsville, the “object of the exercise” being to support a particular candidate in the plebiscite for the selection of the Labor candidate for that seat (Transcript of hearing before Wolfe CJDC p 32).

41. It is difficult to identify the scope of the Ehrmann allegations, because many of them are general and ambiguous, especially when regard is had to her meeting with the AFP in April this year. It is necessary to distil, if possible, her allegations to something more specific, so that it can be assessed whether there is a factual basis for a reasonable suspicion of official misconduct. In particular, that is necessary to assess whether there could be a reasonable suspicion of an actual or potential impact upon the performance of someone who held a relevant appointment. Some of her allegations have been made more specifically. It is undesirable that I detail them here, beyond what appears already from the hearing in the District Court, for several reasons. First there is a potential unfairness to the individual concerned, who has not had an opportunity to learn of Ehrmann's assertion, let alone to answer it. I have been informed by the commission that this opinion will be made public. Secondly, in many cases the assertion is ambiguous or else so general as to be potentially misleading, and Ehrmann has refused to provide any detailed explanation except if she is compelled to do so, Thirdly, I am not involved in a process of a fact finding at the end of a completed investigation: my job is to advise whether a further investigation is permitted and warranted. A close and published examination of the present evidence might not only be unfair to individuals concerned, but detrimental to the conduct of a fuller investigation.

42. If there is to be any further investigation, then those undertaking it should be furnished with the information gathered by the commission thus far. If I have overlooked significant matters which are actually revealed by, for example, Ehrmann's discussions with the AFP, then those undertaking any further investigation will have the same material.

43. Ehrmann was charged in May 1998. At the same time, her colleague in several pre-selection campaigns, Shane John Foster, was charged with like offences. Committal proceedings in respect of Ehrmann and Foster were to be heard together in late 1998. At the committal proceedings, Foster said that he would be pleading guilty and provided a statement implicating Ehrmann. Foster was sentenced on 17 March 1999 by Chief Judge Shanahan. Foster and Ehrmann worked closely together in furthering the interests of some candidates for pre-selection including Ehrmann in her contest for pre-selection for Thuringowa in late 1996. I have the advantage of information sourced from Foster, which is in material not presently on the public record.

44. In 1997, Mr Andrew Kehoe pleaded guilty in the Townsville Magistrates Court to several counts of forging electoral enrolment forms, that activity occurring in September and October 1996. Mr Kehoe was very actively involved in campaigning for a candidate for pre-selection for the seat of Townsville. The timing of his offences corresponds with that of the pre-selection process. His conduct is relevantly considered in the assessment of whether official misconduct could be reasonably suspected in relation to this pre-selection contest.

45. In my view, having regard to s.32(1)(a) at least, there could be a reasonable suspicion of official misconduct, by conduct constituting a criminal offence or offences affecting the electoral roll, for the purposes of the pre-selection contest for Townsville in 1996.

46. As mentioned, in her affidavit tendered in the District Court, Ehrmann alleged that conduct of the same kind was engaged in to support the ALP candidate in the Mundingburra by-election in 1996. Again, it is inappropriate to refer to any details of this allegation which do not appear on the public record.

47. On the material provided to me, there could be a reasonable suspicion of official misconduct by conduct constituting a criminal offence or offences affecting the electoral roll for the Mundingburra by-election in 1996.

48. Dr Watson, the leader of the Liberal Party in Queensland, has sent to the commission a seven page document which, as he describes it, "purports to be an internal discussion paper produced by the Socialist Left in 1994". The author of the document is not named and nor is it signed. However no issue seems to have arisen thus far as to its authenticity (It was apparently accepted as authentic by Mr Milner, the State Secretary of the ALP: Courier-Mail 22 August 2000).

49. The document refers to disputed pre-selections for the wards of East Brisbane and Morningside, in 1993, in which the Socialist Left faction was disputing the outcomes. It alleges the incidence of criminal conduct, at least by the forging of electoral enrolments. Having regard to the very general nature of Ehrmann's allegations of like conduct within the ALP but outside Townsville, it seems to me that these matters fall within the Ehrmann allegations upon which I am asked to advise.

50. Again, I shall not detail the potentially relevant facts and circumstances. In my opinion there could be a reasonable suspicion of official misconduct by criminal conduct affecting the content of the electoral roll, for the purposes of the respective plebiscites in 1993 for the selection of the Labor candidates for the wards of East Brisbane and Morningside.

51. There are some other specific allegations, for which the preliminary inquiries required so that I can advise, are incomplete. It is possible that with more time and more information there might emerge a basis for a reasonable suspicion of official misconduct in some of these matters. Some of them have arisen only within the last few days, and in one case, only yesterday. My advice has been sought urgently, and it is undesirable that it be delayed whilst any further information is sought for this advice, especially as there is already a reasonable suspicion of official misconduct in the respects referred to above. As I recommend at the conclusion of this opinion, whoever further investigates those matters should be appointed also to conduct an investigation into such other allegations as give rise to a reasonable suspicion of official misconduct concerning, criminal conduct in respect of ALP plebiscites within a defined period. The particular allegations within this category involve conduct at different times, but none of them is earlier than 1993 or later than 1997. There must

be some focus upon allegations which, according to their facts and circumstances, might involve official misconduct. As I mentioned, much of what is alleged by Ehrmann as having occurred for many years, by way of "branch stacking", falls short of an allegation of criminal conduct and still further, official misconduct. The legitimate purposes of the investigation I recommend would not be served by terms of reference which go beyond conduct which is reasonably suspected to be official misconduct. I add that some of the specific allegations within the category mentioned in this paragraph suggest conduct which could constitute a criminal offence, although not by way of forging electoral enrolments.

Jennifer Hill

52. Ms Jennifer Hill is a councillor in the Townsville City Council, and is the endorsed ALP candidate for the Federal seat of Herbert in the next Federal election. The allegations concern Mr John Peterson, who lives in Townsville. The allegations as made by others do not correspond with Mr Peterson's version of events, at least as he provided to commission officers. According to the allegations of others:

- Ms Hill forged Mr Peterson's signature on an application form to join the ALP.
- Ms Hill forged his signature on a letter dated 2 June 1998 addressed to the then State Secretary of the ALP, requesting that Mr Peterson be excused from having to attend branch meetings due to medical problems.
- Minutes of branch meetings falsely record Mr Peterson's presence.

53 Mr Peterson has been interviewed by officers of the commission. According to what Mr Peterson told them:

- Mr Peterson does not accuse Ms Hill of completing his membership application. He maintains that he did not sign the application but he does not know who did.
- He says that he told Ms Hill of his interest in joining the ALP, and that he had told her that he had completed an application form previously but had not heard anything further as to membership.
- He received the usual letter of acceptance to membership, which enclosed a copy of The application form as purportedly signed by him, and which also enclosed an ALP membership card.
- In fact, he did sign the back of that card, as if intending to assume ALP membership.
- Further he did attend at least two branch meetings of the branch in question, so that minutes of those meetings correctly record his attendance.
- He did sign the letter of 2 June 1998 to the Secretary of the ALP, in which he sought to be excused from attending branch meetings. He says that some but not all of the letter was read to him by Ms Hill before he signed it. I do not understand him to say that he was unable to read it when it was presented for his signature, or that it was subsequently altered with or without his consent. This incident must be seen in the context of his having actually attended branch meetings within the next few months.

54. So as it happened, he effectively assumed ALP membership: he signed his membership card and attended branch meetings, His grievance is that his signature was forged on the application for party membership. He concedes that the signature does resemble his signature but he is adamant that it is not his (His letter 30 November 1998 to the then State Secretary of the ALP and others). He does not accuse Ms Hill of signing the application form.

55 Quite apart from the factual basis or otherwise for any suspicion of official misconduct, there is apparently no relevant connection with a unit of public administration or an appointment held therein. The alleged forgery is in relation to an internal ALP document. Insofar as the holder of a public office is identified, it is Councillor Hill. The House of Representatives is nor a unit of public administration under the Act, so that Ms Hill's candidacy for that office is irrelevant. If Ms Hill did sign Mr Peterson's application form, she did nor do so in purported discharge of her functions as a councillor, and I do not see the conduct as being official misconduct pursuant to s.32(1)(b). Nor would I see that conduct as having a relevant and sufficient connection with her work as a councillor to ground a reasonable suspicion of official misconduct by reference to s.32(1)(a). The conduct is of a different kind from that of, for example, Ehrmann, Foster or Kehoe. If Ms Hill did sign the application form, that was conduct to give effect to Mr Pererson's stated intention to become a member of the ALP, which intention corresponded with his subsequent conduct to act as a member. Importantly the conduct of which he complains did not affect the electoral roll.

Matters for Further Investigation

56. To summarise so far, a reasonable suspicion of official misconduct exists in respect of:

(a) conduct affecting the electoral roll relevant to the conduct in 1996 of a plebiscite for the selection of the Labor candidate for the State electorate of Townsville;

(b) conduct affecting the electoral roll for the by-election for the seat of Mundingburra held in 1996;

(c) conduct affecting the electoral roll for the purposes of a plebiscite in 1993 for the selection of the Labor candidate for the ward of East Brisbane;

(d) conduct affecting the electoral roll for the purposes of a plebiscite in 1993 for the selection of the Labor candidate for the ward of Morningside.

57. 1 am asked to advise on the nature of the investigation which the commission should conduct. It should be by a hearing of the commission, to be conducted pursuant to s.25.

Open Hearing

58. The next question for my advice is whether "an open hearing should be held for the purpose of such investigation", having regard to s.90 of the Act.

59. Section 90 relevantly provides as follows:

Hearings closed to the public unless commission otherwise orders

> 90. (1) A hearing of the commission is to be closed to the public unless the commission orders, whether before or during the hearing, that it be open to the public.
> (2) The commission may order that the hearing be open to the public only if the commission considers –
>
> > (a) the hearing is of an administrative nature; or

(b) a closed hearing would be unfair to a person or contrary to the public interest.

(3) In considering whether a closed hearing would be unfair to a person or contrary to the public interest, the commission must have regard to-

(a) the subject matter of the hearing; and
(b) the nature of the evidence expected to be given

(4)….
(5)….
(6) In this section –

'hearing' includes part of a hearing."

60. The section was amended in 1997 (Section 34 of the *Criminal Justice Legislation Amendment Act* 1997, which was assented to on 5 November 1997 and subsequently proclaimed with the exception of this new s.90. Accordingly, s.90 commenced on 6 November 1998, being one year and one day from the assent date: *Acts Interpretation Act* 1954, s.15DA(2)). From the Explanatory Memorandum, it appears that the reason for the amendment was that, in accordance with the recommendations by the Parliamentary Committee, it was considered that the potential damage to an individual's reputation from the conduct of a public hearing is so great, that the general rule ought to be that there be private hearings (1997 Explanatory Notes No 61, p 1581). The Parliamentary Committee also noted that public hearings were likely to take longer. at greater expense to witnesses and the community, than private hearings (Report No 26, p 74). The present question is whether the commission could consider that a closed hearing would be unfair to a person or contrary to the public interest, having regard to its subject matter and the nature of the evidence expected to be given. A public hearing would be permitted only if the commission was relevantly persuaded by the particular circumstances relating so this hearing.

61. The most important of those circumstances is that the relevant subject matter has already been made public. This subject matter is of fundamental importance to public confidence in the efficacy of the electoral laws, as well as in the holders of appointments in the Legislative Assembly and local governments. That public confidence is already affected by the publicity which has been given to the Ehrmann case and related allegations. In addition, the generality of the Ehrmann allegations, could encourage unfair suspicions and rumours extending to innocent people, the extent of which might be minimalised by an open hearing (See Report of a Commission on Inquiry pursuant to Orders in Council (report by Mr Fitzgerald QC) para 1.4.1).

62 Accordingly, it seems to me that the commission could be satisfied of matters within s.90(2) so as to permit the hearing to be held in public. It is a matter for the commission to consider whether the hearing, or any part of it, should be open to the public. The particular circumstances might require part of the hearing to proceed as a closed hearing.

Terms of Reference of Open Inquiry

63. Next I am asked to advise on the terms of reference of any such open hearing. The appropriate terms of reference should correspond with the official

misconduct which can be reasonably suspected. That conduct consists of conduct as described in paragraph 56 above, as well as other official misconduct which could be reasonably suspected within the subject matter referred to in paragraph 51 above.

64. I recommend that the commission conduct an investigation into:

(1) Any alleged official misconduct, by way of conduct which constitutes or could constitute a criminal offence or offences:

> (a) affecting the electoral roll relevant to the conduct in 1996 of a plebiscite within the Australian Labor Party to select its candidate for the State electorate of Townsville;
>
> (b) affecting the electoral roll for the by-election for the seat of Mundingburra held in 1996;
>
> (c) affecting the electoral roll relevant to the conduct in 1993 of a plebiscite within the Australian Labor Party to select its candidate for the Brisbane City Council ward of East Brisbane;
>
> (d) affecting the electoral roll relevant to the conduct in 1993 of a plebiscite within the Australian Labor Party to select its candidate for the Brisbane City Council ward of Morningside.

(2) Such other alleged conduct, which constitutes or could constitute a criminal offence in respect of any plebiscite conducted within the years 1993 to 1997 inclusive for the selection of the candidate of the Australian Labor Party for any electorate of the Legislative Assembly or the position of councillor of any local government within Queensland, in respect of which there could be a reasonable suspicion of official misconduct.

65. I further recommend that those conducting the investigation be authorised to undertake such preliminary investigations as are appropriate to determine whether there is a reasonable suspicion of official misconduct in relation to anything which constitutes or could constitute a criminal offence, in respect of any plebiscite conducted within the years 1993 to 1997 inclusive and as otherwise described in paragraph 64(2) above.

With compliments
P.D. McMurdo QC
Chambers
5 September 2000

Attachment 9

AEC staff circular from Mr Mark Cunliffe, a/g Electoral Commissioner, 6 October 2000

All Staff Circular

CJC INQUIRY – AEC INVESTIGATION RE ALLEGATIONS

You may have seen or heard media reports from Tuesday's hearings of evidence at the Queensland Criminal Justice Commission Inquiry suggesting that an Electoral Commission "insider" was allegedly providing electoral enrolment acknowledgment "white cards" which were used to assist with ALP pre-selection ballots.

The allegation was made in evidence by Ms Karen Ehrmann. Ms Ehrmann was convicted on 11 August 2000 and sentenced on 24 charges of forgery and 23 charges of uttering electoral enrolment cards in the Townsville area between 1993 and 1996, in relation to ALP preselection ballots for Queensland State electoral purposes.

While I stress that these are only allegations, they are serious allegations which have the potential to damage the AEC's reputation for probity and professionalism. I know that all staff will share my concerns and understand why I have decided, after consulting Andy Becker, the Electoral Commissioner; Trevor Morling, the Commission Chairperson; and Denis Trewin, the non-judicial member of the Commission, that the allegations should be investigated by an appropriate independent external investigator. The most appropriate process for this investigation is currently being examined. I will provide all staff with more information when the process for this investigation has been confirmed.

Media reports today also indicate that the Government has ordered the AEC to hold an internal investigation. I assure you that there has been no such direction. I have however, advised the Minister of my intentions to have the allegations investigated.

(Authorised for electronic transmission)

Mark Cunliffe
A/g Electoral Commissioner

6 October 2000

Attachment 10

Extract from Queensland Legislative Assembly Legal, Constitutional and Administrative Review Committee Issues Paper, "Inquiry into the Prevention of Electoral Fraud", 8 September 2000 (original can be accessed electronically at www.parliament.qld.gov.au/committees/legalrev)

LEGISLATIVE ASSEMBLY OF QUEENSLAND

LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

INQUIRY INTO THE PREVENTION OF ELECTORAL FRAUD

ISSUES PAPER – SEPTEMBER 2000

This is an issues paper and the committee has formed no firm conclusions on matters raised within it.

The committee calls for public submissions in relation to the above inquiry and releases this issues paper to facilitate the preparation of submissions by:

- providing the community with information delineating the focus of the inquiry;
- and identifying, though not limiting, issues of reform that submissions might address.

The closing date for submissions is **Friday, 6 October** 2000. Please see the back page of this paper for the committee's contact details and guidelines on making a submission. Requests for confidentiality should be clearly marked.

Submissions become the property of the committee and are only made public after a decision by the committee. Persons making submissions should not release them or otherwise publish them to others without the authority of the committee. Submissions to the committee are protected by parliamentary privilege, but their publication without the authority of the committee is not protected by privilege.

The committee is conducting an inquiry into issues of electoral reform, namely, on ways to prevent the possibility of electoral fraud in State and local government elections.

The committee wishes to stress that it considers that the investigation of specific allegations of past instances of electoral fraud is properly a matter for the relevant law enforcement and anti-corruption agencies.

The committee has prepared this issues paper within the restrictive timeframe imposed by the resolution of Parliament initiating this inquiry.

1. THE COMMITTEE

The *Parliamentary Committees Act 1995* establishes the Legal, Constitutional and Administrative Review Committee (LCARC; 'the committee') as a statutory committee of the Queensland Legislative Assembly. The Act provides that the committee's broad areas of responsibility include legal reform, constitutional reform, administrative review reform and electoral reform.

The Act also states that the committee's statutory responsibility regarding electoral

reform includes monitoring generally the conduct of elections under the *Electoral Act 1992* (Qld) and the capacity of the Electoral Commission Queensland to conduct elections.

The *Parliamentary Committees Act* provides that statutory committees are to also 'deal with' an issue referred to it by the Legislative Assembly.

2. FOCUS OF THE INQUIRY

On 22 August 2000, the Legislative Assembly, on the motion of Mr Peter Wellington MLA, seconded Mr Gary Fenlon MLA (Chair of this committee), passed the following motion:

That this House requests the Legal, Constitutional and Administrative Review Committee to investigate and report back to State Parliament by 14 November 2000 on the best way to minimise electoral fraud at elections, where the Queensland State electoral roll is used.

The committee notes that, during debate on the motion in the Assembly, Mr Wellington made the following comments:

My motion does not intend to empower this committee to take over the role of the Police Service or the Queensland Criminal Justice Commission in relation to investigating past allegations of electoral fraud in this State.

For the purposes of this motion and the ambit of my requested investigation, it is my intention that the investigation be limited to ways of improving the conduct of State and local government elections and not be extended to a consideration of the conduct of Federal elections.

In light of Mr Wellington's comments, the wording of the motion and this committee's State-focussed jurisdiction, the committee considers that the inquiry referred to it by the Assembly comprises an inquiry into ways of preventing electoral fraud in relation to:

- an election of a member or members of the Queensland Legislative Assembly, and the conduct of those elections by the Electoral Commission Queensland (ECQ) under the *Electoral Act 1992* (Qld) ('the EA');
- an election of a councillor or councillors of local governments, and the conduct of those elections by the chief executive officer of the local government (or another returning officer—or the ECQ in the case of the Brisbane City Council if the council enters into an agreement with the ECQ to conduct the election) under the *Local Government Act* 1993 (Qld) ('the LGA'), Chapter 5 (ss 289 to 441); the *City of Brisbane Act 1924* (Qld), Part 2. Division 3; and the EA;
- an election of a councillor or councillors under the *Community Services (Aborigines) Act 1984* (Qld) and the *Community Services (Torres Strait) Act 1984* (Qld);
- State referendums conducted under the *Referendums Act 1997* and referendums conducted under the LGA, Chapter 3, Division 7; and
- the maintenance of the electoral roll (the roll is used for the purposes of federal, state and local government elections) by the Australian Electoral Commission (AEC) under the *Commonwealth Electoral Act 1918* ('the CEA') - as authorised by the joint roll arrangement referred to in s 62 of the EA - but not the conduct of federal elections.

'Electoral fraud' in its widest sense might mean anything that threatens the integrity of the electoral system. The 'electoral system' was defined by the former Electoral and Administrative Review Commission (EARC) as the system that 'provides an electoral process which includes voter qualification? candidate eligibility, apportionment of seats, rules for the conduct of elections, and laws which govern the mechanics of converting votes into seats.

However, the committee would stipulate that it does not see the terms of the Assembly's motion as being so wide as empowering the committee to revisit such broad matters as:

- the setting of electoral boundaries;
- the redistribution process;
- voter qualification or candidate eligibility *per se*;
- the method of voting in Queensland elections;
- the registration of political parties;
- requirements concerning electoral funding and financial disclosure; and
- the powers of the Court of Disputed Returns.

Instead, the committee considers that the reference 'the best way to minimise electoral fraud ...' in the motion impels the committee to focus upon **preventing fraudulent practices in relation to enrolment procedures and the casting and recording of votes.**

Fraudulent electoral practices include what the AEC has described as 'time-honoured methods of manipulating elections results', such as multiple voting, cemetery voting, vacant lot enrolment and roll stacking in electorates.

Section 8 of this paper lists, but does not seek to limit, possible issues that submissions might refer to in this regard.

The committee welcomes the opportunity that this inquiry presents to:

- address public concerns about electoral fraud; and
- make recommendations addressing those concerns and/or provide factual information to allay those concerns.

In relation to the 14 November 2000 timeframe for the committee to report, Mr Wellington said that such a deadline would:

> *... enable Queenslander interested in minimising electoral fraud at elections the opportunity to tell us how the current system can be improved prior to the next State election.*

2.1 Local government

While information contained in this issues paper might reflect a focus on State elections (that is, elections for a member or members of the Legislative Assembly), the committee stresses that it equally welcomes submissions concerning local government elections. Submitters addressing the issues set out in section 8 should feel free to adapt those issues accordingly (for example, submissions might replace references to 'the ECQ' with references to 'the local council', as the case may be).

In this regard, the committee notes that in June 2000 the Department of Communication and Information, Local Government, Planning and Sport (DCILGPS) released a discussion paper, *Review of local government electoral arrangements in the Local Government Act* 1993. Submissions in response to that discussion paper - which can be obtained from the Local Government Services division of the department - close on 6 October 2000.

The DCILGPS discussion paper outlines information about, and invites submissions on, local government arrangements, such as the role of the ECQ in local government elections.

The DCILGPS discussion paper also states that the department (as it does after each local government election) has written to local governments seeking advice on any amendments to the election procedures that are considered necessary to overcome any practical problems or issues encountered during the March 2000 local government elections.

2.2 Context of the committee's inquiry

The committee's inquiry is set in the context of substantial political and media attention to issues surrounding recent allegations of, and/or convictions for, fraudulent electoral activities perpetrated in Queensland. The committee observes that that attention has extended from the recent well-publicised convictions in Townsville of certain persons, including Ms Karen Ehrmann (and the context of those convictions, namely, the forging and uttering of Commonwealth - ie AEC electoral enrolment forms in relation to political party plebiscites for pre-selection) to a questioning of the integrity of past results for some electorates and a raft of allegations of other instances of electoral fraud.

The events have provided impetus to not only this committee's inquiry but also investigations into allegations of past instances of electoral fraud by:

- Queensland's Criminal Justice Commission (CJC); and
- the Commonwealth Parliament's Joint Standing Committee on Electoral Matters (JSCEM).

2.2.1 The CJC inquiry

On 22 August 2000, the CJC appointed independent counsel, Mr Philip McMurdo QC, to examine infromation gathered during preliminary CJC investigations into certain allegations of electoral fraud, and to:

- direct and supervise any further inquiries he considered appropriate in order to assess
- whether there is a reasonable suspicion of official misconduct in relation to the allegations; and
- if there is such a suspicion, advise the CJC on how to proceed (and whether an open hearing should be held).

The preamble to the CJC's resolution to appoint independent counsel is worthy to note for contextual purposes. Part of it is as follows:

(1) On 11 August 2000 Karen Lynn Ehrmann pleaded guilty in proceedings in the District Court of Townsville to 24 counts of forging and 23 counts of uttering

Commonwealth Electoral Enrolment forms and was sentenced to thre years imprisonment;

(2) During the course of the said proceedings documents were filed on behalf of Karen Lynn Ehrmann alleging the involvement or possible involvement of Australian Labor Party (ALP) members, including elected representatives, in electoral fraud.

(3) On 15 August 2000, allegations were made in the Senate by Senator Brandis that in 1998 Jennifer Hill, an ALP Councillor in the Townsville City Council, fraudulently caused a person to be recorded as a member of the ALP,

(4) On and from 15 August 7000, the Criminal Justice Commission (the Commission) has operated, of its own initiative, in conducting preliminary investigations of the allegations referred to in paragraphs (2) and (3) …

On 6 September 2000, the CJC presented Mr McMurdo's report to Parliament. The CJC announced that 'the essence of the advice is that there are matters, which if proven, could constitute official misconduct' and that it had appointed an independent person to conduct a 'full investigation of the allegations' and hold public hearings.

This committee notes that there are no indications at this stage that the CJC's inquiry - to be conducted by retired judge, the Honourable Tom Shepherdson QC - will be finalised within the timeframe set by Parliament for this committee's inquiry.

2.2.2 The JSCEM inquiry

On 23 August 2000, the Commonwealth Special Minister of State asked the Joint Standing Committee on Electoral Matters to examine the issues of the integrity of the electoral roll and fraudulent enrolment. At its meeting on 5 September 2000, the JSCEM considered the matter and, as this committee understands it, agreed to inquire into and report on:

- the adequacy of the *Commonwealth Electoral Act* for the prevention and detection of fraudulent enrolment;
- incidents of fraudulent enrolment; and
- the need for legislative reform.

As this paper goes to print this committee understands that the JSCEM intends to call for public submissions in the very near future.

3. QUEENSLAND'S ELECTORAL SYSTEM

Free, honest and fair elections conducted using a true and accurate roll are the cornerstone of democracy.

The Fitzgerald report identified this, stating that:

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

A government in our political system which achieves office by means other than free and fair elections lacks legitimate political authority; over that system ...

The Elections Act 1933-35 should ... be reviewed in an impartial manner to ensure that more effective means are developed to guarantee the accuracy of electoral rolls,

to prevent fraudulent voting practices and to maintain the confidentiality of individual voters, particularly in the case of absentee and postal voters.

... *inquiry [*by EARC] *must be totally open with public access to the evidence and submission received by it ...*

The former EARC, as required by legislation enacted by the Queensland Parliament after the Fitzgerald report, published various reports that dealt with the proper conduct of elections in Queensland. EARC's electoral reports include reports on:

- *The local authority electoral system of Queensland,* September 1990;
- *Queensland joint electoral roll review,* October 1990;
- *Queensland Legislative Assembly electoral system,* vols I & 2, November 1990, in which EARC addressed the proper setting of electoral boundaries in Queensland:
- *Review of the Elections Act 1933-1991 and related matters,* vols 1 & 9. December 1991: and
- *Report on investigation of public registration of political donations, public funding or election campaigns and related issues,* June 1992.

It is from the thorough research and extensive public input reflected in EARC's comprehensive reports that Queensland obtained its current electoral system. The EA, introduced in 1999, is based on a draft Electoral Bill that EARC attached to its *Report on the Review of the Elections Act 1933-1991 and related matters.* The EA also incorporated comments made by the former Parliamentary Committee for Electoral and Administrative Review, which had the task of reviewing all EARC reports.

The EA sets out the arrangements for State elections and establishes an independent statutory authority, the ECQ. The ECQ's functions and powers include:

(a) Preparing for and conducting parliamentary elections, by-elections and referendums,
(b) Conducting elections and amalgamation ballots for industrial unions of employers and employees,
(c) Administering the funding and disclosure provisions of the Electoral Act 1992:
(*d) Reviewing the external boundaries and electoral arrangements for local governments,*
(e) Assisting in the maintenance and monitoring of the accuracy of the Commonwealth-State joint electoral roll
(f) Providing research and operational support services to State Redistribution Commissions on appointment;
(g) Promoting enrolment, voting and public awareness of electoral matters by conducting information and awareness campaigns and providing educational material;
(h) Conducting research into electoral matters, and providing information and advice on electoral issues to the Minister and Government, the Legislative Assembly, and government departments and agencies;
(i) Publishing material relating to the Commission's functions including monthly enrolment statistics, election, by-election and referendum results, and the results of research on electoral matters.

The ECQ's mission statement is to maintain the integrity of Queensland's electoral system.

3.1 **General comments**

The committee observes that Queensland's electoral system is considered to be amongst the best in Australia, and that Australia's electoral systems are considered to be amongst the best in the world.

Queensland's electoral legislation is founded upon EARC's considered approach of attempting to ensure integrity without being overly prescriptive Queensland's electoral system is essentially based on an elector's civic obligation of trust at first instance, within a finely-tuned system of various checks and balances (set out in section 3.2 below).

The checks and balances arise from the following principles, which EARC laid down as the proper basis for an electoral system and the ECQ adopted as its on-going Charter.

PRINCIPLES UNDERLYING THE ELECTORAL SYSTEM

Free and Democratic Electoral Events

1. Electors must have only one vote; the ballot must be secret.
2. Electors must be free to cast their votes without coercion or improper influence.
3. The rights both to vote and be a candidate must be preserved.
4. Electors must be provided with maximum opportunity to cast their votes.
5. Electors must have access to information and assistance to aid them in selecting candidates and casting votes.
6. Ballot papers must be admitted to the count where the voters' intentions are clear.
7. Once admitted to the scrutiny each elector's vote must be accurately counted.
8. The rights of candidates to be represented at polling and at the scrutiny, and to promote their candidacy must be protected.

Legitimacy

9. Electoral legislation and procedures must be open and regularly reviewed in the light of changing community expectations so that public confidence in the integrity of the electoral system and outcomes can be maintained.
10. Electoral officials must be politically neutral and the conduct and administration of electoral events must never be influenced by political considerations.
11. Electoral officials must have a level of competency sufficient to command the respect of voters.
12. All possible steps must be taken to eliminate electoral malpractice and fraud.
13. Political parties play an important part in the election process and their place in the electoral system should be recognised.
14. Judicial and administrative review procedures should be available to all candidates and electors who wish to query or dispute the conduct of an electoral event.

A Simple Voting System

15. Procedures at polling booths must be simple and straightforward.
16. There should be the maximum level of compatibility between ballot paper marking methods in federal, State and local government electoral systems.
17. Administrative procedures must be efficient and cost-effective.
18. Election results must be made available without delay.

The committee notes that a number of these principles go to the core of this inquiry into preventing electoral fraud. The committee also notes that there is a certain potential tension between various principles. For example, **the principle that all possible steps must be taken to eliminate electoral malpractice and fraud (principle 12 above) needs to be balanced with the principle that electors must be provided with maximum opportunity to cast their votes (principle 4)**.

In this regard, the committee considers that it is important to consider any proposals for the prevention of electoral fraud from a perspective that concurrently identifies the need to ensure that as many electors as possible access their right to enrol and are given the opportunity to vote.

3.2 Current checks and balances

It is useful to note that there are various important checks and balances already in place to deter, detect and act upon electoral fraud. The existing checks and balances that are in place to ensure the integrity of the electoral process generally (and to combat electoral fraud specifically) include at least the following:

An independent electoral commission

The Electoral Act 1992 establishes the ECQ as an independent statutory authority, headed by an independent electoral commissioner.

Roll maintenance

Continuing efforts by the AEC, with input from the ECQ. to improve the integrity of the electoral roll, such as:

- the on-going process of upgrading the AEC's address-based Roll Management System (RMANS); and
- the move from the traditional periodic door-knock review of the electoral roll to the employment of continuous roll updating methods (CRU). CRU includes matching roll records with information recorded in the databases of other organisations (eg Australia Post, CentreLink, etc) to check electors' addresses and make arrangements to update the rolls where necessary. (Such systems, when developed, provide a guard against enrolment frraurd because they provide a number of ways to cross-check the identity of the voter and the authenticity of enrolment.)

Detection and investigation

- Various administrative safeguards employed by the ECQ (and by the AEC in relation to federal elections) and returning officers to prevent and detect possible instances of electoral fraud on and before polling day.

- Checks and investigations undertaken after each election by the ECQ to detect fraudulent voting. These include:

- post-election scanning of dual and multiple marks on the certified lists (see the glossary to this paper) to identify apparent multiple voting in the same name;

- subsequent investigations by the ECQ by way of 'please explain' letters to electors with multiple marks against their names (and to electors with no marks against their names); and
- subsequent reference by the ECQ of outstanding cases of apparent multiple voters to the police for further investigation and prosecution.

- The ability of any concerned individual to refer allegations of electoral fraud to the electoral commission and/or police for investigation, and the subsequent investigation of those allegations.

Scrutiny

- The rights of candidates to be represented by (often legally trained) scrutineers at polling and, especially, at the count of the vote.

Disputed returns

- The capacity of the ECQ to dispute an election by challenging the result in the Court of Disputed Returns if the commission considers that instances of fraudulently or irregularly cast votes (e.g. multiple votes) were sufficient to affect a result for an electoral district. The ECQ considers that it has a clear statutory obligation to place an election result before the Court of Disputed Returns if there is any doubt in the circumstances that an election does not have a clear result.

- The capacity of unsuccessful candidates and persons qualified to vote in the relevant election to have recourse to the Court of Disputed Returns in the same way.

Monitoring and review

- After each State election, the ECQ consults with returning officers and reviews the commission s processes. The ECQ subsequently provides a report to the Queensland Attorney-General containing recommendations for amendments to the EA that the ECQ considers warranted in light of the conduct of the election. This committee has previously reported on the recommendations made by the ECQ and/or the subsequently proposed amending legislation.

- After each *federal election,* there is a formal process whereby the incoming government establishes a JSCEM of the Commonwealth Parliament (see section 2.2.2 above) and provides it with a reference to inquire into and report on that election. Subsequently, the JSCEM publishes a comprehensive report following public consultation by way of submissions and public hearings. The reports contain various recommendations for the amendment of the CEA. The ECQ monitors JSCEM recommendations (and any changes to the CEA) to assess the appropriateness of those changes for Queensland.

This committee continues to monitor electoral matters (in line with one of its key responsibilities, namely, electoral reform including monitoring generally the conduct of elections under the EA). This committee has published reports on a variety of electoral matters.

4. PAST ANALYSIS BY AUTHORITIES OF ALLEGATIONS OF VOTING FRAUD

Throughout Australia, allegations are made of a wide variety of fraudulent electoral practices (especially voting fraud) following almost every election.

The committee considers that this issues paper provides an opportunity to provide information on what the AEC, JSCEM and ECQ have previously said about (allegations of) electoral fraud. (Though, the committee does not wish to suggest that, at this preliminary stage of its inquiry, it either accepts or agrees with the statements referred to in this section.)

The committee notes the following comments made by the AEC about allegations of electoral fraud previously made in relation to federal elections:

It has been concluded by every parliamentary inquiry into the conduct of federal elections, since the AEC was established in 1984 that there has been no widespread and organised attempt to defraud the federal electoral system, that instances of multiple voting that do occur show no pattern of concentration in any Division, marginal or otherwise; and that the level of fraudulent enrolment and voting is not sufficient to have overturned the result in any Division in Australia. That is there is no evidence to suggest that the overall outcomes of the 1984, 1987, 1990, 1993 and 1996 federal elections were affected by fraudulent enrolment and voting.

As a matter of course, the AEC provides extensive information concerning possible fraudulent enrolment and voting to the JSCEM of the Commonwealth Parliament that is established to inquire into the conduct of the most recent federal election. Based on this information the JSCEM usually makes conclusions about the incidence of electoral fraud.

The following edited summary of JSCEM findings over time (provided by the AEC) describes the evidence of enrolment and voting fraud.

In investigating the conduct of the 1987 federal election the JSCEM noted that allegations of fraudulent enrolment and voting such as cemetery voting where characteristically supported only by insubstantial anecdotal information and no compelling evidence of widespread and organised fraud was available. It was reported that public awareness of multiple voting had probably been aroused by the widely-publicised prosecution of an individual who *voted six times at the 1987 election apparently in order to test the integrity of the electoral system.*

In investigating the conduct of the 1990 federal election the JSCEM again noted [as it had after the 1984 and 1987 elections] *an increase in multiple voting statistics but again concluded that there was no factual data to substantiate allegations of widespread multiple voting, or to support allegations of cemetery voting. It was noted that, with the tight security checks built into the AEC computerised scanning systems to detect multiple voting and cemetery voting, it would be very difficult for fraudulent voting to escape detection by the AEC.*

Following the 1993 federal election, the JSCEM examined the increase in multiple voting statistics and noted that there was no pattern across Divisions that might indicate organised fraud The JSCEM also examined allegations of cemetery voting and noted that there was no evidence to support a single possible case ...

The JSCEM inquiring into the 1996 federal election reported:

The inquiry's most contentious topic was the question of whether current enrolment and voting procedures can prevent, or even detect, electoral fraud. Electoral fraud

can encompass multiple voting (in the names of existing electors, or in false names deliberately placed on the roll for the purpose), being enrolled for the wrong House of Representatives electorate. or being a foreign citizen or underage. Obviously some of' these circumstances can also arise through misunderstanding on the part of electors, rather than deliberate attempts at fraud.

The inquiry did not reveal improper enrolment or voting sufficient to affect any result at the election. However, it is unacceptable that the most fundamental transaction between a citizen and the government - the act of choosing the government at a democratic election - is subject to a far lower level of security than such lesser transactions as opening a bank account, applying for a passport, applying for a driver's licence or registering for social security benefits, to name but a few.

At State level, this committee asked the Electoral Commissioner at a meeting in May 1996 about the allegations of multiple voting that are often made after elections. The committee reported that the commissioner had indicated that 'the problem was more one of speculation than of reality' and that:

The Commissioner considered that, if there is any double or multiple voting, it is not significant. The Committee was informed that in 1992, 27 cases of suspected multiple voting were referred to Queensland Police Service for investigation. Only three prosecutions were launched which resulted in three pleas of guilty.

The Commissioner noted that between 7 and 60 double markings occurred on the roll per electoral district, with an average of 72 per district, and most of these were satisfactorily resolved through the process of sending out notices requiring explanation.

The committee understands that after the 1995 general State election five matters concerning multiple voting were referred to the police for investigation and no cases were subsequently prosecuted; and that after the 1998 general State election, six such matters were referred to the police for investigation and no cases were prosecuted.

In relation to allegations of so-called 'cemetery voting' (people voting in the name of recently deceased persons), the committee has also reported that:

The [Electoral] *Commissioner indicated that there was little evidence of cemetery voting. In this regard, the Commissioner referred to research in South Australia which indicates that calling the last general election in that state there was no cemetery voting. The Commissioner provided the Committee with a copy of a report from the South Australian Electoral Commission on this issue. That report states:*

"In South Australia, where sixteen of the 47 seats could be won or lost with a swing of 5% at the December 1993 General Elections, it was considered appropriate to assess whether cemetery voting affected the outcome of those elections.

All death notices appearing in The Advertiser from the date the election was announced on 28 October until Friday prior to polling day 3 December 1993, were compared against the electoral rolls to determine if a match were possible. Between 28 October and 26 November a total of 450 names were matched and details were supplied to Returning Officers, together with instructions to cross those names off all copies of their certified scannable lists. Only one of those deceased electors claimed an ordinary vote on polling day and on further inquiry it was established that the

Department had made an incorrect assumption about the identity of' the reported deceased person.

A further 158 names were matched between 27 November and 3 December but as it was then too late to annotate these on the certified lists a post poll check was undertaken to determine if any had voted. Again this produced a negative result which puts the nail in the coffin of anyone who suggests that cemetery voting occurred during these elections.

The Commissioner noted that, whilst cemetery voting is always possible, the need to spend extra money to be vigilant against it was questionable. The Commissioner pointed out that if a seat was won by 700 votes the issue was irrelevant, and if the poll is close, the scrutiny of the Court of Disputed Returns would probably uncover any irregularities.

[The committee adds that it commented on multiple and cemetery voting at that time in order to disseminate information on those issues. The committee had not formally inquired into the issues. Nor would the committee wish to represent the above comments of the Electoral Commissioner as his definitive statement on the issues.]

In terms of evidence of widespread multiple voting in Queensland, the committee notes the Queensland Court of Disputed Returns' decision in *Tanti v Davies*, (the Mundingburra decision'). The petition included challenges to a raft of votes on the grounds of alleged (i) impersonation of electors and (ii) multiple voting.

Mr Justice Ambrose found that, in relation to allegations of impersonation, no cases had been made out. In relation to allegations of multiple voting, this committee has previously reported on the Electoral Commissioner's perspective on the case:

despite the intense scrutiny which occurred during the Mundingburra Court of Disputed Returns trial, no multiple voting fraud was uncovered.

5. PREVIOUS COMMITTEE REPORTS ON MATTERS RELATING TO THE ELECTORAL ROLL

In light of the focus of the current inquiry, the committee notes here that it has previously reported on issues relating to the integrity of the electoral roll in some depth.

The committee has previously reported in a critical manner on recent amendments (as yet uncommenced) made to the *Commonwealth Electoral Act* by the Commonwealth Government (namely, a requirement on persons seeking to enrol for the first time to produce proof of identity and citizenship, and more stringent enrolment witnessing requirements). The committee concluded that the amendments 'have the potential to effectively disenfranchise a significant number of eligible voters.

The committee added:

If electoral fraud is a problem it should be addressed through a cooperative approach between the Commonwealth and the states. Such cooperative approach might include an enhanced continuous roll updating system with appropriate back-up and audit.

Rather than the new commonwealth enrolment requirements the committee would prefer to see measures in place to increase the quality of the electoral roll and level of enrolment in a cooperative approach between the Commonwealth and the states.

The committee revisited the matter of maintaining electoral rolls in a subsequent, related report. Having analysed available information and public submissions on the matter, the committee came to the following conclusion and made the following recommendations:

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

To facilitate 'data matching' as a form of CRU, the committee recommends that the Attorney-General - as the minister responsible for the Electoral Act 1992 (Qld) - amend that Act so as to enable the Electoral Commission of Queensland to obtain name, address and date of birth data from state government departments and agencies for a price that reasonably reflects the cost of producing a copy of that data.

This recommendation is subject to:

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

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

Therefore, the committee has already extensively dealt with issues concerning the integrity of the electoral roll in its reports nos 19 and 23. Nevertheless, in light of the current reference from the Parliament, the committee will consider submissions to it about (the committee's conclusions in relation to matters concerning the integrity of the electoral roll contained in report nos 19 and 23. In this regard, the committee acknowledges that further work might now need to be done.

6. MOTION IN PARLIAMENT, 5 SEPTEMBER 2000

In relation to the committee s report no 19, the committee notes the following extract from the *Votes and Proceedings* of the Legislative Assembly concerning a motion moved by Dr David Watson MLA in the Legislative Assembly on 5 September 2000.

NOTICE OF MOTION - ELECTORAL CORRUPTION

Dr Watson, pursuant to notice, moved –

In view of the conviction of three ALP identities for electoral corruption by rorting the electoral rolls [used) for Federal, State and Local Government elections, this House calls on the Queensland Government to amend the Electoral Act to require proof of identity and address from all voters before ballots are cast, and calls upon the Commonwealth to amend the Commonwealth Electoral Act to require proof of identity and address before a person must be registered on the electoral roll.

Debate ensued.

The following amendment was proposed by Attorney-General and Minister for Justice and Minister for The Arts (Mr Foley) –

Insert thefollowing words before 'In view' –

"1. The House notes the conclusion in Report No. 19 of March 2000 by the all-party Legal, Constitutional and Administrative Review Committee that the Commonwealth's "new enrolment requirements have the potential to effectively disenfranchise a significant number of voters",

2. The House further notes that on 22 August 2000 it requested the Legal, Constitutional and Administrative Review Committee to "investigate and report back to State Parliament by 14 November 2000 on the best way to minimise electoral fraud at elections, where the Queensland State electoral roll is used.", and

3. The House requests that Committee to include in the said investigation and report consider tion of Dr Watson's motion that:"

Debate ensued.

…

Question – That Mr Foley's amendment be agreed to - put and agreed to.
Question - That the motion as amended be agreed to - put and agreed to.

7. AN ALTERNATIVE APPROACH: AN ENHANCED FRAUD 'AUDIT' FUNCTION?

The committee notes that, from one perspective, current electoral arrangements are about right in the way the electoral system provides for free, honest and fair elections with a minimum of fuss to citizens. However, as identified by the JSCEM, there is also 'disquiet in sections of the community about the potential tor electoral fraud' with associated calls for stringent measures, such as:

- ceasing new enrolments on the day that the writ tor an election is issued; and
- subdivisional (or 'precinct') voting, where an elector's name appears on only one roll at one polling place.

At this opening stage of the inquiry, the committee asks whether there is also some room for an alternative 'middle-ground' in relation to the whole approach of preventing and detecting electoral fraud and/or in relation to its specific manifestations.

Is there some room tor measures that will provide a significant deterrence against fraudulent electoral behaviour without being overly obtrusive to the whole electoral process or overly restrictive of the rights of all citizens to enrol and vote'?

For example, should there be some form of an enhanced fraud 'audit' function whereby electoral officials select a random but representative sample of:

- enrolment transactions for further, comprehensive investigation as to the authenticity of those enrolments (perhaps via the sending out of an official to sight the elector at their place of residence and ask for documentary evidence of proof of their identity); and
- voters at the time of voting for further, more comprehensive investigation as to their identification?

The form of any such 'audits' should be suggested by and compatible with other measures directed at the integrity of the rolls and of the voting process.

8. KEY ISSUES IN RELATION TO WHICH THE COMMITTEE INVITES RESPONSE

The committee has identified at least the following issues with respect to the prevention and detection of enrolment and voting fraud in our State and local government elections. Submissions need not address all issues. It would be helpful if submissions addressed the issues as numbered.

The incidence of electoral fraud

1. Are the current checks and balances in Queensland's electoral system sufficient to adequately prevent and detect enrolment and voting fraud?

2. Is the *actual incidence* of enrolment and voting fraud at such a level that it warrants reform of existing electoral legislation and procedures in Queensland? If so, what needs to be changed? Is there any evidence of systematic malpractice?

3. Is the *prospect* of enrolment and voting fraud being perpetrated by some people sufficient to warrant changes to our laws that simultaneously restrict the ease and opportunity of all citizens to enrol and vote?

(These first three questions could either be answered in their own right or guide responses to specific issues listed below.)

The prevention and detection of electoral fraud

Enrolment

4. What more can be done to ensure and enhance the integrity of the electoral roll? What more can be done to prevent and detect fraudulent enrolment in the form of:

(a) people enrolling themselves at a false address/in the wrong electoral district;
(b) people enrolling false names at real, or false, addresses; and
(c) people enrolling real names a real, or false, addresses?

Specifically:

5. Should people seeking to enrol for the first time and/or to change their enrolment details:

(a) be required to provide electoral officials with proof of their identity; and/or
(b) be subject to more stringent witnessing requirements on enrolment forms?

6. What more can the Australian Electoral Commission (AEC) do to ensure the integrity of the electoral roll in relation to its current process of implementing continuous roll updating (CRU) activities to replace periodic door-knocking review? (CRU activities include: data matching techniques; data mining of federal databases; and enrolment marketing.)

7. What more can the Electoral Commission Queensland (ECQ) do to contribute to ensuring the integrity of the roll? For example, should Queensland legislate to open up certain State agency databases to assist with CRU activities? Should Queensland establish its own computer system to process enrolments and prepare rolls for elections?

8. With regard to points 5 and 7 above, should Queensland revisit its joint roll arrangement with the Commonwealth? Should Queensland (re)establish a separate State roll?

9. Currently the roll closes five to seven days after the issue of the writ for an election. Should the electoral rolls be closed as soon as an election is announced? What else can be done to address allegations of (last minute) so-called 'roll stacking'?

10. Are current arrangements for objecting to names appearing on the electoral roll adequate?

11. Should there be a complete re-enrolment of the voters of the State (once some or all of the above safeguards are in place) or of the voters of one electorate (as a trial or 'acid test' of existing or future arrangements)?

Voting

12. What more can be done to ensure and enhance the integrity of the voting process? What more can be done to prevent and detect fraudulent voting in the form of:

(a) multiple voting (e.g. voting at different issuing places/booths; voting prior to, and again on, polling day);
(b) the impersonation of other electors (presumably someone not expected to vote); and
(c) so-called ‘cemetery voting’ (voting in the name of a recently deceased person)?

13. In relation to declaration voting, what more can be done to ensure the integrity and security of the voting process in relation to:

(a) postal voting;
(b) special postal voting;
(c) pre-poll (in person) voting;
(d) absentee voting; and
(e) unenrolled voting?

14. In relation to voting at special locations, what more can be done to ensure the integrity and security of the voting process in relation to:

(a) voting at declared institutions;
(b) voting in remote areas; and
electoral visitor voting?

Specifically:

15. In relation voting generally. should electors, before receiving a ballot paper, be required to provide proof of identity to electoral officials by way of:

(a) a suitable form of identification (prescribed or acceptable at the discretion of the polling official); or
(b) a specific 'voting card' issued to all electors prior to polling day (either to be handed in at each electoral event or given out for permanent retention by electors)?

16. Alternatively, is there scope for improving procedures surrounding issuing officers' questioning of people seeking to vote for the purpose of deciding whether the person is entitled to vote?

17. Should sub-district (or ‘locality’ or 'precinct') voting be introduced, whereby an elector's name appears on only one roll at one polling place, i.e. the place at which the elector is required to cast an ordinary vote? (Electors voting outside the sub-district would be treated as absentee voters and subject to the further scrutiny of a declaration)?

18. Should electronic voting be introduced to replace the present manual voting methods? Is the technology available? Would electronic voting reduce, or increase the possibility of electoral fraud?

19. What can be done to prevent and detect false declarations?

Arrangements for polling and counting

20. Are existing arrangements providing for the presence of scrutineers during polling and the counting of votes adequate? If not, what more needs to be done?

21. In terms of precluding the possibility of polling official malpractice, can improvements be made to the processes surrounding the preliminary processing of declaration envelopes and ballot papers; the preliminary and official counting of votes: the recounting of votes: and the declaration of the poll?

22. Are the existing arrangements for the security of the supply, storage and transport of ballot papers adequate? Are the existing arrangements directed towards preventing and detecting the forgery of, and tampering with, ballot papers adequate? If not, what more needs to be done?

Possible enrolment and/or voting audits'

23. In relation to possible enhanced electoral fraud 'audits' mentioned in section 7 of this paper, what form might any new or improved electoral fraud 'audit' procedures take and how might they be implemented in relation to:

(a) enrolment procedures; and and/or

(b) voting procedures?

Offences and enforcement

24. Is there scope for improving the offence provisions relating to enrolment and voting that are contained in the Commonwealth and State electoral legislation and in the Commonwealth *Crimes Act* and the Queensland *Criminal Code?*

25. Is there scope to increase penalties for enrolment and voting offences?

26. Can more be done to facilitate the public's lodging of complaints of electoral fraud to the ECQ or AEC and/or the Queensland Police Service or the Australian Federal Police? Can more be done to improve the investigation of such complaints by those bodies?

27. Overall. can electoral laws be better enforced? If so, how?

General

28. What more can be done to improve the capacity of the ECQ and persons responsible for the conduct of local government elections to prevent, detect and act upon electoral fraud? Regard might be had to questions of:

(a) legislative functions and powers;
(b) the role of various officers and officials; and
(c) resources.

Gary Fenlon MLA
Chair
September 2000

Attachment 11

Extracts from Queensland Legislative Assembly Legal, Constitutional and Administrative Review Committee Report No 19 of 12 March 2000 entitled "Implications of the new Commonwealth enrolment requirements"
(the original can be accessed electronically at:
www.parliament.qld.gov.au/committees/legalrev).

3.3.2 The wider debate regarding electoral fraud

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

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

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

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

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

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

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

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

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

….

Committee conclusion 1

1.1 Based on current information, the committee understands that the Commonwealth Government intends to operationalise the October 1999 amendments to the *Commonwealth Electoral Act 1918*, s 98 (concerning proof of identity for first-time electors and the witnessing of claims for enrolment) by regulations which are yet to be finalised.

1.2 The amendments to the *Commonwealth Electoral Act 1918* bringing in these new enrolment requirements were developed with little direct consultation with the relevant states with whom joint or other shared roll arrangements exist. This runs counter to the historically cooperative arrangements in place between the Commonwealth and the states with regard to respective roll maintenance and data exchange.

1.3 The new enrolment requirements have the potential to effectively disenfranchise a significant number of eligible voters.

1.4 This result would make it essential for Queensland to retain its enrolment criteria as they stood prior to the October 1999 Commonwealth amendments (which have not yet commenced). In practical terms, this would mean that Queensland should (re)establish a separate state electoral roll. This, in the committee's opinion, would be a necessary but undesirable outcome.

1.5 If electoral fraud is a problem, it should be addressed through a cooperative approach between the Commonwealth and the states. Such cooperative approach might include an enhanced continuous roll updating system with appropriate back-up and audit.

1.6 Rather than the new Commonwealth enrolment requirements, the committee would prefer to see measures in place to increase the quality of the electoral roll and level of enrolment via a cooperative approach between the Commonwealth and the states.

Committee recommendation 1

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

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

- foreshadow the possibility that, if the enfranchisement of Queenslanders is threatened, then Queensland will consider:

(a) amending the *Electoral Act 1992* (Qld) to ensure enrolment criteria, as they stood prior to the October 1999 Commonwealth amendments (which have not yet commenced), are retained for state elections; and
(b) (re)establishing its own electoral roll.

Attachment 12

Extract from AEC submission No 88 of 12 March 1999, "Address Register" and "Continuous Roll Update"

4.3 Address Register

4.3.1 Allegations of electoral fraud are made at every election and frequently raise the possibility of, for example, a large number of organised individuals transferring their enrolments *en masse* into marginal Divisions to vote in a particular way; or a large number of organised individuals voting in a particular way for more than one address, for the same address, or in other names, in marginal Divisions. Needless to say, it is unlikely that such highly organised conspiracies, of necessity involving hundreds of individuals, would remain undetected.

4.3.2 Whilst such alleged activities have never been proven, to the satisfaction of the AEC, the JSCEM, or the Court of Disputed Returns, to have occurred to the degree necessary to affect the result of an election, nevertheless concerns remain in some quarters that the AEC is unable to detect or investigate such activities. This is despite the many administrative and legislative checks and balances that exist within the electoral system, and the continual enhancements that are being made to enrolment procedures and processes.

4.3.3 A major enhancement to RMANS was the move to an address-based enrolment system, known as the RMANS Address Register, introduced in 1997 and further developed during 1998. Prior to the introduction of the Address Register, addresses claimed for enrolment needed only to fit known streets and localities. The confirmation of addresses by the AEC is now more strictly controlled, as each known address is now recorded separately on the Register, whether or not the address is occupied by electors.

4.3.4 As well as identifying each separate address, the Register lists a range of attributes for each address including a land use code, occupancy status, an enrolment limit, the last review date, and whether the address is habitable and 'active', that is, valid for enrolment. Provision has been made to store additional geographic data and related locality information against addresses and to include an enrolment turnover indicator. In cases of 'inactivated' addresses, such as demolished or incomplete habitations in a new area, enrolment cannot take place until the address is 'activated'.

4.3.5 The use of the Address Register has not yet been completely integrated into enrolment processing, but the quality of data on the Register is gradually being improved and procedures are being developed so that AEC staff can make full use of the Register when enrolling electors. Current address data integrity activities include the matching of all addresses held by the AEC with the Australia Post National Address File. At the Divisional level, staff are continuing to apply Rural Road Numbers, where available, to country addresses.

4.3.6 The AEC is now able to build an enrolment history for all residential addresses that were on RMANS at the Address Register conversion in 1997, or have since been created. Over time, the AEC will increasingly be able to identify addresses that are incorrectly described or duplicated on the Register, those that have a high number of enrolments and/or an abnormally high turnover of electors, and those that have two or more groups of electors resident with different family names. Such exceptions will be examined by Divisional staff for follow-up, including

fieldwork if appropriate, at the time of enrolment or as part of new roll review procedures.

4.3.7 The RMANS Address Register is an increasingly powerful tool available to the AEC to detect and deter fraudulent enrolment, enabling staff to check the validity of addresses and to take follow-up action when claims on enrolment forms are at variance with the information on the Register, such as in cases of possible suspicious enrolment at any particular address.

4.3.8 For example, on 7 September 1998 Mr Charlie Taylor, the General Secretary of the Northern Territory Country Liberal Party complained to the Australian Electoral Officer for the Northern Territory in the following terms:

> As campaign manager for the Country Liberal Party in this election campaign, I seek your advice on any incidence of apparently excessive numbers of people from a single address, or non-existent addresses attempting to enrol and vote in the Northern Territory. My concern is based on reports that the organisers of the anti-mining protest at Jabiluka have adopted a strategy of encouraging itinerant protesters to enrol and vote during their visit to the Northern Territory. This is part of an overall strategy to maximise the Green/ALP vote at this election, as both parties promise to block further development of the Jabiluka mine.
>
> People identifiable as anti-Jabiluka protesters appear to frequent the area around your office, where enrolments can be physically lodged, and groups have visited the offices of local MLAs to pick up enrolment forms. On Friday, August 28, a group of a dozen or so requested enrolment forms from a Member's office, and a spokesman mentioned he had been lucky to find a flat in Coconut Grove so they could all give the address to satisfy residential requirements for voting in the Northern Territory. Hence my letter to you, and would appreciate any advice once your staff have had the chance to assess the bona fides of potential voters in this election.

4.3.9 Because of recent enhancements to RMANS such as the Address Register, the AEC is now able to identify those addresses where the number of numbers of electors exceed a set limit. Accordingly, in response to Mr Taylor's complaint, a review of enrolments in the suburb of Coconut Grove was undertaken, and the investigation revealed no abnormalities in any single dwelling in this area.

4.4 Continuous Roll Update

4.4.1 Following a recommendation of the 1993 JSCEM, section 92 of the Electoral Act was amended by the *Electoral and Referendum Amendment Act 1995* to allow for continuous roll updating by the AEC on a more precisely targeted and cost-effective basis than the previous two-yearly national door-knocks. In 1995-96 the then Australian Joint Roll Council commissioned a report from Australian Strategic Planning on the effectiveness of existing roll review procedures and options for moving to continuous roll updating.

4.4.2 As a result of that report, trials were undertaken in Queensland during 1996-97 using change of address data provided by Australia Post. This trial demonstrated that continuous roll updating procedures were effective, especially if used in conjunction with the RMANS Address Register. In April 1997 an extensive mail-out to 'vacant' addresses (known addresses on RMANS at which there is no current enrolment) resulted in an estimated 240,000 enrolments being received, as well as a

significant volume of address information used to update the Address Register. A separate national mailing at this time, using Australia Post change of address information, resulted in further enrolments, and highlighted some problems in the use of external data.

4.4.3 During 1998 the AEC undertook investigations with the State/Territory Joint Roll partners, through the Continuous Roll Update Implementation Steering Committee (CISCO) of the Electoral Council of Australia, into the implementation of continuous roll update as a complete replacement for the two yearly habitation review. This work included a further posting to 'vacant' addresses in Tasmania and South Australia, the successful negotiation with Australia Post of a business agreement for the use of residential Change of Address information, and the development of RMANS systems and reports for use by Divisional staff. Separate initiatives were undertaken by a number of the State/Territory electoral authorities during 1998 to collect enrolments forms as part of other civic transactions such as motor vehicle license renewals and electricity connections.

4.4.4 The AEC is committed to the full implementation of continuous roll update commencing in the first half of 1999, a decision endorsed by the State/Territory electoral authorities. The AEC is currently preparing procedures and materials for this early start. Full use will be made of the exception reporting available from the RMANS Address Register and the experience with mailing based on vacant house and change of address data. Targeted fieldwork will be undertaken to confirm address information and enrolment details, particularly in areas of high elector turnover. In addition, the AEC has commenced negotiations with other federal departments and agencies for access to change of address information, and will contact relevant State/Territory government departments and agencies as appropriate.

4.4.5 The Government has demonstrated strong support for the principle of continuous roll update in its response to the June 1997 JSCEM Report, and during debate in December 1998 on the *Electoral and Referendum Amendment Bill 1998*. This support is part of the overall commitment of the Government, as understood by the AEC, to ensure that the Commonwealth Electoral Roll maintains the highest level of integrity that is reasonably possible, and is increasingly resistant to fraudulent enrolment activity.

Attachment 13

"Dole Fraud by Phantom Recipients", Michael McKinnon, Courier Mail, 4 September 2000, p 5

DOLE FRAUD BY PHANTOM VOTERS by Michael McKinnon

Organised crime gangs are using high-tech imaging equipment to provide ready-made identities for welfare fraudsters.
Government payment agency Centrelink has detected at least 110 cases of false identity fraud in the past year, with the involvement of criminal gangs confirmed by a national police intelligence body.
Taxpayers were saved $14.5 million by the detection of the 110 cases.
Fraudsters not only create new identities, but also assume existing identities based on dead children after visits to graveyards.
Australian Bureau of Criminal Intelligence fraud enforcement spokesman Ian McCartney said identity fraud was one of the major issues confronting Australian law enforcement.
"The Internet, together with developing computer technology, has resulted in the growth of sophisticated identity theft," he said.
"For a low cost, computer and copying equipment can be purchased to produce high-quality copies of virtually any document.
"From a Commonwealth perspective, we have seen the increase of fabricated false documentation used in the fraudulent claim for social security payments.
"Recent investigations have also identified organised criminal syndicates in Australia involved in the selling of identity kits."
Mr McCartney said the Internet was a ready channel for selling high-quality false identification.
"Figures from the United States indicate that fake IDs generated on the Internet two years ago represented 1 per cent of all those produced in the United States," he said. "This figure now represents 30 percent."
Centrelink documents show that the organisation – responsible for paying social welfare benefits to about six million Australians – is well aware of the dangers posed by the global increase in identity fraud.
"Fraudsters have used technological advances to assist in their schemes," Centrelink documents obtained by the Courier-Mail state.
"(The 110 cases discovered in the past year) represented over $2.4 million of fraudulently obtained payments, and the early detection of these frauds has resulted in an estimated saving in government outlays of $14.4 million."
The documents said welfare payments continued to be exploited by criminals using identity fraud involving the use of fictitious, created and assumed names by a person in order to claim social security payments.
"Common examples are legal change of names – such as when a woman marries, or remarries," the documents said.
"A legal name change in some states will cost the applicant just $10.
"More sophisticated identity frauds entail Day of the Jackal scenarios where the perpetrator assumes the identity of real people or adopts the personal details of children who were born about the same time as they were, but died at an early age."