



The Federal Redistribution 2006
QUEENSLAND



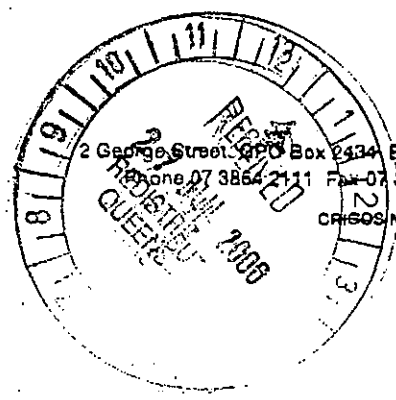
Comment Number 12 on Objections

Mr John R Pyke

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Redistribution Committee for Queensland
GPO Box 2590
BRISBANE QLD 4001

Queensland Redistribution 2006 - Comments on Liberal Party's objection (or "how to read an Act of Parliament")

Dear Committee members,

I offer a few comments on the propositions of law advanced in the Liberal Party's well-publicised, and intemperately-worded, objection to your draft redistribution. [It is also ungrammatical, in its references to "a non-statutory criteria", and the party of Menzies should know better, but let's not mind that too much.]

The party claims, once its grammar has been corrected, that equality of electors is a "non-statutory" criterion. It is true that your Act does not direct that electorates should have as nearly equal membership as possible. However, after spelling out all of the criteria in paras 3(a) and 3(b), s 66 does mandate that, subject to the other criteria, "*the quota shall be the basis*". I submit that there is a pretty clear inference from this that as much equality as is practicable *is*, other things being equal, something that the Committee should be pursuing; it is in fact a statutory criterion, even though it is subject to all the other criteria (which is the point of the "margin of allowance").

The Liberals also seem to misunderstand s 66 in another significant way (maybe they were reading an old copy of the Act?). They say (p 6 of the pdf version, 3rd substantive page of the submission) that your proposal "offends the criteria (at 3(v)) that the committee shall have regard to the boundaries of existing Divisions in the State". They seem not to have noticed that sub-s 66(3A) provides that criterion (v) is subsidiary to criteria (i) to (iv). Indeed, as I pointed out myself in my objection to the continuation of the Petrie "peanut" electorate, you seem to have overlooked it yourself because, it seems to me, the continued existence of that odd-shaped electorate can only be explained by a desire not to change the existing boundaries too much.

Since the words at the end of sub-s 66(3) are long and rambling, and contain both indications of low priority ("subject to") and high priority ("but in no case") there may be some point in un-scrambling the order of priorities set by the section:

- first, the 10% range at the date of determination ("*in no case shall the quota be departed from to a greater extent...*");
- secondly, the 3.5% range at the projection date (para (a));
- thirdly, the criteria in sub-paras (b)(i), (ii) and (iv) – community of interest, communication, and physical features;
- fourthly, the boundaries of existing divisions;
- and if there is room after all that to apply an even-greater-equality criterion, do that too – because, subject to everything else, "*the quota shall be the basis*".

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Therefore, to spell out the consequences of these priorities in detail:

- there is nothing wrong with you making a few extra adjustments to boundaries in the name of greater equality where that does *not* lead to divergence from the other criteria in sub-s 66(3), but
- it is improper to make adjustments in the name of greater equality if that *does* lead to divergence from the expressed criteria, including even the weak criterion of sticking to existing boundaries.

I have not studied the boundary changes that the Liberals object to in detail, but it does seem to me that they may have become a bit obsessive about this and may be complaining about every mention of equality in your commentaries on the proposed boundaries. In many cases a statistical area near a Division boundary may have about equal community of interest with the electorates on both sides of the boundary, so criterion (i) will not bear on the decision either way, but of course if moving an area simply to pursue equality means disregarding the existing boundary, it may be contrary to criterion (iv) – which, though of low weight, still outweighs absolute equality. So, although the Liberals have generally misinterpreted the Act, some of their objections may have substance.

I believe, in the light of all the criticisms your proposals have attracted, that you are going to have to look at the boundaries again, and I urge you to do so and to pay rather more attention to the priorities dictated by your Act than, with respect, you seem to have done on the first pass. This may mean that you have to make some of the adjustments suggested by objectors, including possibly even some of those suggested by the Liberals, but I urge you not to take too much notice of their “overall objection” – it simply shows that not only do they not know the singular form of “criteria” but they cannot read an Act of Parliament.

Sincerely



John R Pyke
Lecturer in Law

COMMENT

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