



18 September 2021

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Senator Chandler
Chair,
Senate Standing Committee on Finance and Public Administration
PO Box 6100
Parliament House
Canberra, ACT 2600

Dear Senator,

Commonwealth Electoral Amendment (Integrity of Elections) Bill 2021

Please accept this submission for the Committee's inquiry into the *Commonwealth Electoral Amendment (Integrity of Elections) Bill 2021*.

I note that Schedule 1 to the Bill deals with the auditing of authorised technology at federal elections and ensuring the cyber integrity of federal elections. It is of great importance that the Houses of Parliament are genuinely 'chosen by the people' under ss 7 and 24 of the Commonwealth Constitution. Hence measures to ensure the security and accuracy of the means for determining the outcome of elections are to be welcome. However, I do not have the necessary expertise to assess whether the measures specified in this Schedule are the most appropriate to achieve that end and would defer to the expertise of others on this point.

Voter identification and the effect upon minorities

Schedule 2 deals with voter identification provisions. This is a more problematic area as there has been a long history in other countries of the use of such schemes to prevent or deter certain groups in society from voting, with the consequential effect that legislative bodies are elected by a less representative sector of the people. See, for example, the article by Z Hajnal, N Lajevardi and L Nielson, 'Voter Identification Laws and the Suppression of Minority Votes' (2017) 79(2) *The Journal of Politics* 363. It examined available empirical evidence in the United State and concluded that voter ID laws diminish the turnout of racial and ethnic minorities in elections and that they 'produce a clear partisan distortion', favouring conservative candidates. Accordingly, such measures should be addressed with caution.

Even where provision is made to ensure that itinerant electors, disadvantaged persons and Indigenous electors in remote areas have additional means of establishing their identity, as is the case in proposed s 394A set out in this Bill, the additional procedural

burden, the effort required, the confusion that it can create and the message that it sends of being ‘suspect’ or unwanted, may be enough to suppress the vote. In an article addressing the Queensland experiment on voter ID in 2014-5 (Graeme Orr and Tracey Arklay, ‘Rethinking voter identification: its rationale and impact’ (2016) 51(3) *Australian Journal of Political Science* 386), Orr and Arklay noted its differential impact on regional electorates and those with high concentrations of Indigenous electors.

It is also notable that Australia is different from most other countries, as it has a system of compulsory enrolment and compulsory voting. This means that any cases of multiple voting or impersonation of other voters are easily detectable and relatively rare. It is my understanding that nearly all cases of apparent multiple voting are resolved as errors in marking off the electoral roll and that there is no significant problem of voting fraud in Australia. (See, eg, Rodney Smith, ‘Multiple Voting and Voter Identification’ (2014): [https://elections.nsw.gov.au/NSWEC/media/NSWEC/Reports/Commissioned%20reports/Multiple-voting-and-voter-identification-report-2014-\(PDF-1.3MB\).pdf](https://elections.nsw.gov.au/NSWEC/media/NSWEC/Reports/Commissioned%20reports/Multiple-voting-and-voter-identification-report-2014-(PDF-1.3MB).pdf).)

For example, claims of multiple voting were examined by Justice Atkinson in the Queensland Court of Disputed Returns in *Caltabiano v Electoral Commission of Queensland (No 4)* [2009] QSC 294 at [236]-[285]. Thirty claimed cases were investigated, but upon examination, 28 were found to be clerical errors and 2 were cases of elderly confused people who cast votes early by one means and then, being incapable of recalling that they had done so, cast a second vote later. There was no deliberate electoral fraud substantiated by the court proceedings.

I am unaware of any recent evidence to suggest that electoral fraud involving deliberate multiple voting in the names of other people has since become a significant issue.

This raises the question of why such measures are necessary now. While it is true that most people have easy access to some form of identification, this is not always the case and such measures will necessarily result in some people not exercising their right to vote at elections. The High Court has previously struck down the validity of changes to procedural voting laws which had the effect of excluding people who are entitled to vote from exercising that entitlement (see *Rowe v Electoral Commissioner* (2010) 243 CLR 1) and has expressed particular concern about laws that have the effect of excluding from voting members of minorities or the vulnerable. Any such law would require a ‘substantial reason’ and would need to be proportionate to the legitimate end that is sought to be achieved (i.e. the purpose of protecting electoral integrity).

Identity and address

There is a lack of clarity about how the provisions are intended to operate. The ‘proof of identity document’ definition is peculiar, because some of the forms of identity are directed at a person’s address (eg utility bills) whereas others are addressed at a person’s visual appearance (eg photo ID cards, licences, passports). This raises the question of whether these measures are directed only at determining if a person is not who they claim to be (in which case a photo ID is relevant) or are directed at electoral

fraud involving people claiming to vote in an electorate where they do not live (in which case ID involving an address is relevant).

What happens, for example, if a person attends the polling booth and provides a proof of identity document, such as a driver's licence, which states that the person lives in electorate A, while the person in answering the formal questions claims to live, and is formally enrolled, in electorate B? Is the voter then denied an ordinary (non-provisional) vote, or does this not matter as long as the voter can show a document, such as an internet bill, that has the same name on it as an enrolled person, even if the address is different?

I ask this question because I have recently moved house. As required, I notified the AEC and changed my enrolment to my new address. But when I tried to change my address on my driver's licence, I was told that all address changes were currently prohibited in NSW during the pandemic because people had been changing address to get out of 'local government areas of concern'. I was prevented from notifying my change of address, even though I had moved to an address which was within the same local government area as my former address. I pointed out that there is also currently a law that requires people outside their home to carry identification of their current address, if they are queried by police. I was told that I would have to carry a utility bill or a council rates notice. But as I had just moved house, my first utility bill would not arrive for three months. I rang the Council and begged for an early rates notice, but was told that the 'system' could not manage that.

If an election was called tomorrow and I had to produce identification with my address on it, it would be inconsistent with my address on the electoral roll. This is just a small example of the anomalies that can arise, but it suggests that there will be plenty more problems out there thrown up by this sort of legislation. They include the person who loses their wallet on, or shortly before, polling day, the person who has had their ID papers destroyed in a bushfire or flood, the person who is travelling and does not have the requisite documents, the student living at home who does not pay utility bills or have a driver's licence, the people who simply forget to bring ID with them to the polling booth and are turned away, as well as homeless people who do not have, or cannot keep with them, relevant documentation and do not have the connections or initiative to obtain a community identification document.

The Bill is unlikely to disrupt intentional electoral fraud

The aim of the Bill is apparently to prevent voter fraud. But if anyone was seriously wanting to impersonate other people in order to vote multiple times or in a different electorate, then it would be quite easy to fake a utility bill or a notice from a local government authority, or an internet bill, or just steal one out of a letter box. Indeed, such provisions may embolden people to do so, given that it would make it very easy to assert that you are someone who you are not, and some might regard it as a game or challenge. It is also notable that identification requirements do not extend to postal voting, leaving this potential fraud pathway unaffected.

Realistically, the only people such a law would impede from voting would be those entitled to vote but lacking identification (who were not prepared to make fake identification documents, or did not have the facility to do so), rather than those intending to commit voting fraud. In short, these measures are unlikely to achieve anything of positive value but may well prevent people from legitimately exercising their right to vote.

Practical effects of the proposal

In addition, consideration should be given to the significant delay that is likely to occur as each person produces identification and it is assessed by the voting officer. This will either result in increased election costs (due to the need to hire more voting officers) or longer delays for people queuing to vote at polling booths.

It is normally a campaign slogan of political parties – especially conservative ones – that they will ‘slash red-tape’ and end the unnecessary administrative burdens imposed by governments on the people. This would be a particularly egregious case of imposing red-tape, because it is red-tape that burdens a fundamental democratic right.

Such requirements would also impose increased and unnecessary pressure on poll clerks to make significant judgement calls about whether a person can make an ordinary vote. It is not hard to imagine that in some cases persons who are rejected for failing to produce ID might become angry or even violent. Having previously acted as a poll clerk in my youth, I would not have wanted to have to refuse a ballot paper to a large angry person who had inadequate identification or no identification. I would also have regarded myself as insufficiently trained and equipped to judge whether a proof of identity document was real or a fake.

Provisional votes

I note that while I have discussed the possibility of the right to vote being denied, the draft bill permits a person to proceed with a ‘provisional vote’, which may or may not be accepted by officials later. It is not clear whether polling officials would be obliged to offer that alternative to those with insufficient identification documents. Even if they did so, some electors, such as those with low literacy skills or from non-English speaking backgrounds, might find it too difficult or embarrassing to try to fill in a provisional voting envelope and might just leave. Others might do so, but be left with uncertainty about whether their vote was counted or not.

It is not clear on the face of the Bill how electoral officials would later make the assessment of whether to count such a provisional vote. If they did so by merely matching a name on the provisional vote envelope against a name on the electoral roll, then the requirement for voter ID at the polling booth would be a farce. So how is this assessment made? Does the Electoral Commission have a bank of voter signatures against which it compares the signature of the provisional voter to establish their identification? If not, how is their identity checked? Are there provisions in the Act which set this out, or are additional provisions needed?

During the Queensland experiment on voter ID, there were 16,852 ‘declaration votes’ where a person had not provided sufficient identification documents, with all but 402 later being admitted to the count. But it is not clear to me how that assessment was made and what was different about the 402. One might also query the cost in staff hours and money in undertaking this assessment, especially if it has to be done across the whole country.

Further, if a person attends a polling place to vote in an election and is unable to produce sufficient identification, does this mean that he or she could then be fined for failing to vote? Would making a provisional vote alleviate that problem, but only if it were accepted in the count?

Effect on turnout

I also note that the ‘Statement of Compatibility with Human Rights’ attached to the Explanatory Memorandum, asserts that when voter identification rules were applied at the 2015 Queensland state election, ‘turnout was slightly higher than it had been in the previous election’. However, Orr and Arklay recorded that turnout actually dropped by almost 1.1%. The Queensland Electoral Commission’s website records that the turnout for the 2012 election was 91% and the turnout for the 2015 election was 89.9%, so it appears that the turnout dropped. This might have been for other reasons, but it is unusual for turnout to drop during a highly contentious and closely-fought election, such as the 2015 Queensland election.

Maintaining confidence in the integrity of elections

My final observation is that public concern about the integrity of elections does not appear, in my view, to be directed at the impersonation of people at polling booths. This is because there is no evidence of this being a significant problem. Instead, in my experience, there is significant public concern about the integrity of elections due to the partisan use of public money to make grants in marginal and targeted seats as a means of influencing the outcome of elections. If the Parliament is concerned about maintaining public confidence in the integrity of elections, this is where it should be directing its attention.

I hope these comments are of assistance.

Yours sincerely,

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