



Australian
Human Rights
Commission

President
Emeritus Professor Rosalind Croucher AM

Our Ref: SUB-2021/0914153029

20 September 2021

Committee Secretariat
Senate Finance and Public Administration Legislation Committee
Via online portal at: www.aph.gov.au

Dear Secretariat

Inquiry into the Commonwealth Electoral Amendment (Integrity of Elections) Bill 2021

1. The Australian Human Rights Commission (Commission) welcomes the opportunity to make this submission to the Senate Finance and Public Administration Legislation Committee with respect to the Commonwealth Electoral Amendment (Integrity of Elections) Bill 2021 (Bill) introduced by Senator Roberts. This submission is made only in relation to Schedule 2 of the Bill relating to voter identification.
2. Schedule 2 of the Bill proposes to introduce voter identification to address 'illegal or multiple' voting during elections.¹ The Commission is concerned that this Bill has been introduced without proper regard to the existing safeguards against multiple voting and their effectiveness, and without proper consideration of the adverse impacts that the Bill is likely to have on participation in elections. In the absence of this kind of analysis, the Bill risks disenfranchising a range of groups of people who may have difficulty in complying with its requirements. As a result, the measures proposed in Schedule 2 of this Bill do not appear to be necessary and proportionate to achieve the aim being sought and could unreasonably limit, and unduly impinge on, a person's right to vote.
3. For these reasons and as further elaborated below, **the Commission recommends that Schedule 2 not be passed.**

Australian Human Rights Commission
President
Emeritus Professor Rosalind Croucher AM

Overview of the Bill

4. The Explanatory Memorandum (EM) to the Bill states that its objective is to protect the confidence of Australian elections, and improve the right to free and fair elections. Schedule 2 of the Bill responds to recommendation 21 of the majority of the Joint Standing Committee on Electoral Matters (JSCEM) in its report on the conduct of the 2019 federal election, which recommended voter identification during elections.²
5. The law currently requires a polling officer to be satisfied of the identity of a person seeking to vote, based on questions asked of the person, but does not require identity documents to be presented.³ The Bill proposes to make a person's entitlement to vote (by way of a pre-poll ordinary vote or by way of ordinary vote on polling day) contingent upon: showing a 'proof of identity document' to a voting officer; and the voting officer being reasonably satisfied of the person's identity. If these requirements are not met, a person's claim to vote may be rejected or the person may be entitled to cast a provisional vote.⁴ For itinerant electors, an Indigenous person in a remote area and/or a disadvantaged person, a health or welfare service employee can provide a 'community identity document' which would be accepted as identification.

Key human rights issues

6. The right to vote in elections on the basis of 'universal and equal suffrage' is set out in the *International Covenant on Civil and Political Rights* (article 25) and the *International Covenant on the Elimination of Racial Discrimination* (article 5(c)). Australia is a party to both treaties. The United Nations has confirmed that in practice, this means:⁵
 - States must take effective measures to ensure that all persons entitled to vote are able to exercise that right;
 - any restrictions should be based on objective and reasonable criteria;
 - obstacles to voter registration should not be imposed;
 - States should adopt measures to ensure elections are genuine, free and periodic.

Assessment of necessity

7. The Commission recognises that voter fraud, when it occurs, is a serious risk to the conduct of genuine and fair elections. It is a criminal offence to vote more than once in the same election.⁶ The existence of a criminal offence can

Australian Human Rights Commission
President
Emeritus Professor Rosalind Croucher AM

provide a strong, and effective, disincentive against multiple voting. The Australian Electoral Commission (AEC) also has measures in place to prevent and detect multiple voting. This includes the increased use of electronic certified lists (ECLs) which allow for a real time mark off of voter names as they present to a polling place.⁷

8. The EM states that 'theory and the empirical evidence' justifies voter identification laws.⁸ However, it does not provide any information on the prevalence of voter fraud or how voter identification will address voter fraud. The AEC provided advice to the JSCEM that multiple voting is 'a very small problem'⁹ with multiple voting reflecting approximately 0.03 per cent of total votes at the 2019 federal election for the House of Representatives.¹⁰ The AEC noted that this very small cohort included some people with mental health issues who may not be engaging in deliberately fraudulent activity. Further, the AEC has confirmed that not only is the incidence of multiple voting very small, it has also never been larger than the margin in any seat for a federal election. That is, it has never affected the outcome of an election.¹¹
9. In order to address the concern of multiple voting, the AEC recommended that those who have been identified as intentionally voting multiple times in a previous election be required to vote only by declaration vote in subsequent elections. While these people would be identified by the AEC, their identity would not be made public. Under this proposal, the AEC would count only the first declaration vote cast by a multiple voter and disregard all subsequent declaration votes received or detected.¹² This is the same process that the AEC currently uses with other multiple declaration or postal votes received, which it says are generally unintentional. A similar process operates in New South Wales which provides for the declaration of a person as a 'special elector'.¹³
10. Without further information on the prevalence of voter fraud, and noting the detailed evidence provided by the AEC to the JSCEM, the Commission considers the proposed requirement of voter identification is an unwarranted limitation to the exercise of the right to vote. Further, there are a number of effective safeguards already in place to ensure free and fair elections. There are also other less restrictive alternatives which could be considered to address the relatively small issue of multiple voting that do not require mandatory voter identification for all electors.

Australian Human Rights Commission
President
Emeritus Professor Rosalind Croucher AM

Assessment of proportionality and potential adverse impacts

11. On potential adverse impacts, the Commission is concerned the Bill will create a barrier for people who lack identification documents from exercising their right to vote, leading to further disenfranchisement. This is particularly acute for marginalised and disadvantaged groups including Aboriginal and Torres Strait Islander peoples, people experiencing homelessness, people in remote regions, older people and people with a disability. These groups often do not have access to identification due to a range of factors including insecure housing, inadequate access to technology remoteness and mobility issues. There may also be existing intersectional discrimination within these communities (race, disability, gender, age) which may undermine their capacity to obtain and present identification when voting. If identification requirements were introduced, we also anticipate that there would be challenges in ensuring that information about the requirement was provided in a format and range of Indigenous languages to Indigenous Peoples to ensure that it could be adequately understood, in accordance with the free, prior and informed consent principle (FPIC).

12. The potential disproportionate impact to Aboriginal and Torres Strait Islander peoples was also raised by the Commission in 2014 in response to the proposed introduction of a similar provision in Queensland.¹⁴ The proposed Queensland legislation (which was passed and later repealed)¹⁵ provided for people without identification to make a 'declaration vote'. However, Mr Mick Gooda, the former Aboriginal and Torres Strait Islander Social Justice Commissioner said that he was still concerned about this alternative requirement, stating:

Aboriginal and Torres Strait Islander people attempting to vote may feel intimidated by the requirements to fill in extra paperwork and being treated differently to other voters, a realistic possibility given the figures about the lack of identification in our community I mention above. The declaration process may also have the effect of making people without identification feel further marginalised and may make them reluctant to complete the process. I worry that intending voters may not continue to complete their ballot if required to go through the declaration vote procedure.

13. Further, Aboriginal and Torres Strait Islander peoples often do not possess a birth certificate and face difficulties obtaining subsequent formal identification.¹⁶ For these reasons, care should be taken when examining the

Australian Human Rights Commission
President
Emeritus Professor Rosalind Croucher AM

reported levels of declaration votes in Queensland¹⁷ because they may underestimate the impact of the laws there on the participation of Aboriginal and Torres Strait Islander people.

14. The AEC has also published estimated Indigenous enrolment rates. In 2020, it estimated that only 78% of eligible Indigenous voters were enrolled to vote.¹⁸ This was a small increase on the rates of 76.4% in 2018 and 76.6% in 2019. The low rates of Indigenous enrolment are of particular concern to the overall objective of ensuring all persons entitled to vote are able to exercise that right. Given the numbers involved, this is a much more significant issue than the very low rates of multiple voting. It is vital to avoid steps that would impede the progress made to increase rates of Indigenous participation in our elections.

Risk of further disenfranchisement

15. The Bill provides for a wide range of acceptable forms of identification in the definition of 'proof of identity document'. However it is unclear how this will be implemented in practice. For example, it is unclear whether electronic documents will be accepted or if voting officers will need to determine if a document is genuine (and whether they will have the resources to undertake this assessment). For community identity documents, the Bill also assumes a person is receiving a health or welfare service. Without further clarity on how voting officers will make decisions and how community identity documents will be made available, the Commission is concerned of the increased risk of voter exclusion.

Recommendations

16. The requirement for voter identification does not appear to be necessary or proportionate to the aim of addressing voter fraud and likely constitutes an unreasonable limitation on a person's right to vote. It may also create an obstacle to voter participation, particularly for vulnerable groups, and unduly impinge on their exercise of the right to vote.

Recommendation 1: The Commission recommends that Schedule 2 of the Bill not be passed.

Recommendation 2: The Commission recommends that the Joint Standing Committee on Electoral Matters give further consideration to:

Australian Human Rights Commission
President
Emeritus Professor Rosalind Croucher AM

- the Australian Electoral Commission's proposal of restricting voters who have previously cast multiple votes to only cast a declaration vote in future elections, to address voter fraud concerns in a proportionate and targeted way;
- the experience of the New South Wales 'special elector' process including whether it has been successful in reducing the number of multiple votes and whether it would be appropriate for use at the Commonwealth level.

Recommendation 3: If Recommendation 1 is not accepted the Commission recommends that the Bill be amended to:

- ensure adequate procedures and safeguards on how voting officials will deem an identification document as acceptable (including electronic documents);
- expand the classes of persons that can vouch for the identify of a person in addition to a health or welfare service employee, for example another eligible voter;
- ensure that sufficient, culturally appropriate, assistance is provided to a person to complete a provisional vote if there are concerns about the person's identity so that any limitations to the right to vote are reasonable and minimal.

Yours sincerely

Emeritus Professor Rosalind Croucher AM
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Australian Human Rights Commission
President
Emeritus Professor Rosalind Croucher AM

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- ¹ Statement of Compatibility of Human Rights contained in the Explanatory Memorandum, Commonwealth Electoral Amendment (Integrity of Elections) Bill 2021, at https://www.aph.gov.au/Parliamentary_Business/Bills_LEGislation/Bills_Search_Results/Result?bld=s1319
 - ² Joint Standing Committee on Electoral Matters, *Report on the conduct of the 2019 federal election and matters related thereto*, December 2020, at https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2019Federalelection/Report.
 - ³ Explanatory Memorandum, Commonwealth Electoral Amendment (Integrity of Elections) Bill 2021, at https://www.aph.gov.au/Parliamentary_Business/Bills_LEGislation/Bills_Search_Results/Result?bld=s1319
 - ⁴ *Commonwealth Electoral Act 1918* (Cth), s 235.
 - ⁵ United Nations Human Rights Committee, General Comment No 25: The right to participate in public affairs, voting rights and the right of equal access to public service, UN Doc CCPR/C/21/Rev.1/Add.7, (1996) paras 1, 10, 11.
 - ⁶ *Commonwealth Electoral Act 1918* (Cth), s 339(1A).
 - ⁷ Australian Electoral Commission, Supplementary submission 120.7 to the Joint Standing Committee on Electoral Matters inquiry into the conduct of the 2019 federal election, 13 October 2020, pp 20 and 26–27, at <https://www.aph.gov.au/DocumentStore.ashx?id=259b6277-9c48-4e38-9890-4f7c56a32c9c&subId=670941>.
 - ⁸ Statement of Compatibility of Human Rights contained in the Explanatory Memorandum, Commonwealth Electoral Amendment (Integrity of Elections) Bill 2021 at https://www.aph.gov.au/Parliamentary_Business/Bills_LEGislation/Bills_Search_Results/Result?bld=s1319
 - ⁹ Tom Rogers, Electoral Commissioner, Australian Electoral Commission, Evidence to Joint Standing Committee on Electoral Matters Inquiry into the conduct of the 2019 federal election (6 December 2020), at <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Fcommjnt%2Fed40663b-3554-4dc7-9817-80a3ad9b0848%2F0000%22> Transcript.
 - ¹⁰ Tom Rogers, Electoral Commissioner, Australian Electoral Commission, Evidence to Joint Standing Committee on Electoral Matters Inquiry into the conduct of the 2019 federal election (6 December 2020), at <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Fcommjnt%2Fed40663b-3554-4dc7-9817-80a3ad9b0848%2F0000%22> Transcript.
 - ¹¹ Tom Rogers, Electoral Commissioner, Australian Electoral Commission, Evidence to Joint Standing Committee on Electoral Matters Inquiry into the conduct of the 2019 federal election (6 December 2020), at <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Fcommjnt%2Fed40663b-3554-4dc7-9817-80a3ad9b0848%2F0000%22> Transcript.
 - ¹² Australian Electoral Commission, Supplementary submission 120.7 to the Joint Standing Committee on Electoral Matters inquiry into the conduct of the 2019 federal election, 13 October 2020, p 20, at <https://www.aph.gov.au/DocumentStore.ashx?id=259b6277-9c48-4e38-9890-4f7c56a32c9c&subId=670941>.
 - ¹³ *Electoral Act 2017* (NSW), Sch 6.
 - ¹⁴ Australian Human Rights Commission, Submission No 134 to Legal Affairs and Community Safety Committee Inquiry into the Electoral Reform Amendment Bill 2013 (17 January 2014), at <https://documents.parliament.qld.gov.au/committees/LACSC/2013/ElectoralReform2013/submissions/134.pdf>.
 - ¹⁵ *Electoral Reform Amendment Act 2014* (Qld).

Australian Human Rights Commission
President
Emeritus Professor Rosalind Croucher AM

- ¹⁶ Australian Human Rights Commission, Submission No 134 to Legal Affairs and Community Safety Committee Inquiry into the Electoral Reform Amendment Bill 2013 (17 January 2014), at <https://documents.parliament.qld.gov.au/committees/LACSC/2013/ElectoralReform2013/submissions/134.pdf>.
- ¹⁷ Joint Standing Committee on Electoral Matters, *Report on the conduct of the 2019 federal election and matters related thereto*, December 2020, at https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2019Federalection/Report, [7.43].
- ¹⁸ Australian Electoral Commission, Supplementary submission 120.7 to the Joint Standing Committee on Electoral Matters inquiry into the conduct of the 2019 federal election, 13 October 2020, at <https://www.aph.gov.au/DocumentStore.ashx?id=c5b2e061-4336-4435-b21d-d018b23d0a3e&subId=670941>.