



10 April 2015

The Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

By email only: lacsc@parliament.qld.gov.au

Dear Committee

Electoral and Other Legislation Amendment Bill 2015

The Queensland Association of Independent Legal Services Inc (**QAILS**), the Human Rights Law Centre (**HRLC**), Caxton Legal Centre and the Aboriginal and Torres Strait Islander Legal Service Ltd (**ATSILS**) welcome the opportunity to provide comment on the *Electoral and Other Legislation Amendment Bill 2015* (the **Bill**). We restrict our comments to those parts of the Bill that remove voter proof of identity requirements, and offer our support for these changes.

As we noted in submissions to the Committee's inquiry into the legislation introducing these requirements¹ and in testimony before the Committee,² requiring voters to provide identification is an unnecessary and disproportionate response to any perceived risk of voter fraud. It can disenfranchise significant numbers of voters, and disproportionately affects vulnerable and marginalised groups.

The right to vote

Voting in a parliamentary election is a human right recognised under Australian and international law.

In *Roach v Electoral Commissioner* [2007] HCA 43, Australia's High Court found that the right to vote lies at the heart of Australia's system of representative government. The High Court ruled that Australians' voting rights should not be limited or infringed except where absolutely necessary and then only to the extent that the limitation is proportionate.³

¹ Joint submission from QAILS and ATSILS, Submission No.142; Human Rights Law Centre, Submission No. 133.

² *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 6 February 2014.

³ *Roach v Electoral Commissioner* [2007] HCA 43 (26 September 2007); *Rowe v Electoral Commissioner* [2010] HCA 46 (15 December 2010).

The right to vote is also protected in the International Covenant on Civil and Political Rights (ICCPR) to which Australia is a party (art. 25). The provisions of the ICCPR extend to all parts of federal states, including Queensland, without limitation or exception (art. 50).

Human rights law does not require a particular electoral system, but to be compatible with the right to vote, an electoral system “must guarantee and give effect to the free expression of the will of the electors.”⁴

Although the right to vote under the ICCPR can be limited, those limitations should be based on objective and reasonable criteria.⁵ For example, it may be reasonable to set a minimum age for voting.⁶

The integrity of the voting system is central to the right to vote. Both the right to vote and representative government are undermined by processes that are marred by fraud and corruption. The voting system should guarantee the secrecy, security and validity of the voting processes in law and also ensure that the right to vote can be freely exercised.⁷

Voter identification requirements create an extra hurdle for voters to overcome in order to cast a ballot. In this sense the law will limit the right to vote.

Voter identification requirements are disproportionate and unnecessary

A human rights approach requires that any limitation on the right to vote must be necessary and proportionate. We believe that the voter identification requirement is not a necessary or proportionate limitation for the following reasons:

- There is no evidence of significant voter fraud in Queensland.
- There is a risk that voter identification laws disproportionately and negatively impact already marginalised and disadvantaged groups in society.
- Voter identification requirements will impose a further barrier to participation in elections at a time when that participation is declining.

For these reasons, we submit that identification requirements are an unnecessary infringement on the right to vote. There is simply no need for voter identification requirements in Queensland and too great a risk that they will unnecessarily stop people who are eligible to vote from casting their ballot, and we support the removal of this requirement from the *Electoral Act*.

Proof of identify requirement is a disproportionate response to the risk of voter fraud

Proof of identity requirements are a disproportionate response to the perceived risk of voter fraud. There is insufficient empirical evidence of voter fraud to justify a proof of identity requirement for voters. The *2012 State General Election: Evaluation Report and Statistical Returns* published by the Electoral Commission of Queensland does not include any evidence of, or reference to, electoral or voter fraud. Further, the *Electoral Reform Green Paper: Strengthening Australia's Democracy*, published by the Commonwealth Government in September 2009, reported that there were only 10 cases of multiple voting in the 2007 Commonwealth government election referred to the Australian Federal Police for investigation.

⁴ Human Rights Committee, General Comment 25: The right to participate in public affairs, voting rights and the right of equal access to public service, CCPR/C/21/Rev1/Add.7, 1996 para 21.

⁵ Ibid.

⁶ Ibid, paragraph 10.

⁷ Ibid, para 22.

Proof of identity documents

Not all persons hold documents within the classes included in the regulations. These people would be discriminated against, due to their inability to cast a vote, or the inability to cast a vote in the same way as people who can produce proof of identity.

It is also likely that a large number of people who did hold such documents at one time, to enable their enrolment as a voter, would no longer have access to such documents. People experiencing homelessness may, for example, not hold a current driver licence, passport or other current form of identification card issued by the Commonwealth or State government. Further, people experiencing homelessness would not have accounts with utility providers or receive a voter identification letter from the Electoral Commission of Queensland.

Only 38% of Aboriginal and Torres Strait Islander people hold a drivers licence, compared with 90% in the non-Aboriginal community,⁸ and it is also estimated that thousands of Aboriginal and Torres Strait Islander people in Australia do not have birth certificates.⁹ As a result, the requirement for proof of identity is likely to be more difficult for Aboriginal and Torres Strait Islander people to discharge, indirectly discriminating against them and leading to disenfranchisement and civic disengagement.

Electoral Commission of Queensland data collated by Professor Graeme Orr of the University of Queensland, and shared with us, shows a clear and striking correlation between seats with the highest proportions of ID-less voters and seats with the highest proportions of Indigenous electors.

Proof of identity requirement will not prevent all types of voter fraud

The requirement to show proof of identity does not address all types of voter fraud (if such fraud is a real problem, which has not been proven by the evidence discussed above). Voter fraud can occur in a number of different ways, such as where an ineligible person casts a vote in an election, or where a single person votes more than once, either in multiple locations or in the name of another eligible voter or a fictitious person.

Voter identification does not necessarily prevent a person from voting in multiple locations or from producing a document which would enable the person to vote in the name of another registered voter.

Proof of identity requirement will not enhance voter convenience

The requirement for voters to show proof of identity at a polling booth will not enhance voter convenience, and there was limited communication of the change to the community prior to the January 2015 election. QAILS produced a flyer to educate the community about these changes.¹⁰ Even with such a campaign, it is likely that many people would be unable to, or would forget to, bring the appropriate proof of identity documents with them. This would result in an increase in declaration voting and delays at polling booths. This may, in turn, discourage people from voting. This will be a particular issue for people in remote and regional areas, including many Aboriginal and Torres Strait Island people, who could be unable to return home to obtain appropriate proof of identity documents and return to polling stations on election day.

Further, the introduction of proof of identity requirements into the Act will cause public confusion, because the Act applies only to Queensland parliamentary elections and does not apply to Commonwealth government elections.

⁸ Skinner and Rumble, "A new approach to addressing driver licensing issues within Indigenous communities across Australia," Austroads, December 2012, p 2, available at http://acrs.org.au/wp-content/uploads/15_Robinson-N-PR.pdf

⁹ Castan Centre for Human Rights Law, Submission No. 10.

¹⁰ Available at http://www.qails.org.au/_dbase_upl/Photo%20ID%20factsheet.pdf.

Voter identification laws tend to be discriminatory

Voter ID laws tend to disproportionately affect groups of people who are already marginalised or disadvantaged.

Laws regulating voting will be inconsistent with the right to vote if they permit distinctions to be made between citizens on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.¹¹

In Australia, strict voter identification requirements would be likely to disproportionately affect particular social groups who are less likely to have identification such as elderly people, young people, people experiencing homelessness and Aboriginal and Torres Strait Islander peoples.¹² Voter identification requirements also discriminate against people with limited mobility such as the elderly and people with disabilities who are less able to return to a polling booth in the event that they forget to bring the required identification.

Voter identification laws impose an unjustified barrier to electoral participation

Whilst the regulations allowed a broad range of ID to be eligible and allowed declaration votes to be cast, the voter ID requirement does limit the right to vote.¹³

Voter identification requirements impose a barrier to participation and, if anything, discourage participation in elections. For example, it is impossible to quantify the extent to which the ID requirement will deter or prevent people from voting. The Queensland Department of Justice was concerned that introducing such a requirement could confuse voters.¹⁴ Confusion about whether ID is required or which ID is accepted could discourage people from attending a polling station. This would mean that they do not have the opportunity to take advantage of the declaration voting provisions.

Participation in Australian elections is diminishing. The AEC reports that 20% of eligible voters did not cast a ballot in the 2010 federal election and that 25% of young voters (400,000 people aged 18 to 24) failed to enrol in time to vote in the 2013 election.¹⁵ Informal voting is also on the rise. Over 5.92% of total votes cast in the 2013 election were informal – comprising both people who deliberately voted informally and those whose ballot was unintentionally filled out wrong. This is the highest proportion of informal votes in 30 years.¹⁶

Reform in this area should aim to make voting easier not introduce more barriers to participation. A human rights-based approach requires states to actively ensure wide participation in elections by adopting positive measure to overcome difficulties some members of the community might face in voting, such as illiteracy, language barriers or freedom of movement.¹⁷

¹¹ Human Rights Committee, above n 4, para 3.

¹² In Queensland, only 38% of Aboriginal and Torres Strait Islander people hold a drivers licence, compared with 90% in the non-Aboriginal community: Skinner and Rumble, "A new approach to addressing driver licensing issues within Indigenous communities across Australia," Austroads, December 2012, p 2, available at http://acrs.org.au/wp-content/uploads/15_Robinson-N-PR.pdf. It is also estimated that thousands of Aboriginal and Torres Strait Islander people in Australia do not have birth certificates: See Paula Gerber, "Aboriginal people are still denied full citizenship", The Drum, 1 November 2012.

¹³ The voter ID requirements allow a declaration vote to be made, which must be witnessed by a returning officer (ss 107(7), 112(7) and 121). The voter must declare that they are the person whose name is on the envelope and that they have not already voted in order to be allowed to cast a ballot (s 121(3)). The acceptable forms of ID are set out in regulations.

¹⁴ Queensland Department of Justice and Attorney-General, "Electoral Reform Discussion Paper", January 2013, p 29.

¹⁵ Catherine McGrath, "Statistics show 25 per cent of young people failed to enroll to vote in September election", ABC, 21 August 2013, available at <http://www.abc.net.au/news/2013-08-21/figures-show-25-per-cent-of-young-people-failed-to-enrol-to-vote/4903292>.

¹⁶ Sally Young, "Informal Voting is on the rise", Election Watch 2013 University of Melbourne, available at <http://2013electionwatch.com.au/analysis/informal-voting-rise>.

¹⁷ Human Rights Committee, above n 4, para 12.

Conclusion

For the reasons set out above, we do not believe that there is any need for voter identification requirements in Queensland; indeed, these measures disproportionately and negatively impact already marginalised and disadvantaged groups in society, and impose a further barrier to participation in elections at a time when that participation is declining.

For these reasons, we support those parts of the Bill that remove voter proof of identity requirements.

Please contact us if we can further assist the Committee in its consideration of the Bill.

Yours sincerely,



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About QAILS

Queensland Association of Independent Legal Services (**QAILS**) is the peak body for community legal centres in Queensland and its vision is for a fair and just Queensland.

To achieve this, QAILS supports and develops community legal centres to provide effective, high quality services to their communities, and leads to unite its members and be a leading voice for social justice.

www.qails.org.au

About the Human Rights Law Centre

The Human Rights Law Centre is an independent, non-profit, non-government organisation that protects and promotes human rights in Australia and in Australian activities overseas, through a strategic combination of research, advocacy, litigation and education.

The HRLC is a registered charity and has been endorsed by the Australian Taxation Office as a public benefit institution. All donations are tax deductible.

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About ATSILS

ATSILS is a community-based organisation established to provide professional and culturally proficient legal services for Aboriginal and Torres Strait Islander people across Queensland. ATSILS' mission is to foster collaborative partnerships with its communities, and key government and non-government stakeholders to influence positive change and deliver high quality legal services for Aboriginal and Torres Strait Islander people within or exposed to the justice system.

ATSILS' role includes:

- influencing a positive change within the justice system and broader legal system to reflect a better understanding and appreciation of the culturally specific and diverse challenges and circumstances that impact upon Aboriginal and Torres Strait Islander people and communities; and
- provide quality, evidence-based research, advice and direction to rectify policies and practices that impact adversely and disproportionately on the legal rights of Aboriginal and Torres Strait Islander people.

www.atsils.org.au

About Caxton Legal Centre

Caxton Legal Centre is an independent, non-profit community organisation providing free generalist and specialist legal and social work services across a variety of programs.

We promote access to justice by empowering people to address their legal problems, increasing community awareness of the law and working to change unfair laws.

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