



## **SUBMISSION**

to

**Legal Affairs and Community Safety Committee**

**Electoral Reform Amendment Bill 2013**

**17 January 2014**

## Introduction

The Legal Affairs and Community Safety Committee (the Committee) has invited submissions on the *Electoral Reform Amendment Bill 2013* introduced into the Queensland Parliament on 21 November 2013, by the Attorney-General and Minister for Justice, Hon Jarrod Bleijie MP. The Anti-Discrimination Commission Queensland (ADCQ) thanks the Committee for the opportunity to comment on this Bill.

## About the Anti-Discrimination Commission Queensland

The ADCQ is an independent statutory authority established under the Queensland *Anti-Discrimination Act 1991* (the AD Act).

One of the functions of the ADCQ is to promote an understanding, acceptance and public discussion of human rights in Queensland.

Human rights under the AD Act include the rights and freedoms recognised in the *International Covenant on Civil and Political Rights*(ICCPR)<sup>1</sup>. It also includes other human rights instruments and declarations that have been ratified, acceded to or adopted by Australia.

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<sup>1</sup> Entry into force for Australia 13/11/1980, except Article 41, which came into force for Australia on 28 January 1993.

## The human right to political participation

The right to participate in the political process, including the right to vote, is a fundamental civil liberty and human right and should be enjoyed by all people without discrimination.

As a party to the ICCPR, Australia is bound under international law to ensure the protection and promotion of the rights in that Covenant.

Article 25 of the ICCPR states that:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.

The distinctions in article 2 of the ICCPR include 'race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'

The United Nations Human Rights Committee has issued a General Comment (General Comment 25) to help interpret the meaning of article 25 of the ICCPR.

The General Comment explains that any restrictions on the rights in article 25 of the ICCPR 'should be based on objective and reasonable criteria.'

The *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD) Article 5 (c) states that:

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: ...

(c) Political rights, in particular the right to participate in elections, to vote and to stand for election on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service; <sup>2</sup>

Article 2 in the ICERD refers to the obligation to eliminate racial discrimination and 'to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.'

### **Objectives of the *Electoral Reform Amendment Bill 2013***

The stated policy objectives for the Bill are to amend the *Electoral Act 1992* to ensure the opportunity for full participation in Queensland's electoral process and to enhance voter integrity and voting convenience.

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<sup>2</sup> Entry into force for Australia 30/10/75, except Article 14, which came into force for Australia on 4 December 1982

To achieve the policy objectives, the Bill introduces a number of proposed legislative changes including:

- facilitating electronically assisted voting, particularly to ensure access to secret and independent voting for blind and vision impaired voters and voters who require assistance because of a disability, motor impairment or insufficient literacy; and
- implementing a proof of identity requirement to vote in a state election in a way that reduces the potential for electoral fraud.

This submission focuses on human rights and equality issues arising from these proposed amendments to the *Electoral Act 1992* contained in the Bill.

## **Human rights and equality issues**

A healthy democracy ensures that all members of the community have equal access to the political process. It is therefore vital that the right to vote is enjoyed equally by all Queenslanders. However, for a range of reasons equal access to the political process does not currently exist for all Queenslanders. Disadvantaged groups include certain young people, prisoners, Aboriginal and Torres Strait Islander peoples, people living in rural and remote areas, people with disability and homeless people.

In particular this submission comments on those aspects of the Bill that either improve or make it more difficult for certain young people, Indigenous peoples,

people with disability and people living in rural and remote areas to exercise their human right to political participation.

## **Facilitating electronically assisted voting**

When introducing the Bill to Parliament the Attorney-General stated:

Reforms to maximise voter participation are also proposed in the Bill. Provisions to enable electronically assisted voting will be inserted into the act. The government supports offering electronically assisted voting to all Queenslanders, if associated security and integrity arrangements can be assured. In the short term, the priority is to make electronically assisted voting available on a targeted basis for blind and vision impaired voters and voters who require assistance voting because of a disability, motor impairment or insufficient literacy. Electronically assisted voting will, for the first time in Queensland, enable these voters to cast their votes independently and in secret.<sup>3</sup>

The proposed new section 121A provides that an elector may make an electronically assisted vote if, inter alia, the elector cannot vote without assistance because the elector has an impairment or an insufficient level of literacy; or the elector can not vote at a polling booth because of an impairment.

The Explanatory Notes to the Bill state the new section 121A is inserted to:

provide for the implementation of electronically assisted voting. Electronic voting refers to any system by which voters cast their votes using an online

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<sup>3</sup> Hansard 21 November 2013 p4221

system such as the internet or touch-tone phone. It includes both remote voting and electronically assisted voting. The priority is to implement electronically assisted voting for an elector who can not vote without assistance because of impairment or because they have insufficient literacy.<sup>4</sup>

The proposed new section 121B provides for the commission to make procedures about how an elector may make an electronically assisted vote for an election, and for the procedures to provide for the registration of electors who may make an electronically assisted vote for an election. This suggests an elector who wishes to vote electronically will be required to make an application to do so, as is currently the case, for example, for electors who wish to be registered as a special postal voter.

Decisions made on applications for registration to vote electronically will be administrative decisions, and as such they may be subject to challenge under administrative law.

It is in the best interests of both the public and the administrators that the provisions are as clear as possible as to whom they apply and the circumstances in which they apply. Neither the Bill nor the *Electoral Act 1992* defines terms such as 'impairment', 'electronically assisted vote' and 'can not'.

Whilst it might be beneficial not to constrain the meaning of 'impairment' with an exhaustive definition, the ordinary meaning of 'impairment' is not confined to physical or mental disabilities. Also, a literate person with limited or no fluency in

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<sup>4</sup> Explanatory Notes page 6

the English language might be said to have a language impairment. Adding a descriptive such as 'physical or mental, or 'physical, mental or language', to 'impairment' might provide greater clarity for the public and limit the potential for applications involving circumstances not intended to be covered by the amendment.

The electors who may make an electronically assisted vote include those who 'cannot vote without assistance' and those who 'cannot vote at a polling booth' because of an impairment. The latter in particular is analogous to the element of indirect discrimination of an inability to comply with a term, requirement or practice. In cases of indirect impairment discrimination, courts and tribunals have interpreted the 'inability to comply' element broadly rather than literally, and have variously considered whether a person is able to comply 'in a meaningful sense', 'without serious disadvantage', and 'reasonably, practically and with dignity'. Unless a strict literal interpretation is intended, examples inability to vote without assistance and inability to vote at a polling booth would assist in the understanding and implementation of the new provisions.

The ADCQ is very supportive of the provisions in the Bill which facilitate electronically assisted voting, particularly to ensure access to secret and independent voting for people with an impairment including blind and vision impaired voters; and voters who require assistance because of a disability, motor impairment or insufficient literacy. Many voters with these types of impairments do not presently have a process whereby they can vote without assistance. Being able to cast a vote independently is an important part of an individual's participation in



the political process, and the provisions are a positive development in providing equality and protecting human rights.

The prescribed procedures under section 121A will be an important part of the effectiveness of this new provision, as will the publicity campaign notifying those eligible to vote electronically of this option for casting their vote.

### **Requirement for Proof of Elector's Identity**

Clause 9 of the Bill amends section 107 (Procedure for voting) of the *Electoral Act 1992* to provide that to cast a vote at a polling booth on polling day, an elector must provide an issuing officer with proof of the elector's identity. If the elector does not provide the issuing officer with proof of identity or the issuing officer is not satisfied of the elector's identity, the elector will be able to make a declaration vote under section 121. The *Electoral Regulation 2013* will set out the types of documents that may be used as proof of identity by voters.

When introducing this amendment to the Parliament, the Attorney-General said:

The Bill proposes reforms to enhance voting integrity. A proof of identity requirement on polling day will be introduced to reduce the potential for electoral fraud. The government acknowledges that not all voters will have ready access to photographic identity. A range of acceptable proof of identity documents, not restricted to photographic identification, will be set out in the Electoral Regulation 2013. A voter who does not provide proof of identity on polling day will still be permitted to cast a declaration vote. The Electoral Commission of Queensland must check each declaration vote made and only

if satisfied of the voter's entitlement to vote will the ballot paper be included in the count.<sup>5</sup>

## **Documents that may be used as proof of identity by voters**

Officials from the Department of Justice and Attorney General provided evidence to the Committee that the type of documents that would be listed in the regulation that could be used for identification would include:

- Cards issued by the Commonwealth or a State of a person's entitlement to a financial benefit—so a healthcare card or a Seniors Card or a Medicare card;
- A rates notice, or electricity account statement; that sort of documentation;
- 18-plus card;
- The cards that are often sent out prior to an election that eligible voters receive in their letterboxes.<sup>6</sup>

## **ADCQ concerns with the proof of identity requirement**

Very little evidence has been put forward by the Attorney-General, his Department or the Electoral Commission of the lack of integrity of the existing voting system to justify the introduction of this new provision.

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<sup>5</sup> Hansard 21 November 2013 p4222

<sup>6</sup> Transcript Public Briefing by the Department of Justice and Attorney-General held on 12 December 2013 p3

In the absence of evidence that there is regular and routine fraud occurring that compromises the integrity of an election result, it is important to consider whether the requirement for a voter to prove their identity at the time they vote may have the affect of disenfranchising voters who come from disadvantaged groups.

The ADCQ is concerned about the impact of the proof of identity requirement on Aboriginal and Torres Strait Islander people, people with mental illness and people with intellectual disability, some young people, and people in rural and remote areas (many of whom are Indigenous people.)

Even though the documents that are proposed to be listed in the regulation to establish a person's identity are broad, some members of the abovementioned disadvantaged groups may have difficulty in providing these identification documents on election day. A much higher percentage of Indigenous people than other voters do not have a driver's license.<sup>7</sup> People from some of these disadvantaged groups experience a higher degree of homelessness than the general population and may not have a fixed address at which they receive correspondence. For a range of reasons they may not have the necessary documentation to prove their identity at the time they present to vote. They will then be required to cast a declaration vote. The provisions have the potential to make it more difficult for people from these groups to exercise, or prevent them from exercising, their fundamental human right to participate in the political process.

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<sup>7</sup> *Doing Time – Time for Doing - Indigenous youth in the criminal justice system*, Report of House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, June 2011 p181  
[http://www.aph.gov.au/parliamentary\\_business/committees/house\\_of\\_representatives\\_committees?url=/atsia/sentencing/report/chapter6.htm#anc20](http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=/atsia/sentencing/report/chapter6.htm#anc20)

There is also the potential for voter confusion, inconvenience and delay. Any slight benefit in the new requirements in improving voter integrity may be outweighed by the potential for voter disenfranchisement, extra administrative costs and inconvenience of the new system.

For these reasons, the ADCQ suggests the Committee give serious consideration as to whether there is a necessity to include these provisions in the Bill, when the evidence of voter fraud and lack of integrity in the existing voting system does not appear to be of substance.

## **Summary of Recommendations**

1. Clause 15 of the Bill (Electronically assisted voting) - The Committee consider whether greater clarity ought to be given to the definition and meaning of the terms 'impairment' , 'electronically assisted vote' and 'can not' to ensure there is sufficient clarity as to the intent of the amendments.
2. Clause 9 of the Bill (Procedure for voting) – The Committee recommend the proof of identity requirement be removed from the Bill as there is insufficient evidence for the necessity for the proof of identity requirement.

The ADCQ again thanks the Committee for the opportunity to comment on this Bill.