



21 January 2013

**Electoral Reform Amendment Bill 2013
Submission 142**

Mr Brook Hastie
Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane QLD 4000

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

Dear Mr Hastie

Electoral Reform Amendment Bill 2013

The Queensland Association of Independent Legal Services Inc. (**QAILS**) and the Aboriginal and Torres Strait Island Legal Service (**ATSILS**) welcome the opportunity to provide this information to the Legal Affairs and Community Safety Committee (**Committee**) as part of its consideration of the *Electoral Reforms Amendment Bill 2013* (the **Bill**).

Executive Summary

QAILS and ATSILS applaud the policy objectives for the Bill, as stated in the Explanatory Notes, of ensuring the opportunity for full participation in Queensland's electoral process, increasing electoral integrity and enhancing voter convenience. We support the implementation of electronically assisted voting in achieving these goals.

However, the requirement that voters provide proof of evidence is unnecessary, disproportionate and risks disenfranchising a large number of Queensland voters, particularly Aboriginal and Torres Strait Island peoples, people with disability, older and young people, and people experiencing homelessness.

QAILS and ATSILS recommend:

- accepting the provisions of the Bill that allow for electronically assisted voting (new pt 7, div 5, sub-div 3A);
- including a definition of 'impairment';
- that proposed proof of identity requirements are removed from the Bill;
- if proof of identity requirements are retained, that the Bill clarify the process for confirming a voter's entitlement to vote after the making of a declaration vote.

About QAILS

QAILS is the independent peak body for community legal services in Queensland and represents the thirty-three funded and unfunded member community legal services operating throughout Queensland. QAILS is an incorporated association established for the public charitable purpose of assisting the Queensland community, particularly disadvantaged and marginalised people, to obtain access to legal services. Further, QAILS' purpose is to provide a collective voice advocating for social justice.

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.

Electronically assisted voting

QAILS and ATSILS applaud the policy objectives for the Bill, as stated in the Explanatory Notes, of ensuring the opportunity for full participation in Queensland's electoral process and enhancing voter convenience. In particular, QAILS and ATSILS support the proposed amendments to the *Electoral Act 1992* (the **Act**) which facilitate 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.

However, clause 15 of the Bill includes as the proposed new section 121A, a provision which enables an elector to make an electronically assisted vote if:

- (a) the elector can not vote without assistance because the elector has:
 - (i) an impairment;
 - (ii) an insufficient level of literacy;
- (b) the elector cannot vote at a polling booth because of an impairment; or
- (c) the elector is a member of a class of elector prescribed under a regulation for this section.

It is noted that the term "impairment" is not currently defined in the Act, or in the schedule to the *Acts Interpretation Act 1954*. We recommend that a definition of the term "impairment" is included in the Act, that includes voters with impairments of the kind referred to in the Explanatory Notes (the definition of 'impairment' in the *Anti-Discrimination Act 1991* may be appropriate).

Proof of identity requirement

It is also noted that the policy objective of the Bill includes enhancing voter integrity, by implementing a proof of identity requirement to vote in a State election. It is asserted that this reduces the potential for electoral fraud.

The Bill proposes an amendment to section 107 of the Act to require a voter to give an issuing officer a proof of identity document before a ballot paper is issued.

If a voter cannot provide a proof of identity document, the voter will be required to make a declaration vote under section 121 of the Act.

QAILS and ATSILS do not support the introduction of a proof of identity requirement to vote in State elections, for the reasons set out below:

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

The introduction of a proof of identity requirement is a response which is disproportionate 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.

- ***Proof of identity documents***

The Bill includes amendments to section 2 of the Act to include a definition of "proof of identity document" which is a document relating to proof of a person's identity prescribed under a regulation. The *Electoral Regulation 2013 (Regulation)* does not yet prescribe documents relating to the proof of a person's identity. However, in a media release dated 21 November 2013, the Attorney-General and Minister for Justice identified the following classes of documents as acceptable forms of identification:

- a current driver licence;
- a current Australian passport;
- a voter identification letter issued by the Electoral Commission of Queensland;
- a recent account or notice issued by a public utility; or
- an identification card issued by the Commonwealth or the State as evidence of the person's entitlement to a financial benefit (such as a Commonwealth seniors health card, a Medicare card or a pensioner concession card).

While it is acknowledged that the classes of documents specified above are broad, it must also be acknowledged that not all persons will hold documents within those classes. 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.

In its submission to this inquiry, the Human Rights Law Centre notes that only 38% of Aboriginal and Torres Strait Islander people hold a drivers licence, compared with 90% in the non-Aboriginal community (see Skinner and Rumble, "A new approach to addressing driver licensing issues within Indigenous communities across Australia," Austroads, December 2012). It is also estimated that thousands of Aboriginal and Torres Strait Islander people in Australia do not have birth certificates, discussed in the Castan Centre for Human Rights Law's submission to this inquiry. 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.

The Bill proposes amendments to the Act which provide that voters who cannot provide proof of identity will be required to cast a declaration vote. In his speech introducing the Bill into Queensland Parliament, the Attorney-General and Minister for Justice stated that 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 votes counted. If proof of identity requirements are to be maintained, the Bill should clarify the manner in which a voter's entitlement to vote will be confirmed after the making of a declaration vote.

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

The requirement to show proof of identity will 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.

The classes of documents set out above would not necessarily prevent a person from either voting in multiple locations or from producing a document which would enable the person to vote in the name of another registered voter. Even if the proof of identity requirements do make it easier to detect voter fraud (such as a voter casting votes in multiple locations), where the votes have already been cast they cannot be retrieved, so the voter fraud may be punished, but any impact on the election in question cannot be remedied.

- ***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. It has already been acknowledged, by Ms Imelda Bradley during the public briefing of the Committee on 12 December 2013, that the introduction of proof of identity requirements would require an extensive campaign to educate voters on the specific documents that would be acceptable as proof of identity on election day. 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, particularly Aboriginal and Torres Strait Island peoples, who will 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.

Conclusion

As set out above QAILS and ATSILS are supportive of the policy objectives for the Bill, of ensuring the opportunity for full participation in Queensland's electoral process and enhancing voter convenience. 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, will achieve this policy objective.

However, QAILS and ATSILS consider that the introduction of proof of identity requirements to vote in Queensland elections will work against these policy objectives, may discriminate against people who do not have access to proof of identity documents which have been publicly identified by the Attorney-General and Minister for Justice, and the consequential rise in declaration votes will impact negatively on voter convenience.

Thank you for considering this submission; you can address any queries to James Farrell (QAILS) or Shane Duffy (ATSILS) on the details below.

Yours sincerely,



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