



ANTI DISCRIMINATION
COMMISSION QUEENSLAND

Submission

to

Legal Affairs and Community Safety Committee

**Inquiry into the *Justice and Other
Legislation Amendment Bill 2014***

by the

Anti-Discrimination Commission Queensland

December 2014

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Introduction

1. The Anti-Discrimination Commission Queensland (Commission) is an independent statutory authority established under the Queensland *Anti-Discrimination Act 1991*.
2. The functions of the Commission include promoting an understanding, acceptance and public discussion of human rights in Queensland, and dealing with complaints alleging contraventions of the *Anti-Discrimination Act 1991* and of whistle-blower reprisal. Complaints that are not resolved through conciliation can be referred to the Queensland Civil and Administrative Tribunal for hearing and determination.
3. This submission focuses on proposed amendments to the *Anti-Discrimination Act 1991*, the *Queensland Civil and Administrative Tribunal Act 2009* and the *Referendums Act 1997*.

Recommendations

4. The Commission makes the following recommendations:
 - (i) That clause 109 of the Bill be amended to provide that the new sections 131 and 132 of the *Queensland Civil and Administrative Tribunal Act 2009* include a definition of final decision, in the following terms:

final decision includes an agreement filed with the tribunal under the *Anti-Discrimination Act 1991*, section 164 or section 189.
 - (ii) Removal of the provisions of the Bill relating to the introduction of proof of identity requirements for the *Referendums Act 1997*.

Amendment of the *Anti-Discrimination Act 1991*

5. Clause 10 of the Bill would amend section 119 of the *Anti-Discrimination Act 1991* so that the examples properly refer to the paragraphs of section 119 instead of referring to them as subsections.

6. This is an editorial amendment and is supported by the Commission.

Amendment of the *Queensland Civil and Administrative Tribunal Act 2009*

7. Clause 109 of the Bill would replace sections 131 and 132 of the *Queensland Civil and Administrative Act 2009* (QCAT Act) with new sections 131 and 132. The new sections provide that a monetary final decision of the tribunal is taken to be filed in a court of competent jurisdiction, and that a non-monetary final decision of the tribunal is taken to be a non-monetary order of the relevant court.
8. These provisions assist in the enforcement of orders made by the tribunal, and are supported by the Commission.
9. The *Anti-Discrimination Act 1991* provides for the filing with the tribunal of agreements reached at the Commission stage (section 164) and agreements reached at the tribunal stage (section 189). Both sections provide that after an agreement is filed with the tribunal it is enforceable as an order of the tribunal. See attachment A for the full text of sections 164 and 189 of the *Anti-Discrimination Act 1991*.
10. The Commission recommends an amendment to the proposed new sections 131 and to ensure the new enforcement provisions extend to agreements filed with QCAT under the *Anti-Discrimination Act 1991*.

Recommendation 1

That clause 109 of the Bill be amended to provide that the new sections 131 and 132 of the *Queensland Civil and Administrative Tribunal Act 2009* include a definition of final decision, in the following terms:

final decision includes an agreement filed with the tribunal under the *Anti-Discrimination Act 1991*, section 164 or section 189.

Amendment of the *Referendums Act 1997*

Proof of identity

11. Clause 118 of the Bill amends section 22 (Procedure for voting) of the *Referendums Act 1997* to provide that to cast a vote at a polling booth on polling day, an elector must provide an issuing officer with a document in 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 32.

12. Clause 130 of the Bill provides that 'proof of identity document' will be defined in accordance with the *Electoral Act 1992*. Under the *Electoral Act 1992* each of the following is a proof of identity document:

- (a) a current driver licence;
- (b) a current Australian passport
- (c) a voter information letter issued by the commission;
- (d) a recent document evidencing electoral enrolment;
- (e) an identification card issued by the Commonwealth or State evidencing the person's entitlement to a financial benefit;

Examples –

a Commonwealth seniors health card, health care card, Medicare card, pensioner concession card or repatriation health card

- (f) an adult proof of age card issued by the State;
- (g) a recent account or notice issued by a local government or a public utility provider;

Examples –

a council rates notice, electricity account statement, gas account statement or water bill

- (h) a recent account statement, current account card or current credit card issued by a financial institution;

- (i) a recent account statement issued by a carriage service provider as defined under the Telecommunications Act 1997 (Cwlth);

Examples –

a telephone bill or internet bill

- (j) a recent notice of assessment issued under the Income Tax Assessment Act 1997 (Cwlth).¹

13. The Commission expressed concerns about the proof of identity requirement when this was introduced into the *Electoral Act* earlier this year.² Those concerns remain valid and are repeated here.
14. Very little evidence has been put forward of the lack of integrity of the existing voting system to justify the introduction of the proof of identity requirement.
15. In the absence of evidence that there is regular and routine fraud occurring that compromises the integrity of an electoral or referendum 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.
16. The Commission is concerned about the impact of the proof of identity requirement on Aboriginal and Torres Strait Islander people, people with mental illness, people with intellectual disability, some young people, and people in rural and remote areas (many of whom are Indigenous people).
17. Even though the documents to establish a person's identity are broad, some members of the abovementioned disadvantaged groups may have difficulty in providing these identification documents on a voting day. A much higher percentage of Indigenous people than other voters do not

¹ *Electoral Act 1992*, section 2, and Electoral Regulation, section 3.

² Submission to the Legal Affairs and Community Safety Committee on the Inquiry into the *Electoral Reform Amendment Bill 2013*, 17 January 2014. Available on the Commission website at www.adcq.qld.gov.au.

have a driver licence.³ 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.

18. 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.
19. For these reasons, the Commission 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.

Recommendation 2

Removal of the provisions of the Bill relating to the introduction of proof of identity requirements for the *Referendums Act 1997*, as there is insufficient evidence of any necessity for the proof of identity requirement.

³ *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 .

Attachment A

Anti-Discrimination Act 1991

164 Resolution by conciliation

- (1) If the complaint is resolved by conciliation, the commissioner must record the terms of the agreement and have the document signed by the complainant and the respondent.
- (2) The commissioner must provide a copy of the document to each party and file the document with the tribunal.
- (3) The agreement is then enforceable as if it were an order of the tribunal.

189 Resolution before tribunal order

- (1) If the complainant and the respondent resolve the complaint before it has been determined by the tribunal, they must record the terms of the agreement in a document signed by the complainant and the respondent and file the document with the tribunal.
- (2) The tribunal must provide a copy of the document to each party.
- (3) The agreement is then enforceable as if it were an order of the tribunal.