



Australian
Human Rights
Commission

Aboriginal and Torres Strait Islander
Social Justice Commissioner

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17 January 2014

Legal Affairs and Community Safety Committee
via email: lacsc@parliament.qld.gov.au

To whom it may concern

Legal Affairs and Community Safety Committee Inquiry into the Electoral Reform Amendment Bill 2013

I welcome the opportunity to contribute to this Inquiry into the Electoral Reform Amendment Bill 2013 as Aboriginal and Torres Strait Islander Social Justice Commissioner at the Australian Human Rights Commission (the Commission).

The Commission is established by the Human Rights Commission Act 1986 (Cth) (AHRC Act) and is Australia's national human rights institution. I provide this correspondence under my legislative function to promote discussion and awareness of human rights in relation to Aboriginal and Torres Strait Islander peoples as set out at s 46C of the AHRC Act.

I have concerns about the practical effect of the Electoral Reform Amendment Bill 2013 (the Bill), particularly with regard to the identification requirements.

The right to vote, without discrimination, is a human right established in a number of treaties under which Australia has obligations. The International Covenant on Civil and Political Rights (article 25) and the International Covenant on the Elimination of Racial Discrimination (article 5(c)) set out this right to vote.

The Declaration on the Rights of Indigenous Peoples also affirms Indigenous peoples' 'rights to participate fully, if they so choose, in the political, economic, social and cultural life of the State.'¹

I note that the Bill proposes that voters be required to produce identification before being issued a ballot paper.² The types of identification documents that will be accepted have been announced by the Minister and will be established through the Electoral Regulations 2013.³ If a person is deemed not to have appropriate identification they may make a declaration vote, much like a provisional vote persons are allowed to make if their name is not found on the electoral role on polling day.

Many Aboriginal and Torres Strait Islander people face difficulties in obtaining formal identification and may have insufficient documents to meet the proposed requirements. A 'vicious cycle' is said to exist where the lack of a birth certificate prevents people from being granted other forms of identification, however individuals

cannot obtain a birth certificate because they cannot satisfy the identification requirements to be granted one.⁴

As a broad indicator of the potential disproportionate influence of these laws, it has been estimated that only 38 per cent of Indigenous people in some local government areas in Queensland have a drivers licence compared to an average of 90 per cent of the rest of the eligible population.⁵

The proposed laws will create a barrier for those people who lack identification documents to exercise their right to vote.

Declaration votes allow an alternative way to cast votes for people with insufficient identification and are a preferable alternative to disallowing voters with insufficient identification from voting at all by. However, I remain concerned about the effect of identification requirements on Aboriginal and Torres Strait Islander people.

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.

The Australian Electoral Commission have reported the highest level of informal votes (7.36 per cent) in those cast as provisional votes (the manner most similar to how voters without ID will cast their votes).⁶ This figure doesn't include the provisional votes excluded in preliminary scrutiny before counting because the declaration details are incorrectly completed. There is greater opportunity for error, particularly for those with less advanced literacy, when required to complete more complex paperwork than just filling in a ballot paper. This means that those without identification may have an increased likelihood of their votes not being counted, even if they proceed to the alternative declaration vote process.

This bill is said to be motivated by a desire to prevent electoral fraud: however there is no specific evidence of any voter fraud within the existing system.

A basic tenet of human rights is the test of proportionality, that is, any action taken to address an issue must be proportionate to the risk of infringing on rights. Given the lack of evidence of voter fraud and the risk of disenfranchisement of high numbers of Aboriginal and Torres Strait Islander voters, I believe these laws may not satisfy this test and could potentially be considered to be an imposition to the exercise of the rights of Aboriginal and Torres Strait Islander people.

If the bill is to proceed I encourage the Queensland Government to strengthen its efforts to address the barriers to Aboriginal and Torres Strait Islander people obtaining identification documents. This should include efforts to ensure that birth certificates are available and affordable for all members of the community.

I note that concerns have also been raised about the effect of the bill on people with a culturally and linguistically diverse background, people with a disability, older Queenslanders and people experiencing homelessness.

I welcome the aim of the bill, as stated by the Attorney General, to allow electronically assisted voting to allow voters with a disability to cast their votes independently and in secret.⁷

Thank you for the opportunity to contribute to this Inquiry and considering my contributions.

Please contact either myself or Jack Register, Project and Research Officer at jack.register@humanrights.gov.au if you would like to further discuss this letter.

Yours sincerely



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¹ Declaration on the Rights of Indigenous Peoples, Article 5.

² Electoral Reform Amendment Bill, cl 9.

³ Rice S, *Voting revolution for Queensland*, (Media release, 21 November 2013). At <http://www.saxonrice.com.au/voting-revolution-for-queensland/> (viewed 16 January 2014).

⁴ A Gargett, P Gerber & M Castan, 'A right to birth registration in the Victorian Charter? Seek and you shall not find!' (2010) 36(3) *Monash University Law Review* 1, p 5.

⁵ M Skinner & N Rumble, 'A new approach to addressing driver licensing issues within Indigenous communities across Australia' (2010) *Austrroads*, p 2. At http://acrs.org.au/wp-content/uploads/15_Robinson-N-PR.pdf (viewed 16 January 2013)

⁶ Australian Electoral Commission, *Analysis of Informal Voting House of Representatives, 2010 Federal Election* (2011) p 17. At http://www.aec.gov.au/about_aec/research/paper12/hor.htm (viewed 16 January 2014).

⁷ Queensland, *Parliamentary Debates*, Legislative Assembly, 21 November 2013, p 4221, (The Hon JP Bleijie, Attorney-General and Minister for Justice).