

27 November 2021

Senator Jacqui Lambie
Senate, Parliament House
Canberra ACT 2600
By email: senator.lambie@aph.gov.au

Dear Senator Lambie,

The NSW Council for Civil Liberties (NSWCCL) was alerted to your website poll asking people to assist you in determining how to vote on the recently introduced Electoral Legislation Amendment (Voter Integrity) Bill 2021 (Bill).

This Bill requires voters to provide an acceptable form of identification, or alternatively an attestation from another enrolled person who does have an acceptable form of identification, in order to cast an ordinary pre-poll or polling day vote in federal elections and referenda.

NSWCCL does not support the passage of the Bill.

1. **There is no requirement for photo ID**

It is submitted that there is no demonstrated need for such a bill (unless it presages the attempted reintroduction of an identity card to be carried by all Australians such as the ill-fated, discredited Australia card).

The explanatory note states that the new provisions will reduce the risk of electoral fraud (in the form of voter impersonation). NSWCCL contends that there is no evidence of voter impersonation. Voter impersonation is different to multiple voting. Multiple voting has not been identified as a significant problem either.

Multiple voting

Australian laws on voting are guided by compulsory voting (or at least compulsory marking off). For this reason, voting is made as easily accessible and available as possible. Votes may be cast at any polling place in an electorate, and pre-poll, postal and absent voting are available. That obviously does allow for the possibility of someone accidentally voting more than once. Political analyst Antony Green mentions the common example of an elector voting in a nursing home, and then being taken out to vote again on polling day.

At the 2019 election, there were around 2,000 multiple roll mark-offs from around 15 million votes. Around 20 suspected multiple voters were referred to the Australian Federal Police. None was prosecuted.¹

The Australian Electoral Commissioner, Tom Rogers, has stated in Senate Estimates that “evidence of multiple voting to date is vanishingly small” but acknowledged there was a “perception issue that other people think is worth dealing with”.² A perception issue alone, in our view, is insufficient to warrant intrusive measures such as those contemplated by the Bill.

¹ Green, A. (October 28, 2021) Government Introduces Bill Requiring Voters to show ID to Vote *Antony Green's Election Blog*

<https://antonygreen.com.au/government-introduces-law-requiring-voters-to-show-id-to-vote/>

² Parliamentary Joint Committee on Human Rights-Human rights scrutiny report-Report 13 of 2021

Impersonation

There is no proof of any incidences of fraudulent impersonation. Green points out that “If voters were voting in the name of someone who voted, it would be detected as a multiple vote. If it was done on behalf of a voter the miscreant knew would not vote, we have no way of detecting such a fraud.”³ This conduct would be caught in the statistics for multiple voting referred to above that Rogers describes as “vanishingly small”.

Given that voters, at least, have to identify themselves by full name and address and if voting via postal vote must have their contact details confirmed beforehand, in our view, the risk of impersonation is slim.

2. The new provisions demand proof of identity not proof of residence

The Bill seeks to establish a person’s identity, when the prime purpose of marking off the electoral roll is/and should continue to be to determine address within the electoral area/roll.

Many people do not possess drivers licences; there are many people with driver licences that do not match where they are enrolled to vote for insurance or other reasons. Some of the allowable ID documents such as Medicare cards and credit cards will not have an address.

Although proof of enrolment mailed to each elector would be one form of ID, such a situation would be open to mail fraud. The Bill will not assist in reducing this kind of fraud, even if there were any evidence that it is occurring.

If the Bill is to pass, and we do not think that it should, it should at least require proof of identity and residence.

3. The legislation is rushed

Similar legislation introduced by the Newman Queensland government prior to the Stafford by- election, did not resolve issues of multiple voting and impersonation. Remote electors were considered likely to have more problems with ID. This was a lesson in not rushing major electoral changes through before an election.

The Parliamentary Joint Committee on Human Rights (PJCHR) said the government had not explained “*why the current laws are insufficient ... and why the measures address a pressing and substantial concern*”.⁴ The Bill purports to respond to recommendations of the Joint Standing Committee on Electoral Matters' reports into the conduct of the 2013, 2016 and 2019 elections. However, there was no government response at the time of the 2019 report and the reports (apart from the 2013 report) are mostly short of detail.⁵

Electoral legislation, of this kind, which involves major change to the way the system works, needs serious consideration and time for implementation, for staff to be trained and viable alternatives to be available so that there is no disenfranchisement of voters. Training will involve trying to ensure consistency among casual poll workers as to the ID they accept and the questions they ask and under what circumstances ID will be satisfied. Delays will be experienced in completing attestation documents or provisional vote documents, all delays and frustrations that people will need to manage while social distancing, checking in and wearing masks (in the foreseeable future).

This is putting to one side the time (which varies from agency to agency) that it may take people with vulnerabilities who do not already have adequate identification documents available to obtain them from the relevant organisations in time for any election.

(10 November 2021) p.6

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Scrutiny_reports/2021/Report_13_of_2021

³ Op.cit. Green

⁴ Op.cit. PJCHR

⁵ Op.cit. Green

4. Australia's compulsory voting practices are different from other jurisdictions

The explanatory note states that "The measures in this Bill will bring the Australian electoral system into line with voter identification practices of other liberal democracies such as Canada and Sweden." Neither of those countries has compulsory voting where voters are actively prosecuted for failing to vote, so the comparison is not appropriate.⁶

Australia should not have ID laws so strict that a voter is prevented or even dissuaded from voting- and thereby commit an offence. There should be a minimum of questioning required of a voter by a polling official to avoid voter oppression. At the very least it will make voting more difficult for particular groups including Indigenous Australians, migrants, people living with a disability and the homeless.

5. Inequity

Despite the Bill presenting a favourable Statement of Compatibility with Human Rights, the PJCHR noted that the Bill could limit the right to participate in public affairs "if a person is unable to cast a vote ... or potentially if there is a lower voter turnout because of a perception that identification is required to vote".⁷

The Committee further stated that, "requiring proof of identity may have a disproportionate impact on particular groups who may face issues accessing identification documentation or having such documentation on them while voting (such as those who are homeless or Aboriginal or Torres Strait Islander people in remote communities), the measure engages and may limit the right to equality and non-discrimination. This right provides that everyone is entitled to enjoy their rights without discrimination of any kind and that all people are equal before the law and entitled without discrimination to equal and non-discriminatory protection of the law."

Such a disproportionate impact may be seen in the declaration vote envelope used for provisional votes. This is detailed and would be difficult to complete for those with limited English or literacy skills. Professor Anne Twomey, in a submission on a similar One Nation Bill, noted that voter ID requirements had a "long history in other countries ... to prevent or deter certain groups in society from voting".⁸

Given the inability of proponents of the Bill to advance a justification for the laws that withstands scrutiny, the only likely outcome that we can foresee if the Bill is to pass is that vulnerable communities will face greater difficulties in exercising their democratic right to vote in elections.

Finally, the explanatory memorandum touts that the provisions will "improve public confidence about the integrity of ballot-issuing practices." NSWCCCL contends that Australians have high levels of trust in the electoral system and that this Bill will, in fact, reduce public confidence in the electoral system and discourage some voters from voting.

Passage of this bill will not advance in any way our system of democracy.

Yours sincerely,



Michelle Falstein
Secretary

⁶ See for example, *Commonwealth Director of Public Prosecutions v Easton* [2018] NSWSC 1516 and the discussion of the history of prosecuting failure to vote in Australian jurisdictions from [75] onwards.

⁷Op.cit. PJCHR

⁸ Karp, P. (5 November 2021) Coalition's voter ID bill could be challenged in court over voter suppression, expert warns *The Guardian* <https://www.theguardian.com/politics/2021/nov/05/coalitions-voter-id-bill-could-be-challenged-in-court-over-voter-suppression-expert-warns>