

Senate Finance and Public Administration Committee

INQUIRY INTO COMMONWEALTH ELECTORAL AMENDMENT (INTEGRITY OF
ELECTIONS) BILL 2021

Submission by Professor Graeme Orr

This submission opposes Voter ID. But in case that part of the Bill should proceed it also recommends amendments.

Background

I thank the Committee for the opportunity to make this submission. It is a welcome return to public scrutiny of sensitive electoral reforms, compared to the recent ‘Party Registration Integrity’ Bill.¹

This submission comments only on Voter Identification (Schedule 2 of the present Bill).

Queensland briefly experimented with a similar proposal in the mid-2010s. At the end of this submission is a 2016 research paper I published with Dr Tracey Arklay, ‘Rethinking Voter Identification: its Rationale and Impact’. That paper assesses the arguments for and against voter ID in a compulsory voting system, and finds arguments in favour to be wanting. It also examined ecological data from the 2015 Queensland election: finding correlative evidence that rural and indigenous electors were most likely to have trouble with ID requirements.

No Principled Justification for Voter ID, especially in a Compulsory Voting System

The stated purpose of this bill is a broad claim about ‘integrity’. Australian elections have a high level of integrity because of three interrelated factors: (a) a tradition of independent, professional and central electoral administration; (b) an electoral culture marked by relatively low and contained levels of social conflict and (c) a century old legal requirement to enrol, and to turnout to vote. Compulsion and professional administration has led to very high levels of enrolment, accuracy of the rolls, and turnout in Australia.² There is no culture of trying to steal parliamentary elections in modern Australia, as the late Electoral Commissioner and Professor Colin A Hughes demonstrated.³ Even in the more electorally troubled US, studies have shown that voter fraud is around as common as humans being struck by lightning.⁴

¹ Pushed through both Houses without committee scrutiny – and hence without public consultation – in a fortnight covering just 4 sitting days.

² Enhanced through ANAO oversight of the electoral roll and AEC procedures, and improvements made by the AEC since the Parliament legislated for ‘automatic’ enrolment around a decade ago.

³ Colin A Hughes, ‘The Illusive Phenomenon of Fraudulent Voting Practices: a Review Article’ (1998) 44 *Australian Journal of Politics and History* 471.

⁴ Brennan Center for Justice, [Debunking the Voter Fraud Myth](#). In an anonymous survey conducted by, amongst others, Professor Jackman (now head of the US Studies Centre in Sydney), respondents were as likely admit, directly or indirectly, to have personated an elector as to claim to have been abducted by aliens: John S Ahlquist et al, ‘Alien

Voter ID is not required in our politically and geographically closest neighbour, New Zealand. At least until now, it has not featured in elections in Great Britain. Whilst it is common enough in other established electoral democracies, many of them (in particular across Europe) have legal requirements and a social culture around the carrying of a free, singular national ID card or papers.⁵ Common law democracies like Australia, the UK and New Zealand have chosen to avoid such ID cards, out of liberal values. In the absence of such a national ID card, the Bill has to craft a grab-bag of ID ‘documents’. No such list can be (a) immune from partisan manipulation (as US experience shows), (b) so comprehensive as to not pose hurdles for some, often vulnerable electors, or (c) administered perfectly consistently.

Voter ID in Australia is a solution in search of a problem. It cannot sensibly address any issues we have with sporadic instances of multiple voting. It is at best a prophylactic for ‘personation’ (ie someone trying to impersonate another elector.) Only last month, this Parliament strengthened protections against those suspected of multiple voting.⁶ In any event a more practical way of addressing multiple voting is to have real-time, electronic mark-off of the certified lists of electors.

Finally, increasing hurdles to voting is an odd thing to do in a compulsory voting system.

Constitutional Issues

The High Court in the ‘Early Roll Closing’ case of *Rowe v Electoral Commissioner* (2010) held that machinery hurdles to the constitutionally protected franchise must be proportionate to an empirically justified purpose.⁷ So it is (a) not enough for an Explanatory Memorandum to assert a purpose without evidence; and (b) there must be a ‘sufficient’, ie rational, connection to that purpose.

In addition, if voter ID in practice proves to have a differential impact on some groups more than others, it may face not only a challenge based on the implied right to vote (the basis of *Rowe’s case*). It may face a second attack on the basis of the implied guarantee of ‘equality of opportunity to participate in political sovereignty’, established in the 2015 ‘Donation Limits’ case of *McCloy v New South Wales*.

The broad ‘integrity’ claim for this Bill is not substantiated. The Explanatory Memorandum does not even try to argue there is an actual integrity deficit. Instead it claims it addresses some vague *perceived* integrity or trust problem. A need for trust in electoral processes is not unimportant. But where is evidence of a significant lack of trust, linked to the long-standing absence of a voter ID requirement in Australia?⁸ Even if there were empirical evidence that a significant subset of electors believe voter ID makes elections more secure, this invokes a somewhat circular claim: the clamour for voter ID by its proponents would be self-fulfilling.

Abduction and Voter Impersonation in the 2012 US General Election: Evidence from a Survey List Experiment’ (2014) 13 *Election Law Journal* 460.

⁵ Glenn Kessler, Fact Checker: Trump’s Assertion that Only Two European Nations Allow Mail-In Voting, [The Washington Post](#), 4/12/2020.

⁶ *Electoral Legislation Amendment (Electoral Offences and Preventing Multiple Voting) Act 2021*.

⁷ *Rowe v Electoral Commissioner* (2010) 243 Commonwealth Law Reports 1.

⁸ Proponents of tighter campaign finance laws sometimes appeal to ‘perception of corruption’ arguments. But those laws do not rest only on corruption arguments. The High Court has held them justifiable on political equality grounds: *McCloy v NSW* (2015) 257 Commonwealth Law Reports 178.

I am not saying voter ID would *necessarily* be unconstitutional. The Bill, by allowing electors without ID or whose ID is rejected to lodge a provisional vote, will probably be held to *not* seriously burden the franchise. Whether that is the case depends on how consistently and well the voter ID requirements and provisional voting option are administered.

Practical Problems with Voter ID

Voter ID is not only a solution in search of a problem. It creates administrative problems in itself :

1. **A resourcing burden on the AEC.** The UK Electoral Reform Society estimates that the proposal for voter ID in Great Britain will cost in the order of £20m per general election. As a Senate Bill, this proposal does not include an appropriation for its costs (of both Schedule 1 ‘audits’ and Schedule 2 ‘voter ID’). The Explanatory Memorandum does not mention costs either. It is for this Committee to seek evidence on that.
2. **Slowing down in-person polling.** If ever there were a time to *not* introduce extra documents or to slow down in-person polling, it is during the Covid-19 pandemic. (Given the risk of viral transmission through paper handling in polling stations and via queues at them).
3. **Inconsistency.** Lacking a national ID card, the Bill envisages a list of ID documents, and regulatory power to augment that list. To have a broad rather than narrow list is a virtue. But it also will be a challenge to administer consistently, across tens of thousands of mostly casual polling clerks, in a very big country. It is almost certain that some electors will have ID accepted that will be rejected elsewhere. Of course no law is perfectly enforced; but the franchise as the most fundamental political right.
4. **Reasonable excuse for not voting.** The only statutorily guaranteed excuse for not turning out to vote is for religious reasons. That leaves the AEC to administer the ‘valid and sufficient reason’ defence on a case by case basis, using internal guidelines which it does not publish (for obvious reasons). If we have voter ID for the 2022 election, there will be electors who hear of ‘voter ID’ primarily via advertising, or rumour and word-of-mouth. The AEC may send letters to all electors about voter ID; but whether to mention the extra complexity of the option of provisional voting is a moot point. In short, there will be electors who lack ID, or mislay it on election day, who naturally think ‘if voter ID is required, there’s no point my turning out’. Such inevitable confusion means some disenfranchisement. Moreover, the Bill is silent about whether the AEC will have to accept such excuses. Probably it will; yet that kind of excuse undermines compulsion because anyone who wants to avoid turning out can assert they ‘misaid’ their ID.

Amendments

If MPs were minded to adopt voter ID, the Bill should be amended or reconsidered in several ways:

1. **To require the AEC to advise all electors who vote by provisional or declaration ballot, whether their ballot was admitted to the count.** Presently, this is not a routine requirement. Without it, electors who are unable to place their ballot into a ballot box – because they cannot not vote in person, or because of an issue necessitating a ‘provisional’ ballot – are left in a ‘black box’ state. This is undesirable in a modern electoral system; especially given contemporary technologies (email or SMS).

Imagine a rural elector who has to travel 30 minutes each way to vote in-person, yet arrives at the polling station without their wallet (or with it, but without suitable ID). What kind of ‘trust’ will they have in a system that turns a 1 hour round-trip into a 2-hour round-trip, without assuring them whether their ballot is even admitted to the count? Such a trust deficit will be heightened for indigenous, young or elderly electors, who are less likely to meet ID requirements.

Such notification would also serve a second democratic purpose: if someone impersonates an elector, via a declaration or provisional vote, it may trigger an alert from that elector.

In 18 states of the US, electors who vote by mail are even notified if there is some formal defect in their declaration (or an issue with signature matching). To allow them to ‘cure’ the defect.⁹ Such curative provisions are desirable in Australia too, but perhaps outside the formal scope of this Bill.

2. **To make clear that polling officials *must* offer a provisional ballot to all voters who cannot meet the ID requirements.** I imagine that is the intent of Schedule 2 clause 8 (new section 235(1)(aa)). But given that thousands of casual clerks staff polling stations, it would be better to make this explicit.
3. **To consider whether confusion over ID requirements is to be a guaranteed excuse to avoid a fine for not turning out to vote.** This follows from my observation that some electors may understandably think there is no point turning out, if they lack ID or mislay it on polling day.
4. **To consider voter ID for postal balloting.** A curious feature of current international debates is that conservative voices (who tend to frame voting reform around ‘integrity’ claims rather than claims about rights of participation) in the US are seeking to restrict postal voting. But elsewhere such voices remain keen on postal voting. It is unclear why this bill does not require postal voters to include ID with their declaration envelope. Postal voting historically has been less secure than in-person voting.
5. **To consider the meaning of ‘document’.** The Bill uses this word several times. The *Acts Interpretation Act* defines it to include all manner of electronic and even oral records (eg voice prints).¹⁰ That may be a good thing. But I’m not sure the drafters intend it: the Bill reads as if they mean tangible or printed material only.

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⁹ National Conference of State Legislatures (US), *Voting Outside the Polling Place Report* (Sept 2020), [Table 15](#).

¹⁰ *Acts Interpretation Act 1901* (Cth) [s 2B](#) (definition of ‘document’).

ARTICLE

Rethinking voter identification: its rationale and impact

Graeme Orr^a and Tracey Arklay^b^aSchool of Law, The University of Queensland, Brisbane, Australia; ^bSchool of Government and International Relations, Griffith University, Brisbane, Australia**ABSTRACT**

Voter ID is a contentious issue in electoral democracies worldwide. This article surveys arguments for and against voter ID in the Australian context, presenting data from the first election in the country to require it. The data demonstrate a differential impact on regional electorates and on electorates with concentrations of Indigenous voters. While the law in question (from the State of Queensland) was moderate in its overall impact, confusion created by it may have suppressed turnout. The law has since been repealed, but voter ID now has the support of a conservative majority on the Commonwealth Parliament's electoral matters committee. We conclude that voter ID is not a solution to eliminating fraud, but an additional bureaucratic layer upon the ritual of casting a ballot and a hurdle with unintended consequences.

ARTICLE HISTORY

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Elections; voter identification; electoral law; Australian elections; voter suppression

Australia is one of a relatively few liberal democracies that does not require electors to produce identification (ID) to vote. Until recently it seemed likely to remain so. Australia lacks any form of national ID card or papers, which might make voter ID relatively easy to administer. It also has a long, progressive tradition that every vote is sacred, a tradition traceable through nigh on a century of compulsory voting and compulsory enrolment (Sawer 2003). However, in 2014 a conservative Queensland government enacted voter ID in that State.¹ Although that initiative was quickly repealed by the Labor Party on its return to office in 2015, the Coalition majority of the Commonwealth Parliament's electoral matters committee has recommended adopting the experiment for national elections (JSCEM 2015: 112–20).²

Voter ID is common across many developed democracies. True – and notably from the Westminster and common law perspective shared by Australia – neither New Zealand nor the UK (outside Northern Ireland) employ voter ID. But even in the UK, a recent report has recommended its introduction (The Electoral Commission 2015: 26). In other respects, democracies that do not require voter ID are a motley minority, like Georgia, Samoa, Sudan and Tuvalu (Smith 2014: 48).

If the numbers of nations requiring voter ID is taken in isolation, it may appear as if voter ID is inevitable, even natural. We argue, however, that international precedent is

not itself a justification for the adoption of voter ID in Australia. On the contrary, voter ID runs counter to Australia's history of compelling registration and turnout. We also report and analyse, for the first time, data from the Queensland experiment with voter ID. These statistics shed light on voter ID's disparate impact in the Australian context, particularly on Indigenous and regional electors. We conclude by arguing that while voter ID might provide a kind of reassurance to those concerned about electoral integrity, it would add an unnecessary level of bureaucracy and potential confusion to the voting experience and, if applied strictly, would be a form of electoral discrimination.

The politics and principles of electoral integrity and participation

Australia's electoral system is often held up as a reasonable model, both in terms of its rules and administration (Mercurio and Williams 2004: 3). As Farrell and McAllister (2006) indicate, a majority of Australian voters are content with the transparency and fairness of their electoral system. McAlister (2011: 80–86) attributes Australians' relatively high level of satisfaction with electoral democracy to compulsory voting and the underlying belief that their vote matters. There has been a general, especially expert, consensus that any electoral fraud – through false enrolments or multiple voting – is isolated and not at a level to affect outcomes (Hughes 1998; Hughes and Costar 2006).

Yet there have also long been those questioning the integrity of Australian electoral practice and culture (e.g., McGrath 1996, 2003 on behalf of the HS Chapman Society). Scepticism received a filip after the debacle of the 2013 Western Australian Senate election, which had to be re-run after the loss of 1300 ballots by the Australian Electoral Commission (AEC) (see Douglas 2014).

Tension between contentment and suspicion in electoral systems is a familiar theme, repeated across the world. It is not confined to emerging democracies. Canada and the UK, for instance, have recently proposed tightening electoral rules, ostensibly for integrity purposes. The Canadian Electoral Bill C-23, known also as the *Fair Elections Act*, proposed abandoning a system by which Canadian electors could have a friend or relative vouch for their identity at the polls. This Act had a controversial genesis, with critics suggesting it provided partisan advantage to the government through the disenfranchisement of many, otherwise, eligible voters (Mas 2014; Shepherd, Stoney and Turnbull 2014: 18).

Similar arguments greeted the 'Electoral Fraud in the UK' report, which suggested that voter ID was necessary to remove 'actual and perceived weakness in the system', despite finding that voter fraud was rare (The Electoral Commission 2015: 1–2). Voter ID laws remain a particularly 'hot-button' issue in the US (Mycoff, Wagner and Wilson 2009). A recent *New York Times* editorial (2014) suggested that as 'there is virtually no in-person voter fraud; the purpose of these laws is to suppress voting'. Undeterred by such criticisms, conservative governments continue to press arguments that mandatory voter ID enhances integrity through at least the appearance of a more secure system.³

Disputes between those championing electoral integrity and those championing electoral participation are almost emblematic of the divide between conservatives and social democrats (Orr 2010: 68; see also Lee 2012; *The Economist* 2012). In ideal terms, of course, integrity and participation should be a single goal for fair and inclusive elections. After all a system with 100 per cent accurate rolls and 100 per cent turnout would by definition maximise each of these values. Debates, then, are conducted at the level of values

and principles. It is an inescapable truth, however, that whatever rules are set, electoral systems can be structured by incumbents so as to be 'the most specific manipulative instrument of politics' (Sartori 1968: 273, cited in Grofman and Liphart 1986).⁴

Voter ID in international perspective

It is worth putting the potential adoption of voter ID in Australia in international context. Despite differences between Australian and other, especially voluntary, voting systems, which reduce the ability to compare cause and effect, the normative and even political arguments for and against voter ID in Australia tend to follow a similar trajectory to those overseas. Those supporting the measure claim a desire to eliminate voter fraud, or at least the perception of voter fraud. Whereas those against argue that voter ID raises barriers to participation and may disenfranchise certain groups of citizens.

While acknowledging that the political system in say the US is very different from Australia, we pause to briefly examine the debate over voter ID in North America, before providing evidence as to why voter ID is both unnecessary and unhelpful in the Australian context. This analysis adds to the international literature examining the current trend by conservative political parties to engage in voter suppression policies (Bentele and O'Brien 2013; Shepherd et al. 2014).

In May 2014 the Canadian Parliament passed the *Fair Elections Act* (mentioned above) to amend the *Canada Elections Act*. Pierre Poilievre, the Conservative Party Minister of State who sponsored the bill asserted it 'made it easier for law-abiding Canadians to vote and harder to break the law ... [i.e.] more difficult to vote illegally or fraudulently' (Poilievre 2014). In response, an expert group of 19 international academics claimed 'Canada's international reputation as one of the world's guardians of democracy and human rights is threatened' by the reforms (*The Globe and Mail* 2014). It is important to note that – as in the UK, Australia and even the US – evidence suggests there is minimal voter fraud in Canada (Neufeld 2013: 6; Shepherd et al. 2014: 19).

One provision of the Canadian reforms removed 'vouching' provisions. Vouching is an alternative to ID that allows one elector to vouch for another's identity at a polling booth. Removing vouching altogether, it was estimated, could have disenfranchised over 120,000 electors, particularly seniors, students, the poor and Indigenous citizens. On that issue, the government relented and a revised bill allowed for an elector carrying physical ID to vouch, in writing, for the name and address of a voter who lacked ID at the polls (Bryden 2014). Nonetheless, Burgmann (cited in Smith 2014: 72) has argued that the move to mandate physical ID in Canada reduced Indigenous voting there by 10 per cent.

Over 30 States in the US mandate some form of voter ID.⁵ There is a substantial body of literature that shows voter fraud is rare in the US and that, when it does happen, it tends to be the result of 'election officials taking steps to change election results or ... involves absentee ballots' (Hasen, quoted in Lee 2012). Voter ID will not prevent either of these types of fraud. Ongoing litigation in US federal courts has led to findings of racial discrimination in Texas's strict photo-ID requirements (*Veasey v Abbott*).⁶ While such litigation, and see-sawing Republican and Democratic majorities in state legislatures, means some US States are now reviewing their harsher ID restrictions, the most relevant Supreme Court rulings (*Crawford v Marion County Election Board*; *Shelby County v Holder*)⁷ still

preserve considerable leeway for individual States to set their own rules (Mann and Wakeman 2013).

US scholars claim that the harsher laws are mostly likely to impact people who are unlikely to vote conservatively (Shepherd et al. 2014: 19). In the Texas case, for instance, besides obvious sources of photo ID such as driving licences or passports, gun licences and military ID were accepted but, for example, student cards were not. As noted earlier, conservative politicians and activists are more likely to frame the issue in terms of electoral integrity and liberals or social democrats in terms of making participation easier.⁸ In 2001, the then Liberal Party Director gave evidence that members of his party had ‘mixed views’ on voter ID (Crosby, cited in Holmes 2014). More recently, however, Smith (2014: 74) reported an observable partisan divide across Canada, the US and Australia in regards to those who favour voter ID laws.

These philosophical instincts may also map onto perceptions of partisan gain. After examining various variables, Bentele and O’Brien (2013: 1103) conclude that, in the US, ‘a straightforward picture emerges’ whereby ‘the emergence and passage of restrictive voter access legislation is unambiguously a highly partisan affair, influenced by the intensity of electoral competition’ and that ‘demobilization efforts are not a blunt practice’. Marginalised groups in society are most likely to have difficulty obtaining voter ID, and US studies confirm ID adds a layer of complexity to their participation in the political process (Alvarez, Bailey and Katz 2008; Hershey 2009: 87 citing Vercellotti and Anderson 2006). As Robert Peel put it in the 19th century, ‘[t]hat party is strongest which has the existing [voter] registration in its favour’;⁹ a sentiment echoed in Harry Truman’s alleged observation, a century later, that ‘decisions are made by those who show up’.

Yet explanations as to why conservative parties might favour voter ID as a form of voter suppression in the US and Canada do not readily apply to the Australian case. Reasons for this include the widespread use across many States in the US of differing and sometimes draconian requirements for voter ID; compulsory as opposed to voluntary voting laws in Australia; and demographic, cultural and socioeconomic differences between the countries. The compulsory nature of voting in Australia also helps ensure governments are more likely to consider the entire Australian population in their policy formulations for fear of reprisal at the ballot box.

Voter ID law in Australia: another first for Queensland

Voter ID laws can, at one level, be seen as but a continuation of a pioneering tradition in Queensland. After all, Queensland was the first Australian jurisdiction to enact compulsory voting, in 1915 (the Commonwealth followed, for national elections, in 1924). It also employed ‘contingent voting’, a form of optional preferential voting, as early as 1892. Queensland has been something of an outlier in perpetuating rules and structures that have been problematic for electoral democracy and accountability. Most notable were its longstanding system of zonal malapportionment, which skewed rural and agricultural interests over urban ones (Orr and Levy 2009; Wanna and Arklay 2010: 616), and its lack of an elected upper house to check majoritarian rule (Aroney et al. 2008; see Murphy 1980 on its abolition). Each, in its own way, was a form of political manipulation designed to enhance the ruling party and increase executive governmental power (Wear 2005: 87). In electoral reforms, then, Queensland has been both forerunner and recalcitrant.

In Australia, generally, voter fraud has been rare. Significantly, no election result has been affected by fraudulent voting practices (Hughes 1998). Independent electoral commissions maintain the electoral roll, which is updated using government data to further safeguard their accuracy. Proof of identity is required at the time of enrolment to protect the integrity of the rolls. The Queensland government's own discussion paper (2013: 29), which floated the voter ID initiative, admitted that voter fraud was not an issue at previous Queensland elections and that voter ID might be considered a 'disproportionate response to the risk'.

Besides concerns about disproportionate impact on vulnerable groups, opposition to voter ID in Queensland centred around two propositions. One was the mismatch between compelling people to turnout at the polls on pain of a fine, yet potentially turning them away for forgetting or being unable to produce ID. The other was the fact that postal voting was simultaneously made a right,¹⁰ yet postal voters (who skew towards incumbents and tend to be older) were not required to forward ID. Only those voting in person on polling day or, increasingly, at early voting centres were required to submit ID. If the purpose of voter ID is to erect a bureaucratic barrier to fraud, this is a curious omission. Postal voting is notoriously more subject to fraud than in-person voting.¹¹ These two objections to voter ID were united by the apparent contradiction of simultaneously making the 'when' and 'where' of voting more convenient, yet making the 'how' of voting more of an administrative chore.

There are, admittedly, thousands of apparent cases of multiple voting at each election in Australia. However, these are overwhelmingly the result of administrative error (people with similar names being marked off the voting lists) or innocent electoral error. According to the AEC at least 80 per cent of multiple voting cases not attributed to administrative error involve elderly people or people with poor language skills (AEC 2009). There are also institutional mechanisms in place to investigate such problems (AEC 2010). In any event, multiple voting is not obviously deterred by voter ID: multiple voting might better be tackled with on-line marking off of electoral lists. Personation, rather than multiple voting, is the primary, practical target of voter ID.

To its credit, and unlike many US States, the Queensland Government's initial experiment with voter ID did not mandate photo-only ID. In two respects, it was relatively generous. First, a variety of ID was ministerially regulated as acceptable (and in the case of accounts/statements, which are often e-mailed to people today, electronic copies held on a mobile device were accepted):

- a current driver licence;
- a current Australian passport;
- a voter information letter issued by the commission or similar document evidencing electoral enrolment;
- an identification card issued by the Commonwealth or State evidencing the person's entitlement to a financial benefit (e.g., a Commonwealth seniors health card, health care card, Medicare card, pensioner concession card);
- an adult proof of age card issued by the State;
- a recent account or notice issued by a government or a public utility provider including a telecommunications company (e.g., an Australian Taxation Office notice of

- assessment, council rates notice, electricity, water or gas account, or telephone or internet bill, containing the elector's name and address);
- a recent account statement, current account card or current credit card issued by a financial institution.

Second, electors who did not produce acceptable ID were to be offered a 'declaration vote'. That is, to complete a declaration as to their identity and address, with their accompanying ballot paper set aside for special scrutiny, and possible inclusion in the count, at a later stage.

While the types of acceptable ID were broad, there were still concerns about voter ID adding another layer of complexity to polling day. Around 10,000 casual workers are employed by the Electoral Commission Queensland (ECQ) during a general election. Training would have to be thorough and well resourced; yet even then inconsistencies might arise in interpreting and applying the list of acceptable ID or in offering declaration votes. The Indigenous and Torres Strait Islander Social Justice Commissioner argued that many within his remit lack a birth certificate, which creates a 'vicious cycle' in terms of acquiring formal ID (Gooda 2014). On AEC data, 1.5 per cent of new enrolments are by people who do not have a driver's licence or birth certificate (Howie 2013). Other concerns included whether voter ID would further bureaucratise the electoral experience and potentially lengthen queues at polling stations. Most of all, fears were expressed that the initial voter ID rules could be the thin end of a wedge, with ID requirements being tightened and the declaration vote fall-back removed, by a future Attorney-General and Parliament, respectively.

The experience of Queensland's 2015 election

The ECQ captured and published online data relating to 'uncertain ID' voting at the 2015 general election, across Queensland's 89 electoral districts. ('Uncertain ID' voters were those electors those who presented on polling day, but had to apply to vote by declaration ballot because they did not present acceptable ID). We were able to analyse the data by comparing them with ABS census statistics about various socioeconomic factors. These were: income, median age, per cent non-English speaking background, per cent Indigenous (i.e., Aboriginal and Torres Strait Islander) residents. Population density was also employed as a direct proxy for a rural-urban spectrum. The data are presented below.

It should be noted that the manner of the ECQ's collection of data posed two issues. First, returning officers only collected voter ID data on a seat-by-seat level, not by polling stations. Hence, the demographic variables also had to be measured at that level. This limited the granularity of the analysis, since electoral districts vary less by, for example, average age or income, than do electoral sub-districts. Nonetheless, the seat-by-seat level demographics still exhibit significant differentiation, especially as regards Indigeneity and population density. A smaller problem was that due to an administrative misunderstanding, uncertain voter ID was not collected in one seat, Toowoomba South. However, that seat has a demographically almost identical neighbour, Toowoomba North, so extrapolations were made from the number of uncertain ID voters in the latter seat.

Before the presentation and discussion of the results, by way of background [Table 1](#) provides a summary of the data, showing the state-wide averages – and the variation between electoral districts – for the key variables under study.

Table 1. Summary data.

Variable	Mean	Standard deviation	Minimum	Maximum
Uncertain ID votes as percentage of turnout	0.622	0.298	0.23	2.36
Total turnout as percentage of enrolment	89.849	2.153	83.59	92.67
Income pp pa (\$)	31,328	5714	20,540	45,448
Median age	36.741	3.900	29	45
NESB (%)	8.110	9.236	1.16	57.26
Indigenous (%)	5.514	7.955	0.61	58.15
Density (voters/km ²)	410.939	449.127	0.03	1816.65

Table 2. Pair-wise correlations, with significance values.

Variable	Correlation with 'uncertain ID' voters	Significance value
Income	-0.0948	0.376
Median age	0.0196	0.885
NESB %	-0.1807	0.090
Indigenous %	0.6502	0.000
Density	-0.3531	0.001

Bivariate correlations were conducted, examining the association between the number of uncertain ID voters and the demographic variables. Table 2 summarises these results.

The results demonstrate a significant relationship between ID-less voters and Indigenous population ($r = .650$, $p < .001$), such that the percentage of uncertain ID voters increases with an increase in a seat's Indigenous population. The relationship between population density and uncertain ID voters was also significant ($r = -.353$, $p = .001$), with fewer ID-less voters in regions with higher population density. Relationships with income or median age were non-significant. This may not disprove a relationship between age, but merely be an artefact of the tendency for seats, as opposed to sub-districts, to not vary significantly by average age.

In relation to non-English speakers, especially newer immigrants who might otherwise be assumed to have greater problems with either producing ID or knowing of its requirement, any such effect may have been outweighed by their relative urbanity. The values ($p = .07$ and $.09$) are close to significant, indicating some relationship between NESB status and ID problems, but only a more fine grained analysis within electoral sub-districts could clarify that.

A regression analysis was also employed to determine if the demographic characteristics of a region significantly predicted the proportion of uncertain ID voters. Results are presented in Table 3. Together, these variables account for 49.4 per cent of the variance

Table 3. Regression model.

Variable	Coefficient (B)	Std Error (B)	Significance (p)
Income	.000	.000	.379
Median age	.007	.007	.338
NESB %	-.005	.003	.057
Indigenous %	.025	.003	.000
Density	-.001	.001	.412
Constant	.126	.414	.761
R ²	0.4948		
Adjusted R ²	0.4644		

($R^2_{\text{adj}} = .464$, $F(5, 83) = 16.26$, $p < .001$). While the percentage of Indigenous residents significantly predicted uncertain ID votes ($B = .025$, $p < .001$), other variables were non-significant. Results of the post-estimation analyses of the residuals and the variance inflation factor were satisfactory.

Discussion of the Queensland data

The data presented above establish a not unexpected correlation between higher levels of Indigeneity and electors experiencing problems with ID. It also demonstrates a correlation between rural–urbanity and such problems, so that electors in more urbanised seats experienced less problems with ID. The top 10 seats, by percentage of voters without acceptable ID (between 2 and 0.9 per cent of total turnout), include a roll-call for the larger, remote and more Indigenous electorates: Mt Isa, Cairns, Warrego, Cook, Keppel, Townsville, Thuringowa and Barron River.

Explanations for these findings are several and revolve around access to information and to ID. In relation to ID, there are the twin issues of owning ID, and one's propensity to either routinely carry it (or be able to shuttle from the polling station to home and back again, possibly at considerable distance, to obtain it). There may also be cultural factors at work. For instance people in more remote regions may live freer lives, less concerned with bureaucratic niceties such as regulations about keeping or presenting ID.

There were also anecdotal reports of some polling booths providing different information than others (Robertson 2015). If true, and without being critical of the ECQ, this would be unsurprising. The 2015 poll was a snap election, employing an entirely novel voter ID process. There was limited time and resources for public education about voter ID, and a need to distribute thousands of polling stations across a geographically large jurisdiction. Perversely, the broader and hence more complex are the list of acceptable ID and the rules permitting declaration votes, the more likely that casual polling staff might interpret or explain those rules differently, compared to rules that are narrow, crude but 'bright-line' (such as a 'no drivers licence, no vote' rule).

Of course, these findings are of correlations only and, as earlier noted, of correlations at the level of electoral districts. And in some electorates, indigeneity and remoteness overlap. Beside anecdotes, there are no data at the level of individual electors. Electoral commissions retain copies of applications for declaration votes. But due to privacy laws, these are not available to researchers. Even if they were, they would shed little light: electors do not enrol as 'Indigenous', 'NESB' or 'poor'. Nonetheless, the correlations are both strong and not unexpected. The parliament was presented with evidence indicating that Indigenous people had less access to ID. For example, only 38 per cent of Indigenous Queenslanders hold a driver's licence (Human Rights Law Centre 2014: 5), and that around 13 per cent of Indigenous births in Australia are not registered (Castan Centre for Human Rights Law 2014: 2).

In absolute terms, the numbers of Queensland voters who lodged uncertain ID declaration votes was not huge: 16,852 out of 2,435,432 who voted in person.¹² This represents 0.69 per cent of in person turnout (a further 244,442 voted by post and hence were not subject to the ID law). Of those who cast declaration votes for 'uncertain ID', only 402 were not admitted to scrutiny. This either suggests that almost no-one sought to cast

fraudulent votes, or that the ECQ simply checked the declared name and address against their records.

There appear to be two overlapping, but distinctive, reasons for the fact that only about 0.7 per cent of those who cast ballots in person did not produce appropriate ID. The first is that overall turnout dropped by almost 1.1 per cent. This drop was surprising, given the 2015 election was expected to be (and was) the first close election in Queensland since 1998. The election featured a high level of resentment and backlash against the government, which lost office on a swing of 14 per cent. Pre-poll enrolments were in the order of 60,000, up from just 23,000 at the previous election, an 'unprecedented' spike which suggests a high level of interest and motivation (Branco 2015). Close elections ordinarily motivate higher turnout; predictable ones the reverse.¹³ In the nine previous elections in the 26 years of the modern (or post-Bjelke-Petersen) era, turnout in Queensland only dropped by a non-negligible amount in elections that were predictable landslides for an incumbent government (2001, 2004, 2006). In addition, the ability to postal vote and options for early voting were both expanded for this election.

Turnout of course is subject to multiple factors, so there can be various reasons for a decline in turnout – e.g., the 2015 Queensland election was called early, with a polling day of 31 January. It is reasonable, however, to speculate that a considerable number of Queensland electors in 2015 were deterred from turning out because of a misapprehension that 'voter ID' meant what it implied. Certainly, one known-unknown from the voter ID experience was the number of electors who did not turn up at the polls either because they lacked ID, or were out and about on election day, intending to vote late, but realised they were not carrying ID.

Such confusion is not fatal to voter ID per se: one response would be greater time and resources to advertise the voter ID requirements and the declaration vote fall-back. However, such education will always be imperfect. Numerous journalists, including political and news reporters and commentators, were unaware that 'voter ID' really meant that electors were entitled to lodge a declaration vote.¹⁴ To give a flavour of this, one online news story commenced: 'No ID. No Vote. No Thank You' (*Brisbane Times* 2014). It is hard to imagine all citizens grasping the jargon of 'declaration voting'.

A second, more optimistic, explanation for the relatively modest percentage of uncertain ID declaration votes is that the typical modern elector, especially in Queensland's cities and provincial towns, probably does carry a wallet or purse containing, for example, a drivers licence or Medicare card. This is a claim that supporters of voter ID use when arguing to reassure mainstream audiences (this reassurance, of course, means little to vulnerable sub-communities that may lack that ID).

Conclusion: voter ID a solution in search of a problem

The now-repealed Queensland experiment with voter ID was notable for three things. First, at least compared to the US, the law was relatively moderate. Second, at the polls it impacted on barely one per cent of electors, but confusion about what voter ID 'meant' seems likely to have depressed turnout. Third, voter ID impacts more heavily on remote and Indigenous communities than urban and non-Indigenous ones.

In our view, both the normative arguments and the Queensland data given above demonstrate that there is no real case for voter ID in Australia. This is not to dismiss

the concerns of all of those who advocate voter ID. The onus, however, must be on those wishing to impose hurdles to the ballot to justify those hurdles.¹⁵ This is doubly so given Australia compels both enrolment and turnout. It is not sufficient to simply point to the prevalence of voter ID in other countries. From a pragmatic and moral perspective, compulsion in Australia is in itself an integrity measure: a roll that is as broad as possible, and turnout as high as possible, militates against electoral fraud.

Voter ID, in a moderate form, may well have symbolic and expressive value.¹⁶ Social democrats argue that regulation of political finance may be justified to increase trust in political integrity (the appearance of corruption being a concern as much as its actuality).¹⁷ Conservatives can similarly point to a concern that electoral laws *appear* to guard against fraud, as a desirable end in itself. Indeed, the real dispute about voter ID in Australia has so far been joined primarily at this level – it has been less about partisan benefit or detriment as has been the case in the US. As long as voter ID laws are accompanied by a well administered and easily accessible declaration ballot – and decent public education – then its impact is less at the level of partisan effect and more at other levels. (At the level of electoral effect, voter ID's impact on Labor-leaning Indigenous communities might be balanced by its impact on conservative rural communities. Similarly, lack of ID may impact on left-leaning youth as well as conservative-leaning senior-citizens).

The other levels of effect, even of a moderate voter ID law, must be accommodated in any argument about symbolic and expressive effects. First, voter ID does impinge on the actuality and experience of electoral democracy. An elector who attends a polling station and is denied an ordinary ballot, has no way of knowing if their ballot is admitted to scrutiny. Declaration votes are separated and put, in effect, into a 'black-box'. The declaration voter leaves the polling station not knowing if their ballot will actually be scrutinised. At a minimum, declaration voters should be contacted by the Electoral Commission after polling day and told if their ballot was accepted into scrutiny, and if not, why not. The ritual of the polling station, too, is transformed when electoral officials have to solicit voter ID. Some may feel the act of casting a vote is made more solemn; others may experience it as a more bureaucratic and less trusting encounter (Orr 2015: 25–26).

Ultimately, whether there is a community perception that voter ID is a common sense means to address any appearance that elections are subject to fraud, the reality is that voter ID can do little to prevent those cases of deliberate multiple voting, which currently exercise concern (cf. JSCEM 2015). As we noted at the outset of this article, scholars such as Colin Hughes (himself a former head of the AEC) and Brian Costar have argued that such concerns are inflated. Nothing about voter ID per se stops someone presenting themselves at different polling stations to vote more than once in their own name: at best it may deter, at the margins, anyone impersonating another elector multiple times or require them to forge or copy ID.

Hence, whatever the intentions or motivations for its introduction, as Rayner (2014) observed, if governments were serious about eliminating fraud then a universal national ID might need to be introduced. (Voter ID is less of a practical and cultural burden, and more fairly and equitably enforceable, where such ID papers are the norm). Further, electronic, interactive versions of the roll would need to be provided at as many polling booths as is feasible (allowing for reliable and secure internet connections) if multiple voting is to be eliminated. Each of those reforms would involve significant costs, not to mention privacy and security concerns.¹⁸ In the meantime, further bureaucratising

the voting experience and causing disparate impact on indigenous and remote electors, would be, to quote Green (2014), to legislate an ‘answer trying to find a problem’.

Notes

1. *Electoral Reform Amendment Act 2014*.
2. The minority MPs (Labor and The Greens) on the committee rejected voter ID (JSCEM 2015: 162–3). The same committee had also rejected voter ID as unwarranted some 14 years earlier (JSCEM 2001: 45).
3. In a government press release mooted proposed amendments, then Queensland Attorney General Jarrod Bleijie (2013) stated that ‘The Newman Government wants to ensure the state has an electoral system that meets high standards of integrity and accountability’, and that ‘Fair and effective electoral laws are central to the promotion of participation in our democracy.’ This echoes comments made by the Canadian Minister, Pierre Poilievre: ‘We will have a requirement for physical ID every time someone votes ... It is fair, it is reasonable and, as of today, it will be the law’ (Maher 2014). As in Queensland, Canadians were permitted to bring electronic ID (e.g., documents held on a smartphone).
4. Grofman and Lijphart (1986: 2–3) cite 13 elements of political laws that when manipulated may change political outcomes. These include registration requirements, ease of voter and candidate access to the balloting process, the structure of political competition (including ballot format, districting procedures, financing rules, campaigning and, of course, vote handling and counting procedures. Voter ID relates to ease of voter access to the process.
5. Election law in the US, even for national elections, is primarily governed by State law.
6. *Veasey v Abbott* (US Court of Appeals, Fifth Circuit, 5 August 2015).
7. *Crawford v Marion County Election Board Shelby County v Holder* 553 US 181 (2008) (upholding Indianan photo ID-only law); *Shelby v Holder* 570 US _ (2013) (watering down the *Voting Rights Act* of 1965).
8. Curiously, the position is reversed when it comes to money in politics.
9. Peel in a letter to Arbuthnot, 1838, cited in Seymour (1915: 125).
10. Previously, an elector needed a good reason related to distance or mobility.
11. In a recent UK case illustrating this, *Simmons v Khan* [2008] EWHC B4, the elections judge concluded that all-postal local elections had rendered ‘wholesale electoral fraud both easy and profitable’.
12. The raw figure for ID-less ballots was 16,591. We have incorporated a proportionate figure to account for the missing Toowoomba electorate (see discussion above).
13. In contrast, turnout rose appreciably in each election that was expected to be close (1988 and 2009) and was static in elections which led to a change in the status of the government (1989, 1995, 2012).
14. The authors, in giving media commentary before the election, including on voter ID, encountered both public and commercial journalists who assumed that ‘voter ID’ meant ‘no ID, no vote’.
15. As Justice Isaacs put it in *Kean v Kerby* (1920) 27 CLR 449 at 459: ‘[T]he ballot, being a means of protecting the franchise, should not be made an instrument to defeat it ...’
16. On law as a form of governmental or social expression, see Anderson and Pildes (2000).
17. A position accepted even under libertarian first amendment (free-speech) doctrine in the US: see *Buckley v Valeo* 424 US 1 (1976).
18. In 1986 and again in 1987 the Australia Card Bill was defeated after lengthy parliamentary debates and vociferous opposition from sectors of the population (Clarke 1987).

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