

Senate Finance and Public Administration Committees
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Commonwealth Electoral Amendment (Integrity of Elections) Bill 2021

This submission responds to the Committee's invitation of public comment regarding the Commonwealth Electoral Amendment (Integrity of Elections) Bill 2021 sponsored by Senator Roberts. It addresses provisions in that Bill relating to compulsory provision of identity documentation in relation to elections.

The following pages reflect teaching, research and publication regarding identity, identification processes, forgery and personhood, including publication in 2022 of monographs on identity crime (Routledge) and the legal construction of identity (Springer).

The submission does not represent what would reasonably be construed as a substantive conflict of interest.

The Bill

In essence the Bill offers an ineffective response to an overstated problem, ie supposed voter fraud.

Highly politicised claims of systemic fraud through impersonation, multiple voting, ballot box tampering have received widespread publicity in the United States despite evidence and have been echoed in Australia. The Australian Electoral Commission in its submission to the Joint Standing Committee on Electoral Matters inquiry into the conduct of the 2013 election noted "media commentary and social media speculation" regarding multiple voting.

There is however **no** hard evidence regarding large-scale multiple voting (as distinct from very small-scale errors in mark-offs by officials).

There is **no** hard evidence of systemic impersonation.

The expression of misplaced anxieties in 'the main stream media' or voicing of conspiracy theories among the echo chamber that is social media are not the basis for law reform. Claims regarding a supposed lack of integrity in voting and proposals for mechanisms to solve the problems should be considered by the Committee on the basis of fact rather than assertion.

Practicalities

The Bill proposes to address impersonation (an individual engaging in identity crime by impersonating a voter at the polls) through a requirement for mandatory provision of a proof of identity. I note Brian Costar's submission to the Joint Standing Committee on Electoral Matters inquiry into the conduct of the 2013 election, which indicated the voter identification would not provide a solution for those engaging in multiple voting in their own name.

The 'proof of identity' in the Bill encompasses

- current driver's license,
- Australia passport,
- proof of age card,
- enrolment to vote acknowledgement letter,
- local government or utility account,
- phone bill,
- income tax assessment notice,
- community identity document.

The proposed new section 394A provides that the Electoral Commissioner can make rules regarding what documents are community identity documents, so that an employee of a local health or welfare service may vouch for the identity of itinerant voters, remote Indigenous voters, and disadvantaged persons.

Australian electoral law does not require Australian Electoral Commission staff to have expertise in document forensics, ie particular skill in determining whether an identity document has been faked. The Commission does not systematically provide its permanent and sessional staff with training regarding forensics.

That is salient for the Bill's identity document requirements given that forgery of several of the identity documents is trivial. Someone who wishes to impersonate a voter is unlikely to have much difficulty faking a phone bill, utility account or acknowledgement letter in a way that will survive superficial scrutiny on polling day. The requirement in the Bill is therefore ineffective rather than merely based on an overstated problem.

The Explanatory Statement accompanying the Bill and the Second Reading Speech are silent as to whether the identity documents must be in hardcopy or digital formats. That is salient given that many people have chosen to rely on digital rather than postal communication, accordingly receiving rates, utility, phone, bank and other accounts by email or the web through mobile phones and other digital devices. Their proof of identity under the Bill will be on their phone, in itself a readily subverted proof. The Bill does not engage with Australians using the government-issued digital Medicare card (ie on a mobile device) rather than the traditional green plastic.

The authenticity of 'identity on a phone' is particularly relevant given the enthusiasm with which the NSW Government is advocating digital driver identification (and by extension identification for other licenses regarding sport/recreation) and recurrent examples of people creating fake COVID identity documents for mobile devices.

Further, law reports provide recurrent instances of people faking hardcopy photo identity cards, including proof of age cards and driver licence cards, whether to subvert a specific requirement or as the basis for 'breeding' a suite of identity documents for a criminal purpose. A national multi-purpose biometric 'Australia Card' (sporadically espoused by the One Nation Party) will be susceptible to forgery and will not solve voter impersonation. Importantly, such an identity document will foster a range of identity crimes rather than merely attracting strong condemnation from rights advocates, the legal profession and ordinary citizens.

Conclusion

This submission began by questioning whether there is a need for mandatory provision of a proof of identity at polling places. The Bill does not address legitimate concerns expressed over the past two decades regarding exclusion of people escaping domestic violence, wary about stalking, with disabilities, or otherwise marginalised.

The Bill does **not** solve ‘the impersonation problem’. Instead it merely shifts that problem, in ways that create an unnecessary administrative burden.

From an operational perspective it is unlikely that many people will go to the effort of forging proof/s of identity in order to subvert the electoral system. That is unsurprising, given that –

- there is no financial benefit and no direct scope for tarnishing someone’s public profile through mischief-making (two motivations for identity crime)
- there is no reason to believe that voter impersonation in Australia occurs on a large scale.

In the absence of authoritative evidence regarding the pervasiveness and severity of supposed impersonation in voting there is **no** compelling reason to introduce a flawed new identity requirement. The Bill should be rejected on that basis.

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