



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

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Submission Cover Sheet

Inquiry into Electoral Amendment Bill 2021

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Standing Committee on Justice and Community Safety
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Inquiry into the Electoral Amendment Bill 2021

This submission responds to the Standing Committee's invitation to comment on the Electoral Amendment Bill 2021.

Summary

The submission suggests that the Bill should be rejected. The following paragraphs question assumptions regarding the Bill and note inconsistencies in the drafting.

Basis

The submission reflects research and teaching as a law academic over the past 14 years regarding rights, responsibilities, capacity, including two forthcoming monographs and contribution. It also reflects invited submissions and testimony to a range of Commonwealth and state parliamentary inquiries regarding electoral systems and community participation in political processes.

The submission does represent what would be reasonably construed as a conflict of interest. It is not made on a confidential basis.

Weak rationale for the Bill

There is substantial independent scholarly literature regarding community perceptions of public administration and disenchantment with political processes, unsurprising given –

- disquiet about sexual or financial misconduct among leading politicians at the state and Commonwealth level,
- revelations about corruption in government agencies,
- awareness that special interests may enjoy extraordinary access to key decisionmakers, and
- the reluctance of governments to establish or adequately fund anticorruption and transparency agencies.

The ANU 2019 Australian Election Study for example reported that satisfaction with democracy is at its lowest level since the constitutional crisis of the 1970s, with trust in government having reached its lowest level on record. Just 25% of Australians believe people in government can be trusted, 56% believe government is run for 'a few big interests' and only 12% believe the government is run for 'all the people'. That disquiet is increasing, with for example a 27% decline since 2007 in stated satisfaction with how Australia's democracy is working. Overall trust in government has declined by nearly 20% since 2007; three quarters believe that people in government are looking after themselves.

The Explanatory Statement for the Bill refers to a problematical finding by the Australian Human Rights Commission in 2019 that 'people under the age of 18 feel they have no voice in

society'. Without disrespect to the two sponsors of the Bill that sense of lacking a voice or agency is **not** restricted to people under 18. It is lamented by members of Australia's First Nations (reflected in calls for a special body to inform or even form part of the Australian Parliament). Studies, such as that from the ANU, suggest it is also shared by many adults in rural and metropolitan Australia. It should be addressed on a holistic rather than feel good basis.

The Bill is characterised as a response to 'human rights advocates and young people by seeking to increase their political engagement and political relevance' alongside 'stigma' surrounding young people. It 'exemplifies the desire for political engagement from young people to affect issues that impact them' and will supposedly have a 'positive impact on the confidence of young people to feel they can affect change'.

It is debatable whether many young people are indeed 'frustrated about their lack of ability to participate in politics' and whether voting is the only or best way for that participation. Some appear indifferent. Some engage in activism outside voting, on occasion more effective than their adult peers. Some, just like adults, have unrealistic expectations regarding processes, outcomes and the scope for action by the ACT Government and Commonwealth Government.

If the ACT Legislative Assembly is concerned about the confidence of young people to effect change it should properly address the lack of confidence among many adults, for example through –

- support for national restrictions on private funding of political parties,
- enhanced transparency about public/private property deals, including rezoning,
- a depoliticised process for selection of judges, magistrates and tribunal members through an independent body
- increased accountability, such timely independent investigation of failures such as the recent ACT workers compensation claims data breach.

The Legislative Assembly might also recognise that feeling misunderstood and restricted is an inherent part of growing up, evident among toddlers who don't want to be in bed by 8pm and teenagers whose parents caution about binge drinking or hard drugs.

The Assembly might also recognise that there is reason for caution in relying too heavily on a Human Rights Commission report that offers insights but for example relies heavily on a poll in which 86% of respondents were aged 9 to 12.

Uneven Capability

It is debatable whether most 'Australian teenagers' have a 'keen understanding' of areas for improvement in Australian Government policy as it relates to obligations under the Conventions of the Rights of the Child' or indeed any other of the Conventions and whether that understanding is best addressed through an age-based identity politics. The Explanatory Statement risks objectifying people under 18, apparently assuming that they are a homogenous cohort in which all/most members have an earnest desire for political engagement and a willingness to actually engage.

The Statement correctly recognises that some young people – including those below the age of 16 or 14 – are interested in politics, have the robustness to hold and defend individual opinions, and a maturity that is alas lacking in many older peers. Individual circumstances and capabilities are reflected in the legal notion of Gillick Competence, with Australian courts on occasion very appropriately respecting fundamental decision-making by young individuals.

That respect does not imply that *all* young people have the same understanding and resilience. It does not require the extension of a major legal responsibility to all people who are 16 or 17 ... or, on the same basis, to people aged 12, 13, 14 or 15 – age cohorts that historically were regarded as the formal beginning of adulthood.

Inconsistencies

It is common for people to refer to rights without recognition of responsibilities. In Australia voting is a major right *and* a responsibility. The Bill inadequately addresses that responsibility.

Clauses 11 and 12 of the Bill – ie ‘Compulsory voting: Section 129 (1), penalty’ and ‘Default notice: Section 161 (2)’ – propose extension of the franchise to people under 18 but inconsistently treat those individuals as deficient, having the rights of adults but lesser responsibilities. Specifically, if people younger than 18 are to be given the vote they should face the same penalties as their adult peers, rather than a 50% discount. The basis for the proposed discrimination is unclear.

Consideration should be given to the quantum of the penalty for not voting. A penalty of \$10 is trivial. It signals that as a society we do not regard non-voting by young people as serious. Ironically that disregard is a manifestation of the ‘stigma’ decried by one person quoted in the Human Rights Commission report.

Candidature?

The Bill is predicated on people under the age of 18 being able to vote and penalised, however trivially, if they omitted to do so. In contemplating the proposal the Committee might ask a hard question as a corollary of that extension.

If all 16 year olds – or indeed 14 year olds, given that 16 is an arbitrary threshold for adulthood – are to be given the vote what is the rationale for excluding those people from standing for election and being duly seated after gaining the requisite votes?

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