



ELECTORAL REGULATION RESEARCH NETWORK/DEMOCRATIC
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**FEDERAL VOTER ID LAWS:
MATERIALS FROM THE GILBERT + TOBIN CENTRE OF PUBLIC LAW AND
ELECTORIAL REGULATION RESEARCH NETWORK SEMINAR**

Various contributors

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Summary

On November 5, 2021 the Gilbert + Tobin Centre of Public Law and the Electoral Regulation Research Network held a seminar to discuss the federal government's recently announced intentions to enact new voter ID requirements for federal elections—a proposal that raises questions of constitutionality and broader democratic policy. These questions include: Do laws of this kind promote electoral integrity, or ultimately undermine it?; Are they consistent with our system of compulsory voting?; And do they advance principles of equality, or are they racially discriminatory in effect?

Following on from that seminar this working paper compiles a number of pieces by participants. These materials include:

- a transcript of the meeting;
- Dr. Peter Brent's *Inside Story* article;
- Professor Rosalind Dixon's article from the *Sydney Morning Herald*;
- Anthony Green's blog post from *Antony Green's Election Blog*;
- Dr. Dani Larkin's article from *The Conversation*;
- Professor Orr's article from *The Conversation*.

Transcript from the ‘Federal Voter ID Laws’ seminar

Held Friday November 5 2021 via Zoom – Recording [available here](#)

Speakers:

Graeme Orr is a Professor of Law at UQ, Brisbane. His books include *The Law of Politics* (2nd ed, 2019), *The Law of Deliberative Democracy* (2017, with Ron Levy) and a work on elections as rituals.

Rosalind Dixon is a Professor of Law at UNSW Sydney and Director of the Gilbert + Tobin Centre of Public Law, and former co-president of the International Society of Public Law. She is the author (with David Landau) of a new book *Abusive Constitutional Borrowing: Legal Globalization and the Subversion of Democracy* (OUP 2021).

Alice Drury is a Senior Lawyer at the Human Rights Law Centre, where she leads research and advocacy on Australian democracy.

Dani Larkin is a Bundjalung, Kungarykany woman from Grafton, New South Wales and a public lawyer and representative of the Senior Dialogue Leadership group for the Uluru Statement from the Heart. Dani is also Lecturer and Deputy Director of the Indigenous Law Centre at UNSW.

Paul Kildea is a Senior Lecturer at the UNSW Faculty of Law & Justice, Director of the Elections and Referendums Project at the Gilbert + Tobin Centre of Public Law, and co-convenor of the NSW chapter of the ERRN.

Paul Kildea: Hi everyone and welcome to this online seminar jointly hosted by the Gilbert + Tobin Centre of Public Law at UNSW and the Electoral Regulation Research Network. My name is Paul Kildea and I teach and research at UNSW in public law with a focus on elections and referendums.

I’d like to begin by acknowledging the Gadigal people who are the traditional owners of the land on which I’m standing today and pay respects to their elders past and present. And also, I’d like to acknowledge the traditional owners of all the lands on which all of you are standing today and to also pay my respects to their elders past and present.

Today’s topic is Federal Voter ID Laws. So, the federal government has introduced a voter ID bill to Parliament in the last week, and the government intends for it to be enacted in time for the next federal election, which is due by May of next year.

The bill requires people to present identification prior to receiving a ballot paper at a polling place, and the bill has already prompted a great deal of discussion even in just these few days, and for the government it says that it is a modest, sensible reform and that no voter will be denied a vote, because they do not have an acceptable form of identification.

On the other hand, critics argue that it’s unnecessary and that it will have a disproportionate impact on certain groups within the community. So there’s a lot to discuss and we’ve got a great panel for you today to discuss both the proposed law and also a range of other matters related to voter ID.

Let me introduce our panel: Speaking first today will be Graeme Orr, who is a Professor of Law at the University of Queensland and an election law specialist.

We also have Rosalind Dixon, Professor of Law at UNSW and Director of the Gilbert + Tobin Centre of Public Law.

Speaking third is Dani Larkin, who is a public lawyer and representative of the senior dialogue leadership for the Uluru Statement From the Heart. Dani is also a lecturer and Deputy Director of the Indigenous Law Centre at UNSW.

And we have also Alice Drury, who is a senior lawyer at the Human Rights Law Centre, where she leads research and advocacy on Australian democracy.

So in terms of how today will work, I'll ask each of our speakers to speak for five to seven minutes, and then at the end we'll have a Q&A session. And so I invite people to write their questions into the chat, feel free to do that while the speakers are speaking, or at the end, and I'll keep an eye on it and do my best to put as many questions as I can to the speakers.

So that's enough for me. Let's get started and I'm going to hand it over to you, Graeme, to kick us off.

Graeme Orr: Thanks everybody, thanks for attending. I can see there's over 80 people - that's extraordinary at such short notice. And I should acknowledge that I am speaking to you from the land of the Jagera and Turrbal peoples in what's otherwise known as Brisbane.

Now voter ID. Voter ID, we have to understand for many conservatives, is an article of faith. Temperamentally they fret about election security and integrity, and they think that people who don't fret about it are far too trusting. To be honest, many countries have voter ID – Great Britain is soon to require it.

So for many people out there, it feels like common sense. But what is 'common sense' is often more 'common' than 'sensible'. This proposal is similar to one in the mid-2010s in Queensland that lasted for one election and which I studied.

As Paul said, it will require everyone voting in person to present some documentary ID, but photo ID is not required. Besides Medicare cards and various other government cards and documents, even a utility bill with your name on it should suffice.

In our law as well, 'document' includes electronic material – things you might hold on your mobile phone - such as a copy of a utility bill as well as letters from certain Indigenous bodies will count. As well as that, a fellow elector can vouch for you.

And most of all, as Paul said, if you lack suitable ID you'll be asked to make a provisional vote, a written rigmarole but a bit like a postal vote.

So, this is not in any realistic sense a voter suppression measure: if we were importing US voter wars, they would be making it harder to vote by mail, to vote early, to vote with assistance of mobile polling stations in remote areas and so on – that's very much Trump's shtick.

Indeed, the government could have plumped for the Canadian model – and in election finance integrity we're often looking to the Canadian system – in Canada if you don't have ID and no one to vouch for you, you can't vote at all.

And the government hasn't even plumped for the UK approach, Mr Boris Johnson's approach, and I noticed senator McGraw my former student is a Boris Johnson aide in the past, and the UK approach is to require photo ID which then requires it to spend 10s of millions of pounds every election trying to make sure that people can have access to photo ID.

So if this doesn't pass, Australia, New Zealand will begin to look like outliers, and I stress here that New Zealand also does not have voter ID and isn't planning to have it. But I think we'll be happy outliers if this doesn't pass.

Ultimately proponents of erecting hurdles to something as fundamental to the franchise I think have to prove their case: You can't just say, oh, the 'appearance of integrity demands this' – that's a circular argument. In Australia we have direct enrolment, compulsory turnout, and a long history of independent and well-funded national electoral agencies. So, we also have a high and deserved level of trust in elections.

Voter ID might feel right to a lot of people but what actually does it prevent? It could in theory prevent impersonation – that's if I go and vote in your name – but there's no evidence that that's a problem in Australia.

And if it was, the way to avoid it is to maximize turnout, and I stress that integrity and participation doesn't have to be in tension. Really, they should be in harmony. Voter ID can't prevent multiple voting, a minor and sporadic problem in Australia. Only automatic online crossing out of voters at the polling stations on the roll can really prevent that, but it's not a huge problem anyway.

Ultimately, my concerns with the proposal are threefold: Cost in a time of Covid; it contradicts compulsory voting; and it will have inconsistent effect, and an impact on trust.

So first of all, cost. Cost includes the cost of training thousands and thousands of casual clerks in the next few months. The cost of voter education, and the cost of delays in polling – people going through the rigmarole, including of the provisional voting process – when four out of six states will be enduring their first actual community wave of the virus.

Secondly, it contradicts compulsory turnout. For almost 100 years you've been fined in Australia for not turning out to vote; with voter ID you might be deterred from voting when you hear, perhaps on polling day that you require ID which you may not have. And ironically, anyone who doesn't want to vote now has an easy excuse: "Oh, sorry electoral commission, I misplaced my wallet and thought that voter ID meant strictly voter ID."

Thirdly, inconsistency of effect and impact on trust and we'll hear more about this, but even the soft touch voter ID that's proposed to you will have an effect.

Yeah, sure it makes the ritual of voting a bit more solemn and involved and that's not entirely all bad, but to the extent that more of the very young, the very old, the remote and Indigenous folk will have trouble with ID, the experience of voting, our one equalizing birthright will be burdened.

Remember, we don't have an egalitarian national ID card, unlike European nations. We don't have that because Liberals and conservatives opposed it some years ago.

Tens of thousands of casual polling clerks will have to administer this law as they work 10-to-14-hour polling days, they'll be looking at utility bills on cracked mobile screens. All this has been done in the name of trust. But when you make a provisional vote, without voter ID, you're putting an envelope in a black box. You never actually find out if your vote was admitted to the count.

And finally, there is a 'thin end of the wedge' concern. Once entrenched, it will not be a big step in the future for a Senate to empower the minister to set more restrictive ID requirements. Actually, I think that is unlikely in the future because of our traditions in Australia. But what is very likely is that

at next year's election, it'll be marked by some extra cost, extra confusion and some inconsistency. And in a pandemic year, the AEC needs that like a hole in the head.

As to voter turnout, it's unlikely it will be noticeably affected. In the Queensland study I did, the number of provisional votes due to voter ID was about 0.6% of total turnout. Turnout was down 1% but that was from one baseball bat election to another.

But that said, remote and regional electors in particular clearly had more problems with voter ID in Queensland, and provisional ballots for voter ID hurdles in the big remote areas varied from 1 to 2%, so we should certainly be concerned about electorates like Lingiari which covers most of the Northern Territory.

In the end, what's going to happen with this law is that Labor will repeal it if in when it gets into power, and we will have, like prisoner voting in the past, is a new political football to kick around, which is not exactly the metaphor you want for something as essential as voting rights.

And as for integrity and I'll finish on this point: Mr Palmer is pumping millions of dollars already into his two-man political party, just as he pumped \$80 million into the last election campaign distorting equality and deliberation. Now that really is an integrity issue. Thanks.

Paul Kildea: Thanks so much Graeme, a great deal covered there in your seven minutes. Let's move straight on to Professor Dixon.

Rosalind Dixon: Thank you so much, Paul, and like others I want to acknowledge that I'm coming to the meeting from Gadigal land on which UNSW campus sits, and pay respects to elder's past, present and emerging and to Aboriginal and Torres Strait Islander colleagues joining, as well as using this as an opportunity to note my support for a voice to Parliament, as meaningful acknowledgement of country.

I also want to say a very quick thank you on behalf of the Gilbert + Tobin Centre, as Graham noted we've got over 100 people joining us and we put this together, jointly with the Electoral Regulation Research Network very quickly and it's wonderful to see lots of people interested in these issues and I want to thank our co-panellists and Paul, as well as others at the ERRN for being so generous and collaborative in putting together this event so quickly.

So, my perspective is very much the non-expert on this panel because I don't work on election law per se, but I bring a comparative, as well as a constitutional perspective to the issue. And I really just want to highlight three things, two about the comparative context for the bill and one about its likely constitutionality.

So, the first is about what comparison teaches us about possibility. The two is about the issues of fit that one might be worried about and the third is about dangers, and then I'll turn to constitutionality. So as Graeme notes, this is an area of regulation where most democracies have some kind of regulation in place, and one of the values of looking around the world is we can look at the best and the worst ways of doing it, and clearly there is some learning embodied in what the federal government is proposing but I think there's still more we can learn and one of the ways we learn is by looking not just at possibilities that are, you know, legal possibilities but possible impacts.

And I think, you know, Graeme has done great work along with others in Queensland that show us the possible dangers in terms of impact but I think the rest of the world can also teach us that.

So the first is about negative and positive possibilities as what we learn from looking at other electoral regulation regimes.

The second is I think when we do comparison and learn from other systems we have to worry about fit. And one of the things I do think is worth emphasizing and you know Graeme says New Zealand and Australia are becoming outliers – perhaps in our family of Commonwealth countries – but Australia is a system of compulsory voting, and I think that's a really important thing to note. And if that were the sort of starting point, you'd be looking at Brazil or you'd be looking at some of the European countries that have compulsory voting as your touchstone.

My suggestion is that if you think about compulsory voting as a system in which we see voting as a civic duty, far more than a right, there is a real tension between requiring people to go through various hurdles in order to exercise the right to the franchise because it sends a message that it's a privilege, rather than a duty. Of course it's both, but our system is predicated on widespread participation and encouraging people to vote.

There's Judith Brett's famous rendition of the barbecue as the encouragement to vote, but the reality is that it's encouraged by a wide range of measures, by a modest fine, by being on Saturday, by there being pre-polling options, it being very easy to vote, and when you do go up there on your Saturday to your local polling place if you're able to, it being a reasonably seamless and pleasant experience, and erecting barriers to that and making it seem legalistic, bureaucratic and difficult is something that may deter turn-out as Graeme has shown, but also sends a symbolic message that I think undermines a very, very important part of our democratic fabric.

And that fabric shouldn't be taken for granted: increasing numbers of people don't register so that they can't be then engaged by the system. And we need to be very mindful about encouraging voting as part of our tradition and seeing it as a duty not simply a right.

So that's the fit point. And the other aspect of fit is that regulation makes sense when you've got an identified risk or danger, and there are countries where there have been instances of abuse that need to be countered.

But as others have pointed out, there is very little evidence in Australia from the AEC or anyone else to suggest that multiple voting, or voting on behalf of people who are not the registered voter, is a meaningful problem in Australia in elections: the AEC's best estimate was .03 percent.

And what does that mean. That means that there's a real danger here that you're fixing a problem that doesn't exist, and in the process you're causing real harm. One of the harms that Dani is going to talk about more in due course and which I think is really important to emphasize, and Graeme's research backs this up, is that the kind of people most likely to be impacted adversely by these laws are people who are already disadvantaged in our political system and are overwhelmingly First Nation or from culturally diverse backgrounds.

The good news in Australia is that more people have ID than in countries like the US, and so this isn't going to bite and preclude many people from voting, but of those who will be precluded or disadvantaged, or discouraged, a very significant number will be First Nation voters. And you know that has impact, as Graeme says, in certain electorates like Lingiari in the Northern Territory, but it also has broader equity considerations that we need to be very alive to and Dani's going to talk more I believe about that.

The other danger of responding to a problem of this kind, without demonstrable risk or danger is that there's inevitably an adverse impact that one has to weigh, but my broadest comment would really be

that this kind of move – and it is generally a conservative move – trades off the kind of seeming reasonableness and sensible nature of the reforms, but in effect is part of a broader global movement to suppress turnout and voting by those who tend to vote for more progressive politics and policies and governments, that it is straight out of the Republican playbook in the United States, and also the Johnson playbook in the United Kingdom, and one of the things that I think we have to really hold on to, if we're going to promote the best kind of democracy in Australia, is the sense that regulation should be a response to real problems that are backed up by evidence.

One of the things that allowed Trump to get away with the claims of rigged elections or, you know, a problem in electoral integrity in the United States, is that over the last four years, and more, there's been a growing distance between identified evidence-based claims policymaking and the political response. And if we say, "well, of course there could always be integrity issues so we act now", there's this danger of creating a politics, which is in a sense, allowing discourse and regulation to proceed without a sufficient evidentiary basis.

And that is really the slippery slope to a fake news, you know, political, claiming, situational culture where there is very real dangers to democracy of a kind that I hope we never see in Australia and we haven't seen to date, but that's the danger [of] regulating without data or without demonstrable problems – it does raise really serious concerns. If you think about the voter suppression efforts that followed January 6 and earlier in November of last year in the United States.

So, my concern is that this is seemingly common sense, but it has racial disparate impact, it has a discouragement that fails to identify the nature of Australian-based duties in voting, and that it creates a politics of responding to non-evidence-based claims in ways that are very dangerous.

And so, you know, like others I think it's a very concerning development that we should be really scrutinizing very carefully, and I would suggest that the High Court would do the same: the doctrine is obviously quite complicated but essentially they're looking for whether any effective burden on the franchise is reasonably necessary or adapted to its purpose, and if there isn't evidence of a problem, it's going to be very hard for the law to satisfy that kind of necessity test and so my own argument would be that there is, on the data we have at the moment, both a political problem, and a very real constitutional doubt around these proposed laws.

Thank you, Paul. I look forward to discussing more.

Paul Kildea: Thanks so much Ros, and now we're going to hear from Dani Larkin.

Dani Larkin: Thank you Paul. Good afternoon, everyone. My name is Dani Larkin, I'm a Bundjalung, Kungarykany woman, and I'd just like to pay my respects from the land that I'm dialling in on from today which is Gadigal country.

So, Indigenous people fall into each of the vulnerable categories of voters that political commentary has identified this week and last: they are people who are financially vulnerable living in poverty, they're people that are living in remote communities with minimal access to support services and with a small spread-out population, making it harder for those people to find someone to vouch for them.

They are homeless people. And of course, those who are of Indigenous descent... in fact Indigenous people occupy alarmingly high statistics in all of those categories despite being less than 3% of Australia's overall population.

Furthermore, research conducted from the Australian Electoral Commission in 2016 suggests that approximately 58% of Indigenous people were enrolled to vote. However, this was viewed as a generous estimate of Indigenous voter engagement with a more realistic enrolment figure perceived to be at 50%.

In addition, a private assessment conducted by Indigenous leaders, non-government and government agencies found that approximately 25 to 30% of Indigenous people who are enrolled actually cast a formal vote, but I note, Minister for Indigenous Australians Ken Wyatt's media release last week on the 28th of October, where he drew upon data and stated that the estimated Indigenous enrolment rate lifted from 74.7% in 2017, to 79.3% in 2021.

However, enrolment rates are obviously not inclusive of voter turnout rates, and rates of votes actually being cast, and those that are, actually being counted. I'd suggest these issues and figures are indicative of broader systematic challenges facing Indigenous political participation in Australia. Yet nothing's being done about it.

Instead, we have the Morrison government's proposed electoral changes, adding additional red tape to the voting process, which does not provide incentive for those who are already disenfranchised to politically engage.

I also note Senator Patrick Dodson's media release on Friday the 29th of October, where he stated the government knows full well that First Nations people have always struggled to obtain ID documents as basic as a birth certificate, because of an absence of records or because of difficulties in accessing and navigating official services – difficulties that are often exasperated because of remoteness and language and communication disadvantages. Accordingly, there should be as few barriers to Indigenous people casting a vote as possible.

Despite the difficulty in calculating unregistered births across Australia, a study conducted in Western Australia in 2016 found that there are lower rates of birth registrations amongst Aboriginal Australians compared to non-Aboriginal Australians, and according to the study many Aboriginal Australians do not have registered birth certificates when they're infants. This was common amongst Aboriginal children from disadvantaged families who are also shown to be nine times less likely than non-Aboriginal people to have their births registered.

The study also found that there are significant barriers in the birth registration process that can contribute to Aboriginal families not registering birth. Generally, those barriers included situations where the mother was a teenager when they had their first child, they lived in a remote area without private health care insurance and this birth was not registered.

The most likely circumstances for non-registration occurred where the parent was disadvantaged from having lower levels of literacy, which made it difficult for them to complete the application form whilst trying to look after a newborn baby.

Despite assistance being available through the birth registry, access to staff is difficult for those residing in really remote areas. Financial disadvantage was another common factor given most Aboriginal parents living in remote communities have higher unemployment rates and were unable to afford the fee for a birth certificate.

Despite electoral legislation allowing persons without voter ID to enrol with the support of a stat dec, signed by a person who is identified to vouch for their identity, there remains a barrier for Aboriginal electors: those who reside in remote communities may lack the incentive to enrol to vote in the first

place because of that initial barrier, compounded by the task of finding someone to vouch for their identity through a stat dec. Inevitably, some Aboriginal citizens will remain off the voter rolls.

There is another way in which low rates of birth registration intersects with high rates of incarceration to compound Indigenous people's disenfranchisement. We know that the Commonwealth Electoral Act 1918, section 93, subsection 8aa, disqualifies prisoners from voting if they're serving a prison sentence of three years or more.

We know that Australia's national incarceration statistics evidence a disproportionately high representation of Aboriginal Australians imprisoned – we occupy 27% of Australia's national prison population – a statistic that was acknowledged by the Australian Law Reform Commission report 'Pathways to Justice - Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples'. And in addition, the 'Incarceration' report found that unlicensed driving offenses greatly contribute to Indigenous Australians being over-represented in incarceration.

Those without a birth certificate, are unable to get a driver's license; those in remote areas, in particular, depend on driving to cover the vast distances between families and services. Without a license many drive regardless, which leaves those persons open to being found guilty of driving a vehicle without a license.

This offense is typically one that occurs in emergency and high-need situations where an Indigenous person needs to, or is the only one able to – illegally however – drive a vehicle to attend the hospital for an emergency and/or lives in a remote community and needs to travel to get groceries, etc.

The 'Incarceration' report also revealed that incarcerated Aboriginal Australians are also likely to be affected by mental illnesses and illiteracy issues. Being deemed of unsound mind can also be a disqualifying barrier to voting at Commonwealth elections.

So as you can see the proposed voter ID requirements actually intersect with a number of other political participation barriers for Aboriginal and Torres Strait Islander people and arguably these barriers are another reason why Indigenous people need a constitutionally protected voice to parliament, when their means of representation within it is so limited.

Thank you, everyone.

Paul Kildea: Thanks, Dani. Great. And now move on to our fourth and final speaker, Alice Drury.

Alice Drury: Thanks, Paul. I'd like to acknowledge that I'm calling in from the country of the Wurundjeri people of the Kulin nation today and pay my respects to elders past and present and also extend those respects to the Aboriginal and Torres Strait Islander people on the call today, and also the First Nation advocates who are really leading the charge blocking this bill.

And just to echo Professor Dixon, we have a really strong culture of treating every vote as sacred in this country. But the impact of these laws, is that they will practically disenfranchise many people, as we've heard from Dr. Larkin, they'll hit hardest Aboriginal and Torres Strait Islander people, particularly those living in remote communities; people experiencing homelessness; people experiencing mental health issues; elderly people.

These are exactly the people that should have better representation in our parliaments and not have locked out of yet another avenue to power. And we've also heard that there's precious little evidence supporting these laws. But there's an overwhelming amount of evidence to indicate that they can be used to suppress votes.

But what I wanted to focus on today was some sort of practical points, that the government has made in favour of these laws. And also, you know what we're doing at the Human Rights Law Centre, and what others can do to block this bill.

So, firstly to sort of debunk a couple of things. It's really normal for a lot of people not to have one of the IDs listed in the bill. Dr Larkin has already gone through a couple of reasons why: if you're born on country, you might not ever be given a birth certificate, which is a huge barrier to then getting other forms of ID.

In addition, not everyone uses the western calendar and not every culture celebrates birthdays – that's definitely not the norm across the country – so it's very normal, to not have a birth date or a birth certificate.

In addition, you might have had ID but it expired, and the bureaucratic barriers to renewing it are huge if you live hundreds of kilometres from government office or if you don't have internet. If you're moving from place to place a lot, if you're visiting family or community you might not have it on you.

And also, if you're experiencing homelessness, you probably have nowhere safe to keep your ID. And so I think normalizing this idea that you might not have ID on you on the day that you vote is really, really important to combating this bill.

And second, declaration votes are not a safety net. Again, Dr Larkin has already gone through the barriers to enrolling for Aboriginal and Torres Strait Islander people and declaration votes will operate in the same way.

What many people will hear is 'voter ID laws': what that will mean to them is that if you don't have an ID, you're not going to be able to cast a vote. They won't even think to turn up so declaration votes won't help in a lot of instances.

Also, the declaration votes themselves are extremely confusing; as currently drafted they ask for your permanent address, your driver's license and passport number. Technically, people may not have to fill in that detail, but they're not going to know that, and it's also likely that many electoral officers won't know that. When these laws were temporarily in place in Queensland, electoral officers wrongly turned voters away when they didn't have ID.

And finally, there are issues already with declaration votes: the process of verifying identity under tight timelines meant that in the 2010 Federal election about 28,000 declaration votes weren't counted.

We should also be deeply cynical, and we should all be asking why the government is pursuing these laws now. They serve as a distraction from talking about the actual integrity problems in our democracy – we've got allegations of corruption and pork barrelling, secret donations, sexual assault in Parliament, all of which have gone, to date, unaddressed – or inadequately addressed at most.

We also have issues with our elections specifically including, as Professor Orr pointed out, the unchecked spread of disinformation and unprecedented millions that Clive Palmer is spending to flood our airwaves to skew election outcomes.

So, there is a long, long list of integrity reforms that the Morrison government could pick from, and he's picked the one that there's no evidence for, that will disenfranchise people and is absolutely the worst thing that he could have done, in my opinion.

And also, Dr Larkin made reference to a significant underinvestment by the government in getting information in language to remote communities, and the lack of will to address the existing barriers to enrolment to vote. So, if you care deeply about electoral integrity, then that is where we should be focusing our efforts.

What these laws do is raise an opportunity for the government and Pauline Hanson to talk about voter fraud, and that has been a highly successful tactic to further undermine trust in elections, of course as we've seen in the United States.

And just talking about it as a problem can lead people to doubt the process of voting. This is a really dangerous precedent to be following here in Australia.

So practically, I wanted to talk as well about messaging for anyone doing advocacy on this issue, or even people wanting to talk to their friends on this issue. The first of which is to speak from the values, and also to speak from a strengths-based approach, particularly when talking about how these laws will impact Aboriginal and Torres Strait Islander communities, and I wanted to give a shout out to Passing the Message Stick, which is amazing, really well researched kind of gold standard messaging that's freely available, on their website, that particularly speaks to talking about justice for First Nations people, but the principles are excellent and should be deployed I think basically in all circumstances.

And, second, just a kind of moment to say that we should be avoiding talking about voter fraud and using the phrase voter fraud because that will unfortunately just perpetuate the aims of this bill, which is to make it a conversation.

Finally, in terms of practically what the Human Rights Law Centre is doing together with other partners in the sector is: most likely we will need to block this bill in the Senate, which means asking people in South Australia to reach out to Senators Stirling Griff and Rex Patrick, and anyone in Tasmania to reach out to Jacqui Lambie's office, particularly if you're someone who might be impacted or if you're in contact with people who might be impacted by this bill.

That's all from me, thanks Paul.

Paul Kildea: Thanks Alice, thanks to all our speakers, and I can already see a few questions in the chat which I made a note of and will come to them very soon. If any of you would like to throw a question to one of our panellists, then please make use of the chat function.

I thought I'd just begin by playing a little bit of devil's advocate. So the government has put a range of different justifications for the bill forward, and one that I've kind of heard a lot in terms of, you know, media have paid attention to this week is this idea that we need to show ID in a range of other everyday activities. And so, James McGrath a Senator who is the chair of JSCEM said, if I want to go to my local surf club or bowls club I have to show a form of photo ID, but I don't when I'm voting, so why is that? And he then goes on to say that electoral matters must not only be fair, open and transparent they must be seen to be so.

And so I guess the question for any panellist who wants to come in on that is, isn't there something to that? And then we've talked a bit about evidence, there's not really any evidence of impersonation, but perhaps trust isn't about evidence at the end of the day, and the argument is that by introducing a voter ID requirement that is going to build up trust and that should be a good thing, and that it would be an open way of demonstrating that in our electoral system.

So, over to any of our panellists who have a response to those kind of perspectives, such as those put forward by Senator McGrath.

Rosalind Dixon: You know Paul I was asked on Canberra radio earlier in the week about, you know, if I wanted to go to the bottle shop and buy a bottle of wine, or you know Jack Daniels was the exact beverage of choice the host used you know to show ID – yeah but you don't have a sort of public duty to go and buy Jack Daniels or go to the surf club. The duty aspect to it I think is really worth stressing which is that a lot of the things that we have to show ID for are a privilege and that, you know, voting is part of our absolute civic fabric and duty.

And I think that there's also a rationale there, which is underage drinking is not an ephemeral, made up problem. It's a problem that's a serious safety and public health issue in a lot of contexts and so there's an evidence-based reason for that ID requirement, which there just isn't here.

I thought Ian's suggestion in the chat about cross-checking through electronic crossing-off was really interesting, worth discussing and hearing other people's feedback. Sam says it could be expensive. But as Graeme says, it's not like checking IDs is free.

I think the other broader thing though that's really tricky about this and this picks up on what Alice and Graeme said as well as the chat from Kim Rubinstein is that trust is a circular phenomenon, it's like if we raise doubts we undermine trust and yet if we provide certain forms of assurance we maybe increase trust; the very discourse around this bill seems to do more to undermine trust than to promote it and I think that's one of the really vexed parts of it.

Dani Larkin: I think if I could just chime in too Ros, I mean, from an Indigenous perspective, Indigenous people aren't, especially in remote communities, going to be concerned with attending the local surf club, or their local bottle shop every Friday and have the privilege of even accessing such venues.

And probably, that's not even on their priority list if they're in utter financial poverty, which is the main issue here, and getting onto trust I mean it comes down to – this is why Indigenous people don't have necessarily trust in their current representatives in Parliament, because of that disconnect.

There's a disconnection there with understanding the magnitude of oppression and lived experience of Aboriginal and Torres Strait Islander people in remote and regional communities and that statement in and of itself from McGrath is clear evidence of that. And so what you get is Aboriginal and Torres Strait Islander people going "well there you have it" – we've got someone here that's a Senator who is meant to be representing different constituent interests, and he has no connection, if any at all, to Aboriginal and Torres Strait Islander lived experiences and their lack of access to obtaining, the financial support necessary to be able to obtain voter ID documents to satisfy the propose Bill requirements to be able to vote.

Paul Kildea: Thanks Dani, so Graeme, I'm going to go to you now, I can see your hand up and I thought just as part of that – a couple of people have asked in the chat about lessons to learn from Queensland so feel free to address that as part of your response.

Graeme Orr: Yeah, so the point about trust is not an insignificant one, because trust in the system whether it's high or low is important to democracy and courts around the world recognise that and political philosophy recognises that and so on.

And I am aware that you know when I put forward proposals sometimes about capping donations, I'm part of a set of voices that often are asserting that the appearance of money passing – even if we

can't prove corruption – is problematic in itself, but the difference there is that money is a tangible thing, and that we do know we have clear survey data of a decade to show that Australian people are very concerned about the inequality of access to political processes and so on, so that's where I draw the line with Senator McGrath, without saying that as a matter of principle, that what he's saying is stupid.

I'm happy to take particular questions about the Queensland experience but I'll hand back to Paul.

Paul Kildea: Yeah. So, there is some interest in the Queensland experience, Graeme I guess in particular in terms of, you know, your research and the, I guess what communities did you find that to have the biggest impact on – is there anything that you'd like to highlight that we could learn going forward?

Graeme Orr: Right. I mean certain things that I've already put forward, there was a bill about voter ID just a month or two ago from the One Nation party which the government didn't support but now they're pushing forward very much the same proposal that if, if this is to go through there's certain things we do need certainly to do and one is to ensure the Electoral Commission is doing proper, detailed, fine-grained research about this because in the Queensland case it just didn't happen at all – the government didn't care, the Electoral Commission didn't have the resources – and so it was left to me and an oily rag to look what we call ecological data, so we can only do it at the level of electorate level, and you know when you're talking about young and old people with problems accessing ID, that just doesn't come out in the wash. So all we could do is to show that yes remote and other regional communities and those electorates, that were the vastest or had the largest Indigenous populations had the most effect.

As I said, the effect wasn't great in terms of the number of people who turned up and their ID was not good enough or they were rejected but we obviously don't know how many people mightn't have turned up because they didn't understand they were still entitled to vote and that's going to be a real problem with the messaging, both for the government, the Electoral Commission but also for activists in this area.

So I mean some of the lessons are that yeah, if we worried about this as Alice said, there are things that you can do obviously because in the Australian system you can assist people to vote, scrutineers can take people in to help make sure that they can cast a proper and provisional ballot, but on top of that I also think it's outrageous that you could have to drive a long distance, particularly in a remote or regional electorate to get to the polling station, and then you're never told whether your votes accepted in the count.

I'll also note that this isn't a proposal that requires postal voters to photocopy ID and that's kind of understandable because they already have to go through the rigmarole but it's interesting that we don't impose that on postal voters, and they tend to be older citizens. And yet this is the very sort of thing in the US where they really want to suppress, where they're trying to stop postal voting and things of that nature.

Paul Kildea: So thanks very much Graeme, and there's a bit of comment about electronic mark-off in the chat, I understand the AEC is looking to kind of roll that out more, and potentially that can address accidental mark offs, accidental multiple voting.

But there's a question, I guess, as to the number of devices as someone has commented in the chat and also the question of whether you want to rig your electoral roll up to the internet and whether that's going to open it up to kind of hacking concerns.

I should also say that Antony Green has written about Queensland's lessons as well if anyone wants to pursue that, on his blog. And I just thought Alice in relation to your comment that we should be cynical about the government's agenda here. I just want to tease that out a bit – is it your sense that there's an electoral gain to be had by introducing voter ID laws and it came up in Ros' talk as well, like in the sense that it seems to me that if – playing devil's advocate I should say – that if the impact of voter ID, while real, is it of sufficiently large scale to actually potentially shift an outcome in a seat or not.

Could it just be you know this idea of voter ID is an enduring one, it's been recommended by multiple JSCEMs over the last decade, is it not so much to do with potential electoral gain as it is to do with just concerns about fraud, like a philosophical concern about fraud in the way that Graeme kind of identified earlier.

Alice Drury: Yeah look I haven't seen any data to indicate that this bill could flip seats. And I'm not sure... you know, I think some folks are looking at doing that number crunching and I don't think anyone's had a chance to do it yet.

My point is less that, and it's more that there is a philosophical – not evidence-based but philosophical – concern about the potential for future, you know, people in the future voting multiple times, etc. And there is a very, very real known outcome of that which is that people will be disenfranchised.

So I think the cynicism that I spoke to was, you know, why introduce these laws now when there's no problem. And I think that's because, as I mentioned before, it's a distraction from the very real problems that the government is facing in terms of integrity within the party and systemic problems with our democracy. And I think it also gives some folks including Pauline Hanson an opportunity to talk about voter fraud when it's a really, really hot topic in the United States, so it kind of appeals as well to that conspiracy right faction.

Rosalind Dixon: Can I say something about that Paul as well? I think that there isn't real voter demand for this, but there is a degree to which we now sort of see packages of policies coming from other countries, so if you're a conservative you need to be in favour of these sorts of laws as part of a broader political package. They are effectively part of the current US/British conservative package and we need to resist that infecting our politics – that we can have, you know, crossover discussions, that we can interrogate policies on their own merits.

And that I don't think the broad swath of voters, know about, care about, or certainly wouldn't support this proposal if it was put to them, and explained fully, but it is a sort of messaging to the base that is a dangerous pattern of kind of taking if you like a whole package, some of which is really undesirable, and so we need to hold the government to account and say, you know, we can see this is part of a broader ideological package that even though it seems quite sensible in many ways has a really troubling effect for First Nations and very troubling broader sort of symbolism in taking discourse from the US – which is very, very dangerous and putting it into Australia in a way that we really need to resist. So I think it's much more about the base and the broader vote and calling the government out on that might be very important to our ability, as Alice said, to draw attention to senators who aren't members of the coalition and/or to get people thinking about the dangers.

So there's some interesting discussion as well in the chat about whether the actual evidence that does support the suggestion and I think both Peter and Antony Green had something interesting to say about that, I'll turn it back to you, Paul.

Paul Kildea: Thanks for that Ros and also in the chat just a little bit earlier I had someone asking a question about, is there a need to be putting more effort into making ID more accessible for First Nations people and also homeless people.

I mean, I don't know, if Dani, if you had anything to say about that, I mean I guess would your concerns about voter ID be lessened if you knew that ID was made more readily available or is that to you it's just one of many issues that are at play here?

Dani Larkin: I think you've got to think of this as like a suite of different law and policy reform options that would all work towards enhancing and providing incentives to First Nation voters, yeah? So, like the media release I referred to by our minister for Indigenous Australians Ken Wyatt, he noted in that media release that the government is looking at putting in more funding towards different initiatives to increase indigenous voter turnout and engagement, political participation programs in Indigenous communities.

That's something that has been established for decades now, but it doesn't seem to be working – that is my point. The AEC could work with Births, Deaths and Marriages offices in each state and territory to find ways in which it can assist with providing financial support to financially vulnerable Indigenous people so that they are able to obtain a birth certificate, and be able to go on and get photo ID so that they can vote at elections.

I think it ultimately comes down to the political attitude of people in Parliament and them making a very real legislative commitment in electoral laws and policies that actually recognize these types of substantive political rights of First Nation people but also the barriers they must contend with. I spoke about the Voice to Parliament before and the reason why we're advocating so hard for that because we don't see ourselves represented within Parliament. There's also the issue we must contend with where even when we do get in, we're part of minority voices and interests yet again.

The representation is not very representative at all in fact. This contributes to issues surrounding political distrust which is our political reality. In fact, we are politically invisible when it comes to our political representation. And it comes down to also I think, how the government works out different ways to ensure electoral law actually supports Indigenous voter turnout. If there is not legislative commitment to do so, then it should be thinking about what other mechanisms it can offer outside of its institutions to start a process of structural reform that would hopefully have a flow-on effect to ensuring indigenous people are politically represented. This might be achieved through a constitutionally protected Indigenous Voice and its proposed functionality of intercepting of really important law and policy making processes that may even lead to electoral reform on these types of issues.

Paul Kildea: Thanks, Dani. Maybe moving from parliaments to think of courts, I mean, Ros you mentioned potential court intervention and so did you Graeme, you know, how would you see a challenge to voter ID, a Voter ID Act, you know, playing out here – is it something that would necessarily have to wait until after the election in any event?

Does Rowe set a decent president that fraud is something that the courts can look at very seriously and would want to see evidence of it? I might go to you first Ros and then to Graeme.

Rosalind Dixon: Well, others are, you know, going to be better at answering the timing question but I think there's no doubt that protecting electoral integrity is a compelling reason to legislate but there has to be an evidentiary basis or necessity.

One of the things I do think was interesting in the second Unions Case, in the context of the implied freedom is that the court held the state parliament to a pretty demanding evidentiary standard in terms of its claims that were underpinning the legislation, so I think there's no doubt that the broad aim of promoting public trust in the electoral process and the integrity of the process is an absolute constitutionally valid and indeed compelling interest, but that's not enough, there has to be a basis for pursuing that interest in the circumstances, and the burden that's real that everyone's talked about has to be justified by reference to some kind of reasonable necessity or appropriate and adapted test and I think that unless a lot more evidence that comes to bear as part of the parliamentary debate, and or independent evidence to support that, I don't think the issues – the nature of the purpose as you say Paul – it's got some precedent and I think it is compelling, I think it's whether there's the evidence to suggest that pursuing the purpose here is valid and necessary.

Paul Kildea: Graeme, feel free to come in if you wanted to add anything.

Graeme Orr: Yeah, I mean, as much as I love litigation in this area, I wouldn't be pushing it under this bill. I certainly wouldn't be pushing it before the election. One problem is that any plaintiff who it burdens is simply going to be told, well go and get ID there's a long list of ID and you can provisionally vote anyway. I'd be looking for evidence maybe after the election on effect.

But even then, well it's such a soft form of voter ID and with this current High Court, I wouldn't actually want to be, to risk a precedent that forecloses things, I'd be saving my powder, as it were, for the possibility that these laws will be tightened and made more restrictive in the future.

Again, that's not to say that I think the laws are justified in a political sense but I think this is also a political campaign.

Paul: Thanks Graeme. We've kind of just got a few minutes left, I guess, open to any of our panellists – I've kept you on a very tight leash today but if there's anything in particular, you wanted to add in... I might go to Alice first, I mean you made some really interesting points about declaration votes and just about the availability of declaration votes isn't necessarily going to solve the problem, it's still going to present a significant barrier for a lot of people. If there's anything else you wanted to say about that, or you whether you would sort of welcome this being referred to a JSCEM inquiry for proper consideration prior to enactment – anything along those lines.

Alice Drury: In terms of whether it will be referred to JSCEM, there's reasons to doubt that – it's already been considered by JSCEM in their reviews of the last few elections, also this came from JSCEM which is a Coalition-dominated parliamentary committee.

So I don't know if it will be referred to JSCEM, it could be referred to a Senate committee and even a select committee. So we'll see if that happens, ideally from our perspective it goes to a vote in the Senate. Ideally the government would retract it, but presuming that they're not going to, it goes to a vote in the Senate and it's blocked.

And in terms of sort of practical instances of people not being able... the barriers that they face on the ground I think there's some excellent organizations and advocates who are pulling together those case studies as we speak, so definitely keep your eyes peeled. And making sure that we have the people who are impacted speaking to their experiences of voter ID laws.

Rosalind Dixon: One of the things I thought was interesting to note, you know the chat highlights and, you know, Deborah and then also an earlier comment from Damien... think about homeless people, young people and people with lived experience of disability are also impacted and we need to keep that in mind.

I think one of the real challenges is as Damien says, to some extent, especially for First Nations, this highlights the importance of working more to get people access to ID and birth certificates in the ‘formality of existence’, and that’s going to be more important as we live in a, you know, Covid era where documentation of various kinds is important in access to ordinary civic life. As Dani says, not everyone’s lucky enough to have a surf club down the street but there’s still ways in which being formally recognized by the state, whether it’s that driver’s license you need for the emergency or something else really matters. But we can try and hold on to that instinct which is this is the miners canary about ID – without saying, and by the way you need ID to vote, because this is again emphasizing that it may undermine not increased trust in the electoral process.

I just keep coming back to it’s a duty, you know, you don’t erect barriers in the way of a duty unless there’s a really demonstrable problem with how it’s being implemented and so I think it’s difficult politically actually to do that messaging at once but I do think if possible, taking seriously that there’s an ID access issue, which is a human rights issue in itself – especially for First Nation but also for some homeless and other disadvantaged communities – and at the same time, even if we fix that, it doesn’t mean we necessarily want to be going down this path, because of the symbolism around what compulsory voting and civic duty means. So, you know, I think that’s worth bearing in mind.

But it’s great that we’ve got all these wonderful experts joining this meeting so that it’s not just the panellists, but all the people teaching us in the chat from their litigation experience there, their analysis and their own scholarship in political campaigning that’s, you know, a real treat.

Paul Kildea: So we’re just coming up to the hour now so it’s probably a good time to draw a line under it and I agree Ros, I really just, it’s terrific to have such a large audience here today to be here while we discuss this issue.

I should say there’s a lot to this and we haven’t been able to get to everything. There’s much more to say about say, the impact on electoral commissions and the like and I will put in a bit of a word for the ACT branch of the ERRN which is holding its own seminar on voter ID later in the month, so look out for that, around the time the bill is being discussed in parliament.

But I really want to thank you for being here, I want to thank our speakers who on such short notice have agreed to be here and offer such interesting, diverse perspectives on this issue. So thanks to everyone and we hope to see you all again soon.

Is it time for Voter ID?, by Dr. Peter Brent

Dr. Peter Brent, Election specialist, Mumble, Inside Story, @mumbletwits

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Voter ID is back. According to [media reports](#), the federal government will shortly table a bill to require voters to provide evidence of their identity at federal polling booths.

Any discussion of this topic needs to first extract itself from a fallacy that befalls so many debates about voting rules (compulsory voting is a fine example): that the United States is the only other country in the world. And look at how terrible things are over there!

Voter ID has a long and ugly history in America, and has become deeply embedded in the ideology wars. Australian partisans tend to inhale these battles as if they're happening here. But the world contains many functioning democracies.

Yes, America has a ridiculously decentralised voting system (state legislatures decide rules for national elections; local councils do their own thing) that's riddled with partisanship. Australia does not. In fact, with a permanent national body that conducts elections — the independent Australian Electoral Commission — we are at the opposite end of the spectrum. (Most liberal democracies have national election laws administered by public servants and local government employees.) So let's leave America out of it.

Our centre-right parties have been itching to introduce voter ID for decades (although John Howard didn't when he had his 2005–07 Senate majority). While some current advocates of voter ID spend too much time on American right-wing websites, the reaction from opponents of the idea can actually be worse. No less than Labor's national secretary, former treasurer Wayne Swan, has tweeted that it involves "rigging elections." (He accuses the Coalition of "Trumpist" behaviour, but claiming your opponent will steal the election is actually part of the Trump playbook.)

But it's true that Australia doesn't have a problem with voter impersonation. In Antony Green's much-quoted words, voter ID is a "solution in search of a problem."

And yet...

The fact is that most countries do have voter ID laws, including most of those we would compare ourselves to: longstanding liberal democracies with advanced economies. But then, most of them are in (western) Europe and have national ID cards that people must carry around anyway. Of the more comparable nations — New Zealand, Canada and Britain — all without civic registers, only Canada requires voter ID for national elections.

Still, being in the minority is not a good reason to change. In this case, there is really only one good one: public perceptions. Most Australians support voter ID because it just makes sense, and it seems strange you don't do it already. In the pre-Netflix era, advocates would point out the apparent incongruity of needing ID to rent a video but not to employ that precious possession, your vote.

The answer then and now is that enabling nearly all people to exercise this right — as might be the case with voter ID — is not good enough. As a society we don't want voting to be restricted to the 80–90 per cent who have no trouble producing ID. Elections are supposed to be the big leveller; all our voices should count equally.

But the public confidence factor can't be dismissed.

The last federal election's jaw-dropping outcome, dramatically contradicting all published opinion polls, produced a dollop of social media conspiracy theorising — but no more than that. Virtually everyone accepted that it was a genuine result. We want to keep it that way. Perceptions matter.

When Queensland's Newman government brought in a voter ID law in 2013, I gave it a single thumb up. If we were going to have such a thing, this one seemed pretty innocuous. If you didn't have ID you would fill in a declaration vote to be checked later. It was used at one general election, in 2015, before the new Labor government repealed it.

Anecdotally, Queensland's experiment produced longer queues. As Graeme Orr notes, turnout dropped, but turnout fluctuates between elections anyway, and cause and effect can't be reliably

identified. Still, it wouldn't be surprising if voter ID laws turned a lot of people off. And it also produces another possible excuse for not voting. While "I don't have ID" might not, strictly speaking, be a reasonable defence, it's likely the Electoral Commission of Queensland was lenient.

(Data from ECQ annual reports mildly supports this. The 2012–13 annual report says \$5 million was paid in non-voting fines in that financial year, "the majority... in connection with the two major electoral events conducted in 2012" — that is, before the new voter ID laws. Its 2014–15 and 2015–16 reports, covering the first election under voter ID, recorded just under \$1.5 million in total.)

The planned federal legislation, which at time of writing hasn't been seen, looks as if it will be like Queensland's, but with the added feature that you can get someone else on the roll to vouch for you if you're without ID. Not mentioned in current media reports is whether the AEC will send all voters a letter that could be used as ID (as happened in Queensland).

The fine print is that little checking of those declaration votes was done in Queensland. If the claimed voter was on the electoral roll, the vote was counted, because logistically it wasn't feasible to check if their name was already crossed off one of the many copies of the roll. So for all intents and purposes, that voting paper might as well have gone straight into the ballot box in the first place, along with all the IDed votes.

The Queensland rule was really just a disincentive to vote fraudulently. And, of course, a means to maintain a perception of electoral propriety.

Technology has changed since 2013, too. Increasingly, electoral rolls are being accessed electronically by officials on election day. As far as I know the rolls are not yet live at federal elections, which would facilitate the immediate cross-off of names across all copies of the roll. But even then, under the Queensland arrangements, nothing would have stopped someone impersonating someone they knew wasn't going to turn out.

So much of this discussion is very twentieth century. Technology is changing the way we live our lives; letters and paper ID are becoming obsolete. Most people don't receive utilities bills in the post. Not everyone has a printer. It is, of course, impossible for postal voters to show original identification. Widely used internet voting will come eventually (but not soon, fear not).

If the federal government's ID plan becomes law, the AEC will require extra resources. There will be teething problems. It's probably easy to overstate the contribution to public trust. Conspiracy theories about electoral malfeasance could take root regardless, and would be likelier in the event of a Labor win. (Already the AEC has to deal with wacky social media disinformation.) The loophole described above creates plenty of space for feverish speculation.

And while the Newman government in 2013 enjoyed a massive majority in its single chamber of parliament, the current legislation must pass the Senate to become law. That's quite a hurdle.

Proposed voter ID laws pose a risk to our democracy, by Professor Rosalind Dixon

Rosalind Dixon is a Professor of Law and Director of the Gilbert + Tobin Centre of Public Law at UNSW Sydney. She is author (with David Landau) of a new book on *Abusive Constitutional Borrowing: Legal Globalization and the Subversion of Democracy* (OUP 2021).

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The Commonwealth government announced this week that it was considering enacting new voter ID laws— requiring voters to provide valid identification before casting a ballot at a federal election.

On its face, the proposal looks eminently reasonable. We require ID for many things in our society, and this is only increasing in a world of vaccine certificates. The law also allows for multiple forms of ID, and mechanisms to prove identity if you cannot prove ID. But appearances can also be deceiving.

Most Australians have some form of formal ID. But of those who do not, an overwhelming number are Aboriginal and Torres Strait Islander people. Just like US voter ID laws that appear racially neutral, the proposed law therefore has a very real potential to be racially discriminatory in effect.

It also sends a message to Australians that voting is a privilege, rather than a duty. This goes against the spirit of our system of compulsory voting, and the sense of civic duty that helps underpin it.

Failure to vote in Australia carries with it a modest fine. But part of how we get people to the ballot box is through social pressure, pre-polling and Saturday voting, and a sausage sizzle. Asking people to sign a statutory declaration rather than if they want onions with their sausage is contrary to this spirit.

An equally real danger is that the proposed law is designed to respond to a problem for which there is almost no evidence in Australia. Voter ID laws are designed to address the risk of voter fraud – for instance, because people seek to vote twice, or vote for someone who is still on the roll but should not be.

But the Australian Electoral Commission recently estimated that the rate of multiple voting in Australian federal elections was as low as 0.03%. There is comparably little reason to think that illegal voting – for example, for someone who is dead – is a significant problem. So as the opposition said in response to the proposal, this is a fix to a problem that largely does not exist in Australia.

This poses very real questions about the constitutionality of the proposed law. The High Court has recognized that the Constitution protects a universal right of access to the franchise. Limits on access to the franchise will also only be upheld by the Court where they are reasonably necessary to advancing the public interest. Laws that respond to an illusory problem are also unlikely to be seen as necessary by the Court.

Perhaps even more troubling, legislating in response to non-existing problems follows a recent and disturbing pattern in the US. President Trump and his supporters have consistently suggested that the 2020 US presidential election was plagued by widespread voting irregularities and sought on this basis to overturn the election results, and enact wide-ranging voter ID requirements.

This, however, is a clear abuse of the idea of electoral integrity. There was again almost no evidence to support these claims and efforts. Rather, it was a nakedly partisan effort by Trump and his supporters to keep control of the White House, and by Republican state legislators to suppress Democrat-leaning minority votes.

Australia, to date, has been fortunate to be free to his kind of rank partisanship, and abuse of commitments to democracy and electoral integrity. But the proposed new law suggests that the same kind of language and politics may soon be coming to us. And that, far more than potential multiple voting, is a clear risk to democracy. We need to put a stop to it – before it stops us from preserving the democracy we have and cherish.

Why voter ID requirements could exclude the most vulnerable citizens, especially First Nations people, by Dr. Dani Larkin

Dr. Dani Larkin, Lecturer/Deputy Director of the Indigenous Law Centre, UNSW

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On Tuesday October 26, the Guardian Australia revealed the Morrison government intends to make further changes to Australian federal electoral legislation.

These proposed changes include the requirement for registered voters to show ID prior to casting their vote at the polling booth on election day.

The proposed changes state the appropriate forms of ID would include:

- drivers licence
- passport
- medicare card
- power bill
- debit or credit card
- an enrolment letter from the Australian Electoral Commission (AEC).
- a document from a Land Council or similar agency.

If a voter is unable to produce ID on election day, there is an option for a fellow voter (who has their own ID) to vouch for them. Potential voters could also sign a declaration for their ID, which is then attached to their ballot.

If this bill becomes law, it would potentially further disenfranchise vulnerable people of society who don't have access to the ID documents required, particularly First Nations people.

Why have these changes been proposed?

The Morrison government has stated these measures are necessary to ensure federal elections aren't at risk of electoral fraud. This also ensures potential voters aren't excluded from casting their vote at federal elections. This position was reaffirmed recently by Liberal Senator James McGrath on RN Breakfast.

Previous Australian elections have not required voters to produce ID on election day. This is because electoral fraud has rarely been an issue in Australian elections. In fact, the Australian Electoral Commission estimates the rate of multiple voting at the 2019 Federal election was 0.03%.

This proposed change from the Morrison government has been met with criticism and outrage from Labor, the Greens and others. They argue not only is multiple voting not a problem that needs solving, this proposed change risks doing harm to the electoral system.

The people who would suffer most from this proposed bill are Australia's most vulnerable voters. They include those living in financial poverty, living in remote communities with minimal access to

support services and homeless people. Indigenous people occupy alarming rates of each of those vulnerable positions in society.

Further disenfranchisement for vulnerable people

Barriers of this kind are part of a history of undemocratic attitudes towards how Australian elections should be conducted. Women and Aboriginal people of Australia were excluded from providing input during the drafting of the Australian Constitution. The only people who were included in that process were non-Indigenous male delegates from each colony except Queensland.

In addition, women and Aboriginal people were granted the right to vote in federal elections much later than white men. Women were granted the right to vote in 1902, Aboriginal people in 1962. However, with Indigenous people, there still remains ongoing issues with increasingly high and disproportionate incarceration rates and low literacy and numeracy rates. Those issues are yet to be settled in Australia and contribute significantly to Indigenous marginalisation.

It seems as though the Morrison government's position on voter ID requirements doesn't consider the issues Indigenous people face and how to combat them. For example, research conducted from the AEC in 2016 suggests approximately 58% of Indigenous people (both Aboriginal and Torres Strait Islander people) were enrolled to vote. However, this was viewed as a generous estimate of Indigenous voter engagement – a more realistic enrolment figure is about 50%.

Further, a private assessment conducted by Indigenous leaders, non-government and government agencies found approximately 25 – 30% of Indigenous people who are enrolled actually cast a formal vote. These figures, I'd suggest, are indicative of broader systemic challenges facing Indigenous political participation in Australia.

Senator Patrick Dodson recently said:

the government knows full well that First Nations people have always struggled to obtain identification documents as basic as a birth certificate, because of an absence of records or because of difficulties in accessing and navigating official services – difficulties that are often exacerbated because of remoteness and language and communication disadvantages.

Indigenous people and communities must rely on the limited resources of the AEC, which coordinates educational outreach programs to engage and assist Indigenous voters. However, past funding for these initiatives has been limited.

The Indigenous enrolment rate of 79.3% still lags behind the enrolment rate for all eligible voters of 96.3%. Those figures are not inclusive of Indigenous voter turnout rates, Indigenous votes cast and the rates at which those votes are actually counted as formal votes.

What do these proposed changes mean for other vulnerable voters?

The Morrison government's proposed voter ID changes add additional red tape to the voting process. This does not provide incentive for those who are already oppressed to participate in voting. Instead, such electoral changes could make for a less fair and less transparent democracy.

There should be as few barriers to Australian citizens casting their vote as possible.

At an international level, the government's position conflicts with internationally recognised standards of universal suffrage. In general terms, it should only be limited if there are substantial reasons to justify the limitation of the privileges of adult citizens.

Voting should be easier than this

The Morrison government's position on electoral fraud is not a substantial reason to further exclude Australia's most vulnerable people from voting at elections.

Rather, given the evidence of Indigenous and other vulnerable people's disenfranchisement and as the Australian Human Rights Commission has recommended in its submission to a Senate inquiry in September, the voter ID requirement bill should be blocked.

The proposed electoral voter ID requirements are precisely why Indigenous people need a constitutionally protected Voice to Parliament, given their means of representation within it is so limited.

The government should adopt a new strategy for electoral reform that commits to empowering and including Indigenous people and other vulnerable voters of society.

A new strategy would require new ways to ensure Australia's most vulnerable, marginalised and unrepresented people have a seat at the table in federal electoral decision-making processes. Most importantly, this must include those who are first peoples to this land.

Government Introduces Bill Requiring Voters to Show ID to Vote, by Antony Green

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The Morrison government this morning introduced the Electoral Legislation Amendment (Voter Integrity) Bill 2021.

The bill's provisions will require polling day and pre-poll voters to present some form of identification when they turn up to vote. ID will be checked against details on the electoral roll before ballot papers are issued. Presentation of ID will replace voters being asked for their name and address.

There is no requirement for photo ID. There are numerous permitted documents to prove identity, including driver licences, passports, Medicare cards, proof of age cards, birth certificates, citizenship certificates, credit cards, bank statements, utilities, letters from the Electoral Commission, tax assessments and several documents specific to Indigenous voters.

Voters without ID can also be vouched for if they are voting with a voter who does have identity documents. This provision deals with couples turning up to vote when only one has brought their driver licence.

Voters unable to pass the above tests will still be allowed to vote, but they will be directed to another part of the polling place where they will be issued with ballot papers and a declaration vote envelope.

On the envelope voters must write their name, address, and date of birth. Once completed, their ballot papers will be placed in the envelope and the envelope sealed. The envelope will be put aside for post-election processing.

In the week after the election, the declaration envelope will be checked against the electoral roll, and if details are correct, the ballot papers will be extracted and admitted to the count.

The government's stated aim with these changes is to improve election integrity. The government stresses that this improved integrity can be achieved without any voter being denied the opportunity to vote.

Voter ID is politically sensitive given how it has been weaponised at US elections. This legislation is mild compared to what we have seen in the United States but will still attract a vigorous political debate.

I'll leave it others to engage in that debate.

In this post I'll examine what evidence there is that points to the need for this legislation, and also at whether the legislation can ensure voters are not denied the vote.

Even if the legislation is justified, can it be implemented safely in time for the next election.

But I'll start by looking at the last time similar laws were introduced, in Queensland by the Newman LNP government. The laws were used for a by-election in 2014, and the state election in 2015, before being repealed by the newly elected Palaszczuk Labor government.

The Newman Government's Voter ID Experiment

After the Newman government's landslide victory, Attorney-General Jarrod Bleijie released a discussion paper in January 2013 on possible electoral law reforms. These reforms included a proposal to require voters to present ID before voting.

I wrote a blog post on the review which you can find at [this link](#).

After the consultation, the government did what it was probably always going to do, which was introduce a requirement for voters to show ID. The new rules were used for the first time at the 2014 Stafford by-election.

At the time I wrote this post on how the new laws would work, including the range of documents that could be used as ID. The documents were similar to those proposed under the Federal laws, though the Morrison government's bill adds several other documents, and allows vouching or attesting which wasn't allowed in Queensland.

Around the same time as these changes were introduced, Chris Berg, then a Research Fellow at the Institute of Public Affairs, wrote on Voter ID and described it as a non-answer to a non-problem. (Link <https://www.abc.net.au/news/2014-06-03/berg-no-vote-of-confidence-in-id-laws/5495996>) After the by-election I wrote on how the new laws worked at the Stafford by-election. 199 insufficient ID votes were cast, 0.9% of all votes. As I mentioned in the post, the Electoral Commission wrote to all voters ahead of the by-election and advised that voters should bring ID to make voting easier.

Speaking to a Parliamentary Committee in April 2015, Acting Electoral Commissioner Dermot Tiernan released some broad statistics on documents provided. Around 60% of voters presented the Electoral Commission's letter as proof of ID, while around 33% used their driver licence.

Reliance on a letter from the Electoral Commission as proof of identity was a strange consequence of the voter ID law. If all voters are sent a letter, and the letter can be used as ID, you can't help but think someone wanting to rot the election could simply engage in a bit of letter box theft.

There was a scare campaign ahead of the 2015 Queensland election that voters could not vote without ID (not true) which I discussed [in this post](#).

The Newman government was defeated at the 2015 election, an astonishing result given the size of the government's majority. Given the ID law was repealed shortly afterwards, the Electoral Commission Queensland (ECQ) engaged in no research on how the laws worked.

Again speaking to the Parliamentary Committee, Mr Tiernan provided some general comments on how the law worked. Across the state, 0.6% of votes were declaration votes through insufficient identity, though Tiernan also indicated that some votes had been incorrectly rolled in with totals of Absent and other declaration votes.

Mr Tiernan also revealed there had been a problem caused by the new laws, introduced at the same time as new roll mark-off software. At some polling places, voters were marked off the roll, and then directed to the declaration vote desk. As a result, when these declaration envelopes were processed, the voters were indicated as having already voted.

The Australian Electoral Commission will be rolling out new roll mark-off software at the 2022 election. If the same error were repeated at a Federal election, it could create a pool of suspected multiple votes that could be challenged. It raises the prospect that a close electorate could be put at risk by the late introduction of voter ID laws.

Lessons from Queensland

First, if you are going to legislate on voter ID, do it early so the laws have time to be implemented. You might even get chance to try them at a by-election.

Second, it is a major change to the way elections are conducted, so it is really worth a serious investigation into how the law might work, and whether the legislation is sufficient.

The government has pointed out that voter ID has been recommended by Joint Standing Committee on Electoral Matters (JSCEM) inquiries into the 2019, 2016 and 2013 elections. That's true, but it is a little strange to respond with legislation in the final sitting fortnight of the government's third term. Plus when you look at the JSCEM reports, the recommendations are a bit short of detail.

The relevant parts of the 2019 report quotes several submissions before pointing to a previous exploration of the subject in the JSCEM report on the 2016 election. The government never responded to the recommendations of the 2016 report.

In JSCEM's 2016 report, there were again quotes from submissions to the inquiry, but it then pointed to the JSCEM report into the 2013 election as justification for introducing voter ID.

The 2013 JSCEM committee was chaired by current House Speaker Tony Smith and did a very thorough report on the 2013 election. It led to reform of the Senate's electoral system. Copies of the final report that dealt with voter ID can be found at [this link](#).

Chapter 5 of the report went into detail on voter ID and reviewed aspects of the Queensland experiment. In paragraph 5.58, the Committee mentioned the lack of clarity in the Queensland act on how declaration votes should be dealt with, before proceeding with a detailed discussion of submissions made to the inquiry. It then made a recommendation (Number 17) that similar voter ID laws be introduced for Federal elections. However, the recommendation only referred to addresses being checked with declaration votes, where the Commonwealth declaration vote envelope includes a date of birth.

So it is fair to say that only the 2013 JSCEM report has done detailed work on voter ID. Eight years later, you would expect such a major change to electoral procedure would warrant a newer inquiry more specific to the proposed law.

Another point to make concerns how to deal with the increase in declaration votes on polling day. No problems were reported at the 2015 Queensland election, but that was an election for a single chamber using optional preferential voting rules. It didn't take long to vote so queuing wasn't a problem, the it took time to complete the declaration envelope.

Federal elections are for two chambers, with full preferential voting in the lower house, and semi-optional preferences for a giant upper house ballot paper. It is going to take longer for each declaration voter to vote. Allowance will have to be made to prevent queuing.

There is also the issue of how declaration votes will be scrutinised after the election. Are they to receive the same level of scrutiny as absent and provisional votes?

Proof of Identity versus Proof of Address

In the proposed section 200DI, the request for a voter to give name and address is replaced by the voter presenting their ID. The provision allows the voter to be asked questions to resolve the person's name or place of living, and further questions concerning whether the person with the ID is the same person as on the roll.

This comes down to the problem of proof of identity versus proof of residence. There are many people with driver licences that do not match where they are enrolled to vote. This comes down to some people having more than one address. Some voters also register their licence and vehicle at a different address to where they live for issues to do with insurance, registration and access to parking permits. That the act refers to 'proof of identity', and that many of the documents will not have an address, points to the main purpose of the provision is about establishing who the voter is.

But it is clear that issuing officers may be required to ask further questions to resolve differences between addresses on voter documents and addresses on the electoral roll.

Voters sent off to cast a declaration vote will not have this opportunity to resolve addresses. There are a lot of details to be completed (see sample below). I'd be interested to know how a remote indigenous voter with limited written English skills would deal with it.

DECLARATION VOTE

OFFICE USE	POLLING OFFICIAL TO COMPLETE	
Division Finder ref. or ECL		Cert. ID
To DRO for the Division of		
Issued at		

CURRENT DETAILS

Surname

Given names

Daytime phone

Date of birth / / Gender

Current permanent address

ENROLMENT

Are the details you gave above the same as they appear on the electoral roll?
 No Yes **Go to section 3 below.**

Surname

Given names

Address on electoral roll

CITIZENSHIP AND IDENTITY

Are you an Australian citizen? Yes No

Town of birth Country of birth

EITHER Australian driver's licence or passport number

OR Another enrolled person who can confirm your identity
I declare that I am on the Commonwealth electoral roll and I confirm the identity of this elector.

Surname

Given names

Date of birth / /

Signature

DECLARATION

I declare that I am entitled to vote and have not voted in this election/ referendum. I am eligible and claim enrolment for my current permanent address, where this is not my enrolled address. The information I have given on this form is complete and correct.

Your signature or mark

Witnessed by issuing officer signature Date / /

How will it be processed? While it is easy to say no voter will be denied a vote, will their vote instead be denied entry to the count? Another question that could be answered by an inquiry into the legislation.

Multiple Voting versus Personation

While multiple voting keeps being tossed around as the purpose of the legislation, what it is actually about is personation, one person voting while claiming to be someone else.

All the available statistics on multiple voting concern instance of individuals voting more than once. That is difficult to do in countries like the UK and Canada that use precinct voting where you can only vote at one polling place.

In Australia, our laws on voting are guided by the use of compulsory voting. We allow votes to be cast at any polling place in an electorate, and allow liberal access to pre-poll, postal and absent voting. As a result, it is more likely that someone could, accidentally or deliberately, vote more than once. If voter ID were introduced, then unless electronic roll mark-off devices were connected together by wifi and the internet, you still could not prevent multiple voting.

Even then, you would have to allow declaration voters for people who say they haven't voted but have been marked off as voted.

Which raises another security issue on trying not to open the electoral roll to the internet by linking up roll mark-off devices

At the 2019 election, there were around 2,000 multiple roll mark-offs from around 15 million votes. That's about 13 per electorate.

I use the term mark-off because it is often clerical error that's the cause rather than an elector voting more than once. A polling official marks off an adjacent name, resulting in one elector being reported as voting twice, and the next voter getting a non-voter fine. These multiple mark-offs mostly get resolved in this way.

Most admitted multiple votes have specific causes. A common one is an elector voting in a nursing home, and then being taken out to vote again on polling day.

At the 2019 election, around 20 suspected multiple voters were referred to the Australian Federal Police. None were prosecuted, either for lack of public purpose or because there was a lack of evidence to prove the case.

As for proof of personation, there is none. 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. This is the sort of false vote that might be detected by voter ID, but we have no knowledge of its incidence.

The Electoral Act was recently amended so that a suspect multiple voter could have their name removed from the public electoral roll. Such a voter would still be able to vote, but they would have to cast a declaration vote, and only one declaration vote per person can be lodged. It is a mild imposition placed on the tiny number of multiple voters against the alternative of making all voters show ID.

Back in 2009 I wrote on a Court of Disputed Returns challenge in the Queensland state seat of Chatsworth. There were 30 multiple mark offs. The Court went through the detail of each and found 28 were clearly clerical error. The other two were confused elderly voters. It shows the level of record keeping at Australian elections that is the true guard against multiple voting.

So What's the Point?

Electoral laws must always be kept under review. In the 30 years I've been working on elections, the way electoral rolls are maintained and used has changed, as has the way people vote with a shift from on the day voting to pre-poll voting.

Our electoral system relies a lot on trust, but then so does the functioning of our whole society. The last two years have highlighted how much we rely on our fellow citizens to act in the common good. To say that checks on voter ID should never be allowed can lead you into a position where you deny any right to the Electoral Commission to question whether someone is a valid voter.

What is the minimum level of questioning of a voter is permitted by a polling official before it becomes voter suppression? That's the basic question to be addressed when you discuss voter ID. How that question is addressed in this country is conditioned by our use of compulsory voting. How can you have compulsory voting and ID laws so strict that a voter is prevented from voting?

The voter ID law being proposed by the government is very weak by international comparison. For most voters it requires only a small change that should not inconvenience them. But a small number could be inconvenienced by being forced to cast a declaration vote.

It is not US style voter suppression, though some will argue it is the thin end of the wedge with more to come.

For all the arguments for or against voter ID, there are very good reasons to ask why it is suddenly so important in the final weeks of the government's third term in office.

Can it be implemented by the AEC in time without the problems that occurred in Queensland? How will declaration votes be dealt with? How do you stop mistakes being made where voters are denied the vote, or be misled into thinking they can't vote without ID?

Are particular groups of voters going to be disproportionately disadvantaged by these laws? Particular mention has been made of remote indigenous voters, a group who are already underrepresented on the electoral roll, and who already face difficulties casting and having their vote count as a result of where they live.

Voter ID law shouldn't instantly be rejected. Nor should it be suddenly introduced without more discussion than the current bill has received.

Tens of thousands of casual polling officials need to be trained before the election. You would hate the late passage of voter ID legislation to result in officials making errors come election time.

And you would hate the law to be responsible to challenges to the result after the election.

Voter ID Proposal – Not Voter Suppression but Not Justified, by Professor Graeme Orr

Graeme Orr is a professor of law at the University of Queensland, specialising in the law of elections and politics.

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The Morrison government is pushing legislation to mandate voter ID at polling places. Contrary to some critics, what it proposes will not create US-style "voter suppression". But it is still an unnecessary idea at an inappropriate time.

Countries like Australia, New Zealand and the United Kingdom (until now at least) do not require electors to show ID to vote. Many other systems do.

Insecurity about security is a conservative trope. So it is natural for political conservatives, temperamentally, to favour voter ID, with the argument being it is an "integrity" measure. Social democrats, on the other hand, are more trusting and concerned to ensure everyone can and does vote.

The Australian proposal lists an array of documents as acceptable ID. Photo ID such as a driver's licence is not mandatory; a credit card or utility bill would suffice. "Documents" in law now include electronic records, which is important given how few people receive paper utility bills.

If an elector does not bring ID, or it is rejected (say for a misspelled name), they are to be offered a “provisional” vote. That is a rigmarole involving extra forms and delays. But it is a buffer - imagine a remote voter driving an hour to a polling station having forgotten their wallet.

Young people, the very elderly and Indigenous people are all less likely to have such ID. To address the latter, a document from an Indigenous land council or similar agency will also count. When the LNP in Queensland briefly introduced voter ID in 2013-15, it was clear remote electors were more likely to have problems with ID.

Cost in the time of COVID

The UK Cabinet Office estimates voter ID there will cost in the order of £20 million (A\$36.7 million) per election. That is for mandatory photo ID. The direct cost in Australia will be less, if not insignificant. The Australian Electoral Commission will need to mail proof of enrolment to each elector as one form of ID.

There are also indirect costs. The most obvious is in training - and trying to ensure consistency among tens of thousands of casual poll workers. Inevitably, some forms of ID will be accepted in some polling places and not others. Think of bills on cracked mobile screens, or cards with minor differences to the name on the electoral roll.

Most of all, with Australia reopening, COVID will be spreading across states that have never had a real wave. Voter ID will add to processing time for millions of electors. Those whose ID is rejected will have to join separate queues to make a fussy “declaration” vote.

Finally, those declaration votes enter a black box. Unlike some US states, electors are not told whether their provisional vote was ever accepted into the count. This in itself will hamper, not enhance, trust.

One group of electors will not need to produce ID: postal voters. Asking (predominantly older) postal voters to scan or copy ID is a step too far, as they already sign and witness forms to vote.

What does the Constitution say?

On voting “rights”, next to nothing. But in 2007, the High Court implied a universal franchise for Australian citizens. Then, in 2010, it struck down the early closing of electoral rolls as an undue burden on the ability to vote.

In doing so, it said parliament cannot impose such burdens without evidence. The “evidence” to support voter ID is the intuition that voters should produce ID. The benefit of voter ID is said to be enhancing perceptions of integrity.

This may be a fair call in the abstract. Yet in reality, Australia has high levels of trust in our independent and thorough electoral processes. Any lack of trust buzzes around parties as hierarchical entities, their funding and accountability, not electoral administration.

Perceptions of risk can also be circular, if not manipulated. By playing up integrity risks, regardless of actual evidence, you can generate concerns that you then use to justify new rules. (We also see this in debates about electoral donations.)

As long as the law allows electors without ID to cast a declaration vote without excessive palaver, the High Court will not veto voter ID. In any event, the law cannot be challenged before it is

implemented. Any plaintiff claiming to be affected before the election will likely be rebuffed with “go and organise ID”.

Voter ID cuts across compulsory voting

Most of all, voter ID is a dull idea in a country that has required people to enrol to vote for 110 years, and to turn out to vote since 1924.

Quite why we need voter ID is not clear. Most European countries do. But they have national ID cards. That is, every citizen, equally, has official ID. Such ID is something liberals in Australia fought against.

Ultimately, electoral integrity comes from having the most thorough roll and the highest turnout possible. Australia has a good record here, thanks to compulsion and direct enrolment laws.

Short of evidence of rogue electors impersonating other voters, voter ID is an unnecessary bureaucratic requirement, at an inappropriate point in a pandemic.