



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: PuLC/DHvk: 1573125

10 August 2018

Committee Secretary
Joint Standing Committee on Electoral Matters
PO Box 6021
Parliament House
Canberra ACT 2600

By email: em@aph.gov.au

Dear Committee Secretary,

Inquiry into the Commonwealth Electoral Amendment (Lowering Voting Age and Increasing Voter Participation) Bill 2018

Thank you for the opportunity to provide submissions in respect of the Commonwealth Electoral Amendment (Lowering Voting Age and Increasing Voter Participation) Bill 2018 ("Bill"). The views of the Law Society of NSW are informed by its Public Law Committee.

1. Summary of the Law Society's position

The Law Society supports, in principle, measures that would encourage voter engagement and political participation. The contention that early enfranchisement is a means of increasing voter participation merits further consideration, but an evidence-based approach must be adopted in pursuit of such electoral reform. We consider that further investigation is warranted before we could properly consider a proposal to lower the voting age, and the Law Society does not support the model proposed under this Bill. For the reasons discussed further, the Law Society does not support a proposal to allow voluntary voting.

2. Lowering the voting age – available evidence

The Law Society is of the view that it is worthwhile to have a serious and robust discussion about the merits of lowering the voting age for the purpose encouraging youth participation, with the view to, as we understand it, creating a life-long "habit" of political participation.

We consider that if such a proposal is to be pursued, with particular objectives to be achieved, an evidence-based approach must be adopted.

There are arguments (and evidence) for and against the proposal to enfranchise 16 and 17 year olds, and we note that there is precedent in other comparable jurisdictions.

It would be useful to closely consider the experiences of other jurisdictions to assess the likelihood of any adverse unintended consequences of pursuing this proposal. For example, we understand that there is a study of 324 national elections across 91 countries that suggests that rather than encouraging lifelong political participation, lowering the voting age

(in jurisdictions where voting is not compulsory) actually lowered the turn out rate,¹ and may have resulted in creating a habit of abstention.² A 2004 study suggested that “a small decline in turnout is magnified over successive age cohorts; [and] that the declining turnout observed across many established democracies is a consequence of lowering the voting age in the early 1970s. As [Franklin] puts it, 'the socializing experience of the act of voting (or non-voting) will have tended to lock in the lower turnout of the newly enfranchised 18 year olds'.”³

However, we note that these studies are relatively dated, and that findings in respect of turn out may have limited relevance in the Australian context, given our system of compulsory voting.

We also note more recent examples that indicate that lowering the voting age may have positive effects in encouraging the participation of both youth and other age groups. For example, in Scotland, the franchise was extended to 16 and 17 year olds in respect of the Scottish independence referendum, and the turn out rate for this age group was estimated to be 75%, which was much higher than the estimated rate for 18-24 year olds (54%).

The analysis⁴ further suggests the following in the Scottish context:

- The levels of political interest in the independence referendum among those younger than 18 was similar to that of the overall adult population; and
- Significantly, the newly enfranchised young people in Scotland showed substantially higher levels of engagement with representative democracy than their peers in England, Wales and Northern Ireland; through voting as well as other forms of political participation such as signing petitions and taking part in demonstrations. They also engaged with a greater range of information sources about politics and reflected greater levels of political efficacy.

Other analysis from four elections in Denmark (where the voting age is 18) suggests that, on average, when their children came of voting age right around the election, turnout increased 2.7 percentage points for the parents. However, this was true only for parents who lived with their children. In this study, parents with voting-age children at home are about 4 percent more likely to vote; parents whose voting-age children do not live with them are unaffected.⁵ Again, these studies are not directly comparable to the Australian context as they took place in jurisdictions without compulsory voting. Further, the Scottish example is a specific one in relation to a historically significant referendum.

The evidence currently available suggests that it is likely that early enfranchisement alone (without other factors such as civics education, parental socialisation and so forth) will not be a panacea to youth engagement, and other educational and other efforts directed at shaping the norm to vote, would be required to achieve this objective.⁶ The Law Society notes that there is further research underway of this very question, analysing both historical and contemporary evidence in the UK and in other jurisdictions concerning voting age reform,

¹ Ian McAllister, *The Politics of Lowering the Voting Age in Australia: Evaluating the Evidence*, Prepared for the AEC Electoral Research Forum, 19-20 Nov 2012, Canberra, 10-12 citing studies from 1998, 2000, 2004 and 2006. Available here: https://www.aec.gov.au/About_AEC/research/caber/files/3b.pdf.

² *Ibid.*, 13.

³ *Ibid.*

⁴ Jan Eichorn, *Beyond anecdotes on lowering the voting age: new evidence from Scotland*, available here: <http://blogs.lse.ac.uk/politicsandpolicy/votes-at-16-new-evidence-from-scotland/>.

⁵ See Jens Olav Dahlgaard, “Trickle-Up Political Socialization: The Causal Effect on Turnout of Parenting a Newly Enfranchised Voter”, (2018) 112(3) *American Political Science Review* 698-705.

⁶ Andrew Mycock, Jonathan Tonge, “Votes for 16-year-olds should be based on wider evidence, not just a need for participation”, *The Conversation*, 2 February 2018, available here: <https://theconversation.com/votes-for-16-year-olds-should-be-based-on-wider-evidence-not-just-a-need-for-participation-90898>.

youth democratic participation, and the rights and responsibilities of youth and adult citizenship.⁷ It may therefore be useful to wait for more evidence to become available.

3. Erosion of compulsory voting

The Law Society does not support the proposal to provide for voluntary voting for 16 and 17 year olds. In our view, these provisions would undermine the Australian system of compulsory voting, which was introduced to address the problem of low voter turn out.⁸ In the Law Society's view, while compulsory voting may not a perfect solution to various electoral problems, it is likely to be better than the alternatives. We note the scholarship on this issue and in particular highlight the research of Professor Lisa Hill in relation to the benefits of compulsory voting.

Professor Hill argues that:

Without compulsory voting, turnout would be considerably lower at around 55-60% of the eligible population, mimicking similar democracies such as the US or Canada.

[...]

[Voluntary voting] would plunge Australian democracy into the same crisis of citizenship that democracies everywhere in the voluntary-voting world are going through: that is, the rapid decline into gerontocracy as voters – especially young people – turn their backs on voting in droves.

While Australia's young are less inclined to vote than older cohorts, because of compulsory voting 83% of 18-25 year olds still turn out to vote. Compare this to Britain where only around 44% of young people vote, or Canada where the figure hovers at around 37 to 38% or, worse still, the US. There, in the recent midterm elections, only 22% of young people bothered to cast a ballot.

Further, the research suggests that a trend towards a gerontocracy would be a self-reinforcing one:

Many studies have indicated that government attention and spending are directly related to the size of electorate cohorts. Older people vote and so governments spend far more per capita on them than they do on the young. Governments are also a lot more responsive to the policy concerns of older voters.⁹

Low voter turn out is problematic for many reasons, not least of which is that it is a self-perpetuating cycle that is likely to undermine the integrity of a democracy. According to Professor Hill:

It is not necessarily the case that non-voters are less interested in politics but they *are* less informed, more disillusioned and most importantly 'less connected to the established political process' than are voters. A self-perpetuating cycle exists because 'non-voters do not like what they see when they do connect with information about politics — which is usually only during elections when they cannot avoid it.' In addition, those who are socially excluded only exacerbate their social exclusion by abstaining. The more they abstain the worse their

⁷ See University of Huddersfield, "The Leverhulme Trust research grant has gone to Dr Andrew Mycock and Professor Jon Tonge" available here:

<https://www.hud.ac.uk/news/2017/december/119kgranttoevaluatewhether16-year-oldsshouldgetthevote/>

⁸ See information from the Australian Electoral Commission available here:

<https://www.aec.gov.au/About/AEC/25/theme1-voting-history.htm>

⁹ Lisa Hill, "Compulsory voting, much like democracy, beats the alternatives", *The Conversation*, 29 January 2015, available here: <https://theconversation.com/compulsory-voting-much-like-democracy-beats-the-alternatives-34765>

exclusion is likely to become so that a counterproductive cycle of exclusion, low efficacy, cynicism and non-participation becomes entrenched. Compulsory voting can provide a circuit-breaker to this cycle, partly because it can boost levels of subjective political efficacy but mainly because laws are an extremely effective way of changing entrenched behaviour.[footnotes omitted]¹⁰

Further, we note that a substantial body of research indicates that there are strong negative correlations between voting and socio-economic status characteristics such as low levels of education, residential instability and homelessness, youth, being a new immigrant, being a member of an ethnic minority, economic marginality and unemployment. Professor Hill states that "The United States exhibits an unusually strong relationship between socio-economic status and voter turnout but it exists in virtually every advanced democracy where voting is not compulsory."¹¹

Professor Hill concludes that:

A well-designed and properly administered compulsory 'voting' regime can provide an elegant, economical and reliable solution to the problem of low and unequal turnout which, if properly managed, may be well tolerated by citizens. It is true that compulsory voting cannot do much to cure cynicism about politicians or prevent a further softening of party loyalties: nor can it address the problems associated with lack of election salience and first past the post voting, all of which are known to depress turnout in voluntary regimes. But it does have the potential to ameliorate *some* of the electoral problems experienced in voluntary regimes. It can remedy bad and worsening turnout and decisively close the [socio-economic status] voting gap, while enhancing and protecting such important democratic values as representativeness, legitimacy and political equality. Further, by ensuring the performance of at least one form of civic participation, it can boost levels of political efficacy.

When considering the benefits of a compulsory voting system, it is also worthwhile to note the argument that because voting is compulsory in Australia, "politicians and electoral officials have gone to considerable lengths" to make voting as simple and accessible as possible.¹²

Malcolm Mackerras and Professor Ian McAllister comment that Australia is "probably ... the most voter-friendly country in the world": it would be hard to find another system with such low transaction and opportunity costs to voters.¹³ For example, registration is relatively easy (acknowledging that there are existing issues with the disenfranchisement of certain groups such as those who are homeless); elections do not take place on a week day; polling booths are generally close at hand and easily accessible; and early and postal voting is available. Significantly, penalties for failing to vote appear to be appropriately calibrated.¹⁴

In our view, it is undesirable to erode the existing system of compulsory voting in Australia, noting that the right to vote ought to carry attendant responsibilities.

¹⁰ Lisa Hill, "Compulsory Voting in Australia: A Basis For A 'Best Practice' Regime" [2004] FedLawRw 22; (2004) 32 Federal Law Review 479 available online:

<http://classic.austlii.edu.au/au/journals/FedLawRw/2004/22.html#Heading28>.

¹¹ Ibid.

¹² Malcolm Mackerras and Ian McAllister, 'Compulsory Voting, Party Stability and Electoral Advantage in Australia' (1999) 18 *Electoral Studies* 223.

¹³ Note 10.

¹⁴ Note 10.

Thank you for the opportunity to make submissions. Questions at first instance may be directed to Vicky Kuek, Principal Policy Lawyer, at victoria.kuek@lawsociety.com.au or (02) 9926 0343.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'D Humphreys', written in a cursive style.

Doug Humphreys OAM
President