

P I L C H

Public Interest Law Clearing House

Homeless Persons' Legal Clinic

Giving Voice to the Voiceless

Submission to the Inquiry into the 2001 Federal Election

July 2002

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1. Executive Summary and Recommendations

1.1 Introduction

This submission is made by the Homeless Persons' Legal Clinic. It is endorsed by the organisations and individuals listed in Part 7.

In 1996, more than 105,000 people in Australia were homeless. Many more were at risk of homelessness. It is estimated that approximately 88,000 homeless people are eligible voters.

Estimates of the proportion of homeless people who are eligible but not registered to vote vary from 33 to 90 per cent. This suggests that between 29,000 and 80,000 homeless people did not vote in the 2001 Federal Election.

The *Commonwealth Electoral Act 1918* (Cth) (“**the Act**”) determines who has the right to vote at federal elections and the procedure pursuant to which that right is exercised. This submission examines the impact of the Act’s requirements relating to enrolment and voting on the exercise of the right to vote by homeless people in Australia.

The submission argues that the requirements and restrictions relating to “normal” electors may prevent and discourage homeless people from being noted on the electoral roll. The submission also argues that the provisions relating to “itinerant” electors should be reviewed, amended and targeted so as to enable homeless people to participate in federal elections regardless of the form of shelter in which they are domicile prior to and at the time of elections.

The submission makes recommendations as to appropriate legal and social reforms aimed at enabling and empowering homeless people to enrol to vote, exercise their right to vote, and meaningfully participate in the federal democratic process. Recommendations include legislative amendments, policy development and changes to the budgetary allocation of the AEC.

1.2 Recommendations

Recommendation 1: Amend the Act so that persons who give details of why they cannot provide an “address” as to where they “live” are able to nominate an address in the Subdivision with which they have a “close connection”.

Recommendation 2: Repeal section 101(5) of the Act. Alternatively, amend section 105(5) so as to remove the automatic penalty for failure to comply by incorporating a “reasonable excuse” provision. In addition, amend sections 101(4) and 101(5) of the Act so as to extend the 21 day time frame.

Recommendation 3: Do not pass the *Electoral and Referendum Amendment (Roll Integrity and Other Measures) Bill 2002* amending section 155 of the Act (and related sections).

Recommendation 4: If the *Electoral and Referendum Amendment (Roll Integrity and Other Measures) Bill 2002* is to be passed, make an exception for “itinerant” electors. Do not pass section 4 of the Bill, which proposes to amend section 96(4) of the Act.

Recommendation 5: That no amendments be passed requiring any form of original paper identification for a claim on the electoral roll to be accepted.

Recommendation 6: That no amendments be passed limiting the class of persons who may witness a declaration (and the production of valid identification) of eligibility to vote.

Recommendation 7: That further detail of the policies embodied in the Divisional Officers Procedures (Elections) Manual be made publicly available regarding reasons for failing to vote which may be considered to be “valid and sufficient”.

Recommendation 8: That an amendment be drafted to section 245 of the Act recognising that the problems faced by homeless people who are enrolled as "normal" voters may prevent them from exercising their right to vote and that such problems constitute a "valid and sufficient reason" for failing to vote.

Recommendation 9: Review the itinerant elector claim form, simplify the layout and clarify the requirements.

Recommendation 10: Amend section 96(2A) of the Act to allow itinerant electors to enrol in the Subdivision with which they have the "closest connection".

Recommendation 11: Clarify the definition of "real place of living" to ensure that homeless people who have a regular but non-conventional shelter or domicile (but who do not have an "address" which would enable them to enrol as "normal" voters) are not excluded from eligibility to enrol as itinerant electors. This may require a distinction between the "place of living" requirements of section 101 and the "real place of living" definition in section 96 of the Act.

Recommendation 12: Amend section 96(8) of the Act to increase the period of time that an itinerant voter may have a "real place of living" in a Subdivision from one month to six months before they become ineligible to be enrolled as itinerant voters.

Recommendation 13: Extend registration deadlines for itinerant voters. Further, or in the alternative, insert an exception into the Act allowing for late registration, in-person, up to the day before the election.

Recommendation 14: That the AEC invest more money in sending administrative assistants to shelters for the homeless, disability services, welfare organisations and other places frequented by homeless people to assist homeless people with completing relevant forms and educating homeless people about their rights and how to exercise those rights.

Recommendation 15: That employees of agencies providing services to homeless people be trained to assist in the registration of homeless people as itinerant voters. The United States *National Voter Registration Act 1992* (US) contains express provisions to this effect.

Recommendation 16: Strategically locate polling stations to facilitate casting of votes by homeless people and provide for welfare agencies to request a mobile polling station to attend areas of need.

2. Introduction

2.1 What is the Homeless Persons' Legal Clinic?

The Homeless Persons' Legal Clinic (“**Clinic**”) is a joint pilot project of the Public Interest Law Clearing House (Vic) Inc (“**PILCH**”) and the Council to Homeless Persons (“**CHP**”). It was established in October 2001 to provide free legal assistance to, and advocacy on behalf of, one of society's most disenfranchised groups – people who are homeless or at risk of homelessness. The fundamental objective of the Clinic is to reduce the degree to which homeless people are marginalised and to provide a viable and sustainable pathway out of homelessness.

The Clinic provides civil legal services at crisis accommodation centres and welfare agencies so as to encourage direct access by clients. This is important because, given the range of pressures and issues confronting many homeless people (including financial, familial, social, psychological, medical and health issues), legal problems often remain unaddressed unless services are provided at locations already frequented by homeless people.

The Clinic is staffed by pro bono lawyers from participating law firms and legal departments, including Blake Dawson Waldron, Clayton Utz, Hunt & Hunt, Mallesons Stephen Jaques, Minter Ellison and the National Australia Bank Legal Department.

2.2 Persons assisted by the Homeless Persons' Legal Clinic

As discussed above, the Homeless Persons' Legal Clinic provides assistance to people who are homeless or at risk of homelessness.

This includes people who are without conventional accommodation (such as people who sleep rough), people who are in temporary accommodation (such as a refuge or crisis accommodation facility) and people who are in insecure or transitional accommodation (such as people who live in rooming houses).

2.3 Significance of voting to the homeless

The homeless population is one of society's most powerless and disenfranchised groups. The sense of frustration and powerlessness that attends homelessness is perpetuated by the denial, in substance or form, of the right to vote in federal elections. This denial also undermines democracy, any meaningful notion of which must provide for protection of, and participation by, members of marginalised groups.

Exercise of the right to vote is likely to give homeless people an enhanced sense of agency and empowerment. Moreover, given that the needs of homeless people are often so different to the needs of those with stable accommodation, it is crucial that they are encouraged, assisted and able to enrol and vote in federal elections so as to articulate their special circumstances, interests and concerns. This is crucial to sensitive policy responses to homelessness and the construction of sustainable pathways out of homelessness.

2.4 Definition of “homelessness”

There are numerous definitions of “homelessness”. This is because homelessness is a descriptive term relating to the actual and perceived social and cultural minimum standards of shelter and housing in a particular community.

For the purposes of this submission, the following three-tier definition of “homelessness”, adopted by the Australian Bureau of Statistics (“**ABS**”), is used:

Primary homelessness

People without conventional accommodation, such as people living on the streets, sleeping in parks, squatting in derelict buildings, or using cars or railway carriages for temporary shelter.

Secondary homelessness

People who move frequently from one form of temporary shelter to another. It covers: people using emergency accommodation (such as hostels for the homeless or night shelters); teenagers staying in youth refuges; women and children escaping domestic violence (staying in women's refuges); people residing temporarily with other families (because they have no accommodation of their own); and those using boarding houses on an occasional or intermittent basis.

Tertiary homelessness

People who live in boarding houses on a medium to long-term basis. Residents of private boarding houses do not have a separate bedroom and living room; they do not have kitchen and bathroom facilities of their own; their accommodation is not self-contained; they do not have security of tenure provided by a lease.¹

2.5 Statistics on homelessness in Australia

The most comprehensive statistics available on homelessness in Australia are those that were collated by Chris Chamberlain on behalf of the ABS using the raw data collected in the 1996 Census. This report, called "Counting the Homeless", found that on Census night in 1996 there were 105,304 homeless people in Australia.² The profile of this population is enumerated in Table 1 below.

Table 1 Number of persons in different sectors of the homeless population, Census night 1996.³

	Enumerated	Estimated	Total
Boarding houses	23,299		23,299
SAAP accommodation	12,926		12,926
Friends and relatives	35,500	13,000	48,500
Improvised dwellings, sleepers out	19,579	1,000	20,579
Totals	91,304	14,000	105,304

¹ Australian Bureau of Statistics, *Occasional Paper – Counting the Homeless: Implications for Policy Development* (1999) at 1, 13.

² The Clinic acknowledges that a certain percentage of the total number of homeless people will be under the age of 17 and thus be ineligible to be listed on the Roll. Unfortunately, there is no reliable data on the number of homeless people who are over the age of 17, although the Clinic notes that of the 48,500 homeless people staying with friends and relatives, it was estimated by the ABS that 13,000 youths between the ages of 13-18 were "missed" by the Census.

³ Australian Bureau of Statistics, *Occasional Paper – Counting the Homeless: Implications for Policy Development* (1999) at 3.

“Counting the Homeless” reports that:

There were 105,000 homeless people across Australia on Census night. Many of them move frequently from one form of temporary shelter to another and between 60 and 70 per cent of them had been homeless for six months or longer at that time. However, nearly half (46%) were staying temporarily with other households on Census night; one-fifth (20%) were in improvised dwellings, tents or sleeping out; and another one-fifth (22%) were staying in boarding houses. Twelve per cent were in SAAP.

Over a year, just over 100,000 people stay in SAAP accommodation for short periods of time; but many people who exit from SAAP go to other sectors of the homeless population, or they 'move around the system'.⁴

In November 2001, on the basis of the findings in “Counting the Homeless”, it was estimated that there are more than 88,000 homeless people who are eligible to vote.⁵

2.6 Representation of homeless people on the Australian electoral roll

Statistics on enrolment to vote and participation in voting by homeless people are difficult to obtain due to inherent difficulties in tracking homeless people.

Estimates of the proportion of homeless people who are eligible but not registered to vote vary from 33 to 90 per cent.⁶ This suggests that between 29,000 and 80,000 homeless people did not vote in the 2001 Federal Election.

The lack of authoritative statistics and information on homelessness and voting are indicative of the marginalisation and isolation of this particular population from the rest of society. It is important that the government take steps to ensure that this population is represented during democratic elections to ensure that their voice is heard amongst the other voices of the Australian population.

It is only when the homeless are empowered as a collective voting group that their needs will be more effectively recognised and met by the legislature.

⁴ Australian Bureau of Statistics, *Occasional Paper – Counting the Homeless: Implications for Policy Development* (1999) at 7 [citations omitted].

⁵ M Horn, ‘Social and Democratic Exclusion: Giving Voice to the Homeless’ (Hanover Welfare Services: November 2001).

⁶ Hanover Welfare Services estimates that approximately one third of homeless people are not registered to vote (M Horn, ‘Social and Democratic Exclusion: Giving Voice to the Homeless’ (Hanover Welfare Services: November 2001)), while the Australian Federation of Homelessness Organisations estimates that more than 90 per cent of homeless people are not registered to vote (Australian Federation of Homelessness Organisations, Media Release, 27 June 2001 (see www.afho.org.au/afhnews/mediareleases/20010727.htm)).

3. Voting in Australian Federal Elections

3.1 Constitutional right to vote

The Commonwealth Constitution does not guarantee the right of all citizens to vote.

Although sections 7 and 24 of the Constitution provide that the Senate and the House of Representatives shall be comprised of members “directly chosen by the people”, these provisions have not been interpreted to impose a minimum standard of universal suffrage.⁷ Indeed, it is arguable that parliament is not constrained under the Constitution from denying groups of citizens from the right to vote “on the grounds of race, sex or lack of property”.⁸

The requirement contained in section 8 of the Constitution, that no adult person with a right to vote in a state election shall be prevented from voting in elections for the Federal Parliament, has been interpreted narrowly and has no practical effect today. This provision has been interpreted to be a transitional provision, applying to those who had acquired the vote prior to the introduction of the first uniform Commonwealth Franchise in 1902.⁹

Pursuant to sections 30 and 51(xxxvi) of the Constitution, parliament is entitled to legislate to determine the franchise for elections. Parliament has done so in the *Commonwealth Electoral Act 1918* (Cth). In the absence of constitutionally entrenched voting rights, it is the Act that governs who can vote and how.

3.2 International law right to vote

Article 25 of the International Covenant on Civil and Political Rights (“**ICCPR**”) states that every citizen is to have the opportunity to participate in the public affairs of the country, including the right to vote.¹⁰

Further, Article 2(1) of the ICCPR states that the rights contained in the convention are to be protected without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Australia is a party to the ICCPR and is therefore bound, at international law, by its provisions. Moreover, although Australia has not implemented the ICCPR as part of domestic law, the ICCPR is a legitimate and important influence on the development, interpretation and application of domestic law.¹¹

For so long as homeless people are denied a practical, exercisable opportunity to vote, the Act is inconsistent with fundamental human rights principles and parliament is potentially in contravention of the ICCPR.

3.3 Who is entitled to vote in federal elections?

As discussed above, the Act determines who is entitled to vote in Australian federal elections.

Section 93 of the Act provides:

⁷ *Attorney General (Cth); Ex rel McKinlay v Commonwealth* (1975) 135 CLR 1.

⁸ *Attorney General (Cth); Ex rel McKinlay v Commonwealth* (1975) 135 CLR 1, 56 (Stephen J).

⁹ *R v Pearson; Ex parte Sipka* (1983) 152 CLR 254.

¹⁰ *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171 (entered into force generally 23 March 1976 and for Australia 13 August 1980).

¹¹ See generally, *Mabo v Commonwealth* (1992) 175 CLR 1, 42 (Mason CJ, Brennan and McHugh JJ).

- (1) Subject to subsections (7) and (8) and to Part VIII, all persons:
- (a) who have attained 18 years of age; and
 - (b) who are:
 - (i) Australian citizens; or
 - (ii) persons (other than Australian citizens) who would, if the relevant citizenship law had continued in force, be British subjects within the meaning of that relevant citizenship law and whose names were, immediately before 26 January 1984:
 - (A) on the roll for a Division; or
 - (B) on a roll kept for the purposes of the *Australian Capital Territory Representation (House of Representatives) Act 1973* or the *Northern Territory Representation Act 1922*;
- shall be entitled to enrolment.

Section 99 makes the following further provisions in relation to enrolment or transfer of enrolment:

- (1) Any person qualified for enrolment, who lives in a Subdivision, and has so lived for a period of one month last past, shall be entitled to have his or her name placed on the Roll for that Subdivision.
- (2) Any elector whose name is on the Roll for any Subdivision and who lives in any other Subdivision, and has so lived for a period of one month last past, shall be entitled to have his or her name transferred to the Roll for the Subdivision in which he or she lives.
- (3) Subject to sections 94, 94A, 95, 95AA, 96 and 96A and Part XVII, a person is not entitled to have his or her name placed on the Roll:
 - (a) for more than one Subdivision;
 - (b) for a Subdivision other than the Subdivision in which the person lives; or
 - (c) in respect of an address other than the address at which the person is living when the claim is lodged.
- ...
- (5) The validity of any enrolment shall not in any case be questioned on the ground that the person enrolled has not in fact lived in the Subdivision for a period of one month.
(emphasis added)

"Lives", "Living" and "Lived" are not defined in the Act.

The only definition of "Address" is that it does not include a postal address that consists of a post office box number.

3.4 What is the procedure pursuant to which a person entitled to vote normally exercises the right to vote?

A person entitled to vote must lodge a claim to be added to the Commonwealth of Australia Electoral Roll ("**the Roll**"). A claim must be lodged within 21 days of becoming entitled to vote.

Section 98 of the Act sets out the following procedure for enrolment:

(1) Names may be added to Rolls pursuant to claims for enrolment or transfer of enrolment or claims for age 17 enrolment.

(2) A claim shall:

(a) be in the approved form;

(b) subject to subsection (3), be signed by the claimant; and

(c) be attested by an elector or a person entitled to enrolment, who shall sign the claim as witness in his or her own handwriting.

A copy of the approved form is at **Appendix A**.

Forms can be downloaded from the internet or otherwise obtained through the Australian Electoral Commission ("**AEC**").

An individual seeking to be added to the Roll for the purposes of voting in a federal election must provide, *inter alia*, the following information:

- residential address – full details are required showing the exact residential address. Notes to the enrolment form state that sufficient information must be given to identify a rural address, and if the address is a property, the name of the access road must be given; and
- postal address; and
- the applicant must sign a declaration of eligibility to enrol for federal elections and attesting to the correctness of the information provided on the form in front of a witness who is eligible to be on the Roll. There have been proposals to amend this aspect of enrolment which will be discussed in Part 3.7 below.

The form may then be returned by mail (no postage required).

The claim may be rejected pursuant to section 102(3)(c) of the Act if the Divisional Returning Officer ("**DRO**") is of the opinion that the claim is not in order or if the individual is not entitled to be an elector. The claimant must be notified of the decision in writing and given details of the basis for the decision and of his or her appeal rights under Part X of the Act.

A decision to reject an application can ultimately be heard by the Administrative Appeals Tribunal (see section 121 of the Act). The Clinic is not aware of any hearing before the AAT relating to rejection of a claim on the basis of an improper or unacceptable address being given, or on the basis that the claimant is not entitled to be an elector due to an argument that the person does not "live" at the address given in the subdivision.

Once the application is received and approved the individual will receive a card showing their enrolment details and their name will be added to the Roll. Once enrolled to vote, it is compulsory for "normal" electors to vote in all federal elections and referenda in the Subdivision in which the elector lives (see section 99 of the Act and sections 4(1) and 45(1) of the *Referendum (Machinery Provisions) Act 1984* (Cth)).

Pursuant to section 155 of the Act, electors have until 8pm seven days after the writs are issued (commanding the electoral officer to conduct an election) to enrol or update their details on the Roll. Polling day must be at least 33 days after the issue of the writs according to section 157 of the Act. However, it can be as many as 100 days after the date of the writ pursuant to section 159.

3.5 What are the penalties for failing to vote?

Section 101 of the Act sets out the requirements for lodging a claim for enrolment and is aimed at ensuring that persons entitled to vote are enrolled and that the Roll remains valid and up to date. This section is set out in full in Annexure A.

Section 101 of the Act establishes that it is compulsory for every person who is entitled to be enrolled for any Subdivision to sign a claim for enrolment within 21 days of that person becoming so entitled. Failure to do so is an offence punishable on conviction by a maximum fine of \$50.00. A person is also required, by virtue of sections 101(4) and 101(5), to give notice of a change of address within 21 days of the change of place of living. Failure to do so is an offence punishable on conviction by a fine of not more than \$50.00.

Section 245 of the Act contains the penalty provisions for electors who fail to exercise the right to vote. This section is set out in full in Annexure B.

Section 245 does not apply to certain electors, including those enrolled as itinerant electors (section 245(17)).

3.6 How is the right to vote exercised and how are the penalties enforced?

As discussed above, a penalty of \$50.00 applies for (normally) enrolled voters who fail to exercise their right to vote in a federal election (section 245 of the Act). However, failure to vote does not automatically result in a \$50.00 fine. First, the DRO will send a penalty notice to the elector notifying them that if they do not provide a "valid and sufficient reason" for failing to vote, a penalty of \$20.00 will have to be paid, unless the elector wishes to have the apparent failure to vote dealt with by a court.

Failure to provide a "valid and sufficient reason" or pay the \$20.00 fine will result in a second penalty notice being issued. This notice re-states the options open to the elector, including paying the fine of \$20.00. If the elector pays the penalty, gives sufficient evidence of having voted, or provides a valid and sufficient reason for failing to vote, proceedings against the elector for breach of section 245(15) are prohibited. If the voter fails to pay, the DRO may institute proceedings in the Magistrates' Court, where a fine of \$50.00 (plus costs) may then be ordered on conviction. Any person who chooses not to pay the court-ordered fine will be dealt with by the Court accordingly. This may involve the imposition of community based orders, seizure of goods, or even periods of imprisonment.

What is a "valid and sufficient reason" for failing to vote? There is no explanation in the Act as to what is meant by "valid and sufficient reason" other than the express provision that religious duty may constitute a valid and sufficient reason for not voting (section 245(14)).

It is therefore at the discretion of the DRO to decide whether the reason given is "valid and sufficient", although the exercise of the discretion is guided by the Divisional Office Procedures (Elections) Manual ("**Manual**"). The Manual is an internal AEC document and is not available to the public, despite the fact that the exercise of this discretion may result in a person being summonsed to appear before Court.

The Manual lists specific circumstances and examples of reasons for failure to vote which will be regarded as "valid and sufficient" reasons. It also discloses procedures in relation to dealing with defaulters. In *John Paul Murphy v Australian Electoral Commission*,¹² the AEC was challenged to make the contents of the Manual available to the public under the *Freedom of Information Act 1982* (Cth). However, the application was refused on the grounds that to make the information public (the applicant admitted that he would publish the Manual) would,

¹² No Q93/585 AAT No 9492; (1994) 33 ALD 718.

or would be likely to, prejudice the effectiveness of methods and procedures adopted by the AEC to detect, investigate and deal with matters arising out of the breach of section 245.

The Clinic has not had the advantage of perusing the Manual. In the Clinic's view, however, some form of official recognition of the problems faced by homeless people which may validly prevent those enrolled as "normal" voters from voting should be articulated in such guidelines or policies. Further, it is critical to make it well known in the relevant communities that the government and the AEC will not punish or penalise homeless people for failing to vote if that failure was caused by or related to the person's homelessness. Just as there is a justifiable basis for the express provision relating to religious beliefs in section 245(14) of the Act, the Clinic submits that a similar public recognition of the practical difficulties faced by the homeless population which may prevent them from voting is necessary. This would encourage the recently homeless and the homeless population in the tertiary class who may have some kind of housing and be eligible to enrol as a "normal" voter to enrol and participate in the democratic process whenever possible.

Based on the figures in Table 2 below, 56.3 per cent of apparent non-voters in 1996 and 61.3 per cent of the apparent non-voters in 1998 were found to have a valid and sufficient reason for failing to vote, or had their claim to have voted substantiated. It cannot be discerned from these figures the number of apparent non-voters who:

- gave a sufficient reason (and what reasons were deemed sufficient); or
- actually voted in the election.

The High Court has stated that a "valid and sufficient" reason is some reason which is not excluded by law and is, in the circumstances, reasonable. This may include circumstances of "physical obstruction, whether sickness or outside prevention, or of natural events, or accident of any kind."¹³

Whether homelessness or associated problems would be accepted as constituting a "valid and sufficient" reason for failing to vote is not clear. The Clinic submits that it should. Homeless people experience a range of pressing problems (including financial, familial, social, psychological, medical and accommodation issues) which are related to homelessness and which may prevent the person from being able to vote on a particular day.

Table 2: Statistics collated by the AEC in relation to the 1996 and 1998 federal elections show the following pattern of voting:¹⁴

	1996 Federal Election	1998 Federal Election
Number of enrolled electors	11,740,568	12,154,050
Total number of apparent non-voters	356,991 (3.04%)	421,570 (3.47%)
Number of apparent non-voters with valid and sufficient reason, or claim to have voted substantiated.	201,023	258,582

¹³ *Judd v McKeon* (1926) 38 CLR 380 (Isaacs J).

¹⁴ Figures dated 31 July 2001. Information provided by Deputy Electoral Commissioner in letter to Brianna Harrison dated 17 January 2002.

Number of electors who paid \$20 administration penalty	29,154	40,396
Number of warning letters issued, no further action or awaiting further information	10,717	23,427
Number not proceeded with for reasons such as death or change	6,673	10,653
Number of summonses issued for failure to vote	9,055	8,619
Number of cases dealt with by Courts	6,027	6,246

These figures do not show the percentage of enrolled voters who failed to vote who were not able to be tracked by the DRO.

3.7 **How do enrolment and enforcement provisions impact on the ability of homeless persons to enrol to vote or to exercise their right to vote under section 93 of the Act? What are the practical impediments or disincentives to homeless people enrolling or voting under section 93?**

(a) **Requirement to give a residential address and mailing address**

The requirement to give a residential address is a major impediment to homeless people completing a claim for enrolment, re-enrolment or updating their information on the Roll. This is due to two main characteristics of homelessness, namely, non-conventional housing or lack of stability and security of housing.

- (i) Non-conventional housing: Where the homeless person resides or stays in non-conventional shelter such as a doorway, neglected warehouse or on the streets, they will not be able to provide an "address" which is suitably particular and therefore will be ineligible to enrol as a "normal" elector. It is not clear under the Act and the AEC directions on the electoral claim form how widely "address" is defined. However, there is nothing to indicate that a wide definition would be applied. For example, a person who lived in a caravan on unused Crown land which could be adequately located by means of describing the "access road", or other geographical marker would probably be refused enrolment.
- (ii) Stability and security of housing: For most homeless people, it is not the lack of address per se, but the lack of a stable and consistent address which is the major barrier preventing them from being able to be enrolled as "normal" electors. As stated earlier in this submission, the statistics show that homeless people are a relatively transient population, lacking stability of residence and moving from place to place frequently.¹⁵ Section 99(2) requires not only that the person be "living" at an "address" within the Subdivision, but also that the person have lived in that Subdivision for at least one month. Section 99(3) goes on to stipulate that a person cannot be enrolled for a Subdivision other than the Subdivision in which they live.

¹⁵ Australian Bureau of Statistics, *Occasional Paper – Counting the Homeless: Implications for Policy Development* (1999) at 7.

Thus, it is extremely difficult for most, if not all, homeless people to provide an address where they live, and to constantly maintain the correctness of their details on the Roll.

Recommendation 1: Amend the Act so that persons who give details of why they cannot provide an "address" as to where they "live" are able to nominate an address in the Subdivision with which they have a "close connection".

"Close connection" in this context could be drawn from similar provisions in international legislation such as:

- the address of or which is nearest to a place where the claimant commonly spends a substantial part of his or her time (whether during the day or night): see section 7B of the *Representation of the People Act 1983* (UK) as amended in 2000; or
- the "home base" requirement as provided for under the American "National Mail Voter Registration form".

(b) **Requirement to update information within 21 days of change of place of living (s.101(4)) and fine for failure to do so**

This requirement discourages homeless people from becoming and remaining enrolled as "normal" voters because of the relative frequency with which homeless people move. This is an unrealistic requirement both in terms of the time period allowed for notifying the DRO of a change of address and the potentially onerous obligation on homeless people, particularly those in the secondary and tertiary classes of homelessness who may often have an address but who move from place to place frequently. The threat of a penalty of \$50.00 for a failure to provide appropriate notification has the effect of discouraging homeless people from enrolling as "normal" electors when they do have an acceptable address at which they have been living for more than 21 days due to the burden of updating the Roll each time they move.

Recommendation 2: Repeal section 101(5) of the Act. Alternatively, amend section 105(5) so as to remove the automatic penalty for failure to comply by incorporating a "reasonable excuse" provision. In addition, amend sections 101(4) and 101(5) of the Act so as to extend the 21 day time frame.

(c) **Whilst \$50.00 may be intended as an administrative penalty and mere "slap on the wrist", the impact of a \$20.00 or \$50.00 fine on a homeless person can be significant**

Receiving such a fine can have the effect of further entrenching the vulnerability and instability of a homeless person's current situation. Often they have no chance of paying such a fine and they get drawn into the administration system and eventually brought before the courts. This discriminates against homeless people and those with limited finances and limited access to resources to respond to and defend such penalties. It also discourages homeless people from seeking to re-enrol when they do find stable housing.

(d) **Closing of the rolls within seven days of writ being issued (section 155 of the Act)**

Section 155 of the Act requires that the Roll remain open for seven days after the election writ is issued. This is a very small window of opportunity for an elector to lodge a claim updating their information. In the week following the announcement

of the 1998 election, the AEC received a total of 351,913 enrolment forms which included new enrolments, re-enrolments and transfers of enrolments.¹⁶

Whilst section 101 of the Act requires electors to update the information on the Roll if they change address within 21 days of so doing, it is recognised that many people (homeless or not) neglect this responsibility. It is only when a federal election is announced that most individuals notify the AEC of their changed circumstances.

As a result of inquiries into the 1996 and 1998 federal elections, it was recommended that the Act be amended to close the Roll at 6pm on the date of issue of the election writ for new enrolments and to close the Roll three days after the issue of the writ for electors who wished to update their information on the Roll or re-enrol.¹⁷ This was also recommended by the Joint Standing Committee on Electoral Matters following the 2001 inquiry into the integrity of the Roll.¹⁸ This recommendation was supported by the government as a means of preserving the electoral Roll and is now reflected in sections 3, 5 and 11 of the *Electoral and Referendum Amendment (Roll Integrity and Other Measures) Bill 2002* ("the Bill").

The early closing of the electoral Roll will act as a practical impediment to homeless people exercising their right to vote by removing or significantly reducing the opportunities for updating address details or registration as itinerant voters. The premature closing of the Roll will have a disproportionate and discriminatory effect on homeless people because:

- homeless people have no consistent and stable place of residence and most of the homeless population moves frequently from one form of temporary shelter to another,¹⁹ therefore, homeless people are far more likely to have incorrect details recorded against their names on the Roll, or to have been removed from the Roll due to the AEC becoming aware of inaccuracies in address or contact details;
- homeless people are often outside the main-stream media loop and may not become immediately aware that a federal election has been announced; and
- a higher proportion of the homeless population have reduced literacy and this impacts on their knowledge of current events and also their ability to complete the required AEC forms within a limited time frame.

The effect of the proposed changes has been resisted by the AFHO who has stated that the early closing of the electoral roll could potentially "wipe out voting opportunities for large numbers of already disenfranchised people."²⁰ The Clinic supports this view and opposes the amendments.

¹⁶ Joint Standing Committee on Electoral Matters, *Report of the Inquiry into the Conduct of the 1998 Federal Election and Matters Related Thereto* (June 2000) at 14.

¹⁷ Joint Standing Committee on Electoral Matters, *Report of the Inquiry into the Conduct of the 1998 Federal Election and Matters Related Thereto* (June 2000) at 15.

¹⁸ Joint Standing Committee on Electoral Matters, *Report of the Inquiry into the Integrity of the Electoral Roll: User Friendly Not Abuser Friendly* (May 2001) at 50.

¹⁹ Australian Bureau of Statistics, *Occasional Paper – Counting the Homeless: Implications for Policy Development* (1999) at 7.

²⁰ Australian Federation of Homelessness Organisations, Media Release, 27 June 2001 (see www.afho.org.au/afhonews/mediareleases/20010727.htm).

Interestingly, the American roll closes only 30 days before an election and the Canadian roll remains open until the day before the election. This enables registration staff to actively maximise enrolment prior to the election by seeking out under-represented populations and it also ensures that people who require assistance with enrolling or who may not be "tuned in" to the mainstream media will have an opportunity to enrol.

Recommendation 3: Do not pass the Bill amending sections 155 of the Act (and related sections).

Recommendation 4: If the Bill is to be passed, make an exception for "itinerant" electors. Do not pass section 4 of the Bill which proposes to amend section 96(4) of the Act.

(e) **Proposed amendment requiring proof of identification in order for claim**

Under the current provisions of the Act, an individual is not required to provide any identification upon enrolment or registration. Section 98(2) of the Act provides that a claim for enrolment must be:

- (a) in the prescribed form;
- (b) be signed by the claimant (where the claimant is physically capable of signing); and
- (c) be attested by an elector or a person entitled to enrolment, who shall sign the claim as witness in his or her own handwriting.

Over the years there have been a number of recommendations made to the government that there be some form of identification requirement imposed on individuals making a claim for enrolment. A further amendment to section 98 of the Act was suggested to restrict the electors who may witness claims for enrolment to a limited class of persons rather than simply requiring that the person be entitled to be an elector. This person would then effectively be attesting to the fact that they had sighted the relevant proof of identification. Both of these amendments were recommended as supporting the integrity of the electoral roll and public confidence in the electoral roll.²¹

However, on 15 May 2002 the Senate disallowed the proposed *Electoral and Referendum Amendment Regulations 2001 (No 1) 2002 No. 248* which was to effect those amendments. The AEC supported the disallowance motion. There are a number of reasons why the amendments were not passed. During the Senate debate of the proposed regulations Senator Bartlett conceded that homeless people are currently underrepresented on the electoral roll and will be further marginalised by any identification requirements.²² A recent audit of the Roll by the Australian National Audit Office confirmed the high integrity of the Roll. The Clinic submits that any amendments along these lines will be likely to further reduce the number of homeless people who are able to enrol.

Recommendation 5: That no amendments be passed requiring any form of original paper identification for a claim on the electoral roll to be accepted.

²¹ Joint Standing Committee on Electoral Matters, *Report of the Inquiry into the Integrity of the Electoral Roll: User Friendly Not Abuser Friendly* (May 2001) at 40-6 and government response of October 2001 at 2.

²² Commonwealth Senate Hansard (Wednesday, 15 May 2002) at 1626.

Recommendation 6: That no amendments be passed limiting the class of persons who may witness a declaration (and the production of valid identification).

(f) **Failure to vote once enrolled is an offence punishable by a fine which may be enforced by Court**

The provisions relating to failure by a "normal" elector to vote in an election are found in section 245 of the Act and in Division 7 of the *Electoral and Referendum Regulations 1940*.

Electors who fail to vote in an election are guilty of an offence and may be served a penalty and summonsed to court if the penalty is not withdrawn and it is not paid.

These provisions may have the effect of discouraging people with unstable housing situations from enrolling to vote if they have been or are likely to be penalised for failing to vote when such failure may be due to issues associated with homelessness, or problems experienced by a higher proportion of homeless people (such as issues relating to securing accommodation, income, and food for the immediate future).

In addition, if a homeless person has been penalised under these provisions in the past, they are unlikely to update their information on the Roll when they do have a "place of living" with a valid residential address.

(g) **"Valid and sufficient reason" not open and transparent**

As can be seen from Table 2 above, the provisions relating to penalties for failing to vote are routinely enforced following each federal election. Section 245(15)(ii) provides that if the elector can provide a valid and sufficient reason for failing to vote the penalty may be waived.

Details of what constitutes a "valid and sufficient" reason are not available to the public other than the express provision in section 245(14) relating to religious duties. This exception may operate to protect people from being penalised for failing to vote in circumstances where they were unable to vote due to issues related to homelessness. However, without transparency and openness in the application and purpose of this provision, the policies of the government cannot be scrutinised for any discriminatory effects. Furthermore, lack of openness or guidance as to what constitutes a "valid and sufficient reason" will result in the exception not being properly utilised by many of the people who need it most.

Recommendation 7: That further detail of the policies embodied in the Divisional Officers Procedures (Elections) Manual be made publicly available regarding reasons for failing to vote which may be considered to be "valid and sufficient".

Recommendation 8: That an amendment be drafted to section 245 of the Act (or expressly included in the Divisional Officers Procedures (Elections) Manual) recognising that the problems faced by homeless people who are enrolled as "normal" voters may prevent them from exercising their right to vote and that such problems constitute a "valid and sufficient reason" for failing to vote.

4. Current Itinerant Voter Provisions

4.1 Itinerant voters under the Act

There are a number of special enrolment provisions in the Act which establish exceptions and special rules for persons with physical difficulties, itinerants, overseas electors, Antarctic electors, and persons who do not want their addresses shown on the Roll.

The provisions for itinerant electors are found in section 96 of the Act and are intended to provide for enrolment by persons with no fixed address. Section 96 is set out in full in Annexure C.

A person is entitled to be listed on the Roll as an itinerant elector if:

- the person is in Australia; and
- the person has had no "real place of living" in a Subdivision for a month or longer.

Once a person has resided in a Subdivision for over a month (that is, once they have had a "real place of living" within the Subdivision for over a month) they are no longer entitled to be enrolled as an itinerant elector.

"Real place of living" is defined in the Act as including the place of living to which a person, when temporarily living elsewhere, has a fixed intention of returning for the purpose of continuing to live at that place. Many homeless people will not have a "real place of living" as defined in the Act, or will only have so for short, unpredictable periods of time.

In *Tanti v Davies (No 3)*,²³ Justice Ambrose was caused to consider more closely the meaning of "real place of living" under the *Electoral Act 1992 (Qld)*. His Honour made the following observations regarding this term:

"Place of living" encompasses both temporary and permanent living. While it includes residential living, it also includes living which does not amount to residential living. In my view, "real place of living" is more synonymous with "actual place of living" than it is with "place of residence" where one need not actually live at the relevant time. An actual place of living may be either a place of residence of the voter or at some other place where the voter lives, without necessarily choosing to do so at the time and without any adoption of that place as "home" - for example persons on military duty overseas in places like Rwanda or perhaps persons held in custody.

In *Burnett Shire Council v Galley*,²⁴ Justice Holmes also considered the meaning of the term, holding that "there must be some element of continuity in a person's occupation of premises for the purposes of eating, sleeping, bathing and carrying on the other activities of everyday life to warrant a conclusion that he or she lives there."

Applying these tests of "place of living" it might appear that a homeless person who lives in, say, a particular area of a public park, might be said to have a "place of living" and thus not be eligible to enrol as an itinerant.

The Australian Electoral Officer will consider the application and grant or refuse such application under section 69(5).

One of the reasons for which a person will cease to be entitled to be treated as an itinerant elector is if, while the person is being so treated, a general election is held at which the person

²³ [1996] 2 Qd R 602.

²⁴ [2000] QSC 490.

neither votes nor applies to vote (section 96(9)(a)). However, there is no provision in the Act for rejecting an application for enrolment as an itinerant elector on the basis that the applicant has been previously removed from the Roll as a consequence of failing to vote. Therefore, it appears that this will not disentitle an individual from becoming an itinerant elector.

A person whose application for enrolment as an itinerant elector is rejected by the Australian Electoral Officer may, subject to the *Administrative Appeals Tribunal Act 1975* (Cth), apply to the Administrative Appeals Tribunal for a review of the decision.

Section 245 of the Act does not apply to itinerant electors. Thus, strictly speaking there are no "penalties" for itinerant electors who fail to vote at a federal election.

4.2 How many people are currently registered as itinerant voters?

As at 7 September 1998 (the date the Rolls closed for the 1998 federal election), there were a total of 2,532 electors enrolled in Australia as itinerant voters.²⁵ This number is clearly far below the number of homeless persons in Australia, most of who would not be eligible to enrol as "normal" electors.

Figures show that those electors enrolled as itinerant voters do tend to exercise their right to vote. In 1996, only 0.62 per cent of itinerant electors were subsequently removed from the Roll for failing to vote, and in 1998, 0.67 per cent of the enrolled itinerant electors were removed from the Roll.²⁶

4.3 What is the procedure pursuant to which a person entitled to vote as an itinerant elector exercises the right to vote?

In order to enrol as an itinerant elector, the individual must complete the approved form.

A copy of the approved form is at **Appendix B**.

Forms can be downloaded from the internet or otherwise obtained through the AEC.

An individual seeking to be added to the Roll as an itinerant elector for the purposes of voting in a federal election must provide, *inter alia*, the following information:

- the Subdivision in which the elector is entitled to be enrolled. The form contains a hierarchical list of grounds for determining which subdivision the elector is entitled to be enrolled in. The elector must select the first statement that applies to him or her from the following list:
 - (a) the Subdivision for which the claimant was last entitled to be enrolled;
 - (b) the Subdivision in which one of his or her next of kin is enrolled (if he or she has not previously been entitled to enrol);
 - (c) the Subdivision in which the claimant was born; and
 - (d) the Subdivision with which the claimant has the closest connection (this final category is available only to persons born outside Australia).

²⁵ Information available at www.aec.gov.au

²⁶ Figures dated 31 July 2001. Information provided by Deputy Electoral Commissioner in letter to Brianna Harrison dated 17 January 2002.

Reasons must be attached if the claimant elects to be enrolled in any Subdivision other than the Subdivision where the claimant was previously enrolled; and

- a postal address;
- reasons for applying for enrolment as an itinerant elector;
- the address for which the claimant is claiming enrolment; and
- address at which the claimant was previously enrolled (where applicable).

The Clinic has been informed by the AEC that the address for which the person is claiming enrolment will relate directly to their answer to question 1 which determines the Subdivision in which they are entitled to be enrolled. The Clinic submits that it is not clear from the face of the form that the "address for which the claimant is claiming enrolment" does not need to be the address of the place where the individual is currently staying. The only express requirement in relation to the address is that the address be more than a mere post box number.

There are no specific requirements regarding the postal address nominated by the individual.

The applicant must sign a declaration stating that they are eligible to enrol for federal elections, that they do not have a real place of living, that they do not intend to reside overseas while enrolled as an itinerant elector and that the information given is true and correct. This must be witnessed by a person who is eligible to be on the Roll. The form may then be returned by mail (no postage required).

4.4 What practical impediments or disincentives to homeless people voting in the normal way do the itinerant voting provisions overcome? How?

The itinerant voting provisions do not require that the elector have an "address" or a fixed place of living.

There are no penalties for failing to update one's information on the Roll.

There is no penalty for itinerant electors who fail to vote, although their name will be removed from the Roll if they fail to exercise that right.

4.5 What practical impediments or disincentives to homeless people voting in the normal way do the itinerant voting provisions fail to overcome? Why?

It appears that the provisions relating to enrolment as an itinerant voter in the Act potentially apply to many homeless people.

The Clinic submits that the main reasons for so few people being enrolled as itinerant voters (and, therefore, so few homeless people) lies in the practical aspects of enrolling.

First, the fact that a prescribed written form needs to be completed would act as a deterrent to many homeless people. This is an administrative burden which might frequently be displaced due to more pressing issues associated with homeless such as the need to find food and shelter for the night.

This administrative burden is increased by section 96(9)(a), which effectively requires an individual to re-enrol as an itinerant elector each time they fail to vote in an election. There are many reasons why a homeless person might fail to vote in an election and the mail checks should be a sufficient means of ensuring that the registration details of itinerant voters are valid and up to date.

Second, the form itself is unclear. Question 11, which requires an individual to show the address for which they are claiming enrolment, could be read as requiring them to indicate a current residential address. It is not sufficiently clear from the form that the address required is the address relating to the claimant's answer to Question 1.

Recommendation 9: Review the itinerant elector claim form, simplify the layout and clarify the requirements.

Pursuant to section 96(2A) of the Act, the Subdivision for which an itinerant elector will be enrolled is determined by the hierarchical list set out in the section. An elector will only be enrolled in the Subdivision with which they have the closest connection if none of paragraphs (a), (b) and (c) apply. A note on the enrolment form states that the "closest connection" option can only apply to persons born outside Australia.

If homeless people are to use the itinerant elector provisions, it follows that they should be able to cast a vote in respect of the Subdivision in which they "live". This is an essential aspect of democracy; persons voted into power should be directly chosen by the electors that they are to represent. The current provisions discriminate against homeless people by ignoring their right to have a say in the people and policies by which they are governed.

The Clinic submits that the current means of determining the appropriate Subdivision for a homeless person enrolling as an itinerant elector should be amended to enable the elector to vote in the Subdivision in which they spend most of their time. This could be determined by a "place of closest connection" test as is already provided in section 96(2A)(d). This method has recently been adopted in the United Kingdom pursuant to section 6 of *The Representation of The People Act 2000* (UK). Alternatively it may be determined by reference of the postal address given by the claimant. This method would more closely reflect the United States approach (see section 4 of the *Model State Homeless Voter Registration Act*).

Recommendation 10: Amend section 96(2A) of the Act to allow itinerant electors to enrol in the Subdivision with which they have the "closest connection".

Although the evidence shows that the homeless population moves around within the system, there will be a significant number of homeless people who become ineligible to be enrolled as itinerant voters after having secured stable accommodation for over one month (section 96(8)) but who are still essentially ineligible or unlikely to enrol as a "normal voter" for the reasons discussed in this Submission.

The ABS report "Counting the Homeless" estimated that over 70 per cent of homeless people fall within the "low turnover" category, that is, have been homeless for over six months. A further 17 per cent were estimated to be "medium turnover", that is, to have been homeless for between four and 25 weeks. Whilst these figures do not show precisely how long a homeless person is likely to stay in particular accommodation, it is clear that the one month limit for itinerant electors would prevent a significant percentage of the homeless population – most of whom are ineligible or unlikely to enrol as "normal voters" from enrolling as itinerant voters.

The current definition of a "real place of living" is not sufficiently particular and needs to be reconsidered so as to ensure that homeless people with unstable housing or non-conventional places of living are not excluded from both "normal" enrolment and from the itinerant elector scheme.

Recommendation 11: Clarify the definition of "real place of living" to ensure that homeless people who have a regular but non-conventional shelter or domicile (but who do not have an "address" which would enable them to enrol as "normal" voters) are not excluded from eligibility to enrol as itinerant electors. This may require a distinction between the "place of living" requirements of section 101 and the "real place of living" definition in section 96 of the Act.

Recommendation 12: Amend section 96(8) of the Act to increase the period of time that an itinerant voter may have "a real place of living" in a Subdivision from one month to six months before they become ineligible to be enrolled as itinerant voters.

Recommendation 13: Extend registration deadlines for itinerant voters. Further or in the alternative, insert an exception into the Act allowing for late registration in-person up to the day before the election.²⁷

However, as stated, it appears that the main impediments to the homeless population utilising the itinerant voter provisions are practical. Elector awareness is a critical issue which needs attention and funding. Not only do homeless people often miss out on the educational campaigns that are aimed at the mainstream population, but they are also plagued by other issues commonly associated with homelessness such as fear, hunger, illiteracy, disenchantment with authority, apathy and desperation. It is essential that the government recognise these factors which act on the homeless population and make positive steps to overcome them in order to increase homeless voter participation.

The Clinic recommends the following battery of non-legal measures.

Recommendation 14: That the AEC invest more money in sending administrative assistants to shelters for the homeless, disability services, welfare organisations and other places frequented by homeless people to assist homeless people with completing relevant forms and educating homeless people about their rights and how to exercise those rights.

Recommendation 15: That employees of agencies providing services to homeless people be trained to assist in the registration of homeless people as itinerant voters. The United States *National Voter Registration Act 1992* (US) contains express provisions to this effect.

Recommendation 16: Strategically locate polling stations to facilitate casting of votes by homeless people and provide for welfare agencies to request a mobile polling station to attend areas of need.

²⁷ See 3.7(iv) of this submission for further discussion of registration enrolment deadlines.

5. Overseas Models and Provisions for the Enrolment of Homeless People and the Exercise of the Right to Vote

5.1 United Kingdom: *The Representation of the People Act 2000* (UK)

As part of electoral law reform, the United Kingdom recently enacted *The Representation of the People Act 2000* (UK) ("**RPA**"). The RPA was designed to amend the *Representation of the People Act 1983* (UK), in particular to address declining rates of voter participation in the United Kingdom. The RPA specifically contains reforms aimed at those who neither own nor occupy any property, and thus is of particular relevance to homeless people. Prior to the enactment of the 2000 RPA, the need for an address at which to register had been a major barrier to registration for homeless people.

(a) Requirements to establish an entitlement to vote

Under the RPA, in order to establish an entitlement to vote in a United Kingdom parliamentary election in any constituency a person must:

- (i) be registered in the register of parliamentary electors for that constituency,
- (ii) not be subject to any legal incapacity to vote (age apart),
- (iii) be either a Commonwealth citizen or a citizen of the Republic of Ireland; and
- (iv) be of voting age (that is, 18 years or over).²⁸

Thus, the requirement of registration is paramount to ensure that a person has the right to vote. The RPA attempted to address problems of virtual disenfranchisement of homeless people, many of whom, by definition, are without even a temporary address, by allowing potential electors to demonstrate "notional residence". Previously, in practical terms, only those able to nominate a residence were able to comply with the first requirement of registration.

(b) Declaration of Local Connection

Section 6 of the RPA allows a person to make a "declaration of local connection" in order for them to register to vote. Specifically, section 6 provides that a homeless person may make such a declaration by:

- (i) stating his or her name,
- (ii) providing an address to which correspondence from the registration officer may be sent, or an indication of a willingness to collect such correspondence periodically from the registration officer's office; and
- (iii) in lieu of a residential address, providing the address of, or which is nearest to, a place in the UK where he or she commonly spends a substantial part of his time (whether during the day or night).

By allowing a homeless person to state as their address "the address of, or which is nearest to, a place in the UK where he or she commonly spends a substantial part of his time (whether during the day or night)", registration becomes possible. A

²⁸ See section 1 of the *Representation of the People Act 1983* (UK), inserted by section 1 of the *Representation of the People Act 2000* (UK).

place such as a day centre or rough sleeping site would now be considered adequate as an address for the purposes of registration.

Registration forms are available from outlets including local councils, libraries, Citizen's Advice Bureau and doctors' surgeries.²⁹ Once completed, the forms may be lodged at electoral registration offices located within local councils. The register is a rolling register which is updated monthly rather than every year.

(c) **Limitations**

The RPA qualifies the rights of homeless people to register to vote somewhat by imposing a limitation on declarations of local connection made in the run up to a by-election. Section 6 of the RPA provides that from the date on which a vacancy of a candidate occurs until the final date for nominations, an additional declaration to the effect that for the last three months the declarant had been spending a substantial part of his or her time at, or near, the required address must be made. This is intended to prevent a flood of non-*bona fide* electors into the constituency of the by-election. However, a propertied voter would not have to comply with such a requirement, and thus homeless people are, in effect, discriminated against.

Furthermore, homeless people are not permitted to make multiple declarations of local connection, however those people with multiple homes are permitted to register pursuant to their multiple addresses.

(d) **Voting not compulsory**

Voting is not compulsory in the United Kingdom. Therefore penalties do not apply due to a failure to vote.

5.2 **United States: *National Voter Registration Act 1992 (US)***

The United States confers eligibility to register and to vote on citizens of the United States who are legal residents of their state who have attained at least 18 years of age by the election date.

Some states exclude the eligibility of individuals who are imprisoned, on probation or parole, are ex-felons or have been declared mentally incompetent by a court.

Individuals are able to register by completing a short voter "registration-by-mail" form. These are available at various locations including post offices, libraries, the Department of Motor Vehicles, the welfare department, the Registrar of Voters, the City/County Elections Office and many other social service agencies.

The *National Voter Registration Act 1992 (US)* ("**NVRA**"), (also known as the "Motor-Voter" law), governs voter registration for United States Federal elections.

The NVRA requires states to make the voter registration process for federal elections more accessible to citizens by facilitating the registration process. The "motor voter" option provided to citizens enables them to register to vote when they apply for or renew their driver's licenses at state Departments of Motor Vehicles. The NVRA also requires the states to designate as voter registration agencies all state offices that provide either public assistance or state-funded programs primarily engaged in providing services to people with disabilities. This includes homeless shelters, drop in centres, food pantries, soup kitchens, day care centres, child welfare agencies and community health centres.

The following are key provisions of the NVRA:

²⁹ www.youthinformation.com

(a) **Residential Address Requirement**

The uniform "National Mail Voter Registration Form" requires the states to accept for registration an applicant who draws a map to indicate where he or she lives "if the applicant lives in a real district or has a non-traditional address".

This allows a homeless person who is able to identify a street corner or a park bench, for example, as their home base by designating it on a map to register to vote notwithstanding being unable to provide a traditional residential address. The "home base" is a specific location that the homeless person considers is their home base to which they return regularly and intend to remain for the present. In relation to state elections, courts have addressed the issue and have held that states may not refuse to allow a homeless person to register to vote on the grounds that he or she does not have a traditional residential address.

(b) **Mailing Address Requirement**

Most states require prospective registrants to provide a mailing address and this requirement is not prohibited by the NVRA. However, several states allow registrants to identify a government office or post office "general delivery" address or other reliable contact points including a shelter, church or municipal building as a mailing address.

The mailing address requirement has not been tested by the courts. If the mailing address requirement simply imposes a burden or inconvenience on the applicant but does not prevent his or her registration, the requirement is likely to be upheld by the courts. If however the mailing address requirement is strictly enforced with the consequence of preventing the homeless person to register, it will be likely to constitute an unlawful restriction on the fundamental right to vote.

(c) **Personal Identification Requirement**

Most states require prospective registrants to provide a personal identification number which is usually a social security number or a driver's licence, to enable election officials to verify the persons identity. The legality of demanding the person's social security number has recently been impugned by a Federal District Court which prohibited the practice of a state requiring a social security number.

The NVRA prohibits states from imposing highly restrictive identification requirements as the National Voter Registration Form "may require only such identifying information ... and other information ... as is necessary to enable the appropriate state election official to assess the eligibility of the applicant and to administer the registration and other parts of the election process".

(d) **Registration Deadlines and Residency Duration Requirements**

Most states have a deadline prior to election day in which voter registration applications must be submitted. Generally it is 30 days before the election. This requirement often presents a problem for homeless individuals who move their home base to a different election district before the deadline for registration and the election. The result is that the homeless person will have missed the deadline for registering to vote in the new district but will be prohibited from voting in the former district because they are no longer residents of that district.

The NVRA provides protection for people who move their home base from one location to another within an election district and requires that the registrant be permitted to vote at either the previous assigned polling place or a central location upon affirmation of the new address by the registrant or at a new polling place upon confirmation of the new address.

(e) **Removal of Registration Lists and Mail Checks**

Many states remove names of individuals from registered voters lists where they are no longer residents of the election district in which they are previously registered. This practice presents difficulties for homeless people because commonly names are removed when the registrant fails to respond to a mail check. This involves a notice being issued by mail to which the registrant is required to respond in order to confirm his or her continued residence in the particular election district and to prevent removal of his or her name.

The NVRA confers some protection by restricting circumstances under which failure to respond to a mail check may result in removal from the rolls and by imposing certain conditions on mail check procedures.

In addition to the above, section 1B of the NVRA encourages "all non governmental entities" to register their clients. This targeting of key venues has the effect of encouraging a greater response in homeless people registration and is a useful model for our purposes and worthy of consideration.

5.3 United States: *Equal Protection of Voting Rights Act of 2001* s.565/H.R. 3295 (US)

Section 103(2) of the *Equal Protection of Voting Rights Act 2001* refers to the requirements for identification for voting eligibility. It reads:

- (A) In general an individual meets the requirements of this paragraph if the individual -
 - (i) in the case of an individual who votes in person -
 - (I) presents to the appropriate state or local electoral official a current and valid photo identification; or
 - (II) presents to the appropriate state or local election official a current utility bill, bank statement, Government check, pay check, or other Government document that shows the name and address of the voter.

There are currently a number of lobby groups requesting that the United States Congress expand the definition of valid identification to include identifications issued from shelters, transitional housing programs and other services for people experiencing homelessness.³⁰

5.4 United States: *Model State Homeless Voter Registration Act* and enactment of homeless voting registration laws in American states³¹

The National Council for the Homeless ("NCH") has been involved in the "You Don't Need A Home To Vote" campaign in the United States since 1992. This campaign aims to lobby and effect written policies/opinions from either the State Elections Office or the State Attorney-General. The campaign seeks to protect and promote a homeless persons' right to vote,

³⁰ Such organisations involved in such lobbying include the National Coalition for the Homeless, the Law Committee for Civil Rights, National Council of La Raza, Disability Rights Education Defence Fund, National Network to End Domestic Violence, the Mexican American Legal Defence Farm, New York Coalition for the Homeless, US PIRG, and the Leadership Conference on Civil Rights.

³¹ The Clinic acknowledges the considerable information provided by the NCH at www.nationalhomeless.org

ensuring that people who are homeless maintain an active role and voice in shaping their future.

Since the inception of the campaign in 1992, thousands of homeless citizens have been registered to vote. The campaign according to the NCH, uses a five-pronged strategy of: registration; education; "get out the vote"; state and federal legislation; and litigation. Currently, 30 states require that a person have a mailing address in order to register and while nearly all states say that a person can register to vote even if he or she lives in a shelter or on the streets (that is 48 states), only 17 have written policies and 24 have verbal policies. Currently, only ten states (Arizona, Colorado, Illinois, Indiana, Iowa, Kansas, Maine, Nebraska, Oregon and West Virginia) have laws which give homeless people the right to vote. It is of concern that verbal only policies on the homeless voter registration result in county election officials having a discretion of making their own policies.³²

The NCH has drafted a Model State Homeless Voter Registration Act which, during the past decade, has formed the basis for homeless voting legislation in Arizona, Colorado, Illinois, Indiana, Iowa, Kansas, Maine, Nebraska, Oregon and West Virginia. The Model Act is intended to provide guidance in relation to the provisions that a states homeless voter registration law should include. The objective is, of course, to increase homeless voter participation in elections by overcoming restrictions on their eligibility by virtue of their homeless status. The following is an outline of some of the key provisions:

(a) **Section 2 – "Definitions"**

"Domicile" the place where a person's habitation is, and to which, whenever absent, the person has the present intent of returning.

"Non-Traditional Abode" includes shelters, parks, shanties, underpasses and cars.

"Homeless Provider" includes residential shelters, day centres, soup kitchens and food pantries.

The NCH notes that the key to assessing a person's domicile and residence is "present intent". That is, if an individual has the present intent of returning to a shelter or a park whenever the person is absent during the day, then that constitutes the requisite residence. It is not significant that at some unidentifiable time in the future the person intends to leave the shelter or park and live elsewhere.

(b) **Section 4 – "Residency"**

A person living in a residential shelter may be considered a resident of the election district where the shelter is located. A person living in a non-traditional abode other than a residential shelter has the option of electing that his or voting residence be either the "geographic location" or the street address of a homeless provider with which the homeless person has a relationship.

The NCH regards this section as the key to the Act. It signifies that a person living in a shelter is a resident of the election district in which the shelter is located even though the person does not live in a traditional house. Further, an individual who lives in a park, for example, can vote in the election district where the "geographic location" is situated or in a district where the shelter with which the person has a relationship is located. Persons living in non traditional abodes other than shelters may not want to use their "geographic location" because they may move frequently and thus would have to re-register every time their "geographic location" changed.

³² For further information regarding the NCH and the Model State Homeless Registration Act, please refer to www.nationalhomeless.org

Therefore, there is an alternative to using the address of a homeless provider so that if the location does change, the individual is not precluded from re-registration.

(c) **Section 5 – "Equal Treatment"**

A person's residency should not be challenged solely on the basis that a person lives in a non-traditional abode.

The NCH refers to the objective of the section as to prohibit an inference that a person is a non-resident solely on the basis of living in a shelter or in a park. They submit that people living in these locations should be treated the same as persons living in traditional residences with regard to determining residency. Therefore, a question about the true residence of a person cannot be raised solely on the basis that the person lives in a park instead of a house. A person who claims to live in a house in a particular election district is presumed to be a resident of that election district and it should therefore follow that a person who claims to live in a park or shelter in a traditional election district should also be presumed to be a resident of that election district.

(d) **Section 6 – "Registration Deadline"**

Registration for an election shall close at 8:00pm on the second Wednesday before the election.

The NCH clarifies that a significant number of states have a registration deadline of 30 days. Some states permit same day registration but most state legislatures would most likely reject an enactment of this type. The NCH advocates that state legislatures enact at least a deadline of within 14 days prior to an election on the basis that registration deadlines are often the major reason for why people who are homeless become disfranchised. Such people are ignorant of the deadline to register and are therefore less likely to become involved in an election until immediately before it occurs. They are therefore less likely to register before the deadline passes. Some states have reduced their deadline to below ten days and the NCH argues that other states should follow suit.

(e) **Section 7 – Late Registration - In Person"**

A person who has failed to register by the registration deadline for an election can still vote in the election if the person completes a registration form in person at the City/County Registrars' Office by 5:00pm on the day before the election. Once the registration form is completed, the Registrar shall issue a certificate of registration to the person. The certificate can then be presented by the person on election day at the polling place, who she will then be entitled to vote.

The NCH states that this provision prevents the registration deadline being so final by conferring an exception for homeless people who are unaware of registration deadlines in recognition of the important right of voting.

(f) **Section 8 – "Mail Registration"**

A person may register by mail by filling out a registration card and having the card mailed or delivered to the City/County Registrar's Office. The registration card shall have postage pre-paid, with the address of the City/County Registrar's Office already printed on the front. The card shall only require the person to provide the information listed in section 11: for registration by mail to be considered totally, the registration card must be post marked no later than the second Wednesday before the election. Any person who is a registered voter in the state may help another person fill out a mail registration card."

NCH regards the mail registration provision as having the biggest impact on increasing the number of persons who are experiencing homelessness to register to vote. The provision facilitates the registration of people who are experiencing homelessness by allowing an employee of the shelters and soup kitchens to assist their clients with filling out the cards and dropping them in the mail.

(g) **Section 9(a) – "In-Person Registration - Shelters and Soup Kitchens"**

The director or an employee of the shelter or soup kitchen, or a client/shelter resident who uses the services of a shelter or soup kitchen, may apply to the city/county registrar to be appointed a deputy registrar. The city/county registrar is required to make such appointment if such director, employee, or person who is experiencing homelessness is a qualified voter in the city/county. The person shall be appointed as a deputy registrar for a period of 2 years. As a deputy registrar, the person will have the power to conduct in person registration at that location during normal business hours. The city/county registrar shall provide registration forms to all deputy registrars.

The NCH states that employees or clients/shelter residents who use the services of a shelter or soup kitchen acting as deputy registrars will have the effect of significantly increasing registration among persons who are homeless. Clients at the shelters and soup kitchens are much more likely to come forward and register with familiar deputy registrars as opposed to going to the city/county registrar's office.

(h) **Section 9(b) – "In Person Registration - Additional Sites"**

Any person may request in writing to the city/county registrar's office that the registrar conduct additional registration at a specific site. Such site can be at any place where more than 50 persons qualified to vote are located. If an additional site is requested, the registrar shall make a good faith attempt to conduct registration there.

The NCH states that this provision allows an additional in-person registration site upon request at any encampment or in any park where a large number of people who are currently homeless live.

(i) **Section 10 – "Registration by Absentee"**

A person may register in-person or by mail in a different city/county than the one in which that person resides. The city/county registrar who receives the registration form or mail registration card has the duty to forward the registration to the appropriate city/county registrar so that the person may be registered.

NCH states that this provision allows persons who are forced to live temporarily in a shelter located outside of the city/county of their residence to register without having to travel back to their city/county of residence.

(j) **Section 11 – "Registration Information Required"**

The mail registration card and registration form shall only require a person to provide his or her full name, date of birth, resident address, mailing address (if different), and location of previous registration. Persons living in shelters may provide the shelter address as their resident address. Persons who live in non-traditional abodes other than shelters may use either the geographic location where they live, or the address of a homeless provider with whom they have a relationship as their resident address. Persons using their geographic location as their resident address must give a description of the location with such specificity that the proper election district can be determined for such persons. The person is not required to present identification to register. The person must sign an oath that

he or she is qualified to vote in that election district. If the person cannot write, he or she can sign the registration form or mail registration form with his or her mark.

The NCH submits that persons should not be required to present identification in order to register. A signed oath subject to criminal penalty is sufficient to deter voter fraud. Further, persons living on the streets should have a choice as to their resident address. If they are very transient, using their geographic location would be difficult because every time they moved, they would have to re-register. However, if the person is more permanently based, then he or she should be allowed to use his/her geographic location as a resident address. The geographic location (eg. the north-west corner of a local park) is important so that the person is allowed to vote in the election district where he or she actually lives. It would not be difficult for the city/county registrar to determine the proper election district based on a specified geographic location.

(k) **Section 11(a) – "Mailing Address"**

An applicant may provide any type of mailing address to which non-forwardable mail can be delivered, including a post office box, general delivery, a shelter, or a soup kitchen. The city/county registrar is required to maintain a list of shelters and soup kitchens that have agreed to allow registered voters to receive mail there. A person can then use one of these shelters or soup kitchens as his or her mailing address. In the absence of a mailing address, the city/county clerks office may be substituted.

The NCH submits that there is no reason to limit the types of mailing addresses that can be used. Requiring the registrar to maintain a list of shelters and soup kitchens that have agreed to accept mail would assist those persons who do not have a readily available mailing address. If sufficient shelters and soup kitchens participate, a person registering will likely have an available mailing address that is close to his or her residence.

(l) **Section 12 – "Examination of Applicants for Registration"**

A person signing an oath that he or she is qualified to vote in an election district shall be presumed qualified to vote in that district. The city/county registrar shall refuse registration only if there is a preponderance of evidence that the person attempting to register is not so qualified. The city/county registrar cannot refuse registration however, on the sole basis that the person attempting to register lives in a non-traditional abode. The registrar must rely on other evidence that indicates that the person is not qualified to vote in that election district. If a person is refused registration, that person must be given notice of the refusal within 10 days.

The NCH highlights that the significance of this section is that a city/county registrar cannot refuse registration based solely on the assumption that a person who is currently experiencing homelessness is not a resident because he or she lives in a shelter or a park. The registrar must have other information to indicate that the person should not be considered a resident of the election district, before being allowed to refuse registration.

(m) **Section 13 – "Right of Appeal"**

All applicants refused registration have the right to appeal the refusal to the County Circuit Court within 30 days. The appeal shall be heard in a timely fashion so as to enable those whose appeal is successful to vote in the upcoming election.

The NCH comments that homeless applicants who attempt to register to vote close to the registration deadline or who attempt to register the day before the election

and whom are refused registration will effectively be denied their right to vote if an appeal is not heard in a timely fashion.

(n) **Section 15 – "Verification Procedures"**

The city/county registrar shall conduct voter verification during the month of May each year. The verification shall be conducted both by mail and personal canvass. The city/county registrar shall first send by non-forwardable mail a verification notice to all registered voters within that city/county. As long as the verification notice is not returned as non-deliverable, the voter shall continue to remain in the registration roll. If a notice is returned as non-deliverable and if the voter's resident address or mailing address is a shelter or soup kitchen, the city/county registrar shall request the employees of the shelter or soup kitchen to conduct a personal canvas during the month of June. If during that month, the registered voter uses the services of the shelter or soup kitchen, the employee shall report this back to the city/county registrar and the voter shall continue to remain on the registration roll.

If the voter does not use these services during the month of June, or if the voter's resident address or mailing address is not a shelter or soup kitchen, the city/county registrar shall send a notice by forwardable mail that the voter will be removed from the registration rolls unless a response is received within 30 days. The notice shall provide a return address reply card, with postage pre-paid, signifying that the voter is still qualified to vote in that election district. The reply card shall provide a space for the voter's new mailing and/or resident address in that election district. If a new address is provided in the reply card, the city/county registrar will then send a new voter identification card to that address within 10 days. If no response is heard within 30 days, the voter shall then be purged from the registration roll.

The NCH states that the city/county registrar should take every step to accurately determine whether a registered voter is still a resident of that election district before purging such voter from the registration roll. Moreover, it should not be difficult for the registrar to provide shelter and soup kitchen employees with a list of those voters who may be purged. The employees could then simply keep an eye out for those voters listed and if such voters used their services during the month of June, notify the registrar of this fact.

(o) **Section 16 – "Re-identifying"**

A voter who is purged pursuant to section 15 can still vote on election day if the voter goes to the polling place on election day and signs an affidavit that she or he is still qualified to vote in that election district.

The NCH refers to the exception that should be made to purging for such a important right as voting. The signing of an affidavit subject to criminal penalty is sufficient to deter voter fraud.

(p) **Section 18 – "Voter Education"**

Any shelter or soup kitchen that has more than 50 registered voters using it services may apply to the city/county registrar to have voter education conducted at its location each year. The voter education should cover the voting procedures that will take place on Election Day and shall also cover the importance of voting in a election.

The NCH comments that voter education is likely to increase voting by people who are experiencing homelessness by generating interest and emphasising the importance in individuals exercising their right to vote.

The city/county registrar must make a good faith effort to comply with each request.

The NCH states that increasing access to polling places will result in an increase in the electoral participation of people experiencing homelessness.

5.5 Canada: *Canada Elections Act 2000 (Can)*

There are no specific itinerant voter provisions in the Canadian legislation.

However, the *Canada Elections Act 2000* ("**Canadian Act**") has, to some extent, addressed the issues faced by homeless people participating in the political process. Furthermore, the Canadian Federal Government has adopted a purposive approach to the interpretation of the relevant sections of the legislation.

(a) **Qualifications for electors**

Section 3 of the Canadian Act provides that every person who is a Canadian citizen and is 18 years of age or older is qualified as an elector.

Every person who is qualified as an elector is entitled to be included on the list of electors for the polling division for which he or she is ordinary resident.³³

Further, section 49 of the Canadian Act provides:

Any person may at any time request the Chief Electoral Officer to include him or her in the Register of Electors, by providing

- (a) a signed certification that he or she is qualified as an elector;
- (b) his or her surname, given names, sex, date of birth, civic address and mailing address; and
- (c) satisfactory proof of identity.

An elector may be registered on the Register of Electors for that electorate prior to an election or may register on the day of the election. A person's ordinary place of residence is defined in s 8(1) to be the place "that has always been, or that has been adopted as, his or her dwelling place, and to which the person intends to return when away from it".

(b) **Ordinary Place of Residence for Homeless**

As homeless people are likely to struggle to determine an ordinary place of residence, the following sections are of specific importance to homeless people registering to vote:

Section 8 of the Act provides, *inter alia*:

- (5) Temporary residential quarters are considered to be a person's place of ordinary residence only if the person has no other place that they consider to be their residence.
- (6) A shelter, hostel or similar institution that provides food, lodging or other social services to a person who has no dwelling place is that person's place of ordinary residence.

³³ Section 6 of the *Canada Elections Act 2000*.

Further, section 9 provides:

If the rules set out in section 8 are not sufficient to determine the place of ordinary residence, it shall be determined by the appropriate election officer by reference to all the facts of the case.

The *Canada Elections Act 2000* was intended to simplify the residency requirements and the discretion granted to the Chief Electoral Officer was the additional means of ensuring that individuals are not refused enrolment due to their homeless status.

Section 2(3) of the Act provides:

For the purposes of this Act, satisfactory proof of an elector's identity and satisfactory proof of residence are established by the documentary proof of the elector's identity and residence that is prescribed by the Chief Electoral Officer.

In the lead up to the 2000 federal election, Jean-Pierre Kingsley, the Chief Electoral Officer, used his discretion to interpret the above sections to mean that homeless people could, for the purposes of the Act, designate their place of residence to be the shelter in which they were registered to sleep on 25 November 2000 (two days prior to the election).³⁴

Homeless people were required to furnish one piece of identification to fulfil the identification requirement. Such identification may consist of an official document bearing the elector's name and signature. Moreover, if a homeless person is unable to provide proof of identity, they may take prescribed oath as to their identity and residence, provided another voter registered in the same district vouched for them.³⁵

(c) **Voting not compulsory**

It should be noted that voting is not compulsory in Canada. Consequently the Canadian Act, contrary to the position in Australia, contains no penalties for failing to vote. Furthermore, no fines apply in the event that a homeless person is unable to register to vote, or where a person is registered and fails to vote.

³⁴ *Library of Parliament* (Canada) on-line under the subject heading "*ELECTIONS Do the homeless have the right to vote in federal elections?*"

³⁵ Section 161 of the *Canada Elections Act 2000*.

6. Conclusion – Improving the Representation of Homeless People on the Electoral Roll and in the Next Federal Election

Whilst there is scope for amendment to the "normal" elector registration requirements and voting regulations so as to take into account the needs and constraints of the homeless population, the Australian system differs in one critical aspect from its overseas counterparts: compulsory voting. Thus, unlike the United Kingdom, United States and Canadian systems which have all recently amended their general enrolment requirements and systems to provide for the special needs of the homeless population, this may not be the best approach in Australia.

Due to the penalties in the Australian registration and voting requirements relating to the enforcement of compulsory voting, the Clinic believes that the itinerant elector provisions are more amenable and appropriate for the homeless population as this group of electors are exempt from the penalties which apply to "normal" voters. The Clinic thus submits that reform and resources are most critically required in relation to the under-utilised scheme for enrolment as an itinerant elector.

However, the Clinic also recognises that many homeless people, such as the recent homeless, are also unjustifiably punished by the "normal" elector system when, for reasons related to homelessness, they are unable to comply with the strict administrative requirements. The Clinic submits that this is not only discriminatory, but also undermines the democratic idea by further marginalizing an already under-represented minority group. It is the government's duty to actively encourage voter participation and ensure that it is not inadvertently preventing or discouraging homeless people from participating in the democratic process.

7. Endorsements

This submission is endorsed and adopted by the following organisations:

Australian Federation of Homelessness Organisations – AFHO is the national peak body for homelessness organisations. AFHO researches, develops and promotes national policy and action to reduce homelessness and its impact on the diverse range of people it affects.

Council to Homeless Persons – CHP is a non-government peak body for approximately 250 agencies which facilitates services to homeless people, educational institutions, and individuals concerned about homelessness. CHP also provides advocacy, policy and program development for and on behalf of homeless people.

Federation of Community Legal Centres – The Federation of Community Legal Centres is the peak body of Victoria's community legal centres. The Federation is committed to the principles of human rights, social justice and equity. The Federation's endorsement is subject to formal ratification at the July General Meeting.

Hanover Welfare Services – Hanover Welfare Services aims to empower homeless people to enable them to take greater control of their lives and to stimulate and encourage change in Australian society to benefit them. This is achieved by delivering services, conducting research, and by advocacy.

Melbourne Citymission Western – Melbourne Citymission works alongside people who are marginalised, at risk, disadvantaged, frail or denied access to other services in order to empower and enhance their well-being and maximise their human potential. The Western Region office offers a range of programs for adults and families who are homeless, women exiting prison, early intervention and employment, education and training programs for young people and a range of disability programs.

North Melbourne Legal Service – North Melbourne Legal Service is an independent, not for profit, community legal centre. NMLS provides essential legal services and assistance, including advice and representation, to the community of North Melbourne, Parkville, West Melbourne and the CBD. These legal services are provided free of charge and are specifically targeted at persons from needy, marginalised or disadvantaged backgrounds.

Public Interest Advocacy Centre – The Public Interest Advocacy Centre is an independent, non-profit legal and policy centre. PIAC seeks to promote a just and democratic society and to empower individuals and groups, particularly those who are disadvantaged and marginalised. Using legal, policy, communication and training initiatives PIAC makes strategic interventions in public interest matters.

Public Interest Law Clearing House – PILCH is a non-profit community legal centre that coordinates the provision of free legal assistance in public interest matters. These services are targeted at non-profit organisations and people from marginalised or disadvantaged backgrounds.

Salvation Army Adult Services – Salvation Army Adult Services offer a range of support services to marginalised and disadvantaged people. This includes Flagstaff Crisis Accommodation, a crisis accommodation facility and support service for adult males who are homeless or in crisis situations.

Society of St Vincent de Paul Community and Support Services (Ozanam House) – The Society of St Vincent de Paul Community and Support Services offer a range of services to people from disadvantaged backgrounds. This includes Ozanam House, a crisis accommodation facility and support service for adult males who are homeless or severely disadvantaged.

The Big Issue – The Big Issue is an independent, current affairs magazine sold on the streets of Melbourne, Sydney, Brisbane, Geelong and Bendigo by vendors who are homeless or long-term unemployed. The Big Issue exists to help its vendors earn their own income.

Urban Seed – Urban Seed is a non-profit organisation which engages in and raises public awareness about issues including homelessness. It provides support and services to homeless people who live in the city. These services include Credo Café, which provides free

meals to Melbourne's homeless, particularly those with mental health or substance abuse issues.

Victorian Council for Civil Liberties (Liberty Victoria) – Liberty Victoria strives to advance and take the necessary steps to defend and extend civil liberties in Victoria and the rights and freedoms recognised by national and international law.

Victorian Council for Social Services – VCOSS is a non-government peak body that works towards the reduction and eventual elimination of social and economic disadvantage in Victoria. It promotes cooperation between organisations and individuals involved in the field of social and community service in Victoria.

The submission is endorsed and adopted by the following individuals:

Andrea Durbach, Executive Director, Public Interest Advocacy Centre

Annemarie Devereux, Senior Solicitor, Public Interest Advocacy Centre

Bill Manallack, Managing Director, The Big Issue

Chris Maxwell QC, President, Liberty Victoria

Emma Hunt, Co-Executive Director, Public Interest Law Clearing House

John Manetta, Barrister and Committee Member, Liberty Victoria

Netty Horton, Chief Executive Officer, Council to Homeless Persons

Paul Ronalds, Executive Director, Urban Seed

Sally Smith, Legal Policy Officer, Federation of Community Legal Centres

Samantha Burchell, Co-Executive Director, Public Interest Law Clearing House

The Reverend Bevil Lunson, Lazarus Centre, Anglicare

The Reverend Tim Costello, Collins Street Baptist Church

Tony McCosker, Community Director, Society of St Vincent de Paul

8. Annexure A – Section 101 of the Commonwealth Electoral Act 1918 (Cth)

101. Compulsory enrolment and transfer

(1) Subject to subsection (5A), every person who is entitled to be enrolled for any Subdivision, otherwise than by virtue of section 94, 94A, 95, 96 or 100, whether by way of enrolment or transfer of enrolment, and whose name is not on the Roll, shall forthwith fill in and sign a claim and send or deliver the claim to any Divisional Returning Officer or Australian Electoral Officer.

(1A) A person who is entitled to be enrolled for any Subdivision under section 95AA may fill in and sign a claim and send or deliver it to any Divisional Returning Officer or Australian Electoral Officer.

(2) Where a person sends or delivers a claim for enrolment (including a claim for age 17 enrolment), or for transfer of enrolment, to a Divisional Returning Officer for a Division other than the Division (in this subsection referred to as the *proper Division*) on the Roll for a Subdivision of which the person is entitled to be enrolled, the Divisional Returning Officer shall note on the claim the date of its receipt, subject to subsection 102(2A), and forthwith send the claim and any documents sent or delivered by the person with the claim to the Divisional Returning Officer for the proper Division.

(3) Where a person sends or delivers a claim for enrolment (including a claim for age 17 enrolment), or for transfer of enrolment, to an Australian Electoral Officer, the Australian Electoral Officer shall note on the claim the date of its receipt and, subject to subsection 102(2A), forthwith send the claim and any documents sent or delivered by the person with the claim to the Divisional Returning Officer for the Division on the Roll for a Subdivision of which the person is entitled to be enrolled.

(4) Subject to subsection (5A), every person who is entitled to have his or her name placed on the Roll for any Subdivision whether by way of enrolment or transfer of enrolment, and whose name is not on the Roll upon the expiration of 21 days from the date upon which the person became so entitled, or at any subsequent date while the person continues to be so entitled, shall be guilty of an offence unless he or she proves that the non-enrolment is not in consequence of his or her failure to send or deliver to a Divisional Returning Officer or an Australian Electoral Officer, a claim, duly filled in and signed in accordance with the directions printed thereon.

Note: A defendant bears a legal burden in relation to the defence in subsection (4) (see section 13.4 of the Criminal Code).

(5) Subject to subsection (5A), where a person enrolled for a Subdivision (including a person whose address, in pursuance of a request made under section 104, is not entered on a Roll) changes his or her place of living from one address in that Subdivision to another address in the same Subdivision, the person shall, within 21 days after the date of making the change, give notice in writing of the new address to the Divisional Returning Officer for the Division that includes that Subdivision.

(5A) Subsections (1), (4) and (5) do not apply to a qualified Norfolk Islander within the meaning of section 95AA.

Note: A defendant bears an evidential burden in relation to the defence in subsection (5A) (see subsection 13.3(3) of the Criminal Code).

(6) A person who fails to comply with subsection (1), (4) or (5) is guilty of an offence punishable on conviction by a fine not exceeding \$50.

(6AA) An offence against subsection (6) relating to a failure to comply with subsection (1) or (5) is an offence of strict liability.

*Note: For **strict liability**, see section 6.1 of the Criminal Code.*

(6AB) An offence against subsection (6) relating to a failure to comply with subsection (4) is an offence of absolute liability.

*Note: For **absolute liability**, see section 6.2 of the Criminal Code.*

9. Annexure B – Section 245 of the Commonwealth Electoral Act 1918

245. Compulsory voting

- (1) It shall be the duty of every elector to vote at each election.
- (2) The Electoral Commissioner must, after polling day at each election, prepare for each Division a list of the names and addresses of the electors who appear to have failed to vote at the election.
- (3) Subject to subsection (4), within the period of 3 months after the polling day at each election, each DRO must:
 - (a) send a penalty notice by post; or
 - (b) arrange for a penalty notice to be delivered by other means;to the latest known address of each elector whose name appears on the list prepared under subsection (2).
- (4) The DRO is not required to send or deliver a penalty notice if he or she is satisfied that the elector:
 - (a) is dead; or
 - (b) was absent from Australia on polling day; or
 - (c) was ineligible to vote at the election; or
 - (d) had a valid and sufficient reason for failing to vote.
- (5) A penalty notice is a notice in an approved form notifying the elector that:
 - (a) the elector appears to have failed to vote at the election; and
 - (b) it is an offence to fail to vote at an election without a valid and sufficient reason for the failure; and
 - (c) if the elector does not wish to have the apparent failure to vote dealt with by a court, the elector may, within the prescribed time:
 - (i) if the elector did vote as required by this Act---give the DRO particulars of the circumstances of the elector's voting; or
 - (ii) if the elector failed to vote---give the DRO a valid and sufficient reason for the failure; or
 - (iii) pay to the DRO a penalty of \$20.
- (6) If an elector does not respond to a penalty notice in the manner indicated in subparagraph (5)(c)(i), (ii) or (iii), within the prescribed time, the DRO must send by post or deliver to the elector, at his or her latest known address, a second penalty notice, having, subject to subsection (7), the same form as the first such notice but bearing a notation to the effect that a previous notice in the same terms was sent to the elector but that a response in the manner indicated in subparagraph (5)(c)(i), (ii) or (iii) was not received.
- (7) The provisions of this section, other than subsection (6), apply in relation to a second penalty notice:
 - (a) as if it were a penalty notice issued under subsection (3); and

(b) as if, in the provisions of this section as so applied, references to paragraphs and subparagraphs of subsection (5) included references to those paragraphs and subparagraphs as applied by this section.

- (8) If, within the prescribed time:
- (a) an elector responds to a penalty notice in the manner indicated in subparagraph (5)(c)(i) or (ii) and the DRO to whom the response has been given is satisfied:
 - (i) in the case of a response of the kind referred to in subparagraph (5)(c)(i)---that the elector did vote as required by this Act; or
 - (ii) in the case of a response of the kind referred to in subparagraph (5)(c)(ii)---that the reason for the failure to vote is a valid and sufficient reason; or
 - (b) an elector responds to a penalty notice by paying the penalty of \$20;

proceedings against the elector for a contravention of subsection (15) are prohibited.

- (9) If the DRO to whom a response to a penalty notice has been given under subparagraph (5)(c)(i) or (ii) within the prescribed time is not satisfied:
- (a) in the case of a response of the kind referred to in subparagraph (5)(c)(i)---that the elector voted as required by this Act; or
 - (b) in the case of a response of the kind referred to in subparagraph (5)(c)(ii)---that the reason for the failure to vote is a valid and sufficient reason;

the DRO must send by post or deliver to the elector, at his or her latest known address, a notice in an approved form, notifying the elector that:

- (c) the DRO is not so satisfied; and
- (d) if the elector does not wish to have the apparent failure to vote without a valid and sufficient reason for such failure dealt with by a court, he or she may, within the prescribed time, pay to the DRO a penalty of \$20.

(10) If, in response to a notice under subsection (9), the penalty of \$20 is paid to the DRO within the prescribed time, proceedings against the elector for a contravention of subsection (15) are prohibited.

(11) If an elector is unable, by reason of absence from his or her place of living or physical incapacity, to respond to a penalty notice or to a notice under subsection (9) within the prescribed time, any other elector who has a personal knowledge of the facts may, subject to the regulations, respond to the notice within that time, and such response is to be treated as compliance by the first-mentioned elector with the notice.

(12) The DRO must prepare a list of all electors to whom a penalty notice has been sent or delivered and note on that list in relation to each elector:

- (a) whether there has been a response to the notice; and
- (b) if there has been a response:
 - (i) whether the DRO is satisfied that the elector did in fact vote or that there was a valid and sufficient reason for the elector's failure to vote; or
 - (ii) whether the penalty has been paid.

(13) The DRO must note on the list prepared under subsection (12) in relation to each elector to whom a notice under subsection (9) has been sent or delivered:

- (a) the fact that a notice has been sent or delivered under subsection (9); and
- (b) whether there has been a response to the notice; and
- (c) if there has been a response---whether the penalty has been paid.

(14) Without limiting the circumstances that may constitute a valid and sufficient reason for not voting, the fact that an elector believes it to be part of his or her religious duty to abstain from voting constitutes a valid and sufficient reason for the failure of the elector to vote.

(15) An elector is guilty of an offence if the elector fails to vote at an election.
Penalty: \$50.

(15A) Strict liability applies to an offence against subsection (15).

*Note: For **strict liability**, see section 6.1 of the Criminal Code.*

(15B) Subsection (15) does not apply if the elector has a valid and sufficient reason for the failure.

Note: A defendant bears an evidential burden in relation to the matter in subsection (15B) (see subsection 13.3(3) of the Criminal Code).

(15C) An elector who makes a statement in response to a penalty notice or to a notice under subsection (9) that is, to his or her knowledge, false or misleading in a material particular is guilty of an offence.

Penalty: \$50.

(16) Proceedings for an offence against this section may be instituted only by the Electoral Commissioner or an officer authorised, in writing, for the purpose by the Electoral Commissioner.

(17) In this section, "**elector**" does not include:

- (a) an Antarctic elector; or
- (b) an eligible overseas elector; or
- (c) an itinerant elector.

(18) In this section, a reference to the prescribed time for a response to a penalty notice or a notice under subsection (9) is a reference to the time for response specified in the notice.

10. Annexure C – Section 96 of the Commonwealth Electoral Act 1918 (Cth)

96. Itinerant electors

(1) A person who:

- (a) is in Australia; and
- (b) because the person does not reside in any Subdivision, is not entitled to be enrolled for any Subdivision;

may apply to the Australian Electoral Officer for a State for enrolment under this section for a Subdivision in that State.

(2) The application must be:

- (a) in the approved form; and
- (b) signed by the applicant; and
- (c) attested to by a person referred to in paragraph 98(2)(c).

(2A) The Australian Electoral Officer shall cause the name of the applicant to be added to the Roll:

- (a) for the Subdivision for which the applicant last had an entitlement to be enrolled;
- (b) if the person has never had such an entitlement, for a Subdivision for which any of the applicant's next of kin is enrolled;
- (c) if neither paragraph (a) nor paragraph (b) applies, for the Subdivision in which the applicant was born; or
- (d) if none of paragraphs (a), (b) and (c) applies, the Subdivision with which the applicant has the closest connection.

(2B) The Australian Electoral Officer shall also annotate the Roll so as to indicate that the person is an itinerant elector.

(2C) Until an annotation under subsection (2B) is cancelled, the person to whom the annotation relates is entitled to be treated as an itinerant elector.

(3) Notwithstanding anything contained in subsection 99(1) or (2), while a person is entitled to be treated as an itinerant elector by virtue of an annotation under subsection (2B) to the Roll for a Subdivision, the person is entitled to:

- (a) have his or her name retained on the Roll for the Subdivision; and
- (b) vote as an elector of the Subdivision.

(4) Where an application under this section is received by an Australian Electoral Officer after 8 p.m. on the day of the close of the Rolls for an election to be held in the Division to a Subdivision of which the application relates, the name of the applicant shall not be added to the Roll for the Subdivision, and the annotation of the Roll under subsection (2B) in relation to the applicant shall not be made, until after the close of the polling at that election.

(5) Where an Australian Electoral Officer:

- (a) grants or refuses an application made under subsection (1); or
- (b) is of the opinion that an application made under that subsection cannot be proceeded with because of the operation of subsection (4);

the Australian Electoral Officer shall notify the applicant in writing of that decision or opinion, as the case may be.

(6) Where an Australian Electoral Officer notifies a person under subsection (5) of a decision to refuse an application made under subsection (1), the notice shall include a statement to the effect that a person whose interests are affected by the decision may, subject to the *Administrative Appeals Tribunal Act 1975*, if he or she is dissatisfied with the decision, make an application to the Administrative Appeals Tribunal for review of the decision.

(7) Where a person who has applied under subsection (1) to be treated as an itinerant elector:

- (a) resides in a Subdivision for a period of 1 month or longer;
- (b) forms the intention to depart from Australia and to remain outside Australia for a period of 1 month or longer; or
- (c) ceases to be entitled to enrolment;

the person shall, as soon as practicable, give notice in writing to the Australian Electoral Officer to whom the application under subsection (1) was made of the happening of the event referred to in paragraph (a), (b) or (c), as the case may be.

(8) Subject to subsection (9), where a person who is being treated as an itinerant elector under this section resides in a Subdivision for a period of 1 month or longer, the person ceases to be eligible to be treated as an itinerant elector under this section on the expiration of that period of 1 month.

(9) A person ceases to be entitled to be treated as an itinerant elector under this section if:

- (a) while the person is being so treated, a general election is held at which the person neither votes nor applies for a postal vote;
- (b) the person ceases to be entitled to enrolment; or
- (c) the person departs from Australia and remains outside Australia for a period of 1 month or longer.

(10) Where the Australian Electoral Officer who has caused the name of a person to be added to the Roll for a Subdivision of a Division under this section becomes aware that the person has ceased to be entitled to be treated as an itinerant elector under this section by virtue of subsection (8) or (9), he or she must:

- (a) if the person ceases to be entitled otherwise than because of paragraph (9)(b) and the Australian Electoral Officer is aware that the person resides in the Division---cause the annotation made in relation to the person under subsection (2B) to be cancelled; or
- (b) in any other case---cause the enrolment of the person on the Roll for the Subdivision to be cancelled.

(11) If, after an application is made by a person under this section to be treated as an itinerant elector and before the person's name is added to the Roll and an annotation under subsection (2B) is made in relation to the person, an event occurs by reason of which, if the name had been so added and the annotation so made, the person would cease to be entitled to be treated as an itinerant elector under this section, whether immediately or otherwise, then:

- (a) where the name was not added to the Roll, and the annotation was not made, before the Australian Electoral Officer to whom the application was made became aware of the happening of the event---the Australian Electoral Officer shall not cause the name to be added to the Roll under this section or cause the annotation to be made; or

(b) where the name is added to the Roll and the annotation is made---the person ceases to be entitled to be treated as an itinerant elector immediately after the name is added and the annotation is made.

(12) For the purposes of this section, a person shall be taken to reside at a place if, and only if, the person has his or her real place of living at that place.

(13) In this section:

"Australia" does not include Norfolk Island.

11. Appendix A – Approved Form for Claim to Vote

12. Appendix B – Approved Form for Enrolment as Itinerant Elector