



## **NSWCCL SUBMISSION**

### **SENATE FINANCE AND PUBLIC ADMINISTRATION REFERENCES COMMITTEE**

### **INQUIRY INTO THE ADMINISTRATION OF THE REFERENDUM INTO AN ABORIGINAL AND TORRES STRAIT ISLANDER VOICE**

**24 April 2023**

**NSWCCL**

## **Acknowledgement of Country**

In the spirit of reconciliation, the NSW Council for Civil Liberties acknowledges the Traditional Custodians of Country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past and present and extend that respect to all First Nations peoples across Australia. We recognise that sovereignty was never ceded.

## **About NSW Council for Civil Liberties**

NSWCCL is one of Australia's leading human rights and civil liberties organisations, founded in 1963. We are a non-political, non-religious and non-sectarian organisation that champions the rights of all to express their views and beliefs without suppression. We also listen to individual complaints and, through volunteer efforts, attempt to help members of the public with civil liberties problems. We prepare submissions to government, conduct court cases defending infringements of civil liberties, engage regularly in public debates, produce publications, and conduct many other activities.

CCL is a Non-Government Organisation in Special Consultative Status with the Economic and Social Council of the United Nations, by resolution 2006/221 (21 July 2006).

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The NSW Council for Civil Liberties (**NSWCCL**) welcomes the opportunity to make a submission to the Senate Finance and Public Administration References Committee (**Committee**) in regard to the administration of the referendum into an Aboriginal and Torres Strait Islander Voice (**Referendum**).

## 1 Introduction

- 1.1 The NSWCCL is concerned that the Referendum will not be accessible to the people who will be most affected by its outcome: Aboriginal and Torres Strait Islander people.
- 1.2 In addition, the NSWCCL has observed significant misinformation being circulated about the Voice and anticipate this will only increase as the Referendum draws closer. Misinformation is cause for serious concern as it undermines democratic freedoms by compromising an individual's ability to make a free and informed decision regarding constitutional reform.
- 1.3 This submission focuses on key issues relating to the disenfranchisement of First Nations people, misinformation and disinformation, and the ongoing integrity and assurance process of the Australian Electoral Commission (**AEC**). While these matters are of particular concern to us right now because of the Referendum, we wish to emphasise that these matters will continue to be of concern to us at future elections as well.

## 2 Disenfranchisement

- 2.1 The NSWCCL considers that all Australian citizens should be afforded the right to vote in all elections and referenda. As a democracy, it is pertinent that Australia upholds the principle of free and equal participation in the political process. The Australian Government has both legal and moral obligations to protect the right to vote as one of the most fundamental human rights and civil liberties.<sup>1</sup>
- 2.2 The right to vote without discrimination is provided for in human rights treaties that are binding on the Australian government, namely:
  - (a) article 25 of the *International Covenant on Civil and Political Rights*; and
  - (b) article 5(c) of the *International Covenant on the Elimination of Racial Discrimination*.
- 2.3 Article 21 of the *Universal Declaration of Human Rights* also outlines the importance of protecting core elements of democracy, including the 'right to take part in the government of [one's] country' and that 'the will of the people shall be the basis of the authority of government'.
- 2.4 There are, however, a number of factors that currently contribute to the disenfranchisement of Aboriginal and Torres Strait Islander people. We take these in turn below.

### (A) Gross rates of over-incarceration of First Nations people in Australia

- 2.5 The issue of the over-incarceration of First Nations peoples in Australia is well documented.
- 2.6 Several inquiries and royal commissions have examined this issue and provided recommendations, including the 1987 Royal Commission into Aboriginal Deaths in Custody (**Royal Commission**)<sup>2</sup> and the 2021 NSW Select Committee on the High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody (**NSW Inquiry**).<sup>3</sup>
- 2.7 The Final Report of the Royal Commission found that the rate at which First Nations people are taken into custody is "overwhelmingly different" to non-Indigenous people.<sup>4</sup> At the time of the

<sup>1</sup> 'Right to vote', *Australian Human Rights Commission* (Web Page) <<https://humanrights.gov.au/our-work/projects/right-vote>>.

<sup>2</sup> 'Royal Commission into Aboriginal Deaths in Custody', *National Archives of Australia* (Web Page) <<https://www.naa.gov.au/explore-collection/first-australians/royal-commission-aboriginal-deaths-custody>>.

<sup>3</sup> 'Select Committee on the High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody', *Parliament of New South Wales* (Web Page) <<https://www.parliament.nsw.gov.au/committees/listofcommittees/Pages/committee-details.aspx?pk=266>>.

<sup>4</sup> *Royal Commission into Aboriginal Deaths in Custody* (Final Report, April 1991) vol 1 1.3.

Royal Commission's Final Report in 1991, First Nations people were 8 times more likely to be imprisoned than non-First Nations people.

2.8 The Final Report of the NSW Inquiry was tabled in the New South Wales Parliament almost exactly 30 years after the Royal Commission, yet we are no closer to addressing the gross over-representation of First Nations people in the criminal justice system.<sup>5</sup> Many of the recommendations made in the Royal Commission's 1991 Final Report have still not been implemented, and the results of that are telling.

2.9 The following statistics highlight the gravity of the issue in Australia using current statistics from the 2021 official national census (and more recent periodic updates to it).

**(1) Population of First Nations persons in Australia**

(a) As at June 2022, First Nations people represent 3.2% of the Australian population,<sup>6</sup> however they made 32% of Australia's prison population.<sup>7</sup>

**(2) Average imprisonment rates<sup>8</sup>**

(a) The average imprisonment rate of the total population is 202 persons per 100,000 people.

(b) The average imprisonment rate of First Nations people in Australia is 2,330 per 100,000 people.

(c) The average imprisonment rate for First Nations males is 4,395 per 100,000 people – that is 22 times the rate for the total population.

(d) The average imprisonment rate for First Nations females is 427 per 100,000 people – that is twice the rate for the total population.

2.10 First Nations people are also being refused bail at a high rate. The NSW Bureau of Crime Statistics and Research update on overrepresentation of First Nations people in custody reported in September 2022 that 43.8% of First Nations people proceeded against by the police were refused bail upon charge.<sup>9</sup> Between September 2020 and September 2022, the First Nations remand prison population has increased by 26.9%, while the rate of First Nations people sentenced to a period of full time custody has remained stable.<sup>10</sup> So a large proportion of First Nations people in custody have not even been convicted of an offence, but are awaiting trial or sentence.

2.11 The NSWCCCL is deeply concerned about the unacceptably high level of First Nations people in custody. As the Uluru Statement from the Heart declares, First Nations people 'are not an innately criminal people', yet First Nations peoples are incarcerated, policed and criminalised at a significantly higher rate than non-Indigenous people.<sup>11</sup>

<sup>5</sup> Select Committee on the high level of First Nations people in custody and oversight and review of deaths in custody, Parliament of NSW, *Inquiry into the high level of First Nations people in custody and oversight and review of deaths in custody* (Final Report, April 2021) ix.

<sup>6</sup> 'Australia: Aboriginal and Torres Strait Islander population summary', *Australian Bureau of Statistics* (Web Page) <<https://www.abs.gov.au/articles/australia-aboriginal-and-torres-strait-islander-population-summary#:~:text=In%20Australia%2C%20812%2C000%20people%20identified,represented%203.2%25%20of%20the%20population?>>.

<sup>7</sup> 'Prisoners in Australia', *Australian Bureau of Statistics* (Web Page) <<https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/latest-release>>.

<sup>8</sup> 'Corrective Services, Australia', *Australian Bureau of Statistics* (Web Page) <<https://www.abs.gov.au/statistics/people/crime-and-justice/corrective-services-australia/latest-release>>.

<sup>9</sup> New South Wales Bureau of Crime Statistics and Research, 'NSW Criminal Justice Aboriginal over-representation: quarterly report, September 2022 – Aboriginal adults' (Report, September 2022) <<https://www.bocsar.nsw.gov.au/Publications/Aboriginal-OR/CJS-Aboriginal-over-representation-quarterly-Sept-2022.pdf>> 2.

<sup>10</sup> *Ibid* 3.

<sup>11</sup> 'First Nations National Constitutional Convention', *Uluru Statement from the Heart* (2017) <<https://ulurustatemdev.wpengine.com/wp-content/uploads/2022/01/UluruStatementfromtheHeartPLAINTEXT.pdf>>.

- 2.12 The NSWCCCL urges the Committee to consider the consequences of the over-incarceration of First Nations people, including that laws prohibiting prisoners from voting have a disproportionate effect on First Nations communities.
- 2.13 Section 93(8AA) of the *Commonwealth Electoral Act 1918* (Cth) prohibits a person who is serving a sentence of imprisonment of three or more years from voting in a Commonwealth election; this section is expressly replicated in section 22(2)(c) of the *Referendum (Machinery Provisions) Act 1984* (Cth) in relation to eligibility to vote in a referendum.
- 2.14 Article 25 of the International Covenant on Civil and Political Rights (**ICCPR**) protects the right to vote without 'unreasonable restriction'. When this right is read in conjunction with rights to be treated with humanity, dignity and respect in detention, matters protected by Articles 7 and 10 of the ICCPR and the Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment, the importance of respecting the voting rights of prisoners is clear. Relevantly, article 10(3) of the ICCPR emphasises the importance of the rehabilitative and reintegrative function of incarceration: it is important for prisoners' rehabilitation to be integrated within the community outside of prison, and allowing them to vote affords them with respect and dignity as democratic rights holders.
- 2.15 To ensure all members of our democracy are afforded the right to vote in the Referendum, the NSWCCCL urges the Committee to remove restrictions on prisoners' voting rights in the *Referendum (Machinery Provisions) Act 1984* (Cth) and *Commonwealth Electoral Act 1918* (Cth). This will support enfranchisement generally, and specifically in relation to First Nations people. The Committee should also ensure that the prison mobile polling booth program is properly funded so that people in custody who can vote have the opportunity to exercise their rights, including those on remand.

### **(B) Low levels of voting enrolment in First Nations communities**

- 2.16 As at December 2022, only 84.5% of eligible Aboriginal and Torres Strait Islander people were enrolled to vote.<sup>12</sup> Compared to enrolment rates in the general population where 97.1% of eligible Australians are enrolled to vote,<sup>13</sup> this highlights another significant barrier to a free and fair voting process. This issue is particularly acute in the Northern Territory where, according to a study conducted by Morgan Harrington and Francis Markham at the Australian National University, approximately one in four Aboriginal people are not enrolled to vote.<sup>14</sup>
- 2.17 In 2021, the *Local Government Act 2019* (NT) was amended to allow for 'on the day' enrolment, which lead to approximately 1,700 additional votes being cast across the Northern Territory in the local government election.<sup>15</sup> The NSWCCCL urges the Committee to consider reform of the *Referendum (Machinery Provisions) Act 1984* (Cth) to allow for similar same day enrolment. As the legislation currently stands, the roll of eligible voters will close seven days after the Governor-General's writ is submitted to the electorate.<sup>16</sup>

<sup>12</sup> Australian Electoral Commission, *Indigenous enrolment rate* (Webpage 6 February 2023)

<[https://www.aec.gov.au/Enrolling\\_to\\_vote/Enrolment\\_stats/performance/indigenous-enrolment-rate.htm](https://www.aec.gov.au/Enrolling_to_vote/Enrolment_stats/performance/indigenous-enrolment-rate.htm)>.

<sup>13</sup> Australian Electoral Commission, *Enrolment statistics* (Webpage 6 February 2023)

<[https://www.aec.gov.au/Enrolling\\_to\\_vote/Enrolment\\_stats/](https://www.aec.gov.au/Enrolling_to_vote/Enrolment_stats/)>.

<sup>14</sup> Morgan Harrington and Francis Markham, *Indigenous electoral power in the 2022 federal election: A geographic snapshot of latent potential* (Topical Issue No. 2/2022), Centre for Aboriginal Economic Policy Research, Australian National University.

<sup>15</sup> *Estimates Committee – Tuesday 14 June 2022*, Northern Territory, 14 June 2022, 6 (Commissioner Iain Loganathan); Northern Territory Electoral Commission, *2020-2021 Annual Report*, 5, 13.

<sup>16</sup> *Referendum (Machinery Provisions) Act 1984* (Cth) s 9(1).

### (C) Lack of voting infrastructure in rural and remote areas

- 2.18 Since 1962 when Aboriginal and Torres Strait Islander people were granted the right to vote, voter participation in remote Indigenous communities has been significantly lower than the national average.<sup>17</sup> In some very remote locations, the turnout of enrolled Indigenous voters in the 2019 Federal election was below 50 per cent.<sup>18</sup> This is not due to Aboriginal and Torres Strait Islander people's lack of interest in political issues, rather it is a result of government policies that have created structural barriers to engagement, including lack of voting infrastructure and services in remote communities and language barriers. These barriers, coupled with the low enrolment rate and high incarceration rate, result in a very small proportion of First Nations peoples participating in our democratic process.
- 2.19 Australian National University research has found that in the electorate of Lingiari (which covers almost all of the Northern Territory) 46 per cent of the remote mobile polling booths were open for only a single hour, with 154 of 205 mobile booths being present for less than four hours. The Northern Land Council's Chairman noted in the lead up to the 2022 Federal Election that 'this short window for voting does not take into account daily life in remote communities where people have other commitments, including work, childcare, travel as rangers and so on, as well as important cultural obligations'. Similarly, the Central Land Council has criticised the AEC mobile voting system for only attending each remote community for a few hours on a single day and rarely visiting outstations and homelands.<sup>19</sup>
- 2.20 The disadvantage arising from poor voting infrastructure is only compounded by a lack of telecommunications infrastructure to enable online voting. Research in Canada has suggested that online voting is the key to increasing Indigenous participation in the electoral process.<sup>20</sup> However, this is not possible in communities with inadequate mobile phone reception. Cape York Land Council chairman Richie Ah Mat, told *The Australian* that there is poor phone coverage and mobile internet connection in his region inhibiting everyday activities, stating: 'if there is a problem with communications, no one can get money out, nobody can get their bills.'<sup>21</sup> Moreover, according to the Australian Bureau of Statistics, just two-thirds of households in the Torres Strait Islands had an internet connection in 2016.<sup>22</sup> Without access to the internet and communications infrastructure, online voting is restricted. This is of particular concern to disabled people who may need online or phone voting access (as discussed below).
- 2.21 In the 2021 local government election, the Northern Territory Electoral Commission set up 'community voting centres' the day prior to election day and had locally appointed polling officers travel to outstations and homelands; this successfully increased voter participation.<sup>23</sup> More

<sup>17</sup> Morgan Harrington, 'Past policies have created barriers to voting in remote First Nations communities', *The Conversation* (online, 14 April 2022) <<https://theconversation.com/past-policies-have-created-barriers-to-voting-in-remote-first-nations-communities-181194>>.

<sup>18</sup> Morgan Harrington and Francis Markham, *Indigenous electoral power in the 2022 federal election: A geographic snapshot of latent potential* (Topical Issue No. 2/2022), Centre for Aboriginal Economic Policy Research, Australian National University.

<sup>19</sup> Central Land Council, Submission No 478 to the Joint Standing Committee on Electoral Matters, *Inquiry into the 2022 federal election* (October 2022) 5.

<sup>20</sup> Nicole Goodman, Chelsea Gabel and Brian Budd, 'Online Voting in Indigenous Communities: Lessons from Canada' (2018) *International Joint Conference on Electronic Voting* 67.

<sup>21</sup> See Charlie Peel, 'Poor phone and internet reception leaves remote communities holding the line', *The Australian* (online, 15 August 2022) <<https://www.theaustralian.com.au/nation/poor-phone-and-internet-reception-leaves-remote-communities-holding-the-line/news-story/ef6c0ce4a19fe3cc0aaec7d51ac04ef1>>.

<sup>22</sup> Australian Bureau of Statistics 'Changing characteristics of the Torres Strait region and its people' (Report 12 September 2018) <<https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/changing-characteristics-torres-strait-region-and-its-people/2011-2016>>.

<sup>23</sup> Central Desert Region Council, Submission No 333 to the Joint Standing Committee on Electoral Matters, *Inquiry into the 2022 federal election* (6 October 2022) 2-3; Northern Territory Electoral Commission, 'Community voting centres offer extended remote voting options' (Media Release, 11 August 2021).



recently, the AEC established a trial voting booth ahead of the 2022 Federal election at the Tharawal Aboriginal Medical Service in Campbelltown, which had significant voter turnout among First Nations voters.<sup>24</sup>

- 2.22 Adopting the learnings from the Northern Territory elections, the AEC should seek to collaborate with First Nations organisations, including local councils and Aboriginal Community Controlled Organisations, to host community voting centres in regional and remote areas for a suitable period of time, and to have local people acting as polling agents to attend outstations and homelands. This should include providing local First Nations people with proper training and remuneration for this work.

### **(C) Intersectional disadvantage**

- 2.23 An additional concern regarding the administration of the Referendum is the disenfranchisement of members of our community experiencing intersectional disadvantage. For example, First Nations people experiencing disability, homelessness or illiteracy face significant barriers to voting and having their voice heard.

#### **(1) Disability**

- 2.24 Article 29(a) of the *United Nations Convention on the Rights of Persons with Disabilities* provides that people living with disability must be provided the opportunity to vote on an equal basis to others. People living with disability should be provided with access to voting that suits their needs, including pre-polling, online and in person voting on the day. Accessible voting is of particular concern for First Nations people, who are twice as likely to be living with a disability as compared to the general population.<sup>25</sup>
- 2.25 For example, people with vision impairment do not enjoy the right to a secret ballot like other Australian citizens. Currently, people with vision impairment must rely on another person to cast their vote. Blind Citizen Australia identified that the electronic voting option, iVote, was extremely popular and selected by 94% of people with vision impairment in the 2019 NSW State election.<sup>26</sup> However, iVote was decommissioned in 2022 and no longer provides an accessible voting option for people with vision impairment.
- 2.26 Equal access to voting and a secret ballot is of particular concern in the Referendum as First Nations people are three times as likely to experience blindness and vision loss than other Australians according to Vision Australia, as reported by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.<sup>27</sup>
- 2.27 Whilst recognising the importance of data security in elections, the NSWCCCL submits that the use of an electronic voting option by a small group of the voting population, namely vision impaired

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<sup>24</sup> Julie Power, 'John wasn't allowed to vote in 1955. Now, his voice will be heard' *Sydney Morning Herald* (online, 20 May 2022)

<<https://www.smh.com.au/national/john-wasn-t-allowed-to-vote-in-1955-now-his-voice-will-be-heard-20220517-p5am4u.html>>; Politics in Colour, Submission No 344 to the Joint Standing Committee on Electoral Matters, *Inquiry into the 2022 federal election* (October 2022) 6.

<sup>25</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'First Nations people with disability' (Fact sheet, 16 October 2020) <<https://disability.royalcommission.gov.au/system/files/2020-11/First%20Nations%20people%20with%20disability%20-%20Infographic.pdf>> 1.

<sup>26</sup> 'National Organisation for People who are Blind or Vision Impaired Files Complaint Against NSW Electoral Commission', *Blind Citizens Australia* (Web Page) <[https://www.bca.org.au/2022/08/30/national-organisation-for-people-who-are-blind-or-vision-impaired-files-complaint-against-nsw-electoral-commission/?utm\\_source=rss&utm\\_medium=rss&utm\\_campaign=national-organisation-for-people-who-are-blind-or-vision-impaired-files-complaint-against-nsw-electoral-commission](https://www.bca.org.au/2022/08/30/national-organisation-for-people-who-are-blind-or-vision-impaired-files-complaint-against-nsw-electoral-commission/?utm_source=rss&utm_medium=rss&utm_campaign=national-organisation-for-people-who-are-blind-or-vision-impaired-files-complaint-against-nsw-electoral-commission)>.

<sup>27</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Overview of responses to the Experience of First Nations people with disability in Australia Issues paper' (Report, August 2021)

<<https://disability.royalcommission.gov.au/system/files/2022-03/Overview%20of%20responses%20to%20the%20Experience%20of%20First%20Nations%20people%20with%20disability%20in%20Australia%20Issues%20paper.pdf>>.

people, would constitute a limited and acceptable risk given its promotion of electoral participation and the protection of the secret ballot.

- 2.28 Further consultation with disabled people, particularly ones belong to First Nations communities, is required to support their ability to vote confidently and independently.

## **(2) Homelessness**

- 2.29 Homelessness is a growing issue in Australia, with approximately 122,494 people experiencing homelessness in 2021.<sup>28</sup> Homelessness intersects with multiple social issues, including domestic violence, disability, mental ill health and poverty.
- 2.30 People experiencing homelessness face significant barriers to participation in the electoral process, including:
- (a) difficulty in verifying their identity, which requires another enrolled elector verifying the identity and the signed form being submitted in hard copy, which raises several logistical barriers to enrolment;
  - (b) a lack of information, since people experiencing homelessness 'are often outside the mainstream media leap', experience social isolation and may be unaware that a referendum has been called;<sup>29</sup>
  - (c) a lack of awareness that homeless people are eligible to enrol as 'voters of no fixed address' and are not required to live at the address which determines their electoral division;<sup>30</sup>
  - (d) distrust of government bodies and anxiety about personal information on the electoral roll being shared with other government agencies; and
  - (e) practical factors, such as mobility issues or a lack of transport to a polling booth, particularly for people in remote and rural communities.
- 2.31 Many of the requests and recommendations in this submission, including 'on the day' enrolment and mobile voting options, would assist with encouraging participation in the Referendum from those experiencing homelessness.

## **(3) English literacy**

- 2.32 Many Australians do not have English as their first language. For some First Nations people, particularly in remote communities, English may be their second, third or fourth language.<sup>31</sup> Individuals with low English literacy levels may find it difficult to complete voter enrolment forms or ballot papers. Research has shown that informal voting is higher in remote Indigenous communities, with language barriers and literacy levels being among the contributing factors.<sup>32</sup>
- 2.33 Education materials should be made available in plain English and in Aboriginal languages well in advance of the Referendum. In addition, the AEC should provide interpreters in voting centres where English is not the most commonly spoken language.

<sup>28</sup> 'Estimating Homelessness: Census', *Australian Bureau of Statistics* (Web Page) <<https://www.abs.gov.au/statistics/people/housing/estimating-homelessness-census/latest-release#cite-window2>>.

<sup>29</sup> Homeless Persons' Legal Clinic, Submission No 131 to Joint Standing Committee on Electoral Matters, *Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto Homelessness and Voting* (30 March 2005) 20.

<sup>30</sup> Veronica Coram et al, *An Exploration of Homelessness and Electoral Participation* (Report prepared for the Australian Electoral Commission, 2019) 8.

<sup>31</sup> Diana Eades, 'Taking evidence from Aboriginal witnesses speaking English: some sociolinguistic considerations' (2015) 126 *Precedent* 44, 45.

<sup>32</sup> Lisa Hill and Kare Alport, 'Voting Attitudes and Behaviour Among Aboriginal Peoples: Reports from Anangu Women' (2010) 56(2) *Australian Journal of Politics and History* 242, 245-246; Roxanne Fitzgerald and Liz [Trevaskis](#), 'Lack of interpreters and 'unprecedented' challenges leave some remote NT voters in the lurch this election' *ABC News* (online, 21 May 2022) <<https://www.abc.net.au/news/2022-05-21/aec-no-interpreters-small-time-window-aboriginal-vote-election/101083240>>.



2.34 The NSWCCCL implores the Committee to focus on removing barriers to voting for individuals experiencing intersectional disadvantage, including disability, homelessness and illiteracy, such as through the adoption of mobile polling booths and an electronic voting option for the Referendum.

### 3 Misinformation and disinformation

3.1 The NSWCCCL is deeply concerned about the prevalence of misinformation and disinformation penetrating liberal democracies generally, but especially circulating about the Voice. We suspect this is largely due to:

- (a) a lack of awareness about, and understanding of, the concept of the Voice, including its purpose, operation and utility, and the proposal being put to the Australian people as part of the Referendum;
- (b) misunderstanding or lack of understanding of the role of the Constitution and the referendum and legislative process; and
- (c) the deliberate spread of misleading information for political ends, especially online.

3.2 The NSWCCCL stresses the importance of electoral integrity as a key element of our democracy. We therefore strongly support the AEC's continuing efforts to protect voters from misleading information and to secure electoral processes. For example, the AEC's 'Stop and Consider' campaign aims to encourage voters to carefully consider information that may be intended to influence their vote.<sup>33</sup>

3.3 Additionally, we observe that the AEC is taking important steps to improve knowledge of the Constitution and the referendum process and combatting misinformation about the Voice. For example, the AEC has established a register that lists disinformation regarding the Referendum.<sup>34</sup> This is an important mechanism to identify, mitigate and obstruct the potential dissemination of false information that is likely to mislead and influence public opinion about the Referendum, including its impact on the democratic process of the legislature and the executive. Additionally, the AEC has a webpage with accurate and digestible information about how a referendum works to ensure voters are informed about the process.<sup>35</sup> However, the AEC should be taking active steps to disseminate this information beyond merely creating a repository on its website so that the public can be properly informed.

3.4 The NSWCCCL urges the Committee to support ongoing efforts to inform voters about the referendum process, including that it is compulsory to vote in a referendum, similar to a federal election.

3.5 Professor Megan Davis, co-chair of the Uluru Statement, has expressed concern that the official pamphlets on the Voice will not be factchecked and could spread 'misinformation and fabrication and racist messaging' to voters.<sup>36</sup> Instead, the burden for fact-checking information falls to First

<sup>33</sup> 'AEC launches campaign to combat disinformation', *Australian Electoral Commission* (Web Page) <<https://www.aec.gov.au/media/2022/04-12.htm>>.

<sup>34</sup> 'Disinformation register - Referendum process', *Australian Electoral Commission* (Web Page) <<https://www.aec.gov.au/media/disinformation-register-ref.htm>>.

<sup>35</sup> 'Referendums', *Australian Electoral Commission* (Web Page) <<https://www.aec.gov.au/referendums/>>.

<sup>36</sup> Lorena Allam, 'Pamphlets for voice to parliament could spread misinformation and 'racist messaging', leading yes campaigner says', *The Guardian* (online, 10 February 2023) <<https://www.theguardian.com/australia-news/2023/feb/10/pamphlets-for-voice-to-parliament-could-spread-misinformation-and-racist-messaging-leading-yes-campaigner-says>>.

Nations peoples; for example, Bridget Cama, a Wiradjuri and Pasifika Fijian woman, who has started a daily post on LinkedIn to respond to misinformation.<sup>37</sup>

- 3.6 The NSWCCCL strongly encourages the Committee to call for the official pamphlets on the Voice to be factchecked to reduce the risk of misinformation being spread to voters. We also call on the Committee to consult closely with the AEC on what additional resources it may need to combat misinformation and to provide those additional resources as required.

#### **4 Recommendations**

4.1 NSWCCCL implores the Committee to:

- (1) recommend that restrictions on prisoner's voting rights be removed to prevent discrimination against prisoners, including First Nations prisoners, with immediate effect;
- (2) recommend legislative reform to allow enrolment on the same day as voting;
- (3) advise the AEC to work with local First Nations organisation to establish community run voting centres and employ local people to attend outstations and homelands;
- (4) advise the AEC to provide more materials in plain English and in Aboriginal languages, and to provide translators at polling booths in locations with populations who do not have English as a first language;
- (5) remove barriers to voting for individuals living in rural or remote areas or experiencing intersectional disadvantage, including disability, homelessness and illiteracy, such as through the adoption of mobile polling booths;
- (6) support investment in public education campaigns about the referendum process and highlighting identified misinformation;
- (7) call for the official pamphlets on the Voice to be factchecked to reduce the risk of misinformation being spread to voters; and
- (8) consult closely with the AEC on what additional resources it may need to combat misinformation and to provide those additional resources as required.

We trust that this submission assists the Committee in its work and would be pleased to offer further assistance if it would be of use.

Yours sincerely,

**Josh Pallas**  
**President**  
**NSW Council for Civil Liberties**

Contact in relation to this submission: Josh Pallas

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<sup>37</sup> See, for eg, [Bridget Cama, 'Day 2 of factual info about the #voicetoparliament' \(LinkedIn, 19 April 2022\)](https://www.linkedin.com/posts/bridget-cama-54821483_voicetoparliament-ulurustatement-referendum-activity-7054352354669690880-GYn3?utm_source=share&utm_medium=member_desktop)  
<[https://www.linkedin.com/posts/bridget-cama-54821483\\_voicetoparliament-ulurustatement-referendum-activity-7054352354669690880-GYn3?utm\\_source=share&utm\\_medium=member\\_desktop](https://www.linkedin.com/posts/bridget-cama-54821483_voicetoparliament-ulurustatement-referendum-activity-7054352354669690880-GYn3?utm_source=share&utm_medium=member_desktop)>.