

**SUBMISSION OF THE HUMAN RIGHTS AND EQUAL
OPPORTUNITY COMMISSION**

to the

**JOINT STANDING COMMITTEE ON ELECTORAL
MATTERS**

regarding

INQUIRY INTO CIVICS AND ELECTORAL EDUCATION

2 June 2006

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Introduction

1. The Human Rights and Equal Opportunity Commission (the Commission) welcomes the opportunity to make this submission to the Joint Standing Committee on Electoral Matters (the Electoral Committee) regarding its Inquiry into Civics and Electoral Education.
2. The Commission is established by the *Human Rights and Equal Opportunity Commission Act 1986* (Cth) (HREOC Act). It is Australia’s national human rights institution.
3. Section 11 of the HREOC Act sets out the Commission’s function to promote an understanding, acceptance and public discussion, of ‘human rights’ in Australia.¹

¹ Section 11(1)(g) of the HREOC Act.

4. In addition, section 46C(1) of the HREOC Act sets out the Commission's function to promote discussion and awareness of human rights in relation to Aboriginal persons and Torres Strait Islanders.
5. For the purposes of the HREOC Act, 'human rights' include the rights and freedoms recognised in the International Covenant on Civil and Political Rights (ICCPR).
6. In relation to the human rights of Aboriginal and Torres Strait Islander peoples the Commission must also have regard to the Universal Declaration of Human Rights (UDHR) and the International Covenant on the Elimination of All Forms of Racial Discrimination (ICERD).²
7. In addition, a central function of the Commission is to undertake education programmes that increase public awareness and generate discussion of human rights and anti-discrimination issues within Australia.³

Overview of the Commission's submission

8. As the Terms of Reference for this Inquiry notes, a healthy democracy must ensure that all members of the community have equal access to the political process. It is therefore vital that the right to vote is enjoyed equally by all Australians. However the Commission is concerned that such equality does not currently exist in Australia and that is partly due to the level of civics education extended to groups including young people, people with disability, Aboriginal and Torres Strait Islander peoples, and prisoners.
9. This short submission describes Australia's obligation to ensure the human right to full, effective and non-discriminatory political participation for all Australians. The submission briefly notes the Commission's concerns regarding the ability of certain groups in the Australian community to exercise those rights. It also makes some recommendations as to where civics and electoral education might be targeted.

The human right to political participation

10. The right to participate in the political process, including the right to vote, is a fundamental civil liberty and human right and should be enjoyed by all people without discrimination.
11. As a party to the ICCPR and ICERD, Australia is bound under international law to ensure the protection and promotion of the rights in those Conventions.
12. Article 25 of the ICCPR states that:

² Section 46C(4) of the HREOC Act.

³ Section 11(1)(g)-(h) of the HREOC Act.

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.

The distinctions in article 2 of the ICCPR include ‘race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’.

13. The United Nations Human Rights Committee has issued a General Comment (General Comment 25) to help interpret the meaning of article 25 of the ICCPR.

14. General Comment 25 explains that article 25 of the ICCPR requires parties to the Convention to make it practically feasible for all people to exercise their right to vote:

States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed. If residence requirements apply to registration, they must be reasonable, and should not be imposed in such a way as to exclude the homeless from the right to vote. ... **Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community.**⁴ (emphasis added)

15. Article 5(c) of ICERD states that:

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: ...

- (c) Political rights, in particular the right to participate in elections, to vote and to stand for election on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;

Article 2 in ICERD refers to the obligation to eliminate racial discrimination and ‘to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.’

16. Finally, article 21 of the Universal Declaration on Human Rights provides that:

- (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
- (2) Everyone has the right of equal access to public service in his country.

⁴ General Comment 25, paragraph 11.

- (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Young people and early closure of the rolls

17. In March 2006, the Commission made a submission to the Senate Finance and Public Administration Committee regarding the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005* (the Bill). In that submission the Commission highlighted that those provisions in the Bill seeking to close the rolls on the same day as an election writ is issued may severely disadvantage first time young voters, who typically enrol in great numbers during the so-called 'grace period'.⁵
18. While the Commission acknowledges that the motivation behind the early closure of the rolls is to ensure sufficient time to scrutinise the identity of new electors, the Commission also notes that the body in charge of conducting this function – the Australian Electoral Commission (AEC) – is against such a change:

The AEC is on record repeatedly expressing its concern at suggestions to abolish or shorten the period between the issue of the writs and the close of the rolls. That period clearly serves a useful purpose for many electors, whether to permit them to enrol for the first time (tens of thousands of electors), or to correct their enrolment to their current address so that they can vote in the appropriate electoral contest (hundreds of thousands of electors). The AEC considers it would be a backward step to repeal the provision which guarantees electors this seven day period in which to correct their enrolment.⁶

19. The Commission further notes that the AEC has commented that despite previous education campaigns focussed on early enrolment, still the vast majority of new enrolments come in the grace period.
20. Should the Bill come into law, the onus on the AEC and education authorities more generally will be extraordinarily high and the focus of that education will have to be on enrolments prior to the call of an election.

Young people and civics education in schools

21. The Commission has expressed concern about the absence of human rights education, which includes civics education, in school curricula on several occasions. In particular, the Commission is concerned that 'human rights' is seen

⁵ For a copy of the Commission's submission see:

<http://www.humanrights.gov.au/legal/submissions/electoral20060309.html>

⁶ AEC, submission to the Joint Standing Committee on Electoral Matters (JSCEM) in 2002: (page 3 of the bills digest) AEC, Supplementary Submission, Inquiry into the 2001 federal election, p. 10

<http://www.aph.gov.au/house/committee/em/elect01/subs/sub174.pdf>

to be in competition with other priorities for time and space within the implemented curriculum.

22. As it stands, 'human rights' does not exist as a discrete subject in any State or Territory curricula. However, an understanding of rights and responsibilities – and their relevance to young people as active citizens – is an identified learning outcome in a range of secondary school subjects.
23. The broad goal of the Commission's human rights education programme is to develop in students an awareness of their human rights and responsibilities as members of the community in which they live. In so doing, a central aim is to assist young people in their development as informed, active citizens and to encourage values of tolerance, respect and empathy.
24. The Commission's human rights education program has been developed as a direct response to increased demands for human rights education resources in schools and the relative absence of relevant published material which can be incorporated into current Australian education curricula.
25. The Commission has been successful in the delivery of human rights education materials to schools. The education modules are delivered direct to teachers via the Commission website and by direct mail to schools throughout Australia.
26. The unique feature of the Commission's human rights education modules is that they are explicitly linked to the curriculum frameworks that exists in each State and Territory. These curriculum links are clearly outlined in the supporting documentation of each module, providing teachers with the required language to describe the learning outcomes of the Commission's human rights education resources in their own programming. There are no other curriculum linked human rights education programs in the Australian school system.
27. In 2005, the Commission published *Rights of Passage*, the report of a Dialogue with Young Australians about Human Rights. *Rights of Passage* addresses several of the issues highlighted in this Inquiry's terms of reference, as set out below. A full copy of *Rights of Passage* can be downloaded from the Commission's website.⁷
28. The methodology of the Dialogue included a literature review, national survey, focus groups and essay and art competitions soliciting the views of Australia's young people about a variety of human rights issues including their knowledge of the Australian electoral system.
29. In summary, *Rights of Passage* found that the degree of civic knowledge in young people varies greatly because (a) there is no national mandate to include civics education in State curricula, (b) the amount of electoral education taught in schools varies from State to State and (c) it is largely up to the discretion of the individual teachers whether or not to teach civics.

⁷ http://www.humanrights.gov.au/human_rights/rights_of_passage/index.html

30. Regarding the current status of young people's knowledge of, and responsibilities under, the Australian electoral system, *Rights of Passage* makes the following comments:

Once they reached eighteen, the majority of focus group respondents said they were intending to be active voters, but did not display a great deal of enthusiasm for the electoral process. One frequently mentioned reason for their self-confessed apathy was that there was little perceived difference between major parties and their policies, with this similarity doing little to inspire them to vote one way or the other:

'The question is will a different government make a difference? If it won't, then our vote won't do anything.' Male 17-19

A common view was that political parties pursued their own agendas rather than the needs of the people they represented:

'I reckon they all just say all this so they can get in and then just stuff it all up.' Male 14-16

In most groups, the main reason given for intending to vote was that individuals are subject to a fine if they don't:

Q: So you'd like to participate in choosing the government?

'Yep.' Male 14-16

Q: Do you think you will influence the government?

'Not really.' Male 14-16

'No.' Male 14-16

Q: So why waste time voting if you can't have any influence?

'Cause you get fined if you don't.' Male 14-16

While this statement was generally made 'tongue in cheek', it often foreshadowed a more serious discussion about whether or not voting should be compulsory. On this question focus group respondents were divided, with many agreeing that if voting were not compulsory their overall lack of enthusiasm for the process would mean that they might choose not to participate at all. However, a small number of respondents expressed enthusiasm for voting regardless, and looked forward to the opportunity.

In some groups, the idea of holding referenda for particular issues was introduced. Respondents who debated this idea showed considerable enthusiasm, compared to their 'lukewarm' support for voting in elections. This serves as an important qualification to their views on voting overall, that while they are unlikely to support any one party's full range of policies, they were passionate about some issues and desired a greater say on individual policy items of key interest to them.⁸

31. Regarding the adequacy of civics and electoral education in government and non-government school programs of study, as well as in TAFE colleges and universities, *Rights of Passage* relevantly discusses the following:

Overall, participants appreciated the opportunity to engage actively in their communities. Most had taken advantage of some of the tools available to them to engage in the democratic process (for example, writing a letter to a politician or

⁸ *Rights of Passage*, pp50-51.

signing a petition), and almost all had a sound knowledge that a working democracy was a reflection of the will of the majority. It was notable that while some had taken part in a demonstration, they were mostly concerned not to engage in anything 'illegal', or attract the adverse attention of the police.

On the other hand, participants did not reveal clear knowledge of political processes and institutions. This has been noted in other research too, and the existence of a 'civics deficit' in knowledge is not confined to the younger members of Australian society. This is largely a result of the absence of mandatory teaching on 'democracy' and 'civics' subjects in state and territory school curricula.⁹

32. On the impact of civics education on Australia's youth, *Rights of Passage* further notes that:

Studies conducted world wide have found that schools and teachers are the primary source of information about civic and political processes, including political history, government functions, voting procedures; and at a more abstract level, the concept of democracy in those countries that are democratically governed.¹⁰

33. *Rights of Passage* also provides some guidance on the potential to increase civics knowledge through extra curricular school programs:

One of the key findings of the survey was the observable link between human rights knowledge, attitudes and behaviours. The implication here is that young people actively engaged in civic and political projects are more likely to develop an interest in, understanding of and sympathy for human rights values and practices. Also, it appears that human rights knowledge learnt in the classroom may assist young people to develop into citizens who are more socially and politically aware and active in later life.

This reflects other research literature which shows that traditional 'talk-and-chalk' classroom techniques are usefully supplemented by activities both inside and outside the school. Activity-based learning programmes are also more appropriate for younger students, students who speak English as a second or additional language, and students with learning or literacy difficulties.¹¹

34. Finally, Appendix A in *Rights of Passage* provides a useful overview of research conducted into human rights-related attitudes and behaviours of young people in the global context. This includes discussion of school-based civil rights and human rights education measures in Canada, the USA and New Zealand.

⁹ *Rights of Passage*, p65

¹⁰ *Rights of Passage*, p84. See further, J Torney-Purta & WK Richardson, 'Trust in government and civic engagement among adolescents in Australia, England, Greece, Norway, and the United States', paper presented at the Annual Meeting of the American Political Science Association, Boston, Massachusetts, 29 August-1 September 2001.

¹¹ *Rights of Passage*, p67.

People with disability

35. As the Electoral Committee noted in its *Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto*, there is a sector of the Australian community that is not in a position to exercise a secret ballot due to print disabilities.
36. The Electoral Committee recommended introducing a trial for electronic voting for people with print disability in its 2004 Report. The Commission urges the Committee to implement this recommendation.
37. In relation to education, the Commission recommends that in the event that such a trial does occur, there should be a targeted education campaign to notify the print disability community of the availability of electronic voting and how to use the technology to make a valid vote. To this end, the Commission recommends close co-operation with community groups representing and working with people with print disabilities.
38. The Commission acknowledges that the AEC already conducts education campaigns targeted towards people with disabilities. However, the Commission recommends renewed consultation with national peak organisations representing people with disabilities regarding the ongoing development of electoral education programs. A consultative approach should assist in ensuring that education programs are accessible to people with disabilities. It will also assist in optimising the impact of education programs on the promotion of equal participation for people with disabilities.
39. It is relevant to note that measures to promote understanding and access for people with intellectual or cognitive disabilities in particular, such as provision of plain language information, are likely to have wider benefits. For example, people with limited literacy in English will benefit from material that is more clearly and simply expressed.

Prisoners

40. In its submission to the Senate Finance and Public Administration Committee, the Commission highlighted that those provisions in the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005* seeking to disenfranchise all prisoners constitute a breach article 25 of the ICCPR.¹²
41. In the event that the Bill is passed into law (despite the fact that it will breach Australia's human rights obligations), it is arguable that education about a specific election inside prisons would be moot because no prisoner will be entitled to vote.
42. However, irrespective of whether the Bill is passed, it is important to ensure that

¹² For a copy of the Commission's submission see:
<http://www.humanrights.gov.au/legal/submissions/electoral20060309.html>

general civics education is provided to prisoners as part of the process of rehabilitation and reintegration into the community. Indeed, some commentators have argued that political enfranchisement can assist with rehabilitation and social integration of prisoners.¹³ This approach is in accordance with Article 10(3) of ICCPR which provides:

The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.’

43. Civics education for prisoners is particularly important given the high percentage of indigenous prisoners and prisoners with mental illness and other disabilities.
44. According to the NSW Law Reform Commission people with intellectual disability are detained at a rate four times greater than that of the general population.¹⁴ In 1996, the NSW Law Reform Commission estimated that in NSW prisons people with intellectual disability make up between 1% and 3% of the general population, but represent between 9% and 13% of the total NSW prison population.¹⁵ A survey of NSW prisons in 2001 by the NSW Corrections Health Service found that approximately 11% of women and 11% of men were determined to have either an intellectual disability or were functioning in the borderline range.¹⁶
45. Studies also indicate high incidences of mental illness on admission to prison and high rates of prior treatment and assessment. A 2001 study by the Schizophrenia Fellowship of NSW suggests that 60% of people admitted to prisons have an active mental illness.¹⁷ The NSW Corrections Health Service also conducted a survey which revealed that 54% of women and 41% of men reported that they had received some form of psychiatric treatment or assessment for an emotional or mental health problem at some point in their lives. Approximately one third of these people had been previously admitted to hospital as a psychiatric inpatient.¹⁸
46. As at 30 June 2005 there were 5,656 Indigenous people in Australian prisons or 22% of the total prison population.¹⁹ In 2003, The Australian Bureau of Statistics estimated that Indigenous persons were 16 times more likely to be in prison than

¹³ Dhimi MK (2005) Prisoner disenfranchisement policy: A threat to democracy? *Analyses of Social Issues and Public Policy*, 5(1) 235-247.

¹⁴ NSW Law Reform Commission (1996). Report 80: People with intellectual disability and the Criminal Justice System. Available at <http://www.lawlink.nsw.gov.au/lrc.nsf/pages/R80TOC>

¹⁵ NSW Law Reform Commission (1996). Report 80: People with intellectual disability and the Criminal Justice System.

¹⁶ Butler T, Milner L. (2003) The 2001 New South Wales Inmate health Survey. Corrections Health Service, Sydney.

¹⁷ Schizophrenia Fellowship of NSW Inc. (2001) Report on the criminal justice system in Australia.

¹⁸ Butler T, Milner L. (2003) The 2001 New South Wales Inmate health Survey. Corrections Health Service, Sydney.

¹⁹ ABS, Prisoners in Australia, 2005. Series cat. no. 4517.0, Commonwealth of Australia, Canberra, 2005.
<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4517.0Main+Features12005?OpenDocument>

non-Indigenous persons.²⁰

47. Thus a failure to empower prisoners with the tools to become fully participating citizens while inside and outside prison, may constitute a breach of articles 2 and 25 of the ICCPR in the case of people with disability, and articles 2 and 5(c) of ICERD in the case of Indigenous Peoples, due to the disproportionate impact on those two groups.

²⁰ ABS, Prisoners in Australia, Series cat. no. 4517.0, Commonwealth of Australia, Canberra, 2003 p.5.