Please accept this submission for the JSCEM's Inquiry into the 2010 Federal Election.

Background
I am an Australian citizen living in London. I have been living outside Australia since March 2009. I am not currently on the Commonwealth electoral roll.

It is my view that the disenfranchisement of overseas Australian citizens who have resided outside of Australia for more than 3 years is unconstitutional.

I base this view on the High Court of Australia's decision in *Roach v Electoral Commission* [2007] HCA 43.

Roach v Electoral Commission
That case concerned the question of whether legislation that excluded Australian citizens on the grounds that they were, at the point in time when the election was scheduled, serving a prison sentence, was unconstitutional.

The High Court of Australia held that it was.

The Court reasoned that, in accordance with the Australian Constitution, a substantial reason was required for the exclusion of adult Australian citizens from the right to vote. As Gleeson CJ held (at [7]):

"Because the franchise is critical to representative government, and lies at the centre of our concept of participation in the life of the community, and of citizenship, disenfranchisement of any group of adult citizens on a basis that does not constitute a substantial reason for exclusion from such participation would not be consistent with choice by the people" (emphasis added).

In their joint judgment, Gummow, Kirby and Crennan JJ provided further clarification (at [85]):

"A reason will answer that description [of being sufficiently "substantial"] *if it be reasonably appropriate and adapted to serve an end which is consistent or compatible with the maintenance of the constitutionally prescribed system of representative government."*

Gummow, Kirby and Crennan JJ went on to hold that legislation that was disproportionate or arbitrary would not satisfy the test of being reasonably appropriate and adapted for an end consistent or compatible with representative government (at [85]).

The Court held that in the case of an adult Australian citizen who had committed a crime of a sufficiently serious nature, such an act could constitute the withdrawal by that individual of respect for his responsibility to participate in community life in accordance with the rules of that community. There might, at that point, be a substantial reason to exclude such a person from the rights that go with civic participation, such as the right to vote.

However, it is the culpability of the person who has committed the crime that such an exclusion would be justified by. There would be a substantial reason for the exclusion. By contrast, the legislation considered by the Court in *Roach* operated in

a blanket fashion to exclude all prisoners from their right to vote, irrespective of the gravity of their individual crimes. It was therefore arbitrary in its application and did not pass the test of being “reasonably appropriate and adapted for the maintenance representative government” (at [95]). It was held to be unconstitutional.

Disenfranchisement of overseas Australians
Overseas Australian citizens who have been removed from the electoral roll (often without their permission) and who have resided overseas for more than 3 years cannot be re-instated onto the electoral roll until they physically relocate back to Australia.

There is no substantial reason that might justify this curtailment of an overseas Australian citizen’s right to vote. Unlike a prisoner incarcerated for a sufficiently serious crime, an overseas Australian citizen has not necessarily withdrawn from his or her responsibilities to participate in Australian civic life. Merely choosing to reside in a particular place is not an indicator of willingness to carry civic responsibility. This is even acknowledged within the legislation - an individual is not disenfranchised at the point at which he or she emigrates, but rather, at an arbitrary point three years later.

The three-year rule does not take into account an individual’s circumstances, and in particular, the individual’s actual, potential or desired participation in Australian civic society. It assumes that physical location outside Australia for a set period of time is a reliable indicator of such participation. However, in our technologically interconnected society, this is no longer the case and my own circumstances are an illustration. Although I have resided in London for almost two years, I am still very much engaged in Australian civic life - I read and keep abreast of Australian news and current affairs, I debate Australian issues with my Australian friends in London, I keep close daily contact with my family and friends in Australia, I voted in the 2010 federal election and I return to Australia for a number of weeks each year. My response to this consultation is an example of how important I regard civil engagement in Australian representative government.

On the other hand, there may be other overseas Australians who have decided they no longer want to participate in Australian civic society. It would be arbitrary to treat both categories of people in the same fashion merely because they have both resided outside Australia for more than three years. If I have not withdrawn my responsibility to remain civically engaged in Australian society then I would argue that the withdrawal of my right as an Australian citizen to vote in federal elections cannot possibly be justified. There is no substantial reason for it. It is merely an arbitrary and disproportionate response that is not “consistent or compatible with representative government”. It is, in my opinion, unconstitutional.

For these reasons, I would strongly urge you to consider changing the law in this area so that overseas Australian citizens are not denied their fundamental constitutional right to decide who should govern Australia.

Thank you for your consideration.

Kind regards,

Shipra Chordia