

# **Homelessness and Voting**

**Supplementary Submission to  
the  
Joint Standing Committee on  
Electoral Matters  
Inquiry into the 2007 Federal  
Election**

**October 2008**

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## **Supplementary Submission to the Joint Standing Committee on Electoral Matters Inquiry into the 2007 Federal Election**

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## 1. Summary

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In May 2008, the PILCH Homeless Persons' Legal Clinic (**Clinic**) made a submission to the Joint Standing Committee on Electoral Matters (**Committee**) Inquiry into the 2007 Federal Election.<sup>1</sup>

On Monday, 11 August 2008, the Committee invited Clinic staff Caroline Adler, Amy Barry-Macaulay and James Farrell to provide oral testimony in support of the Clinic's written submission.<sup>2</sup>

As part of its oral examination by the Committee, the Clinic resolved to prepare supplementary submissions on two points raised in the hearing, namely:

- improvements to the legislative provisions dealing with voters experiencing homelessness (**Part 2**); and
- the effectiveness of the engagement of voters experiencing homelessness by the Australian Electoral Commission (**AEC**) (**Part 3**).

This supplementary submission deals with these two issues in greater detail.<sup>3</sup>

Part 2 of this supplementary submission does not make any further recommendations, but expands on the bases for the recommendations contained in Part 5 of the Clinic's submission. The Clinic acknowledges the provisions in section 96 of the *Commonwealth Electoral Act 1918 (CE Act)* reduce some of the barriers to the enfranchisement of people experiencing homelessness. However, as raised in the Clinic's submission and in testimony before the Committee, there are some deficiencies in this legislation that, with minor amendments, could further encourage the participation of homeless people in the democratic process.

Similarly, Part 3 of this supplementary submission discusses the anecdotal and empirical evidence of the AEC's work in engaging and enfranchising people experiencing homelessness, as raised in the Clinic's submission. Importantly, this supplementary submission confirms the Clinic's view, expressed in its oral evidence, that it is not the role of homelessness service providers to enrol voters or assist them to vote. The AEC needs to engage with people experiencing homelessness, and service providers can provide or broker access for this interaction, but should not have a practical role in enrolling electors.

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<sup>1</sup> PILCH Homeless Persons' Legal Clinic, 'Homelessness and Voting: Submission to the Joint Standing Committee on Electoral Matters Inquiry into the Conduct of the 2007 Federal Election and Matters Related Thereto' (2008). Available online at <http://www.aph.gov.au/house/committee/em/elect07/subs/sub135.pdf>.

<sup>2</sup> Hansard is available online at <http://www.aph.gov.au/hansard/joint/commtee/J11098.pdf>.

<sup>3</sup> The Clinic thanks volunteer lawyers Nasos Kaskani and Annabelle Wilson for their assistance in preparing this supplementary submission.

## 2. Legislative provisions for voters experiencing homelessness

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### 2.1 Introduction

In part 5 of its submission to the Committee, the Clinic recommended a number of changes to section 96 of the CE Act, which deals with itinerant voters. These recommendations are set out below:

- **Recommendation 12:** The *Commonwealth Electoral Act 1918* (Cth) should be amended to include a definition of a person experiencing homelessness. The definition of a person experiencing homelessness should relate directly to a person eligible to enrol to vote as an itinerant elector under section 96 of the Act.
- **Recommendation 13:** The *Commonwealth Electoral Act 1918* (Cth) should incorporate a definition of a person experiencing homelessness that is similar to the definition provided under section 3A of the *Electoral Act 2002* (Vic)...
- **Recommendation 14:** Section 96(9)(a) of the *Commonwealth Electoral Act 1918* (Cth) should be repealed, until a more flexible voting system is implemented, such as through the adoption of mobile polling booths etc.
- **Recommendation 15:** Section 96(8) of the *Commonwealth Electoral Act 1918* (Cth) should be amended to increase the period of time that an itinerant elector may have a 'real place of living' from one month to six months.

These issues were raised in the Clinic's oral evidence to the Committee by the Chair, as set out on pages EM76 to EM78 of the transcript of the Clinic's oral testimony. In particular, the Chair noted the provisions of the CE Act which related to residents of Norfolk Island.

The issues raised by the Chair of the Committee are discussed in detail below.

### 2.2 The current itinerant elector provisions

Section 96 of the CE Act contains provisions for itinerant electors, who are defined in section 4 to be electors who are entitled under section 96 to be treated as itinerant electors. Australian citizens aged 18 or over who do not 'reside' in a Subdivision may be entitled, pursuant to section 96(1) of the CE Act, to enrol to vote as itinerant electors at Federal Elections.

Section 96 is set out in full at **Attachment A**.

The current itinerant elector provision, which is substantially similar to provisions for voters who reside on Norfolk Island,<sup>4</sup> addresses some of the barriers to access for people experiencing homelessness. However, as noted in the Clinic's submission and oral testimony, there are some relatively minor issues which, if addressed, will have a significant impact on the enfranchisement of people experiencing homelessness. The Clinic reiterates its views about the current itinerant elector provisions in section 96:

#### (a) Section 96 does not include a definition of homelessness

The very purpose of section 96 of the CE Act is to encompass people who are experiencing homelessness and do not have a permanent address so as to enable them to enrol to vote.

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<sup>4</sup> See *Commonwealth Electoral Act 1918* (Cth) sections 95AA to 95AC.

In particular, section 96(1) sets out that a person is entitled to be registered as an itinerant voter if they are:

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

However, the provision does not fulfil that purpose, particularly because of the insufficient awareness of this provision amongst people experiencing homelessness and homeless services.

**(b) Section 96(9)(a) allows itinerant voters to be removed from roll if they don't vote**

Under section 96(9)(a) of the CE Act, if a person fails to vote at a Federal Election, they cease to be an itinerant elector and under section 96(10), where an Australian Electoral Officer becomes aware of this, their name must be struck off the electoral roll.

The Clinic notes that a general elector who fails to vote may be penalised by a fine up to the amount of approximately \$50, however, if the elector can show reasonable circumstances for their failure to vote they can avoid the fine. Failure to vote at a Federal Election does not result in a general elector being removed from the electoral roll. The rights of general electors and itinerant electors are clearly imbalanced. Removal of an itinerant voter from the roll for failure to vote is unduly harsh and unreasonable, given that this penalty can only be imposed on itinerant electors, who are by definition experiencing homelessness, whereas a voter with a fixed address receives a penalty that does not remove their right to participate in this important democratic process.

**(c) "Real place of living" for itinerant electors**

Under section 96(8) of the CE Act, a person ceases to be entitled to enrol as an itinerant elector if that person resides in a Subdivision for one month or longer. This provision is one of the most relevant provisions to the issues raised by the Chair at the Clinic's oral testimony. As it currently stands, this provision is ineffective because it does not address the realities of homelessness and therefore covers only a fraction of its targeted coverage.

As noted in the Clinic's submission, and the subject of considered questions from the Committee as part of the Clinic's oral testimony, the mean period of stay in Supported Accommodation Assistance Program (SAAP) accommodation (crisis or emergency accommodation funded under the *Supported Assistance Act 1994* (Cth)) in 2005-06 was 48 days.<sup>5</sup> Similarly, it is very common for people experiencing homelessness to live in temporary accommodation, such as on a friend's couch or in a caravan, a crisis shelter or a domestic violence refuge for up to six months. Section 96(8) assumes that homelessness is a very quick or temporary experience, when the reality is quite different. The section fails to consider the practical realities of the accommodation situation of many people experiencing homelessness.

### **2.3 Recommended changes to the itinerant elector provisions**

In order to address the shortcomings in section 96, the Clinic recommends the following actions:

**(a) Section 96 should include a definition of homelessness**

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<sup>5</sup> Australian Institute of Health and Welfare, *Homeless People in SAAP: National Data Collection Annual Report 2005-06* (2007) 41.

The provision should expressly incorporate a definition of homelessness and reference to people experiencing homelessness as being eligible persons under the CE Act who can enrol to vote.

The Clinic notes that in 2004, the Victorian Government introduced the *Electoral Legislation (Amendment) Act 2004 (Vic)*. This piece of amending legislation introduced a definition of homelessness under section 3A of the *Electoral Act 2002 (Vic)*. This provision defines a person eligible to vote as an itinerant voter as:

- (b) a person living in –
  - (i) crisis accommodation; or
  - (ii) transitional accommodation; or
  - (iii) any other accommodation provided under the *Supported Accommodation Assistance Act 1994 (Cth)*.

Section 3A of the Victorian Act further refers to people who have 'inadequate access to safe and secure housing' within the meaning of section 4 of the *Supported Accommodation Assistance Act 1994 (Cth)*. This would include people experiencing primary homelessness, who have no accommodation at all and may be sleeping rough in parks or under bridges. Including this definition in the Commonwealth Act would be a significant improvement on the current provisions.

**(b) Itinerant voters should not be removed from roll if they don't vote**

It is unduly harsh and unfair to penalise an itinerant voter for failing to vote at an election by removing them from the electoral roll. Given the difficult personal circumstances that homeless people using the itinerant elector provisions routinely experience by virtue of their homelessness and marginalization in the community, there should be a more flexible voting system that takes into account the barriers that they face in enrolling to vote and attending voting stations. Until a more flexible voting system is implemented, such as through the adoption of mobile polling booths and other measures that take into account the barriers experienced by homeless people, section 96(9)(a) should be repealed.

**(c) "Real place of living" for itinerant electors**

Notwithstanding the temporary and insecure nature of SAAP accommodation such as crisis or transitional housing, they constitute 'real places of living' within the current definition in the CE Act and people who stay in such accommodation for more than one month are therefore ineligible to enrol as itinerant electors. The Clinic submits that people experiencing homelessness should be able to reside in a 'real place of living' for up to six months rather than only one month before they become ineligible to enrol as an itinerant elector. This was recommended in the Clinic's submission.

Despite this recommendation, the Clinic notes the comments from the Chair of the Committee at page EM77 of the transcript of the Clinic's testimony:

**CHAIR**—If you are in the category of homelessness, maybe those provisions should not kick in. It is just something that occurred to me in view of your submission and from what you were saying. It seems to me that it is going to be a recurring problem for people who are homeless. I know that other members of the committee will not want to disenfranchise them, as long as there is a nominated place or subdivision where they are registered.

**Mr Farrell**—We would absolutely encourage that they do have that opportunity to nominate for a subdivision.

**Ms Adler**—Are you suggesting that be without a time limit?

**CHAIR**—Yes. I am not suggesting a time limit. I am saying that if you fall into a category of homelessness you might be able to register as a homeless voter, which could allow those other provisions to kick in, which puts you in a separate category. It does not have party support or anything, just individual support.

As noted in our oral testimony, the Clinic would support that time limits be removed completely from section 96, if that was the view of the Committee and the Parliament. Regardless of the proposed course of action in terms of time limits, the current provisions do not reflect the practical realities faced by people experiencing homelessness, and should be amended.



### 3. AEC action for voters experiencing homelessness

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#### 3.1 Recommendations for action by the AEC

In the Clinic's submission and in its oral testimony before the Committee, the Clinic provided information about the role of the AEC in franchising electors experiencing homelessness. In its submission, the Clinic made the following recommendations:

- **Recommendation 2:** The Clinic recommends that the CE Act be amended to require that electoral enrolment forms and information be displayed prominently at all times in every Australia Post, Centrelink and Medicare outlet to enable and encourage eligible persons to enrol and vote.
- **Recommendation 3:** The Clinic recommends that:
  - the AEC formulate, implement and report against a detailed, ongoing, action plan to promote and encourage enrolment and voting among persons and groups experiencing difficulty because of social circumstance; and
  - that such persons and groups should include, but not be limited, to homeless and itinerant persons, illiterate persons, persons with disabilities and residents of isolated and remote areas;
  - the AEC consult with and consider the views of organisations and groups representing homeless and itinerant persons, illiterate persons, persons with disabilities, residents of remote localities, and other appropriate bodies, to formulate appropriate strategies, programs and materials for use when the action plan is implemented;
  - the AEC report back to the Committee prior to the next Federal Election with details of its action plan and implementation strategies;
  - where appropriate, adequate funding be provided to enable the AEC to develop, implement and report against the action plan; and
  - that following the next Federal Election, the AEC seek feedback from representative groups and community members regarding the effectiveness of the strategies implemented, and further develops its action plan to incorporate constructive suggestions where appropriate.
- **Recommendation 4:** The Clinic recommends that the AEC continue its consultations with relevant parties well before the next Federal Election, as part of improving access to the franchise by those experiencing homelessness, as a minimum:
  - target homeless persons in its public awareness campaigns, informing them about itinerant elector and other voting enrolment and options; and
  - ensure that its training programs alert AEC staff to the needs of the homeless and other marginalised citizens.
- **Recommendation 5:** The Clinic recommends the early production and distribution of an information kit containing relevant and accessible information for homeless people and homelessness service providers regarding enrolment and voting procedures for no fixed

address and ordinary electors. This information kit should explain the various steps in relation to enrolment and voting, as well as any relevant changes to the CE Act.

- **Recommendation 6:** The Clinic recommends planned and coordinated early distribution of the information kit (including relevant enrolment forms) to high frequency contact points, such as Centrelink and Medicare. The AEC should also engage with Centrelink and Medicare staff to ensure that, where possible, they encourage and assist people to enrol to vote.
- **Recommendation 7:** The Clinic recommends that the AEC actively engage with homelessness service providers and provide the information kit (including relevant enrolment forms), along with education and resources to equip them to inform people experiencing homelessness about the importance of voting, eligibility for enrolment and procedures for enrolment and, where possible, assist them to enrol.
- **Recommendation 8:** The Clinic recommends early implementation of a targeted advertising campaign to raise awareness about the importance of voting and to encourage people experiencing homelessness to enrol and vote at all federal elections. This advertising campaign could take the form of, for example, posters displayed in areas and in services that homeless people tend to frequent (including Centrelink and Medicare). We also suggest that the AEC considers placing some larger scale advertising, such as billboards, in locations and suburbs that homeless people frequent.
- **Recommendation 9:** The Clinic recommends that the AEC establish voting stations at locations that are easily accessible, and appropriate to, people experiencing homelessness. We suggest that, where possible, the AEC employ consumer consultants who are sensitive to the issue of homelessness to assist at polling booths on Election Day.
- **Recommendation 10:** The Clinic recommends early roll-out of training for electoral site managers and volunteers addressing the needs of and issues that affect people experiencing homelessness and how electoral workers might assist people from that group on Election Day.
- **Recommendation 11:** The Clinic recommends that the CE Act be amended to allow for the installation of mobile polling booths at sites frequented by people experiencing homelessness (including Centrelink and homelessness service providers). Where possible, this would also involve the employment of consumer consultants to assist at mobile polling booths on Election Day.

An extract of the Clinic's submission regarding "The AEC and the Committee – franchising people experiencing homelessness" can be found at **Attachment C** to this supplementary submission.

### 3.2 Comments from the Committee

In its oral testimony, the Clinic was questioned by members of the Committee about these recommendations. The following questions were asked by members of the Committee:

**Mr MORRISON** — Could you draw to our attention communications campaigns that have been run to speak to the homeless community that have been effective? It is hard enough trying to get 17-year-olds on to the roll when they turn 18. Have there been communications campaign to target that group, given the proliferation of media they now consume? What is the most effective means? Are you aware of some campaigns that have been run that have tried to get across some sort of public good message that have actually been effective?

...

**Mr MORRISON** —...I am talking about where, say, the AEC may choose—and this might be a good thing to do—to basically engage as agents organisations that are active in assisting homeless people, they should have a formal requirement to be impartial in their conduct of those activities. Is that an unreasonable obligation for an agent?

...

**Mr MORRISON** — ...What we are coming to is that it may well be too difficult to engage these third parties in a formal process of securing recruitment by the AEC. If the AEC wishes to do this, and we wish to recommend to the AEC that they do this, it may well be our recommendation that they need to do it directly in order to protect the integrity of the message and the environment in which the message is received. If other agency and advocacy groups want to go out and make a political point that is fine. They can do that any time, but it would be important to separate that function always from any formal role or communication campaign run by the Electoral Commission.

### 3.3 Response from the Clinic

The Clinic appreciates the concerns of members of the Committee regarding the electoral integrity of engaging homeless service providers to allow people experiencing homelessness to enrol and vote.

The integrity of the system is paramount. In that context, it is not the Clinic's view that service providers should do the work of the AEC.

Rather, the Clinic would encourage the AEC to get out and about and consult with homelessness service providers. In this context, we repeat recommendation 7 of the Clinic's submission:

The Clinic recommends that the AEC actively engage **with** homelessness service providers and provide the information kit (including relevant enrolment forms), along with education and resources to equip them to inform people experiencing homelessness about the importance of voting, eligibility for enrolment and procedures for enrolment and, where possible, assist them to enrol.

Practically, we consider that this could entail actions similar to those undertaken by the Victorian Electoral Commission (**VEC**) prior to the 2006 Victorian State Election, including the following:

- enrolment days at a number of homelessness service providers including St Mary's House of Welcome (**SMHOW**), Front Yard, St Kilda Crisis Centre, Sacred Heart Mission and St Kilda Drop-in Centre. Lunch was provided at each enrolment day, as well as transport to and from the location for those that required it. Information about the enrolment days were sent to all homelessness service providers in Victoria. (Practically speaking VEC staff conducted all enrolment activities at these sessions).
- Development and wide distribution of posters specifically targeting people experiencing homelessness and very simple one page fact sheets in relation to no fixed address enrolment.
- Training for electoral workers who staffed the polling stations on Election Day in relation to homelessness and effective communication.
- Provision of mobile polling at homelessness service providers for organisation that were able to guarantee attendance by 20 people. (Again, electoral staff conducted all activities at these voting sessions).

- Establishment of a homelessness and voting advisory committee, including representatives of homelessness service providers as well as consumers themselves.
- Assistance with development and printing of information kits and brochures by service providers, including the Clinic.
- Attended the Melbourne homelessness festival *Home is Where the Heart Is* in 2007 to provide information and assist people to enrol to vote.

The VEC worked particularly closely with SMHOW in the following ways:

- a mobile polling booth was located at SMHOW on 17 September 2006 to increase participation of homeless people in the State Election - around 80 people experiencing homelessness exercised their right to vote at the SMHOW mobile polling booth;
- teams of electoral officers attended SMHOW on three separate occasions (twice in February 2007 and once in August 2007) to assist homeless people to enrol to vote for the Federal Election – the sessions resulted in over 100 new enrolments;
- the VEC provided for a group of SMHOW clients to attend its Melbourne office on 21 November 2007 to vote in the Federal election (as the AEC was unable to advise SMHOW where pre-polling would take place, with enough time to engage and encourage homeless people's participation in the election).<sup>6</sup>

The Clinic does not support the outsourcing of the duties of the AEC in any way, including by appointing 'agents' to assist in the enrolment of people experiencing homelessness. Rather, the Clinic calls for the AEC to engage with service providers, and get out to the 'coalface' to interact with voters experiencing homelessness. While service providers can encourage their clients to attend sessions with the AEC, it is not (and should not be) the role of the service providers to assume responsibility for the duties of the AEC.

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<sup>6</sup> See Victorian Electoral Commission, 'Report to Parliament on the 2006 Victorian State election' (2007) 35; 'Homeless not voteless' (2007) 12 *Selection 7*.

## Attachment A – section 96 of the CE Act

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### 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) (but see subsection (2AA)); and
  - (d) supported by the evidence of the applicant's identity that is required by the regulations (but see subsection (2AB)).
- (2AA) The requirement in paragraph (2)(c) does not apply once the regulations in relation to evidentiary requirements for enrolment are in operation.
- (2AB) To avoid doubt, the requirement in paragraph (2)(d) does not apply unless regulations are in operation for the purposes of that paragraph when the application is made.
- (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 date of the writ 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.

**Attachment B – transcript of the Clinic’s oral testimony to the Committee**

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[1.55 pm]

**ADLER, Ms Caroline, Manager and Principal Lawyer, PILCH Homeless Persons' Legal Clinic**

**BARRY-MACAULAY, Ms Amy, Lawyer, PILCH Homeless Persons' Legal Clinic**

**FARRELL, Mr James, Seconded and Voluntary Lawyer, PILCH Homeless Persons' Legal Clinic**

**CHAIR**—Welcome. Although the committee does not require you to give evidence on oath, I should advise you that these hearings are legal proceedings of the parliament and therefore have the same standing as the proceedings of the respective houses. We have received a written submission from you and, if you have any additional submissions, please feel free to present those or if you wish to make an opening statement to the committee please proceed.

**Ms Adler**—We thank you very much for the opportunity to make submissions to the inquiry into the 2007 federal election. You may be aware that the clinic has long been concerned with the ability of people experiencing homelessness to participate in the electoral process in Australia, and we have made numerous recommendations to both federal and state inquiries into electoral matters in the past. We would say that some of our ideas and recommendations would probably be familiar to the committee because they have been noted in previous submissions and have also been recommendations of the committee itself.

I wanted very briefly to explain the background in terms of statistics, the issue of homelessness, and electoral participation. You are probably all very familiar with the scary statistics that 100,000 people experience homelessness in Australia on any given night. Those are the official statistics from the 2001 Census. The 2006 Census data has not yet come out, but anecdotal evidence from a range of different service providers suggests that those numbers are increasing. The statistics in relation to homelessness include a wide range of non-conventional accommodation, including people who sleep rough, around 14,000, crisis accommodation and refuges, another 14,000, and also around 23,000 people in boarding houses, as well as all those who live in temporary accommodation with friends.

According to the ABS, 64 per cent of people experiencing homelessness on Census night in 2001 were 19 or older, and it can be conservatively estimated from this that 64,000 people experiencing homelessness who were eligible to vote did not do so in the 2007 federal election. As you may know, the Homeless Persons' Legal Clinic provides free legal advice through outreach locations around Melbourne, and in addition to that we do a range of law reform and advocacy work, including what we are doing here today. One of the essential elements of the human rights framework under which we work is the right to participate. As a part of that we consider that the government is legally, ethically and socially obligated to take steps to ensure that all Australians, especially and including those who are experiencing homelessness, are represented during democratic elections. Ms Barry-MacAulay and Mr Farrell are both going to talk very briefly about practical and legislative measures that we think should be implemented in the future.



**Ms Barry-Macaulay**—As was just mentioned, the clinic actively advocates for the adoption of a human rights based approach to law reform policy development and service delivery, and this is detailed in our written submission. I will briefly discuss the legal framework of the right to participate and vote in Australia. The clinic encourages the committee to work within this framework by promoting and implementing proactive and practical measures that will ensure realisation of the right to vote for people experiencing homelessness. A number of binding legal instruments establish the right to vote. Over 25 years ago Australia became a party to the International Covenant on Civil and Political Rights, which expressly states that every citizen is to have the right to vote. Australia is bound by the provisions of this treaty and international law, and is also bound to consider its terms when developing, interpreting and applying domestic laws. We note that the federal government has stated its commitment to fulfil its international legal obligations. Based on this commitment, we call upon the federal government to ensure realisation of the right to vote for all Australians.

The right to vote requires that the government take steps to ensure that everyone is able to exercise their right to vote. In Australia homeless people continue to face great difficulties in exercising this right. The enfranchisement of homeless people is a key challenge for individuals, organisations and government concerned with the alleviation and eradication of homelessness in Australia.

A democratic government is one in which each member of the government is chosen by the people whose wishes that member is to represent. For this to occur all Australians must have equal opportunity to exercise their right to vote. We refer the committee to the recent landmark decision of the High Court in *Roach v Australian Electoral Commission*. In that decision the High Court upheld the fundamental right to vote in finding that a blanket ban denying prisoners the right to vote was unconstitutional. The court stated that the process of voting in elections for parliament lies at the very heart of the system of government for which the constitution provides. The court also went on to say that the phrase in the constitution ‘chosen by the people’ comprehends the presence of a voice, the voice of the people, in selecting the legislators. The low numbers of people experiencing homelessness who vote show that their voice is not adequately represented in the democratic process.

The clinic submits that there are a number of practical measures that can and should be undertaken by the government, and in particular the Australian Electoral Commission, to facilitate greater access to enrolment and voting amongst people experiencing homelessness. These practical measures will go some way toward fulfilment of the right to participate and the right to vote for people experiencing homelessness.

I will not discuss all of the practical measures because they are detailed in our written submission, but some of the key steps that should be undertaken by the government and the Australian Electoral Commission are education and awareness campaigns that target homeless people and inform them about itinerant elector and other voting and enrolment options. For example, a targeted advertising campaign involving the display of posters and brochures in areas that are frequented by people experiencing homelessness, such as Centrelink and Medicare should be undertaken early on as well prior to a federal election. Federal enrolment forms and information should also be displayed at Australia Post and also at Centrelink and Medicare outlets to enable and encourage eligible persons to enrol to vote. We would also encourage the

committee to consider whether enrolment could be incorporated into Centrelink intake procedures.

The clinic also submits that early production and distribution of an information kit that contained relevant and accessible information for homeless people and homelessness service providers is important to an awareness campaign, and such information kits should also be provided at the agencies of Medicare and Centrelink. We suggest that the AEC should also engage and work with government agencies in training staff so that they are able to encourage and assist people attending their facilities to enrol to vote.

We would suggest also that it is important that the AEC consult and consider the views of organisations and groups representing homeless and itinerant persons, and in this respect we would refer to the work that is already being undertaken by the Victorian Electoral Commission in terms of consulting and engaging with homelessness service providers, which they doing at the moment for the upcoming local council elections.

The clinic strongly recommends that the Australian Electoral Commission establish voting stations at locations that are easily accessible and appropriate to people experiencing homelessness, and in this respect we refer the committee to the work of the Victorian Electoral Commission in facilitating mobile polling booths. On 17 September 2006 there was a mobile polling booth at St Mary's House of Welcome to increase participation of homeless people in the state election. Around 80 people experiencing homelessness exercised their right to vote at St Mary's on that day, which was a great result and showed how successful mobile polling booths and voting days are. However, at the moment the Commonwealth legislation does not currently provide for mobile polling booths. We say that, if the government is serious about enfranchising people experiencing homelessness, it must make provision for mobile polling booths.

**CHAIR**—In the city of Melbourne, for instance, how many such places would there be that you say should have mobile polling booths?

**Ms Barry-Macaulay**—How many places should there be?

**CHAIR**—Yes. Do you a view on that in terms of homelessness?

**Ms Adler**—It would really depend on the group of the demographic. There are some very key organisations within the city of Melbourne, for example. There are probably four that have very high turnovers of people on any given day. Front Yard for Young People is a very good example of that. They get upwards of 200 people through their doors every day. In terms of mobile polling, if you got services to work together, you could establish three or four key sites and then ensure that other organisations were able to transport their clients to that service as well.

**Ms Barry-Macaulay**—That also highlights the importance of prepolling stations as well, which we would suggest requires advertising in advance. For example, in 2006 St Mary's organised a bus of people to go to a prepolling booth the week before the election to facilitate voting. In addition to these practical measures, there are a number of legislative amendments that are required, and I will now pass you over to Mr Farrell, who will discuss the need to reform the Commonwealth Electoral Act.

**Mr Farrell**—I will very briefly address part 5 of our submission, which talks about the black-letter substantive law issues that we would like to see addressed from the clinic's point of view. There are five key provisions of the act that we would like to see addressed in order to engage the participation of homeless people. They are the proof of identification requirements in section 98AA and regulation 12. We would say that the provisions as they stand are overly onerous on homeless people, who often do not have access to the types of documents that are required, do not have regular long-term ongoing relationships either with service providers, family members or prescribed electors that can sign the identification requirements. We would encourage some provision that takes into account the specific circumstances that people experiencing homelessness face in respect of identification documents.

The second point that we would like to see addressed is the closure of the roll. Given that people experiencing homelessness are often disengaged from the community and socially excluded, and not in the loop of the mainstream media, to assume that they have the ability on the day that the writ is issued to go into their local AEC and fill in a form and ensure that they are elected, particularly when itinerant voters—and I will come to this in a moment—are excluded from the roll if they fail to vote and may not become aware of that, the closure of the roll on the day the writ is issued does put substantial hurdles in the way of people experiencing homelessness.

Section 96 is the itinerant voters provision. We have a couple of key recommendations with that. Firstly, we would suggest that a definition of 'homelessness' be introduced to the act. We would submit that section 96(1) is a little bit circuitous in the way that it describes someone who qualifies as an itinerant voter. Under section 96(9), if someone is registered as an itinerant voter and fails to vote, they are automatically struck off the roll. We would say that, given the various issues that we see amongst people experiencing homelessness, they might not be in a position to vote on any given day, and we think that it is disproportionate and unfair that they are struck from the roll as a result of not being in a position to vote on a particular day.

Under section 96(8), the real place of living, which I believe is something that has come before the committee in its hearings previously, someone cannot continue to be enrolled as an itinerant voter if they reside in one location for more than a month, given that the average stay in SAAP, supported accommodation, now is 48 days—and that is people in real crisis. That information comes from the Australian Institute of Health and Welfare. The average stay in SAAP is 48 days. We would say that to limit the real place of living to a month does not recognise the circumstances of people experiencing homelessness in a lot of cases.

**Mr MORRISON**—What do you think the view of people would be generally about the cross-referencing of databases, for example, Centrelink? This probably is not an issue with a driver's licence. Perhaps in some cases it is, but I doubt it. How would people feel about the government cross-referencing these other databases, be they for Centrelink benefits or other things, with electoral rolls and using that as a tool to identify people? I am not arguing against it. Obviously, though, it throws up a whole range of privacy issues, and I am just wondering whether that has been something that your organisation has tossed around.

**Ms Adler**—Interestingly, that actually came up in a state inquiry as well. The suggestion there was essentially automatic enrolment by that cross-referencing activity. It is a difficult one, because if that encourages broader participation in enrolment that is probably a good thing, but

you have rightly pointed out that there are some major hurdles and considerations that need to be thought out in terms of people's privacy. We would say that if that system came into effect there would need to be consent of people in some way for that cross-checking to happen.

**CHAIR**—One suggestion is that you modify the form or put an addition on the form, people would fill in the requisite section and then consent to that matter being sent off to the Electoral Commission. It would be a cross-referencing with the consent of the particular person involved and not an involuntarily cross-referencing.

**Ms Adler**—In some ways, provided that it was real consent and people understood what they were signing up for, that is certainly something that we could be supportive of.

**Mr MORRISON**—Could you draw to our attention communications campaigns that have been run to speak to the homeless community that have been effective? It is hard enough trying to get 17-year-olds on to the roll when they turn 18. Have there been communications campaign to target that group, given the proliferation of media they now consume? What is the most effective means? Are you aware of some campaigns that have been run that have tried to get across some sort of public good message that have actually been effective?

**Ms Adler**—In some respects the VEC campaigns have been quite effective. They have run in the lead-up to a range of different elections. There have been a number of enrolment days with specific targeted information, very simple instruction sheets in very plain English with pictures and the like that are specifically targeted and have included an advertising campaign with specifically targeted words for people experiencing homelessness. That starts at a very grassroots level. You have to work very closely with homelessness agencies, as the VEC has, to ensure that the people on the ground are disseminating that information and are talking to their clients on a day-to-day basis about why it is important to vote. The VEC has been the driver of that. They have had six, seven or eight enrolment days to which a huge range of people have turned up and enrolled. That is a specific thing that has worked and will continue to work as more resources are put into it.

**Mr MORRISON**—Whether it is Centrelink or other agencies, when you move beyond government agencies and you start enlisting the support of non-government organisations in this process, what sorts of safeguards do you think one needs to put in place where you are effectively recruiting these organisations to assist in the public relations campaign about getting people on the roll to ensure that they are not engaging in any sort of political campaign themselves on behalf of a government funded campaign to get people on to the roll? I think you know what I am getting at.

**Ms Adler**—Yes.

**Mr MORRISON**—If we want to engage people or talk to homeless people regularly for whatever reason, providing services, support and so on, and the purpose is to get them on the roll, how do we ensure that we do not go down the path of paying people to get them on to a roll with a very clear voting message that comes with it?

**Ms Barry-Macaulay**—In terms of the information kits that we suggested, we would also suggest that they be information kits specifically for those service providers that you are

consulting and engaging with. It would be telling them how to engage with their clients to encourage and promote enrolment and voting in a neutral way. It is more about the encouragement and the empowerment process of being involved in voting in elections. In terms of the consultation and engagement with the service providers, and that relationship between the AEC and those service providers, there would need to be some sort of training as well of service providers. We would also suggest training of staff at Centrelink and Medicare and places such as that.

**Mr MORRISON**—Do you think they should have to provide some sort of formal undertaking in terms of the neutrality of that process? The sort of situation I am envisaging is that occasionally we have elections that end up in court. If it hypothetically was the case that there was a whole range of votes that came from a particular group in the community that had all been enrolled through a particular organisation that have been found to be in contravention of what might have been put forward, should they not have to be giving an undertaking formally? To engage in a process of government communication there should be some sort of formal contracting process that would obligate them along those lines, and for which they would have to be responsible.

**Ms Adler**—Yes and no. You need to make sure that you keep a distinction with the AEC in this case or the election commission, whichever one it may be and the NGO.

**Mr MORRISON**—Anyone acting as an agent for them effectively.

**Ms Adler**—Yes and no. In the case of the VEC activities, the VEC goes out there as the VEC and actually attends, and so there is a very strong distinction. Obviously, you are asking people to talk to people who might be homeless about why it is important to vote, but the VEC goes out there and conducts its own activities off its own bat.

**Mr MORRISON**—That is not the sort of scenario I am talking about. I am talking about where, say, the AEC may choose—and this might be a good thing to do—to basically engage as agents organisations that are active in assisting homeless people, they should have a formal requirement to be impartial in their conduct of those activities. Is that an unreasonable obligation for an agent?

**Ms Barry-Macaulay**—We are not really proposing that service providers would be engaged as agents as such but rather that these service providers can be involved in the community education process of enrolment and voting, and that the service providers, such as St Mary's, are places where people will come so that you can have the mobile polling booths and so on. The information kits given to them would be about community education of enrolment, which is encouraged in schools and so on.

**Mr MORRISON**—It is not just what they might say. For example, let us say that the training is to take place in a community hall somewhere in one of these centres and everything that is said may be strictly in accordance with what is expected, and you look around the room and there is a whole range of posters for X candidate or Y candidate or X issue or Y issue. These are the sort of safeguards I would be suggesting you probably need to build into the system to protect the integrity. I applaud the effort to connect with a group that is itinerant, but if we are

going to do that we need to do so in a way that is impartial and protects the integrity of our system.

**Ms Adler**—Yes. I personally think it is the role of an electoral commission to ensure that happens. I do think you need to be very careful in impinging on the legitimate advocacy role of organisations in their work. That kind of thing would need to be thought out very carefully. I use the VEC as an example because it is the only one we have. We have not had the same engaged relationship with the AEC. They go out there in their own name, and so that agency relationship does not necessarily exist. I would find it quite difficult to encourage those kinds of very formal relationships where that could be seen as an impingement on the activities of the organisation.

**Mr MORRISON**—That is fair enough. What we are coming to is that it may well be too difficult to engage these third parties in a formal process of securing recruitment by the AEC. If the AEC wishes to do this, and we wish to recommend to the AEC that they do this, it may well be our recommendation that they need to do it directly in order to protect the integrity of the message and the environment in which the message is received. If other agency and advocacy groups want to go out and make a political point that is fine. They can do that any time, but it would be important to separate that function always from any formal role or communication campaign run by the Electoral Commission.

**Ms Adler**—But I would say if the VEC can do it why can't the AEC? I do not think there have been any questions about the integrity of the enrolments.

**Mr MORRISON**—But they are doing it directly.

**Ms Adler**—Yes, indeed. I honestly do not think that is a bad thing. The role of an electoral commission is to engage the public about voting, and so they should not be contracting out the responsibilities that they have to third parties to do that. What we are suggesting is a partnership or a tripartite relationship between the electoral commission, whichever one it might be, an agency that has direct contact with people experiencing homelessness, and as a tripartite work together so that people who are experiencing homelessness can participate. People do have advocacy roles, but every person I have spoken to in a third party who has been involved in a project with VEC has really engaged with their clients about voting as an ideal per se, not about which party they should be voting for. This is really about engaging very disengaged and marginalised people back into a process that everyone in a democratic society is entitled to participate in. Certainly from my perspective I have not heard that very party political rhetoric coming out through the agencies.

**Mr MORRISON**—My only concern is where that is done with even a hint of some sort of official stamp to it. For example, if any organisation or any political party for that matter that wants to go out there and hit the campuses or whatever and encourage people to enrol because, 'We think you should vote for X', I have no issue with that. That is their democratic right to do so. The Greens do this, and that is fine. They should go out there and recruit people to get them on the roll.

**Senator BOB BROWN**—I am thinking about the National Party in Queensland—

**Mr MORRISON**—Regardless of which party it is.

**Senator BOB BROWN**—and access to Indigenous communities where this could materially influence the vote.

**Mr MORRISON**—If it is a political party saying it, ‘We’re seeking to recruit you on to the roll’, that is very transparent. I would only argue for the need for some sort of safeguard or quarantining such that if someone is involved in recruiting activity that is made clear.

**Senator BOB BROWN**—How many people experiencing homelessness are enrolled?

**Ms Adler**—I would say very few. The figure that we talk about of 64,000 entitled to vote is over 18s. I would say that a vast minority of those would actually be enrolled. We do not have any good data at this stage about enrolments. But if you think about 64,000 people who are entitled to vote and who did not do so as an approximate, I would say the vast majority of those are not enrolled.

**Senator BOB BROWN**—To take your argument a bit further, what about an opt-in or opt-out system attached to applications for assistance when service providers meet up with such people? The service providers presumably get the necessary information to validate the person as an adult citizen and where they are living temporarily.

**Mr Farrell**—We would absolutely support that type of thing. Anecdotally, a lot of the information that we are getting from our clients is that every time they go and see someone they fill in another form. For someone who is experiencing homelessness that can be quite difficult. While we would not condone information sharing across-the-board, where there is the opt in or the consent arrangement to encourage less paperwork for people who more than anyone else do not want to do paperwork we would encourage that.

**Senator BOB BROWN**—Would the information gathered by the service providers be enough to validate this person as a legitimate voter?

**Ms Adler**—It would be. Another way to look at it is for there to be a tick-the-box for intake at service providers. For example, the Homeless Persons’ Legal Clinic has an intake form whenever it sees a new client for the purposes of giving free legal advice, and on that is a little teaser question that says, ‘Are you enrolled to vote?’ We provide our lawyers with enrolment forms for people. Particularly in the lead-up to elections we talk to people about the importance of voting and have the forms available for them. As part of our intake process people can fill out a form and we will ensure that it gets sent off for enrolment. There are ways that service providers can engage with clients.

**Senator BOB BROWN**—Do you know what proportion of those people—

**Ms Adler**—End up voting?

**Senator BOB BROWN**—no—fill out the form?

**Ms Adler**—We do not have exact data. We have had good success. In the lead-up to the 2007 election—I could not give you exact figures—a good 30 per cent of people probably filled in a form, which is a good start for a community that is extremely disengaged.

**Senator BOB BROWN**—It would be very helpful to look at an opt in, opt out system just to see whether the requirements of the Electoral Act that validate a person as a voter are covered by the information the service provider gathers or a legal service provider gathers. If the gap is not big, it may be an avenue for being able to get people enrolled, particularly at a time when an election is approaching or is on, if there is time for that to happen. What did the average of 48 days relate to?

**Mr Farrell**—That is for SAAP accommodation, which is a service provided and supported by the federal government under the SAA Act.

**Ms Adler**—Yes, crisis services.

**Mr Farrell**—Crisis and transitional housing.

**CHAIR**—That is the average time they stay at a particular establishment?

**Mr Farrell**—That is right; at refuges and the like.

**CHAIR**—I will follow that up.

**Senator BOB BROWN**—Yes, that needs following up, too. The problem is validating the person having legitimacy as a voter under the Electoral Act the same as applies to everybody else in the community, and of course there is the issue of whether they are already enrolled somewhere else and have to have their enrolment details renewed.

**Senator CAROL BROWN**—This morning we heard from the AEC that it is developing some strategies to get homeless people on the roll and to vote. Are you aware that apparently there is a group within the AEC working on that?

**Ms Adler**—As a part of the recommendations that came out of this committee after the 2001 elections, we met with the AEC at the beginning of 2007. We provided them with an action plan document with lots of suggestions based on our relationship with the VEC. We received a letter two weeks prior to the 2007 election and have not heard anything else since about its strategy. We have tried to find out information from the AEC about what work it is doing and have not received much of an answer yet. No, I am not aware of the group that exists within AEC. I do know that as part of recommendations coming out of various federal election inquiries there is work to be done, and I am sure someone has been allocated that work, but we are not directly aware of any of that.

**Senator CAROL BROWN**—With respect to the initiatives that were undertaken by the AEC in the lead-up to the 2007 election, can you give the committee a view on how well they were conducted? Were they adequate? Do you have any suggestions?

**Mr Farrell**—My understanding is that information was sent out to homeless service providers in August or October of 2007. There was a short lead-in time. We would suggest that the language used needs to be plainer. Often people who are experiencing homelessness, the types of clients that we see, have low levels of literacy and as a result they struggle with any sort of complex paperwork. We would say that what was provided was not entirely suited to the



audience it was supposed to be provided to, and it was not given in a long enough time frame to encourage the participation of voters who are experiencing homelessness.

**Ms Adler**—It is a large task, but we would also argue that homelessness agencies need to be engaged and brought along in the process. One of the disadvantages was that the letter was sent out in September or whenever it was with maybe three weeks to a month to go, and that was just a one-off mail-out to every single homelessness agency in Australia without any awareness of what was going to happen in that campaign. If you are going to engage with homelessness agencies, who are already under-resourced and do a huge amount of work, you need to start early with them, bring them along, let them know what you are going to send them and why it is important. You need to help them to understand how they might be able to incorporate that into the work that they are already doing rather than just doing a blanket mail-out with three weeks to go prior to the election.

**Ms Barry-Macaulay**—It is also important to engage with the homelessness service providers, because they can give the AEC feedback as to how to conduct the campaign, where to target people and so on, so they can provide feedback and assist in the campaign and with awareness.

**CHAIR**—I would like to raise with you the intersection of your recommendation 12, which talks about amending the definition to include the person experiencing homelessness, and your recommendation 15, relates to section 96(8) of the Electoral Act, which states:

... should be amended to increase the period of time that an Itinerant Elector may have a 'real place of living' from one month to six months.

The evidence you have given us is that, in effect, as far as homeless people are concerned they probably stay at a place for about 48 days on average.

**Mr Farrell**—Can I just qualify that?

**CHAIR**—Qualify?

**Mr Farrell**—The last bit. When we say somebody stays somewhere for 48 days, we would note that the Institute of Health and Welfare says that there is a large proportion of people turned back from those crisis accommodation services. To say that homeless people in crisis accommodation are all staying there for 48 days excludes a large proportion of people who do not have access to those services.

**CHAIR**—I will tell you what my concern is. I am just thinking out aloud here and this is nothing other than that. If they are enrolled and they are nomadic, so long as they are within the state and they actually vote their Senate vote is preserved. It is their Lower House vote that is in jeopardy, especially with proof of identity if they have not got it. I was involved in an inquiry in relation to voting on Norfolk Island. The Norfolk Island provisions in the Electoral Act, 95AA(2), (3) and (4) are worth reading. Subsection (2) states:

(2) Subject to subsection (4), a qualified Norfolk Islander who is one of the people of a State for the purposes of sections 7 and 24 of the Constitution is entitled to be enrolled for:

the Subdivision in that State for which he or she last had an entitlement to be enrolled; or

if he or she never had such an entitlement—a Subdivision in the State for which any of his or her next of kin is enrolled; or

if neither paragraph (a) nor (b) applies—the Subdivision in that State with which he or she was born; or

if none of paragraphs (a), (b) and (c) applies—a Subdivision in that State with which he or she has a close connection.

(3) Subject to subsection (4), a qualified Norfolk Islander who is not one of the people of any State for the purposes of section 7 and 24 of the Constitution is entitled to be enrolled for a Subdivision of a one-Territory Division.

(4) A qualified Norfolk Islander is not entitled to be enrolled for more than one Subdivision at the same time.

If you were to create a voter in the category of homelessness is there any benefit in having provisions that would be different to other electors but similar to what the Northern Territory has in terms of their nomination of a subdivision within a state, which might overcome the nomadic nature of them but has the connection?

**Mr Farrell**—In that case I would refer you to section 96(2)A, which has very similar provisions.

**Ms Adler**—The difficulty with these is because of the month-long time period—

**CHAIR**—That is what I am trying to overcome.

**Ms Adler**—If you stay somewhere for a month, those provisions are not available to you anymore.

**CHAIR**—If you are in the category of homelessness, maybe those provisions should not kick in. It is just something that occurred to me in view of your submission and from what you were saying. It seems to me that it is going to be a recurring problem for people who are homeless. I know that other members of the committee will not want to disenfranchise them, as long as there is a nominated place or subdivision where they are registered.

**Mr Farrell**—We would absolutely encourage that they do have that opportunity to nominate for a subdivision.

**Ms Adler**—Are you suggesting that be without a time limit?

**CHAIR**—Yes. I am not suggesting a time limit. I am saying that if you fall into a category of homelessness you might be able to register as a homeless voter, which could allow those other provisions to kick in, which puts you in a separate category. It does not have party support or anything, just individual support.

**Ms Adler**—We would be supportive of that. On a very tiny point, I would suggest that it not be called ‘homeless voters’.

**CHAIR**—If it were to get legs, it has to be a particular category. We did that for Norfolk Island and I was part of the committee that did that. We were conscious to try to ease their transition into the voting system. In terms of homeless people what I am worried about is the nomadic nature of their existence. I do not see their changing roll every 48 days or whatever.

**Ms Adler**—That is right. You can tweak the itinerant elector provisions so that in the definition of ‘homelessness’ they are linked together.

**CHAIR**—Can I get you to put your mind to it, because you have got the experience in the field?

**Ms Adler**—Yes.

**CHAIR**—I am not offering out any hope. I am just trying to flesh stuff out in terms of enfranchising people who are marginalised and at the moment could be disenfranchised.

**Senator RONALDSON**—Of those 64,000 people you estimate who were homeless on the day of the 2007 election, which itself is based on the 2001 Census figures, is it fair to say that all of those people could have enrolled and voted or none of those people could have enrolled and voted? Is that the breadth of the options?

**Mr Farrell**—We do not think so. We think there is a grey area between those two.

**Senator RONALDSON**—It could be one of those two options and everything in between. We just do not know. Is that the reality of it?

**Ms Adler**—That probably is the reality. One thing that points to is the need to get better data on these sorts of things.

**Senator RONALDSON**—I am not saying that in a negative sense, but all 64,000 could have been registered and voted or none of the 64,000. Commonsense would dictate that it is not the former.

**Ms Adler**—Indeed.

**Senator RONALDSON**—As a matter of principle, we just do not know, do we?

**Ms Adler**—That is right. I would qualify that by saying something you already know. Across-the-board anecdotal data says that homeless people are the most disadvantaged and marginalised of the community. In terms of that 64,000 number I would say that it is far closer to one than it is to 64,000 that it does not bear comparison.

**Senator RONALDSON**—Someone at one of the hearings told us that, quite frankly, going to vote on a particular day, from a priority point of view, is probably very low on homeless people’s agenda.

**Ms Adler**—It is incredibly low. Dr Andrew Hollows, who works for Hanover, has done some great research based on Hanover statistics and he should be able to give you a better indication of specific numbers of people who are not exercising their right to vote.

**Senator RONALDSON**—How would you suggest that the AEC deal with issues of the integrity of the roll if we do away with any identification provisions, which is effectively an opt in without any requirement?

**Mr Farrell**—We would not suggest that the identification provision be removed completely. What we are saying is that, for example, as to providing a driver's licence, which is the first of the cascade of three types of proof of identification that is required, not all homeless people have driver's licence. Indeed, not all people in the community have a driver's licence.

**Senator RONALDSON**—What proof of ID do you require when you are dealing with your clients to ascertain their bona fides? What are your identification requirements at PILCH?

**Ms Adler**—We have a contact register sheet, which indicates their first contact with the service. They give us their name and address. To the extent that we require photocopies of documents or cards for the purposes of acting for them and not for ascertaining their bona fides, they provide those and they give us a phone number. They sign an authority to act on their behalf so that we can interact with third parties on behalf of them.

**Senator RONALDSON**—Does the proof of identity that you require to act on their behalf bear any similarity to the requirements to get enrolled?

**Mr Farrell**—I would not think so. Our mandate is to provide advocacy services for the disadvantaged and marginalised people that need them.

**Senator RONALDSON**—I understand that.

**Mr Farrell**—We understand that in order to protect the integrity of the roll perhaps a high standard of identification be required.

**Senator RONALDSON**—What sort of certified paperwork would you require to be able to act for someone?

**Ms Adler**—We do not.

**Senator RONALDSON**—Mr Farrell said you require certification of some sort.

**Ms Adler**—No. The only thing we require is a document from them. Obviously, they need to provide us with their name and their phone number so that we can contact them. The only piece of paper we require is for them to sign an authority to act, but that is not so that we can establish their bona fides, it is so that we can put out to the world that we act on behalf of this person and advocate for them. So we do not require them to produce a drivers licence to show us who they are. Obviously, it is a case of whether or not their bona fide comes out in the course of us acting for them. So if we go to Centrelink and ask for information about them because we are acting for them in relation to a Centrelink inquiry, if their name does not come up then that would be

something we would deal with when Centrelink demonstrates that they are not who they say they are, but we do not require them to hand up ID to prove to us who they are.

**Senator RONALDSON**—Thank you.

**CHAIR**—Thanks for your attendance here today. It is very much appreciated. If you have additional material or you want to respond to some of our suggestions, please feel free to provide material to the secretary. You will be sent a copy of the transcript of your evidence and you can obviously make corrections as to grammar and fact. Thank you very much.

## Attachment C – Extract of the Clinic’s Submission

### 4. The AEC and the Committee – franchising people experiencing homelessness

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#### 4.1 Findings and recommendations of the Inquiry into the conduct of the 2004 Federal Election

On Monday 10 October 2005, the Committee tabled its report on the inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto entitled *The 2004 Federal Election (Report)*.

In the Report, the Committee made a number of recommendations to increase voter participation, improve electoral management and maintain the integrity of the electoral roll.

As you may be aware, in 2005 the Clinic made detailed written and oral submissions to the Committee in relation to the ability of homeless people to exercise the right to vote. Referring to the Clinic’s and other submissions, the Report made the following findings in relation to the franchise of homeless voters:

- the right to vote is a fundamental human right that is not exercisable by some people due to disadvantage and social circumstances;
- at the time of the 2004 Federal Election, up to 76 per cent of the 64,000 homeless people who were eligible to vote did not do so;
- at least 64 per cent of homeless people want to vote, but do not due to the complexity of the enrolment and voting process; and
- further impediments to enrolments and voting for homeless people include: social exclusion; lack of information and misinformation about enrolment and voting (particularly itinerant enrolment); inaccessibility of enrolment information; and the inaccessibility of voting stations.

Having regard to these findings and evidence, the Committee made the following recommendations in relation to the enfranchisement of people experiencing homelessness:

- the CE Act be amended to require that electoral enrolment forms and information be displayed prominently at all times in every Australia Post, Centrelink and Medicare outlet to enable and encourage eligible persons to enrol and vote.<sup>7</sup>
- in consultation with homelessness assistance services, the Australian Electoral Commission (AEC) formulate, implement and report against a detailed ongoing action plan to promote and encourage enrolment and voting among homeless persons and other marginalised and disadvantaged groups. The Committee also recommended that the AEC be adequately funded to develop and implement such a plan.<sup>8</sup>
- as a minimum and prior to the next Federal Election, the AEC target homeless persons in its awareness campaigns to inform them about itinerant elector enrolment and other voting options, and that the AEC ensure that its training programs alert AEC staff to the needs of the homeless and other marginalised citizens.<sup>9</sup>

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<sup>7</sup> Joint Standing Committee on Electoral Matters, Parliament of Australia, *The 2004 Federal Election: Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto* (2005) 14 [Recommendation 1].

<sup>8</sup> *Ibid*, 17 [Recommendation 2].

<sup>9</sup> *Ibid*, 132 [Recommendation 26].

## 4.2 Implementation of the recommendations for the Inquiry into the 2004 Federal Election

In the Clinic's view, the Committee's recommendations in relation to homeless voter enfranchisement were generally not implemented and where implementation was attempted, it was inadequate and too late.

Contrary to the Committee's recommendation, the CE Act was not amended to require that electoral enrolment forms and information be displayed prominently at all times in every Australia Post, Centrelink and Medicare outlet to enable and encourage eligible persons to enrol and vote. In fact, there is still no reference to 'homeless person' or 'homelessness' in the CE Act.<sup>10</sup>

Contrary to the Committee's recommendations, the AEC did not formulate, implement and publicly report against a detailed ongoing action plan to promote and encourage enrolment and voting among homeless persons (**Action Plan**). The Clinic has applied for access to the Action Plan under freedom of information legislation, but the AEC has advised that there is no document that matches this description. However, the Clinic notes the helpful research and preparatory work of the AEC, in conjunction with the Victorian Electoral Commission (**VEC**), dating from 2003, discussed below at 4.6.

The Committee recommended that the AEC target homeless persons in its awareness campaigns to inform them about itinerant elector enrolment and other voting options in general and particularly in the lead up to the next Federal Election. As far as the Clinic is aware, in October 2007, the AEC sent information, including a letter from the Commissioner and updated enrolment forms and fact sheets, to SAAP funded homelessness service providers. The purpose of this information was to promote the availability of no-fixed address enrolment, in particular.

In terms of the utility of the materials provided, the Clinic considers that the AEC's fact-sheet was not appropriately focused for its intended audience as its content was too lengthy and complex. In our view, electoral information must be set out clearly and in simple English – a one page step-by-step process would more helpfully assist people wishing to enrol as a 'no fixed address' voter. The materials provided were insufficient for the purpose of engaging people experiencing homelessness in the electoral process. One letter asking already under-resourced homelessness agencies (already a limited range of organisations) to distribute materials and educate their service users about various voting options is simply not enough to adequately comply with the Committee's recommendation to target homeless persons in the AEC's awareness campaigns; it creates no awareness in the community and does not form part of a broader educative strategy to increase participation in political processes in Australia. The Clinic considers that the provision of such information to a limited selection of organisations was insufficient to result in a significant increase in new 'no fixed address' enrolments.

Finally, the Clinic notes that the writs were issued on 17 October 2008, meaning that the AEC campaign lasted for a matter of weeks. The AEC's commitment to undertake such limited dissemination in early October 2007, only 6 weeks before the Federal Election, provided insufficient time for an effective awareness campaign to be conducted. Thus, while the AEC has technically adopted this recommendation of the Committee, its implementation was neither timely nor appropriately adapted to respond to homeless people's high barriers to participation in the electoral process.

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<sup>10</sup> Taking into account amendments up to Act No. 157 of 2007.

### **Recommendation 2**

The Clinic recommends that the GE Act be amended to require that electoral enrolment forms and information be displayed prominently at all times in every Australia Post, Centrelink and Medicare outlet to enable and encourage eligible persons to enrol and vote.

### **Recommendation 3**

The Clinic recommends that:

- the AEC formulate, implement and report against a detailed, ongoing, action plan to promote and encourage enrolment and voting among persons and groups experiencing difficulty because of social circumstance; and
- that such persons and groups should include, but not be limited, to homeless and itinerant persons, illiterate persons, persons with disabilities and residents of isolated and remote areas;
- the AEC consult with and consider the views of organisations and groups representing homeless and itinerant persons, illiterate persons, persons with disabilities, residents of remote localities, and other appropriate bodies, to formulate appropriate strategies, programs and materials for use when the action plan is implemented;
- the AEC report back to the Committee prior to the next Federal Election with details of its action plan and implementation strategies;
- where appropriate, adequate funding be provided to enable the AEC to develop, implement and report against the action plan; and
- that following the next Federal Election, the AEC seek feedback from representative groups and community members regarding the effectiveness of the strategies implemented, and further develops its action plan to incorporate constructive suggestions where appropriate.

### **Recommendation 4**

The Clinic recommends that the AEC continue its consultations with relevant parties and prior to the next Federal Election, as part of improving access to the franchise by those experiencing homelessness, as a minimum:

- target homeless persons in its public awareness campaigns, informing them about itinerant elector and other voting enrolment and options; and
- ensure that its training programs alert AEC staff to the needs of the homeless and other marginalised citizens.

## **4.3 Recommendations by the Clinic**

The Clinic, together with other organisations such as the Council to Homeless Persons (**CHP**), the Salvation Army and Hanover Welfare Services, consulted with the AEC at a roundtable discussion in March 2007. The Clinic, working in collaboration with the CHP, provided written resources to the AEC at that roundtable discussion and recommended a comprehensive action plan to improve



electoral participation of people experiencing homelessness. These recommendations are attached at **Attachment A**.

In summary, the Clinic and CHP recommended the following actions:

- early production and distribution of an information kit containing relevant and accessible information for homeless people and homelessness service providers regarding enrolment and voting procedures for no fixed address and ordinary electors;
- provision of information, education and resources to equip homeless service providers to inform people experiencing homelessness about the importance of voting, eligibility for enrolment and procedures for enrolment;
- distribution of an information kit (including relevant enrolment forms) to high frequency contact points, such as Centrelink and Medicare;
- implementation of a targeted advertising campaign to raise awareness about the importance of voting and to encourage people experiencing homelessness to enrol and vote;
- training for electoral site managers and volunteers addressing the needs of and issues that affect people experiencing homelessness and how electoral workers might assist people from that group on Election Day;
- ensuring that voting stations are established at locations that are easily accessible to, and appropriate to, people experiencing homelessness; and
- planning for the installation of mobile polling booths at locations frequented by people experiencing homelessness (including Centrelink and homelessness service providers).

Minutes of the March 2007 meeting were distributed, but the AEC did not contact the Clinic again until October 2007, when the AEC wrote to the Clinic and said that it was 'seeking to promote the availability of no fixed address enrolment'. This letter provided an example of the materials the AEC intended to send to SAAP funded homelessness agencies, also in October 2007. As discussed above at section 4.2, the letter and the attached materials were too little too late.

The Clinic submits that the AEC must be more proactive and innovative in its approach to attracting and retaining people without a fixed address to register to enrol to vote. The AEC must develop a long-term commitment to improving participation of people experiencing homelessness, or at risk of homelessness in the electoral process (and the political process more generally). There is much more work to be done.

It is important to have increased education and awareness of the electoral process "*to have informed citizens who actively participate in the democratic processes of electing our representatives and voting in referendums on Constitutional change*".<sup>11</sup> This statement, which comes from the AEC website, must translate from talk into action. The Clinic urges the AEC to implement the Committee's Report and to adopt the recommendations of the Clinic so as to promote and ensure the effective realisation of the right to vote for people experiencing homelessness.

#### **Recommendation 5**

The Clinic recommends the early production and distribution of an information kit containing relevant and accessible information for homeless people and homelessness service providers regarding enrolment and voting procedures for no fixed address and ordinary electors. This information kit

<sup>11</sup> <[http://www.aec.gov.au/About\\_AEC/AEC\\_Services/education\\_services.htm](http://www.aec.gov.au/About_AEC/AEC_Services/education_services.htm)>.

should explain the various steps in relation to enrolment and voting, as well as any relevant changes to the CE Act.

**Recommendation 6**

The Clinic recommends planned and coordinated early distribution of the information kit (including relevant enrolment forms) to high frequency contact points, such as Centrelink and Medicare. The AEC should also engage with Centrelink and Medicare staff to ensure that, where possible, they encourage and assist people to enrol to vote.

**Recommendation 7**

The Clinic recommends that the AEC actively engage with homelessness service providers and provide the information kit (including relevant enrolment forms), along with education and resources to equip them to inform people experiencing homelessness about the importance of voting, eligibility for enrolment and procedures for enrolment and, where possible, assist them to enrol.

**Recommendation 8**

The Clinic recommends early implementation of a targeted advertising campaign to raise awareness about the importance of voting and to encourage people experiencing homelessness to enrol and vote at all federal elections. This advertising campaign could take the form of, for example, posters displayed in areas and in services that homeless people tend to frequent (including Centrelink and Medicare). We also suggest that the AEC considers placing some larger scale advertising, such as billboards, in locations and suburbs that homeless people frequent.

**Recommendation 9**

The Clinic recommends that the AEC establish voting stations at locations that are easily accessible, and appropriate to, people experiencing homelessness. We suggest that, where possible, the AEC employ consumer consultants to assist at polling booths on Election Day.

**Recommendation 10**

The Clinic recommends early roll-out of training for electoral site managers and volunteers addressing the needs of and issues that affect people experiencing homelessness and how electoral workers might assist people from that group on Election Day.

**Recommendation 11**

The Clinic recommends that the CE Act be amended to allow for the installation of mobile polling booths at sites frequented by people experiencing homelessness (including Centrelink and homelessness service providers). Where possible, this would also involve the employment of consumer consultants to assist at mobile polling booths on Election Day.

#### 4.4 Comparative review of the work of the Victorian Electoral Commission

The work done by the VEC in relation to homelessness provides an interesting counterpoint for comparison with that of the AEC. Indeed, over the last 3 years, the VEC has been proactive in seeking to enfranchise the homeless in the electoral process.

In the lead up to the 2006 State Election, the VEC worked very hard to engage with homelessness service providers and with people experiencing homelessness themselves in an attempt to engage them with the electoral process. A number of initiatives were developed, including the following:

- enrolment days at a number of homelessness service providers including St Mary's House of Welcome (**SMHOW**), Front Yard, St Kilda Crisis Centre, Sacred Heart Mission and St Kilda Drop-in Centre. Lunch was provided at each enrolment day, as well as transport to and from the location for those that required it. Information about the enrolment days were sent to all homelessness service providers in Victoria.
- Development and wide distribution of posters specifically targeting people experiencing homelessness and very simple one page fact sheets in relation to no fixed address enrolment.
- Training for electoral workers who staffed the polling stations on Election Day in relation to homelessness and effective communication.
- Provision of mobile polling at homelessness service providers for organisation that were able to guarantee attendance by 20 people.
- Establishment of a homelessness and voting advisory committee, including representatives of homelessness service providers as well as consumers themselves.
- Assistance with development and printing of information kits and brochures by service providers, including the Clinic.
- Attended the Melbourne homelessness festival *Home is Where the Heart Is* in 2007 to provide information and assist people to enrol to vote.

The VEC worked particularly closely with SMHOW in the following ways:

- a mobile polling booth was located at SMHOW on 17 September 2006 to increase participation of homeless people in the State Election - around 80 people experiencing homelessness exercised their right to vote at the SMHOW mobile polling booth;
- teams of electoral officers attended SMHOW on three separate occasions (twice in February 2007 and once in August 2007) to assist homeless people to enrol to vote for the Federal Election – the sessions resulted in over 100 new enrolments;
- the VEC provided for a group of SMHOW clients to attend its Melbourne office on 21 November 2007 to vote in the Federal election (as the AEC was unable to advise SMHOW where pre-polling would take place, with enough time to engage and encourage homeless people's participation in the election).<sup>12</sup>

Compared to the proactive work done by the VEC to engage with homelessness service providers and homeless people by the VEC, the AEC's attempts to engage and enfranchise homeless voters are disappointing and fail to take into account the needs of this group. This is despite the findings

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<sup>12</sup> See Victorian Electoral Commission, 'Report to Parliament on the 2006 Victorian State election' (2007) 35; 'Homeless not voteless' (2007) 12 *Selection* 7.

and recommendations contained in the Committee's 2004 Report. The Clinic's submission provides a series of recommendations to remedy the AEC's failure in this regard. The work undertaken by VEC is also a useful starting point for the AEC to consider when establishing policies and practices that aim to facilitate the inclusion of people experiencing homelessness, or at risk of homelessness, in the political and voting processes.

The Clinic is very committed to ensuring that people experiencing homelessness are able to exercise their right to vote.<sup>13</sup> To ensure this outcome, we are very happy to work closely with both the AEC and the VEC to implement the Committee's recommendations and any recommendations arising from the 2008 Inquiry.

#### **4.5 Findings and Recommendations of the Inquiry into the Conduct of the 2001 Federal Election**

The Committee tabled its *Report of the Inquiry into the 2001 Federal Election* in Federal Parliament on 23 June 2003. The franchise of homeless people was considered in some detail in the Report. The Committee made several recommendations in relation to the enfranchisement of homeless people, including:

- that the Itinerant Elector provisions outlined in section 96 of the *Commonwealth Electoral Act 1918* (Cth) be amended to clearly apply to homeless people;
- that the AEC simplify its Itinerant Elector application form to assist homeless people; and
- that the AEC target homeless people in a public awareness campaign, informing them about Itinerant Elector enrolment.<sup>14</sup>

In response to these recommendations, the AEC undertook to include homeless people as a target group in its public awareness campaign for the next Federal Election (in 2004). The AEC also foreshadowed that it would work with welfare agencies to ensure that enrolment forms and registration assistance are available on-site.<sup>15</sup>

#### **4.6 Implementation of the Recommendations of the Inquiry into the 2001 Federal Election**

In the Clinic's view, again, implementation of the Committee's recommendations in relation to homeless voter enfranchisement arising from the 2001 Federal Election has not been adequate or timely.

To date, the Commonwealth Government has not amended, nor announced an intention to amend, section 96 of the CE Act to ensure that it effectively applies to and enfranchises homeless people. This is to be contrasted with action taken by the Victorian Government to amend the *Electoral Act 2002* (Vic) to add section 3A 'Homeless Persons' to clarify that the Itinerant Elector provisions under section 22(4) of that Act apply to and include homeless persons.

The Clinic notes that despite the difficulties outlined above, since late 2003, the AEC, in conjunction with the VEC, has undertaken a range of activities intended to improve the franchise of the homeless. This has included conducting a series of consultations with homelessness service providers and homeless people themselves. The AEC and VEC have also conducted a joint project with researchers from the Swinburne University Institute of Social Research to conduct quantitative

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<sup>13</sup> See eg 'HPLC Voting Campaign' (2006) 22 *Street Rights* 1; PILCH Homeless Persons' Legal Clinic, 'Voting against homelessness' (Press Release, 30 October 2006).

<sup>14</sup> Joint Standing Committee on Electoral Matters, Parliament of Australia, *The 2001 Federal Election: Report of the Inquiry into the Conduct of the 2001 Federal Election and Matters Related Thereto* (2003) 82-93 [Recommendation 7].

<sup>15</sup> *Ibid*, 93.

and qualitative research on the circumstances and reasons for the non-enrolment of so many homeless persons so that effective strategies may be developed to enhance their enfranchisement.<sup>16</sup>

Unfortunately, however, just as many of the AEC strategies being considered and developed to improve homeless voter education, enrolment and participation, including simplification of the Itinerant Elector Application Form, were not implemented in time for the 2007, nor were they implemented for the 2004 Federal Election before it. In particular, the Clinic notes that, prior to the 2004 Federal Election; the AEC did not develop a 'simplified Itinerant Elector application form to assist homeless people' or directly targeted homeless people in a public awareness campaign informing them about Itinerant Elector enrolment. Although the AEC did develop new materials and application forms before the 2007 Federal Election, as discussed above in sections 4.2 and 4.3, the Clinic submits that it has yet to fully grasp its responsibilities in relation to people experiencing homelessness and their participation in the electoral process.

The Clinic reiterates that it is committed to working closely with the AEC and VEC to implement the Committee's recommendations from 2001 and any further recommendations arising from the 2008 inquiry.

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<sup>16</sup> See 'Bringing Democracy Home' at <<http://www.sisr.net/cag/projects/bdh/welcome.htm>>.