

Dear Committee

Attached is a submission by the by the Human Rights Law Resource Centre Ltd ('HRLRC') to the Senate Finance and Public Administration Legislation Committee Inquiry into the Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005. The HRLRC aims to bring the influence of international human rights norms and principles to bear on domestic law and policy.

The submission examines and discusses the Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005, particularly those provisions pertaining to:

1. the franchise of prisoners;
2. the timing of closure of the electoral roll; and
3. proof of identity requirements.

The submission starts at Part 2 by providing an overview of the right to vote under international human rights law, particularly art 25 of the *International Covenant on Civil and Political Rights*. In addition to discussing the application of this fundamental right in general terms, it also considers exercise of the right by Indigenous people and prisoners and Australia's obligations in these areas.

Part 3 of the submission examines and discusses the proposals under Items 14 and 15 of Schedule 1 of the Bill to deny the right to vote to any person serving a sentence of imprisonment. With reference to the human rights to vote and to non-discrimination, the proposal is discussed in general terms and in terms of the likely discriminatory disenfranchisement of Indigenous people.

Part 4 of the submission examines and discusses the proposal under Items 18 and 29 of Schedule 1 of the Bill to impose more onerous proof of identify requirements on applicants for enrolment. It also considers the proposal under Item 20 to close the electoral roll on the day that the election writ is issued. The proposals are particularly considered in the context of their likely impact on exercise of the right to vote for people experiencing homelessness.

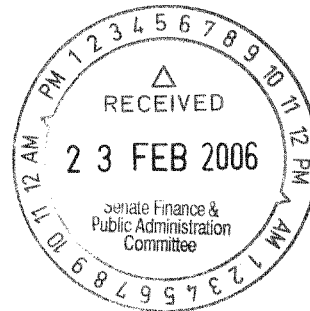
Part 5 of the submission concludes that numerous of the Bill's provisions are inconsistent with international human rights principles and standards and Australia's obligations in respect of those norms. The submission therefore recommends that the Bill not be passed in its current form.

I would be delighted to discuss this submission further.

Yours sincerely

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# **The Human Right to Vote and Participate in Public Affairs**

**Submission to the Senate Finance and  
Public Administration Legislation  
Committee Inquiry into the Electoral and  
Referendum Amendment (Electoral  
Integrity and Other Measures) Bill 2005**

**March 2006**

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# **1. Introduction**

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## **1.1 Overview of Submission**

This submission is made by the Human Rights Law Resource Centre Ltd ('HRLRC'). The HRLRC aims to bring the influence of international human rights norms and principles to bear on domestic law and policy.

The submission examines and discusses the Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005, particularly those provisions pertaining to:

- (a) the franchise of prisoners;
- (b) the timing of closure of the electoral roll; and
- (c) proof of identity requirements.

The submission starts at Part 2 by providing an overview of the right to vote under international human rights law, particularly art 25 of the *International Covenant on Civil and Political Rights*. In addition to discussing the application of this fundamental right in general terms, it also considers exercise of the right by Indigenous people and prisoners and Australia's obligations in these areas.

Part 3 of the submission examines and discusses the proposals under Items 14 and 15 of Schedule 1 of the Bill to deny the right to vote to any person serving a sentence of imprisonment. With reference to the human rights to vote and to non-discrimination, the proposal is discussed in general terms and in terms of the likely discriminatory disenfranchisement of Indigenous people.

Part 4 of the submission examines and discusses the proposal under Items 18 and 29 of Schedule 1 of the Bill to impose more onerous proof of identify requirements on applicants for enrolment. It also considers the proposal under Item 20 to close the electoral roll on the day that the election writ is issued. The proposals are particularly considered in the context of their likely impact on exercise of the right to vote for people experiencing homelessness.

Part 5 of the submission concludes that numerous of the Bill's provisions are inconsistent with international human rights principles and standards and Australia's obligations in respect of those norms. The submission therefore recommends that the Bill not be passed in its current form.

## **1.2 About the Human Rights Law Resource Centre Ltd**

The HRLRC aims to promote human rights in Victoria and Australia, particularly the human rights of people that are disadvantaged or living in poverty, through the practice of law. The HRLRC seeks to achieve this aim by supporting, conducting, coordinating, resourcing, facilitating and enhancing the provision of legal services, litigation, education, training, research and advocacy regarding human rights.

The HRLRC undertakes these activities through partnerships and collaboration with the community legal sector and legal aid, human rights organisations, pro bono lawyers, legal professional associations and university law schools.

The HRLRC is the first specialist human rights law resource centre in Australia. It is also the first centre to pilot an innovative service delivery model to promote human rights. The model draws together and coordinates the capacity and resources of pro bono lawyers and legal professional associations, the human rights law expertise of university law schools, and the networks, grass root connections and community development focus of community legal centres and human rights organisations.

The HRLRC was formally incorporated in January 2006 with the Public Interest Law Clearing House (Vic) Inc ('PILCH') and the Victorian Council for Civil Liberties Inc ('Liberty Victoria') as the initial members. PILCH is an independent community legal centre that facilitates the provision of pro bono legal services to marginalised and disadvantaged individuals, groups and communities. Liberty Victoria is an incorporated association whose activities include human rights-focused community and professional legal education, law reform, lobbying and advocacy.

## 2. The Human Right to Vote

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### 2.1 Content of the Right to Vote

Article 25(b) of the *International Covenant on Civil and Political Rights* ('ICCPR') provides that all citizens have the right to vote.<sup>1</sup> According to the UN Human Rights Committee ('HRC'), this right 'lies at the core of democratic government based on the consent of the people'. The HRC also recognises that access to and effective exercise of the right to vote is a fundamental component of the framework necessary for the promotion, protection and fulfilment of other civil and political rights.<sup>2</sup>

In General Comment 25, the HRC made a number of additional important observations about the content and exercise of the right to vote under art 25:

- (a) The right to vote must be recognised and protected for all citizens, with no distinctions, restrictions or impairments permitted on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status;
- (b) States must adopt specific measures to ensure that obstacles to voting and participation, such as poverty, illiteracy, restrictions to freedom of movement and homelessness, are overcome; and
- (c) Any restrictions on the right to vote must be established by law and must be objective, reasonable and proportionate.<sup>3</sup>

Developing this jurisprudence further, the UN Office of the High Commissioner for Human Rights ('OHCHR') has asserted that any restrictions on the right to vote must be restrictions that are 'necessary in a democratic society' for a public goal.<sup>4</sup> The determination of what is objective, reasonable, proportionate and necessary should take account that exercise of the right to vote is of especial importance to citizens who are marginalised or disadvantaged, with participation in public affairs and decision-making processes contributing to a sense of social inclusion, civic responsibility and societal engagement. As the OHCHR has written:

Lack of political rights is both a cause and a consequence of poverty. Socially and politically excluded people are more likely to become poor, and the poor are more vulnerable to social exclusion and political marginalization...Active participation in political decision-making processes plays a role in expanding political freedoms and empowering people, which in

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<sup>1</sup> Opened for signature 19 December 1966, 999 UNTS 171 (entered into force generally 23 March 1976 and for Australia 13 August 1980).

<sup>2</sup> UN Human Rights Committee, *General Comment 25: Article 25*, UN Doc HRI/GEN/1/Rev.5 (2001) 157.

<sup>3</sup> UN Human Rights Committee, *General Comment 25: Article 25*, UN Doc HRI/GEN/1/Rev.5 (2001) 157.

<sup>4</sup> UN Office of the High Commissioner for Human Rights, *Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies* (2002) 48.

turn contributes towards combating social exclusion and political marginalization.<sup>5</sup>

Having regard to this, the OHCHR has specifically identified the proportion of poor and disadvantaged people going to the polls as a key indicator of the extent to which a state is implementing its fundamental obligations in relation to the right to vote and other fundamental human rights.<sup>6</sup>

## 2.2 Implementation of the Right to Vote

Australia has ratified and is therefore bound by the *ICCPR*.

Article 2 the *ICCPR* imposes on Australia a range of responsibilities and obligations of realisation in relation to civil and political rights rights; namely obligations to *respect*, *protect* and *fulfil* human rights.<sup>7</sup>

The obligation to *respect* requires that Australia refrain from interfering, directly or indirectly, with enjoyment of human rights. Prima facie, this prohibits amendment of the *Commonwealth Electoral Act 1918* (Cth) to, directly or indirectly, disenfranchise certain social or racial groups, such as prisoners, homeless people and Indigenous people.

The obligation to *protect* requires that Australia prevent third parties, including organisations and individuals, from interfering in any way with the enjoyment of human rights.

The obligation to *fulfil* requires that Australia take positive steps to promote and support the realisation of human rights and, where necessary, to provide for the realisation of human rights for marginalised or disadvantaged groups. In relation to the fulfilment of civil and political rights, such as the right to vote, the positive action required pursuant to art 2(2) of the *ICCPR* is that Australian governments take all necessary steps to immediately implement the right to vote without discrimination or restriction other than is objective, reasonable, proportionate and necessary.

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<sup>5</sup> UN Office of the High Commissioner for Human Rights, *Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies* (2002) 48.

<sup>6</sup> UN Office of the High Commissioner for Human Rights, *Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies* (2002) 51.

<sup>7</sup> See also CESCR, *General Comment 15: The Right to Water*, [17]–[29], UN Doc E/C.12/2002/11 (2002). See also CESCR, *General Comment 12: The Right to Adequate Food*, 69, [15], UN Doc HRI/GEN/1/Rev.5 (2001); and CESCR, *General Comment 13: The Right to Education*, 84, [47], UN Doc HRI/GEN/1/Rev.5 (2001).



### 3. Prisoners and the Right to Vote

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#### 3.1 Introduction

Items 14 and 15 of Schedule 1 of the Bill seek to amend the *Commonwealth Electoral Act 1918* (Cth) to deny the human right to vote to any person serving a sentence of imprisonment.

The policy rationale for this proposed amendment is unclear but seems to be based on two propositions, namely:

- (a) Denial of the right to vote to prisoners is educative in that it 'ensures that people realise the importance of the democratic system and the role it plays within our societal structures';<sup>8</sup> and
- (b) Denial of the right to vote to prisoners is a deterrent or disincentive to the commission of crime.<sup>9</sup>

The practical impact of this amendment will be the disenfranchisement of at least 20,000 prisoners around Australia.<sup>10</sup> The amendment is also likely to impact disproportionately on Indigenous people, who are 16 times more likely to be imprisoned than non-Indigenous people and who comprise approximately 20 per cent of the prisoner population compared with roughly 2 per cent of the general population.<sup>11</sup>

#### 3.2 The Status of Prisoner Disenfranchisement under the *ICCPR*

The proposed disenfranchisement of prisoners is manifestly inconsistent with a range of international human rights norms and principles.

Most obviously, the proposal is inconsistent with art 25 of the *ICCPR* which, as discussed above, enshrines the right to vote for all citizens and only permits restrictions on that right in so far as they are objective, reasonable, proportionate and necessary. It is notable that no evidence has been advanced or exists to support the propositions that the proposal will have both educative and deterrent impacts. In fact, all of the available evidence demonstrates that policies which promote social inclusion, civic engagement and participation in civil, political, social, cultural and economic life, can reduce and resolve marginalisation, disadvantage and poverty, all of which are significant causal factors and risk indicators of criminal activity.<sup>12</sup> This, in turn, is likely to promote rehabilitation, integration and participation. On the other

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<sup>8</sup> Senator Eric Abetz, Special Minister for State, as cited in Jason Koutsoukis, 'Coalition Set to Change the Way We Vote', *The Age* (Melbourne), 11 June 2005.

<sup>9</sup> Joint Standing Committee on Electoral Matters, *The 1996 Federal Election: Report of the Inquiry into the Conduct of the 1996 Federal Election and Matters Related Thereto* (1997) 48.

<sup>10</sup> Australian Bureau of Statistics, *Prisoners in Australia 2004* (2005) 3.

<sup>11</sup> Australian Bureau of Statistics, *Prisoners in Australia 2004* (2005) 5.

<sup>12</sup> See, eg, Jenny Mouzos, 'Homicidal Encounters: A Study of Homicide in Australia 1989–1999' (Research and Public Policy Series Paper No 28, Australian Institute of Criminology, 2000) 39–40.

hand, policies and practices which are discriminatory or result in social exclusion are closely linked with increased crime rates and recidivism.<sup>13</sup> As Sachs J of the Constitutional Court of South Africa has observed:

The universality of the franchise is important not only for nationhood and democracy. The vote of each and every citizen is a badge of dignity and personhood. Quite literally, it says that everybody counts.<sup>14</sup>

The inconsistency between the human right to vote and the disenfranchisement of prisoners has been recognised by a number of courts over recent years, including the Supreme Court of Canada, the European Court of Human Rights and the South African Constitutional Court. In the case of *Sauve v Canada (Chief Electoral Officer)*, for example, the Supreme Court of Canada held that:

With respect to the first objective of promoting civic responsibility and respect for the law, denying penitentiary inmates the right to vote is more likely to send messages that undermine respect for the law and democracy than enhance those values. The legitimacy of the law and the obligation to obey the law flow directly from the right of every citizen to vote. To deny prisoners the right to vote is to lose an important means of teaching them democratic values and social responsibility.

...

The right of every citizen to vote...lies at the heart of Canadian democracy. The law at stake in this appeal denies the right to vote to a certain class of people – those serving sentences of two years or more in a correctional institution. The question is whether the government has established that this denial of the right to vote is...a 'reasonable limit demonstrably justified in a free and democratic society'. I conclude that it is not. The right to vote which lies at the heart of Canadian democracy, can only be trammelled for good reason. Here, the reasons offered do not suffice.<sup>15</sup>

The majority concluded that:

When the façade of rhetoric is stripped away, little is left of the government's claim about punishment other than that criminals are people who have broken society's norms and may therefore be denounced and punished as the government sees fit, even to the point of removing fundamental constitutional rights.<sup>16</sup>

The reasoning of the Supreme Court of Canada was followed by the South African Constitutional Court in *Minister for Home Affairs v National Institute for Crime Prevention and the Re-Integration of Offenders*, in which the Court held that denial of

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<sup>13</sup> See, eg, Philippa Wells and Jacqueline MacKinnon, 'Criminal Records and Employment: A Case for Legislative Change' (2001) 19 *New Zealand Universities Review* 177, 189.

<sup>14</sup> *August v Electoral Commission* (1999) 3 SA 1 (CC) [16].

<sup>15</sup> *Sauve v Canada (Chief Electoral Officer)* [2002] 3 SCR 519.

<sup>16</sup> *Sauve v Canada (Chief Electoral Officer)* [2002] 3 SCR 519.

the right to vote to prisoners was neither reasonable nor justifiable in a 'democratic society based on human dignity, equality and freedom'.<sup>17</sup>

In another recent case, the European Court of Human Rights similarly stated that there is 'no evidence to support the claim that disenfranchisement deterred crime' and considered that 'the imposition of a blanket punishment on all prisoners regardless of their crime or individual circumstances indicated no rational link between the punishment and the offender'.<sup>18</sup> The Court further stated that:

As regards the purpose of enhancing civic responsibility and respect for the rule of law, there is no clear, logical link between the loss of vote and the imposition of a prison sentence, where no bar applies to a person guilty of crimes which may be equally anti-social or 'uncitizen-like' but whose crime is not met by such a consequence. There is much force in the arguments of the majority in *Sauvé* that removal of the vote in fact runs counter to the rehabilitation of the offender as a law-abiding member of the community and undermines the authority of the law as derived from a legislature which the community as a whole votes into power.<sup>19</sup>

The proposal to deny prisoners the right to vote has not in any way been demonstrated by the government to be objective, reasonable, necessary or proportionate and, as such, violates art 25 of the *ICCPR*.

### **3.3 The Status of Prisoner Disenfranchisement under Other International Human Rights Instruments**

In addition to being manifestly inconsistent with the right to vote under art 25 of the *ICCPR*, the proposal to deny the franchise to prisoners is also inconsistent with a number of instruments and norms pertaining to the rights and treatment of prisoners, including:

- (a) Art 5 of the *UN Basic Principles for the Treatment of Prisoners*,<sup>20</sup> which provides that 'all prisoners shall retain their human rights and fundamental freedoms' except to the extent that a limitation is 'demonstrably justified by the fact of incarceration';
- (b) Art 10 of the *UN Basic Principles for the Treatment of Prisoners*, which provides that prisoners should be subject to conditions 'for the re-integration of the ex-prisoner into society';
- (c) Art 60(1) of the *UN Standard Minimum Rules for the Treatment of Prisoners*,<sup>21</sup> which states that correctional services should 'seek to minimize any differences between prison life and life at liberty which tend to lessen the

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<sup>17</sup> (CCT03/04) (3 March 2004).

<sup>18</sup> *Hirst v United Kingdom (No 2)* [2004] ECHR 122 (30 March 2004).

<sup>19</sup> *Hirst v United Kingdom (No 2)* [2004] ECHR 122 (30 March 2004).

<sup>20</sup> GA res 111, UN GAOR, 45th sess, 68th mtg, Supp No 49A, UN Doc A/Res/45/49 (1990).

<sup>21</sup> ESC Res 663C, UN ESCOR, 1<sup>st</sup> Annex, Supp 1, 11, UN Doc E/3048 (1957), as amended by ESC Res 2076, UN ESCOR, Supp 1, 35, UN Doc E/5988 (1977).

responsibility of the prisoners or the respect due to their dignity as human beings'; and

- (d) Art 10 of the *ICCPR*, which provides that prisoners must be accorded all of their civil and political rights, including the right to vote, subject to the restrictions that are 'unavoidable in a closed environment'.<sup>22</sup>

### **3.4 The Status of Indigenous Prisoner Disenfranchisement under the *Convention on the Elimination of All Forms of Racial Discrimination***

Finally, the move to disenfranchise prisoners is likely to constitute a violation of art 5(c) of the *Convention on the Elimination of All Forms of Racial Discrimination*,<sup>23</sup> which, read in conjunction with arts 1 and 2, provides that the right to vote must be equally accorded to all citizens without distinction on the grounds of race and that any restriction to this right must have neither the purpose nor effect of discriminating on the grounds of race.<sup>24</sup> As discussed above, it is clear that a blanket disenfranchisement of prisoners will have a significantly disproportionate and therefore discriminatory impact on Indigenous people contrary to the *Convention*.

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<sup>22</sup> See also Human Rights Committee, *General Comment 21: Replaces General Comment 9 Concerning Humane Treatment of Persons Deprived of Liberty (Art 10)*, 153, UN Doc HRI/GEN/1/Rev.6 (2003).

<sup>23</sup> Opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969).

<sup>24</sup> See also Committee on the Elimination of Racial Discrimination, *General Comment 20: Non-Discriminatory Implementation of Rights and Freedoms (Art 5)*, UN Doc HRI/GEN/1/Rev.3 (1996).

## 4. Homelessness and the Right to Vote

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### 4.1 Introduction

Items 18 and 29 of Schedule 1 of the Bill seek to impose more onerous proof of identify requirements on applicants for enrolment.

Item 20 of Schedule 1 of the Bill seeks to amend s 94A(4)(a) of the *Commonwealth Electoral Act 1918* (Cth) to close the electoral roll on the day that the election writ is issued.

Both of these proposals are likely to have a significant impact on exercise of the right to vote for people experiencing homelessness.

### 4.2 Nature and Extent of Homelessness in Australia

According to the Australian Bureau of Statistics, on Census night in 2001, there were 99,900 people experiencing homelessness across Australia.<sup>25</sup>

This included over 14,000 people sleeping rough or in squats, more than 14,000 in crisis accommodation or refuges, almost 23,000 in boarding houses, and nearly 49,000 people staying temporarily with friends or relatives. A further 23,000 people across Australia were living temporarily or marginally in caravan parks.<sup>26</sup>

According to the Australian Institute of Health and Welfare, approximately 153,000 people accessed homelessness assistance services in 2003-04.<sup>27</sup>

The causes of homelessness are complex and varied. However, they are generally acknowledged to include:

- structural causes (such as poverty, unemployment and inadequate supply of affordable housing);<sup>28</sup>
- fiscal, social and public policy causes (such as taxation policy and expenditure on public and community housing, health care, education and vocational training);
- individual causes (such as ill health, mental illness, intellectual disability, substance and alcohol dependency, problem gambling, domestic violence, family fragmentation and severe social dysfunction); and
- cultural causes (such as the provision of culturally inappropriate housing or support services to indigenous communities).<sup>29</sup>

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<sup>25</sup> Australian Bureau of Statistics, *Counting the Homeless 2001* (2003) 2.

<sup>26</sup> Australian Bureau of Statistics, *Counting the Homeless 2001* (2003) 2.

<sup>27</sup> Australian Institute of Health and Welfare, *Homeless People in SAAP: National Data Collection Annual Report 2003-04* (2005) 9.

<sup>28</sup> Following the 2001 Census, the Australian Bureau of Statistics identified unemployment and inadequate income as significant structural factors contributing to and causing homelessness across Australia: Australian Bureau of Statistics, *Counting the Homeless 2001* (2003).

<sup>29</sup> See generally, 'The Changing Face and Causes of Homelessness: Symposium' (2002) 15(9) *Parity*.

In many cases of homelessness, these causes are intersectional and related.

#### **4.3 Number of Homeless of Voting Age in Australia**

According to the Australian Bureau of Statistics, 64 per cent of people experiencing homelessness on Census night in 2001 were aged 19 or older.<sup>30</sup> Census figures are not available for the percentage of homeless people aged 18 or older.

On this basis it can be conservatively estimated that there were at least 64,000 people experiencing homelessness who were eligible to vote at the 2004 Federal Election.

#### **4.4 The Importance of Voting for People Experiencing Homelessness**

The enfranchisement of homeless people is a key challenge for individuals, organisations and governments concerned with the alleviation and eradication of homelessness in Australia.

The importance of the voting for homeless people is recognised by international human rights law, with the HRC stating that art 25 of the *ICCPR*, which provides that every citizen has the right to vote, imposes an obligation on governments and agencies to adopt specific measures to ensure that obstacles to voting and participation, such as poverty, illiteracy and homelessness, are overcome.<sup>31</sup>

At a domestic level, the Preamble to the Commonwealth *Supported Accommodation Assistance Act 1994* (Cth) provides that it is essential that people experiencing homelessness have the opportunity to have a say in decision-making processes and policy development, while section 5(4)(d) of the Act requires that SAAP assist homeless people to participate fully in civil and political life.

The importance of homeless people having a say is also, unsurprisingly, recognised by homeless people themselves. According to research undertaken by the PILCH Homeless Persons' Legal Clinic, at least 54 per cent of homeless people would like to enrol to vote at federal elections, notwithstanding many other significant issues and concerns regarding, food, housing, health and so on.<sup>32</sup> Moreover, the right to vote is regarded as inadequately protected by 42 per cent of people who are homeless and as important or very important by a substantial 76 per cent.

According to another recent survey of 226 homeless people across Victoria, the right of homeless people to have a greater say in decision-making processes and policies that affect them is 'very important' but also frequently violated. As one homeless

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<sup>30</sup> Australian Bureau of Statistics, *Counting the Homeless 2001* (2003) 3-4.

<sup>31</sup> UN Human Rights Committee, *General Comment 25: Article 25*, UN Doc HRI/GEN/1/Rev.5 (2001) 157.

<sup>32</sup> PILCH Homeless Persons' Legal Clinic, *Homelessness and Voting: Submission to the Joint Standing Committee on Electoral Matters Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto* (2005) <<http://www.aph.gov.au/house/committee/em/elect04/subs/sub131.pdf>> at 1 August 2005.

respondent said, 'We should have the main say, because it's for us and we know what's really going on.'<sup>33</sup>

#### **4.5 Impact of Proposal to Require Proof of Identification and Evidence of Residence to Claim Enrolment**

As discussed above, the government proposes to require applicants for enrolment to provide proof of identity in order to make an application for enrolment or to update their details on the Roll. Under the current provisions of the *Commonwealth Electoral Act 1918* (Cth), a person must complete an enrolment form and have the form signed and dated by a witness. The application for enrolment is not required to be supported by any proof of identification. There is no evidence that, under these provisions, there is any widespread manipulation of the Electoral Roll or that the integrity, veracity or completeness of the Roll has been compromised.

If the proposals are enacted, persons wishing to be added to the Roll or to change their enrolment details will be required to provide proof of identity and evidence of their place of residence. Where the required identification cannot be provided, it is proposed that written references may be provided by people within a 'prescribed class' of persons.

These proof of identity requirements will significantly impair the ability to enrol to vote of financially and socially disadvantaged people, particularly people experiencing homelessness. Many financially and socially disadvantaged people do not hold a driver's licence or the alternative forms of acceptable identification. Further, many financially and socially disadvantaged people cannot access, or are unwilling to access, persons proposed to be in the 'prescribed class', including members of the police force, Justices of the Peace, doctors and lawyers.

In addition to the above, the proposed 'evidence of residence' requirements are likely to significantly disenfranchise people experiencing homelessness, particularly people staying in temporary or unconventional accommodation for periods of more than one month. Under the current provisions of the Act, it is likely that such people would be ineligible to enrol as Itinerant Electors because they have a fixed place of living for a period of more than one month. They would therefore need to enrol as Ordinary Electors. Under the proposed amendments, however, such people would not be able to enrol as Ordinary Electors because they would be unable to provide evidence of residence. This would prevent many homeless people from enrolling or updating their enrolment, thereby denying them the right to vote and compromising the accuracy and integrity of the Roll.

The negative impacts of the proposed identification and address evidence requirements will be exacerbated further if the amendment regarding the early closure of the Roll is enacted (discussed further below). This is because disadvantaged

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<sup>33</sup> Department of Human Services, *Charter of Rights and Enhanced Complaints Mechanism: Report on Consumer Consultations* (2004); see also Tamara Walsh and Carla Kleese, 'Down and Out? Homelessness and Citizenship' (2004) 10(2) *Australian Journal of Human Rights* 77.

persons will have an extremely limited period of time in which to obtain the required references or other evidence to support a claim for enrolment.

There is insufficient evidence of electoral fraud or manipulation to justify an amendment with the potential to disenfranchise homeless electors. If, however, such an amendment is considered to be necessary, it should provide that:

- (a) the 'prescribed class' include persons who have known the applicant for a period of 6 months or longer and also persons providing homelessness assistance or related support services to the applicant;
- (b) people can reside in one location for up to 6 months, rather than one month as is currently the case, before they become ineligible to enrol as Itinerant Electors and must enrol as Ordinary Electors; and
- (c) homeless people who live in non-conventional or SAAP accommodation such as cars, squats, shelters or refuges for a period of longer than 6 months remain eligible to enrol as Itinerant Electors.

#### **4.6 Impact of Proposal to Close Electoral Roll Early**

Section 155 of the *Commonwealth Electoral Act 1918* (Cth) requires that the Electoral Roll remain open for 7 days after the election writ is issued. This is a limited timeframe within which an elector may lodge a claim updating his or her information. In the week following the announcement of the 1998 election, the AEC received a total of 351,913 enrolment forms which included new enrolments, re-enrolments and transfers of enrolments.<sup>34</sup> While the Act requires that electors update their information on the roll within 21 days of a change of address, it is recognised that many people (homeless or not) do not discharge this requirement. It is only when a federal election is announced that most individuals notify the AEC of their changed circumstances.

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

- (a) most people experiencing homelessness do not have a consistent or stable place of residence, with most of the homeless population moving frequently from one form of temporary shelter to another. Homeless people are therefore far more likely to have incorrect details recorded against their name on the Roll, or to have been removed from the Roll due to the AEC becoming aware of inaccuracies in address or contact details;
- (b) homeless people are often outside the main-stream media loop and may not become immediately aware that a federal election has been announced; and

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<sup>34</sup> Joint Standing Committee on Electoral Matters, *Report of the Inquiry into the Conduct of the 1998 Federal Election and Matters Related Thereto* (June 2000).



- (c) a higher proportion of the homeless population has reduced literacy and this impacts on their knowledge of current events and also their ability to complete the required AEC forms within a limited time frame.

The Australian Federation of Homelessness Organisations has previously objected to similar proposed legislative amendments, stating that the early closing of the Electoral Roll could potentially 'wipe out voting opportunities for large numbers of already disenfranchised people'.<sup>35</sup> Further, the HRLRC notes that the Report of the Joint Standing Committee on Electoral Matters into the 2001 Federal Election also found no justification for the early closure of the Roll and recommended that the existing 7 day period between the issue of the writ and the closure of the Roll be retained. The HRLRC supports this view and opposes the amendments.

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<sup>35</sup> Australian Federation of Homelessness Organisations, 'Proposals threaten voting opportunities for homeless and young Australians' (Press Release, 27 June 2001) <<http://afho.org.au/newsandissues/mediareleases/27.06.01.htm>> at 23 February 2006.

## 5. Conclusion

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The Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005 contains a number of provisions that will have the direct or indirect effect of denying the human right to vote to prisoners, many Indigenous people, and many people experiencing homelessness.

Denial of the right to vote to these marginalised and disadvantaged groups is, prima facie, a violation of:

- (a) Art 25 of the *ICCPR* which enshrines the right to vote;
- (b) Art 5 of the *UN Basic Principles for the Treatment of Prisoners*, art 10 of the *UN Basic Principles for the Treatment of Prisoners*, art 60(1) of the *UN Standard Minimum Rules for the Treatment of Prisoners* and art 10 of the *ICCPR*, which together provide that, subject only to necessary restrictions, prisoners must be accorded all of their civil and political rights, including the right to vote, and should be treated in a way which promotes social inclusion, re-integration and participation; and
- (c) Arts 1, 2 and 5(c) of the *Convention on the Elimination of All Forms of Racial Discrimination* which collectively prohibit laws, policies or practices that have the purpose or effect of denying human rights on the grounds of race.

The Commonwealth has not adduced sufficient or significant evidence to demonstrate that these provisions are in any way reasonable, objective, necessary nor proportionate. The proposed amendments are a violation of international human rights law and Australia's obligations thereunder.