

2.30pm update

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## **UK prisoners should get vote, European court rules**

**Simon Jeffery**

**Saturday October 8, 2005**

**Guardian Unlimited**

Laws setting out who can and cannot take part in elections are to be rewritten after the European court of human rights today ruled in favour of giving British prisoners the right to vote.

Ruling in the case of a former prisoner against the United Kingdom, the Strasbourg court said the disenfranchisement of 48,000 convicts in British jails violated the European convention on human rights.

It said that with the exception of the right to liberty, lawfully detained prisoners continued to enjoy all the rights guaranteed in the convention - including political rights and freedom from inhumane and degrading punishment.

Britain is among 13 signatories to the human rights convention who prevent prisoners from voting, according to a government survey. The only exceptions in Britain are those in jail for non-payment of debts, contempt of court or on remand.

A further 14 signatories to the convention limit the right of prisoners to vote, while another 18 impose no restriction at all. The court's ruling could see prisoners across all states belonging to the 46-member Council of Europe, the court's parent body, given the right to vote.

Juliet Lyon, director of the Prison Reform Trust, said the court's ruling confirmed "people are sent to prison to lose their liberty, not their identity or their citizenship".

Speaking for the Tories, the shadow attorney general, Dominic Grieve, said giving convicted murderers and rapists the vote would "bring the law into disrepute and many people will see it as making a mockery of justice".

A spokesman for the Department for Constitutional Affairs said it was giving the judgment urgent consideration and would bring forward proposals in due course.

The former prisoner who brought the challenge, John Hirst, 54, pleaded guilty to manslaughter on the grounds of diminished responsibility after killing his landlady Bronia Burton with an axe.

He was sentenced to discretionary life imprisonment on February 11 1980 and released from Rye Hill prison, Warwickshire, on May 25 2004.

After his application to vote from prison was turned down, Mr Hirst took his case to the high court and lost. A seven-judge chamber of the Strasbourg court backed him, ruling that blocking the right to vote was disproportionate, and awarded him £8,000 in costs and expenses.

The government then appealed to a 17-judge "grand chamber" of the human rights court, arguing that Mr Hirst would be barred from voting even if the law was reformed to restrict the democratic rights of those who had committed only the most serious offences.

Mr Hirst's lawyers argued that blocking the right to vote was inconsistent with the stated rehabilitative aim of prison and that there was no proven link between removal of the vote and prevention of crime.

The court - on a majority ruling of 12-5 - said an article in the convention guaranteeing the "free expression

of the opinion of the people in choosing a legislature" was not absolute but in a 21st century democracy the presumption should be in favour of inclusion.

Two of the judges said in an additional written ruling that the ban was applied to those in prison but neglected that a judge's decision to send a defendant to prison or hand down a suspended sentence or fine could depend on his or her health, age and family situation and not just the gravity of the crime.

Now living in Hull, Mr Hirst said his challenge had been about breaking the link between crime and the right to take part in the democratic process.

"The human rights court has agreed with me that the government's position is wrong - it doesn't matter how heinous the crime, everyone is entitled to have the basic human right to vote."

A bar on prisoners voting is made in the 1983 Representation of the People Act but the substance dates back to the 1870 Forfeiture Act, which in turn reflects earlier laws limiting the rights of criminals from the reign of Edward III.

The five dissenters - Judges Wildhaber, Costa, Lorenzen, Kolver and Jebens - said in a joint written opinion that the Strasbourg court should be careful not to assume legislative functions. They said states should have the right to restrict voting based on nationality, age, residence and other factors.

The court was set up in 1950 to hear citizens' complaints under the human rights convention and is independent of the European Union.

## Euro court gives UK prisoners vote

**A BRITISH law banning prisoners from voting is a violation of human rights, the European Court of Human Rights ruled today.**

The verdict from Strasbourg means legal changes will have to be made to ensure that all prisoners in Britain can cast their vote in national and regional elections in future if they wish to do so.

The legal challenge was mounted by John Hirst while he was serving a life sentence in Rye Hill prison, Warwickshire, for the manslaughter of his landlady Bronia Burton, who he killed with an axe in 1979.

Now released and living in Hull, Mr Hirst, 54, said his fight had been about breaking the link between crime and the right to take part in the democratic process.

He said: "The human rights court has agreed with me that the Government's position is wrong ... it doesn't matter how heinous the crime, everyone is entitled to have the basic human right to vote."

After his application to vote from prison was turned down, Mr Hirst took his case to the High Court and lost. Then a seven-judge chamber of the Human Rights Court backed him and awarded him £8000 in costs and expenses.

The Government appealed to a 17-judge Grand Chamber of the Strasbourg Court, but it now has also backed Mr Hirst.

The judges said his human rights had been breached by the UK Government because the 1983 Representation of the People Act does not allow convicts to take part in parliamentary and local elections.

The Convention on Human Rights, to which Britain is a signatory, guarantees the "right to free elections" ... that applies equally to prisoners, said the judges.


Mr Hirst pleaded guilty in 1980 to a charge of manslaughter on the grounds of diminished responsibility but released last year.


Editor of the Prisons Handbook, Mark Leech, said: "This is a marvellous victory for John Hirst and for prisoners in general. It rights a wrong put into law over 40 years ago.

"Prisoners lose their liberty, not their place in the human race nor their position in the society of which this judgment makes clear they still remain a part."

General secretary of the Prison Officers' Association Colin Moses said: "This will focus politicians' minds on jails, if there are 77,000 votes there for them there."

06/10/05

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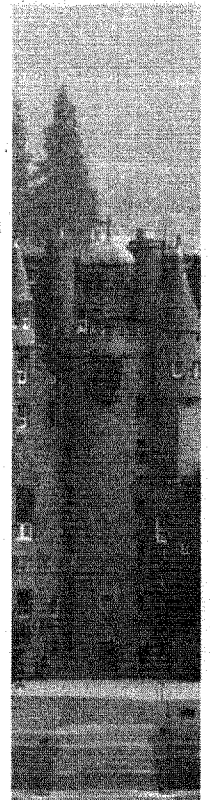
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## **Fiddling the ballot books Nov 3 2005**

### **The Age**

#### **Proposed changes could deny hundreds of thousands of Australians a vote.**

AMID debates about terrorism and industrial relations, the 464-page report of the parliamentary committee inquiry into the conduct of the 2004 federal election had to struggle for media space. Yet if Federal Parliament adopts some of its key recommendations, the right to vote will be significantly restricted, thereby diminishing Australia's well-earned reputation as a world leader in democratic practice.

The report contains much useful information about the electoral system and makes sensible recommendations about how to improve it. But in one crucial area, the inclusiveness of the franchise, the committee's majority of Government members has favoured conspiracy theories over democratic common sense. The result will disenfranchise hundreds of thousands of otherwise eligible citizens at federal elections.

Contrary to popular opinion, neither the right to enrol nor the right to vote are enshrined in the Australian constitution, which gives Parliament wide discretion over how its members are to be elected. Since Australian citizens have limited access to judicial protection in electoral matters, great care should be exercised before anyone is deprived of their vote by the Parliament.

The right to vote follows automatically once a person's name is entered on the electoral roll. The parliamentary committee's recommendation that the roll close at 8pm on the day the election writs are issued — usually the day after the prime minister announces an election — could rob something like 300,000 citizens of their voting rights.

Since 1984, the Electoral Act has required a seven-day "period of grace" between the issue of the writs and the close of the roll. In that one-week period before last year's federal election 284,110 citizens updated their enrolments. Of those, 78,816 were new

voters, most of whom would have turned 18 since 2001.

The committee advanced two major justifications for abolishing the statutory period of grace. One was that by not keeping their enrolment up to date the 284,110 souls were guilty of offences under the Electoral Act and should not be allowed any leeway. This excessive legalism runs counter to the sensible, long-established practice whereby the Australian Electoral Commission does not pursue prosecution for non-enrolment if the neglect is remedied.

The committee also claims that the current arrangements "present an opportunity for those who seek to manipulate the roll to do so at a time where little opportunity exists for the AEC to undertake the thorough checking required ensuring (sic) roll integrity".

This argument fails on at least two counts. First, the AEC, in its submission to the inquiry, stated categorically that it applies its established procedures during the seven-day period after the writs are issued "with the same degree of rigour as it does in a non-election period". Second, the committee itself admits that there is minimal evidence of actual roll fraud, but insists that it must take measures to prevent it occurring in the future.

This second assertion ignores the thorough review of the electoral roll conducted in 2002 by the Australian National Audit Office, which concluded "that, overall, the Australian electoral roll is one of high integrity, and can be relied on for electoral purposes". There are adequate safeguards in the current electoral laws and procedures to deal with any future attempts at fraud without stripping the vote from hundreds of thousands of citizens.

Before the Government proceeds to legislate, it might contemplate a potential constitutional entanglement. This arises from the fact that the governor-general, on the advice of the prime minister, issues the writs for the House of Representatives and the four territory senators, but the state governors, acting on the advice of their premiers, issue the writs for Senate elections. The constitutional power clearly exists for one or more of the state premiers to advise their governors not to issue Senate writs for, say, seven days after the prime minister announces the election date, thereby keeping the rolls open in those states.

Another category of citizens slated to lose their voting rights are prisoners. Since 2004 persons convicted of a criminal offence and serving a sentence of three years or more have been denied the vote (before 2004 the sentence had to be five years). The parliamentary committee recommends that "persons sentenced to a period of full-time imprisonment should not be allowed to a (sic) vote during that time". On current statistics, this would disenfranchise 25,000 citizens.

The committee advanced no sustained argument in favour of this recommendation, but during a 2004 parliamentary debate on the same issue, Senator Nick Minchin insisted that any "pub test" would find that law-abiding citizens resented allowing prisoners the vote.

Good public policy should be grounded on more than pub polls. Denying the vote to prisoners runs counter to sensible rehabilitative penology. It is also highly discriminatory since the prison population is skewed: 94 per cent are male, 56 per cent are aged between 20 and 35 and the rate of Aboriginal imprisonment is 15 times the national average.

The enthusiasm for disenfranchising prisoners may derive from practice in the United States, which is notorious for the practice. Currently nearly 5 million convicted felons are denied the vote (some of them forever), which is more than enough to swing elections. At the moment there is a person in a Milwaukee jail awaiting sentencing for "illegally voting" while serving a sentence for a felony. How this Orwellian silliness serves democracy is not obvious.

Four days before the committee's report was tabled in Federal Parliament, the European Court of Human Rights ruled, for the second time, that the section of the UK Representation of the People Act that imposes a blanket ban on all prisoners in detention is in breach of the European Convention on Human Rights. The Canadian Supreme Court invalidated a similar law in 2002. Yet Australia is on the verge of enacting similar, discriminatory legislation.

An inclusive franchise is basic for modern democracy. Legislators should not restrict the right to vote for some short-sighted partisan advantage.

Emeritus Professor Colin Hughes was the Australian Electoral Commissioner from 1984 to 1989. Brian Costar is professor of Victorian state parliamentary democracy at Swinburne University.

# **Voting changes will strengthen our democracy**

November 9, 2005

Page 1 of 2

*To ask eligible electors to enrol when they turn 18, or when they move house is not too much to ask.*

## **Australian voters have rights, but they also have responsibilities, writes Tony Smith.**

Australia has a good electoral system, but that does not mean it cannot be improved in several areas. One area is the electoral roll itself.

It is a legal requirement that all Australians entitled to vote enrol at the time they become eligible or change their enrolment details.

Yet on the other hand, another law allows for a seven-day period that provides an escape clause for those people who wish to ignore their first legal requirement.

This contradiction promotes the view that electoral enrolment is neither important nor necessary, is driving a growing and unrealistic volume of enrolment changes in the days after an election is called, and leaves the roll open to manipulation and abuse.

For all these reasons, the electoral roll should close at 8pm on the day that the writs are issued for an election.

Colin Hughes and Brian Costar outlined their opposition to this recommendation by the majority of the Joint Standing Committee on Electoral Matters - and another recommendation to remove the right of prisoners to vote - on this page last week ("Fiddling the ballot books" 3/11).

Prisoners serving sentences of three years or more are not permitted to vote. That is the current law. Clearly Costar and Hughes believe that prisoners in general should retain their right to vote.

The Parliament does not concur - nor would I suggest do the



majority of the public. The majority of the joint standing committee recommended that the current law should apply to all prisoners, not just those serving three years or more. On that we will just have to agree to disagree as a matter of principle.

However, when it comes to the closing of the rolls at the time the writs are issued for an election, it is not just principle on which we disagree, but also some compelling facts that they have either not considered or ignored.

Their breathless claim that closing the rolls on the issue of the writs "will disenfranchise hundreds of thousands of otherwise eligible citizens at federal elections" simply does not stack up factually.

Closing the electoral rolls on the day the election writs are issued cannot and will not disenfranchise any voters. "Disenfranchisement" occurs when a person is prevented from exercising their democratic right or they have it removed, not when a person simply fails to observe the enrolment law that applies to every voter.

his change will leave the democratic right and ability to enrol and vote entirely in the hands of every eligible voter in Australia. It is false to dress this up as "disenfranchisement".

Secondly, to assert that several hundred thousand people will not enrol before the next election on the sole basis that that number took advantage of a seven-day gap before the last election, has an amazing lack of logic to it.

If the law changes, so too will behaviour. To suggest that several hundred thousand people would simply ignore the new requirement is condescending and wrong.

As Electoral Commissioner Ian Campbell stated in evidence to the committee, "I could not draw any conclusion that a change in the closure date of the rolls would automatically lead to a particular number of electors who want to vote not being able to vote".

Claims that the late rush of enrolment updates do not cause the Electoral Commission concern ignore some obvious points.

While the commission carries out all the checks it can, there can be no argument that a deluge of last-minute enrolment changes cannot be processed with the same rigour as changes outside the election period, and that the scope for fraud and manipulation is increased.

Further, the volume of these enrolment updates is growing at a rate of about 50,000 each election. We are fast approaching the point where the processing will be unmanageable.

As the committee found, when expressed in terms of workload, the Electoral Commission processed 17.5 per cent of its annual transactions in the seven-day period. In addition, 60 per cent of those who made use of the seven-day period had been contacted by the commission in the previous year, at considerable cost, but chose to take no action.

A focus on democratic rights is a good thing, but Hughes and Costar should also pay attention to the democratic responsibilities that people also have.

To ask eligible electors to enrol when they turn 18, or when they move house is not too much to ask. Seventeen-year-olds can today provisionally enrol so that they can vote once they turn 18.

Seventeen and 18-year-olds fulfil all sorts of other requirements such as getting a driver's licence, a bank account and a mobile phone happily, as do people moving house, who must update utilities accounts, and many other details. This is also the best time to enrol or update enrolment details.

Between elections, about 7 million Australians enrol, re-enrol or update their enrolment details in a timely way - asking the other few hundred thousand to join them, to remove confusion, improve the accuracy of the electoral roll, and guard against potential fraud is not a lot to ask in a democracy that we all have a stake in.

Far from harming our democracy in Australia, this change will improve it.

Tony Smith is Liberal MHR for Casey and chairman of the Joint Standing Committee on Electoral Matters.

<http://www.theage.com.au/news/opinion/voting-changes-will-strengthen-our-democracy/2005/11/08/1131407633349.html?page=2>

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*"Denying penitentiary inmates the right to vote is more likely to send messages that undermine respect for the law and democracy than messages that enhance those values."*

**Chief Justice McLachlin  
of the Canadian Supreme Court**

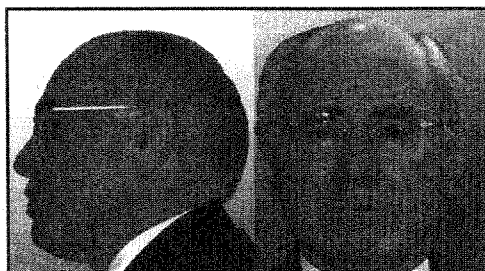
*"Prisoners lose their liberty, not their place in the human race nor their position in the society."*

**Recent European Court of Human Rights ruling**

*... every citizen shall have the right to vote at elections under universal suffrage without a distinction of any kind on the basis of race, sex or other status.*

**International Covenant  
on Civil and Political Rights**

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*Voting is a democratic duty not a privilege*

*Don't let Howard tighten the screws on the prisoners' vote.*

**Visit Justice Action website  
for more detailed information:  
[www.justiceaction.org.au](http://www.justiceaction.org.au)**



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**PRISONERS'  
VOTE**

**ABANDONED  
BY LAW**

*John Howard  
sentences prisoners  
to civic death*

# The coalition wants all prisoners barred from voting in federal elections.

Currently Australian prisoners serving sentences of less than three years can vote in federal elections.

In Aug 2004 Federal Parliament restricted the right to vote to those serving sentences of three years or less.

Now the coalition wants all prisoners barred from voting in federal elections with the introduction of Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill.

## **Prisoners' vote gets life! But they're crims anyway ... why should they vote?**

There is no evidence that disenfranchising prisoners deters crime or assists in rehabilitation.

It is more likely to increase alienation and disengagement from mainstream society and any sense of civic responsibility.

This would disenfranchise 25,353 voters of which more than half are expected to serve sentences of less than two years; ie who are likely to be released within a political term.

It is a double disenfranchisement for the 5,656 Indigenous people in jail who lost their ATSIIC vote last year.

Countries like Canada and South Africa have already removed such blatantly discriminatory laws.

## **So why is the Government bothering?**

It is cheap law and order politics.

Removing prisoners' political voice means politicians can now officially ignore prisons and prisoners. They have sentenced them to civic death.

## **What's the logic?**

Previously Senator Nick Minchin said "*any 'pub test' would find that law-abiding citizens resented allowing prisoners the vote*". (24/06/04)

There is no logical connection between committing an offence and the right to vote regardless of what pub this so-called test was conducted in.

## **Australia – international pariahs ... again!**

Fellow Commonwealth Nations like Canada and South Africa have removed such blatantly discriminatory laws.

*"Denying penitentiary inmates the right to vote is more likely to send messages that undermine respect for the law and democracy than messages that enhance those values,"* Chief Justice McLachlin of the Canadian Supreme Court, *Sauve v Canada* (10/12/02).

The European Court of Human Rights recently ruled in favour of giving British prisoners the vote, *"Prisoners lose their liberty, not their place in the human race nor their position in the society."* *Hirst v the United Kingdom No 2* (6/10/05).

Australia is a signatory to the International Covenant on Civil and Political Rights. Article 25, in combination with Article 2, provides that every citizen shall have the right to vote at elections under universal suffrage without a distinction of any kind on the basis of race, sex or other status.

The right to vote is not a selective reward for those who the Government decides are morally decent. It is a fundamental citizenship right in a constitutional democracy.

Voting is a democratic duty not a privilege