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Human Rights: Enhancing Democracy

Submission to the Electoral Reform Green Paper

December 2009



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About the Human Rights Law Resource Centre

The Human Rights Law Resource Centre is a non-profit community legal centre that promotes and protects human rights and, in so doing, seeks to alleviate poverty and disadvantage, ensure equality and fair treatment, and enable full participation in society. The Centre also aims to build the capacity of the legal and community sectors to use human rights in their casework, advocacy and service delivery.

The Centre achieves these aims through human rights litigation, education, training, research, policy analysis and advocacy. The Centre undertakes these activities through partnerships which coordinate and leverage the capacity, expertise and networks of pro bono law firms and barristers, university law schools, community legal centres, and other community and human rights organisations.

The Centre works in four priority areas: first, the effective implementation and operation of state, territory and national human rights instruments, such as the *Victorian Charter of Human Rights and Responsibilities*; second, socio-economic rights, particularly the rights to health and adequate housing; third, equality rights, particularly the rights of people with disabilities, people with mental illness and Indigenous peoples; and, fourth, the rights of people in all forms of detention, including prisoners, involuntary patients, asylum seekers and persons deprived of liberty by operation of counter-terrorism laws and measures.

The Centre has been endorsed by the Australian Taxation Office as a public benefit institution attracting deductible gift recipient status.

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1. Introduction

1.1 Scope of Submission

1. In September 2009 the Australian Government released the Green Paper, which provides an opportunity for the community to consider and provide comment on a broad range of aspects of electoral law. The Green Paper was developed in consultation with the States and Territories, and is intended as an avenue for identifying opportunities for coordinated reform of electoral laws across jurisdictions.
2. The HRLRC considers that the Australian electoral system should be governed and guided by certain relevant human rights principles. Australia has ratified, and is bound by, various international human rights law treaties that seek to protect and promote, among other things, the right to vote, freedom of expression, assembly and association, the right to participate in public affairs, and the right to equality and non-discrimination in the enjoyment of those rights.
3. This submission sets out how the Australian Government should protect and promote those human rights through the electoral system. In particular, this submission considers:
 - key principles to govern the Australian electoral system from a human rights perspective (Section 2);
 - a human rights-based approach to defining the franchise, including discussion of specific issues regarding rights of persons under certain age to vote, prisoners, citizens living abroad, resident non-citizens and persons of 'unsound mind' (Section 3); and
 - practical steps to ensure that persons entitled to the right to vote are able to exercise that right (Section 4).
4. Annexure A contains a glossary of defined terms. A summary of the recommendations in this submission is set out in Section 1.2 below.

1.2 Recommendations

Recommendation 1

Australia's electoral system should reflect and implement Australia's international human rights obligations and the Constitutional requirement of representative government, in particular by protecting and promoting the right to vote, freedom of speech, the right to participate in public affairs and the right to equality and non-discrimination. This approach will both strengthen Australia's democratic institutions and culture and enhance our international and regional standing in regard to human rights.

Recommendation 2

Australia's electoral system should recognise that the enjoyment of the right to political participation is interdependent and interconnected with other human rights related to the right to political participation, such as freedom of expression, freedom of association and the enjoyment of the rights to education and non-discrimination.

Recommendation 3

In addition to the guiding principles identified in the Green Paper, Australia's electoral system should recognise the following principles:

- the importance of an educated and informed electorate;
- the importance of participation in the electoral system (including through removal of practical barriers to participation);
- robust and enforceable procedural rights by which individuals can address breaches of the right to political participation;
- equality and non-discrimination; and
- the protection and promotion of all human rights necessary for full participation in the electoral system.

Recommendation 4

As a starting point, all persons should have the right to vote in Australia. Classes of persons should only be removed from the franchise if the Government can provide cogent and compelling evidence that the limitation on their right is for a legitimate and pressing purpose, strictly necessary, proportionate and demonstrably justifiable.

Recommendation 5

The Australian Government should allow all prisoners in Australia the right to vote regardless of the length of the term of their sentence. The only exception that might be appropriate is one based on the nature of the crime, such as the disenfranchisement of a person who is found guilty of treason or treachery.

Recommendation 6

The exclusion of persons of 'unsound mind' from the franchise should be removed from the Electoral Act. Instead there should be a presumption of capacity whereby all persons who are of voting age should be enrolled to vote, supported to exercise their right to vote and also entitled to be excused from voting on election day on the grounds that they are experiencing physical or mental health impairments.

Recommendation 7

The Australian Government should actively engage the representative organisations for people with disabilities in any reform of the law, policies and practices related to their participation in political life.

Recommendation 8

The Australian Government should reduce the minimum voting age to 17. Voting for 17 year olds should be compulsory.

Recommendation 9

The Australian Government should allow all members of the Australian community the right to vote and participate in public affairs. The definition of Australian community should include all permanent resident non-citizens.

Recommendation 10

The Australian Government should reform enrolment processes for Australian citizens living abroad so as to make it easier for them to vote in Australian elections. Citizenship should be a necessary and sufficient basis for a person to claim the right to vote, without restrictions according to residence, time or intention.

Recommendation 11

The Australian Government should remove impediments to full participation of the franchise. In particular:

- residence requirements which disadvantage homeless people and youth should be removed (see Section 4.2(a));
- proof of identity requirements should be relaxed (see Section 100(b)); and
- the close of roll date should be extended and enrolment on election day permitted (see Section 4.2(c)).

Recommendation 12

The Government should consult with communities whose participation in elections is limited by educational barriers, and develop relevant and effective means by which to educate those communities about participation in elections and substantive election issues.

Recommendation 13

The Government should adopt specific measures to educate and cater for non-English speaking migrants as a positive measure to overcome language barriers to participation, including:

- partnership programs with migrant resource centres;
- enrolment education as part of migrant settlement activities and enrolment opportunities at citizenship ceremonies;
- providing ballot papers in a range of languages; and
- translation of electoral materials into other languages.

Recommendation 14

The Australian Government should:

- (a) provide polling places in areas 'easily accessible and highly visible' to those experiencing homelessness including mobile polling booths at locations frequented by people in this group such as:
 - (i) Centrelink centres;
 - (ii) emergency accommodation and SAAP service centres; and
 - (iii) homelessness service providers;
- (b) provide mobile polling booths catering to clans in various geographical locations as reasonably required by the local indigenous community given local cultural sensitivities; and
- (c) provide training for electoral site personnel which addresses the needs of the homeless and the employment of consumer consultants to assist at polling booths on Election Day.

Recommendation 15

The Government should:

- (d) ensure that election materials are provided in accessible formats;
- (e) ensure electoral commissions and polling stations are physically accessible, and also close to public transport;
- (f) provide reasonable adjustments to ensure people with a disability can access the voting and electoral procedures, such as personal care attendants or interpreters; and
- (g) develop voting processes and procedures to assist people with a disability to be involved, such as the use of telephone or other electronic voting methods.

2. Key Principles of an Australian Electoral System

2.1 Overview

5. The HRLRC submits that the guiding principles of Australia's electoral system should reflect a human rights-based approach to electoral law, policy and practice. As a party to all the major international human rights treaties, Australia is obliged to protect and promote all human rights, including those rights relevant to the electoral system.¹ Human rights, in turn, are a useful source of principles to govern that system.

¹ Australia is a party to the following instruments that protect rights relevant to electoral systems - the *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force on 23 March 1976; *International Convention of the Elimination of All Forms of Racial Discrimination*: Opened for signature on 21 December 1965, 660 UNTS 195 (entered into force on 4 January 1969); *Convention on the Elimination of All Forms of Discrimination*

6. As a starting point, the HRLRC endorses the key principles of Australia's electoral system set out in Section 2.10 of the Green Paper, particularly those relating to representation, responsiveness and universality.
7. However, further guiding principles can be derived from both international human rights law and Australian human rights law. The following sections set out the relevant rights law and principles from which guiding principles can be drawn.

2.2 The right to political participation

8. The human right most relevant to any consideration of an electoral system is the right to political participation. Australia is bound to protect and promote the right to political participation through its ratification of a number of international instruments, including the ICCPR.² Article 25 of the ICCPR guarantees the right to political participation in the following terms:

Every citizen shall have the right and opportunity, [without discrimination] and without unreasonable restrictions:

 - (a) to take part in the conduct of public affairs, directly or through freely chosen representatives;
 - (b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
 - (c) to have access, on general terms of equality, to public service in his country.
9. As a party to the ICCPR, Australia undertakes to respect, protect and fulfil the rights contained in the Covenant across the federation, to make sure that every person in Australia can enjoy those rights without discrimination, and to take all necessary legislative, administrative and financial steps to give practical effect to those rights.³

(a) The nature of the right to political participation
10. The UNHRC has stated that the right to participate in public life 'lies at the core of democratic government...'. The right to political participation is fundamental to the enjoyment of other rights and its protection is a matter of international concern.⁴
11. The fundamental right to political participation has also been recognised in a range of regional and domestic human rights instruments.⁵ In interpreting those protections, courts

against Women: Opened for signature on 1 March 1983, 1249 UNTS 13 (entered into force on 3 September 1981; and the *Convention on the Rights of Persons with Disabilities*: Opened for signature on 30 March 2007, 993 UNTS 3 (entered into force on 3 May 2008).

² The right is also protected in Article 21 of the UDHR, U.N. Doc A/810 (1948); Article 5 of the International Convention of the Elimination of All Forms of Racial Discrimination: Opened for signature on 21 December 1965, 660 UNTS 195 (entered into force on 4 January 1969); Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women: Opened for signature on 1 March 1983, 1249 UNTS 13 (entered into force on 3 September 1981; and Article 29 of the Convention on the Rights of Persons with Disabilities: Opened for signature on 30 March 2007, 993 UNTS 3 (entered into force on 3 May 2008).

³ ICCPR, Article 2.

⁴ *Wesberry v Sanders* 376 US 1, 17 (1964) (Black J, for the majority).

⁵ It is protected in the European Convention on Human Rights (Article 3 to the First Protocol) is incorporated into the domestic law of the United Kingdom by the *Human Rights Act 1998* (UK). It is also protected in the Canada in the

have held that political participation rights are critical to democracy⁶ and to the very legitimacy of government.⁷ For example, the Supreme Court of Canada has held that:⁸

[t]he right of all citizens to vote regardless of virtue or mental ability or other distinguishing features, underpins the legitimacy of Canadian Democracy and Parliament's claim to power. A government that restricts the franchise to a select portion of citizens is a government that weakens its ability to function as the legitimate representative of the excluded citizens, jeopardizes its claim to representative democracy, and erodes the basis of its right to convict and punish law-breakers

12. Separately, a US Court stated that⁹

No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.

13. Courts have also held that the right to political participation is an affirmation of individual worth. For example, South Africa's Constitutional Court has held that '[t]he vote of each and every citizen is a badge of dignity and personhood.'¹⁰

(b) **Australia's obligations under the right to political participation**

14. In addition to the obligations referred to in paragraph 9 above, the UNHRC has stated that the right to political participation requires State parties to take effective measures to ensure that all persons entitled to vote are able to exercise that right.

15. First, this requires education of the electorate. Individuals should be educated and informed about the electoral process and political issues to allow them to meaningfully exercise their right to political participation.¹¹ Information about elections should be accessible to all, including for example, people who are illiterate, people who do not speak English and people who are blind or vision-impaired.¹²

16. Secondly, it requires the removal of any practical barriers to voting. The Australian Government should actively facilitate political participation by identifying and addressing practical obstacles that may prevent people from voting. For example, residence requirements for voter registration '...must be reasonable, and should not be imposed in such a way as to exclude the homeless from the right to vote'.¹³

(c) **Any limitations must be reasonable and proportionate**

Constitution Act 1982, being Schedule B to the *Canada Act 1982* (UK) and the South African Constitution, *Constitution for the Republic of South Africa* (1996), ch 2.

⁶ The Grand Chamber of the European Court of Human Rights has found that those rights '... are crucial to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law' (*Case of Hirst v The United Kingdom (No 2)* [2005] Appl. No 74025/01, para 58.)

⁷ *Sauvé v Canada (Chief Electrical Officer)* [2002] 3 SCR 519, para 34 (McLachlin CJ, for the majority.)

⁸ *Sauvé v Canada (Chief Electrical Officer)* [2002] 3 SCR 519, para 34 (McLachlin CJ, for the majority.)

⁹ *Wesberry v Sanders* 376 US 1, 17 (1964) (Black J, for the majority).

¹⁰ *August Another v Electrical Commission and Others* (1999) 3 SALR 1, para 17.

¹¹ The UNHRC recognises that '[o]ther education and registration campaigns are necessary to ensure the effective exercise of [political participation] rights by an informed community': General Comment 25, para 11.

¹² General Comment 25, para 12.

¹³ General Comment 25, para 11.

17. Although the right to political participation is fundamental, it is not absolute. The text of Article 25 itself allows for the imposition of reasonable restrictions. The UNHRC has stated that limitations must be objective, reasonable and established by law:

Any conditions which apply to the exercise of the rights protected by Article 25 should be based on objective and reasonable criteria...The exercise of these rights by citizens may not be suspended or excluded except on grounds which are established by law and which are objective and reasonable.¹⁴

18. The UNHRC further stated that a minimum age requirement established by law may be reasonable, whereas restrictions based on physical disability, literacy, education, property ownership or party membership would not be.¹⁵
19. The UNHRC has also indicated that, where a country restricts rights guaranteed under the ICCPR, it must show that those restrictions are necessary and that the means used are proportionate to a legitimate aim.¹⁶

2.3 The right to equality and non-discrimination

20. The right to equality and non-discrimination is fundamental to the enjoyment of all rights in the ICCPR, including the right to political participation. Article 2(1) of the ICCPR requires Australia to ensure that all individuals in its territory or subject to its control enjoy the rights without discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
21. The principle of equality is further elaborated in Article 26 of the ICCPR. Article 26 guarantees that all people are equal before the law, and are entitled to the equal protection of the law without discrimination of any kind. Article 26 is a free-standing non-discrimination clause that prohibits discrimination – in fact or in law – in all aspects of public life.
22. The UNHRC has explained that ‘State parties are responsible for ensuring the equal enjoyment of rights without any discrimination. Articles 2 and 3 mandate States parties to take all steps necessary ... to put an end to discriminatory actions both in the public and the private sector which impair the equal enjoyment of rights’.¹⁷ Positive intervention is equally as important in cases where certain groups within the population are disadvantaged with respect to the enjoyment of a particular opportunity or benefit due to an existing inequality.¹⁸

¹⁴ General Comment 25, para 4.

¹⁵ General Comment 25, para 10.

¹⁶ The UNHRC has observed that ‘Where such restrictions are made, States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights. In no case may the restrictions be applied or invoked in a manner that would impair the essence of a Covenant right’: General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, para 6.

¹⁷ HRC, *General Comment No. 28: Equality of Rights between Men and Women*, UN Doc CCPR/C/21/Rev.1/Add.10 (2000), at para. 3.

¹⁸ See generally Human Rights Committee, *General Comment No 3: Implementation at the National Level*, UN Doc HRI/GEN/1/Rev.6 at 125 (1981).

23. The UNHRC considers that States must take effective measures to ensure that all persons entitled to vote are able to exercise that right¹⁹ and that positive measures should be taken to overcome specific difficulties, such as illiteracy, language barriers, poverty, or impediments to freedom of movement which prevent persons entitled to vote from exercising their rights effectively.²⁰

2.4 Political participation is dependent on enjoyment of other rights

24. Under international human rights law, all human rights are universal, indivisible and interdependent and interrelated.²¹ Human rights provide a comprehensive scheme of core minimum standards that conceptually should not – and practically cannot – exist in isolation. Interdependence and indivisibility means that priority should not be provided to certain rights or sets of rights.²² It also means that the full enjoyment of certain rights is dependent on the full enjoyment of other rights.
25. Therefore, the enjoyment of the right to political participation is dependent on the enjoyment of other human rights.
26. For example, the right to vote may be illusory in a society in which the ability to communicate openly about political matters is constrained. Further, people who are not educated about the political system, in breach of their right to education, may have their ability to participate in political life limited as a consequence.
27. The following sections discuss the rights that are particularly relevant to the enjoyment of the right political participation.

(a) Freedom of expression

28. Freedom of expression is protected in international law, and Australia is thereby bound to respect, protect and fulfil that right.²³ Communication about public issues is a necessary condition for the effective exercise of right to vote, as the discussion leads to an informed and educated electorate.²⁴ The UNHRC has stated that without the capacity to express and exchange ideas, the right to take part in government is of little value.²⁵
29. The High Court of Australia has also recognised the fundamental importance of political communication to the system of representative government in Australia. It held that the

¹⁹ General Comment 25, para 11.

²⁰ General Comment 25, para 12.

²¹ The Vienna Declaration and Programme of Action, as adopted by the World Conference on Human Rights on 25 June 1993, [A/CONF.157/23], [5]. See also Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Maastricht, January 22-26, 1997, [4].

²² The Vienna Declaration and Programme of Action, as adopted by the World Conference on Human Rights on 25 June 1993, [A/CONF.157/23], [5].

²³ 'Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice': Article 19(2) of the ICCPR.

²⁴ 'Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected': General Comment 25, para 12. See also Article 4(3) of the IPU Declaration.

²⁵ 'In order to ensure the full enjoyment of rights protected by Article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion': General Comment 25, para 25.

Constitution establishes a system of 'representative government' and that this necessarily implies a freedom of political communication.²⁶ This implied freedom is limited to political matters, however, like Article 25 of the ICCPR, the implied freedom of political communication in the Australian Constitution is not absolute and may be limited by laws that are appropriate and adapted to achieving a legitimate purpose.²⁷

(b) **Freedom of assembly and association**

30. Freedom of peaceful assembly is guaranteed under Article 21 of the ICCPR, and Article 22 of the ICCPR protects freedom of association with others. These rights must be upheld to enable full political participation, for example, to enable people to join a political party, participate in peaceful protests and to meet to discuss public issues.

(c) **Economic, social and cultural rights**

31. The protection of key economic, social and cultural rights is necessary to facilitate the enjoyment of the right to vote and to take part in government. This is because an individual's formal right to political participation may be worthless if he or she is practically prevented from exercising that right. For example:
- electoral registration criteria that require an address to be provided by enrolled persons may prevent homeless people from enjoying the right to vote;²⁸ and
 - inadequate education may prevent people from being sufficiently informed to make a meaningful choice during an election.
32. The Office of the United Nations High Commissioner for Human Rights has stated that 'lack of political rights and freedoms is both a cause and a consequence of poverty'.²⁹
- 2.5 Further relevant standards drawn from the IPU Declaration**
33. The Green Paper cites the IPU Declaration as a useful source of international standards relating to electoral democracy.³⁰ In addition to the standards and principles highlighted on page 20 of the Green Paper, the IPU Declaration:
- requires states to '[i]nitiate or facilitate national programmes of civic education, to ensure that the population are familiar with election procedures and issues';³¹ and
 - affirms the following procedural rights:³²

²⁶ *Nationwide News Pty v Wills* (1992) 177 CLR 1, 70 (Deane and Toohey JJ); *Australian Capital Territory Pty v Commonwealth* (1992) 177 CLR 106, 136-140 (Mason CJ), 149-150 (Brennan J), 168 (Deane and Toohey JJ), 228 (McHugh J).

²⁷ *FN Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520, 562 (Full Court); *Levy v Victoria* (1997) 189 CLR 579, 594-595, 597 (Brennan CJ), 609 (Dawson J), 614-615 (Toohey and Gummow JJ), 618-619 (Gaudron J), 624 (McHugh J). Cf Kirby J 645-646.

²⁸ See UNHCR General Comment 25, para 11: 'If residence requirements apply to registration, they must be reasonable, and should not be imposed in such a way as to exclude the homeless from the right to vote.'

²⁹ Office of the United Nations High Commissioner for Human Rights, *Principles and Guidelines on a Human Rights Approach to Poverty Reduction Strategies* (2002) 212.

³⁰ Unanimously adopted by the Inter-Parliamentary Council at its 154th session (26 March 1994).

³¹ IPU Declaration, Article 4(1).

³² Procedural rights support the implementation of substantive human rights by providing for procedures for enforcing compliance or addressing breaches.

- a person who is denied the right to vote, or the right to be registered to vote, must be entitled to appeal that decision;³³
- there must be a right to appeal decisions to restrict or deny 'candidature, party or campaign rights';³⁴
- individuals and political parties are entitled to the protection of law and to remedies for breaches of political and electoral rights;³⁵ and
- states should ensure that human rights violations and complaints about the electoral process are handled promptly and effectively by a body that is independent and impartial.³⁶

2.6 Recognition of the right to political participation in Australian law

34. The Australian Constitution provides for a system of representative democracy. In particular, sections 7 and 24 of the Constitution require that senators and members of the House of Representatives be 'directly chosen by the people'.

35. In the recent High Court case of *Roach v Electoral Commissioner*,³⁷ Gleeson CJ affirmed that, to an extent, sections 7 and 24 of the Constitution guarantee the right to vote. He found that:

Because the franchise is critical to representative government, and lies at the centre of our concept of participation in the life of the community, and of citizenship, disenfranchisement of any group of adult citizens on a basis that does not constitute a substantial reason for exclusion from such participation would not be consistent with choice by the people.³⁸

36. In the same case, Gummow, Kirby and Crennan JJ held that '[v]oting in elections lies at the very heart of the system of government for which the Constitution provides'.³⁹

37. The Australian Capital Territory has passed the *Human Rights Act 2004* (ACT) (which came into force on 1 July 2004) and Victoria has passed the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (which came into force on 1 January 2007). The ACT Human Rights Act and the Victorian Charter both guarantee the right to take part in public life in terms that are very similar to Article 25 of the ICCPR.⁴⁰ Like the right to political participation in the ICCPR, the right under the ACT Human Rights Act and the Victorian Charter is not absolute, and may only be subject to reasonable limits that can be demonstrably justified in a free and democratic society.

³³ IPU Declaration, Article 2(4).

³⁴ IPU Declaration, Article 3(8).

³⁵ IPU Declaration, Article 3(6).

³⁶ IPU Declaration, Article 4(9).

³⁷ (2007) 233 CLR 162. The successful plaintiff in this case, Vickie Lee Roach, was represented by the HRLRC, together with Allens Arthur Robinson.

³⁸ *Roach* at 174.

³⁹ *Roach* at 198.

⁴⁰ ACT Human Rights Act, section 17; Victorian Charter, section 18.

2.7 Conclusion

38. In addition to the principles set out in section 2.10 of the Green Paper, the HRLRC considers that the following guiding principles should also be recognised in Australia's electoral system, reflecting a proactive, human rights-based approach:

- Educated and informed electorate: Individuals should be educated and informed about the electoral process and political issues to allow them to meaningfully exercise their right to political participation.⁴¹ Information about elections should be accessible to all, including for example, people who are illiterate, people who do not speak English and people who are blind, vision-impaired or have another disability.⁴²
- Removal of practical barriers: The Australian Government should actively facilitate political participation by identifying and addressing practical obstacles that may prevent people from voting. For example, residence requirements for voter registration '...must be reasonable, and should not be imposed in such a way as to exclude the homeless from the right to vote'.⁴³ Polling booths should be accessible for people who are elderly, people with disability, people in hospitals and prisoners.
- Robust procedural rights: There should be proper processes available by which individuals can enforce compliance with, and address breaches of, the right to political participation.⁴⁴ These measures should be effective, timely and accessible.
- Equality and non-discrimination: The right to political participation should be enjoyed 'without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'.⁴⁵
- Interconnection and interrelatedness of human rights: The Australian Government must act to respect, protect and fulfil all human rights in order to ensure the effective enjoyment of the right to political participation.

⁴¹ The UNHRC recognises that '[o]ther education and registration campaigns are necessary to ensure the effective exercise of [political participation] rights by an informed community': General Comment 25, para 11.

⁴² General Comment 25, para 12.

⁴³ General Comment 25, para 11.

⁴⁴ See IPU Declaration, Articles 2(4), 3(6), 3(8), and 4(9).

⁴⁵ Article 25 of ICCPR. As stated by the UNHRC this right does not mean that '... every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate': General Comment No.18: Non-discrimination, para 13.

Recommendation 1

Australia's electoral system should reflect and implement Australia's international human rights obligations and the Constitutional requirement of representative government, in particular by protecting and promoting the right to vote, freedom of speech, the right to participate in public affairs and the right to equality and non-discrimination. This approach will both strengthen Australia's democratic institutions and culture and enhance our international and regional standing in regard to human rights.

Recommendation 2

Australia's electoral system should recognise that the enjoyment of the right to political participation is interdependent and interconnected with other human rights related to the right to political participation, such as freedom of expression, freedom of association and the enjoyment of the rights to education and non-discrimination.

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In addition to the guiding principles identified in the Green Paper, Australia's electoral system should recognise the following principles:

- the importance of an educated and informed electorate;
- the importance of participation in the electoral system (including through removal of practical barriers to participation);
- robust and enforceable procedural rights by which individuals can address breaches of the right to political participation;
- equality and non-discrimination; and
- the protection and promotion of all human rights necessary for full participation in the electoral system.

3. Defining and Limiting the Franchise

3.1 The right to political participation must be subject only to reasonable limitations

39. Whilst the Australian Government has power to determine the composition of the franchise (the Parliament can make laws regarding the 'qualification of electors'),⁴⁶ that power is limited by the requirement in the Constitution that members of Parliament are 'directly chosen by the people'.⁴⁷ Gleeson CJ states in *Roach* that '...in deciding who may and who may not vote in its elections, a community takes a crucial step in defining its identity'.⁴⁸
40. Under international human rights law, any restriction on the right to vote must be necessary and proportionate. The starting point for an analysis of excluding people from the franchise

⁴⁶ Australian Constitution, sections 8 and 30.

⁴⁷ Australian Constitution, sections 7 and 24.

⁴⁸ *Roach* at 177.

should therefore be that people fully enjoy the right to participate and to vote, subject only to necessary and proportionate limitations.

(a) **The proportionality test**

41. The proportionality test for limitation of ICCPR rights, including the right to political participation, can be stated in general terms (although strictly speaking under the ICCPR each of these rights is limited by words contained within the articulation of the right itself).⁴⁹
42. Put broadly, general provisions setting out a proportionality analysis require that any limitation of rights be reasonable and demonstrably justified in a free and democratic society.⁵⁰ This is a two stage process.
43. First, the purpose of the limitation on the right must be of sufficient importance to a free and democratic society to justify limiting the right.⁵¹ It must fulfil a compelling, specific and legitimate aim.⁵² This might also be described as requiring a 'pressing and substantial' objective,⁵³ reflecting a need to balance the interests of society with those of individuals and groups. An example of a purpose for a limitation that might accord with a free and democratic society is the removal of the right to vote of children who are unable to understand the nature and significance of the voting system (see UNHRC's comments in paragraph 18 above).
44. Secondly, the means used by the State to limit rights must be proportionate to the purpose of the limitation. The most widely accepted test of proportionality is derived from the Canadian case *R v Oakes*.⁵⁴ In that case the Supreme Court of Canada set out the three components of a proportionality test:

There are three important components of a proportionality test. First, the measures adopted must be carefully designed to achieve the objective in question. They must not be arbitrary, unfair or based on irrational considerations. In short, they must be rationally connected to the objective. Second, the means, even if rationally connected to the objective in this first sense, should impair 'as little as possible' the right or freedom in question ... Third, there must be a proportionality between the effects of the measures which are responsible for limiting the Charter right or freedom, and the objective which has been identified as of 'sufficient importance'.⁵⁵
45. The onus of establishing that a limitation is reasonable and demonstrably justified rests on the party seeking to rely on the limitation, which will usually be the government.⁵⁶ The evidence should be 'cogent and persuasive and make clear the consequences of imposing

⁴⁹ As Bell J stated in *Kracke v Mental Health Review Board* [2009] VCAT 646, [105], the internal limitations provisions in ICCPR rights 'call up a proportionality analysis in various ways'.

⁵⁰ Words to this effect are used in section 7 of the *Victorian Charter of Human Rights and Responsibilities Act*, section 1 of the *Canadian Charter of Rights and Freedoms*, section 5 of the *New Zealand Bill of Rights Act* and section 36 of the *South African Constitution*.

⁵¹ *R v Oakes* [1986] 1 SCR 103, [69] – [71] (Dickson CJ).

⁵² *Re an application under the Major Crime (Investigative Powers) Act 2004* [2009] VSC 381, [150] (Warren CJ).

⁵³ The Supreme Court in Canada (Attorney-General) v *Hislop* [2007] 1 SCR 429, [44]. See also *R v Oakes* [1986] 1 SCR 103, cited with approval by Bell J in *Kracke v Mental Health Review Board* [2009] VCAT 646, [145].

⁵⁴ [1986] 1 SCR 103

⁵⁵ [1986] 1 SCR 103, 43.

or not imposing the limit.⁵⁷ The standard of proof is generally the balance of probabilities, although it may change in given circumstances, requiring 'a degree of probability which is commensurate with the occasion'.⁵⁸ That is, the more serious the infringement of rights, the more important the objective of the limitation of those rights must be to a free and democratic society, and the higher the standard of proof will be for the State.⁵⁹

46. The following sections provide the HRLRC's position on whether the current exclusions of different classes of persons from the Commonwealth franchise are in accordance with the right to political participation in international law.

Recommendation 4

As a starting point, all persons should have the right to vote in Australia. Classes of persons should only be removed from the franchise if the Government can provide cogent and compelling evidence that the limitation on their right is for a legitimate and pressing purpose, strictly necessary, proportionate and demonstrably justifiable.

3.2 Prisoners

47. Disenfranchisement of prisoners based on the length of their sentence is not a legitimate restriction on the right to political participation.
48. The UNHRC has stated that prisoner disenfranchisement, regardless of the length of the term, is inconsistent with the ICCPR.⁶⁰

The Committee is of the view that general deprivation of the right [to] vote for persons who have received a felony conviction, and in particular those who are no longer deprived of liberty, do not meet the requirements of Articles 25 [or] 26 of the Covenant, nor serves the rehabilitation goals of Article 10(3).

49. The UNHRC has also stated that all persons deprived of their liberty should enjoy all the rights set forth in the ICCPR, subject only to those restrictions that are unavoidable as a result of being held in a closed environment, such as the restriction of liberty.⁶¹
50. Whilst we acknowledge that the High Court has found that the disenfranchisement of persons serving sentences of three years or more is not unconstitutional, the HRLRC submits that a human rights-based approach would produce a different outcome.
51. The disenfranchisement of persons based on the length of their sentence is arbitrary and disproportionate for the following reasons.

⁵⁶ Ibid, 66. *Kracke v Mental Health Review Board* [2009] VCAT 646, 108

⁵⁷ *Re an application under the Major Crime (Investigative Powers) Act 2004* [2009] VSC 381, [147] (Warren CJ).

⁵⁸ See Warren CJ in *Re an application under the Major Crime (Investigative Powers) Act 2004* [2009] VSC 381 (7 September 2009), [147] citing *Bater v Bater* [1950] 2 All ER 458, 459 (Lord Denning).

⁵⁹ See Warren CJ in *Re an application under the Major Crime (Investigative Powers) Act 2004* [2009] VSC 381 (7 September 2009), [150].

⁶⁰ Human Rights Committee, International Covenant on Civil and Political Rights, Consideration Of Reports Submitted By States Parties Under Article 40 of the Covenant (CCPR/C/USA/CO/3/Rev.1), 18 December 2006 at para 35.

⁶¹ General Comment 21, para 3.

(a) **Sentence based disenfranchisement is arbitrary**

52. Disenfranchisement based on the length of a term of imprisonment is arbitrary for the following reasons:

- (a) The electoral cycle impacts on the number of elections missed by a prisoner. For example, a prisoner serving a sentence of 5 years will be disenfranchised for either one or two elections, depending on the timing of his or her incarceration. Whereas a prisoner serving a sentence of 3 years may still be able to vote in consecutive elections.
- (b) Different sentencing and parole criteria apply in different states, meaning there are inconsistencies in the application of the disenfranchisement depending on the state in which a person is incarcerated.
- (c) Factors not relevant to the moral culpability of the crime are taken into account at sentencing (such as age, family circumstances and infirmity), so a length of sentence does not necessarily reflect the culpability of the crime.

(b) **Disenfranchisement affects rehabilitation**

53. Denying prisoners the right to vote also negatively impacts upon their rehabilitation, an effect that goes beyond any punitive aim of the disenfranchisement. The loss of civil rights, such as voting, 'reinforces a self-fulfilling cycle of disempowerment and civic irresponsibility'.⁶² The benefits of prisoner enfranchisement are well documented and it is widely recognised that promotion of civil engagement and responsibility in offenders reduces the likelihood of prisoners re-offending upon release.⁶³

54. The Standard *Minimum Rules for the Treatment of Prisoners* requires that prisoners retain their civil rights.⁶⁴ A similar position is reflected as a 'guiding principle' in the *Standard Guidelines for Corrections in Australia*.⁶⁵

(c) **Indirect Discrimination**

55. The disenfranchisement of prisoners is also disproportionate insofar as it indirectly discriminates against Aboriginal people. In Australia, an Indigenous person is 13 times more likely to be in prison than a non-Indigenous person and, although constituting only 2.5% of the Australian population, indigenous people represent 24% of the total prisoner

⁶² Orr, G (1998) 'Ballot-less and Behind Bars: the Denial of the Franchise to Prisoners', 26 Federal Law Review 55 at 69.

⁶³ See 'Prisoner re-entry to the community', AICrime Reduction Matters No 33, 5 May 2005, Australian Institute of Criminology and Hill, L (2000) 'Precarious Persons: Disenfranchising Australian Prisoners' 35:3 Australian Journal of Social Sciences, 203 at 208 and Ewald, A C (2002) 'Civil Death: the Ideological Paradox of Criminal Disenfranchisement Law in the United States', Wisconsin Law Review, page 1045 at footnote 282.

⁶⁴ Ridley-Smith, M and Redman, R (2002) 'Prisoners and the Right to Vote' in Brown, D and Wilkie, M Prisoners as Citizens – Human Rights in Australian Prisons, 297. The Standard Minimum Rules were adopted by the UN Congress on the Prevention of Crime and the Treatment of Offenders in 1955, endorsed by the UNESCO (1957) and recognised by the General Assembly in its Resolution on the Basic Principles for the Treatment of Prisoners (1990). See Article 61.

⁶⁵ Pages 6 and 12.

population.⁶⁶ Given the over-representation of Indigenous Australians in the prison system, any restriction on prisoner franchise, regardless of term, is indirectly discriminatory.⁶⁷

56. Article 25 of the ICCPR provides that every citizen shall have the right to vote 'without any distinctions mentioned in Article 2'. Those distinctions include 'race, colour, sex, language, religion...'.⁶⁸ Article 5 of the *International Convention on the Elimination of All Forms of Racial Discrimination* (scheduled to the *Racial Discrimination Act 1975* (Cth)) requires states to guarantee, without distinction as to race.⁶⁹

Political rights, in particular the rights to participate in elections--to vote and to stand for election--on the basis of universal and equal suffrage...

(d) **A reasonable limitation: treason and treachery**

57. HRLRC considers that a permissible limitation to the enfranchisement of prisoners could be made for persons convicted of treason or treachery. The rationale for this would be that the loss of democratic rights is a necessary and justifiable consequence of an offence which of its very nature seeks to undermine the democratic process. There is international support for this position:

- In *Hirst v The United Kingdom (No. 2)*, the Grand Chamber of the European Court of Human Rights found that disenfranchisement of persons convicted of crimes against democracy was consistent with the Protocol.⁷⁰
- In Germany a prisoner can be denied the right to vote if he or she has committed an offence which will or is likely to undermine the foundation of the State or constitutes tampering with elections (eg treason, sabotage, bribery of voters and election fraud).⁷¹

58. The HRLRC considers that treason and treachery are more rationally connected to exclusion from community membership and appropriate to the maintenance of representative government than an exclusion based on length of sentence.

⁶⁶ Australian Bureau of Statistics (2008) *Prisoners in Australia*, pages 6 and 12.

⁶⁷ Ridley-Smith, M and Redman, R (2002) 'Prisoners and the Right to Vote' in Brown, D and Wilkie, M *Prisoners as Citizens – Human Rights in Australian Prisons*, 295.

⁶⁸ See also General Comment 25, paragraph 3.

⁶⁹ For a discussion on the application of section 9 of the Racial Discrimination Act to disenfranchisement laws see Orr, G (1998) 'Ballot-less and Behind Bars: the Denial of the Franchise to Prisoners', 26 *Federal Law Review* 55 at 75 – 79.

⁷⁰ The Grand Chamber stated 'That standard of tolerance did not prevent a democratic society from taking steps to protect itself against activities intended to destroy the rights or freedoms set out in the Convention. Article 3 of Protocol No. 1, which enshrined the individual's capacity to influence the composition of the law-making power, did not therefore exclude that restrictions on electoral rights be imposed on an individual who had, for example, seriously abused a public position or whose conduct threatened to undermine the rule of law or democratic foundations.'

⁷¹ Demleitner, N V (2000) 'Continuing Payment on One's Debt to Society: the German Model of Felon Disenfranchisement as an Alternative', 84 *Minnesota Law Review*, 753 at 761.

Recommendation 5

The Australian Government should allow all prisoners in Australia the right to vote regardless of the length of the term of their sentence. The only exception that might be appropriate is one based on the nature of the crime, such as the disenfranchisement of a person who is found guilty of treason or treachery.

3.3 Persons of unsound mind

59. The disenfranchisement of persons of 'unsound mind' in the Electoral Act is extremely problematic. It is not only a violation of the rights to equality and non-discrimination and to participation in political life in the ICCPR (as set out in parts 2.2 to 2.3 above), but also contravenes fundamental principles in the Convention on the Rights of Persons with Disabilities (*CRPD*).⁷²
60. Australia has ratified the CRPD and is therefore bound by its terms. The CRPD heralds a significant change from viewing persons with disability as being objects of charity, medical treatment and public concern to viewing them as rights-bearers, capable of being active and beneficial members of the community and with the capacity to make decisions.
61. The Electoral Act should be amended to reflect the paradigm shift in thinking about persons with disabilities, in particular insofar as the CRPD provides that:
- (a) Australia must take all appropriate measures, including through law, to abolish laws and policies that discriminate against people with disability (Article 4(1)(b)).
 - (b) Persons with disabilities enjoy the right to participate in political and public life (Article 29).
 - (c) Persons with disability should be consulted and actively involved in all decision making that affects them (Article 4(3)).
 - (d) Supported decision making processes must replace substituted decision making. This is because the CRPD provides that persons with disabilities enjoy legal capacity on all aspects of life on an equal basis with others (Article 12(2)). Further, the state must take measures to ensure access by persons with disabilities to the support they require to exercise that capacity.
62. The HRLRC submits that the current exclusion of persons of unsound mind from voting is vague, discriminatory, does not reflect the true capacity of people to make decisions and should be removed from the Electoral Act. The following parts set out why the provision is problematic, and then proposes a human rights-based approach to reform.
- (a) **The reference to 'unsound mind' is vague, ambiguous and stigmatising**
63. The Electoral Act disenfranchises persons 'of unsound mind incapable of understanding the nature and significance of enrolment and voting'. There is no definition of 'unsound mind' provided in legislation or at common law. Disenfranchisement of persons of unsound

⁷² *Convention on the Rights of Persons with Disabilities*, U.N. Doc A/61/611 (2006), Article 29. This convention was ratified by Australia on 17 July 2008.

mind could cover persons with a range of impairments, including intellectual disability, dementia or people experiencing mental health issues.

64. This raises the risk that the class is overly-broad and overly-vague,⁷³ and may encompass individuals who do not have an impairment that affects their ability to cast a meaningful vote.⁷⁴ For example, a person with a mental health issue may only experience periodic symptoms, and may be easily able to understand the nature and significance of voting on election day.

65. The use of the term 'unsound mind' is not only uncertain, but its connotations are pejorative and risk stigmatising people with disability.

(b) Disenfranchisement does not recognise legal capacity

66. As stated above, the CRPD creates a presumption of legal capacity. The disenfranchisement of persons with intellectual disability or dementia or people experiencing mental health issues may historically have been justified on the ground that such persons were considered to be incapable of making decisions about their own needs and, therefore, are not fully adults.⁷⁵ This rationale is no longer appropriate, as reflected in the presumption of legal capacity in the CRPD.

67. However, we acknowledge that there may be some groups of people (such as people with advanced dementia) who may not have capacity to understand the nature and consequence of voting. For those people, the presumption of capacity will be overturned, and their right to vote may be limited, provided that all necessary steps are first taken to support their participation and the full exercise of their legal capacity.

68. The process for enrolment and removal from the roll is extremely important in terms of protecting and promoting the rights of persons with disability (see section (c) and (d) below).

(c) Persons with disabilities may be unfairly removed from the roll

69. The Electoral Act establishes a process whereby an individual can be removed from the electoral roll upon the objection of another individual on the ground that the individual is of 'unsound mind'. Electoral commissions often rely upon medical or ad hoc evidence that is typically adduced by relatives or carers.⁷⁶ While the objection must be accompanied by a medical certificate, whether an individual falls into this exclusion is typically determined by someone who does not regularly engage with the individual and may not understand the complex nature of capacity.⁷⁷ This process could fail to recognise that, with support (as required by Article 12 of the CRPD), a person could continue to exercise capacity.

⁷³ Democratic Audit of Australia, submission no. 45 to Joint Select Committee on Electoral Matters, Inquiry into the 2007 Federal Election (2009), page 5.

⁷⁴ Joint Select Committee on Electoral Reform, First Report (1983), page 105. The First Report of the Joint Select Committee on Electoral Reform recommended that the imprecise reference to 'unsound mind' should be reviewed 'with a view to excluding on the ground only those persons who are incapable of making any meaningful vote'.

⁷⁵ H Catt, Democracy of the people? :A comparative analysis of who is routinely not allowed to vote, Conference Paper, Australasian Political Studies Association Conference, 2000, available at apsa2000.anu.edu.au/confpapers/catt.rtf, page 3.

⁷⁶ Ibid.

⁷⁷ People with Disability Australia, submission no. 68 to Joint Select Committee on Electoral Matters, Inquiry into the 2007 Federal Election (2009), page 2.

(d) **Persons with disabilities may never be put on the roll in the first place**

70. The disenfranchisement provisions may operate in practice to mean that persons with disability, particularly intellectual disability, are never enrolled to vote at all, without any assessment being made as to their capacity to understand the nature and consequence of voting.
71. As stated above, the CRPD requires Australia to provide support to persons with disabilities to allow them to exercise legal capacity. The broad disenfranchisement of persons of 'unsound mind' ignores the possibility that persons with disability may suffer from varying degrees of mental impairment and will generally be capable of making decisions if provided with adequate support.
72. For example, a person with an intellectual disability may be capable of understanding the distinction between a choice of parties or leaders if the choice is explained in terms that are meaningful for the person.
73. The method of disenfranchisement currently used places the power of determining the capability of a person into the hands of other people. This promotes outdated notions of substituted decision making, instead of supporting people with disability to exercise capacity and to make decisions.

(e) **A human rights-based approach**

74. The Electoral Act should be amended to reflect the fundamental principles of non-discrimination, presumption of legal capacity and supported decision making in the CRPD. This would require:
 - (a) the removal of the exclusion of persons of unsound mind from the franchise;
 - (b) a requirement that all persons be enrolled, regardless of any mental impairment or disability;
 - (c) a requirement that all persons with disability are supported to participate in elections, and if necessary to make a decision about their own capacity to participate; and
 - (d) the creation of a mechanism to excuse persons from voting on election day (including permanent excuses) if they do not have legal capacity and are genuinely unable, even with support, to understand the nature and consequence of voting.
75. Further, the amendments to the legislation and to the policies and practices of the Electoral Commission should be done in consultation, and with the active participation, of persons with disabilities. This is necessary for Australia to fulfil its obligations under Article 4(3) of the CRPD.
76. This approach would empower persons with disability to contribute to the political process to the extent possible, and with the assistance required to do so. American and Canadian jurisprudence demonstrates a focus on providing disabled persons with feasible options that enable them to continue to exercise their right to political participation.⁷⁸ People with

⁷⁸ M.J. Prince, *The Electoral Participation of Persons with Special Needs*, Working paper Series on Electoral Participation and Outreach Practices (2007); M Scharuben, 'Ensuring the Fundamental Right to Vote for Elderly Citizens in the United

mental impairments have had the right to vote, and have been exercising this right, in Canadian federal elections since 1993.⁷⁹

77. In Norway, an assessment of an individual's mental state is undertaken at the polling place, and where there is reason to suppose an individual is suffering from serious mental weakness or diminished mental faculties, their vote is placed aside and made subject to approval by the electoral committee after having reviewed the grounds on which the polling committee placed the vote aside.⁸⁰

Recommendation 6

The exclusion of persons of 'unsound mind' from the franchise should be removed from the Electoral Act. Instead there should be a presumption of capacity whereby all persons who are of voting age should be enrolled to vote, supported to exercise their right to vote and also entitled to be excused from voting on election day on the grounds that they are experiencing physical or mental health impairments.

Recommendation 7

The Australian Government should actively engage the representative organisations for people with disabilities in any reform of the law, policies and practices related to their participation in political life.

3.4 Right of persons under a certain age to vote

78. Currently, only persons aged 18 years old or over are entitled to vote. The UNHRC has stated that the imposition of a minimum voting age can be a lawful restriction on the right to vote, so long as the restriction is reasonable and proportionate. 17 year-olds in Australia have a stake in the governance of the Commonwealth and are sufficiently capable of understanding the significance of voting. For these reasons, and the reasons set out below, it is consistent with the right to political participation for the minimum voting age to be reduced to 17 years of age.

(a) **Enrolment and education**

79. Practical benefits arise from the enfranchisement of 17 year-olds. High school is a unique environment in which to provide civic education and facilitate enrolment, providing an ideal springboard into long-term political engagement. This would not only give a voice to a

States' 9 Thomas M. Cooley Journal of Practical and Clinical Law 307; F.T. Sherman, 'Get out the demented vote!' 59(10) Geriatrics 11 (2004).

⁷⁹ Bill C-114 (1993) (Can); Canada Elections Act (Can), sec 4; M.J. Prince, The Electoral Participation of Persons with Special Needs, Working paper Series on Electoral Participation and Outreach Practices (2007), page 14.

⁸⁰ Representation of the People Act 2002 (Norway), §9-5(5).

group of people that ought to be entitled to vote but also increase voter participation and interest across the electorate generally, thereby strengthening Australia's democracy.⁸¹

(b) **Capable of understanding the significance of enrolment and voting**

80. We have adopted the Victorian Electoral Commission's two-step test as a framework for the below discussion.⁸² It is clear that 17 year-olds have a substantial stake in policies affecting a broad range of areas, such as education, taxation, government support and industrial relations.⁸³ The HRLRC considers that 17 year-olds also have sufficient maturity, life experience, interest and knowledge to be entitled to vote.

- *Maturity* – Empirical studies suggest that youth today are more intelligent and physically mature than previous generations.⁸⁴ It is submitted that since 1973, when the voting age was reduced to 18, the trend of earlier maturity in youths has continued to the extent warranting a further reduction in voting age.
- *Life experience* – The experiences of 17 year-olds and those of the lower age groups of the electorate are markedly different from those of older people. Extending the franchise to 17 year-olds will increase the diversity of the electorate and enhance democracy.⁸⁵
- *Interest* – As a general observation, it is recognised that 17 year-olds display apathy towards voting. Extending the franchise to 17 year-olds in combination with a program of political education in high school will reverse this tendency.⁸⁶

One great advantage of this is that the lessons are directly and immediately relevant to people's lives, rather than being about something that a person will not be a part for two or three years. The combination of early voting and civics classes would therefore not only reduce the problems of having young people vote, but also reduce voter ignorance in general, and represents an interesting opportunity.

- *Knowledge/ignorance* – This aspect is closely connected to 'Interest', above, and any perceived or actual ignorance of 17 year-olds can be addressed by the introduction of civic education programs.

(c) **Why not 16 year-olds?**

81. An extension to 17 year-olds, but not 16 year-olds is appropriate given:

⁸¹ See further National Youth Rights Association (2009) Top Ten Reason to Lower the Voting Age (available at youthrights.org/vote10.php) and Victorian Electoral Commission (2004) Lowering the Voting Age – A discussion from the Victorian Electoral Commission's perspective <http://www.vec.vic.gov.au/files/LoweringtheVotingAge.pdf>.

⁸² Victorian Electoral Commission (2004) Lowering the Voting Age – A discussion from the Victorian Electoral Commission's perspective <http://www.vec.vic.gov.au/files/LoweringtheVotingAge.pdf>

⁸³ For example, see National Youth Rights Association (2009) Why the Voting Age Should be Lowered to 16, www.youthrights.org/votetalkingpoints.php

⁸⁴ See, for example, Hageman W (2000) 'Healthy End to Early Puberty' Chicago Tribune 17/12/2000, Origan v Mitchell (1970) 400 U.S 112 at 280 and National Youth Rights Association (2009) Why the Voting Age Should be Lowered to 16, www.youthrights.org/votetalkingpoints.php

⁸⁵ Victorian Electoral Commission (2004) *Lowering the Voting Age – A discussion from the Victorian Electoral Commission's perspective* <http://www.vec.vic.gov.au/files/LoweringtheVotingAge.pdf> at 5.

⁸⁶ *Ibid* at 6. It is acknowledged that some 17 year-olds will have already left the school system and will not receive the benefit of the proposed civic education. The more direct stake in government policy that these 17 year-olds have by virtue of their full-time employment may go some way in limiting this disadvantage.

- 17 year-olds (but not 16-year-olds) are entitled to join the army. This is a significant acknowledgement of civic maturity and gives 17 year-olds a greater stake in government policy;⁸⁷
- 17 year-olds (but not 16-year-olds) are generally entering or finishing their final year of high school in most jurisdictions. The final year of high school is associated with leadership and responsibility, being attributes closely connected to participation in the democratic process; and
- 17 year-olds (but not 16-year-olds) are currently entitled to be enrolled. Extending the franchise only to 17 year-olds will therefore reduce any confusion associated with a lowering of the voting age.

(d) **Why not voluntary voting?**

82. Extending the franchise on a voluntary basis is not recommended given that:

- it would create an unnecessary degree of complexity and confusion; and
- the arguments in support of compulsory voting for persons currently entitled to vote apply equally to 17 year-olds.

Recommendation 8

The Australian Government should reduce the minimum voting age to 17. Voting for 17 year olds should be compulsory.

3.5 Citizenship and the franchise

83. Human rights law provides the right of political participation to 'citizens'.⁸⁸ This is distinct from other human rights, which generally apply to all individuals, in accordance with the recognition 'of the inherent dignity and of the equal and inalienable rights of all members of the human family'.⁸⁹ However, human rights law provides minimum standards, and Australia is able to provide human rights protection above and beyond that minimum. In fact, once the human rights principles of equality and non-discrimination, together with other Australian social, cultural and economic factors, are taken into account, the HRLRC considers that the right of political participation should be extended to all persons who form part of the Australian 'political community'.

(a) **The Australian context**

⁸⁷ In respect of soldiers engaged in conflict the voting age has been lowered on numerous occasions. During World War I s 39(2) of the *Commonwealth Electoral Bill 1918* (Cth) enabled current and former members of the armed forces to vote at Commonwealth elections during the war and for three years after the end of hostilities if they were either residents or British subjects. No minimum age was specified (a person could be sent to war at 18 but otherwise could not vote until 21). The *Commonwealth Electoral (War-time) Bill 1943* reduced the voting age to 18 years of age for all service personnel. However, communism and issues of gender appear to have prompted the Opposition's move to successfully amend the Bill to lower the age of voting only for those who had seen or were on overseas service.

⁸⁸ The UNHRC observed in its General Comment 25, para 3 that 'In contrast with other rights and freedom recognized by the Covenant... Article 25 protects the rights of 'every citizen'. See also Office of the United Nations High Commissioner for Human Rights, *The Rights of Non-Citizens*, 8, UN Doc HR/PUB/06/11 (2006).

84. The Green Paper states citizenship is a valid basis for determining who is entitled to vote. It cites the High Court in *Roach* as authority for the proposition.⁹⁰ The relevant passage from the judgment reads:

An arbitrary exception would be inconsistent with choice by the people. There would need to be some rationale for the exception; the *definition of the excluded class or group* would need to have a rational connection with the identification of community membership or with the capacity to exercise free choice. Citizenship, itself, *could be a basis for discriminating between those who will not be permitted to vote.*⁹¹

85. In fact, in *Roach*, Gleeson CJ stated that citizens are formally recognised as members, but did not rule out the possibility of other members of the community that were not formally recognised:

Citizens, being people who have been recognised as formal members of the community, would, if deprived temporarily of the right to vote, be excluded from the right to participate in the political life of the community in a most basic way.⁹²

86. This statement does not state that citizenship is the *sole* valid way of delimiting the franchise – rather, it suggests that the notion of citizenship *may be one* way determining who should be entitled to vote. Gleeson CJ's statement leaves open the possibility that there are other methods open to the legislature for deciding on the scope of the franchise.

87. In particular, in noting that citizens may achieve 'formal' recognition of belonging to a community through citizenship, this passage implies that there may be other ways of establishing community membership. Arguably non-citizens who have a sufficient connection with the Australian community should also be considered members of the political community, such that their exclusion from the franchise should only be where necessary and proportionate.

(b) **Permanent resident non-citizens**

88. The HRLRC considers that all members of the Australian community should be able to vote, including permanent resident non-citizens. Non-citizens who reside permanently in Australia are often deeply interested in and affected by the actions of Australian Federal and State and Territory Governments.

89. A number of factors support the right of non-citizen permanent residents being entitled to vote in Australian elections. In particular:

- non-citizen permanent residents contribute to the 'flourishing' of Australia,⁹³
- non-citizen permanent residents are affected by the actions of Australian governments (at the Federal and State and Territory levels) and are 'stakeholders'

⁸⁹ UDHR U.N. Doc A/810 (1948), Preamble.

⁹⁰ Green Paper, para 4.35.

⁹¹ *Roach* at 174-175 (emphasis added).

⁹² *Roach* at 175.

⁹³ Rainer Bauböck, 'Stakeholder Citizenship And Transnational Political Participation: A Normative Evaluation of External Voting', (2006-2007) 75 Fordham Law Review 2393, 2413.

in the Australian community and therefore should be entitled to participate in collective decision making;⁹⁴

- expanding the franchise to permanent resident non-citizens promotes their integration into Australian structures of society by fostering their sense of belonging; and
- the Australian electoral system should reflect Australia's cosmopolitan international engagement and also Australia's historical status as 'an immigrant nation in a globalising world'.⁹⁵

90. Though it is by no means standard internationally, there are some contemporary and historical precedents for allowing certain resident non-citizens to vote in States' local, regional and national elections.⁹⁶ Examples include:

- New Zealand: Permanent residents are permitted to vote in national elections;
- Chile, Malawi and Uruguay: The national franchise is extended to non-citizens who have been residing in the country for a certain period of time (five, seven and fifteen years, respectively);
- Israel: Immigrants who arrive under the Law of Return may vote in local elections before they have acquired Israel nationality;
- Republic of Ireland: The franchise is extended to resident British citizens in Dáil (House of Representatives), local and European Parliament levels; and
- Commonwealth countries (including United Kingdom and certain countries in the West Indies): Resident citizens of another Commonwealth country may vote in general elections.

Recommendation 9

The Australian Government should allow all members of the Australian community the right to vote and participate in public affairs. The definition of Australian community should include all permanent resident non-citizens.

(c) Citizens living overseas

91. Australian citizens living overseas have a presumptive right to vote subject to certain restrictions (eg, they must have an intention to resume living in Australia within six years).

⁹⁴ Rainer Bauböck, 'Expansive Citizenship – Voting Beyond Territory and Membership', (2005) 38 Political Science and Politics 683, 686.

⁹⁵ Graeme Orr, 'Australian Electoral Systems – How Well Do They Serve Political Equality?' (Paper prepared for the Democratic Audit of Australia, 2004), 8.

⁹⁶ André Blais, Louis Massicotte and Antoine Yoshinaka, 'Deciding who has the right to vote: a comparative analysis of election laws' (2001) 20 Electoral Studies 41, 44-50, 52-54; Rainer Bauböck, 'Expansive Citizenship – Voting Beyond Territory and Membership', (2005) 38 Political Science and Politics 683, 684-685; Jamin B. Raskin, 'Legal Aliens, Local Citizens: The Historical, Constitutional and Theoretical Meanings of Alien Suffrage' (1992-1993) 141 University of Pennsylvania Law Review 1391, 1397-1417; Virginia Haroer-Ho, 'Noncitizen Voting Rights: The History, the Law and

The restrictions are usually justified on the basis that Australian expatriates do not have a sufficient link to the Australian community.⁹⁷ The HRLRC recognises that some restrictions may be appropriate. However, the right balance between citizens' rights on the one hand and electoral legitimacy on the other must be struck.⁹⁸

92. The enrolment eligibility and voting procedures for Australian citizens living overseas prevent many of these people from voting, particularly due to time limitations, the requirement to have an intention to return to Australia and the automatic removal of overseas citizens from the electoral roll in certain circumstances.⁹⁹ The low rate of voter participation by Australian expatriates is likely to reflect the harshness of these provisions.¹⁰⁰
93. The HRLRC supports relaxing some of the impediments to voting overseas and advocates improving the awareness and transparency of these processes. Some factors in support of this position include:
- The choice to enrol as an Eligible Overseas Elector and vote overseas is voluntary meaning that external voting is, in a sense, self-selecting. Only those voters with a genuine connection to and interest in Australian affairs are likely to choose to exercise the franchise, which in itself provides a legitimate reason for facilitating that participation.¹⁰¹
 - Australians living abroad who vote in Australian elections are more likely to engage in the civic and political life of their home country, improving the possibility that the experiences and resources of these citizens will be channelled into enriching the development of Australia as a nation.¹⁰²
 - Changing patterns of migration flows, particularly the development of a mobile young professional class, challenges the traditional basis for restricting voting rights on the basis of dislocation from the home country.¹⁰³

Current Prospects for Change' (2000) 18 Law and Inequality 271, 273-285; Elise Brozovich, 'Prospects for Democratic Change: Non-citizen Suffrage in America' (2001-2002) 23 Hamline Journal of Public Law and Policy 403, 406-411.

⁹⁷ In general terms the franchise has not been extended to Australian citizens residing overseas unless they have an intention to return to live in Australia within a specified time. Despite representations by Australian citizens and advocacy group representing citizens living permanently overseas, Parliament has historically considered Australian residence as an important precondition for enrolment and voting: Commonwealth Joint Standing Committee on Electoral Matters, Report on the Conduct of the 2007 Federal Election (2009), 41.

⁹⁸ Michael Fullilove and Chloë Flutter, 'Diaspora: The World Wide Web of Australians' (Lowy Institute Paper, 2004), 65.

⁹⁹ Commonwealth Legal and Constitutional References Committee, *They still call Australia home: Inquiry into Australian expatriates* (2005), 60-66; The Southern Cross Group, 'Submission to the Australian Senate's Legal and Constitutional References Committee: Inquiry into Australian Expatriates' (27 February 2004), 106-117; Gilbert + Tobin Centre of Public Law, 'Submission: Inquiry into Australian Expatriates' (19 February 2004); Statements to Commonwealth Legal and Constitutional References Committee, Parliament of Australia, Sydney, 27 July 2004, 46-53 (Professor George Williams).

¹⁰⁰ Green Paper, para 4.37.

¹⁰¹ See discussion in Rainer Bauböck, 'Stakeholder Citizenship And Transnational Political Participation: A Normative Evaluation of External Voting', (2006-2007) 75 Fordham Law Review 2393, 2408-2409.

¹⁰² Michael Fullilove and Chloë Flutter, 'Diaspora: The World Wide Web of Australians' (Lowy Institute Paper, 2004), 65; Rainer Bauböck, 'Stakeholder Citizenship And Transnational Political Participation: A Normative Evaluation of External Voting', 75 Fordham Law Review 2393 (2006-2007), 2400.

¹⁰³ Michael Fullilove and Chloë Flutter, 'Diaspora: The World Wide Web of Australians' (Lowy Institute Paper, 2004), Ch 2. See also IDEA Handbook, 65.

- Many Australians retain a strong sense of connection to Australia despite not being resident here. Improvements in technology and communications mean that many more Australians stay in touch with affairs at home whilst travelling or residing abroad.¹⁰⁴
 - The Australian Government may have an impact on Australian citizens abroad (for example, due to bilateral treaty arrangements for mutual recognition schemes or recent reforms to taxation legislation).¹⁰⁵
94. According to the IDEA Handbook, as of 2007, 115 countries had mechanisms for allowing voting by diaspora communities.¹⁰⁶ These include:
- Italy: Since 2000, Italian expatriates have been divided into four regions, which are entitled to elect members to six seats in the Senate and twelve seats in the Chamber of Deputies;
 - United Kingdom: Citizens may retain their entitlement to vote for up to twenty years after their departure from the United Kingdom;
 - United States: Citizenship is a necessary and sufficient basis for a person to claim the right to vote, without restrictions according to residence, time or intention;¹⁰⁷
 - New Zealand: Generally, overseas citizens are eligible to vote provided they have returned to New Zealand for any period of time within the last three years.

Recommendation 10

The Australian Government should reform enrolment processes for Australian citizens living abroad so as to make it easier for them to vote in Australian elections. Citizenship should be a necessary and sufficient basis for a person to claim the right to vote, without restrictions according to residence, time or intention.

4. Exercising the Right to Vote

4.1 Overview

95. As stated above, the right to political participation and the right to equality both require States to take effective measures to ensure that all persons entitled to vote are able to

¹⁰⁴ Commonwealth Legal and Constitutional References Committee, *They still call Australia home: Inquiry into Australian expatriates* (2005), 60; Statements to Commonwealth Legal and Constitutional References Committee, Parliament of Australia, Sydney, 27 July 2004, 48 (Professor George Williams).

¹⁰⁵ See Australian Government Taxation Office, 'ATO Tax Practitioner Forum draft minutes - 7 August 2009' (2009) <<http://www.ato.gov.au/taxprofessionals/content.asp?doc=/content/00215097.htm&page=19>> at 10 November 2009.

¹⁰⁶ IDEA Handbook, 65. See generally Chapter 1 and Annex 1. See also the discussion on 'Overseas Examples' in Commonwealth Legal and Constitutional References Committee, *They still call Australia home: Inquiry into Australian expatriates* (2005), 62-65.

¹⁰⁷ See Gilbert + Tobin Centre of Public Law, 'Submission: Inquiry into Australian Expatriates' (19 February 2004); Frances R. Hill, 'Putting Voters First: An Essay on the Jurisprudence of Citizen Sovereignty in Federal Election Law' (2005-2006) 60 *University of Miami Law Review* 156.

exercise that right. Further, particular barriers to full participation may only affect some segments of the population. Accordingly, some measures may need to be adopted which specifically target these segments.

96. In Australia, there is under-enrolment, under-participation and increased rates of informal voting among certain segments of the population, principally:
- youth (approximately 1 in 5 Australians aged 18-25 were not enrolled to vote);¹⁰⁸
 - Indigenous Australians;¹⁰⁹
 - migrant citizens;¹¹⁰ and
 - persons experiencing homelessness.¹¹¹
97. The following discussion considers measures to remove impediments to full participation in three distinct ways:
- reforming enrolment processes and rules;
 - electoral education; and
 - voting services and polling booths for vulnerable and minority segments of the population.

4.2 Enrolment Processes and rules

98. The Government should ensure that enrolment processes do not create obstacles and impediments to full participation. The UNHRC comments that where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed.¹¹²

(a) Residence requirements should not disadvantage homeless people

99. Homeless electors are particularly vulnerable to disenfranchisement from enrolment processes and rules acting as a barrier to the exercise of the right to vote. One main barrier is residence requirements for enrolment.¹¹³ Young people can also be disenfranchised by residence rules due to the frequent changes of addresses often experienced by young people which can lead to them being removed from the roll due to the AEC's 'objection process'¹¹⁴ as well as the complications of re-enrolment following every change of address.

¹⁰⁸Green Paper 9.28 (as at 31 December 2008).

¹⁰⁹ Joint Standing Committee on Electoral Matters, Report on the conduct of the 2007 federal election and matters related thereto, <http://www.aph.gov.au/house/committee/em/elect07/report2/Chapter%206.pdf> June 2009. p145-147.

¹¹⁰ Green Paper 9.44.

¹¹¹ Green Paper 9.48.

¹¹² General Comment 25, para 11.

¹¹³ AEC Research: Electorally Engaging the Homeless, Research Report Number 6, February 2005 http://www.aec.gov.au/pdf/research/papers/paper6/research_paper6.pdf

¹¹⁴ section 114 *Commonwealth Electoral Act 1918* (Cth).

100. If residence requirements apply to registration, they must be reasonable and should not be imposed in such a way as to exclude homeless persons from the right to vote.¹¹⁵ While the itinerant elector provisions under the Electoral Act provide some relief from this requirement, there are some important shortcomings in these provisions:

- (a) If an itinerant elector does not vote at an election, that person's name is removed from the electoral roll.¹¹⁶ This barrier to enrolment should be removed.
- (b) Persons are not eligible for itinerant elector enrolment if they have resided for one month or more in a subdivision of an electorate.¹¹⁷ This does not acknowledge the realities of homelessness where it is common for people experiencing homelessness to reside in temporary accommodation for six months or more.¹¹⁸ Amendments should be made to extend the period for eligibility of residing in a 'real place of living' for at least six months.¹¹⁹

(b) **Proof of Identity and Residence Requirements**

101. HRLRC considers that the proof of identity and residence requirements should be relaxed as they can act as a practical barrier to participation to vulnerable members of society (ie, those least able to comply with the current proof of identity obligations are seniors, people with poor English proficiency, Indigenous Australians, people experiencing homelessness and young voters).¹²⁰

102. Current proof of identity and residence requirements were introduced in accordance with the recommendations of a Joint Standing Committee on Elections Inquiry into the Conduct of the 2004 Election. Prior to those changes, it was adequate for an applicant to lodge an approved form signed by that person and witnessed by an eligible elector.

103. There is no evidence that the proof of identity or residence requirements in place prior to the 2005 changes resulted in widespread or systematic manipulation of the Electoral Roll or that the integrity, veracity or completeness of the Roll was compromised.

104. The current proof of identity and residence requirements should be repealed and the previous provisions re-enacted in which no documentary proof of identity or residence is required to enrol.

(c) **Close of roll**

105. The closing of the roll at 8 p.m. on the day of the writ of election (subject to some exceptions) has a disproportionate effect on homeless people, young people, Indigenous

¹¹⁵ General Comment 25, para 11.

¹¹⁶ section 96(9) *Commonwealth Electoral Act 1918* (Cth).

¹¹⁷ section 96(8) *Commonwealth Electoral Act 1918* (Cth).

¹¹⁸ PILCH Homeless Persons' Legal Clinic, the Human Rights Law Resource Centre and the Victorian Association for the Care and Resettlement of Offenders, *Voting as a human right: enfranchising people experience homelessness and imprisonment*, submission to the Parliament of Victoria Electoral Matters Committee into Voter Participation and Informal Voting, July 2008 http://www.pilch.org.au/Assets/Files/Voting_as_a_Human_Right_Submission_July_2008.pdf

¹¹⁹ PILCH Homeless Persons' Legal Clinic, the Human Rights Law Resource Centre and the Victorian Association for the Care and Resettlement of Offenders, *Voting as a human right: enfranchising people experience homelessness and imprisonment*, submission to the Parliament of Victoria Electoral Matters Committee into Voter Participation and Informal Voting, July 2008 http://www.pilch.org.au/Assets/Files/Voting_as_a_Human_Right_Submission_July_2008.pdf p15

¹²⁰ Green Paper 7.70.

people and electors in remote and regional Australia. There is also no evidence that fraudulent activity has been reduced by closing the roll at this early stage.¹²¹

106. The close of roll can prevent homeless people from enrolling as they do not have access to the same amount of mass media as non-homeless¹²² so as to be aware that a writ of election has been issued and to be able to enrol.
107. HRLRC supports a later close of the electoral roll, or even permitting enrolment on election day as a means of minimising barriers to participation for young and homeless people.

4.3 Education

108. International human rights law, including the ICCPR and IPU declaration, recognises the importance of education in improving voter participation.¹²³ Education can be particularly important to improving participation among the specific groups identified above.

(a) Homeless

109. The strategies to be adopted for people experiencing homelessness should include partnerships with service providers and community groups for education campaigns and assistance. This could include having brochures and itinerant elector enrolment forms at premises, assisting in filling out forms on a drop in basis and enrolment information sessions.¹²⁴

(b) Youth

110. Strategies for young people could include the use of specific media targeted to young people, in addition to civics and citizenship education in schools. The recent JJJ and AEC partnership with 'Rock Enrol' is an example of using youth specific media as an effective education campaign.¹²⁵

(c) Indigenous Peoples

111. The HRLRC supports education programs tailored specifically to Indigenous Australians to increase voter participation. In particular, the recent Budget announcement to increase funding for an Indigenous Electoral Participation Program is a positive step.¹²⁶
112. In designing the program, Australia could benefit from overseas experience and research, which looks at the underlying drivers of low Indigenous voter turn out. Elections Canada

¹²¹ Green Paper 7.84.

¹²² section 96(4) Commonwealth Electoral Act 1918; Homelessness Australia, Submission to the Inquiry into the 2007 Federal Election, p3. accessed <http://www.homelessnessaustralia.org.au/UserFiles/File/Homelessness%20Australia%20submission%20to%20JSCM.pdf>

¹²³ General Comment 25: Para 11; IPU Declaration, Article 4(1); Election Principles And Existing OSCE Commitments For Democratic Elections, 2004, http://www.osce.org/documents/odihr/2004/07/3315_en.pdf

¹²⁴ Victorian Electoral Commission, Being homeless does not make you vote-less <http://www.vec.vic.gov.au/nofixedaddress.html> (undated); PILCH Homeless Persons' Legal Clinic, the Human Rights Law Resource Centre and the Victorian Association for the Care and Resettlement of Offenders, Voting as a human right: enfranchising people experience homelessness and imprisonment, submission to the Parliament of Victoria Electoral Matters Committee into Voter Participation and Informal Voting, July 2008 http://www.pilch.org.au/Assets/Files/Voting_as_a_Human_Right_Submission_July_2008.pdf p19.

¹²⁵ <http://www.rockenrol.com.au/>

¹²⁶ Senator John Faulkner, '\$13.0 Million to Help Improve Indigenous Electoral Participation' Media Release 12 May 2009 http://www.smos.gov.au/media/2009/mr_172009.html

recently undertook an extensive review of studies and literature on Aboriginal voter turnout, and examined outreach and education programs in Canada and other international experiences.¹²⁷ The review emphasised the importance of research to 'investigate electoral orientations, attitudes and motivations' and to 'address the extent to which contextual and culturally specific factors affect participation rates in Aboriginal communities.'¹²⁸ The Electoral Commission of New Zealand recently commissioned research for its Maori Electoral Engagement Research Project along similar lines.¹²⁹

(d) **Language Barriers and Increasing participation in non-english speaking migrants**

113. General Comment 25 states that positive measures should be taken to overcome specific difficulties, such as illiteracy and language barriers, which prevent persons entitled to vote from exercising their rights effectively. This includes the provision of information and materials about voting in minority languages.¹³⁰

4.4 Location and accessibility of polling facilities

114. While the current range of polling facilities is convenient for many Australians, they are not always easily accessible nor appropriate for certain groups, including homeless or Indigenous electors or, in some cases, persons with a disability. In particular, the following issues with the current regime have been identified as adversely affecting the ability and willingness to vote of persons within these groups:

- a lack of access to or appropriate location of polling stations;
- perceived risks associated with being identified at polling booths by perpetrators of domestic violence (the issue is compounded in rural or remote areas where electors have little choice about voting locations);
- a lack of training of electoral site managers and volunteers to address the specific needs of people experiencing homelessness; and
- cultural sensitivities preventing members of Indigenous clan groups attending polling locations in other clan's traditional lands.

115. Article 9 of the CRPD requires states to make participation in public life accessible to persons with disability. This involves both physical access (ie to buildings) and also access to information. In order to ensure accessibility to participation in political life, the Government should:

- (a) ensure that election materials are provided in accessible formats;

¹²⁷ Elections Canada, The Electoral Participation of Aboriginal People, http://www.elections.ca/loi/res/paper/aboriginal/aboriginal_e.pdf 2007.

¹²⁸ Elections Canada, The Electoral Participation of Aboriginal People, http://www.elections.ca/loi/res/paper/aboriginal/aboriginal_e.pdf 2007 p41.

¹²⁹ New Zealand Electoral Commission, Request for Proposals, Māori Electoral Engagement Research Project http://www.elections.org.nz/files/rfp_maori_research.pdf; <http://www.elections.org.nz/maori/study/maori-participation-conf.html>

¹³⁰ General Comment 25:, para 12.

- (b) ensure electoral commissions and polling stations are physically accessible, and also close to public transport;
- (c) provide reasonable adjustments to ensure people with a disability can access the voting and electoral procedures, such as personal care attendants or interpreters; and
- (d) develop voting processes and procedures to assist people with a disability to be involved, such as the use of telephone or other electronic voting methods.

Recommendation 11

The Australian Government should remove impediments to full participation of the franchise. In particular:

- residence requirements which disadvantage homeless people and youth should be removed (see Section 4.2(a));
- proof of identity requirements should be relaxed (see Section 100(b)); and
- the close of roll date should be extended and enrolment on election day permitted (see Section 4.2(c)).

Recommendation 12

The Government should consult with communities whose participation in elections is limited by educational barriers, and develop relevant and effective means by which to educate those communities about participation in elections and substantive election issues.

Recommendation 13

The Government should adopt specific measures to educate and cater for non-English speaking migrants as a positive measure to overcome language barriers to participation, including:

- partnership programs with migrant resource centres;
- enrolment education as part of migrant settlement activities and enrolment opportunities at citizenship ceremonies;
- providing ballot papers in a range of languages; and
- translation of electoral materials into other languages.

Recommendation 14

The Australian Government should:

- (e) provide polling places in areas 'easily accessible and highly visible' to those experiencing homelessness including mobile polling booths at locations frequented by people in this group such as:
 - (i) Centrelink centres;
 - (ii) emergency accommodation and SAAP service centres; and
 - (iii) homelessness service providers;
- (f) provide mobile polling booths catering to clans in various geographical locations as reasonably required by the local indigenous community given local cultural sensitivities; and
- (g) provide training for electoral site personnel which addresses the needs of the homeless and the employment of consumer consultants to assist at polling booths on Election Day.

Recommendation 15

The Government should:

- (h) ensure that election materials are provided in accessible formats;
- (i) ensure electoral commissions and polling stations are physically accessible, and also close to public transport;
- (j) provide reasonable adjustments to ensure people with a disability can access the voting and electoral procedures, such as personal care attendants or interpreters; and
- (k) develop voting processes and procedures to assist people with a disability to be involved, such as the use of telephone or other electronic voting methods.

Schedule A – Defined Terms

ACT Human Rights Act – *Human Rights Act 2004* (ACT).

AEC– Australian Electoral Commission

Electoral Act means the Commonwealth Electoral Act 1918 (Cth).

General Comment 25 – General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Article 25), UN Doc CCPR/C/21/Rev.1/Add.7 (12 July 1996).

Green Paper – Electoral Reform Green Paper ‘Strengthening Australia’s Democracy’

ICCPR – International Covenant on Civil and Political Rights.

ICESCR – International Covenant on Economic Social and Cultural Rights.

IDEA Handbook – Voting from Abroad: The International IDEA Handbook

IPU Declaration – Declaration on Criteria for Free and Fair Elections adopted by the Inter-Parliamentary Council.

UDHR – Universal Declaration of Human Rights.

UNHRC – United Nations Human Rights Committee.

Victorian Charter – *Charter of Human Rights and Responsibilities Act 2006* (Vic).