



***Human Rights and Equal  
Opportunity Commission***  
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**SUBMISSION OF THE HUMAN RIGHTS AND  
EQUAL OPPORTUNITY COMMISSION (HREOC)**

**to the**

**JOINT STANDING COMMITTEE ON ELECTORAL  
MATTERS**

**regarding**

***THE INQUIRY INTO THE 2007 FEDERAL  
ELECTION***

***15 May 2008***

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## Introduction

1. The Human Rights and Equal Opportunity Commission (HREOC) welcomes the opportunity to make a submission to the Joint Standing Committee on Electoral Matters on the 2007 Federal Election (the Inquiry).
2. HREOC is established by the *Human Rights and Equal Opportunity Commission Act 1986* (Cth) (HREOC Act). It is Australia's national human rights institution.

## Summary of Submission

3. The right to participate in the political process, including the right to vote, is a fundamental human right which should be enjoyed by all people without discrimination. It is central to the legitimacy and functioning of our democratic society.
4. HREOC believes that certain aspects of operation of the 2007 federal election raise issues relevant to the right to participate in the political process without discrimination. This submission will address the following matters relating to the 2007 election and electoral laws generally:
  - early closure of the electoral rolls
  - trialling of electronically assisted voting for people with vision impairment
  - aspects of electoral laws that may discourage homeless and itinerant persons from exercising their right to vote
  - disenfranchisement of prisoners sentenced to more than 3 years imprisonment.

## Recommendations

5. HREOC makes the following recommendations:
  - (1) The 2006 amendments which shortened the close of rolls period be repealed and the period between the date of the writ and the close of rolls be extended to seven days to allow enrolment activity during this time.
  - (2) Electronically assisted voting, trialled at the 2007 Federal Election, should be made permanently available and should be provided in as many locations as possible and at least in every electorate; and restrictions on eligibility applied during the trial should be removed.

- (3) The government should review the procedures for enrolment of homeless and itinerant voters to ensure that enrolment procedures are available to and accessible by all.
- (4) All restrictions on voting by prisoners sentenced to more than three years imprisonment should be removed to allow all prisoners full access to voting rights. Disenfranchisement should only be imposed by a court during the sentencing process, where the nature and circumstances of the offence indicate that the person is not fit to participate in the political process.

## The human right to political participation

6. The right to participate in the political process and the right to vote are protected by the *International Covenant on Civil and Political Rights* (ICCPR), the *International Covenant on the Elimination of all forms of Racial Discrimination* (ICERD) and the *Universal Declaration on Human Rights* (UDHR).
7. As a party to the ICCPR and ICERD, Australia has an obligation to take all appropriate measures to ensure the protection and promotion of the rights in those Conventions.
8. Article 25 of the ICCPR states that:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 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.
9. General Comment 25 on interpretation of article 25 of the ICCPR says that States are required to adopt such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights.<sup>1</sup>
10. The General Comment explains that any restrictions on the rights in article 25 of the ICCPR 'should be based on objective and reasonable criteria'.<sup>2</sup>

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<sup>1</sup> General Comment 25, para 1, available at <http://www.unhchr.ch/tbs/doc.nsf/0/d0b7f023e8d6d9898025651e004bc0eb?OpenDocument> [accessed 28 April 2008].

11. The General Comment specifically addresses the possibility of excluding convicted criminals from the right to vote. It suggests that any exclusion must be ‘objective’, ‘reasonable’ and ‘proportionate’ to the offence and the sentence. Further, ‘[p]ersons who are deprived of liberty but who have not been convicted should not be excluded from exercising the right to vote’.<sup>3</sup>

12. Article 2 of the ICCPR provides that States must ensure that the rights in this Covenant are enjoyed without distinction on the basis of ‘race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’.

13. Article 5(c) of ICERD states that:

... States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: ...

(c) Political rights, in particular the right to participate in elections, to vote and to stand for election on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service.

14. Finally, article 21 of the UDHR provides that:

- (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
- (2) Everyone has the right of equal access to public service in his country.
- (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

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<sup>2</sup> General Comment 25, paragraphs 4, 10.

<sup>3</sup> General Comment 25, paragraph 14.

## Early Closure of the Electoral Rolls

15. Amendments to the *Commonwealth Electoral Act 1918* (Cth), under the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* (Cth), changed the deadlines for enrolling for the first time, re-enrolling and registering changes to enrolment details.
16. These amendments were in force at the time of the 2007 federal election.
17. Under current laws, the following enrolment activities must be completed by 8pm on the same day as an election writ is issued:
  - (a) most new enrolments
  - (b) re-enrolments.
18. The following enrolment activities must be completed by 8pm three days after the election writ has been issued:
  - (a) new enrolments for those persons who turn 18 or become Australian citizens between the date the election writ is issued and the election day
  - (b) updating address or name details.
19. Prior to the amendments, the deadline for enrolling for the first time or re-enrolling was seven days after the date of the writ.

***Early closure of the rolls may lead to the disenfranchisement of many Australians, particularly those who are marginalised***

20. Statistics from the 2004 federal election show that a significant proportion of enrolment activity occurred during the seven day period between the date of the writ and the close of the rolls.
21. Statistics in the Report of the Inquiry into the Conduct of the 2004 Federal Election Report show that 16.27% of total new enrolments between the 2001 and 2004 federal elections occurred during the seven day close of rolls period.<sup>4</sup>

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<sup>4</sup> The Parliament of the Commonwealth of Australia, Joint Standing Committee on Electoral Matters, *Report of the Inquiry into the Conduct of the 2004 Federal Election*, 2005, Canberra, para 2.93.

22. The shortening of the close of rolls period is likely to disproportionately impact on young people and new Australian citizens who enrol to vote for the first time. Statistics from the 2004 federal election show that 87.5% of total new enrolments during the close of rolls period were by people between the ages of 17 and 24.<sup>5</sup>
23. The changes may also unreasonably disadvantage sectors of the population for whom enrolment is difficult. This includes people living in rural and remote areas, homeless persons, Indigenous people and people with a mental illness or an intellectual disability.
24. People living in remote and rural areas of Australia may have difficulties enrolling due to limited access to facilities and services necessary for enrolment. In the 2004 Election Report, the Committee noted that people living in remote and rural areas may have problems accessing enrolment-related material.<sup>6</sup>
25. People experiencing homelessness or who are itinerant may have difficulties gathering documentation required for enrolment. They may also face the additional burden of having to frequently register changes of address.
26. People with a mental illness or an intellectual disability, who need assistance to access and complete the relevant materials, are also likely to be further disadvantaged by the changes to enrolment deadlines.
27. Indigenous people may be disproportionately impacted by the early enrolment deadlines for a number of reasons, including that a greater proportion of the Indigenous population live in outer regional or remote areas of Australia and they experience higher rates of homelessness than non-Indigenous people.<sup>7</sup>

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<sup>5</sup> Australian Electoral Commission, *Close of Rolls New Enrolments by Division and Age Group*, available at [http://www.aec.gov.au/pdf/elections/2004/cor\\_stats/new\\_enrol\\_div\\_age.pdf](http://www.aec.gov.au/pdf/elections/2004/cor_stats/new_enrol_div_age.pdf) [accessed 28 April 2008].

<sup>6</sup> The Parliament of the Commonwealth of Australia, Joint Standing Committee on Electoral Matters, *Report of the Inquiry into the Conduct of the 2004 Federal Election*, 2005, Canberra, para 2.20.

<sup>7</sup> Australian Bureau of Statistics, 1301.0, Year Book Australia, Aboriginal and Torres Strait Islander population; 4704.0, The Health and Welfare of Aboriginal and Torres Strait Islander Peoples, 2008.

28. The Commission acknowledges that measures to bring forward closure of the rolls are motivated by concerns to maintain the integrity of the roll and ensure enrolment applications are adequately scrutinised. However, the Commission also notes that the Australian Electoral Commission (AEC), the body in charge of conducting this function, has previously recommended against such measures:

The AEC is on record repeatedly expressing its concern at suggestions to abolish or shorten the period between the issue of the writs and the close of the rolls. That period clearly serves a useful purpose for many electors, whether to permit them to enrol for the first time (tens of thousands of electors), or to correct their enrolment to their current address so that they can vote in the appropriate electoral contest (hundreds of thousands of electors). The AEC considers it would be a backward step to repeal the provision which guarantees electors this seven day period in which to correct their enrolment.<sup>8</sup>

29. The General Comment on article 25 of the ICCPR explains that states are required to take 'effective measures' to ensure that people are able to exercise their right to vote, which includes avoiding imposing obstacles on registration. Residence requirements must be reasonable and should not be imposed in such a way as to exclude the homeless from the right to vote.<sup>9</sup>

30. Given the existing difficulties that many sectors of the population experience in ensuring they are validly enrolled to vote, the shortening of the close of rolls period imposes an additional and unreasonable restriction on the ability of a large number of Australian's to exercise their right to vote.

31. In HREOC's view, the amendments to enrolment deadlines therefore appears to be inconsistent with article 25 of the ICCPR and article 5(c) of ICERD in that they unreasonably restrict the ability of people who are otherwise entitled to vote from exercising their right to participate in the political process.

#### **Recommendation 1**

The 2006 amendments which shortened the close of rolls period be repealed and the period between the date of the writ and the close of rolls be extended to seven days to allow enrolment activity during this time.

<sup>8</sup> Australian Electoral Committee, Supplementary Submission to the Inquiry into the 2001 Federal Election, para 7.3, available at <http://www.aph.gov.au/house/committee/em/elect01/subs/sub174.pdf> [accessed 28 April 2008].

<sup>9</sup> General Comment 25, para 11.

## Electronically Assisted Voting Trials

32. There are currently around 300 000 Australians who have a vision impairment that cannot be corrected by glasses, including 20 000 who are totally blind.

33. For many of these people, the 2007 Federal Election was the first at which they had the opportunity to cast a secret ballot in common with other Australians and in accordance with article 25 of the ICCPR.

34. HREOC welcomed the trial of electronically assisted voting and urges that permanent and more widespread provision be made for this facility.

35. We recognise that the number of participants in the trial was relatively low. In our view, this may have been due to the fact that the trial was subject to three limitations which restricted its impact in extending to Australians with disability the effective capacity to exercise their civic responsibilities and their human rights:

- The trials were available only at 29 locations, rather than at every polling station, or at least in every electorate.
- Participation was restricted to voters who have low vision or are blind, rather than being available to other Australians unable to exercise the right to a secret ballot using pencil and paper.
- Notwithstanding efforts by the AEC and other organisations, there appears to have been limited awareness of the availability of electronically assisted voting in this initial trial. This factor would be expected to improve in future and with more comprehensive incorporation of electronically assisted voting in the electoral process.

36. Print disability, clearly, is not restricted to people who are blind or have a vision impairment, but also affects:

- Australians who cannot complete a secret ballot using pencil and paper by reason of physical disability
- people who (by reason of intellectual or learning disabilities, or other language or literacy difficulties) cannot effectively use written instructions in completing a ballot paper, but could have effective access to a secret and independent ballot through being able to have their input read back to them electronically.

**Recommendation 2**

Electronically assisted voting, trialled at the 2007 Federal Election, should be made permanently available and should be provided in as many locations as possible and at least in every electorate; and restrictions on eligibility applied during the trial should be removed.

## Enrolment of Homeless and Itinerant Persons

37. Further to the impact of the early closure of the rolls, many homeless people in Australia face significant difficulties in exercising their right to vote.
38. Notwithstanding special procedures for enrolment of itinerant voters, it is estimated that up 90 per cent of people experiencing homelessness are not registered to vote.<sup>10</sup>
39. Many homeless people have difficulty meeting proof of identity requirements because they do not have and cannot afford to obtain the necessary documents.
40. The threat of monetary penalties for failure to vote or failure to register changes of address may also discourage homeless people from enrolling.<sup>11</sup>
41. These barriers to voting, along with the lack of voter education, compound the existing social isolation faced by homeless people.

### Recommendation 3

The government should review the procedures for enrolment of homeless and itinerant voters to ensure that enrolment procedures are available to and accessible by all.

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<sup>10</sup> P. Lynch and J. Cole, 'Homelessness and human rights: Regarding and responding to homelessness as a human rights violation' in *Melbourne Journal of International Law*, vol 4, 2003, p157.

<sup>11</sup> P. Lynch and J. Cole, 2003, pp157-158.

## Prisoner Disenfranchisement

42. The High Court held in *Roach v Electoral Commissioner* [2007] HCA 43 that amendments to the *Commonwealth Electoral Act 1988* (Cth) (the Electoral Act) by the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* (Cth), which excluded any person serving a sentence of imprisonment from voting at elections, were Constitutionally invalid.
43. The High Court also held that section 93(8)(b) of the Electoral Act, as it existed prior to the amendments, which excluded persons serving sentences of imprisonment of three years or more from voting, was not invalid. Consequently, this provision reflects the current state of law in Australia.
44. HREOC notes that Australian Bureau of Statistics (ABS) figures from 2004 show that approximately 10 000 prisoners, or half of the prison population, are serving sentences of three years or more.<sup>12</sup>

### ***Objective, reasonable and proportionate restrictions***

45. As noted earlier, General Comment 25 on the interpretation of article 25 of the ICCPR provides that any restrictions on the right to political participation and the right to vote 'should be based on objective and reasonable criteria'.<sup>13</sup>
46. Further, with particular reference to the suspension of voting rights of people convicted of an offence, General Comment 25 states that suspensions must be 'proportionate' to the offence and the sentence.<sup>14</sup>
47. HREOC believes that provisions of the Electoral Act which disenfranchise some prisoners may be contrary to article 25 of the ICCPR. In particular, the restrictions on the right to vote may not satisfy the requirement of proportionality.
48. As stated above, the High Court's decision in *Roach v Electoral Commissioner* confirmed the constitutional validity of the exclusion of prisoners serving sentences of three years or longer from voting. However, it is important to note that this decision concerned only the question of whether such a restriction on voting was valid under the Constitution. Since the Australian Constitution is predominantly

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<sup>12</sup> Parliament of Australia, Bills Digest, *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005*, 8 February 2006, p5.

<sup>13</sup> General Comment 25, para 4.

<sup>14</sup> General Comment 25, para 14.

silent on guarantees of universal human rights, the Court did not and could not decide on the question of whether this restriction complies with international human rights law.<sup>15</sup>

49. This submission therefore considers whether provisions of the Electoral Act which disenfranchise prisoners serving sentences of three years or more are consistent with the government's obligations under international law, an issue which was not considered in *Roach*.
50. Recent developments in international jurisprudence and academic writing suggest that the indiscriminate disenfranchisement of groups of prisoners risks contravening international law. The disenfranchisement of prisoners has been addressed in the following cases:
  - *Sauvé v Canada (Chief Electoral Officer)* [2002] 3 SCR 519
  - *Hirst v United Kingdom (No. 2)* (2006) 42 EHRR 41.
51. In the case of *Hirst v United Kingdom*, the European Court of Human Rights (ECHR) stressed that voting is a right not a privilege and that the right to vote is 'crucial to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law'.<sup>16</sup> Consequently, the Court said that any limitations on the right to vote must be in pursuit of a legitimate aim and should only imposed out of concern to maintain the integrity and effectiveness of an electoral procedure.
52. In *Sauvé v Canada*, the Canadian Supreme Court held that a law which disenfranchised prisoners serving a sentence of two years or more was invalid for breaching section 3 of the Canadian Charter of Rights and Freedoms, which guarantees the right to vote of every citizen. The Court found that the law was not a 'reasonable limit demonstrably justified in a free and democratic society'.<sup>17</sup>
53. The Canadian Supreme Court highlighted the fact that people in prison are still citizens. They are active members of society, with ongoing connections to family and community, pursuing life goals, such as education and employment. Like other citizens, prisoners are obliged to fulfil their civic responsibilities and are entitled to

<sup>15</sup> *Roach v Electoral Commissioner* [2007] HCA 43, see discussion at [101], [166], [181].

<sup>16</sup> *Hirst v The United Kingdom (No 2)* (2006) 42 EHRR 41. See Registrar, Press Release of Grand Chamber Judgment, *Hirst v United Kingdom (No.2)*, 6 October 2005, available at <http://www.echr.coe.int/Eng/Press/2005/Oct/GrandChamberJudgmentHirstvUK061005.htm> [accessed 28 April 2008].

<sup>17</sup> *Sauvé v Canada (Chief Electoral Officer)* [2002] 3 SCR 519, para 1. See *Canadian Charter of Rights and Freedoms*, available at <http://laws.justice.gc.ca/en/charter/index.html> [accessed 28 April 2008].

protection of their rights.<sup>18</sup>

54. Apart from curtailment of rights directly linked to physical imprisonment, such as the right to liberty, prisoners continue to enjoy the human rights including the right to freedom of religion and the right to non-discrimination. According to the ECHR:

[T]he fact that a convicted prisoner is deprived of his liberty does not mean that he loses the protection of other fundamental rights... even though the enjoyment of those rights must inevitably be tempered by the requirements of his situation.<sup>19</sup>

### Punishment

55. The Courts in the above cases, along with several commentators, have argued that disenfranchisement of prisoners based on the length of their sentence as a form of punishment is not a reasonable restriction on the right to vote.

56. Curtailing the right to vote of any prisoner amounts to a distinct and additional form of punishment, sometimes called 'civil death'. Therefore, it should only be imposed by a judge during the sentencing process upon consideration of the nature and circumstances of the offence.<sup>20</sup>

57. The indiscriminate disenfranchisement of groups of prisoners based on sentence length is an arbitrary measure because it fails to make any distinction between different prisoners. The exclusion from voting applies irrespective of the nature and seriousness of the offence committed or the circumstances of the offender.<sup>21</sup>

58. According to the ECHR:

[T]here is no clear, logical link between the loss of vote and the imposition of a prison sentence, where no bar applies to a person guilty of crimes which may be equally anti-social or 'uncitizen-like' but whose crime is not met by such a consequence.<sup>22</sup>

59. Some argue that the right to vote should only be restricted where the offender is considered unfit to participate in the political process, such as where a person has

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<sup>18</sup> *Sauvé v Canada (Chief Electoral Officer)* [2002] 3 SCR 519, para 47.

<sup>19</sup> *Hirst v The United Kingdom* (No 2) [2006] 42 EHRR 41.

<sup>20</sup> M.K. Dhami, 'Prisoner disenfranchisement policy: A threat to democracy?' in *Analyses of Social Issues and Public Policy*, vol 5, no 1, 2005, pp235-247; Public Interest Advocacy Centre, Submission to the Joint Standing Committee on Electoral Matters, Inquiry into the Conduct of the 2004 Federal Election, 2005.

<sup>21</sup> See *Sauvé v Canada (Chief Electoral Officer)* [2002] 3 SCR 519, para 51.

<sup>22</sup> *Hirst v The United Kingdom* (No 2) (2006) 42 EHRR 41.

been convicted of treason.<sup>23</sup> The current disenfranchisement of prisoners is arguably disproportionate because it applies without distinction to persons serving sentences for matters that may be unrelated to their fitness to participate in the political process.

## Deterrence

60. Restricting the right to vote for the purpose of deterring criminal behaviour is considered insufficient to satisfy the standard of reasonableness.<sup>24</sup> In *Sauvé v Canada*, the Court rejected the argument that disenfranchisement is an effective deterrent of criminal behaviour.<sup>25</sup>

## Education and rehabilitation

61. Further to the arguments that disenfranchisement of prisoners as a form of punishment or deterrence is not a reasonable restriction on the right to vote, the Canadian Supreme Court also rejected the argument that disenfranchisement promotes civic responsibility and respect for the law.

62. The Court argued that 'the educative message that the government purports to send by disenfranchising inmates is both anti-democratic and internally self-contradictory'.<sup>26</sup>

63. Additionally, excluding large numbers of prisoners from voting may undermine correctional policy aimed at rehabilitation and social integration.<sup>27</sup>

64. Some commentators have also argued that enfranchisement can assist with rehabilitation and social integration of prisoners.<sup>28</sup> This would be in accordance with Article 10(3) of ICCPR which provides:

The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.

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<sup>23</sup> J. Davidson, 'Inside outcasts: prisoners and the right to vote in Australia' in *Current Issues Brief*, no. 12, 2003-2004; Information and Research Services, Parliamentary Library, Department of Parliamentary Services, citing *Belczowski v The Queen* (1992) 90 DLR (4<sup>th</sup>) 330 at 342.

<sup>24</sup> J. Davidson, 'Inside outcasts: prisoners and the right to vote in Australia' in *Current Issues Brief*, no. 12, 2003-2004.

<sup>25</sup> *Sauvé v Canada (Chief Electoral Officer)* [2002] 3 SCR 519, para 45.

<sup>26</sup> *Sauvé v Canada (Chief Electoral Officer)* [2002] 3 SCR 519, para 32.

<sup>27</sup> *Sauvé v Canada (Chief Electoral Officer)* [2002] 3 SCR 519, para 59.

<sup>28</sup> M.K. Dhami, 'Prisoner disenfranchisement policy: A threat to democracy?' in *Analyses of Social Issues and Public Policy*, vol 5, no 1, 2005, pp235-247.

***Prisoner disenfranchisement disproportionately affects some groups***

65. HREOC is concerned that restrictions on the right of prisoners to vote may have a disproportionate impact on groups who are overrepresented in the prison population, including Indigenous people, people with a mental illness and people with an intellectual disability.
66. As noted earlier, Australia has an obligation under international law to ensure that all citizens enjoy the right to participate in the political process without distinction on the basis of 'race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'.<sup>29</sup>
67. In addition, article 5(c) of ICERD requires Australia to guarantee to everyone, without distinction as to race, political rights and the right to participate in elections on the basis of universal and equal suffrage. Article 2 of ICERD obliges states to amend, rescind or nullify any laws which have the effect of creating or perpetuating racial discrimination.
68. Statistics have long demonstrated the drastic overrepresentation of Indigenous people in Australian prisons. In 2007, 24% of the prison population in Australia was Indigenous. Yet Indigenous people make up only 2% of Australia's total population.<sup>30</sup> According to the ABS, the rate of incarceration of Indigenous persons is 17.5 times that of non-Indigenous persons.<sup>31</sup>
69. Many studies indicate a high incidence of mental illness in prisoner populations. A survey by the NSW Corrections Health Service revealed that 54% of women and 41% of men in NSW prisons reported that they had received some form of psychiatric treatment or assessment for an emotional or mental health problem at some point in their lives.<sup>32</sup>
70. According to 1996 figures from the NSW Law Reform Commission, people with an intellectual disability are detained at a rate 4 times greater than the general population.<sup>33</sup> The Commission estimated that while people with intellectual disability represent between 1% and 3% of the general population in NSW, they make up

<sup>29</sup> International Covenant on Civil and Political Rights, articles 2, 25.

<sup>30</sup> Australian Bureau of Statistics, 4517.0, Prisoners in Australia, 2007, Canberra, p20; 4705.0, Population Distribution, Aboriginal and Torres Strait Islander Australians, 2006, Canberra, p18.

<sup>31</sup> Australian Bureau of Statistics, 4517.0, Prisoners in Australia, 2007, Canberra, p18.

<sup>32</sup> T. Butler, L. Milner, *The 2001 New South Wales Inmate health Survey*, Corrections Health Service, 2003, Sydney.

<sup>33</sup> NSW Law Reform Commission, *Report 80: People with intellectual disability and the Criminal Justice System*, 1996, available at <http://www.lawlink.nsw.gov.au/lrc.nsf/pages/R80TOC> [accessed 28 April 2008].

between 9% and 13% of the total NSW prison population.<sup>34</sup>

71. Due to the overrepresentation of these groups in Australian prisons, the disenfranchisement of prisoners under the Electoral Act may have a discriminatory effect by excluding a disproportionate number of people from these groups from exercising their right to vote. This may further reinforce the existing disadvantage and marginalisation which many of these groups experience.
72. The Commission is therefore concerned that the laws which disenfranchise all prisoners serving sentences of greater than three years are in breach of article 25 of the ICCPR and articles 2 and 5(c) of ICERD.

#### **Recommendation 4**

All restrictions on voting by prisoners sentenced to more than three years imprisonment should be removed to allow all prisoners full access to voting rights. Disenfranchisement should only be imposed by a court during the sentencing process, where the nature and circumstances of the offence indicate that the person is not fit to participate in the political process

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<sup>34</sup> NSW Law Reform Commission, *Report 80: People with intellectual disability and the Criminal Justice System*, 1996.

## Conclusion

73. The right to participate in the political process, including the right to vote, is a fundamental human right which should be enjoyed by all people without discrimination. It is central to the legitimacy and functioning of our democratic society. Australia should take all necessary measures to ensure that enrolment and voting are available and accessible to all. In this submission, we have specifically addressed the following areas of the operation of the 2007 federal election which raise issues relevant to the right to participate in the political process without discrimination:

- early closure of the electoral rolls
- trialling of electronically assisted voting for people with vision impairment
- aspects of electoral laws that may discourage homeless and itinerant persons from exercising their right to vote
- disenfranchisement of prisoners sentenced to more than 3 years imprisonment.